



House of Commons
Justice Committee

Disclosure of youth criminal records

First Report of Session 2017–19

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to the report*

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Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/justicectee and in print by Order of the House.

Committee staff

The current staff of the Committee are Nick Walker (Clerk), Danielle Nash (Second Clerk), Gemma Buckland (Senior Committee Specialist), Nony Ardill (Legal Specialist), Claire Hardy (Committee Specialist), Christine Randall (Senior Committee Assistant), and Liz Parratt (Committee Media Officer).

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Summary

Our predecessor Committee held an inquiry into the disclosure of youth criminal records, on which it had concluded taking evidence but had not reported by the time Parliament was dissolved before the June 2017 general election. One of our first decisions in this Parliament was that we should produce a report on this important issue, based on the evidence received by our predecessor Committee. Our report considers whether the current statutory framework for disclosing records of offences committed by people when under 18 years old is appropriate and effective, and whether it strikes the right balance between protecting employers and the public, and rehabilitating people who commit offences as children. We also consider the impact of the current regime on people who offend as young adults.

Witnesses highlighted the adverse effect of childhood criminal records on individuals' access to employment, education, housing, insurance and visas for travel, and its discriminatory impact on particular groups including Black and Minority Ethnic children and those within the care system. We made direct approaches to organisations representing employers or others making use of criminal records checks for their views on the subject, but received little response from them. Overall, the inquiry evidence strongly supported the case for changing the criminal records disclosure system. For young adults, the majority of those who expressed a view thought that reform was also needed.

We conclude that the current system undermines the laudable principles of the youth justice system and may well fall well short of the UK's obligations under the UN Convention on the Rights of the Child. We regret the Government's decision to pursue an appeal against the recent Court of Appeal decision on the compatibility of the filtering regime with human rights standards, rather than tackling the urgent need for reform. We also conclude that the coherence of Government policy on this area would be enhanced by consolidating responsibility into a single Department.

In addition our report makes a number of recommendations for changing the statutory framework, which can be summarised as follows:

- enactment of Lord Ramsbotham's Criminal Records Bill to reduce rehabilitation periods under the Rehabilitation of Offenders Act 1974 (ROA)
- an urgent review of the filtering regime, to consider removing the rule preventing the filtering of multiple convictions; introducing lists of non-filterable offences customised for particular areas of employment, together with a threshold test for disclosure that is based on disposal/sentence; and reducing qualifying periods for the filtering of childhood convictions and cautions
- considering the feasibility of extending this new approach, possibly with modifications, to the disclosure of offences committed by young adults up to the age of 25

- allowing chief police officers additional discretion to withhold disclosure of non-filterable offences, taking into account the age and circumstances of the offence and the individual's age at the time with a rebuttable presumption against disclosure of offences committed during childhood
- giving individuals the right to apply for a review by the Independent Monitor of police decisions to disclose convictions or cautions.

The 'Ban the Box' campaign aims to delay the point at which job applicants have to disclose criminal convictions by ticking a box on application forms, allowing them to be judged primarily on merit. We recommend extending this approach to all public sector vacancies, with a view to making it a mandatory requirement for all employers. We further recommend urgent amendment to Government guidance on English housing authorities' allocation schemes to reflect the 2016 court decision that found a local authority to have breached the Rehabilitation of Offenders Act 1974 by taking into account an applicant's spent offences. In relation to insurance, we recommend that the Financial Conduct Authority consider undertaking a thematic review of providers wrongly declining cover or quoting higher premiums when customers disclose a criminal record.

1 Introduction

Background to the inquiry

1. The impact on people in England and Wales of disclosing their childhood criminal records, including after they have become adults, has been the focus of concern for many years. For example, the Carlile inquiry, noting evidence of the ‘destructive’ effect of childhood criminal records, recommended in 2014 that children who have committed non-serious and non-violent offences should have their criminal record expunged at the age of 18 if they have stopped offending.¹ A series of legal challenges to the previous disclosure regime led to modification of the legal framework, most recently in 2013 when a filtering system was introduced to prevent disclosure of certain ‘spent’ records in standard and enhanced certificates.

2. Our predecessor Committee received representations from Unlock and the Standing Committee for Youth Justice drawing attention to the continuing negative impact of criminal records on children, who are more likely to acquire a record in this jurisdiction than in many others² and face profound effects on their lives as a result. That Committee’s inquiry into the treatment of young adults in the criminal justice system, on which it reported on 18 October 2016,³ received evidence suggesting that a change in the treatment of criminal records was required to enable young adults to form non-criminal identities following their involvement in the criminal justice system.

Inquiry terms of reference and evidence received

3. Against this background, the previous Committee decided on 13 October 2016 to launch an inquiry into the system governing the disclosure of youth criminal records. It invited written submissions on the following issues:

- The appropriateness and effectiveness of the statutory framework applying to the disclosure to employers and others of criminal records relating to offences committed by people when under 18 years old
- Whether that framework and the way in which it is operated in practice strike an appropriate balance between protection of employers and the public, on the one hand, and the rehabilitation of people committing offences when young, on the other hand
- The effects in respect of the disclosure of such records of changes made in 2013 to the filtering of offences from criminal records checks and in 2014 to rehabilitation periods.

4. In the light of evidence to its inquiry into the treatment of young adults in the criminal justice system,⁴ that Committee also sought views on whether the regime governing

1 [Independent Parliamentarians’ Inquiry into the Operation and Effectiveness of the Youth Court, chaired by Lord Carlile of Berriew CBE QC. June 2014](#)

2 See: [Standing Committee for Youth Justice. Growing up, moving on - the international treatment of childhood criminal records. Claire Sands, March 2016.](#)

3 [House of Commons Justice Committee, Seventh Report of Session 2016—2017: The treatment of young adults in the criminal justice system HC169, published 26 October 2016](#)

4 [House of Commons Justice Committee, Seventh Report of Session 2016—2017: The treatment of young adults in the criminal justice system HC169, published 26 October 2016](#)

disclosure of criminal records relating to offences committed by children should be extended to apply to records of offences committed by older people, for example up to the ages of 21 or 25.

5. In the course of its inquiry into disclosure of youth criminal records, our predecessor Committee received written evidence from a range of statutory, voluntary, academic and other bodies, as well as from a number of individuals who had personal experience of the disclosure regime; in total, 40 written submissions were published. In spite of making direct approaches to a number of organisations representing those who use criminal record checks when assessing prospective employees or social housing tenants, the previous Committee received very little written evidence from this perspective.

6. On 13 December 2016, the previous Committee held a private seminar attended by eight individuals who had been directly affected by the disclosure of criminal records acquired before they were under 18, together with representatives of three NGOs: the Standing Committee for Youth Justice; Unlock; and Wipetheslateclean. An informal note of this seminar appears as Annex 2 to this report.⁵ The Committee also held a public evidence session, at which the witnesses were Christopher Stacey, Co-Director of Unlock; Ali Wigzell, Chair of the Standing Committee for Youth Justice; Dr Phillip Lee MP, Parliamentary Under Secretary of State at the Ministry of Justice;⁶ Sarah Newton MP, Parliamentary Under Secretary of State for Vulnerability, Safeguarding and Counter-Extremism at the Home Office;⁷ and Christian Papaleontiou, Head of the Public Protection Unit at the Home Office.

7. Following the dissolution of Parliament on 3 May 2017, the then Justice Committee—along with all Select Committees—ceased to exist and its ongoing inquiries were closed. The new Justice Committee was established on 11 September 2017. Taking account of the compelling evidence received by the inquiry into disclosure of youth criminal records and the most recent developments on this issue—including the publication of the report of the Taylor Review of the youth justice system, a key judgment of the Court of Appeal, a report by the Law Commission, and the conclusions of the Lammy review of the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the criminal justice system—we decided at our first meeting on 13 September 2017 that we should seek to agree a report on the basis of evidence taken by our predecessor Committee. We would like to record our thanks to all those who provided oral and written evidence to our predecessor’s inquiry, and in particular to those individuals who were willing to share their personal experiences—either by submitting written evidence or by attending the Committee’s private seminar in December 2016.

8. For those readers without prior knowledge of the legal system governing the disclosure of criminal records and the organisations with responsibilities for operating this system, the recent history of the criminal records disclosure regime and a description of the current framework can be found at Annex 1 to this report.

5 This was first published as an Annex to the [House of Commons Justice Committee’s report on unfinished business from the 2015 Parliament: Fifteenth Report of Session 2016–2017 HC 1143](#)

6 Dr Phillip Lee MP was appointed to his role as Justice Minister in July 2016, and then reappointed after the June 2017 general election.

7 Sarah Newton MP was appointed to her role as Home Office Minister in July 2016, and then reappointed after the June 2017 general election.

2 The case for change

9. The system in England and Wales for disclosure of criminal records is complex. It has been described by the Law Commission as “an impenetrable legislative framework,” further compounded by questions of legal certainty, with a compelling case for a wider review.⁸ In this chapter we consider the evidence received by our predecessor Committee—together with other relevant material—on the operation of the system for disclosure of youth criminal records, and on whether it is an effective and appropriate way of rehabilitating those who offend as children or young adults. In relation to children, the overwhelming majority of witnesses considered that this was not the case, and contended that the system needed to change. For young adults, the majority of those who expressed a view thought that reform was also needed.

The extent of disclosure of youth criminal records

10. The extent of disclosure of criminal records obtained in childhood is evident from Government statistics. As of 17 October 2014, out of 11,547,847 nominal records held on the Police National Computer, 10,520,929 contained a criminal record element.⁹ In the year 2014/2015, the total number of standard Disclosure and Barring Service (DBS) checks on subjects with convictions (that is, where there was a PNC match for a conviction) was 31,753; of these, 27,322 were disclosed and the remainder (4,431) were filtered.¹⁰ The same year, there were 200,710 enhanced DBS checks on subjects with convictions, of which 168,420 were disclosed and 32,290 were filtered. Of the standard DBS checks, 8,268 (26%) related to subjects who were under 18 at the time of a conviction; 7,517 of these were disclosed and 751 were filtered. In total, 46,547 (23%) enhanced DBS checks were made on subjects with convictions who were under 18 at the time, of which 41,117 were disclosed and 5,430 were filtered.¹¹

8 [Law Commission, Criminal records disclosure: non-filterable offences](#). Law Com No 371, 31 January 1917.

9 [Home Office FOI release published 21 January 2015](#). As well as persons with convictions, this includes those with impending prosecutions, cautions and any other criminal justice activity on their record, e.g. arrested but not charged.

10 The system for filtering records of certain offences is explained in Paragraph (i) of Annex 1

11 Source: [DBS Freedom of Information release 1377](#), published 17 March 2017

DBS standard and enhanced certificates, 2014/2015¹²

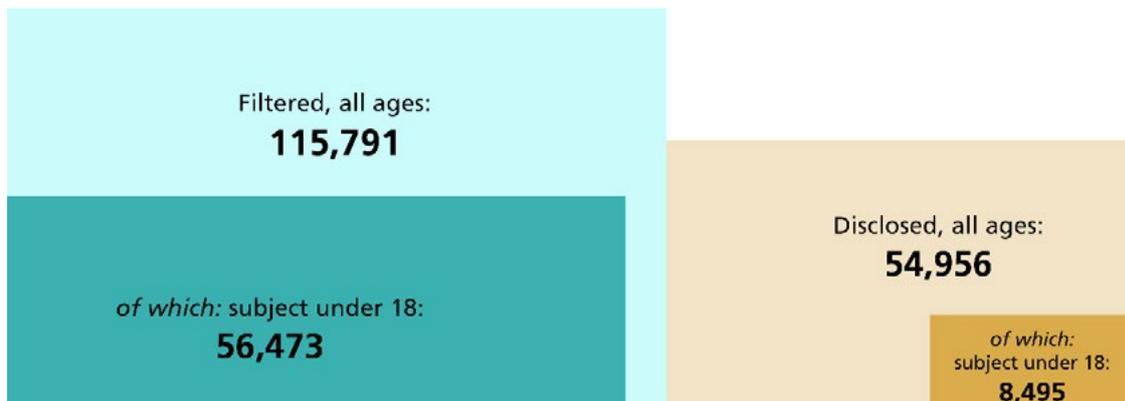
1. Enhanced certificates: convictions filtered/disclosed:



2. Standard certificates: convictions filtered/disclosed:



3. Enhanced certificates: cautions filtered/disclosed:



4. Standard certificates: cautions filtered/disclosed:



12 Source: [DBS Freedom of Information release 1377](#), published 17 March 2017

Consistency with the aims of the youth justice system

11. The principal aim of the youth justice system is to prevent offending by children and young people.¹³ In addition, every court dealing with a child must have regard to the child's welfare.¹⁴ The Government confirmed that its primary objective in youth justice is to stop people being drawn into crime "with consequent blighting of their life chances", as well as harm being caused to victims and communities. With regard to criminal records, it recognised:

... ..that children who offend may benefit from a second chance following their earlier errors, and that current legislation allows for appropriate rehabilitation.¹⁵

12. However, the Prison Reform Trust did not think that the aims of the youth justice system were supported by the current regime for disclosure of youth criminal records, given that this largely mirrors the system applied to offences accrued in adulthood.¹⁶ According to the Youth Justice Board for England and Wales, the criminal records framework could better reflect the requirement to have regard to the welfare of the child.¹⁷ Likewise, Just for Kids Law¹⁸ and the Michael Sieff Foundation¹⁹ cast doubt on whether the current regime was consistent with the aims of the youth justice system, including the prevention of reoffending.

13. There was a clear view among many witnesses that children should be allowed to move on from their past, and that the current criminal records system acted as a barrier to rehabilitation.²⁰ The Youth Justice Board for England and Wales pointed out that most childhood offending is transitory in nature; it is important to allow children and young people to learn from their mistakes and "not create enduring links to their offending if it can be avoided".²¹ The Children's Commissioner for England explained that child offending is predominantly unplanned and often carried out in the company of peers; it is a poor indicator of future behaviour as an adult.²² In the experience of Youth Court magistrates, children's cognitive development can vary significantly:

Many children who come before the court are in the initial stages of developing their consequential thinking skills, and factors such as emotional and social development can be a significant inhibitor to exercising such skills. This goes to the proportionality of criminal records, which should reflect these challenges²³

14. We find it a matter of regret that the laudable principles of the youth justice system, to prevent offending by children and young people and to have regard to their welfare,

13 [Section 37\(1\) of the Crime and Disorder Act 1998](#)

14 [Section 44\(1\) of the Children and Young Persons Act 1933](#)

15 [DYC0021](#)

16 [DYC0018](#)

17 [DYC0028](#)

18 [DYC0022](#)

19 [DYC0014](#)

20 Including Business in the Community [[DYC0038](#)], Unlock [[DYC0016](#)], Clinks [[DYC0019](#)]

21 [DYC0028](#)

22 [DYC0027](#)

23 Magistrates Association [[DYC0013](#)]

are undermined by the system for disclosure of youth criminal records, which instead works to prevent children from moving on from their past and creates a barrier to rehabilitation.

The impact on employment

15. In its written evidence, the Government emphasised that the inclusion of offences on a DBS certificate did not automatically prevent individuals from working with vulnerable groups, and that employers should not withdraw employment offers solely on the basis of a spent conviction or caution. Instead, they should exercise “a balanced judgement”, having regard to such factors as the nature of the offence, when it took place and the person’s age at the time; whether it was an isolated incident or part of a pattern of offending; and its relevance to the post in question. In carrying out this exercise, employers should be guided by the DBS Code of Practice,²⁴ which emphasises the importance of openness and fairness and requires all DBS-registered bodies to have a written policy on the suitability of ex-offenders for employment in particular positions.²⁵ NHS Employers publish one such written policy, which emphasises the need for a fair, non-discriminatory assessment.²⁶

16. On the basis of enquiries received on its telephone helpline, the UK Home Care Association gave evidence that employers in this sector would take a risk-based approach to recruitment, balancing information on convictions with the type of work under consideration.²⁷ However, the Criminal Justice Alliance argued that there was an inappropriate balance in favour of employers, allowing them to discriminate against those with youth offending histories.²⁸ NACRO and Business in the Community both highlighted a reluctance by employers to take on ex-offenders, citing research that suggested a majority would use a criminal conviction either to reject an applicant outright or favour a candidate without a conviction.²⁹ It was pointed out that, in reality, many employers operate a “tick box” system that requires individuals to disclose unspent criminal convictions on job application forms.³⁰ There was also anecdotal evidence of widespread confusion about disclosure, leading to “maladministration” of the scheme by employers.³¹ Employers were also thought to be highly risk averse³² with a tendency to assume the “worst case scenario” in relation to crimes disclosed years after the event, at which point it was difficult for job applicants to provide details of the incident.³³ In consequence, many ex-offenders were not applying for jobs for fear of rejection or embarrassment.³⁴ Christopher Stacey, the Co-Director of Unlock, commented:

I would be the first to say that many people with convictions do secure jobs that involve enhanced checks, having disclosed them, but that perception

24 [Disclosure and Barring Service Code of Practice](#), updated 16 November 2015

25 [DYC0021](#) paragraphs 40 to 42

26 [NHS Employers guidance on criminal records checks, September 2017](#)

27 [DYC0030](#)

28 [DYC0026](#)

29 [DYC0029](#); [DYC0038](#)

30 Standing Committee for Youth Justice [[DYC0056](#)]

31 Prison Reform Trust [[DYC0018](#)]

32 Standing Committee for Youth Justice [[DYC0024](#)]

33 Children’s Commissioner for England [[DYC0027](#)]

34 CRB Problems Ltd [[DYC0004](#)], Just for Kids Law [[DYC0022ata.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/disclosure-of-youth-criminal-records/written/43107.html](#)]

is not widespread ... so they do not bother applying. There is this problem across all types of employment of the way that employers recruit—in the way that they ask people to self-disclose during the recruitment process.³⁵

17. Business in the Community pointed out that younger people with criminal records faced a triple disadvantage from lack of employment experience, lack of networks and a criminal conviction.³⁶ Several witnesses gave evidence that barriers to employment increased the chances of an individual reoffending;³⁷ if a child believes that their criminal record “will haunt them forever”, this encourages the development of an anti-social or pro-criminal identity.³⁸ Ali Wigzell, Chair of the Standing Committee for Youth Justice, emphasised the link between employment and desistance. She commented:

a criminal record can act as a key barrier in that way, because it essentially labels that person as an offender and prevents them from developing a prosocial identity by gaining employment and seeing that reflect back to them by their significant others.³⁹

18. All eight of the individuals who agreed to participate in the Committee’s private seminar had found that their employment prospects were adversely affected by childhood criminal records. One participant, “Anita”, who struggled to find work as a qualified teacher, also submitted written evidence to the inquiry.⁴⁰ Many other case histories submitted as evidence illustrated the significant problems in obtaining employment faced by those with childhood criminal records. One individual explained how she was raised by drug-addicted parents who encouraged her to steal. Having had three convictions for robbery and theft, she was placed in foster care at the age of 16 and realised she had been living her life “completely wrong”. She wanted a career in nursing but discovered that she would not be accepted because of her convictions. After finding work in financial services, the company went into administration and she was made redundant. She commented:

I’ve been out of work since, not totally sure where I go from here as the enhanced [DBS] checks are being rolled out across all industries and I can’t compete with other candidates on merit/experience alone.⁴¹

19. The continuing impact of the rule preventing filtering of multiple, minor convictions is illustrated by this case history:

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.⁴²

35 [Q9](#)

36 [DYC0038](#)

37 Including Greater Manchester Youth Justice University Partnership [[DYC0015](#)], Standing Committee for Youth Justice [[DYC0056](#)]

38 Prison Reform Trust [[DYC0018](#), paragraph 8]

39 [Q8](#)

40 [DYC0032](#)

41 [DYC0036](#)

42 Case history provided by Standing Committee for Youth Justice [[DYC0024](#)]

20. Bob Ashford, from Wipetheslateclean, attended the Committee's private seminar and also made a written submission to the inquiry.⁴³ He explained the impact of having acquired two minor convictions as a 13-year old. Although he was able to progress his career in social work and youth justice, advancing to a senior level, when he stood for election as Police and Crime Commissioner (PCC) for Avon and Somerset he discovered that he would be barred from holding office because of having convictions for "imprisonable" offences.⁴⁴ After resigning his candidacy, he received extensive and largely supportive media coverage of his situation. As a result, he was contacted by many others facing difficulties because of historic criminal records, which led to him setting up his campaign organisation Wipetheslateclean.

21. Problems in obtaining employment were evident in many other case histories given as evidence to the inquiry; space does not permit us to summarise all of them. A consistent concern was the requirement to self-declare convictions that are unspent, using tick boxes on job application forms that were then used to filter out candidates. Business in the Community (BITC) observed:

[Employers] consider that if a conviction is unspent then it must be relevant. This 'ticked box' often then becomes shorthand for 'not fit for employment' without giving the applicant a chance to explain the circumstances of the offence and any rehabilitation that has happened since.⁴⁵

22. BITC's 'Ban the Box' campaign aims to bring about voluntary changes in recruitment practices by delaying the point at which job applicants have to disclose criminal convictions, allowing them to be judged primarily on merit. The campaign is now supported by 76 employers, including the civil service.⁴⁶ It was endorsed by the previous Work and Pensions Committee, whose 2016 report on support for ex-offenders cited a 2016 YouGov survey commissioned by the Department for Work and Pensions, which found that 50% of employers would not consider employing an offender or ex-offender. The Committee concluded:

Ban the Box does not oblige employers to hire ex-offenders but it increases the chance that they will consider them[...] We recommend that the Government extend Ban the Box to all public bodies, with exclusions for the minority of roles where it would not be appropriate for security reasons. The Government should also consider making banning the box a statutory requirement for all employers.⁴⁷

23. We accept that employers are entitled to know about genuine and relevant risks arising from previous criminal conduct. However, the clear difficulties in securing employment faced by people with youth criminal records, often for a lengthy period after they have become adults, leads us to conclude that too many employers fail to make an objective and balanced assessment of the relevance of 'unspent' criminal offences declared in job applications. *While recognising that exceptions may need to be made for exempted roles, we agree with the recommendation of the 2015 Parliament*

43 [DYC0010](#)

44 [Section 66\(3\)\(c\) of the Police Reform and Social Responsibility Act 2011](#)

45 [DYC0038](#), paragraph 12

46 [DYC0038](#), paragraph 3

47 [House of Commons Work and Pensions Committee, Fifth Report of Session 2016–17, Support for Ex-Offenders, HC 58](#) (paragraph 99)

Work and Pensions Committee that Ban the Box, which applies to all criminal records, should be extended to all public sector vacancies, and that the Government consider making it a mandatory requirement for all employers.

The impact on education, housing, insurance and travel

24. Our predecessor’s inquiry also received evidence that childhood criminal records created barriers to education and housing, as well as inhibiting access to insurance and visas for travel. These concerns were summarised by Just for Kids Law:

We know that having a home and a job, and engaging in education, make it much less likely children will reoffend. It seems perverse that we have a criminal record disclosure system that makes it far more difficult for young people to access these things, when disclosure is frequently unnecessary and disproportionate.⁴⁸

Education

25. Witnesses pointed out that the University and College Admissions Service (UCAS) advises candidates to declare all unspent convictions and, for courses that lead to particular professions or occupations that are exempt from the Rehabilitation of Offenders Act (ROA) 1974, any spent convictions that would appear on a DBS check.⁴⁹ The Standing Committee for Youth Justice argued that having a criminal record can affect children’s motivation to continue their education, because they fear discrimination and because they do not want their conviction disclosed.⁵⁰ The difficulties that individuals experience as a result of having criminal records were illustrated by case histories shared with the previous Committee, such as the case of “Paulette”, one of the participants in that Committee’s private seminar, who encountered problems in accessing university education. Another individual, whose case was presented by Unlock, explained how her retaliation against a school bully had led to her receiving a police warning for actual bodily harm at the age of 15. As a result, her university place to study nursing was revoked. She appealed against the decision, which involved writing a disclosure statement explaining the circumstances of the warning to a risk assessment panel. After qualifying, she eventually obtained employment in nursing but has found career progression difficult because of her criminal record, which she is continually having to explain.

26. The Association of Youth Offending Team Managers presented several examples of cases where young people with criminal records had faced barriers to pursuing college courses. In one case, a 17 year old who had been convicted of common assault at the age of 14 was accepted onto a health and social care course. At the end of the first year, prior to her work placement, the student’s conviction was disclosed by a DBS check. The college informed her she would be unable to practise as a social worker and, as a result, she changed to a non-vocational course.⁵¹ In a similar case, a young person gained a

48 [DYC0022](#)

49 SCYJ [[DYC0056](#)]; Unlock [[DYC0057](#)]. See <https://www.ucas.com/corporate/about-us/privacy-policies-and-declarations/ucas-declaration>

50 [DYC0056](#)

51 [DYC0017](#), practice example 6.

place on a course that would have led to her qualifying as a nursery nurse. However, the college would not let her take up the place because her criminal conviction would lead to difficulties finding her a placement, without which she could not complete the course.⁵²

27. In contrast, Sarah Newton MP, Parliamentary Under Secretary of State for Vulnerability, Safeguarding and Countering Extremism at the Home Office, took the view that it could be beneficial to disclose someone’s criminal records to an educational institution, because:

... ..it could be a critical part of their rehabilitation. Good colleges, good schools, will have services for vulnerable young people—mental health services and other support services—to make sure that that vulnerability is properly looked after. Disclosing information can be beneficial in that situation.

28. We agree that, in some circumstances, there may be advantages in vulnerable students disclosing a history of offending to educational providers that are committed to providing support to them. We also acknowledge that certain professions have stringent admission requirements requiring criminal record checks, and that it is important to avoid creating unrealistic expectations for would-be students. However, we believe that information about criminal records should not be used to create avoidable barriers to study or, where possible, to related work placements. We recommend that educational providers do not automatically use information about spent criminal records to deny access to courses, including vocational courses in health and social care. We urge providers to do everything they can to support students with childhood criminal records in their chosen field of study—for example, by giving them all possible assistance to secure work placements related to their courses.

Housing

29. We note the Ministry of Justice’s wish to see a greater emphasis on getting offenders into suitable stable accommodation as a way to tackle reoffending.⁵³ However, others expressed concerns about the potential adverse effect of youth criminal records on access to social housing in adult life. The Localism Act 2011 restored local authorities’ power⁵⁴ to exclude, by class, certain applicants they designate as “non-qualifying persons” for the purpose of their housing allocation schemes; this allows authorities to take into account past behaviour. When the Standing Committee for Youth Justice examined the housing allocation schemes operated by 30 London local authorities, it found that 13 of them contained restrictions on people with criminal records.⁵⁵

30. The problems created by such restrictions are illustrated by a recent court case, where the London Borough of Hammersmith and Fulham was challenged for its refusal to add a 19 year old care leaver to its housing register because of “unacceptable behaviour”—that is, his history of offending between the ages of 12 and 15. The High Court found⁵⁶ that this amounted to a breach of the ROA 1974; all the claimant’s convictions were spent and could not be taken into account. Other than the spent convictions, there was no

52 [ibid](#), practice example 11

53 Ministry of Justice, [Prison safety and reform](#), November 2016

54 Local authorities had the power to exclude categories of housing applicants between 1997 and 2003

55 [DYC0056](#)

56 [YA - v - London Borough of Hammersmith and Fulham \[2016\] EWHC 1850 \(Admin\)](#)

other evidence of “unacceptable behaviour” which made him unsuitable to be a tenant. Government guidance for local authorities on housing allocation does not appear to have been updated to take account of this judgment.⁵⁷

31. Notwithstanding this court decision, at least one London borough still maintains a housing allocations scheme that disqualifies those with convictions for relevant arrestable offences; it may make an exception for those who have maintained “a clear record of behaviour for at least 3 years since the offences occurred”,⁵⁸ implying that spent convictions less than three years old can still be taken into account. The Standing Committee for Youth Justice pointed out that private landlords and housing associations are also free to reject potential tenants with a criminal record; for example, Camelot, the vacant property management service, states “no criminal record” as one of its vetting criteria for property guardians.⁵⁹

32. We have serious concerns about local authorities continuing to frame their housing allocation schemes in a way that denies access to applicants with spent criminal records or unspent records of childhood offences that are low-level or irrelevant to their suitability as tenants. We recommend that, in relation to England, Department for Communities and Local Government guidance for housing authorities be amended as a matter of urgency to reflect the High Court’s 2016 decision on spent offences in *YA v London Borough of Hammersmith and Fulham*, and to clarify best practice in relation to unspent offences. We also draw the attention of the National Assembly for Wales to this issue.

Insurance

33. Insurance companies are entitled to ask customers for details of unspent convictions and to take these into consideration during the application process. Guidance from the Association of British Insurers explains that it is common practice for insurers to take into account only those offences that are relevant to the type of cover, such as motoring offences for car insurance. The guidance also states that:

There is nothing in ... the ROA ... to prevent an insurer from asking an open question about all convictions, but if a conviction is spent the proposer can legally state that it does not exist. Furthermore, if a spent conviction is disclosed, the insurer is under a statutory duty to ignore it if it was spent at the time of disclosure.⁶⁰

34. In spite of this clear guidance, there was evidence that having a criminal record, including spent offences, can affect a person’s access to insurance products. A ‘mystery shopper’ exercise conducted by Unlock in 2016 found that 31 household insurers asked questions about convictions or had assumptions about convictions that were misleading. None of them referred to the ROA 1974 or to the fact that spent convictions need not be

57 [Department for Communities and Local Government, Allocation of accommodation: guidance for local housing authorities in England. June 2012](#)

58 <https://www.croydon.gov.uk/sites/default/files/articles/downloads/Allocations%20Policy%20Final%20201116C.pdf>

59 [DYC0056](#)

60 [Page 8, Insurers’ approach to people with convictions and related offences: An ABI good practice guide. March 2014](#)

disclosed. There were similar findings for motor insurance providers. When the mystery shoppers tested insurers' responses to being informed about convictions that were spent, two providers quoted higher premiums and six refused to quote.

35. In oral evidence to the previous Committee, Christopher Stacey from Unlock explained that car insurance was often important for young people and that insurance companies regularly asked questions such as, "Do you have a criminal record?" without making it clear that people did not need to disclose convictions that are spent. With regard to unspent convictions:

... it is very difficult to find insurance through the mainstream market. Insurance companies take the view, without any real evidence to show this, that they believe people are higher risk with a criminal conviction. The specialist insurers that do exist here, who sometimes charge more ... show the customers who are disclosing a criminal record to be much lower risk.⁶¹

36. In response to a request by the previous Justice Committee, the Financial Ombudsman Service reviewed complaints about criminal convictions being used as a reason to decline insurance cover. Although its recording system could not generate data on complaints specifically relating to youth criminal records, it provided two examples of cases involving adult criminal records. In one case, a motor insurance provider cancelled an existing customer's policy on discovering that she had a spent conviction. In response to her complaint, the insurer suggested that it was the customer's responsibility to know she did not have to disclose a spent conviction, and reasonable for the provider to take into account any conviction disclosed. The Ombudsman concluded that it was unfair and unreasonable for the customer to be penalised for her honesty. While the Ombudsman was able to impose a financial penalty on the insurer, there was no power to change their policies or processes—that was a matter for the Financial Conduct Authority.⁶²

37. We are concerned by evidence that some insurance providers are wrongly declining cover or quoting higher premiums for applicants who disclose records of spent childhood offences, or unfairly taking into account unspent offences that have no relevance to the type of insurance cover. We recommend that the Financial Conduct Authority consider undertaking a thematic review of this issue within the insurance sector. We further recommend that guidance from the Association of British Insurers be strengthened to leave insurers in no doubt that they must not expressly or implicitly request customers to disclose spent offences, and that unspent offences should be taken into account only if they have relevance to the type of cover. We further recommend that the ABI take steps actively to promote the guidance among its members.

Travel

38. To obtain a visa to travel to certain countries, notably the USA, travellers may be required to disclose criminal records. The US Visa Waiver Programme (VWP) is normally used by those staying less than 90 days. For people travelling for longer periods or who have been arrested or convicted of certain offences, the VWP is not available; they must instead apply to the US Embassy for a visa.⁶³ The disclosable offences are those resulting in

61 [Q6](#)

62 [DYC0039](#)

63 The ROA 1984 does not apply to US visa law, so even spent convictions have to be disclosed.

serious damage to property, or serious harm to another person or government authority (previously referred to as “crimes of moral turpitude”) and violations of any law relating to possession or distribution of illegal drugs. Applicants for USA visas must provide a police certificate issued within six months of the date of the visa interview. It was pointed out by CRB Problems Ltd that such certificates would disclose all spent convictions, including those that would normally be filtered from an enhanced DBS certificate.⁶⁴

39. Robert Pinnock submitted evidence of his recent experience of being refused a visa for the USA, in part because he had disclosed his convictions from the 1970s, one of which was for actual bodily harm “despite the fact I was stopping a boy getting a beating”.⁶⁵ Several participants at the Committee’s private seminar were also affected by visa restrictions arising from their childhood criminal records. The Association of Youth Offending Team Managers also gave examples of families cancelling pre-planned holidays to the USA after their children had been arrested for criminal offences.⁶⁶

40. We have no remit to comment on the visa practices of other jurisdictions, but we conclude that these can also have a disproportionately negative impact on would-be travellers with criminal records acquired in childhood. We recommend that the Foreign and Commonwealth Office raise these concerns in discussion with relevant governments.

Rehabilitation periods under the ROA 1974

41. The Rehabilitation of Offenders Act 1974 (ROA) enables criminal offences to become “spent” after specified periods of time, relating to the disposal for the offence.⁶⁷ The Government did not explain the rationale behind the rehabilitation periods under the ROA, including the 2014 revisions.⁶⁸ It was pointed out that, while rehabilitation periods were reduced for many disposals, they were increased for others, including some Youth Rehabilitation Orders (YROs) and Detention and Training Orders (DTOs).⁶⁹ The previous Committee’s inquiry received evidence suggesting that these changes had limited value in moderating the impact of the disclosure regime. As the Information Commissioner’s Office pointed out in evidence, rehabilitation periods only have an impact on basic DBS certificates; around four fifths of applications are for standard or enhanced DBS certificates, which reveal details of both spent and unspent convictions in any event, subject to filtering.⁷⁰ While evidence submitted by a group of school pupils expressed quite mixed views on the length of rehabilitation periods,⁷¹ the Standing Committee for Youth Justice referred to the new rehabilitation periods as “lengthy” and pointed to their negative impact on children trying to access work or housing, especially on those who had no history as employees or tenants.⁷²

42. NACRO thought it anomalous that less serious disposals such as endorsements for motoring offences, conditional discharge orders, compensation orders and restraining

64 [DYC0004](#)

65 [DYC0011](#)

66 [DYC0017](#)

67 Rehabilitation periods under the ROA are explained in Paragraph (d) of Annex 1.

68 [DYC0021](#)

69 Standing Committee for Youth Justice [[DYC0024](#)]

70 [DYC0020](#)

71 Pupils 2 Parliament [[DYC0023](#)]

72 [DYC0024](#)

orders are “unspent” for longer periods than community sentences or certain custodial sentences.⁷³ In oral evidence, Christopher Stacey from Unlock noted that motoring offences take five years to become spent, a technical anomaly that often affects young people.⁷⁴ Some witnesses⁷⁵ considered that there was no consistent rationale or evidence base to support the new rehabilitation periods for children.

43. The Government did not provide the rationale behind the current rehabilitation periods, and some witnesses suggested that none exists. The evidence we have considered also leads us to conclude that the 2014 revisions did not go far enough, and we are particularly concerned that, for some DTOs and YROs, the rehabilitation periods have in fact increased to a level that appears disproportionate.

Operation of the filtering scheme

44. Much of the evidence set out above illustrates the practical impact of the filtering scheme⁷⁶ on individuals with criminal records acquired in childhood, particularly in relation to employment. Sarah Newton MP, the Home Office Minister, described the filtering process as “very open, transparent and rules-based... so that anybody can see what the rules are”. The Minister also assured the previous Committee more than once that the regime was kept under constant review.⁷⁷ On the other hand, NACRO described the filtering scheme as “complex and arbitrary” and difficult to understand, including for individuals seeking to discover whether their offences would qualify for filtering.⁷⁸ The regime was also described as “blunt, restrictive and disproportionate”⁷⁹ and as “not working effectively” to eliminate less serious offences from disclosure.⁸⁰ It was argued that the list of non-filterable offences—which applies to both adult and child offenders—is too inclusive, and that automatic disclosure of some offences might be unnecessary.⁸¹ The Children’s Commissioner for England pointed out that the qualifying period for filtering youth convictions—five and a half years—represented a greater proportion of a child’s life than the qualifying period of 11 years that applies to adult offenders: “For example, a child convicted while aged ten would have to wait for a period equivalent to more than half their life before their record would be eligible for filtering.”⁸²

73 [DYC0029](#)

74 [Q24](#)

75 Children’s Commissioner for England [\[DYC0027\]](#); Standing Committee for Youth Justice [\[DYC0024\]](#)

76 The system for filtering records of certain offences is explained in Paragraph (i) of Annex 1 .

77 [Q36, Q38](#)

78 [DYC0029](#), paragraphs 36 and 37

79 Unlock, paragraph 28 [\[DYC0016\]](#)

80 Greater Manchester Youth Justice University Partnership [\[DYC0015\]](#)

81 Professor Liz Campbell [\[DYC0002\]](#)

82 [DYC0027](#)

45. Many witnesses discussed the rule that prevents filtering of multiple convictions and custodial sentences irrespective of the type of offence. Although this approach was supported by the Office of the Police and Crime Commissioner for Staffordshire,⁸³ other witnesses were critical of it. The Standing Committee for Youth Justice expressed concern that the multiple convictions rule was having a “significant impact” on children, as indicated by the disclosure of many otherwise filterable convictions for offences such as shoplifting and possession of cannabis. According to the Children’s Commissioner for England, there is no evidence to suggest that having committed more than one offence is predictive of a greater risk of continued offending in adulthood; on the contrary, there is considerable evidence that most children stop offending as they mature.⁸⁴

46. Multiple cautions, as opposed to convictions, can be filtered after two years if the person was under 18 at the time of the offence—but any caution relating to a listed offence is non-filterable, so will be disclosed on a standard or enhanced DBS check. It was suggested that young people, especially those in vulnerable situations, might accept a caution from the police without the benefit of legal advice; this also avoided the prosecution being required to prove in court that the offence was committed.⁸⁵ In addition, there was evidence of children accepting a pre-charge caution for a more serious offence than the one that the police would have charged them for—for example, a caution for actual bodily harm (which cannot be filtered) instead of common assault.⁸⁶

47. Angela Grier and Terry Thomas from Leeds Beckett University suggested that, overall, the filtering regime reflected a wider move towards a “precautionary risk” approach, whereby risk-based policies seek to avoid a “worst case scenario” rather than being seen as a probability calculus.⁸⁷ The Government tendency towards risk aversion was acknowledged as a concern by the Justice Minister, Dr Phillip Lee MP, who observed:

The problem is that the list of exceptions grows and the list of circumstances in which we had better err on the side of caution grows. Be assured that I constantly keep looking at that because I want to give as many children as possible a second chance.⁸⁸

48. The filtering system is rules-based, but we do not accept that these rules are open or transparent or that a rules-based system offers sufficient flexibility. Our predecessor’s inquiry received overwhelming evidence of the harsh impact of the system on those who offend in childhood, arising in particular from the five and a half year qualification period before filtering is permitted, the multiple conviction rule and the serious offences rule. We conclude that too many childhood offences are unfiltered, undermining rehabilitation and denying children the “second chance” to which the Justice Minister is committed. We further conclude that the filtering system is wholly inappropriate for records of childhood offending and should be radically revised as a matter of urgency.

83 [DYC0037](#)

84 [DYC0027](#)

85 Professor Liz Campbell [[DYC0002](#)];

86 Just for Kids Law [[DYC0022](#)], CRB Problems Ltd [[DYC0004](#)]

87 [DYC0001](#)

88 [Q44](#)

49. Most sexual offences are non-filterable, including the sharing of indecent photographs of children.⁸⁹ The particular issue of child sexual offenders was considered by Barnardo's, drawing on its own experience which "clearly shows that many of the children who sexually abuse do so because of their own history of neglect, maltreatment and abuse."⁹⁰ Through providing therapeutic support to such children, the charity has concluded that their propensity to reoffend is very low. The profound long-term impact of having a childhood criminal record for a sexual offence was illustrated by evidence submitted to the Committee by a man who was cautioned for downloading a small amount of 'under-age' pornographic material at the age of 16, ten years ago. He described himself as "immature and inexperienced, delving into pornography when I was too young myself" and commented: "A caution is supposed to be a low level punishment but as it stays on my record, it truly isn't."⁹¹

50. Sharing indecent photographs of children in the form of "sexting" between young people has been identified as a growing problem.⁹² In oral evidence, the Minister, Dr Phillip Lee MP, acknowledged the difficulties in determining when sexual behaviour between children amounted to criminal activity;⁹³ and the Home Office Minister, Sarah Newton MP, suggested that it could be difficult for young people to understand the age of consent or which activities were crimes, "and then they find themselves with quite severe criminal penalties and are put on the sex offenders register."⁹⁴ Christian Papaleontiou, Head of the Public Protection Unit at the Home Office, explained that the recent adoption of Outcome Code 16, together with relevant guidance on sexting, allowed the police to record this activity as a crime where, in the public interest, no formal action would be taken.⁹⁵ This policy change means that sexting does not appear on a DBS certificate, other than at the discretion of the police as part of non-conviction intelligence. However, it was pointed out by the National Chief Police Council's Children and Young People (NPCC CYP) Portfolio that this leaves unresolved the position of those with earlier childhood records of sexting offences:

This reflects a change in the policing approach, and therefore has implications to those young people who committed offences at a time when policing was focused on detections for offences as being the most important factor, rather than preventing young people entering the criminal justice system.⁹⁶

51. We do not think that the difficult problem of sexual offending by children is assisted by giving them a record of a non-filterable sexual offence. We note the inconsistency between the current police response to "sexting" by children, designed to prevent them from entering the criminal justice system, and the previous policy of taking formal action. While we commend this change in policing approach, we are concerned about the implications for children whose "sexting" offences pre-date the policy change, acquiring non-filterable criminal records as a result.

89 An offence under [Section 1 of the Protection of Children Act 1978](#)

90 [DYC0025](#), paragraph 9

91 An individual [[DYC0031](#)]

92 Association of Youth Offending Team Managers [[DYC0017](#)]; Prison Reform Trust [[DYC0018](#)]

93 [Q54](#)

94 [Q57](#)

95 [Q59](#)

96 [DYC0035](#)

The Law Commission's review of non-filterable offences

52. In February 2017, the Law Commission published a report of its review of the operation of the filtering system, undertaken at the request of the Home Office.⁹⁷ The review concluded that the list of non-filterable offences lacked coherence and that the complexity of the legislation, owing to its multiple sources, made it hard to understand and inaccessible to users—especially those who are not lawyers. The “operational list” of non-filterable offences used by the DBS also created uncertainty for individuals. For example, some offences appear to have no basis in statute and certain new offences have been omitted from the list. The Commission recommended that, in the future, an improved single list should be created.⁹⁸ However, this should be considered in the context of a wider review of the disclosure system, which might include relaxing the rules that exclude multiple convictions and custodial sentences from being filtered.⁹⁹ The report also observed that:

The system might be regarded as disproportionately harsh in its effect on young offenders. There is an argument that some offences, although they may justifiably be non-filterable when committed by an adult, should be allowed to be removed from the record after a time in the case of a young offender.¹⁰⁰

53. **We commend the Law Commission's detailed and authoritative report on non-filterable offences, and endorse its conclusions on the complexity and inaccessibility of the filtering system and its recommendation for a wider review of the whole disclosure system, a matter to which we return below.**

Compatibility with Article 8 of the European Convention on Human Rights

54. The Information Commissioner's Office (ICO), which has responsibility for data protection, concluded that the filtering system was in breach of the requirements of Article 8 of the European Convention on Human Rights, which protects the right to respect for private and family life:

Any scheme without the sufficient flexibility to permit the use of discretion and judgment on the part of the data controller is likely to fall foul of Article 8...¹⁰¹

The ICO went on to observe that, while a thorough consideration of individual circumstances in every application would “prove prohibitive, in terms of cost and speed”, any regime needed to be able to consider factors that would ensure disclosure of personal data was a proportionate and necessary intrusion into the person's privacy.¹⁰²

55. The compatibility with Article 8 of the rules on non-filterable offences was the subject of a Court of Appeal decision in May 2017. In the linked cases of P, G, and W,¹⁰³ the court considered whether automatic disclosure, without any right of appeal, of multiple convictions and serious single offences was compatible with Article 8. The claimant P,

97 [Law Commission; Criminal records disclosure: non-filterable offences, February 2017](#). Law Com No 371

98 [Ibid](#), paragraphs 1.42 and 1.47.

99 [Ibid](#), paragraph 1.50 and Chapter 5

100 [Ibid](#), paragraph 1.58

101 [DYC0020](#), paragraph 22

102 [DYC0020](#), paragraph 23

103 [R \(P, G and W\) v Secretary of State for the Home Department and others \[2017\] EWCA Civ 321](#)

while suffering from undiagnosed schizophrenia in her early thirties, had been convicted of theft and failing to surrender to bail; the claimant G, when aged 13, had received two reprimands for child sexual offences relating to younger children; and the claimant W, at the age of 16, had been convicted for actual bodily harm, receiving a conditional discharge.

56. The Court of Appeal concluded that the multiple conviction rule and the serious offence rule, without a mechanism for refinement, were not “in accordance with the law” as required by Article 8(2) of the Convention. The multiple conviction rule applies irrespective of the offence, the type of disposal, the time that has elapsed or the relevance of the information to the prospective employer; and the serious offence rule, although based on the nature of the offence, does not allow proportionality to be examined in relation to the other factors.¹⁰⁴ However, it was for Parliament, not the courts, to devise a system that would more finely balance the rights of individuals to put their past behind them with the need to keep the public safe; it might be sufficient to change the filtering system rather than introducing an individual right of review.¹⁰⁵ In response to this decision, the Government has appealed to the Supreme Court; the case is expected to be listed for hearing in the summer of 2018.

57. We note that the observations of the Information Commissioner’s Office regarding the compatibility of the current disclosure scheme with Article 8 of the European Convention chime with the conclusions of the Court of Appeal’s important decision in May 2017, the latest in a line of recent judgments regarding the compatibility of the regime with human rights standards. We regret the Government’s decision to appeal against this recent judgment rather than tackling the urgent need for reform without further delay.

Disclosure of police intelligence

58. When an enhanced DBS check is requested, a relevant chief police officer must be asked to provide any additional non-conviction information about the subject that they reasonably believe to be relevant for the purpose of the certificate. Evidence to the previous Committee’s inquiry indicated fewer concerns about the disclosure of non-conviction information from the Police National Database (PND), compared to concerns about the system for disclosing records of offences. The Government drew attention to the statutory Home Office guidance to chief officers of police on discharging this function, and to the role of the Independent Monitor in providing a disputes process for an individual to challenge inaccurate or inappropriate disclosure; the Independent Monitor also reviews a sample of cases every year. The Government pointed out that the Independent Monitor’s annual report for 2014 noted no significant areas of concern in this regard.¹⁰⁶

59. The Information Commissioner recognised that an element of judgment and discretion is built into decisions about disclosing police intelligence, that chief police officers are required to take Article 8 human rights considerations into account, and that the role of the Independent Monitor provides a further safeguard. The Commissioner was “broadly satisfied that the framework ... achieves the right balance between public safety and the right to privacy of the applicant.”¹⁰⁷ However, CRB Problems Ltd was concerned

104 [ibid](#), paragraphs 44 and 45

105 [ibid](#), paragraph 124

106 [DYC0021](#), paragraphs 28 and 29

107 [DYC0020](#), paragraphs 27 - 30

that, even if a reprimand or caution is filtered from disclosure, the incident in question generally remains on the PND; the police therefore have a discretion to disclose it as non conviction information on an enhanced certificate.¹⁰⁸ Christopher Stacey from Unlock was worried about potential inconsistencies between the disclosure practices of different police forces, and about the fact that, in practice, it falls on young people to proactively challenge a police force disclosure.¹⁰⁹ Both Unlock and the Standing Committee for Youth Justice argued that there should be a presumption against disclosure of police intelligence relating to under-18s, as part of a distinct approach for children.¹¹⁰ We note that a similar recommendation was made by the Taylor Review of the Youth Justice System in England and Wales.¹¹¹

60. We recognise that the regime governing the disclosure of police non-conviction information benefits from having an independent review mechanism and that chief police officers use their discretion in deciding whether disclosure should be made. However, allowing discretion within decision-making may lead to inconsistency between police forces. To support consistency, we recommend a rebuttable presumption against disclosure of police intelligence relating to under-18s, including of information relating to a reprimand or caution that would otherwise be filtered from a DBS certificate.

Discriminatory impact of disclosure regime

61. Several witnesses considered that the disclosure regime caused secondary discrimination for certain groups already disproportionately represented within the criminal justice system. The NPCC CYP Portfolio expressed concern about the over-representation of Black and Minority Ethnic (BAME) young people within the criminal justice system,¹¹² as did Professor Liz Campbell of the University of Durham,¹¹³ Angela Grier and Terry Thomas from Leeds Beckett University¹¹⁴ and the Greater Manchester Youth Justice University Partnership.¹¹⁵ According to Ministry of Justice statistics for 2014, compared with the White ethnic group, “stops and searches” were four and a half times more likely to be carried out on those from the Black ethnic group and twice as likely to be carried on those from the “Mixed” group. Proportions of stops and searches resulting in arrests were also higher for these groups. The statistics also show that, compared to other groups, members of the Black ethnic group were three times more likely to be given a caution.¹¹⁶ The over-representation of BAME young people within the youth justice system has also been highlighted by the report of the Lammy Review, led by David Lammy MP.¹¹⁷

62. A disproportionate impact of the disclosure regime on looked-after children was also identified.¹¹⁸ Research evidence cited by Greater Manchester Youth Justice University

108 [DYC0004](#)

109 [Q29](#) and [Q30](#)

110 Ali Wigzell, Standing Committee on Youth Justice (Q27); Unlock [\[DYC0016\]](#), paragraph 34]

111 [Review of the Youth Justice System in England and Wales, by Charlie Taylor. Ministry of Justice, December 2016](#), paragraph 89.

112 [DYC0035](#)

113 [DYC002](#)

114 [DYC001](#)

115 [DYC0015](#)

116 [Ministry of Justice Statistics on Race and the Criminal Justice System 2014](#)

117 [The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System. Final report, September 2017.](#)

118 National Police Chiefs’ Council Children and Young People Portfolio [\[DYC0035\]](#)

Partnership suggested that children in the care system often commit offences that reflect their troubled backgrounds, characterised by loss of emotional control, aggression, and a disregard for enforced boundaries. The Criminal Justice Alliance pointed out that those in care settings tend to be criminalised for minor infringements and indiscretions that would be dealt with informally in a family home.¹¹⁹ This was illustrated by a case study, submitted by Just for Kids Law, of a physically abused child who had multiple convictions for assaults on care home staff committed between the ages of 10 and 12, due to his inability to cope with normal physical reactions.¹²⁰

63. Witnesses also remarked on the discriminatory impact of the disclosure regime on people whose criminalisation as children was linked to mental health problems—especially if they had been sectioned;¹²¹ to autism; or to depression caused by post-traumatic stress.¹²² CRB Problems Ltd gave an example of a client who was:

...suffering from autism some years ago when treatments, help and support for such sufferers was hardly available, was in fact taken into care and when the home had problems with him—due in fact primarily to his condition—he ended up with 2 convictions, which under the present filtering rules will never be filtered off.¹²³

64. There was also evidence of disproportionate impact on two other groups. The Nia Project highlighted that the disclosure of prostitution-related offences committed by women and girls under the age of 18 creates “a huge barrier to women who wish to exit from what is essentially an abusive trade.”¹²⁴ The Project pointed out that “prostitution is often a survival strategy”, making it highly likely that those with prostitution-specific criminal records have multiple convictions that will never be filtered.¹²⁵ Evidence submitted to the previous Joint Committee on Human Rights by the Project for the Registration of Children as British Citizens has highlighted that, applying the “good character” requirement, the Home Office may refuse British citizenship to children with criminal convictions, many of whom do not have leave to remain in the UK, even though they may have been born in this country or arrived at a very early age.¹²⁶

65. Our conclusion that the criminal records disclosure regime needs to change is supported by evidence of its discriminatory impact on BAME children, children within the care system, girls forced into prostitution and children seeking to become British citizens—an impact that is very likely to follow them into adulthood, to the further detriment of their life chances.

The UN Convention on the Rights of the Child and the Beijing Rules

66. The UK has international law obligations under the UN Convention on the Rights of the Child (UNCRC), which it ratified in 1991. Article 3(1) of the UNCRC makes the best interests of the child a primary consideration “[i]n all actions concerning children, whether

119 [DYC0026](#)

120 [DYC0022](#)

121 Police and Crime Commissioner for Staffordshire [[DYC0037](#)]

122 CRB Problems [[DYC004](#)]

123 [DYC004](#), paragraph 10

124 [DYC0033](#), paragraph 1.3

125 [DYC0033](#), paragraph 2.2

126 Evidence submitted to Joint Committee on Human Rights inquiry into the UK’s record on children’s human rights, by the [Project for the Registration of Children as British Citizens](#) [CHR0011]

undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies ...” According to Article 40(1), the treatment of children who infringe the penal law should take into account their age and the desirability of promoting their reintegration into society; Article 40(2)(b)(vii) requires every child to have their privacy fully respected at all stages of penal law proceedings; and Article 40(3) expects States Parties to promote the establishment of penal laws and procedures “specifically applicable to children”.

67. Building on these Articles of the UNCRC, the UN Committee on the Rights of the Child has recommended that diversion from judicial proceedings should lead to a definite and final closure of the case, without the child in question being treated as having a criminal record or previous conviction.¹²⁷ The Committee has also recommended that, in normal circumstances, a child’s name should be automatically removed from criminal records when they reach the age of 18.¹²⁸ In addition, the UN’s so-called “Beijing Rules”¹²⁹ require records of juvenile offenders to be kept strictly confidential, with access limited to authorized persons.

68. Many witnesses to the inquiry suggested that the system for disclosure of youth criminal records falls short of the UK’s obligations under the UNCRC, by not being distinct from the regime for adults, working against the aim of rehabilitating children, and undermining children’s privacy.¹³⁰ We also note that in its concluding observations on the UK’s fifth periodic report, the UN Committee on the Rights of the Child recommended that the UK ensures that diversion measures do not appear in children’s criminal records.¹³¹

69. When the Minister, Dr Phillip Lee MP, was asked in the oral evidence session whether the criminal records system aligns with the UK’s responsibilities on the rights of the child, he responded:

I am confident that the system, as it currently stands, is in line with what the UN has concluded. We have a system that stands comparison with anywhere else in the world, to be honest with you.¹³²

70. We do not share the Minister’s confidence that the current system for disclosure of youth criminal records is consistent with the UK’s obligations under the UN Convention on the Rights of the Child, General Comment No 10 of the Committee on the Rights of the Child and the Beijing Rules; indeed, we conclude that the current framework may well fall short of these obligations and requires significant reform.

Criminal records acquired by young adults

71. The previous Committee’s inquiry also sought views on whether the regime for youth criminal records should be extended to disclosure of offences committed by older people,

127 [Committee on the Rights of the Child, General Comment No. 10 \(2007\), Children’s rights in juvenile justice; paragraph 27.](#)

128 [Ibid](#), paragraph 67

129 [UN Standard Minimum Rules for the Administration of Juvenile Justice \(“The Beijing Rules”\), adopted by General Assembly resolution 40/33 of 29 November 1985](#)

130 Including Children’s Rights Alliance for England [[DYC0009](#)], Standing Committee for Youth Justice [[DYC0024](#)], Leeds Beckett University [[DYC001](#)], Professor Liz Campbell [[DYC002](#)], Youth Justice Board [[DYC0028](#)].

131 [Committee on the Rights of the Child, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland; July 2016](#)

132 [Q54](#)

for example up to the ages of 21 or 25. The case of “Kamla”, one of the participants at that Committee’s private seminar, illustrates how acquiring a criminal record can have a profound impact on a young adult’s life. One witness said that his non-filterable conviction for actual bodily harm at the age of 18 was still creating barriers to employment, 37 years later.¹³³ Another individual thought that people between 18 and 22 still had a “teenage” way of thinking.¹³⁴ Richard Curen, who offended at the age of 20, described himself as “naïve and immature” and argued for a different approach for criminal records acquired under the age of 21.¹³⁵ Transition to Adulthood (T2A) welcomed the Committee’s decision to extend the inquiry to disclosure of young adults’ offending, pointing out that this was consistent with the conclusions of its inquiry into the treatment of young adults in the criminal justice system. T2A argued that employment, housing and good health were key factors in reducing a young adult’s offending, and called for a distinct approach to criminal records disclosure that promotes desistance from crime. The organisation reminded the Committee of its conclusion that young adults:

...who decide no longer to commit crime can have their efforts to achieve this frustrated both by their previous involvement in the criminal justice system due to the consequences of having criminal records, and limitations in achieving financial independence due to lack of access to affordable accommodation or well-paid employment as wages and benefits are typically lower for this age group.¹³⁶

72. Likewise, the Association of Youth Offending Team Managers questioned the assumption within the legal system that young adults are fully responsible, referring to research that suggests “adulthood is not something which people reach on their 18th birthday.” The Association supported changing the regime for disclosing young adults’ criminal records, to bring it in line with the provisions for care leavers (who are entitled to support until the age of 21, or 25 if they are in full time education or have a disability).¹³⁷ A more nuanced approach for the criminal records of young adults was also recommended by Greater Manchester Youth Justice University Partnership,¹³⁸ Angela Grier and Terry Thomas from Leeds Beckett University,¹³⁹ Business in the Community¹⁴⁰ and the Police and Crime Commissioner for Staffordshire.¹⁴¹

73. When asked in the oral evidence session to comment on this issue, the Minister, Dr Phillip Lee MP, thought that there would be a problem in “arbitrarily” deciding to give different treatment to people aged between 18 and 25:

... because you can find some individuals who are emotionally immature, reach 25, reflect upon their behaviour and realise that they were wrong. There are others who do not do that.¹⁴²

133 An individual [DYC0008]

134 An individual [DYC0006]

135 [DYC0005](#)

136 [DYC0012](#), quoting Paragraph 14 of HC 169

137 [DYC0017](#)

138 [DYC0015](#)

139 [DYC0001](#)

140 [DYC0038](#)

141 [DYC0037](#)

142 [Q66](#)

While supporting change in principle, T2A¹⁴³ and Unlock¹⁴⁴ recommended that further research be undertaken on developing a more nuanced system for young adults. Prison Reform Trust believed the system for young adults “is worthy of separate and more detailed study” but that it should not replicate the system for children, who should be treated differently.¹⁴⁵ Ali Wigzell, from the Standing Committee for Youth Justice, agreed that children should be recognised as a group with needs that are distinct from those of young adults.¹⁴⁶

74. In the light of the report of our predecessor Committee and the evidence submitted to the present inquiry, we consider that a more nuanced approach may be required for the disclosure of records of offences committed by young adults aged between 18 and 25, while still retaining a distinct approach for children. *We recommend that a new approach for disclosing the criminal records of young adults be the subject of comprehensive research.*

143 [DYC0012](#), paragraph 7

144 [DYC0016](#), paragraph 45

145 [DYC0018](#), paragraph 10

146 [Q17](#)

3 Changing the statutory framework

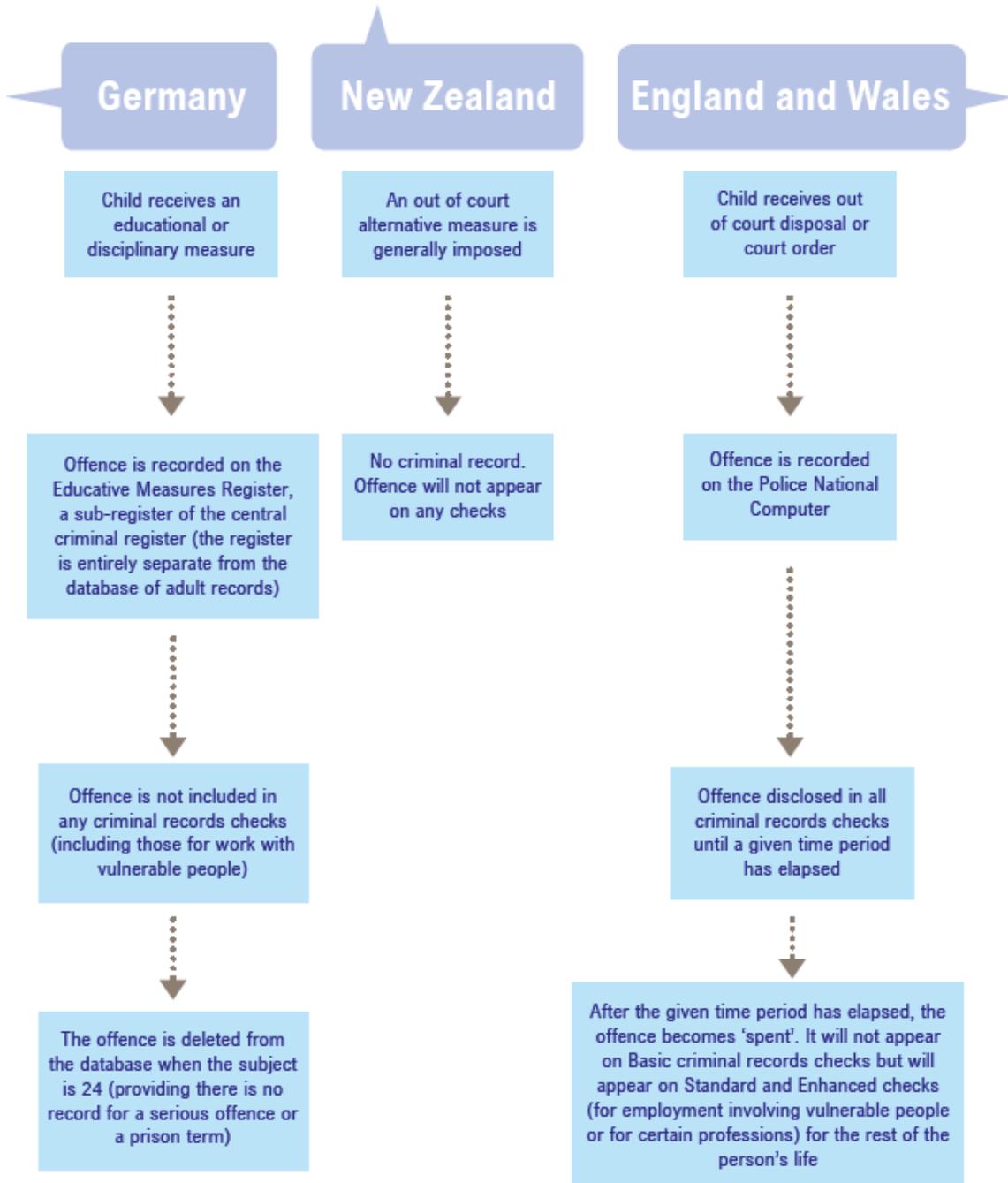
75. Evidence submitted to our predecessor’s inquiry indicated much disquiet about the current statutory regime for disclosing criminal records acquired by children, and many suggestions for revising the system were put forward by witnesses. In this final Chapter, we consider whether, and how, the law governing disclosure of youth criminal records might be made fairer and more accessible to end users.

International comparisons

76. The Standing Committee for Youth Justice drew attention to its international research into the handling of childhood criminal records,¹⁴⁷ which found that the majority of the 16 jurisdictions examined had separate systems for children and adults. For example, in Germany, Ohio, Texas and Spain most childhood records are held on databases entirely separate to those for adults, with significant restrictions on access. In many of the jurisdictions, only the most serious offences committed by children attract a criminal record and/or are classed as ‘convictions’; thus, in New Zealand in 2014, only 48 children under the age of 17 were given a criminal record—compared to 60,000 cautions and convictions (all attracting a criminal record) that were given to children in England and Wales in 2013/14. The research identified provisions for expunging criminal records in 11 of the jurisdictions, although with different conditions and processes. Germany and Spain (from 2019) permit all sentences, apart from life, to be removed from a record, while Canada, Sweden, Italy and Ireland exclude the most serious offences from their otherwise wide-ranging policies on expunging records. Other jurisdictions were found to have more complex rules on expungement of records or link this to rehabilitation.

147 [Standing Committee for Youth Justice. Growing up, moving on - the international treatment of childhood criminal records. Claire Sands, March 2016.](#) The 16 jurisdictions were England and Wales; Scotland; Northern Ireland; the Republic of Ireland; New South Wales; New Zealand; Canada; France; Spain; Italy; Germany; Poland; Sweden; Ohio; Texas; and New Mexico.

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



Treatment of child convicted of second minor offence in Germany, New Zealand, England and Wales. Source: Growing up, moving on - the international treatment of childhood criminal records. SCYJ, March 2016.

77. The Standing Committee’s comparative research also considered the extent to which different jurisdictions allow wider childhood records disclosure for work involving vulnerable people or public trust. With some exceptions, most were found to have special rules for this purpose. However, England and Wales appeared to be relatively unusual—

though not unique—in the breadth of information that can be disclosed for work with vulnerable people, and the number of types of organisation given access to it. Many of the jurisdictions examined take a more rehabilitative approach; for example, in Germany, only the (very rare) childhood offences resulting in custody are disclosed, and in New Zealand and Ohio there is only disclosure of more serious convictions.

78. These research findings were partly corroborated by the conclusions drawn by Unlock’s field study of criminal record practices in France, Spain and Sweden. In all three jurisdictions, shorter rehabilitation periods apply than in England and Wales and the breadth of offences that can be expunged from records “showed a level of commitment to rehabilitation that is simply not present” in this jurisdiction.¹⁴⁸ Employers who need to check criminal records do so at an appropriate stage and, in Sweden, there are seven different categories of employment allowing disclosure to be targeted closely to the type of job.¹⁴⁹

A question of balance

79. The tension between rehabilitation and public protection was one of the issues identified in the inquiry terms of reference. Responsibility for these two objectives is split between the Ministry of Justice (rehabilitation) and the Home Office (public protection). The Justice Minister, Dr Phillip Lee MP, thought that the present balance was right, although he agreed that this was a matter that should be kept under review.¹⁵⁰ When Dr Lee and Sarah Newton MP, Minister at the Home Office with responsibility for safeguarding, were asked whether their two departments were “really joined up” on policy relating to criminal records disclosure, they assured the Committee that they worked together on interministerial working groups and that there were also very good working relationships at officer level. Christian Papaleontiou, Head of the Home Office Public Protection Unit, went on to explain that the split role enabled the two departments “to challenge each other’s positions and priorities”, with the aim of striking the right balance.¹⁵¹

80. Other witnesses, while accepting the importance of protecting vulnerable groups such as children,¹⁵² thought that the disclosure regime should strike a better balance between the interests of employers and those of people committing offences when young;¹⁵³ Ali Wigzell pointed out that the Standing Committee’s international research gave no indication that placing a greater emphasis on rehabilitation would have an adverse effect on public protection.¹⁵⁴ While employers’ rights should be respected, these rights are not enshrined in international law—unlike the rights of children¹⁵⁵—and, it was argued, employers also had a moral responsibility to support ex-offenders, not least to reduce the burden on tax payers.¹⁵⁶ The Committee heard the following example:

148 [DYC0016](#), paragraph 36.

149 [Q14](#)

150 [Q34](#)

151 [Q45 to Q48](#)

152 Pupils 2 Parliament [[DYC0023](#), paragraph 13]

153 Greater Manchester Youth Justice University Partnership [[DYC0015](#)], National Police Chiefs’ Council Disclosure and Safeguarding Portfolio [[DYC0034](#), Paragraph 4.7];

154 Ali Wigzell, [Q19](#)

155 Association of Youth Offending Team Managers [[DYC0017](#)]

156 An individual [[DYC0006](#)]

... a 50-year-old applying to be a traffic warden and they have been prevented from getting that job because they have two shoplifting offences that they committed when they were 12. We would argue, how does that protect the public?¹⁵⁷

81. On the other hand, while acknowledging the importance of both rehabilitation and public protection, Christopher Stacey from Unlock cast doubt on the value of searching for a balance, because:

... you are setting it up as a zero-sum game, where you have to do more of one and less of the other[...] It rather strangely suggests that we have two different groups of people—people with convictions, who are risky, and society, which is vulnerable. In fact, we have over 10 million people in the UK who have a criminal record, so those lines are not as clear-cut as we might like to think they are.¹⁵⁸

An absence of clear cut lines was also indicated by research drawn to the Committee's attention by NACRO, which showed that many high-risk individuals in fact have no previous convictions.¹⁵⁹

82. Christopher Stacey argued that employers tend to assume a clean criminal record indicates a lack of risk, and vice versa.¹⁶⁰ The current regime pushes decision making down to employers, who—rather than taking carefully calibrated decisions—often conclude that any information disclosed to them must be relevant;¹⁶¹ however, Unlock's dealings with human resources professionals indicated that “they want to know the things that are relevant to their organisation and to the risks of the job”.¹⁶² Mr Stacey also pointed out that a targeted barring system would allow people to be disqualified from doing particular jobs where public protection is of high importance, which “brings you closer to a position where you are targeting the information to the relevant job or sector ...”.¹⁶³

83. ***Regardless of whether or not it is a useful principle to base policy-making on criminal records disclosure on achieving a 'balance' between rehabilitation on the one hand, and the interests of employers and the wider public on the other, we believe that the coherence of Government policy would be enhanced by consolidating responsibility into a single department.***

Reducing rehabilitation periods

84. Building on its international research, the Standing Committee for Youth Justice put forward proposals for substantial reductions to rehabilitation periods under the ROA 1974 which, it argued, would be more in keeping with the aims of the youth justice system: Youth Rehabilitation Orders (YROs) should become spent as soon as the order is finished, instead of after six months; custodial sentences of under two years—including Detention and Training Orders (DTOs)—should become spent after six months after the order

157 Ali Wigzell, [Q20](#)

158 [Q21](#)

159 [DYC0029](#), paragraph 28

160 [Q21](#)

161 [Q23](#)

162 [Q22](#)

163 [Q23](#)

has finished; child custodial sentences of between two and four years should become spent after two years; and custodial sentences of more than four years and less than life, currently never spent, should become spent after seven years.¹⁶⁴ In oral evidence, the Standing Committee’s chair Ali Wigzell argued that shortening these periods would give children a much greater opportunity to turn their lives around and to allow the system to focus on rehabilitation.¹⁶⁵ In relation to DTOs, the Standing Committee’s supplementary evidence to the inquiry pointed out that shorter rehabilitation periods would not prevent information being disclosed on a standard or enhanced DBS certificate.¹⁶⁶

85. Other submissions expressed broad support for the Standing Committee’s proposals for reducing rehabilitation periods, including those of Unlock,¹⁶⁷ Prison Reform Trust,¹⁶⁸ Just for Kids Law,¹⁶⁹ Criminal Justice Alliance,¹⁷⁰ and the Children’s Commissioner for England.¹⁷¹ We are also aware that the Criminal Records Bill, a Private Members’ Bill sponsored by Lord Ramsbotham which had its first reading in the House of Lords on 29 June 2017, would significantly reduce rehabilitation periods for both adult and child custodial sentences, using a framework broadly similar to the proposals put forward by the Standing Committee for Youth Justice. This includes allowing YROs to become spent on the last day that the order has effect, with DTOs of up to two years becoming spent six months after the sentence is completed. However, the Bill goes further than the Standing Committee’s model by proposing a rehabilitation period of four years, rather than seven years, for custodial sentences that exceed four years. The Bill is now awaiting a date for a second reading.¹⁷²

86. *We strongly endorse the proposals for reducing rehabilitation periods for childhood offences contained in Lord Ramsbotham’s Criminal Records Bill of Session 2017–19, which we believe reflect a broad consensus for the need for reform in this area. We commend the Bill to Parliament.*

Refining the filtering regime

87. Describing the legislative framework for disclosure of criminal records as “appropriate and effective”,¹⁷³ the Government asserted that the introduction of filtering “has substantially reduced the number of convictions and cautions disclosed on criminal record certificates issued by the DBS”;¹⁷⁴ in 2015–2016, out of 4.2 million DBS certificates issued, 180,000 applications benefited from filtering arrangements.¹⁷⁵ However, echoing the conclusions of the Law Commission’s review, many submissions to the previous Committee’s inquiry expressed support for changing the filtering system, including abandoning the inflexible “two conviction” rule¹⁷⁶ and revisiting the criteria for non-

164 [DYC0024](#)

165 [Q24](#)

166 [DYC0056](#)

167 [DYC0016](#)

168 [DYC0018](#)

169 [DYC0022](#)

170 [DYC0026](#)

171 [DYC0027](#)

172 [Criminal Records Bill](#)

173 [DYC0021](#), paragraph 30

174 [DYC0021](#), paragraph 49

175 [DYC0021](#), paragraph 50

176 Including Just for Kids Law [[DYC0022](#)], Business in the Community [[DYC0038](#)], Unlock [[DYC0016](#)].

filterable offences committed by under-18s.¹⁷⁷ The Children’s Commissioner for England considered that filtering should be based on the nature of the disposal rather than the type of offence, pointing out that members of the public tend to assume the “worst case scenario” when learning of a previous offence. This view was shared by others, including Unlock¹⁷⁸ and the Standing Committee on Youth Justice.¹⁷⁹ The Criminal Justice Alliance proposed automatic filtering for all childhood offences that did not result in a custodial sentence, provided four years had elapsed since the last conviction.¹⁸⁰ The Association of Youth Offending Team Managers went further, suggesting that only records of the most serious offences should be carried forward into adulthood—such as those attracting a custodial sentence of four years or more, possibly with separate provisions for children who offend during their transition to adulthood.¹⁸¹

88. We note the recommendation of the Taylor Review that, once spent, childhood cautions and convictions should very quickly become non-disclosable on standard and enhanced DBS checks, with the exception of the most serious offences.¹⁸² Several witnesses to this inquiry proposed that childhood cautions be automatically filtered after a period of two years.¹⁸³ With regard to convictions, Prison Reform Trust suggested there should be a right to apply to a tribunal to have childhood records expunged.¹⁸⁴ Citing research evidence indicating that most reoffending happens within 12 or 24 months of someone offending or being released from prison, both Unlock and the Standing Committee for Youth Justice argued that there was a strong case for youth criminal records to be automatically expunged after the risk of reoffending had reduced; one option would be after a period of ten years from the end of the sentence for the most recent offence. The Prison Reform Trust called for individuals to have a right to apply to a tribunal for expungement of all or part of their criminal records.¹⁸⁵ We note that the final report of the Lammy Review favoured a flexible process for expunging records similar to the system for “sealing” criminal records that operates in Massachusetts, USA: the report recommended that a judge or a body like the Parole Board be able to decide on applications for records to be sealed, with a presumption that favourable consideration would be given to those who committed crimes as children or young adults who can demonstrate that they have changed since their conviction.¹⁸⁶

89. In the cases of P, G and W, the Court of Appeal’s central conclusion was that the inflexible rules on non-filtering of multiple convictions and serious offences were not “in accordance with the law” without a mechanism for refinement. While not prescribing the changes that Parliament should make, the Court confirmed an earlier Supreme Court

177 Including Youth Justice Board [\[DYC0028\]](#), NACRO [\[DYC0029\]](#), Criminal Justice Alliance [\[DYC0026\]](#), Standing Committee for Youth Justice [\[DYC0024\]](#)

178 [DYC0016](#), paragraph 33

179 [DYC0024](#)

180 [DYC0026](#)

181 [DYC0017](#)

182 [Review of the Youth Justice System in England and Wales, by Charlie Taylor. Ministry of Justice, December 2016, paragraph 88.](#)

183 Standing Committee on Youth Justice [\[DYC0024\]](#); Criminal Justice Alliance [\[DYC0026\]](#); Prison Reform Trust [\[DYC0018\]](#), paragraph 5]

184 Prison Reform Trust [\[DYC0018\]](#), paragraph 7]

185 [DYC0018](#), paragraph 7

186 [The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System. Final report, September 2017.](#)

decision¹⁸⁷ that the nature of the offence, the disposal in the case, the relevance of the offence to the particular employment and the time that had elapsed were all factors that may need to be taken into account in considering whether public protection was engaged.

90. We note that a police-led system was proposed in 2011 by the former Association of Chief Police Officers (ACPO), under which chief officers would be given responsibility, with appropriate guidance, for determining whether convictions and cautions should be disclosed—applying the same test of relevance and proportionality as they do in relation to non-conviction information held on the PND.¹⁸⁸ Speaking at a recent Law Commission symposium on behalf of ACPO’s successor, the National Police Chiefs’ Council, Superintendent Lee Warhurst also expressed support for a police-led system. He pointed out that DBS checks relating to enhanced certificates are already referred to police to allow them to assess whether non-conviction information should be included; he argued that chief police officers could also be entrusted to ensure the proportionate disclosure of all convictions and cautions.¹⁸⁹

91. For sexual offences by children, Barnardo’s recommended a review of whether a young person’s record is disclosed after a set period, based on an individual assessment; the question of whether the person still needs to sign the Sex Offender Register should be considered at the same time.¹⁹⁰ Similarly, Professor Liz Campbell of the University of Durham questioned the need for automatic disclosure of childhood sexual offences, especially for consensual sexual activity with another child.¹⁹¹

92. We recognise the potential advantages of allowing applications to a court or to the Parole Board to have criminal records “sealed”, but we anticipate that that this would impose unsustainable pressures on the decision-making body because of the number of individuals likely to apply. We therefore conclude that a filtering system, albeit with substantial revisions, should be retained to allow automatic filtering of many criminal records.

93. We recommend an urgent review of the filtering regime, with regard in particular to mitigating its well-evidenced adverse impact on individuals with youth criminal records. We would urge the Government to use such a review to give central place to the aims of the youth justice system, together with the UK’s obligations under Article 8 of the European Convention and the UN Convention on the Rights of the Child. Based on our analysis of the evidence to this inquiry, we also recommend that the following features be considered for inclusion in a new filtering scheme for childhood offences:

- ***Removal of the rule preventing the filtering of multiple convictions, to avoid multiple minor offences from being disclosed***
- ***Replacing the single list of non-filterable offences with several customised lists relevant to broad areas of employment, professional activity/positions and licences, etc.***

187 [R \(T\) v Chief Constable of Greater Manchester Police and Others \[2014\] UKSC 35](#), dismissing the appeal of the Secretary of State against [R \(on the application of T\) -v- Chief Constable of Greater Manchester and others \[2013\] EWCA Civ 25](#)

188 National Police Chiefs’ Council Disclosure and Safeguarding Portfolio [[DYC0034](#), paragraphs 4.3, 4.4]

189 Superintendent Warhurst was speaking at a Law Commission symposium in February 2017. See [Analysis of Law Commission Symposium on criminal records disclosure: non-filterable offences](#)

190 [DYC0026](#), paragraph 14

191 [DYC0002](#)

- *For non-filterable offences encompassing a range of behaviour, such as actual bodily harm, introducing a threshold test based on disposal/sentence so an offence can be filtered automatically where the level of criminal conduct was considered by the court or the police to be minor.*
- *For filterable childhood convictions, reducing the qualifying period from five and a half years to a shorter period, such as three years, and from two years to one year for childhood cautions.*

We also recommend that the review give explicit consideration to the feasibility of extending this new approach, possibly with certain modifications, to young adults up to the age of 25.

94. *We further recommend that, after application of the rules for automatic filtering, chief police officers be given additional discretion to decide whether to disclose non-filterable offences in any particular situation, based on the relevance of the offence to the activity and whether disclosure would be proportionate to protecting the public interest, taking into account the age of the offence, the age of the individual concerned at the time of the event, and their intervening conduct. For criminal records acquired during childhood, there should be a rebuttable presumption against disclosure.*

A system of review

95. In its 2017 decision in P, G and W, the Court of Appeal held that having no independent review contributed to making the present filtering regime unlawful—although better calibrated filtering rules without a review process might be sufficient to remedy this problem in many cases. Support for mitigating the inflexibility of the filtering system by introducing a review process came from Unlock,¹⁹² CRB Problems,¹⁹³ and Youth Justice Board for England and Wales.¹⁹⁴ Describing the current disclosure system in England and Wales as “extremely rigid”, the National Police Chiefs’ Council Disclosure and Safeguarding Portfolio cited the examples of the review systems in Scotland and Northern Ireland.

96. We note that, in Scotland, an individual has the right to apply to a sheriff to have a ‘rules list’ conviction removed from their certificate if they believe it is not relevant to their employment. They must notify Disclosure Scotland within 10 working days of the certificate being issued, which will lead to the certificate being withheld from the counter-signing employer. The applicant then has a further three months to make the application to the sheriff, who has the power to order removal of the conviction—in which case Disclosure Scotland issues a new certificate.

97. A somewhat different process exists in Northern Ireland, where an Independent Reviewer of criminal record certificates was introduced in 2016.¹⁹⁵ For individuals who were under 18 at the time of all the offences in question, the application is automatically referred to an Independent Reviewer before a certificate is issued. Statutory guidance¹⁹⁶ requires the Independent Reviewer to take into account factors such as the nature of

192 [DYC0016](#), paragraph 33

193 [DYC0004](#)

194 [DYC0028](#)

195 Section 41 and Schedule 4 of the [Justice Act \(Northern Ireland\) 2015](#)

196 [Statutory guidance for the Independent Reviewer of criminal record certificates in Northern Ireland](#), June 2017

the position being applied for, the number and gravity of the offences and when they occurred; the age of the applicant at the time; and, if applicable, when the information would be eligible for filtering. On the basis of the review, the Independent Reviewer can instruct the Department of Justice to issue a new certificate that excludes reference to spent conviction(s), provided he/she is satisfied that this would not undermine the safeguarding or protection of children and vulnerable adults or pose a risk of harm to the public. However, the information remains on the person's criminal record and may be disclosed at a future date—for example, to a different employer.

98. A common feature of these approaches is that the criminal record certificate is not issued to the countersigning body while the review is in progress—as happens in Scotland and, in Northern Ireland, in cases where all offences were committed during childhood. Unlock recommended that all individuals should be able to apply for their own standard and enhanced check, and made the following observation:

....in practice many people with cautions and convictions do not know exactly how their situation was dealt with. This means that often they do not know whether something will be filtered or not until the check has been returned to them. At this stage, they will have normally had to have already made a decision about whether to disclose or not as part of the application process.¹⁹⁷

99. Given the successful introduction of review processes for disclosure of criminal records in Scotland and Northern Ireland, we find it surprising that no system of review exists in England and Wales and we conclude that one should be introduced. We recommend that the Independent Monitor be given an enhanced role in conducting reviews prior to disclosure and, building on our earlier recommendation at paragraph 95, that individuals be given the right to apply to the Monitor for review of a police decision to disclose non-filterable offences, including records of offences acquired in childhood.

Conclusions and recommendations

Consistency with the aims of the youth justice system

1. We find it a matter of regret that the laudable principles of the youth justice system, to prevent offending by children and young people and to have regard to their welfare, are undermined by the system for disclosure of youth criminal records, which instead works to prevent children from moving on from their past and creates a barrier to rehabilitation. (Paragraph 14)

The impact on employment

2. We accept that employers are entitled to know about genuine and relevant risks arising from previous criminal conduct. However, the clear difficulties in securing employment faced by people with youth criminal records, often for a lengthy period after they have become adults, leads us to conclude that too many employers fail to make an objective and balanced assessment of the relevance of ‘unspent’ criminal offences declared in job applications. *While recognising that exceptions may need to be made for exempted roles, we agree with the recommendation of the 2015 Parliament Work and Pensions Committee that Ban the Box, which applies to all criminal records, should be extended to all public sector vacancies, and that the Government consider making it a mandatory requirement for all employers.* (Paragraph 23)

The impact on education, housing, insurance and travel

3. We agree that, in some circumstances, there may be advantages in vulnerable students disclosing a history of offending to educational providers that are committed to providing support to them. We also acknowledge that certain professions have stringent admission requirements requiring criminal record checks, and that it is important to avoid creating unrealistic expectations for would-be students. However, we believe that information about criminal records should not be used to create avoidable barriers to study or, where possible, to related work placements. *We recommend that educational providers do not automatically use information about spent criminal records to deny access to courses, including vocational courses in health and social care. We urge providers to do everything they can to support students with childhood criminal records in their chosen field of study—for example, by giving them all possible assistance to secure work placements related to their courses.* (Paragraph 28)
4. We have serious concerns about local authorities continuing to frame their housing allocation schemes in a way that denies access to applicants with spent criminal records or unspent records of childhood offences that are low-level or irrelevant to their suitability as tenants. *We recommend that, in relation to England, Department for Communities and Local Government guidance for housing authorities be amended as a matter of urgency to reflect the High Court’s 2016 decision on spent offences in YA v London Borough of Hammersmith and Fulham, and to clarify best practice in relation to unspent offences. We also draw the attention of the National Assembly for Wales to this issue.* (Paragraph 32)

5. We are concerned by evidence that some insurance providers are wrongly declining cover or quoting higher premiums for applicants who disclose records of spent childhood offences, or unfairly taking into account unspent offences that have no relevance to the type of insurance cover. *We recommend that the Financial Conduct Authority consider undertaking a thematic review of this issue within the insurance sector. We further recommend that guidance from the Association of British Insurers be strengthened to leave insurers in no doubt that they must not expressly or implicitly request customers to disclose spent offences, and that unspent offences should be taken into account only if they have relevance to the type of cover. We further recommend that the ABI take steps actively to promote the guidance among its members.* (Paragraph 37)
6. We have no remit to comment on the visa practices of other jurisdictions, but we conclude that these can also have a disproportionately negative impact on would-be travellers with criminal records acquired in childhood. *We recommend that the Foreign and Commonwealth Office raise these concerns in discussion with relevant governments.* (Paragraph 40)

Rehabilitation periods under the ROA 1974

7. The Government did not provide the rationale behind the current rehabilitation periods, and some witnesses suggested that none exists. The evidence we have considered also leads us to conclude that the 2014 revisions did not go far enough, and we are particularly concerned that, for some DTOs and YROs, the rehabilitation periods have in fact increased to a level that appears disproportionate. (Paragraph 43)

Operation of the filtering scheme

8. The filtering system is rules-based, but we do not accept that these rules are open or transparent or that a rules-based system offers sufficient flexibility. Our predecessor's inquiry received overwhelming evidence of the harsh impact of the system on those who offend in childhood, arising in particular from the five and a half year qualification period before filtering is permitted, the multiple conviction rule and the serious offences rule. We conclude that too many childhood offences are unfiltered, undermining rehabilitation and denying children the "second chance" to which the Justice Minister is committed. We further conclude that the filtering system is wholly inappropriate for records of childhood offending and should be radically revised as a matter of urgency. (Paragraph 48)
9. We do not think that the difficult problem of sexual offending by children is assisted by giving them a record of a non-filterable sexual offence. We note the inconsistency between the current police response to "sexting" by children, designed to prevent them from entering the criminal justice system, and the previous policy of taking formal action. While we commend this change in policing approach, we are concerned about the implications for children whose "sexting" offences pre-date the policy change, acquiring non-filterable criminal records as a result. (Paragraph 51)

10. We commend the Law Commission’s detailed and authoritative report on non-filterable offences, and endorse its conclusions on the complexity and inaccessibility of the filtering system and its recommendation for a wider review of the whole disclosure system. (Paragraph 53)
11. We note that the observations of the Information Commissioner’s Office regarding the compatibility of the current disclosure scheme with Article 8 of the European Convention chime with the conclusions of the Court of Appeal’s important decision in May 2017, the latest in a line of recent judgments regarding the compatibility of the regime with human rights standards. We regret the Government’s decision to appeal against this recent judgment rather than tackling the urgent need for reform without further delay. (Paragraph 57)

Disclosure of police intelligence

12. We recognise that the regime governing the disclosure of police non-conviction information benefits from having an independent review mechanism and that chief police officers use their discretion in deciding whether disclosure should be made. However, allowing discretion within decision-making may lead to inconsistency between police forces. *To support consistency, we recommend a rebuttable presumption against disclosure of police intelligence relating to under-18s, including of information relating to a reprimand or caution that would otherwise be filtered from a DBS certificate.* (Paragraph 60)

Discriminatory impact of disclosure regime

13. Our conclusion that the criminal records disclosure regime needs to change is supported by evidence of its discriminatory impact on BAME children, children within the care system, girls forced into prostitution and children seeking to become British citizens—an impact that is very likely to follow them into adulthood, to the further detriment of their life chances. (Paragraph 65)

The UN Convention on the Rights of the Child and the Beijing Rules

14. We do not share the Minister’s confidence that the current system for disclosure of youth criminal records is consistent with the UK’s obligations under the UN Convention on the Rights of the Child, General Comment No 10 of the Committee on the Rights of the Child and the Beijing Rules; indeed, we conclude that the current framework may well fall short of these obligations and requires significant reform. (Paragraph 70)

Criminal records acquired by young adults

15. In the light of the report of our predecessor Committee and the evidence submitted to the present inquiry, we consider that a more nuanced approach may be required for the disclosure of records of offences committed by young adults aged between

18 and 25, while still retaining a distinct approach for children. *We recommend that a new approach for disclosing the criminal records of young adults be the subject of comprehensive research.* (Paragraph 74)

A question of balance

16. *Regardless of whether or not it is a useful principle to base policy-making on criminal records disclosure on achieving a ‘balance’ between rehabilitation on the one hand, and the interests of employers and the wider public on the other, we believe that the coherence of Government policy would be enhanced by consolidating responsibility into a single department.* (Paragraph 83)

Reducing rehabilitation periods

17. *We strongly endorse the proposals for reducing rehabilitation periods for childhood offences contained in Lord Ramsbotham’s Criminal Records Bill of Session 2017–19, which we believe reflect a broad consensus for the need for reform in this area. We commend the Bill to Parliament.* (Paragraph 86)

Refining the filtering regime

18. We recognise the potential advantages of allowing applications to a court or to the Parole Board to have criminal records “sealed”, but we anticipate that that this would impose unsustainable pressures on the decision-making body because of the number of individuals likely to apply. We therefore conclude that a filtering system, albeit with substantial revisions, should be retained to allow automatic filtering of many criminal records. (Paragraph 92)
19. *We recommend an urgent review of the filtering regime, with regard in particular to mitigating its well-evidenced adverse impact on individuals with youth criminal records. We would urge the Government to use such a review to give central place to the aims of the youth justice system, together with the UK’s obligations under Article 8 of the European Convention and the UN Convention on the Rights of the Child. Based on our analysis of the evidence to this inquiry, we also recommend that the following features be considered for inclusion in a new filtering scheme for childhood offences:*
- *Removal of the rule preventing the filtering of multiple convictions, to avoid multiple minor offences from being disclosed*
 - *Replacing the single list of non-filterable offences with several customised lists relevant to broad areas of employment, professional activity/positions and licences, etc.*
 - *For non-filterable offences encompassing a range of behaviour, such as actual bodily harm, introducing a threshold test based on disposal/sentence so an offence can be filtered automatically where the level of criminal conduct was considered by the court or the police to be minor.*

- *For filterable childhood convictions, reducing the qualifying period from five and a half years to a shorter period, such as three years, and from two years to one year for childhood cautions.*
 - *We also recommend that the review give explicit consideration to the feasibility of extending this new approach, possibly with certain modifications, to young adults up to the age of 25. (Paragraph 93)*
20. *We further recommend that, after application of the rules for automatic filtering, chief police officers be given additional discretion to decide whether to disclose non-filterable offences in any particular situation, based on the relevance of the offence to the activity and whether disclosure would be proportionate to protecting the public interest, taking into account the age of the offence, the age of the individual concerned at the time of the event, and their intervening conduct. For criminal records acquired during childhood, there should be a rebuttable presumption against disclosure. (Paragraph 94)*

A system of review

21. *Given the successful introduction of review processes for disclosure of criminal records in Scotland and Northern Ireland, we find it surprising that no system of review exists in England and Wales and we conclude that one should be introduced. We recommend that the Independent Monitor be given an enhanced role in conducting reviews prior to disclosure and, building on our earlier recommendation at paragraph 95, that individuals be given the right to apply to the Monitor for review of a police decision to disclose non-filterable offences, including records of offences acquired in childhood. (Paragraph 99)*

Annex 1: the criminal records disclosure system

Disclosure and Barring Service

- a) Requests for disclosure of criminal records are handled by the Disclosure and Barring Service (DBS), a Home Office-sponsored non-departmental public body set up in 2012 to replace the former Criminal Records Bureau and the Independent Safeguarding Authority. The DBS processes requests for criminal records checks in England and Wales and is also responsible for placing people on, or removing them from, the children's barred list and adults' barred list for England, Wales and Northern Ireland.
- b) A DBS check may be required by organisations in the public, private or voluntary sectors as part of pre-recruitment checks, or in relation to volunteering roles or applications for particular licences. Organisations can register with the DBS if they request more than 99 checks per year; alternatively, they can use a body that is authorised to provide DBS umbrella services. Provided that the role or activity is listed in the relevant legislation as qualifying for a standard or enhanced DBS check, the DBS-registered organisation is entitled to receive information from the Police National Computer (PNC) about an individual's full criminal history, including convictions that are spent under the Rehabilitation of Offenders Act 1974 (ROA). Certain old and minor criminal convictions may be filtered from disclosure. Enhanced checks may also include additional, non-conviction information based on local police intelligence that is held on the Police National Database (PND).
- c) Although an individual may apply on their own behalf for a basic DBS certificate, standard and enhanced checks require the completed application form to be countersigned by the DBS-registered organisation or umbrella body, which then submits it to the DBS. When the individual receives the DBS certificate, this is passed on to the organisation requiring the check. There is no provision for the applicant to preview the information that will appear on their certificate, nor do they have a right of appeal against disclosure—although they may apply to the DBS for an amended certificate on the grounds that it is inaccurate.¹⁹⁸ As described below, there is a right to challenge disclosure of non-conviction intelligence held by local police forces.

The Rehabilitation of Offenders Act 1974

- d) The regime governing the disclosure of criminal records is underpinned by the Rehabilitation of Offenders Act (ROA) 1974, amended in 2014.¹⁹⁹ The Act, which applies in England, Wales and (with modifications) Scotland, enables certain criminal records to be become spent after a specified period of time—that is, the individual is treated, in principle, as though the offence had never been committed. The length of time before a caution or conviction becomes spent is determined by the type and length of sentence. The ROA is designed to support ex-offenders by treating

¹⁹⁸ Under [section 117 of the Police Act 1997](#)

¹⁹⁹ [Section 139 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#). A Private Member's Bill is currently before Parliament (the Criminal Records Bill, sponsored by Lord Ramsbotham), which proposes further reductions in the time before criminal records are spent.

them as ‘rehabilitated’, to facilitate their re-entry into society. Subject to a number of exceptions, it is normally unlawful for employers to take spent convictions into account when considering someone’s suitability for employment.

- e) This table sets out rehabilitation periods that apply to custodial sentences and the most common non-custodial disposals following the 2014 changes. The rehabilitation periods prior to the 2014 changes appear in square brackets

Sentence/ disposal	ADULTS (18 and over at the time of conviction or disposal). Time is calculated from the end date of the sentence (including the licence period).	YOUNG PEOPLE (under 18 at the time of conviction or disposal). Time is calculated from the end date of the sentence (including the licence period).
Custodial sentence* of over 4 years, or a public protection sentence	Never spent [unchanged]	Never spent [unchanged]
Custodial sentence of over 30 months (2½ years) and up to and including 48 months (4 years)	7 years [never spent]	3½ years [never spent]
Custodial sentence of over 6 months and up to and including 30 months (2½ years)	4 years [10 years, calculated from date of conviction]	2 years [5 years, calculated from date of conviction]
Custodial sentence of 6 months or less	2 years [7 years, calculated from date of conviction]	18 months [3½ years, calculated from date of conviction]
Detention and Training Order, over 6 months	N/A	As for custodial sentence [5 years if over 15 at date of conviction; 1 year after order ceases if aged 12 to 14]
Detention and Training Order, 6 months or less	N/A	As for custodial sentence [3½ years if over 15 at date of conviction; 1 year after order ceases if aged 12 to 14]
Community order/youth rehabilitation order	1 year [5 years, calculated from date of conviction]	6 months [The period of the order, or 12 months from the date of conviction (whichever is longer)]

Sentence/ disposal	ADULTS (18 and over at the time of conviction or disposal). Time is calculated from the end date of the sentence (including the licence period).	YOUNG PEOPLE (under 18 at the time of conviction or disposal). Time is calculated from the end date of the sentence (including the licence period).
Simple caution	Spent immediately [unchanged]	Spent immediately [unchanged]
Fine	1 year [5 years, calculated from date of conviction]	6 months [2½ years, calculated from date of conviction]
Endorsement (motoring offence)	5 years	2½ years

* “Custodial sentence” includes immediate and suspended custodial sentences, detention in a Young Offender Institution and Detention and Training Orders.

- f) The 2014 amendments to the ROA 1974 have lengthened the rehabilitation periods for some YROs and DTOs. YROs used to become spent after one year, or when the order ceased to be in force—whichever was later. Under the amended legislation, YROs become spent six months after the order ceases to be in force, meaning that YROs over six months have a longer rehabilitation period than under the previous rules. DTOs for 12 to 14 year olds previously became spent one year after the order ceased to have effect but, under the 2014 legislation, DTOs are now treated like other custodial sentences with no account taken of age; all DTOs of six months or less become spent 18 months after the end of the sentence and DTOs over six months become spent after two years. This means, for example, that the rehabilitation period for an 18 month DTO has increased from 2½ years to 3½ years.

The Exceptions Order and the Police Act regulations

- g) The ROA’s general principle that spent offences must not be disclosed is qualified by the ROA 1974 (Exceptions) Order 1975²⁰⁰ (“the Exceptions Order”). This permits questions normally unlawful under the ROA to be asked about spent convictions and cautions, to assess a person’s suitability for certain occupations or types of employment, licences or permits involving particular risks or sensitivities or high levels of trust; these are often called “exempted questions”. In broad terms, the Exceptions Order covers the medical, pharmaceutical and legal professions; judicial office, work in law enforcement and the prison service; teaching, healthcare and social services occupations that involve contact with children or other vulnerable people; high level positions in the financial services and insurance sectors; and licences relating to gambling and firearms. As well as enabling exempted questions to be asked about unspent convictions or cautions, the Exceptions Order allows the disclosed information, or a failure by the individual to disclose it, to justify excluding the person in question from listed occupations or activities.

200 [The Rehabilitation of Offenders Act 1974 \(Exceptions\) Order 1975, SI No 1975/1023](#). Amendments to this Order were made in 2013, with further amendments in 2014, 2015 and 2016.

- h) The Exceptions Order is closely linked to Part V of the Police Act 1997, which provides for different types of criminal record certificates to be issued:
- **Basic disclosure certificates** show unspent conditional cautions and convictions. Any individual may apply for a basic certificate on their own behalf without the request being authorised or countersigned (for example, by a prospective employer). For people living in England and Wales, applications are handled by Disclosure Scotland, an executive agency of the Scottish Government.
 - **Standard disclosure certificates** are issued by the DBS for occupations and activities set out in the Exceptions Order (other than for activities that qualify for an enhanced certificate). Standard certificates include all spent and unspent convictions and cautions, subject to filtering arrangements which are described below.
 - **Enhanced disclosure certificates** are issued only for “prescribed purposes”²⁰¹ which include activities linked to national security, medical roles and work with children or vulnerable adults. As well as disclosing spent and unspent convictions (subject to filtering), enhanced certificates may include other information that the chief police officer reasonably considers to be ‘relevant’.
 - **Enhanced disclosure certificates with barred list checks** include a check against the DBS list of individuals who have been barred from working with children or vulnerable adults, established by the Safeguarding Vulnerable Groups Act 2006 (as amended in 2012). To be eligible for a barred list check, the position must fall within the definition of “regulated activity”; examples include providing health or personal care, social care or social work services.

The filtering scheme

- i) In 2013, the Court of Appeal held that the disclosure regime under the Exceptions Order and the Police Act 1997 was incompatible with Article 8 of the European Convention on Human Rights (the right to respect for private and family life), because it was disproportionate to the legitimate aims of protecting employers and vulnerable individuals.²⁰² In response to the judgment, a filtering system was introduced. It operates in a mechanical fashion, with no right of appeal against disclosure decisions.
- A single conviction is filtered from disclosure, provided it did not result in a custodial sentence, was not for a “listed offence”, and more than 11 years has elapsed since the conviction—or more than five and a half years if the person was under 18 when convicted.
 - Single or multiple cautions, apart from for “listed offences”, are filtered once six years has elapsed—or two years if the person was under 18 at the time of the caution.

201 [Police Act 1997 \(Criminal Records\) Regulations 2002, as amended; SI No 2002/233](#). This SI was amended in 2006, and every year thereafter until 2014. No consolidated version has been published.

202 [R \(on the application of T\) -v- Chief Constable of Greater Manchester and others \[2013\] EWCA Civ 25](#). The case concerned the requirement to disclose, in an enhanced certificate, two warnings issued to the claimant for stealing bicycles at the age of 11.

- j) The “listed offences” that are non-filterable have been set out in almost identical amendments to both the Exceptions Order and the Police Act 1975.²⁰³ While the legislation makes specific reference to some offences, it also cross-refers to lists of offences contained in Schedules to other primary and secondary legislation. Based on these various legislative sources, the Government has created a database of 942 offences that will never be filtered, covering England and Wales, Scotland and Northern Ireland.²⁰⁴ The database includes sexual and violent offences and those that are relevant to safeguarding, together with equivalent offences committed overseas. The list also includes less serious offences, such as failing to display a certificate of registration in a residential care home.²⁰⁵
- k) In contrast, spent convictions in Scotland are treated on a case-by-case basis; there are no blanket rules regarding the disclosure of multiple convictions. An offence on the ‘always’ list must always be disclosed, whereas other offences are disclosed subject to rules (‘the rules list’) and the remaining spent offences are not disclosed. For a subject who was 18 or over at the date of conviction, an offence on the ‘rules list’ is disclosed for up to 15 years; and up to 7 and a half years if the subject was under 18; an admonition or absolute discharge will not be disclosed.

Police retention and disclosure of information

- l) The power for police to keep records on the police national computer (PNC) is contained in the National Police Records (Recordable Offences) Regulations 2000.²⁰⁶ The PNC holds a record of anyone who has been convicted, cautioned, reprimanded, warned or arrested in relation to a recordable offence. The regulations define a “recordable offence” as including any offence punishable by imprisonment, together with a number of non-imprisonable offences set out in the Schedule to the Regulations.²⁰⁷
- m) Until 2006, the police could delete convictions from criminal records under the so-called “weeding” rules, designed to minimise the disclosure of old and minor convictions. That year, a new policy was adopted under which all data would be retained until the subject of the record reached the age of 100; however, provision was made for individuals to apply for “step down” of convictions or cautions, meaning that these records would not generally be subject to disclosure, although they would remain on the PNC and be available to the police.
- n) In October 2009, the “step down” policy was brought to an end as a result of a Court of Appeal decision²⁰⁸ that considered the compliance of the disclosure regime with data protection principles.²⁰⁹ In consequence, all convictions, cautions, reprimands and warnings recorded on the PNC—spent or otherwise—had to be disclosed on a

203 [Article 2A\(5\) of the Exceptions Order](#) and [Section 113A\(6D\) of the Police Act 1997](#); the Exceptions Order does not list murder, as a conviction for murder is never spent under the ROA.

204 <https://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check>

205 Under [Section 5\(6\) of the Registered Homes Act 1984](#) and [Section 28 of the Care Standards Act 2000](#)

206 [The National Police Records \(Recordable Offences\) Regulations 2000, SI No 2000/1139](#)

207 In addition, there is power to record any other offence(s) of which an individual is convicted in the same proceedings ([Regulation 3\(3\) of the 2000 Regulations](#)).

208 [Chief Constable of Humberside Police and others v Information Commissioner \[2009\] EWCA Civ 1079](#)

209 However, following the Court of Appeal’s decision in [R\(T\) v Chief Constable of Manchester Police \[2013\] EWCA Civ 25](#), a system of filtering was introduced in 2013; see paragraph (i) above.

standard or enhanced criminal record certificate.²¹⁰ This approach was modified in 2013 by the introduction of the filtering scheme following another Court of Appeal decision in the case of T.²¹¹

- o) Since May 2010, local police intelligence about individuals—such as allegations or investigations that did not lead to further action, background information relating to convictions or cautions, and details of arrests—has been recorded on the Police National Database (PND), a system distinct from the PNC. When a request for an enhanced DBS certificate is made, the person’s details are referred to any police force which may hold local information about them. The chief police officer will check against their records for anything which they reasonably believe to be relevant to the purpose of the certificate and then consider whether it ought to be disclosed. When making this decision, chief officers are subject to Home Office statutory guidance²¹² which requires them to assess the merits of every piece of information, taking into account its age, the age of the individual concerned at the time of the event, and their intervening conduct; there should be no presumption either for or against disclosure and the decision should be made “in a way that is compatible with the applicant’s right to respect for their private and family life under Article 8 of the European Convention on Human Rights.”²¹³
- p) In 2012, an Independent Monitor was established²¹⁴ to monitor police decisions to disclose this non-conviction information. The Monitor’s role is fulfilled in two ways. First, he or she must review a sample of cases in which non-conviction information is included, or not included, on enhanced criminal record certificates to ensure compliance with both the Home Office Statutory Guidance and Article 8 of the European Convention. Second, the Independent Monitor must conduct a review on application by an individual who thinks that the information being disclosed about them is not relevant or ought not to be disclosed for other reasons.
- q) The Independent Monitor’s annual report for 2014 records that 310 appeals against police disclosure of non-conviction information were received that year. In over 83% of these cases (258), the police decision was upheld in its entirety; of the remaining cases, 23 resulted in full deletion of the information and 22 in partial deletion. No significant areas of concern were noted in the Independent Monitor’s review of a sample of cases for that year—both cases of undisputed police disclosures and those cases where no disclosure was made.²¹⁵

210 In exceptional circumstances, such as cases of false allegation or mistaken identity, Chief Police Officers can exercise their discretion to delete certain PNC records, for example records of out of court disposals: see [Deletion of records from National Police Systems, National Police Chiefs Council, 2015](#)

211 [R \(on the application of T\) -v- Chief Constable of Greater Manchester and others \[2013\] EWCA Civ 25](#)

212 [Home Office Statutory Disclosure Guidance, Second Edition August 2015](#)

213 [Ibid](#), paragraph 20

214 Under [section 119B of the Police Act 1997](#) (inserted by Safeguarding Vulnerable Groups Act 2006)

215 [Independent Monitor for the Disclosure and Barring Service, Annual Report 2014](#)

Annex 2: Informal note of seminar on disclosure of youth criminal records, 13 December 2016

Committee members present: Robert Neill, Richard Arkless, Alex Chalk, Philip Davies, Kate Green, Mr David Hanson, and Victoria Prentis.

Others present: Christopher Stacey, Co-director, Unlock, Bob Ashford, Founder, Wipetheslateclean, and Anna Boehm, Programmes Manager, Standing Committee for Youth Justice.

Jason, Natasha, Sam, Ben, Anita, Paulette, Kamla and Lynda (names changed: participants sharing personal experiences).

Nick Walker, Nony Ardill, Gemma Buckland, Elise Uberoi, Gavin O’Leary, Christine Randall, Anna Browning (Committee staff).

Plenary session

After introductions and welcome from the Chair, Robert Neill MP, the seminar started with presentations from Christopher Stacey, Co-director of Unlock, Bob Ashford, founder of Wipetheslateclean, and Anna Boehm, Programmes Manager, Standing Committee for Youth Justice.

Christopher Stacey expressed gratitude to the Committee for launching its inquiry into this topic and for holding the informal session. Unlock is a charity for people with convictions, aiming to help them overcome the barriers and stigma caused by the disclosure of criminal records. Unlock does this first through its helpline and website which provide guidance and advice; and second by campaigning, through which it tries to influence the Government and employers to adopt fairer and more inclusive policies. Unlock has a wide focus on all individuals with criminal records, including youth records. It supported SCYJ’s research into childhood criminal records and has made recommendations based on this.

In Mr Stacey’s view, there is now real momentum for change. The Taylor review recommendations, the recent Home Office review of filtering, and the legal challenges to the filtering rules present an opportunity for the Government to be proactive, although its response to the Taylor review suggests that nothing will happen until the legal cases have been resolved. Unlock hoped to hear today about practical measures to take forward—not just for those who acquired criminal records as children, but also as young adults, because having a criminal record and being forced to disclose it affects people for the rest of their lives. While some records may need to be disclosed, the challenge is to establish how and where to draw the line.

It was noted that a 2015 court case on the non-filtering of minor offences (the case of P and A) found that the current regime was in breach of Article 8 of the European Convention on Human Rights. The Court of Appeal will consider the Government’s appeal in February 2017.

Bob Ashford explained that fifty years ago, as a 13 year old boy, he was playing with a group of other young boys caught trespassing on a railway track. One of the boys had an airgun, although he did not touch it. He pleaded guilty to trespass on a railway and possession of a dangerous weapon, and was fined. After training as a social worker, he had to disclose these offences when he applied for jobs, and found he was not getting interviews. Eventually he obtained work within the justice system, progressing over time to be the head of a Youth Offending Team.

Mr Ashford's criminal record became less important over the course of his career and he advanced to a very senior level in the Youth Justice Board. However, his offences still had to be disclosed for visa and insurance applications. When he was selected to stand for election as the Police and Crime Commissioner (PCC) for Avon and Somerset—a role that would use his skills and background—he discovered that he would be barred from holding office because of his offences, in spite of his career and lack of reoffending, and decided to stand down as a candidate. Falklands veteran Simon Weston had a similar experience. To draw attention to this issue on behalf of others as well as himself, he sought extensive media coverage, much of which was supportive. As a result people started contacting him with their stories. He began to understand the huge impact that criminal record disclosures can have on individuals' lives, especially when they had to disclose historic offences of which family and friends were unaware. Following this, Mr Ashford set up his campaign, Wipetheslateclean, which aims to change the legislation for PCC elections and the disclosure rules more generally. He is particularly concerned about the lack of information for young people on the requirement to disclose multiple out of court disposals for the rest of their lives; the lack of information on the implications of different sentences prevents them from making informed choices about what is being offered by the police.

It was noted that someone with a criminal record can become a local authority councillor or Mayor, a Member of Parliament or a police chief constable, but not a PCC because this is barred by statute.

Anna Boehm spoke about the work of the Standing Committee for Youth Justice (SCYJ), which campaigns for improvements in the youth justice system. Over the past two years SCYJ has focused on youth criminal records, commissioning comparative research on disclosure regimes in many other countries; this found that the system in England and Wales is much more punitive than in other countries where a rehabilitative approach is taken.

In England and Wales, the SCYJ has identified the following problems:

- The current system disproportionately anchors children to their past and prevents them from moving on.
- In contrast to many other jurisdictions, cautions and arrests follow a child for life and there is a wide requirement for disclosure—for example, for visas for the USA.
- The current system undermines the aim of reducing reoffending, as disclosure inhibits access to education, housing and other factors that are known to influence offending.

- There is no distinct system for child criminal records, in contrast to many other jurisdictions where adult records are maintained separately.
- The disclosure of police intelligence (for example, on crimes such as “sexting”) leads to increasing numbers of people being affected by youth criminal records.

SCYJ believes that most children grow out of crime, and is calling for childhood criminal records to be wiped after a period of time—say, ten years—and for a presumption that police intelligence is not disclosed at all. It is also calling for substantial changes to the filtering system and to rehabilitation periods. Anna noted that the Taylor report recommended reforms to the system for childhood criminal records, including limits on disclosure of intelligence, and that similar recommendations had been made by other reports over the last few years, such as the report of the Carlile inquiry. SCYJ welcomed the current inquiry of the Justice Committee and would be happy to provide further assistance to it.

Asked about an appropriate threshold of seriousness for disclosure, Christopher Stacey responded that the Rehabilitation of Offenders Act takes into account the length of sentences. The filtering system operates with blunt categories—for example, DBS cannot filter specific offences or any sentence of imprisonment. There should be scope for discretion. Sentence length would be a better determination. Bob Ashford observed that children make stupid mistakes but mature as they grow up. On principle, they shouldn’t be pulled down by what they did when they were young. On the other hand, the public has to be protected—it is a matter of finding a balance. Wipetheslateclean has made some quite detailed proposals on this. Anna Boehm agreed with the view that ‘disposal’ (i.e. the level and type of sentence) is better for determining seriousness than the type of offence. She accepted that, for particular jobs, some offences are relevant—but it was important to consider when an offence ceases to be a reliable predictor of reoffending. SCYC maintains that all offences should be eligible for ‘wiping’ after ten years, provided the person has not reoffended; at that point, the chances of reoffending become similar to those of someone who has never offended.

Asked why employers could not be trusted to make reasonable decisions, Bob Ashford accepted that many can be trusted, but in his experience others do use criminal records as a criterion for rejecting candidates when sifting through high numbers of applications. Certain online application processes block candidates from going further once they have ticked the box for ‘criminal record’. Christopher Stacey said that, because of this problem, many people with criminal records were put off from applying for jobs in the first place. In this area, excellent work is being done by the ‘Ban the box’ campaign (which is calling on employers to ask about criminal convictions later on in the recruitment process). Anna Boehm agreed with both points, adding that employers often lacked information on the detail and context of offences.

The three panel speakers agreed that there was scope for radical proposals for changing the system, although these had to be achievable, taking into account public safety and acknowledging the impact of public perceptions.

The seminar then broke into two smaller groups.

Table 1 discussion

The names of participants have been changed to protect their identities.

Jason described himself as having been a ‘difficult teenager’. He had been convicted of resisting arrest and ABH when he was sixteen, because of an incident when out drinking with a group of friends on the last day of school. He was sentenced to six days at an attendance centre. Because of this, he was rejected for a job with the local council. He got a place at university; his criminal record did not have to be disclosed to make this application, as no placements were involved on the course. After qualifying, he tried to get work in the social care field, but at interviews he would always undergo extensive questions about his criminal record. He was also turned down for three volunteering roles. Overall, he has been rejected for around fifty per cent of the positions he applied for. With online applications, he would sometimes not disclose his criminal record but after getting through the application process, the employer would apply for a DBS check and then tell him that he didn’t satisfy the job criteria after all. The jobs that Jason was most interested in were the ones working with children, which were rated as high risk. It took him eight months to find a job, making between thirty-five and forty-five applications. He now works on substance abuse issues with young people in schools. The schools often ask to see his DBS checks; in some cases this had led to them insisting that a teacher sits in with him; however, he has had a lot of support from his supervisor who has raised this issue with the schools concerned.

Natasha, now aged 32, explained that she had been convicted of three offences, two of which are now ‘filtered’—one public order offence, and another for theft (for which she got a caution). At the age of twenty, she was given a caution for ABH because of an incident where she tried to defend a friend of hers who was being assaulted by ‘glassing’. She was arrested, along with the perpetrator of the assault. Her statement did not match the statements of the other group involved in the fight, although it matched the statement of her friend. Without a solicitor present, she accepted a caution for what the police said was common assault. She later found out that the caution had been for ABH when this came up on a disclosure. She has had more than a dozen rejections because of her criminal record. Fortunately she managed to get work in the health and social care sector, where she has been for ten years, and currently works for a charity. But in spite of having good references, she was recently refused a place on a nursing master’s course. Her DBS check simply states that she has had a caution for ABH, but gives no further details, and “for an employer to see ABH, that conjures up lots of things”. Natasha felt discouraged from applying for work in this sector as she was tired of disclosing her criminal record, but did not think that her offence warranted this treatment. She questioned why there was no discretion about disclosure on an enhanced certificate; she has three children and has worked with different types of vulnerable people, which she would not be able to do if she presented a risk.

Asked whether she would want this information if she herself was an employer, Natasha accepted that she would want to know if someone had recently offended. But she thought that offences over ten years old should be filtered, unless there had been further offending. If a disclosure had to be made, then there should at least be more information about the context in which the offence happened.

Questioned on whether parents should warn children that the consequences of doing something wrong would stay with them for the rest of their lives, rather than giving them a message that the slate would be wiped clean, Natasha responded that good parenting meant that children should be told there would always be consequences, irrespective of the legislation. Christopher Stacey pointed out that people did not necessarily commit crime rationally, in a way that allowed them first to step back from the situation to consider their options.

Sam said that he had dropped out of school at sixteen; he was drinking a lot and hanging around with the wrong type of people. Without qualifications, he couldn't get a job. At seventeen, he was convicted for shoplifting and motoring offences (speeding and driving without insurance), then convicted again at eighteen. After that, he struggled to find work apart from occasional agency jobs and was put on youth training programmes. At the age of 24, he was convicted for 'bouncing' cheques. He was put on probation but violated the conditions, then got convicted again. As a result of this, he has three convictions for multiple offences. He is now in his forties, and has had 'hundreds' of rejections over the years. He learned to apply for jobs that did not require a DBS check and was fortunate in finding employers who wanted to give him an opportunity. He now has to disclose his record but, since the Rehabilitation of Offenders Act and the filtering system, he has found that employers are not so judgmental. He now works in a probation hostel with high risk offenders, serves in the army reserves, and is in his final year at university, doing a criminal justice degree. He commented that some of the big security companies will not hire people with a criminal record, even if the offending happened a long time ago. In his case, they would sometimes let him progress to the interview stage, only to tell him that it was their policy not to employ people with criminal records. Travelling to the USA also presents a problem; he is due to go there as part of the army reserve.

Ben explained that he had become involved in drugs before going to university, and while at university his involvement became 'criminal'. During his second year the police raided his house and he was convicted of possession of cannabis and ketamine (although he could have faced more serious charges). He was fined for these offences. After graduating, he applied for over 200 jobs over the course of a year and received no responses. He attributed this to having ticked the box confirming that he had a criminal record. This propelled him further into crime, although he managed to avoid getting any further convictions. A year after leaving university, he decided to sort out his life; he also came to realise that not disclosing his criminal record was the only way to get a job. For the last five years, this approach has worked, although he has been at risk of losing jobs if his employers found out about his convictions—as has happened to some of his friends. His record was now spent, so it would only show up on enhanced DBS checks. Ben would really like to work with drug addicts, but would not be able to get a job in this field at present. He is currently doing a master's degree in public policy, for which he did not need to disclose his record. In his view, certain types of non-violent and non-fraudulent crime should not have to be disclosed; convictions should only be disclosed if they will affect someone's ability to do the work. The current system is very unhelpful for young people as it prevents them from moving away from crime. He knows people who were in the same situation as himself who are now in prison.

No participants had run into difficulties getting insurance or housing, other than Jason, who had been required to disclose his criminal record when he applied for emergency

housing. Natasha said that one of her clients at the charity where she works had an arson conviction, which was difficult to overlook in relation to housing. Sam commented that employers are able to search Google and Facebook to find out whether job applicants have a criminal record, even if there was no obligation to disclose it when making the application. There was always a risk that an employer would find out in this way—although if the conviction had become spent, employers tend to respect this. In an ideal world, people would disclose everything, but in reality, employers make judgements. People can ask to get themselves removed from Google searches but their requests are not always accepted (and information remains in newspaper archives in any event). Asked what they thought employers should know, participants considered this would depend on the offence, on how long since the person had offended, and what they had done since. Ben noted that employers used criminal records as a system for sifting applications because they got so many applications, especially from young people. He had been in situations where he was sure that the employer wanted to hire him but could not do so because of company policy. Asked what the solution was to this problem, Ben said that the Bristol drugs awareness courses were the best thing he knew of for preventing criminal records. These courses are non-punitive and attendance would not be recorded.

On the distinction between children, young adults and adults, participants agreed that maturity did not necessarily come with adulthood and one participant was aware of studies indicating that many young people were not mature until the age of 24. Jason commented that young people often did not think about the long term consequences of their actions. It was noted that many other countries handle criminal records differently—for example, in some states of the USA, offenders can petition the court after five years to ask to have their records expunged. Sam pointed out that certain people who have never been arrested may be as likely to commit crime as those who had been convicted, and that individuals who have committed crimes without being caught don't face the same barriers as those with convictions. Natasha said that she had been shortlisted for some jobs because the HR department did not disclose the relevant section of her application to the panel, but then at the interview her criminal record would come up “and the whole conversation suddenly turns sour”. She also said that she had wanted to apply for a property assistant role that did not require a DBS check, but the organisation's website said that some roles did require a DBS check, which put her off applying.

Christopher Stacey thought there was sufficient evidence of the detrimental effect of the current system of disclosure to support a more proportionate approach. The public did not realise that people get punished for the rest of their lives. Employers should have a clear policy on dealing with criminal records; sometimes they receive irrelevant information but think that they cannot ignore it and so they reject the person.

Table 2 discussion

The names of participants have been changed to protect their identities.

Anita, who is 27, said she had received two reprimands as a child. She had been given the first one at the age of 11 for arson, after causing £100-worth of smoke damage in a school toilet by setting fire to toilet roll when playing with a lighter with friends. The second reprimand had been given at the age of 14 for ABH, when she hit another pupil in the playground in self-defence. She explained that her mother had not realised the severe

consequences of accepting the reprimands on her daughter's behalf. The police had told her mother just to sign the form and although she could not recall having been told about the implications of doing so, she had thought that it would "make it go away". The form, a copy of which she showed Members, stated that the record would expire when she was 18 years old.

Anita is now a qualified teacher. When studying for her teaching qualification she had almost been kicked out of the university following an enhanced disclosure required for her placements. She hadn't anticipated her criminal record would be a problem when she had applied for the course. She was now working as a college lecturer with adults as she was unable to get a job in a school. Until recently she had been working abroad (for six years), but since returning to the UK had been hit by "constant barriers" in finding supply work, despite her experience and passion for teaching. Although her convictions are spent, teaching is an exempted profession under the Rehabilitation of Offenders Act so she always has to 'tick the box'. She noted that there was no box allowing her to indicate that the offences took place when she was under 18. She has also found it hard to get insurance.

Paulette, now aged 33, is also a teacher. She explained that she had been involved with social services from the age of 13 (after her father stabbed her mother to death) and at 16 she was convicted for importation of cannabis from Jamaica having been groomed by an older man with whom she had a sexual relationship. Soon afterwards she was convicted of a joint enterprise offence relating to a street robbery after a girl was robbed on a bus by a member of a group she was part of. She served a two-year youth custodial sentence. Since then, she had committed no offences. She could not recall whether she had been informed of the implications of her criminal record, but had had legal representation at the time. She applied to university as she wanted to become a social worker but, having discussed her offences with a panel, was told she could not do the course. She then did a series of 'dead-end jobs' in call centres and retail. Paulette applied again for university, told them her story and they agreed to adopt a risk assessment approach. She had to see another panel before her placement. Working through a charity, she now teaches young people involved in the criminal justice system and care leavers. She cannot, in her charity work, disclose her criminal record or related elements of her life story (despite the potential benefits of these anecdotes to her students). She had not applied to teach in mainstream education but expressed doubt about whether she could do so, because of the attitude of mainstream schools.

Kamla is a qualified pharmacist who had received a distinction in her studies. Now aged 39, at the age of 19 she received a criminal conviction for theft (stealing goods from her employer over a period of two weeks, when she had not been paid). Despite being open during the internal investigation and returning all stolen items, Kamla was still prosecuted, even though her employer was aware of her career choice. She was sentenced to six months' probation for two counts of the same offence and was not represented by a solicitor until the point of sentencing. Initially the conviction did not hold her back. She qualified in 2000 and until 2014 she had held various positions at a hospital but had to resign because of bullying from her manager, related to her criminal convictions. She made contact with Unlock and put in an Employment Tribunal claim but did not continue with it owing to a bereavement. Following a career break, she was offered another hospital job, but this was retracted and she felt that her previous manager had jeopardised her chances. She now saw her offence as "stupid" (although she commented that other employees were doing the

same thing) and felt that it had hindered her earning capacity, career options and personal relationships but had taught her to be compassionate. She was now self-employed and seeking to do a graduate diploma in law.

Lynda, now aged 43, described her upbringing within a family she described as “toxic”. Her mother was an alcoholic who had been to prison twice. The family lived in a poor area and people were “in and out of the house all the time”. All her siblings had criminal records and her brother was in prison for having killed someone. Most of her siblings had been taken into care and she and her younger sister had sporadic visits when the neighbours or schools contacted social services but overall they were ignored by the various agencies. From the age of seven, she began shoplifting biscuits as she was not fed by her mother. Aged 11, she broke into a school to be able to play with toys and draw. She was sent to the police station but her warning was not put on record, although she described herself as “spiralling down that road”. Her first conviction was at 14 for shoplifting. She felt that this had been like a cry for help: she was running away constantly and did not consider that the social workers or teachers were doing their job. She had wanted to be a prison officer but, at the age of 22, was working in retail. Her family decided she should “sort out the Christmas meal”: she was convicted for employee theft of the goods in a trolley they had filled. Subsequently, she had a conviction for drink driving when she was found to be over the limit from the previous night.

Lynda said she felt like she had been fighting against the grain, having become homeless to get out of her family environment and wanting to “prove everyone wrong”. She had done clerking for a solicitors’ firm (as the solicitor who represented her had given her a job) and had also worked with young people for two London local authorities. She had most recently applied for an administrative role, despite being over-qualified, as low-paid jobs do not require a DBS check. She felt that people did not look beyond the criminal record, “whether or not you are fantastic”. She stated “it’s like you are marked until death”.

Participants were asked how being asked about their criminal records made them feel about themselves. Anita found it mortifying and embarrassing to have to discuss offences from her childhood and have professional people “judging you” on it. She remarked that because of that piece of paper she was not treated like an employee or a human being. Kamla felt that the stigma had affected her self-esteem and caused unnecessary worry, affecting her quality of life. All participants agreed that they had not done as well as they could have done in their careers and their ambitions had been suppressed. They felt that they should not continue to be punished and stigmatised for their past. Knockbacks can have a significant impact and can lead to a loss of hope in trying to seek work, so forcing people onto benefits or even encouraging a return to criminal behaviour. They were frustrated that supportive statements, for example statements made to DBS panels, may have little effect. Two participants were motivated to help other people in similar situations. One said she “shouldn’t be reduced to a conviction—there is more to me than this”.

Participants were also asked whether they all felt there ought to be a clean slate. There was some discussion about the circumstances of the offence; for example, being in a controlling relationship at a young age, negative influence of family and environment which can continue into adulthood, and cultural and religious issues affecting social maturity. Kamla was asked whether, if she was an employer, she would feel comfortable being in the dark about someone’s offence against a former employer; at what stage, if at

all, should a line be drawn under past offending? She responded by saying that everyone makes mistakes and she believed employers should be brave in considering these matters. For a regulated profession, she did not consider it should be an issue provided there were no restrictions on the licence to practice and the employee could get references. In her view, a line should be drawn after ten years.

Participants were then asked whether they had experienced any other problems relating to disclosure of criminal records—for example, with insurance, housing, or visas. Two participants had applied successfully for visas for the US and one for Australia, but they felt that the process they went through to get them was inconvenient, embarrassing and unnecessary. None had experienced housing issues relating to their criminal records.

Participants were asked whether they had ever thought of lying to potential employers about their criminal history. One had felt it necessary to take a chance, but also picked companies which were unlikely to ask for a DBS check. She also had experience of having been asked to disclose her record at an interview and then never hearing from the employers again. Some employers ask for details of convictions whether they are spent or not, which they shouldn't do.

Finally, participants were asked why they had wanted to come and talk to the Committee. Anita wanted to see change and felt there should be a lot more education of young people and parents about the impact of criminal records. Asked whether any record should be wiped, Lynda said she believed this should happen if the offence did not lead to imprisonment, or was not serious, and the offender was a juvenile at the time. If the offender was over 18, each case should be considered on an individual basis. Even some sexual offences could be considered minor. The possibility of having an opportunity to go to a tribunal or review, or the chance to pay a fee to have the criminal record removed, were also discussed; Paulette said she would pay a fee but felt that those worst affected may be least able to pay. The list of excepted professions was also discussed, with some agreement that it was too long. There was a view that the list does not match up with public concern and public safety. Participants also commented on the absence of legal advice when accepting a caution, together with the lack of police understanding about its severity and the legal profession's lack of understanding of the disclosure system as a whole. The tendency of some schools and carers to call the police rather than deal with matters privately was also an issue.

Conclusion

After the conclusion of the two small group discussions, Robert Neill MP thanked all the participants for giving up their time to come to Westminster, and for sharing with Members their experiences and their views on this issue.

Formal Minutes

Tuesday 17 October 2017

Members present:

Robert Neill, in the Chair

Mrs Kemi Badenoch

Mr David Hanson

Ruth Cadbury

Gavin Newlands

Bambos Charalambous

Laura Pidcock

Alex Chalk

Ellie Reeves

Ruth Cadbury declared a past non-pecuniary interest as a trustee and Chair of the Barrow Cadbury Trust.

Draft Report (*Disclosure of youth criminal records*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 99 read and agreed to.

Annexes agreed to.

Summary agreed to.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till tomorrow at 9.30am]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Wednesday 15 March 2017

Question number

Christopher Stacey , Co-director, Unlock; and Ali Wigzell , Chair, Standing Committee for Youth Justice	Q1–32
Dr Phillip Lee MP , Parliamentary Under-Secretary of State, Ministry of Justice; Sarah Newton MP , Parliamentary Under-Secretary of State for Vulnerability, Safeguarding and Countering Extremism, Home Office; and Christian Papaleontiou , Head of the Public Protection Unit, Home Office	Q33–66

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

DYC numbers are generated by the evidence processing system and so may not be complete.

- 1 An individual ([DYC0006](#))
- 2 An individual ([DYC0007](#))
- 3 An individual ([DYC0008](#))
- 4 An individual ([DYC0031](#))
- 5 An individual ([DYC0036](#))
- 6 An individual ([DYC0032](#))
- 7 Association of Youth Offending Managers ([DYC0017](#))
- 8 Barnardo's ([DYC0025](#))
- 9 Business in the Community ([DYC0038](#))
- 10 Children's Commissioner for England ([DYC0027](#))
- 11 Children's Rights Alliance for England ([DYC0009](#))
- 12 Clinks ([DYC0019](#))
- 13 CRB Problems Ltd ([DYC0004](#))
- 14 Criminal Justice Alliance ([DYC0026](#))
- 15 Financial Ombudsman Service ([DYC0039](#))
- 16 Greater Manchester Youth Justice University Partnership ([DYC0015](#))
- 17 Information Commissioner's Office ([DYC0020](#))
- 18 Just for Kids Law ([DYC0022](#))
- 19 Leeds Beckett University ([DYC0001](#))
- 20 Michael Sieff Foundation ([DYC0014](#))
- 21 Ministry of Justice and the Home Office ([DYC0021](#))
- 22 Mr Richard Curen ([DYC0005](#))

- 23 Mr Robert Pinnock ([DYC0011](#))
- 24 Nacro ([DYC0029](#))
- 25 National Police Chiefs' Council Disclosure & Safeguarding Portfolio ([DYC0034](#))
- 26 National Police Chiefs' Council on the Policing of Children and Young People ([DYC0035](#))
- 27 Nia ([DYC0033](#))
- 28 Office of the Police and Crime Commissioner for Staffordshire ([DYC0037](#))
- 29 Prison Reform Trust ([DYC0018](#))
- 30 Professor Liz Campbell ([DYC0002](#))
- 31 Pupils 2 Parliament ([DYC0023](#))
- 32 Standing Committee for Youth Justice ([DYC0024](#))
- 33 Standing Committee for Youth Justice ([DYC0056](#))
- 34 The Magistrates Association ([DYC0013](#))
- 35 Transition 2 Adulthood (T2A) Alliance ([DYC0012](#))
- 36 UK Home Care Association ([DYC0030](#))
- 37 Unlock - for people with convictions ([DYC0016](#))
- 38 Unlock - for people with convictions ([DYC0057](#))
- 39 Wipetheslateclean ([DYC0010](#))
- 40 Youth Justice Board for England and Wales ([DYC0028](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

Session 2017–19

First Special Report	The implications of Brexit for the Crown Dependencies: Government Response to the Committee's Tenth Report of Session 2016–17	HC 423
Second Special Report	Government Responses to the Committee's Reports of Session 2016–17 on: <ul style="list-style-type: none">• Prison reform: governor empowerment and prison performance• Prison reform: Part 1 of the Prisons and Courts Bill	HC 491