



thinkpiece

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Time served: unlocking insurance to help reintegrate offenders into society

Chris Bath

Summary

- Despite concerns over high prison population in the UK, 99 per cent of people with convictions live in their respective communities with the majority never having been incarcerated.
- Under the current policies of major insurers, people with criminal convictions—and often the people they live with—are barred from securing insurance. This is obviously a significant barrier for the individuals trying to reintegrate into society. Perhaps even worse is the fact many have invalid policies without knowing it.
- While the law aims to prevent indefinite discrimination against an offender following a conviction, several factors currently exist that undermine this goal. These include unreasonably long rehabilitation periods, poor aggregator support, and an overall lack of knowledge from both the insurer and the potential policyholder regarding the law.
- There are, however, workable solutions that can help both sides. Ultimately, by opening access to insurance to a market historically assumed as being too risky, insurers could make a fundamental impact on reducing crime while engaging with a commercially justifiable market.

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CII Introduction: the importance of the insurance industry to everyday life in the UK cannot be better illustrated by the plight facing reformed offenders who have difficulty accessing it. In this latest CII thinkpiece, Chris Bath of the charity UNLOCK, which represents reformed offenders argues that for many people attempting to rebuild their lives, a confusing mix of overarching laws and blanket policy decisions by insurers often leave them (and their loved ones) at risk. Insurance enables people to secure accommodation, get work and rebuild their financial position. Bath argues that a radical rethink is in order for the insurance market for reformed offenders, and this will benefit not only the insurers themselves but wider society. It exists as an untapped and potentially lucrative market.

Politicians, the media, employers and financial services providers have long shared the worldview that discriminating against people with previous convictions can be justified as being in the public's best interests. However, the 'law abiding majority', while a favourite phrase of successive Home Secretaries, is narrower than most would think. Few realise that:

- There are currently over 7.3 million people on the Government's Offender Index database¹
- By the age of 46, one in three men has a criminal record, excluding motoring offences²

The level of *actual* offending is far higher because only 2.5 per cent of crimes result in a conviction.³ So, we may in fact have a law *breaking* majority.

England and Wales' massive prison population of 84,000 has a justifiably high profile.⁴ However, 99 per cent of people with convictions live in the community, with the majority never having been to prison. Estimated at 20 per cent of the UK's

¹ Chartered Institute of Personnel and Development (2004), *Employing ex-offenders, a practical guide*, London: CIPD, p.3.

² Ibid

³ Inter-University Consortium for Political and Social Research (2004), *Cambridge Study in Delinquent Development (Great Britain)*, London: ICPSR.

⁴ National Offender Management Service (2008), *Prison Population & Accommodation Briefing, 1st August 2008*, London: NOMS
http://www.hmprisonerservice.gov.uk/resourcecentre/publication_sdocuments/index.asp?cat=85

working population⁵, these people constitute a significant part of UK life.

“The ‘law-abiding majority’, while a favourite phrase of successive Home Secretaries, is narrower than most would think...”

However, under the current policies and practices of major insurers, people with criminal convictions, and indeed the people with whom they live, are often barred from securing insurance. This has serious emotional, social and economic consequences for the individual and, with millions of people potentially holding invalid policies, for society as a whole.

This paper makes a proposition that much of the industry may find counter-intuitive. By opening access to insurance to a market segment historically assumed too high risk to even consider, insurers could make a fundamental impact on reducing crime while engaging with a commercially justifiable market.

The cost of crime

Crime directly affects the bottom line of every insurer. While other businesses might show interest in crime reduction for reasons of corporate social responsibility, for insurers there is a very clear business case for reducing re-offending. The Home Office estimates the cost of crime to society at £60 billion per annum, including costs; incurred in anticipation of crime (e.g. premiums), as a consequence of crime (e.g. claims) and the costs of the criminal justice system. The cost of re-offending by recent former prisoners alone is estimated at least £11 billion per annum.⁶

The causes of crime

In 2002 the Government's Social Exclusion Unit published a paper entitled 'Reducing Re-offending by Ex-Prisoners'. Building on extensive criminological and social research, the paper identified the key factors that influence the risk of re-offending. With the inception of the National Offender Management Service in 2004, these factors became Government policy in the form of the 'Pathways to Reducing Re-Offending'.⁷ The principal factors in reducing the risk of re-offending were identified as stable

⁵ Chartered Institute of Personnel and Development, loc.cit

⁶ Social Exclusion Unit (2002), *Reducing re-offending by ex-prisoners*, London: ODPM p.3.

⁷ http://www.noms.homeoffice.gov.uk/managing-offenders/reducing_re-offending/reducing_re-offending_pathways

accommodation (20 per cent reduction) and employment (33 - 50 per cent reduction).⁸ Personal finance was also identified as a factor.

The importance of insurance

For the former offender attempting to leave their old life behind them, access to insurance is fundamental to establishing a law-abiding life. They have taken the psychological transition to 'go straight' - an unquantifiable conversion from purposefully living off the grid, to making every effort to be on it. Insurance is of fundamental practical importance because it enables them to:

- Secure stable accommodation;
- Access many (often low-skilled) jobs that require someone to drive;
- Establish small businesses; and
- Protect their delicate financial situation.

The reformed offender, who has often changed their life despite multiple disadvantages and discrimination, rarely gives thought to mistakes in their past which now seem irrelevant. They may have a home, a family or a business. They use insurance the same way as everyone else – without giving it much thought. However, in the nexus of insurance and convictions, mistakes of the past remain deeply relevant and insurance demands significant thought.

The law in principle

Under the contract law duty of *uberrima fides* (utmost good faith) the onus is on the proposer or policyholder to disclose material facts 'that would have an effect on the mind of the prudent insurer in assessing the risk' even if they would not necessarily 'have a decisive effect on the insurer's acceptance of the risk or on the amount of premium charged'.⁹ Under the Marine Insurance Act 1906 an insurer may avoid a contract for any misrepresentation of a material fact, even if the misrepresentation was made honestly and without any lack of care. Innocence is no defence.¹⁰ The Rehabilitation of Offenders Act 1974 (ROA) aims to prevent a person being penalised indefinitely following a conviction. It sets a time period, based on the sentence given, during

⁸ Social Exclusion Unit, op.cit p.6

⁹ *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd* [1995] AC 501

¹⁰ The Law Commission and The Scottish Law Commission, *Insurance Contract Law: Misrepresentation, Non-Disclosure and Breach of Warranty by the Insured*, (2007), <http://www.lawcom.gov.uk/docs/cp182.pdf>

"The reformed offender, who has often changed their life despite multiple disadvantages and discrimination, rarely gives thought to mistakes in their past which now seem irrelevant."

which convictions must be declared to relevant parties such as employers and insurers. It states that once this period has passed, "failure to disclose a spent conviction shall not be a proper ground for prejudicing in any way in any occupation or employment." Until this period passes, the conviction is defined as *unspent*. Once the period is over, the conviction is *spent*. As it relates to insurance, "The broad effect of the Act...is to relieve any proposer for insurance of the obligations to disclose a conviction or even the fact that he had committed the crime."¹¹ The ROA limits *uberrima fides* because after the specified time the offence cannot be considered in any assessment and does not need to be declared. Proposers should therefore always expect to disclose unspent convictions, but should never be expected to disclose spent convictions.

On the face of it this seems fair, since a recent and relevant criminal conviction is likely to have an effect on any reasonable underwriter's decision making. However, several factors conspire to undermine this fairness.

The law in practice

Firstly, the response of major insurers to the disclosure of any unspent conviction is almost always a blanket ban. There is no element of assessing relevance to the risk proposed. Insurers simply refuse or cancel cover for people disclosing unspent convictions. For example, a bar fight resulting in a fine of £750 left one client of UNLOCK's unable to obtain personal home or landlord's insurance for five years¹². Similarly, criminal convictions entirely unrelated to motoring often result in rejection for motor insurance although motor insurers appear to be very slightly more progressive. Of 17 major motor insurers contacted by UNLOCK, Direct Line and Churchill were willing to confirm in writing that they do not need to be informed of any non-motoring convictions when obtaining motoring insurance. The reason for the fundamental difference between home and motor policies is not clear.

Secondly, the rehabilitation periods are much longer than the actual sentence given and are not influenced by the type of offence or subsequent

¹¹ *Reynolds & Anderson v Phoenix Assurance Co. Ltd. & Others* [1978] 2 Lloyd's Rep. 440

¹² UNLOCK, *UNLOCKing Insurance: Issues & Evidence* (2008), UNLOCK, p.8

behaviour. Of those with a conviction by middle-age, the majority committed one or two offences in adolescence, yet will face difficulties for many years. Those who have previously disclosed can continue to face difficulties even once the conviction is spent. Though they are able to say they have no convictions, it is not clear as to what they must answer when asked whether they have been refused insurance in the past. Particularly at odds with either logical risk assessment or a sense of fairness is the fact that 100,000 people with a custodial sentence over 2½ years can *never* be considered to be rehabilitated.¹³

Sentence	Length	Period (Adults)	Period (Children)
Prison/ YOI	More than 30 months	Forever	Forever
	6 months - 30 months	10 years	5 years
Community Service	Less than 6 months	7 years	3 ½ years
	Any	5 years	2 ½ years
Fine/ Compensation	N/A	5 years	2 ½ years
Absolute Discharge	N/A	6 months	6 months

Rehabilitation of Offenders Act 1974

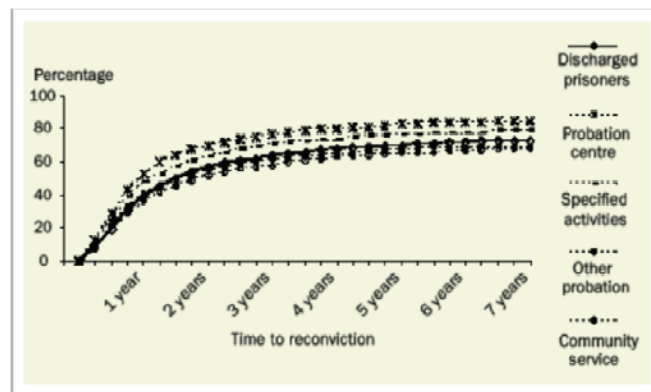
“Breaking the Circle”, a 2002 Home Office review of the 1974 Act, noted that, ‘Insurance is a facility...to which an ex-offender needs access if s/he is to be resettled as a valuable and law-abiding member of the community’ but that the Act is a ‘blunt instrument’ that takes no account of individual circumstance, rehabilitation programmes successfully undertaken or advances in risk assessment.¹⁴

It stated that the 1974 Act had become outdated due to sentence inflation, ‘whereas 3,537 offenders were sentenced to custody for over 30 months in 1974...the number had risen to over 11,000 by the year 2000.’¹⁵ The review concluded that the disclosure period should be the period of the sentence plus an additional buffer period of 1 year for non-custodial and 2 years for custodial sentences. This was based on the fact that the reconviction rate for those who stayed out of trouble for two years following their sentence, was only 4.5 per cent in the first year, or 7.4 per cent over a two year period (for those sentenced to custody of over 12 months). Thirdly, this issue does not only affect the person who has the conviction. It also penalises wives who take back their husbands, parents that take back their children, employers who take back employees and, in one case handled by UNLOCK, a Christian charity worker who offered a former prisoner a place to stay while attending bible college.

¹³ Home Office, *Breaking the Circle*, (2002), London: Home Office Communication Directorate, p.37

¹⁴ Home Office, op.cit, p.26

¹⁵ Home Office, op.cit, p.6



Percentage of offenders reconvicted by time to reconviction Breaking the Circle (2002)

These are people doing what society needs them to. Yet in return for these acts, *they* are prevented from accessing insurance.

“Insurance is a facility...to which an ex-offender needs access if s/he is to be resettled as a valuable and law-abiding member of the community”

Home Office (2002)

Fourthly, over the last few years insurance websites have become hugely popular, generating millions of pounds worth of profits while being criticised for focusing on price over protection. At the same time the percentage value of claims actually paid out has dropped significantly. In a recent UNLOCK investigation into five leading aggregators none were ultimately able to offer *valid* insurance to the customer, though several still generated quotes.¹⁶ The customer had one four-year-old conviction for non-payment of a fixed penalty notice issued to him for littering. All sites referred to *any* convictions not *unspent* in their questions. Two websites mentioned the ROA if the customer clicked a “?” button. Two asked about convictions with no reference to the ROA, while one website simply assumed no convictions despite its relevance to insurers.

“[Consumers] often make incorrect, though reasonable, assumptions such as not needing to declare their conviction due to its age or lack of relevance to the proposed risk.”

Fifthly, and perhaps the most scandalously, even these imperfect rules are often disrespected. Customers and insurance sales staff alike have a poor knowledge of the relationship between the ROA and contract law. Customers lack

¹⁶ UNLOCK, op.cit, p.33

awareness of the concept of material facts, let alone when a previous conviction might constitute one. They often make incorrect, though reasonable, assumptions such as not needing to declare their conviction due to its age or lack of relevance to the proposed risk. Others assume that if a company does not take the opportunity to ask about convictions at application, or indeed at renewal, then they are covered. Another common, but equally ineffective, survival technique is to put policies in a partner's name. Similarly, insurance salespeople often fail to adequately highlight the importance of disclosure, either through a lack of awareness or short-termism borne of commission-based pay. Criminal justice organisations also consistently fail to provide advice on this issue to their clients. As a result, disclosure comes randomly, often as a result of a renewal notice that happens to specifically mention criminal convictions.

In addition, it is not clear that all insurers even accept that the ROA limits *uberrima fides*. How will they react if a conviction is 'spent' but is still perceived as relevant to the proposed risk? Of course, insurers should not have access to information about spent convictions but UNLOCK has evidence that some loss adjusters are asking claimants to make 'subject access requests' under the Data Protection Act to obtain all information held on them by the police. Since these files contain details of all convictions (spent or unspent) as well as cautions and reprimands this is unfair, a flagrant abuse of the SAR system and may even be illegal.

“Proposers who declare their conviction find they simply cannot access insurance, any current cover is cancelled or the premium is increased so immensely as to create the same effect.”

Consequences

Without insurance, essential activities such as using vehicles, buying homes, travelling and running businesses, become unfeasible. When it comes to disclosure, consumers with unspent convictions are damned if they do and damned if they don't. Perversely, honesty is not rewarded. Proposers who declare their conviction find they simply cannot access insurance, any current cover is cancelled or the premium is increased so immensely as to create the same effect. Without buildings insurance, mortgages become unavailable or rescinded and families lose their homes. Without motor insurance, personal transport is lost preventing access to many jobs and impeding family life. Without access to commercial insurance small businesses are unable to trade and self-employment opportunities

disappear. The very elements identified as reducing crime are rendered impossible.

As a result, those who do not disclose out of ignorance are joined by those who do not disclose out of necessity. People who, faced with reasonable increases in premiums, would willingly declare their convictions, paradoxically have to break the law in order to acquire a product which underpins a law-abiding life. In this way, customers pay normal premiums over long periods. Some are simply keeping their head down but most genuinely believe they are covered. In some cases insurers are collecting over 20 years of premiums before refusing to pay a claim.¹⁷ The reality is that there may be millions of households in the UK with policies that could be avoided in the result of a claim.

Solutions

For the vast majority of people with previous convictions in the UK, a market model is more than capable of achieving mutual benefit, rendering government intervention unnecessary. Such a market-led approach requires two elements: supply and demand.

To increase supply, the insurance industry simply needs to choose rational decision-making model based on risk assessment. If this kind of decision-making falls within the core competence of any industry, it is surely the insurers with their armies of highly skilled actuaries and underwriters.

Great progress has already been made. Since 2000, when UNLOCK negotiated the establishment of a specialist broker service, the charity has been developing access to insurance for people with unspent convictions. By building a competitive panel of specialist brokers and underwriters, UNLOCK has helped hundreds of individuals and families. Naturally premiums can go up after disclosure, though in some cases they have actually gone down. However, the route to market remains obscured for many people. Larger insurers have confused latent demand for lack of demand, leaving the misperception that previous convictions represent an insignificant niche.

For demand to increase, customers need to feel confident that they will be treated fairly and on the basis of their individual circumstances. Insurers must 'ensure that the consequences of non-disclosure and inaccuracies are pointed out to the prospective policyholder by drawing his attention to the relevant statement in the proposal form and by explaining them himself to the prospective policyholder' as per the ABI Code of Practice.

¹⁷ UNLOCK, op.cit, p.6

Only once these measures are in place can those who are genuinely trying to cheat the system be singled out. To this end, UNLOCK continues to raise awareness within the criminal justice system and insurance industry, as well as directly distributing leaflets explaining the value of insurance and the need to disclose unspent convictions.

However, if the market is to develop to its full potential, the involvement of major insurers is essential. Industry, regulators, government, charities and the media all have a part to play in ensuring that both consumers and insurers are well informed and behave responsibly. Ultimately however, it is in the preserve of insurers to effect positive change.

“Developing more progressive, data-driven risk-pricing models could offer a largely untapped commercial opportunity, while simultaneously [...] contributing to social justice and crime reduction.”

The legal principle of utmost good faith works both ways and the duty of full disclosure also applies equally to the underwriter. The stated practice of the Financial Ombudsman is that insurers may not avoid a consumer policy for non-disclosure where no question has been asked but this is not in line with the law. Proposals from the Law Commission would, “replace a consumer’s duty to volunteer information [that would have an effect on the mind of a prudent insurer] with a requirement to answer questions carefully and honestly” bringing the law in line with FOS practice.

Truly professional organisations will recognise that while the onus may be on the proposer to disclose material facts, the onus is on the professional to ensure the proposer gets the insurance they need.

Conclusion

Current insurance risk models adopt a blanket approach that is based upon ageing legislation that is not evidence-based. Developing more progressive, data-driven risk-pricing models could offer a largely untapped commercial opportunity, while simultaneously demonstrating corporate social responsibility by contributing to social justice and crime reduction.

If the insurance industry is to act professionally, and therefore act in the public interest, it should note that not only would the public benefit from removing blanket discrimination but that those suffering discrimination actually make up a significant proportion of the public.

There is message here both for Government and industry. Reducing crime is not just about enforcement, it’s also about offering an alternative. It is about inclusion wherever possible.

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