



**UNLOCK**  
The National Association  
of Reformed Offenders

**The Functional, Structural Capability and Equality limitations faced  
by serving offenders, ex-offenders and reformed offenders:**

**Unlock's published response to  
The Equalities Review Interim Report January 2007**

## **FOREWARD BY CHIEF EXECUTIVE**

I welcome the new range of Equality Duties which will help drive forward a culture change, ensuring that we take into account the impact upon people when developing services and policies. Unlock are committed to ensuring all aspects of equality and campaign on what issues and inequalities most severely affect the ability of serving offenders, ex-offenders and reformed offenders to live law abiding lives.

Unlock has a long and recognised history of implementing equality and working to embed equality and diversity through our activities. However Unlock needs help from the Commission for Equalities and Human Rights (CEHR) with a journey that will ensure that serving offenders, ex-offenders and reformed offenders are able to overcome the Functional, Structural and Equality limitations faced by the individual on the journey of rehabilitation and redemption. 7.3 million People are directly affected by having a criminal conviction with an estimated 15 million affected indirectly. Unlock has clearly identified seven main issues affecting the individuals and proposed a number of solutions but legislation is also needed to ensure equality for all and this is why a Second Chance Act is needed to help. Unlock hopes that CEHR will help and not be put off by a section of society that is usually vilified and used as a political pawn.

Bobby Cummines

Chief Executive of Unlock: National Association of Reformed Offenders

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**Unlock's vision:**

Equality for reformed offenders.

“ A society in which every individual, whatever their past convictions, is able to fulfil their potential through the enjoyment of equal opportunities, rights and responsibilities”

**Mission Statement**

Driven by the needs of former offenders, work to reduce crime by overcoming the social exclusion and discrimination that prevents people with convictions from successfully reintegrating into society.

Empower former offenders to break down barriers to reintegration by offering practical advice, support, information, knowledge and skills, and by acting as the voice of former offenders to influence discriminatory policies, behaviours and attitudes.

**Guiding Principles and Beliefs**

A reformed offender is any person who, having been convicted of a crime, and having accepted that they committed crime in the past, decides to live a crime free life in the future.

The experiences of reformed offenders can be used constructively as a highly effective way of helping others to leave crime behind.

The wisdom gained from engaging with offenders, their families, the wider community, our own experiences and those of other professionals should be treated with equal respect when seeking to identify barriers to reintegration and developing innovative solutions. We welcome positive partnerships with individuals and private, public and voluntary organisations.

A civilised society must offer every citizen a fair opportunity to live by its rules. Giving former offenders a fair opportunity to help themselves means that they can take full responsibility for leading a crime free life, and will dramatically reduce re-offending.

Campaigns;-

Anti-discrimination Legislation:	Influence the relevant organisations to establish ex-offenders as a discriminated group, enshrined in legislation, on a par with Race, Disability and Gender, Sexual Orientation, Religious beliefs and Age discrimination.
Voting for Prisoners:	Influence relevant organisations to ensure convicted UK prisoners are enfranchised and enabled to vote in line the European Court of Human Rights judgement (Hirst v UK Government) on voting rights for serving prisoners.
Financial Inclusion:	Influence relevant organisations to recognise offenders in prison and in the community as a key financially excluded group which requires access to financial services, tailored basic financial capability training and one-on-one information, advice and guidance, separate from the option to study for vocational finance qualifications.
Centres of Excellence:	Establish a programme to create an alternative to prison for low-tariff offenders that focus on Education, Training and Employment, as described in the UNLOCK: Centres of Excellence document.
Media:	Contribute to the on-going coverage of ex-offender related issues through TV and radio, newspaper articles and press releases, as and when they are deemed to contribute to the mission of the organisation.

Last year, Commission for Racial Equality (CRE) chairman Trevor Phillips was asked by the government to lead a wide-ranging review into public policy and anti-discrimination laws. This was called the Equalities Review. It is expected to influence the design of a new single equalities law to underpin the Commission for Equality and Human Rights (CEHR) - a super-body which will come into force 2007.

This is the response of Unlock; The National Association of Reformed Offenders to that Equalities Review.

## Introductory comments

The remit of the Equalities Review (ER) is to:

'provide an understanding of the long term and underlying causes of disadvantage that need to be addressed by public policy; make practical recommendations on key policy priorities for: the government and public sector; employers and trade unions; civic society and the voluntary sector; and, inform both the modernization of equality legislation, towards a Single Equality Act; and the development of the new Commission for Equality and Human Rights' (CEHR)

While the intention may be honourable, and it is understood that the ER is at an interim stage, this Interim Report (IR) in its current form has failed to convince Unlock that it has adequately addressed its remit, particularly in respect of the functional, structural capability and equality limitations facing serving offenders, ex-offenders and reformed offenders. A sustained and extensive consultation with the membership of Unlock, serving offender, ex-offender and reformed offender communities on the future for equality in Britain particularly highlights continuing concerns with access to and sustained employment, education, health, housing, financial inclusion and human rights. Dealing with this form of discrimination, in our view, would amount to a cohesive and integrated basis for a UK wide equality strategy which focuses on the infrastructure, substantive issues and action plans, whilst dealing with the issues faced by 7.3 million of the adult population in the UK (Offenders Index: Home Office Nov 2006).

Whilst the ER was right to look for innovative ways of defining, measuring and tackling equality it is difficult to see how this IR addresses the functional, structural capability and equality limitations facing serving offenders, ex-offenders and reformed offenders or how a final report will do so without more dedicated attention on each area of inequality which examines the underlying generic causes. Despite the ER's protestations that there is not enough data to look at all areas in detail, for serving offenders, ex-offenders and reformed offenders it is evidently not the case. There is already a great deal of accessible data in the public domain, including the voluntary sector and, indeed, amongst communities themselves (Please see attached research list [appendix 1] and summary on background issues faced page 11).

## Unlock as a lobbyist group

This IR is critical of 'the traditional approach of considering inequality by strand' and the 'battle of lobbyists' which it claims means that 'public policy is determined largely by the best-organised, often most well-funded and ultimately most popular cause, rather than by what is most urgent, most damaging to society as a whole'. UNLOCK is unique and effective. As a charity founded by ex-offenders, including Stephen Fry (actor/author) and the late Sir Stephen Tumim, former Chief Inspector of Her Majesty's Prisons, we know only too well through bitter and sometimes painful experience, the effects of imprisonment and the barriers, discrimination and prejudices facing anyone with a criminal record.

We understand the problems of ex-offenders and speak their language, having credibility *because* we have shared their experiences. Our track record is now proven and we are therefore able to act as a front line

organisation, fighting for effective resettlement and equal opportunities on political, intellectual, moral and - importantly - *practical* levels.

The need for our services is reflected in the number of people who contact us because others cannot help them, and by the positive responses from those with whom we work. Unlock has grown in reputation as the respected and valued voice of ex-offenders by those whom we represent and those who request our services; we have successfully begun to overcome some of the obstacles, effecting *real* change in the lives of many. In a short space of time, we have become firmly established within the field of penal support as well as national and local community bodies, and are routinely consulted by prisoners, ex-offenders, policy makers and practitioners alike.

Our prison service fails to effectively rehabilitate and our prisons have become little more than human warehouses to which the majority of offenders will return again and again. Moreover, we know from experience that ex-offenders face extensive and unwarranted discrimination, prejudice and exclusion from many areas of mainstream society long after a sentence has been completed so that 'going straight' is made needlessly difficult, if not impossible in many instances.

We know at Unlock that ex-offenders offer a wealth of talent and the majority wish to lead normal lives within a caring community. By putting into place the structures that promote independence whilst in prison through education, job training and facilitating a constructive transition from custody into the community, coupled with inclusion policies practiced in those communities, the likelihood of further offending may be considerably reduced.

The IR seems to imply that if we don't have an 'accepted view' of what is meant by equality – (i.e. the Review's view), then 'a true attempt to remedy an unjust inequality may appear to be the action of self-interested groups to close gaps for which they in part are themselves responsible'. This comment is inaccurate and misses the point that Voluntary sector efforts, more often than not, exist because of perceived gaps. The organic grassroots role of the Voluntary sector is a well recognised asset, by most stakeholders. Government recognises in principle that great experience at the social and individual level rests with these groups, but does not always practice real partnership with them.

Specific capability and inequality issues facing serving offenders, ex-offenders and reformed offenders include:-

- 1) Importance of Political Enfranchisement
- 2) Cyclical Employment practices and right to employment
- 3) Access to National Insurance numbers
- 4) Lack of access to Education at all levels
- 5) Lack of Financial Inclusion and poor access to the benefits system
- 6) Access to poor Health services including mental health
- 7) Access to poor Housing and increased likelihood of homelessness

## 1. Importance of Political Enfranchisement

We are concerned that the introduction to the ER although not necessarily the intention has the effect of downplaying the importance of the vote and political representation as a key lever to participation. The French philosopher Alexis de Tocqueville argued that a passion for equality was at the heart of democracy. In modern societies we recognise that the vote is only part of the democratic story. Unless everyone feels capable of participating in society, and believes that they benefit from being treated as an equal, the possession of a vote can seem peripheral, and increase alienation and disengagement. These in turn generate costs for the whole society, the costs of fractured communities, of those who are either unable or unwilling to work, and of those marooned at the margins of our communities.' When these reasons are coupled with our traditional commitment to social justice and fairness, we are rightly concerned if we discover that some people are unable to throw off the shackles of entrenched inequality. In the end, their inequality impoverishes us all. It is difficult to believe the meaning of the sentence ending: '...possession of a vote can seem peripheral, and increase alienation and disengagement'. In addition referring to shackles, powerfully symbolic of PRISON, as if some people are unable to throw them off is not helpful. Care must be taken in using such emotive terms in conjunction with an implied suggestion that those in shackles can unburden themselves. This sentiment is symptomatic of the approach in the interim review which may be characterised as shift from the systemic to the individual. While De Tocqueville was right to say that equality was at the heart of every democracy we would add that the quality of a democracy is measured by the extent to which minority citizens are true stakeholders in that democracy and enjoy equal rights and freedom from discrimination.

Convicted prisoners in the UK are 'disenfranchised' by a blanket ban on voting in to the notion of 'civic death,' the Forfeiture Act of 1870 denied offenders their rights of citizenship. The current blanket electoral ban on sentenced prisoners voting is contained in the Representation of the People Act 1983 (amended 1985, 2000). In 1998 the Prison Reform Trust (PRT) published *Prisoners and the Democratic Process* arguing that voting rights helped to develop a sense of social responsibility and should be extended to all UK prisoners. It also presented evidence to the Home Affairs Select Committee report *Electoral Law and Procedure*. In 1999 the Home Office Working Party on Electoral Procedures identified the disenfranchisement of convicted but unsentenced and remand prisoners, as caused by electoral criteria which prevented the acceptance of penal institutions as places of residence (White & Rees, 2006). They concluded that preventing remand prisoners from voting was accidental with no argument of principle and recommended they be recorded without a fixed address. The amendment of 2000 saw this implemented but no recommendations or changes were made with respect to the enfranchisement of convicted prisoners.

Over the years there has been increasing pressure to change the law. On 2 March 2004 the PRT and Unlock (The National Association of Ex-offenders) launched the 'Barred from Voting' campaign. The key arguments were that the ban; infringes human rights, further isolates people on society's margins despite the link between social exclusion and crime, disproportionately affects the ethnic minorities over-represented in prison, does not improve public safety, does not act as a deterrent or contribute towards rehabilitation, discourages political interest and debate on prisons and penal policy, encourages political and economic



neglect of prisons and prisoners which encourages re-offending, removes the right to representation on issues such as human rights, living conditions and personal safety (Unlock and PRT, 2004). Notable supporters of the campaign included former Conservative Home Secretary Lord Douglas Hurd, Liberal Democrat president Simon Hughes and Labour peer Baroness Kennedy QC. national and local elections. There is a significant campaign to overturn the ban, which breaches the European Convention on Human Rights, as has occurred in many other countries. The disenfranchisement of prisoners in Great Britain dates back to the 19th century.

The UK is one of only eight European countries to automatically disenfranchise sentenced prisoners, the others being: Armenia, Bulgaria, Czech Republic, Estonia, Hungary, Luxembourg, and Romania. The majority have no ban (18 states including Denmark, Spain, Sweden and Switzerland) or a partial ban (13 states including France, Germany and Italy). In Australia and New Zealand, the length of sentence determines voting rights. In 2002 the Canadian Supreme Court stated that denying the vote "countermands the message that everyone is equally worthy and entitled to respect under the law". In 1999 the South African Constitutional Court gave all prisoners voting rights declaring, "The vote of each and every citizen is a badge of dignity and personhood. Quite literally it says that everybody counts."

In March 2004 the European Court of Human Rights (ECHR) gave its judgement in the case of *Hirst v The United Kingdom*, finding that the ban breached article 3 of protocol 1 of the European Convention on Human Rights which guarantees 'free elections...under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.' The case was brought by John Hirst, a serving prisoner at HMP Rye Hill, after an unsuccessful challenge at the High Court. Much reference was made by the court to *Sauvé v. the Attorney General of Canada (No. 2)* which rejected Parliament's argument for denying the vote on social, philosophical or political grounds as being "inappropriate on a decision to limit fundamental rights". The court held that in a democracy built on principles of inclusiveness, equality and citizen participation, elected representatives had no right to disenfranchise a segment of the population. The Department of Constitutional Affairs responded, 'We have always argued that prisoners should lose the right to vote while in detention because if you commit a crime that is serious, you should lose the right to have a say in how you are governed...This judgement questions that position.' The Government appealed, submitting that the ban was restricted to around 48,000 prisoners 'convicted of crimes serious enough to warrant a custodial sentence and not including those on remand'. The debate became even more prominent leading up to the 2005 General Election. Charles Kennedy declared, "We believe that citizens are citizens. Full stop...you have to have the entitlements that go with it in terms of voting."

In October 2005, the Grand Chamber of the ECHR rejected the Government's appeal by a majority of 12 to 5, stating, "Such a general, automatic and indiscriminate restriction on a vitally important Convention right had to be seen as falling outside any acceptable margin of appreciation" (ECHR Grand Chamber, 2005). The decision on how to secure these rights was left to the UK legislature. The ECHR ruling polarised political opinion. The Liberal Democrats welcomed the ruling, going to get the right to vote...We need to look and see whether there are any categories that should be given the right to vote."

On 2 February 2006 the Lord Chancellor announced that there would be a public consultation about prisoners' voting rights "available for discussion in a few weeks' time" (White & Rees, 2006). The consultation

has just been launched in December 2006 and Unlock will seek to play an active role campaigning for change. Further information is available in Appendix 2 and on Labourspace.com.

#### UNLOCK'S SOLUTION

Unlock will continue to fight for prisoners voting rights and take part in the public consultation.

#### CASE STUDY

Frederick was in prison for the tenth time. Much of his life had been about drugs and alcohol and at the age of 54 years had realised that his life was chaotic and that everything he held as important held him back from 'going straight'. Whilst attending a restorative justice programme Frederick realised that he had never owned a home, had a permanent job or address and had never given the consequences of his actions any wider thought as to the affect that he might have had. He had spent to majority of his life in temporary accommodation. In one session Frederick was extremely animated as to what was wrong with society and what he would do about it. When asked the question whether he had ever voted or campaigned on an issue the reply was no. In a follow up session Frederick told the group that he had never voted and wouldn't know how to and wanted to know how he would get his name on the electoral roll.

The ER repeatedly ignores and minimises systemic discrimination by stating that "discrimination... may not be the only reason for inequality". This suggests that the ER is taking an approach which comes close to a 'blaming the victim' model and does not fully consider all forms of discrimination – its roots, operation, manifestations, and effects (the ROME model).

## BACKGROUND ISSUES OF SERVING OFFENDERS, EX-OFFENDERS, REFORMED OFFENDERS: LINKS BETWEEN OFFENDING AND SOCIAL AND ECONOMIC EXCLUSION

Two strands of argument permeate the topic of offenders and social and economic exclusion:-

- Firstly that people with criminal records are examples of people suffering from multiple exclusion (Social Exclusion Unit 2002).
- Secondly that prison exacerbates the problem rather than cures it (Social Exclusion Unit 2002).

Many offenders, ex-offenders and those who re-offend have low levels of educational attainment, come from unstable family backgrounds, may be from an ethnic minority background and/or may have a history of drug abuse. They are much likely to find themselves unemployed and/or without a home when they leave prison and this ultimately makes them more likely to re-offend.

Many factors aggravate the rehabilitation process of offenders and add to the cost of helping ex-offenders to become socially and economically further excluded. Some of these were identified (SEU 2002) as;-

- the prison system is overcrowded and transfer between establishments does not allow for the consistent level of intervention;
- many prisoners receive little consistent support before or after release from prison;
- investment in and access to prison education programmes varies widely;
- solutions require the co-operation of many agencies, but mechanisms for joint working are inadequate;
- procedures are not in place to identify housing, debt or employment needs;
- short term prisoners (under 1 year) have the highest re-offending rates but receive the minimal amount of intervention within the prison regime and when released;
- where employability is increased in prison, the necessary disclosure of convictions to employers results in discrimination.

Serving a prison sentence creates further problems with;-

- 1) One third of prisoners losing their home whilst in prison
- 2) Two thirds losing their jobs
- 3) One fifth have increased financial problems
- 4) And two fifths lose touch with their families

Putting this into perspective of the 7.3 million people (Offenders Index: Home Office) with a criminal conviction;-

- 2.43 million people have lost their home
- 4.87 million people have lost their jobs
- 1.46 million people have increased financial problems
- 2.92 million people lose touch with their families.

This is discrimination on a mass scale and should not be tolerated in a civilised society. Unlock asks whether criminals are punished 'properly' by sending them to prison? For low level crime, our answer is NO.

In England and Wales, after a stable period, there has been an increase in the prison population (including those on remand). In early 2003, the figure was almost 73,000, an increase of over 25,000 since 1990 (Figure 1). Within a year, by February 2004, the prison population was 74,594, and is continuing to rise with current estimates of 80,000, the highest ever. Between 1992 and 2002 prison populations increased by 55%. The total number of adult women in prison doubled over the same period. The male sentenced prison population for drug offences has increased by 201% in 10 years. For females it is up by 414%, for robbery by 453% and for burglary by 350%. The current prison population for burglary, robbery, theft and handling and drug offences is 29,125 (54% of the total) for men, and 2333 (70% of the total) for women. Half of these sorts of crime are drug related and the majority is committed by people from disadvantaged areas and is catalysed by worklessness, poverty, drug abuse, disaffection and other aspects of social exclusion. The link between social exclusion and crime is indicated by these statistics (Home Office 2006).

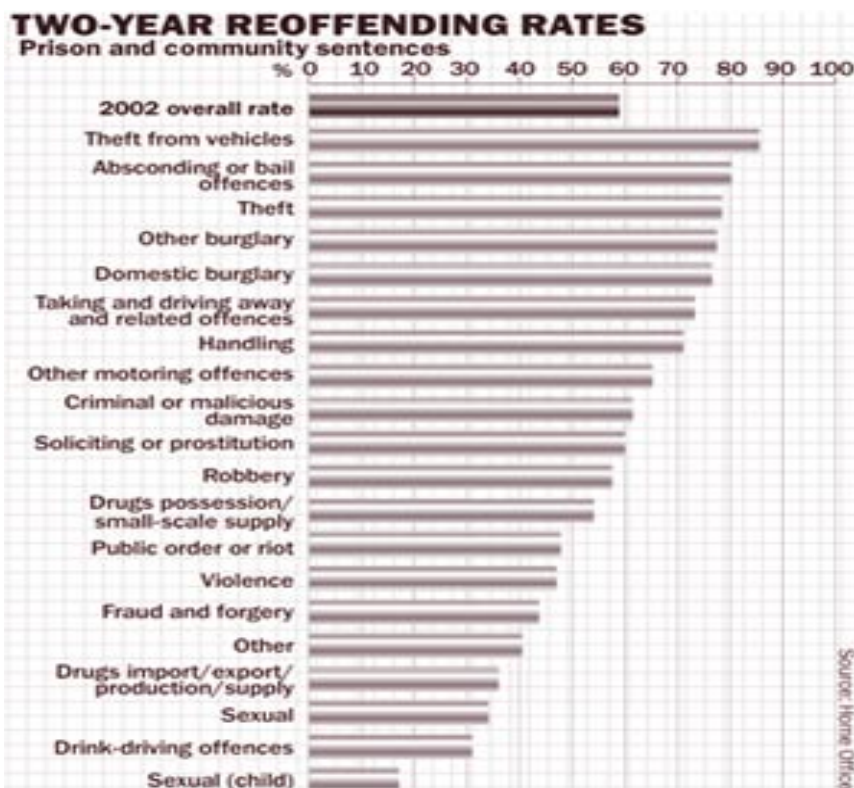
UNLOCK feels that one of the persistent areas of discrimination and inequality that is metered against ex-offenders (that is, individuals who have a criminal conviction, be it a custodial sentence, community sentence, fines or other judicial sanction) is when they are trying to resettle into society. From the above figures 272,000 individuals are affected by the label of ex-offender every year and this has serious implications for society of reduced economic activity, decreased levels of community cohesion and increasing re-offending rates. Over a third of the male population is an ex-offender (Home Office statistics 2006).

The use of trigger episodes as a way of looking at key points of disadvantage is an essential distinction faced by serving offenders, ex-offenders and reformed offenders. A criminal conviction is a significant trajectory event which affects an individual right to employment, education, health, housing, financial inclusion and access to services.

The current prison population for the 26th January 2007 is shown below;-

Male	75,317
Female	4,414
No. of prisoners held in police cells under Operation Safeguard	271
<b>TOTAL</b>	<b>80,002</b>
Useable Operational Capacity	<b>80,375</b>
Spaces available under Operation Safeguard	<b>341</b>
<b>TOTAL</b>	<b>80,716</b>
Number under Home Detention Curfew supervision	<b>2,353</b>

However the criminal conviction is usually the final straw in the symptoms and cascade effect of disadvantage but the one that will ensure a lifetime of discrimination and return to reoffending for 70% of previously convicted criminals (Home Office statistics 2006).



### RECONVICTION RATES

Community rehabilitation order: **62.6%**

Drug treatment and testing order: **88.9%**

Community punishment order: **38.9%**

Community punishment and rehabilitation order: **54.4%**

Prison: **67.4%**

More criminals are returning to a life of crime within months of serving jail or community sentences than at any time. More than 60 per cent of young males are convicted of another offence within two years of ending their sentence. Three quarters of young male burglars and thieves also re-offend, according to the Home Office figures placed unannounced on its departmental website in December 2005.

A massive 90 per cent of offenders on the drug treatment and testing order, designed to tackle the link between drug use and prolific offending, go on to commit more crimes. The programme costs the Government £53 million annually. There is also a high dropout rate by offenders given the orders, which were introduced across England and Wales five years ago.

The figures are a severe blow to the Government, which is attempting to end the “revolving-door” syndrome, in which offenders are constantly in and out of jail. The figures show that 58.5 per cent of adult offenders released from jail in the first quarter of 2002 or starting a community sentence at the

same time were convicted of a further crime within two years. When Labour came to power the figure was 53.1 per cent and in 2000 it was 57.6 per cent.

The number of criminals who committed further offences within two years of leaving jail was even higher. It rose three percentage points to 67 per cent last year and reoffending by those on community sentences increased fractionally to 53 per cent.

When Labour came to power the reoffending rate for prisoners within two years of being released was 58 per cent. More than a third of criminals re-offended within six months of ending their sentence and almost 50 per cent within a year.

The increase in reoffending rates, particularly among ex-prisoners, could be linked to the characteristics of offenders now being sent to jail. Judges and magistrates have said that criminals have been becoming nastier, more prolific and more dependent on drugs in the past decade.

Another reason may be that jails are overcrowded, meaning that staff have less time to work with offenders.

Unlock believes that the Government are misguided in believing that huge investment in the criminal justice system is a key driver in reducing crime and promoting public safety and believe that the figures show that the solution to reducing reoffending lies outside the criminal justice system and points to a complicated pattern of structural, functional capabilities and inequality based on multiple disadvantages and discrimination.

However treating these trigger events as causal factors in inequality runs the risk of too much focus on individuals, personalising inequality, rather than structural factors. There are groups of people who are vulnerable by definition, rather than as a result of life events but for serving offenders, ex-offenders and reformed offenders the boundaries become blurred and a pattern of multiple disadvantage, inequality and trigger events are entwined. The trigger event approach does not offer an effective analysis of power and its role in defining unequal relationships, especially when the individual is faced with structural discrimination of institutions in relation to access to Goods, Facilities and Services. However for the 7.3 million (Offenders Index: Home Office) people facing the consequences of receiving a criminal conviction, it is probably the trigger event that will seal their fate for lifelong discrimination, social and economic exclusion regardless of Race, Disability and Gender, Sexual Orientation, Religious beliefs and Age (Matthewman and Holdsworth-Cannon 2005).

What is social and economic exclusion? Social and economic exclusion is about more than income poverty. Social and economic exclusion happens when people or places suffer from a series of problems such as unemployment, discrimination, poor skills, low incomes, poor housing, high crime, ill health and family breakdown. When such problems combine they can create a vicious cycle. Social and economic exclusion can happen as a result of problems that face one person in their life. But it can also start from birth. Being born into poverty or to parents with low skills still has a major influence on future life chances. Serving offenders, ex-offenders and reformed offenders, have usually suffered multiple social and economic exclusion and this is highlighted on page 18.

Unlock are concerned at the focus on only two areas of civic life - education and employment. The review says this is because:

“Most of the evidence at this stage relates to educational attainment and labour market participation, for two reasons. One is quite simply because these are the fields in which data are most accurate and readily available over the time-span we are considering. The other is that these are the two fields which respondents to the call for evidence and, from our preliminary findings on public attitudes, most people think are most critical to life chances and equality”.

However what needs to be remembered is that, with a few exceptions, our prison population is made up of that section of our society that has already been excluded rather than included. Most prisoners lack educational qualifications, have few employment skills, have often experienced long-term housing, family and addiction problems. Prison cannot deal with the causes of poverty and the widening gap between the rich and the poor.

Notwithstanding the explanation offered above for the concentration of this report in two areas, the result is that a list of 11 major challenges focus almost exclusively on education or employment. In any analysis of equality in the UK there must be a concomitant focus with regard to financial inclusion, housing and Health including mental health.

Figure 30 on page 63 is interesting but unless it is overlaid with several more maps of differing social policy areas and for different groups we will always be left with little more than a snapshot if not misleading diagram. In its present form Fig.30 arrives as an irritant to the analysis, rather than a useful addition and Unlock proposes the following diagram to outline the issues.

PRODUCTIVE	EDUCATIONAL	MATERIAL	EMOTIONAL	SOCIAL	PHYSICAL
↓	↓	↓	↓	↓	↓
COMPETENCE	ACCESS TO	FINANCE/ INCOME	POSITIVE AFFECT	PERSONAL RELATIONSHIPS	HEALTH
CHOICE/CONTROL	ABILITY	SECURITY/ TENURE	MENTAL HEALTH	FAMILY	MOBILITY
INDEPENDENCE		HOUSING QUALITY	FULFILMENT	RELATIVES	FITNESS
PROCVIVITY/ CONTRIBUTION		PRIVACY	SELF ESTEEM	FRIENDS	PERSONAL SAFETY
		POSSESSIONS	STATUS/RESPECT	COMMUNITY INVOLVEMENT	
		FOOD	SEXUALITY	ACTIVITIES	
		NEIGHBOURHOOD	FAITH/BELIEF	ACCEPTANCE/ SUPPORT	
		TRANSPORT			

## DIAGRAM 1. STRUCTURAL AND FUNCTIONAL CAPABILITY

### 2. Cyclical Employment practices and the Right to proportional employment

Employers want to know whether job applicants have a criminal past, but whose interest is served by revealing false or irrelevant allegations? More than one in four people will have a criminal record. If you include people with cautions, reprimands and final warnings on their record then the numbers are even higher. The majority of these ex-offenders are not hardened villains - on the whole, they are normal citizens who have discovered that even if their only crime happened decades ago, a record of it might still be following them around. Our attitude towards people with criminal records is so negative, even though we probably all know several ex-offenders. For people with a criminal record, this prejudice is felt most keenly when applying for jobs. A lot of jobs are being subjected to standard and enhanced disclosure checks for jobs where they have no right to seek that information. There is a growing tendency for employers to run a check on any job that involves even potential contact with children or vulnerable adults. The other issue is that we've got positions that may be eligible for a standard check but an enhanced level check is being carried out instead. This reluctance can be damaging: 20% of employers subsequently refuse to recruit someone as a result of a disclosure and it seems that rather than weeding out potentially dangerous candidates, the disclosure system is being used by some employers to filter out anyone with a prior criminal record. What makes the matter worse is that there is very little recourse for people who have been discriminated against. Such is the culture of discrimination that it has led to a situation where self-exclusion is the norm - people with criminal records realise that it's pointless even applying for jobs which require disclosure. Of the 2.8m standard and enhanced disclosures issued, only 6% of them showed any criminal record, far below the 25% you would expect to reflect society as a whole.



Incredibly, despite the Data Protection Act giving you some access to your criminal record, you cannot access the soft information which would be returned if an employer performed an enhanced disclosure. The closest you can get is to perform a subject access check. Each of the 43 police forces in England and Wales has its own subject access form, which you must fill in and pay £10 to submit. The process often takes the full 40 days allowable under the Data Protection Act and will list only the basic information.

The 35 Acts, 52 Statutory Instruments, 13 Codes of Practice, 3 Codes of Guidance and 16 EC Directives and Recommendations, Human Rights Act 1998 and Directive 2000/78/EC of 27 November 2000 have helped established a general framework for equal treatment in employment, occupation and access to services.

However concrete measures should be taken in order to encourage complete equal treatment in employment and access to services for all sections of society and this includes ex-offenders and reformed offenders. The UK conducts an active labour policy seeking to promote the integration of minorities and the integration of disadvantaged groups (which serving offenders, ex-offenders and reformed offenders are clearly identified SEU 2002, 2004: HAC 2005) into the employment market. Offenders and ex-offenders are not a homogenous group and come from different ethnic, gender backgrounds and are a variety of ages. 84% of the prison population of British nationals in England and Wales in 2002 were white males and females. Black British nationals accounted for 11% of the sentenced population in prison. The ethnic grouping of the female British prison population follows roughly similar proportions. The proportions have shown negligible change since 1996. The proportion of white British females sentenced for drug offences (25%) was almost half the proportion of black British females (45%). Most women in prison are below the age of 30. A quarter come from ethnic minority backgrounds and one in five are foreign nationals. Nearly half the women are in for drug offences (possession, intent to supply and trafficking) and many for acquisitive offences to gain money to support drug habits.

Some of the individuals have been able to challenge discriminatory decisions surrounding access to employment and services using the existing equalities legislation covering race and gender but the pattern of discrimination is further compounded if they are from a minority background, disadvantaged by lack of education and skills and labelled an ex-offender and have a duty to declare all unspent convictions on access to employment. The current domestic legislation that ensures conformity with equalities legislation is not sufficient to prohibit discrimination with regards access to employment and services and this extra layer of discrimination must also be eliminated in practice.

UNLOCK works to overcome the barriers facing ex-offenders in order to reduce the likelihood of re-offending. We believe that once a sentence is complete and society's debt paid, individuals and their families should not be further punished so as to leave them excluded – sometimes permanently (any conviction of thirty or more months means that a conviction is *never* spent, that is, a person is *never* considered as rehabilitated) and this is having economic and social implications for society. UNLOCK knows that 150,000 people are released from prison every year and many more are given non custodial sentences; this fact will discriminate them from the labour market.

The Rehabilitation of Offenders Act 1974 and updates have been under review for a number of years with little progress but Unlock hopes that the review will address some of the barriers facing some ex-offenders in terms of when convictions become spent (no longer declarable). However, the Act does not, and will not,

address the problem of discriminatory practices carried out by many institutions, agencies, service providers and employers who pay little heed to the Act, causing grave difficulties to those wishing to 'go straight'. One of the issues affecting millions of people concerns the lack of redress available to individuals who are honest and declare a criminal conviction and are then excluded from accessing gainful employment, pushed into unemployment, the unofficial economy or re-offending to survive. This pattern of discrimination is seen in access to housing, education, health care and services, and especially financial services.

This is unfair, illogical and works against the principal of equality. This makes no sense to ex-offenders facing discrimination and exclusion from society and is confusing for employers and service providers. It is backward looking, relying on victims to challenge discrimination using a hook onto existing legislation rather than challenging the real reason for discrimination of being an ex-offender and having a criminal conviction. Surely it would be more equitable to have legislation to prevent discrimination on the grounds of a criminal conviction instead of forcing individuals to use The Rehabilitation of Offenders Act 1974 and then face discrimination after they have been honest. However there are circumstances where a person's criminal conviction is highly relevant, for the protection of vulnerable groups for example. However, for most people, in most circumstances, when considering the 'risk' posed by someone with a conviction, weight should be given, where necessary, that is both proportionate and reasonable and currently this is not available to this section of society where traditionally:-

- 92% come from geographical areas of deprivation (IMD 2004)
- 14% had contact with both natural parents
- 66% did not have a good relationship with one or other of their parents
- 44% had experienced physical, sexual or emotional abuse, or neglect
- 27% had been or were in care
- 71% had truanted from school or had been excluded or suspended
- 76% had a recognisable learning disability such as Dyslexia, Aspergers Syndrome
- 96% had skills levels below NVQ level 2
- 49% had drug or alcohol problems

These factors contribute to a life of deprivation and social exclusion and lead to offending and the subsequent cyclical patterns of behaviour that lead to re-offending and continued social exclusion. Surely the time is right to break the cycle and provide legislation to one of the most vulnerable, multiple deprived sections of society who potentially cause the most damage by increasing the fear and reality of crime and destroying community cohesion.

#### UNLOCK SOLUTIONS:

- 1) Ensuring an Equal Opportunities Policy in relation to ex-offenders and reformed offenders, please see appendix 3 for further details
- 2) Introduction of a Criminal Records Tribunal

If a person leaves crime behind them then we as a society should do what we can to help in that process. Why should someone continue to pay for what they did many years ago, when they have learned their lesson and never done it again? UNLOCK wants to see the establishment of a Criminal Records Tribunal (CRT), sitting at local magistrates' courts where ex-offenders would be able to apply to have their convictions classed as spent under the Rehabilitation of Offenders Act 1974. Applicants would need to prove to the Tribunal that they have genuinely changed their way of life. If successful, the conviction(s) of the applicant would be considered 'spent' and in normal circumstances there would be no need to disclose them. It needs to be recognised, however, that people applying for employment with vulnerable groups are required by law to disclose all convictions - spent or otherwise - and thus the public would remain protected. Any further conviction would mean the convictions would become 'live' again.

### CASE STUDY

Rachel is 42 years old. 15 years ago she very tragically lost a daughter 8 years old after a prolonged illness. At the time her husband was extremely violent and domestic violence was a daily occurrence. Following the death of the child, his behaviour deteriorated even further and there were a number of incidents on a daily basis. During one such incident Rachel lashed out and assaulted her husband and charges were pressed against her. Rachel received a six month supervision order. Interestingly no charges were ever brought against her husband for the years of documented abuse suffered by Rachel. Following this outburst Rachel was helped by the local domestic violence refuge to get out of the situation that she was in and start to rebuild her life. 15 years later Rachel has remarried, has held down steady employment for 12 years. 4 years ago, she was asked to become a carer for an individual who felt that her caring manner and organisational skills could greatly improve his quality of life. Through this she was given the opportunity to train and has gained NVQ's at level 1, 2, 3 and 4 in health and social care and is regarded in high esteem by the clientele that she looks after on a daily basis. However on application for further employment Rachel had a Criminal Records Bureau check and potential employers have blatantly discriminated against her because of a criminal conviction over 15 years ago. Rachel continues to be a carer but is severely limited in the choices for employment and is currently stacking shelves at a well known supermarket as well as caring for the original individual who gave her a chance. She feels that the training she has received has been wasted, even though the programme was funded by a Job Centre Plus scheme and none of the issues that Rachel now faces were discussed with her at the outset. On further discussions with the Job Centre Plus their comment was that they were aware that this might be an issue but that their target was to get individuals to train and not to ensure proportionate employment.

### 3) Access to National Insurance number.

This is a national problem with every agency thinking that it is every others agency to sort out. NOMS should take responsibility for sorting this issue out at a national level and agree a mechanism for achieving this with the DWP. National Insurance numbers are crucial to access the benefits system and to gain and maintain employment. If an individual is unable to produce their NI number within 6 weeks then employers have the

right to terminate the employment for failing to comply with the basic requirements of employment. Also the lack of a NI number and the cyclical access to employment means that the individual is pushed towards the illegal economy where paying NI and tax is not required and low wages and skills are perpetuated. And needs to be implemented as a basic requirement before discharge.

## CASE STUDY

Nigel has recently been released from prison following a 4 year sentence for drug offences. During his sentence he received treatment for his drug addiction and behavioural dysfunction. He has been clean for 2 years. Whilst in prison he informed the CARAT worker that during his time as a drug addict he had sold most of his identity to fund his drug habit and wasn't sure what he could do to sort it out. The CARAT worker did not provide any further help and told the individual to speak to his personal officer. The personal officer was unsure what to do about this issue and on discharge Nigel's identification papers had still not been sorted out. Following several attendances at Job Centre Plus Nigel was still unable to provide any identification or a National Insurance number to be able to claim benefit. No one seemed sure about how to get any identification and the issue became desperate as Nigel had not been in receipt of any benefits for 14 weeks, was under the threat of eviction and was having to shop lift to feed himself. Nigel became extremely distressed and ended up speaking to Unlock's advice line. He was given clear advice to go to the Citizens Advice Bureau and ask for an advocate to be appointed to help him. The advocate attended the Job Centre Plus meetings and helped empower Nigel into getting the Job Centre Plus staff to take his confirmed identity custody form and using it as a form of identification. The Job Centre Plus staff member was able to find out Nigel's old National Insurance number and his benefit claim was processed within 2 weeks.

## UNLOCK'S SOLUTIONS

- 1) For NOMS and DWP to agree an easy mechanism for individuals to be able to access their old or new National Insurance number to be then able to access the benefits system and employment
- 2) ACCESS to JC+ employment and training advice by asking DWP to stop the discriminatory practice of only allocating ex-offender 3 points and making them ineligible for services to help them find employment.
- 3) Pre-release Courses

Effective and well-managed pre-release training is fundamental to any penal system which aims to help prisoners lead a law abiding life after release. Though delivered by well intentioned and hard working prison staff, current pre-release

courses are very thin on the ground, their content often questionable, and they are often under resourced and frequently have not been preceded by an informed needs assessment. For the future, UNLOCK is seeking to partners to produce more videos, open an Advice Hotline and publish a monthly newspaper for prisoners and prisons.

## 4) RECOMMENDATIONS FOR DELIBERATE ACTION WITH THE PUBLIC AND PRIVATE SECTORS

On page 91 the Review asks questions of whether Positive action should be extended. Unlock prefer the term deliberate action which implies a considered and purposeful action. Given the state of employment in public and private sectors and representation in political and civic arenas we are in favour of increased legislative powers for deliberate outcomes i.e. affirmative action.

Unlock would like to make a number of recommendations and these include;-

- The Northern Ireland Fair employment legislation, which has made a difference to the employment of Catholics, is used as a starting point to scope out new legislation for the UK to ensure that employment opportunities for ex-offender and reformed offenders are proportionate.
- Develop a programme of radical action for tackling unemployment in ex-offender and reformed communities, which is capable of delivering equality within the lifetime of the current generation and administered by the Voluntary and Community sector, Regional Development Agencies, Job Centre Plus, Sector Skills Development Agency, Sector Skills Councils and Learning and Skills Councils. Implement the (equivalent of the) Northern Ireland Fair Employment Act along with the subsequent Fair Employment and Treatment Order in the public and private sector allowing for the introduction of affirmative action to achieve employment equity for ex-offenders and reformed offenders.
- Establish a Fair Employment Authority. Each region should have a enterprise centre to promote enterprise in ex-offender and reformed offender communities and educational institutions. This should be a main target of all main stream agencies such as Job Centre Plus who should be used to dealing with ex-offender and reformed offenders successful employment brokerage whether paid or self employment.
- A voluntary and community sector work experience programme should be piloted and provide structured training and high quality placements in the public, private and voluntary sectors.
- Ensure representation on Learning Skills Councils and Regional Development Agencies that reflects and addresses that regions demography and make up of residual unemployment groups, of which ex-offenders and reformed offenders make up 50% of the residual, hard to place unemployed (Labour Force Survey October 2004).
- Set measurable departmental targets over the next five years in improving skills in serving offenders, ex-offenders and reformed offender communities and increasing employment rates, with progress being measured and widely publicised on an annual basis. These targets should be both regional and UK wide.

##### 5) The Private Sector (p92)

Despite Government rhetoric, the evidence is that the private sector is not living up to a model of good corporate citizenship or social responsibility, and with little or no incentive to do so in sight. With local Government alone spending £40 billion on goods, works and services, public procurement is a key lever for changing behaviour in the private sector. Public procurement offers incentives for business to change: access to Government monies must require high performance on all forms of equality. The IPPR (Institute for Public Policy Research) business-led Race Equality and Diversity Task Force in its report *Race Equality: the benefits for responsible business* (2004) and the employer-led National Employment Panel (2005) in its

recent recommendations to the Chancellor, have emphasised that the private sector is not averse to greater use of public procurement as a lever to influence employer behaviour in race equality and to improving public service delivery, so why can the same not be done for ex-offender and reformed offender communities..

However, despite calls from employers to more effectively use this lever more effectively, the demonstrable political will, innovation and leadership that has simply been missing.

The government should;-

- Extend the legislation to cover the ex-offender and reformed offender.
- Fund accredited ex-offender organisations to train and employ a pool of experienced diversity practitioners to work directly with private sector employers to improve their employment practices.
- Require all employment or small business support agencies and Jobcentre Plus district managers to produce and publish local action plans to close the employment gaps between ex-offender and non-offender groups via. Regional Development Agencies and Learning Skills Councils regional offices who should agree, fund and assist in co-ordinating these plans.
- Ensure that all forms of equality outcomes form part of value for money in Government procurement, with clear leadership from the Chancellor and the Office of Government Commerce. Procurement at central and local levels needs to be regularly assessed for its impact on equality in both service provision and employment practices.
- Set clear employment targets for the private sector, on a sectoral basis over the next five years, with progress being measured and widely publicised on an annual basis. This should include qualitative and quantitative evidence on recruitment, retention and promotion. Research should include the use of discrimination testing.
- Establish a clear programme, with targets to achieve supply side diversity in the procurement of all Government and local authority contracts.

#### 4) LACK OF ACCESS TO EDUCATION AT ALL LEVELS

The relationship between illiteracy and criminal behaviour was established long before Jails opened and remains as one of the major issues in corrections today. Research (Holdsworth 1994) found that 85% of the incarcerated population did not graduate school, and statistics that 65% of inmates are illiterate (SEU 2002).

The average prison inmate:

1. is functionally illiterate
2. probably learning disabled
3. never had a steady job
4. was a juvenile delinquent
5. abused substances
6. came from a dysfunctional home with a history of abuse
7. has not gone beyond the 10th year of school, and
8. has an average IQ one standard deviation below the mean.

Fifteen percent of prison inmates score below 75 on the Wechsler Scale of Adult Intelligence (Revised), indicating a substantially higher than average rate of mental retardation; and 70% have no skill or trade education (Unlock 2006).

#### **ISSUES IN PRISON EDUCATION**

There are some striking differences between incarcerated adult learners and the non-incarcerated, and these differences can make teaching inmates difficult:-

##### **Non-Incarcerated**

- \* is independent and self directed
- \* has a variety of experiences to draw upon and bring to the learning situation
- \* has educational goals dictated by current needs
- \* motivated to learn based upon solving “real world” problems

##### **Incarcerated**

- \* has every minute of life planned and programmed - not comfortable with independence and self-direction
- \* has experiences too negative to draw upon—especially those dealing with education and authority
- \* has current needs for safety, acceptance, and freedom which often preclude any new learning
- \* removed from the “real world”

There are other obstacles to quality education in prisons:

1. over-crowding and a lack of funding and materials
2. prison life with its routines of lock-downs, counts, and hearings
3. peer pressure (“You don’t need a GCSE’s to sell drugs,” as one inmate stated)

4. tensions between security and education staff
5. public ambivalence toward rehabilitation, as exhibited by the fact that parole boards rarely give weight to an inmate's efforts at rehabilitation, and consider the incident offence as the sole determiner for granting release
6. the 2003 crime bill which effectively killed post-secondary education programs in prisons by removing grant money from college programs and vocational training.

## **ACADEMIC ACHIEVEMENT**

Given the challenges of prison education, how successful can a correctional education program be? One indication of success can be seen from the New York State Department of Correctional Services (NYSDOCS) 2005 "Annual Report of the Academic and Vocational Program." Of those inmates who entered the system with no degree, 49% came in with reading scores below the fifth grade level. Upon release, 49% had reading scores at the 8.0 grade equivalent or above. This report also shows success in vocational education, with 9,873 inmates earning the equivalent of NVQ level 3 skills while saving the department £7.25 million in "live work" projects.

## **RECIDIVISM RATES**

The bottom line measurement for judging the success of correctional education is, traditionally, reduction of recidivism. In 1999 study, the Home Office reported that the offenders who earned a level 2 NVQ while incarcerated returned at a considerably lower rate (34%) than those offenders who did not earn a level 2 NVQ while incarcerated (39.1%). Recidivism rates were inversely related to educational program participation in prison. The more educational programs successfully completed for each six months confined, the lower the recidivism rate. For inmates successfully completing one or more courses per each six months of their prison term, 35.5% recidivated, compared to 44.1% of those who successfully completed no courses during their prison term. None of the inmates who earned a bachelor's degree recidivated, compared with the 55% recidivism rate of the rest of the inmates released. For A female inmates who attended college while incarcerated recidivated at a rate of 7.7% as opposed to the 29.9% return rate of women who did not attend. Post-secondary education in prison can help reduce crime on the street.

## **FINANCES**

Anyone interested in government finances has an interest in inmate rehabilitation. Unlock research (2006) using Home Office information indicated that improvements to the prison education system would reduce recidivism resulting in savings of £28,000 to £35,000 in construction costs and £13,000 in annual operating costs per inmate. Analysis of Home Office figures (Unlock 2006) also show Recidivism is readily reducible 16-62% by broader use of existing types of programs, particularly substance abuse treatment, education, intermediate sanctions and alternatives to incarceration. Finally, determining the effectiveness of correctional education is no easy task. Using recidivism as the number one success indicator pose a number of problems. The studies usually lack control groups and fail to control for self-selection, small samples, and short study lengths. Besides, recidivism is a function of law enforcement, not education, and offenders are returned to prison for a variety of reasons unrelated to education.



## **OTHER MEASURES**

There are other yard sticks by which we may measure the effectiveness of correctional education:

1. instructional (attendance, test scores, duration, objectives achieved)
2. behavioural (decreased violence and disruption, better relations with other inmates and staff)
3. post-release (employment rates and success, continuing education)
4. community service
5. length of time arrest-/drug-free, and
6. improved social skills.

Unlock do not know how to measure the easing of human suffering that comes from a lessening of criminality, but that would be the best indicator of success society could have.

## **CASE STUDY**

Sarah is 24 years old and has been in prison for 6 months. She has another 18 months to go and is desperate to turn her life around. On talking to her personal officer it was suggested that she learn to read and write. Sarah signed up for the courses and is keen. However access to the education block is not always guaranteed as the routine and security of the prison is the priority that the staff on the wing concentrate on. Some of the staff are more flexible than others ensuring that education is also a priority. In the last 4 weeks Sarah has only been able to attend 1 out of her 3 weekly sessions and feels disheartened and demoralised.

## **UNLOCK'S SOLUTIONS**

If we accept the premise that correctional education works, then we need to commit to a comprehensive plan for improving prison. This must be a system-wide education plan focusing on the needs of inmates and including a system for measuring student learning and the effect of education programs on post-release employability and recidivism.

The plan should include:

1. A learner-centred approach, recognizing the different learning styles, cultural backgrounds, and multiple illiteracies
2. incentives such as sentence reductions, parole consideration, and preferential prison employment or incentive pay for attendance
3. post-release services to re-enforce skills that can easily be lost
4. mandatory education through to ensure literacy and numeracy, including financial literacy
5. special education services that meet the needs of all handicapped students regardless of age
6. ESL and bilingual; instruction for all inmates who need it
7. vocational training job-related to the current market with expanded apprenticeship programs
8. "Live work" programs, providing hands-on experience for the students

9. Recruitment and training of qualified teachers, including salaries comparable with those to state school teachers.

In spite of the problems of societal ambivalence toward rehabilitation, the tensions between security and program staff, and prison culture, correctional education has succeeded in lowering recidivism. Correctional education is proven cost-effective, and vital in reducing the human suffering that breeds crime.

## 5) LACK OF FINANCIAL INCLUSION AND POOR ACCESS TO THE BENEFITS SYSTEM

The financial exclusion of ex-offenders is now widely recognised as a fundamental barrier to their rehabilitation and reintegration into the community. A criminal conviction is very likely to bar an individual from securing many financial products, leaving ex-offenders demoralised and discouraged. Having identified that mainstream insurance companies deny home insurance or refuse claims to entire households where somebody has a criminal conviction, UNLOCK successfully secured access to both insurance and mortgages for ex-offenders for seven years. UNLOCK then focused its attention on bank accounts, the foundation stone of financial and therefore social inclusion, carrying out a highly successful 12 month pilot project within prisons in the South East (in partnership with NOMS, the Prison Service and Halifax Bank of Scotland) to provide access to bank accounts and basic financial skills to individuals due to be released.

Home Office analysis indicates that where an ex offender has a job, between a third to half are less likely to re offend and commit further crime. Having somewhere to live results in a 20% reduction in re-offending, however, a bank account is frequently required to get either or both. Bank accounts are also crucial for the timely payment of benefits, including Job Seekers Allowance and Educational Maintenance Allowance and enable direct payment by employers, increasing employability. However, there are often many barriers discouraging people from leaving the cash economy, which require training to overcome.

UNLOCK is now able to deliver the training, developed using feedback from offenders participating in the prison pilot, in the community. The training is delivered via seminars designed to educate offenders in financial awareness. The seminars cover a broad range of general financial issues but focus on the features, benefits and effective use of a bank account. Areas covered include; using an ATM, the clearing cycle, avoiding charges, direct debits, telephone & internet banking, budgeting and money management.

Participants are provided with information required to operate an account and use it to manage money effectively. Financial capability training, will help individuals to open an account, avoid debt, make payments, benefit from discounts offered by companies when paying by direct debit and build up a credit rating for their future.

“For too many people, basic essentials of modern life – like bank accounts – are out of reach... Part of the answer is better education about personal finance...We need consumers to be more confident in dealing with their finances and to make the most of opportunities to prepare themselves for the future... People do need to be able to take greater responsibility for their financial affairs – to play a more active role in choosing financial services that make sense for them...It isn't easy. [It] means dealing with their skills and capabilities and with the culture of how people interact with finances.” - Financial Secretary to the Treasury, Stephen Timms, Improving financial capability is fundamental to financial inclusion, which is fundamental to the successful resettlement of ex-offenders. Perhaps the most recent evidence of need stems from OASys data which shows that of the 26% of offenders with finance, debt or benefit needs linked to their offending only 9% of had an intervention identified. This is the largest gap identified across all the National Offender Management Service (NOMS) pathways, and links directly with many other areas, particularly access to employment and

accommodation. The problem is likely to be much larger in fact, since OASys relies on individuals having the financial awareness to define something as a problem. Adequate support does not currently exist to support the transition from custody to community.

Current estimates suggest that it is at least eight times harder for a person with a criminal record to obtain employment (Chartered Institute of Personnel and Development 2006). Ex-offenders face significant discrimination from recruiters. Even if this is overcome, it can be very frustrating to find that financial exclusion presents yet another obstacle. Some employers will consider employing an ex-offender but would not accept the additional cost of employing someone without a bank account. This is due to the increased administrative costs associated with payment via cheque, as opposed to automated transfer (BACS).

The Institute for Public Policy Research has shown that by their mid thirties couples who attended lessons in personal finance could be up to £32,000 richer and that learning how to draw up a family budget and understand interest rates can boost the wealth of a student by a year's earnings. Recognising these facts, from 2010 the Government will make basic personal financial management skills part of the reformed compulsory Maths GCSE for all school children. For offenders, it is not simply a matter of being a few thousand pounds richer; it is a matter of survival in the modern world. At least a quarter of offenders need this support now and as Stephen Timms notes, they require support which is appropriate for their skills, capabilities and culture.

## UNLOCK'S SOLUTIONS

### 1) DISCHARGE FROM PRISON

Around 150,000 prisoners are discharged from our prisons each year, and each is sent back into society with a 'discharge grant' - equal to one week of income support. The problem is that this has to last two weeks, because Income Support is paid fortnightly in arrears. The average wait for a new benefit claim to be processed is 12 weeks (National Audit office 2005) and during this time individuals are expected to survive. In effect, prisoners are released with one hand tied behind their back. Many fall back into crime as a result. UNLOCK would like to see a wide ranging reform of the whole discharge and release procedure. Following discussions with HM Prison Service, UNLOCK is hopeful that this anomaly will be addressed ... but it was ex-offenders who put this issue on the Service's agenda. However the DWP, Job centre Plus and the Prison Service need to work together to ensure that individuals are not pushed back into crime because of lack of benefits payments.

### 2) PRE RELEASE HANDBOOK

The Centre for Education Research and Development (CRED) in partnership with UNLOCK, Parc Prison, Bridgend Borough Council and others are working on the production of the pre-release handbook and video. This is supported by the European Social Fund. Finding information on release from prison is difficult and frustrating. This project is a small pilot

of 50 prisoners. We will produce, with the guidance of the prisoners themselves, ex-offenders and the statutory agencies a handbook and pre-release video. The handbook will contain information the ex-offenders will find useful straight away and up to 6 months after release.

#### CASE STUDY OF UNLOCK INTERVENTION AND ACCESS TO BANK ACCOUNTS

UFC is an electronic resource that is helping offenders create positive banking relationships, enhance their money skills and successfully enter the financial mainstream. It is designed to help disadvantaged individuals with potentially low levels of numeracy and literacy to build fundamental financial knowledge and develop the confidence to use modern banking services effectively. It was designed by UNLOCK with serving prisoners through the 12 month pilot in conjunction with Halifax Bank of Scotland at HMP Coldingley and HMP Cookham Wood, which saw 133 offenders open basic bank accounts, many leaving the cash economy for the first time. The scheme provided;-

- On-site training for your beneficiaries delivered by the trainer from the pilot
- An electronic financial training resource designed with offenders to benefit offenders
- Digital presentation materials on CD-ROM using Microsoft PowerPoint
- 3D Interactive Virtual ATM/Cash Machine using Macromedia Flash technology
- Classroom materials e.g. Budget Worksheets and Paying-In Slips
- Participant feedback forms for performance analysis
- Free membership of UNLOCK, The National Association of Ex-Offenders for all participants, allowing access to non-discriminatory insurance and mortgage products

The resource has been designed for use in prisons, so it is very flexible. If you are already doing work in the area of finance, benefit and debt It is possible to use it as a Supportive Resource, perhaps to support an existing accredited Budgeting & Money Management Course with improved materials and e-learning. Most organisations will use UFC as an Intensive Stand Alone course. Because it was designed to be delivered effectively in one prison day, it can be efficiently and effectively applied 'through the gate'.

## 6) POOR HEALTH SERVICES INCLUDING MENTAL HEALTH

### The Health Needs of Prisoners

By April 2005 the majority of commissioning for prisoners' health services had transferred to local PCTs. The roots of this transfer lie in the concerns expressed by many commentators about the health of prisoners and the quality of prison health care services in the last decade. Historically, providing health care for prisoners has been the responsibility of the prison service discharged through prison governors. In 1996, Her Majesty's Chief Inspector of Prisons, Sir David Ramsbotham, stated that:

"Prisoners should be entitled to the same level of health care as that provided in society at large. Those who are sick, addicted, mentally ill or disabled should be treated, counselled and nursed to the same standards demanded within the National Health Service."

### Turnover of the Prison Population

When considering the characteristics of the prison population, it is vital to understand the turnover issue. Nationally, over 150,000 people pass through prison each year. The average daily population is the average number of prisoners in the prison at any one time. Overall, there are currently around 75,000 people in prison at any one time.

When the national prison estate is under pressure, increasing numbers of prisoners are transferred for the purpose of balancing capacity. This further increases turnover in the individual prisons and this leads to a discontinuation of health services until they can be re-established at the next prison.

### Characteristics of the Prison Population

The prison population is highly vulnerable and has the following characteristics:

- At any given time, around 20% of the prison population is on remand (not sentenced).
- About 5% of the prison population is female.
- 60% of prisoners are between 16 and 30 years of age;
- About 18% of the prison population is from a minority ethnic group. However, this includes a significant proportion of foreign nationals. If only British nationals are considered, then around 14% of the prison population is from a minority ethnic group.
- Almost half of all prisoners have no educational qualifications and were unemployed prior to entering prison.

Psychiatric Morbidity among Prisoners in England and Wales highlighted the very high levels of adverse family and social experience of prisoners prior to entering into prison. Table 1 shows childhood factors and adverse life events reported by prisoners. Female prisoners report very high levels of domestic violence and previous sexual abuse and over a quarter of both male and female prisoners were in local authority care as children.

Table 1: Childhood factors and adverse life events reported by prisoners<sup>6</sup>

Childhood factors and adverse life events	Male			Female
	Sentenced	Remand	Sentenced	Sentenced
Born outside UK	11%	10%	17%	16%
In local authority care as a child	33%	26%	29%	25%
Spent time in an institution as a child	43%	35%	27%	25%
Attended special school	27%	23%	16%	11%
Violence at home	28%	25%	51%	48%
Bullying	30%	30%	21%	26%
Sexual abuse	9%	8%	34%	31%
Serious illness or injury	18%	14%	16%	13%
Violence at work	6%	6%	3%	4%
Relationship breakdown	42%	45%	46%	46%
Death of close friend or relative	46%	47%	41%	47%
Death of parent or sibling	24%	29%	30%	30%
Death of spouse or child	6%	6%	17%	15%
Stillbirth of baby	8%	7%	10%	11%
Expelled from school	55%	49%	41%	33%
Running away from home	51%	47%	59%	50%
Homelessness	47%	37%	52%	34%
Serious money problems	55%	50%	50%	48%
Sacked or made redundant	44%	49%	26%	31%

Source: Office for National Statistics 2006

### The Health of Prisoners

Health care in prisons: A health care needs assessment, commissioned by the Department of Health and the Directorate of Health Care of the Prison Service provides a useful summary of the current literature and clearly highlights the major health needs of the prison population. The prison population is characterised by having experienced high levels of adverse childhood and social factors and low levels of educational attainment as described previously. As would be expected, this population has very high levels of mental illness.

In addition, the prison population has particular health problems linked to offending behaviours, the most important being drug and alcohol abuse and their complications such as Hepatitis B and C.

Levels of most chronic physical disorders (such as epilepsy, asthma, diabetes, coronary heart disease, cancer) are similar to those found in an equivalent population (that is male, young, socially deprived, inner-city). However, because of the social circumstances prior to entering prison, many of these chronic conditions may have been relatively poorly treated.

## Mental Health problems

The statistics on prevalence provided by the Office of National Statistics (2006) study of psychiatric morbidity amongst prisoners indicate that approximately 90% of prisoners have either a psychosis, a neurosis, a personality disorder, or a substance misuse problem. Additionally many prisoners have more than one of the above problems - seven out of ten prisoners in the study had more than one problem and those with a psychosis were likely to have three or four other problems. Brooker (2002) conducted a systemic review of literature on mental health and prisoners and considered the ONS (2006) study and other prevalence studies and proposed the following prevalence ranges:

- Personality disorder – ranges from 50% (in sentenced and remand female prisoners, to 78% (in male remand prisoners).
- Neurotic disorder – ranges from 40% (in male sentenced prisoners) to 76% (in female prisoners)
- Drug dependency – ranges from 34% (in male sentenced prisoners) to 52% ( in female remand prisoners)
- Alcohol dependency – ranges from 19% (in females sentenced prisoners) to 30% (in both sentenced and remand male prisoners)
- Schizophrenia or delusional disorder – ranges from 6% (in males sentenced prisoners) to 13% (in female remand and sentenced prisoners)
- Affective psychosis – 1% - 2% of prisoners
- Rates of self harm and attempted suicide were high:
- Attempted suicide over a 12 month period ranged between 7% (in male sentenced prisoners) and 27% (in female remand prisoners);
- Self-harm during the current spell in prison ranged between 5% (in male remand prisoners) and 10% (in female sentenced prisoners).

Farrell (2002) reported that the incidence of psychosis in their study was 20 times that of its incidence in the general population. They also found a strong association between severe dependence on cannabis and psycho-stimulants and psychosis. Psychiatric Morbidity Among Prisoners found extremely high levels of mental illness which are summarised in Table 2. All forms of mental illness, with the exception of personality disorder, are commoner in female prisoners than in male prisoners. Remand and local prisons, particularly young offender institutions, have the highest levels of acute mental illness and self harm.

Table 2: Mental ill health in adult prisoners

<b>Male (remand)</b>	<b>Male (sentenced)</b>		<b>Female (all)</b>
Any type of personality disorder	78%	64%	50%
Functional psychosis (in past year)	10%	7%	14%
Neurotic disorder (in past week)	59%	40%	70%

Source: Office for National Statistics 2006



## **Suicide**

Self-inflicted deaths in custody have been a long-standing cause for concern. The rate of self-inflicted deaths for 2003/4 was 135.9 per 100,000 prisoners against a target of 112.8. This represents a small improvement on the rate for 2002/3 although the prisons with funded suicide prevention co-ordinators appear to have performed much better than the other public sector prisons. However, these figures are still markedly higher than the suicide rate in the community. The first few days in custody are the highest risk time for suicide and self harm, as are the first few days after release. The incidence of self harm is also very high across the whole prison population, being particularly high in prisoners under 30.

## **Alcohol misuse**

The ONS (2006) review found that over half of male prisoners and over a third of female prisoners described a significant problem with alcohol misuse prior to entering prison. This is at least twice as common for males, and three times more common for females than in the community. It appears that in some prisons use of alcohol continues during imprisonment.

## **Drug misuse**

Over half of remand prisoners and 40% of sentenced prisoners have been dependent on drugs prior to imprisonment. The majority are dependent on opiates, stimulants or a combination of both. Drug misuse is very important as a source of offending behaviour, particularly in women. Indeed, the commonest reason for imprisonment amongst sentenced females is drug offences. Intravenous drug abuse brings concerns in relation to Hepatitis B, Hepatitis C and HIV. The Office for National Statistics reported over one quarter of prisoners as having injected drugs at some time prior to imprisonment (28% of male remand prisoners and 40% of female remand prisoners). It is likely that this figure has increased. Some prisoners continue to use drugs whilst in prison, although only a small minority report injecting drugs.

## **Prison Health Care Services Funding**

The Department of Health assumed responsibility for funding all health services in public sector prisons in England from April 2003, with existing resources transferred from the Home Office. This responsibility was fully devolved to Primary Care Trusts (PCTs) by April 2006. In 2003/4 the majority of funding for prison health services was routed back to the Prison Service under a National Partnership Agreement with the Department of Health. Over the last two years the Department of Health has spent £139,705,000 (03/04) and £158,002,000 (04/05) on medical and psychiatric care for prisoners in England. The allocation for 05/06 is £175,778,000. These figures include Mental Health in Reach (MHIR) allocation for private prisons. Budgets tend to be historical rather than related to need. Although levels of need are undoubtedly highest in local prisons, particularly those taking remand prisoners, security concerns mean that expenditure per prisoner on health care is likely to be higher in high secure prisons.

## **Responsibility**

Until March 2004, prison governors had overall responsibility for the delivery of health care within their prisons and line-managed prison health care staff. There are a variety of models of health care provision, partly determined by the type of prison and partly by historical patterns of service delivery within individual prisons. The commissioning and potentially the provision of health care services in prisons are in the process of becoming the responsibility of the host PCTs in partnership with Prison Governors. By April 2006 all prison health care was commissioned by PCTs. New models are already being developed, for example the delivery of health services to a prison via a General Practice Personal Medical Services contract.

## **Availability**

Prison health care is not available on a 24-hour basis in all prisons. In large prisons there may be a health care centre with inpatient facilities and 24-hour nursing presence. In smaller prisons there may only be daytime nursing cover. Out-of-hours medical cover is provided in a variety of ways but most often by an on-call arrangement involving local general practitioners. A small number of prisons do not have 24-hour nursing cover but transfer patients out to local NHS A&E departments. Historically, both security and throughput issues have determined the requirement for inpatient facilities and 24 hour nursing and medical cover. For security reasons, high secure establishments will usually have the most comprehensive health care services. Because of problems with high throughput, local prisons usually have inpatient facilities and 24-hour cover. The population is more static in training prisons and health care nursing staff are not usually present for 24 hours.

## **Inpatient facilities**

Inpatient facilities available within prison health care centres should not be confused with NHS inpatient beds. Prisoners within the inpatient unit do not have access to additional specialist medical care or investigation but do have access to nursing care. These beds could be equated with nursing home type provision. There are conflicts within the Prison Service about the utilisation of inpatient beds. It is clear that health care centre beds are not always used for health care and may be used for the provision of sanctuary or for overflow when the prison is overcrowded. The majority of admissions to health care centre beds are in relation to mental health and substance misuse problems, with a quarter of all admissions to health care centre beds in YOIs being in relation to self harm.

## **Access to care**

For security reasons, much of the informal care available in the community is not available in prison, for example, care by family and friends and over-the-counter medications. This means that prisoners have very high levels of contact with the prison health care team. In addition, the prison environment encourages sickness behaviour and dependency on health care staff. Prisoners also do not have access to additional direct access services now available in the community, in particular NHS walk in centres, A&E departments, genitourinary medicine (GUM) clinics and private services such as complementary therapies. Prisoners requiring specialist outpatient or inpatient care are referred to the NHS. For security reasons, some prisons do

arrange in-reach services from the local NHS, particularly psychiatry and mental health services and GUM services. However, which services are “contracted in” varies considerably between prisons and not necessarily in relation to either need or security issues.

### **Utilisation of services**

Male prisoners consult doctors and health care workers considerably more frequently than men of equivalent age within the community. Consultation rates are even higher for female prisoners. However, although admissions to health care centre beds are high, admissions to NHS hospital beds are lower for prisoners than for the local population. Low utilisation of NHS beds may mean that there are some barriers to NHS inpatient care for prisoners. High utilisation of health care centre beds reflects the problems described above.

### **Changes in service provision**

In recent years there have been changes in service provision, with a particular focus on the key issues of drug misuse and mental health services. Additional funding was made available in 2002 for mental health in-reach services and a variety of models are developing. A support service for prisoners with drug problems is now available within all prisons. CARATs (Counselling, assessment, referral, advice and through care) is a multiagency approach to reducing re-offending by tackling drug abuse in prison. The Prison Service reports considerable success in reducing drug abuse in prison. The rate of positive testing fell from 24.4% in 1996/7 to 11.9% in 2002/3. However, it rose again to 12.3% (against the target of 10%) in 2003/4. More than 55,000 prisoners each year sign a voluntary drug-testing compact and many prisoners are supported for the first eight weeks after discharge.

### **Effective models for health care delivery in prisons**

There is a dearth of evidence about effective models of health care delivery in prisons. A rapid review of the literature in relation to models of prison health care reported little evidence available in relation to specific models of care but highlighted certain essential ingredients:-

- Health promotion as a unifying concept for health care in prisons;
- Health screening on arrival in the prison system with an emphasis on mental health;
- Partnership between prison services and the NHS;
- Telemedicine as one mode of delivering health care in prisons;
- Education of prison staff, including health care staff about the health needs of prisoners;
- Developing a model of prison health care which looks beyond the prison environment to the communities which the prison serves.

The second part of the literature review considered managing change in the context of prisons. Again, little direct evidence was available. Development work in relation to the Standard for a Health Promoting Prison has been undertaken with a network of prisons across England. The process has been independently

evaluated, to help ensure that the Standard does achieve real change in line with the aims and objectives of the approach.

The performance of prisons is measured against set standards. These are regularly revised and the standards are available in full on the prison service website. There are 61 standards in all with one (standard 22) applying to health services for prisoners.

STANDARD 22: To provide prisoners with access to the same range and quality of services as the general public receives from the National Health Service (NHS). Standard 22 has 44 components covering:

Service planning and development	Inpatient care
Local policy	Communicable disease prevention & control
Ethos	Clinical services for substance misusers
Professional practice	Pharmacy
Use and protection of patient information	Dental services
Health assessment at first reception	Promoting health
Suicide and self harm management	Consent to treatment
Transfer and release	Clinical governance
Mental health services	

### National guidance

In April 2000, the National Policy Unit and Task Force published a Developmental Work Programme to bring about improvements in the healthcare delivered to prisoners within the following 2-3 years. Based on the programme of prison visits, feedback from NHS and Prison Service staff and the pilot Health Needs Assessments, the key areas where action was identified as needed were:

- Developing clinical services;
- Developing the workforce;
- Developing performance management.

### The Challenges

Prisoners are by definition a selected group of the population who have very high levels of health need, particularly in relation to mental health problems and drug and alcohol misuse. There is an inherent conflict between the necessary discipline environment within prisons and the delivery of modern health care that empowers individuals. There is also a major opportunity, particularly with younger prisoners, to deal with health problems which are to a large extent the cause of offending behaviours and, potentially, to prevent re-offending. The main challenges that Unlock (2006) feel need to be addressed are listed below.

## Unlock Solutions

1. **Managing the Transition.** PCTs are now charged with improving the health of prisoners and the quality of prison health care services. This is a major challenge in terms of capacity, cultural and managerial change. The potential benefits of NHS commissioning and delivery of prison health care are clear in terms of clinical governance, staff recruitment and supervision. The risk is that the health of prisoners will no longer be seen as the responsibility of the prison establishment and the conflict between discipline and health improvement will worsen. To achieve improvement in the health of one of the most vulnerable sections of our society will require excellent change management in both the Prisons and the responsible Primary Care Trusts over the next five years.
2. **Partner Agencies.** A number of key partners, such as local authorities and PCTs in areas without prisons, have no responsibility for prisoners inside prisons but do have responsibilities in terms of preventing offending and re-offending within their communities.
3. **Continuity of care for those leaving prison.** In terms of drug, alcohol and mental health problems a seamless interface between the prison and the community of residence is critical. Without this re-offending is almost a certainty. Continuity of care is also important for those prisoners with chronic illness who require monitoring such as diabetes and epilepsy. This is an issue affecting all PCTs, not just those responsible for a prison within their locality.
4. **The problems caused by throughput, turnover and overcrowding.** Many of the issues here are outside the remit of health care delivery. Reducing throughput is essential if the quality of health care services is to be improved in remand and local prisons.
5. **Health care screening processes in prisons.** This issue is closely linked to the throughput issue above. It is required that prisoners entering as new receptions have health care screening. New tools are being identified and piloted. These must be capable of both informing an appropriate health care plan for each individual prisoner and permitting aggregation to give an accurate profile of health status of the prison population at the point of entering prison.
6. **Perverse incentives within prison.** Prison is a highly abnormal environment, which can result in various forms of sickness behaviour. Encouraging high levels of self-care with access to certain medications and informal health advice is essential but is difficult to implement within the prison setting. Contacts with prison health care services need to be normalised whilst taking account of discipline and security.
7. **The magnitude of the gap between need and service provision.** Although there have been actions to address drug problems and some progress undoubtedly made, there remains a considerable deficit in terms of access to treatment for drug, alcohol and mental health problems for prisoners. This, to an extent, also

reflects deficits in service provision by the NHS to the wider community. There may also be an additional level of unidentified need – for example Hepatitis C. Additional funding promised for prison health services is welcome but there needs to be acknowledgement of the under capacity of the NHS in certain areas in relation to adolescent mental health services, forensic mental health services and drug treatment services.

8. Tackling offending behaviour. Many of these issues are outside the remit of health care delivery, but some are not. How can we best utilise an individual's time in prison to tackle health problems that are linked to offending behaviours? Learning Works suggests transformative prison reform, based on the principle of learning as the heart of the issue. By reversing the current allocation of resources (80% security, 20% rehabilitation), Unlock argues for a focus on the learning needs of prisoners, with prison officers as key change agents, which could dramatically impact on the rate of recidivism and growing size of the prison population. Six out of 10 prisoners are functionally illiterate, which impacts on their health, employability and social functioning. Appropriate treatment of addictive behaviours (not just detoxification and abstinence) could have major impacts on re-offending.

9. Clinical Governance. There are major issues in relation to training and supervision of staff. Many prison doctors have practised in isolation. The risks of institutionalisation of nursing and medical staff are well recognised. Prison Health has produced reports and guidance on clinical governance and a number of issues are covered in Standard 22 of the prison standards. Implementation will require changes in culture, practice and models of care delivery.

10. Dearth of evidence of effective models of health care delivery and health promotion for the prison population. There is little current evidence about effective models or best practice. A number of current projects are being evaluated but there is need for a programme of action research in relation to models of care for specific prison settings.

## **Conclusions**

People in prisons, whether sentenced or on remand, have high levels of morbidity, particularly mental health problems and substance misuse. The rapid turnover of prisoners means that this is a problem for all communities and needs recognition by all primary care trusts. In the past, the prison health service has been very separate from the NHS, which has made it difficult to provide effective services. Now that the prison health service is coming under the aegis of the NHS there are opportunities to improve the health and health care of prisoners. There is also the opportunity to improve data collection and communication – to ensure, for example, continuity of care when people enter or leave prison and a better understanding of the needs and movements of this population. The need for effective local partnership work is self evident through, for example, Crime and Disorder Reduction Partnerships and Local Strategic Partnerships. The best way to improve the health of this vulnerable group is to prevent them going to prison by tackling underlying problems in our communities.

## CASE STUDY

Sheila has considerable anger management problems and found it difficult to behave in the manner that Prison Officers expected of her. She would keep up her good behaviour for a number of days and then would kick off, becoming extremely aggressive, sweaty and irrational. Sheila would ask for some time out in her cell where she would have a cup of tea and a snack. Sheila said that this helped her to calm down and not get so angry and start fighting. The Link Workers felt that Sheila was trying to take responsibility for her behaviour but this was dismissed and time out sessions in her cell were denied. The prison officers felt that Sheila was drunk on occasions as they could smell alcohol but searches of her cell did not reveal any substances. Sheila's anger and behaviour escalated, she was observed binge eating but was also losing weight. It was suspected that Sheila had developed an eating disorder and she was transferred to the local NHS secure psychiatric unit. On examination Sheila was observed to be dehydrated and in an agitated mood. It was felt by the psychiatric team that Sheila needed to have organic causes ruled out and the general medical team from the local A and E department were asked for a consultation. On examination it was felt that Sheila was in a keto-acidotic state (which would account for the alcohol smell), dehydrated and to have extremely high blood sugars. Sheila was diagnosed with having type 1 diabetes mellitus and was quickly transferred to a medical ward in the local NHS hospital. Following a week of treatment Sheila's diabetes had stabilised and she was transferred back to the prison. Through care and after care were real issues and Sheila was transferred to another prison with onsite nursing and medical care. Sheila's anger management problems had developed over a period of 2 months and the pattern of outbursts were consistent with an individual experiencing insulin resistance, hypoglycaemic attacks and eventually ketoacidosis. Prison Officers were shocked to learn of Sheila's diagnosis and they received training on potential causes of anger management issues and how to deal with them.

## 7) ACCESS TO POOR HOUSING, INCREASED LIKELIHOOD OF HOMELESS AND VUNERABILITY OF EX-OFFENDERS

People with criminal records are examples of people suffering from multiple social exclusion. The vulnerability of offenders once they leave prison is shown in the number of rough sleepers who are ex-offenders. In 1999 it was reported that around half of rough sleepers had been in prison at some time. At the time 40% of ex-offenders were homeless on release from prison (DTLR 1999). NACRO (National Association for the Care and Resettlement of Offenders 1999) reported that four out of ten women prisoners expect to be homeless on release. 13% of prisoners are homeless when sentenced and 34% lose their homes as a result of being jailed. In 2005 the situation had not shown any signs of improvement but deterioration.

NACRO (2001) reported that two thirds of those sent to prison received no statutory resettlement support from probation, as sentences were less than 12 months and that:-

- Prisoners released with no job to go to, are twice as likely to re-offend as those who have a job.
- Prisoners released with no home to go to are two and a half times more likely to re-offend.
- Prisoners lacking family support are six times as likely to re-offend.

A study (Matthewman and Holdsworth-Cannon 2004) examined the housing needs of ex-prisoners. It was found that offenders faced a range of problems in trying to find and maintain accommodation after prison. Frequently they found themselves in a 'revolving door syndrome' between prison, inadequate accommodation or the street. The annual report (DTLR 2005) on rough sleeping presents a background and introduction to the issues and it would seem that as a socially excluded group offenders, ex-offenders and reformed offenders are worthy of highest priority for attention but as yet there is a major failure in policy shift and action to help these individuals.

### CASE STUDY

David is 48 years old. he was released from prison 2 years ago. On his first night of release he stayed in Bed and Breakfast accommodation. He then tried to look for permanent accommodation but because he did not have the deposit and rent money in advance he could not secure a place. He went to the local council offices to ask for help but because he could not prove that he was homeless was not provided with the help that he needed. Over the next few weeks he managed to sofa surf on friend's floors, spending the odd night on the streets. Two years later David permanently sleeps on the streets. David is well known in the small seaside town and is checked up on a daily basis by the Project 21 and Salvation Army volunteers. David's health is extremely poor, with his feelings of loneliness, isolation and worthlessness extremely high. David regularly turns up at the soup kitchen and staff have noticed a marked deterioration in his physical and mental health. The Salvation Army asked the local crisis resolution team to assess David but without a formal referral from a General Practitioner could not be seen urgently. Eventually through several contacts an advocate was appointed and an urgent assessment was made by a volunteer clinical practitioner. On assessment David was suffering from exposure, mild hypothermia and was extremely withdrawn. He was unable to make eye contact. The advocate and clinical practitioner decided that the local police and the mental health system



would accelerate David's problems by criminalising his behaviour and would not look after David for the amount of time needed and looked for an alternative solution through the network of volunteers and organisations. David expressed several times that he did not want to be on the streets and felt that he would die. On consultation David was presented with his options and allowed to make an informed decision about his future. A family came forward and offered him shelter. They provided a bed, 3 meals a day and a stable environment to rebuild his strength and dignity. The family, Salvation Army, Project 21, the Catholic Diocese, Advocate and Clinical practitioner all volunteered to help this individual over a long period to ensure that David's future was stable. It is anticipated that this will take 5 years.

#### UNLOCK'S SOLUTIONS;-

- 1) Pre-booked and prepaid accommodation on release from prison until the benefits payments are stable and accessible.
- 2) Access to the benefits and housing system before release from prison.

## CONCLUDING REMARKS

Unlock have no confidence at present that this IR could deliver either a dismantling of the structures perpetuating inequality, nor the functional and structural capabilities facing serving offenders, ex-offenders and reformed offenders, nor provide a positive framework to make strides towards equality for this section of society.

Whilst the concept of an ER offers the promise of a much needed consideration, it remains our view that a focussed year long research and review is needed on employment discrimination faced by serving offenders, ex-offenders and reformed offenders. Unlock would like to propose that in-depth studies are commissioned for each domain as a starting point, followed by an analytical overview and conclusions for example on common causal factors, convergent /divergent possibilities for change across the domains. This could still utilise features of the ER as such as the life stages mapping or economic analyses, but in more developed form.

In essence Unlock are proposing that the equalities review uses research evidence already available as well as a consultation with the affected communities (serving offenders, ex-offenders and reformed offenders) which is led by the communities themselves. Using the current research evidence to inform the future research on inequality and the functional and structural incapacities facing the serving offender, ex-offender and reformed offender. The evidence will also provide useful data for consideration which will help outline the equalities legislation needed to help 7.3 million individuals who have received a criminal conviction and experience a lifetime of discrimination which is disproportionate in 99.6% of cases.

Unlock is currently collaborating with researchers at Birbeck College (UCL) to look into continued discrimination in employment practices and the psychological effect and will gladly share all evidence with the CEHR.

Unlock are concerned that there will be a glaring omission in the Final Report unless the next phase of the Review's work acknowledges (and explores in depth) the benefits of using human rights principles to tackle persistent discrimination. Using human rights law and values to tackle inequality is an important additional route to improving life chances. It is not the only route or a complete solution, but it adds value to our anti-discrimination laws and is severely under-used at present.

Unlock's views are informed by our experience of working at the grassroots level with individuals, service users, voluntary and community organisations and front line service deliverers. Our promotion and training activities on financial inclusion focus on people who get a 'raw deal' from public and private services and our work engages with issues around race, sex, disability, age, sexual orientation, religion and belief, nationality and health as well as the effect of having a criminal conviction. Through this work, Unlock encourages people to make practical use of human rights standards to tackle problems of persistent disadvantage and inequality. It is because of this experience that we are disappointed that the Interim Report has not recognised or harnessed the opportunities that an existing, practical tool – the Human Rights Act – can offer to eliminate discrimination. A range of organisations in the voluntary, community and public sectors have successfully used human rights in their work on tackling inequality. They see the potential for translating these straightforward principles, backed up by the force of law in the Human Rights Act, into action to help them challenge discrimination and disadvantage.

Being treated poorly is a key issue for many serving offenders, ex-offenders, reformed offenders and individuals with a spent conviction experiencing inequality. The human rights vision of equality extends significantly beyond discrimination, to encompass fairness of treatment, dignity, respect and access to the fundamental rights which enable participation in a democratic society.

If the Final Report of the Equalities Review is to set a visionary, ambitious agenda for tackling inequality it must acknowledge the role that human rights can play in eliminating discrimination. If the policy recommendations in the Final Report are to have a lasting and influential impact then they must take account of emerging developments on the ground and reflect the value that grassroots advocates and practitioners attach to human rights as a tool for delivering equality beyond discrimination. Human rights of serving offenders, ex-offenders and reformed offenders need to be in the Final Report

As well as recognising the practical role that human rights has and can play in addressing inequality, the Final Report should set out concrete recommendations for how to best harness the benefits of human rights. For example, Unlock believes there is an urgent need for:

- training and other activities in both the voluntary and public sectors to increase understanding of the value of human rights in addressing inequality faced by serving offenders, ex-offenders and reformed offenders ;
- detailed research into the benefits of using human rights to tackle persistent inequality; and,
- policy guidance and frameworks placing human rights in the context of equality and social exclusion targeted at all levels of government – from Whitehall departments through to local authorities and all public and private sector delivery agents.

These will be especially important in the context of the Discrimination Law Review's ongoing work and to inform the priorities of the new Commission on Equality and Human Rights. Particular issues that need to be addressed are:-

- continuing socio-economic inequality and research evidence carried out by the former ODPM and the recent publication by the Fabian Society on Life Chances must form part of the story on why inequality remains so deep rooted in the UK.
- explicitly recognise the concept of multi-dimensionality and issues around the inter-relations between two or more strands or domains.
- access to services or lack of them is a profound contributor to persistent inequality. The place of social and health care and support services is particularly important for vulnerable groups facing exclusion or discrimination on the basis of more than one strand. One example is rights under the welfare and benefits system. The Review's terms of reference may exclude tax and benefits but any analysis of enduring inequality cannot ignore the welfare benefits system as this is a major factor in today's polarised economic society.

The coming together of equality and human rights is an opportunity to demonstrate how the Human Rights Act is relevant to all segments of society including serving offenders, ex-offenders and reformed offenders and underpins individual economic, social and cultural rights. These include accessible education, minimum

wage levels, safe working environments and the protection and promotion of physical and mental health. The contribution of international instruments, such as the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, the European Charter on Fundamental Rights, and the Convention on the Rights of the Child to tackling entrenched inequality should be recognised as fundamental to serving offenders, ex-offenders and reformed offenders.

**UNLOCK'S SOLUTION:** An Act of Parliament gives ex-offenders a second chance

A bill needs to be introduced into the UK Parliamentary system that merits the attention and support of every taxpayer who wants to 'get tough on crime'. The bill should be titled the Second Chance Act, which would put the enormous weight and resources of the government behind a very simple, straightforward idea, namely, that once a person has been found guilty of committing a crime, completed the prescribed sentence and is eligible for release from prison, he or she ought to be given reasonable assistance -- help in finding a job, suitable housing, mental health or substance abuse treatment where needed, and family support -- to re-enter society.

Given the horrid crimes that have captured the headlines in the UK this past year it may be difficult to focus on a bill that proposes to ease the transition of criminal offenders back into the community. Bizarre and grimly tragic crimes notwithstanding, the fact is that an overwhelming numbers (88%) of people who are arrested and imprisoned these days are either jailed for drug offences or have histories of drug or alcohol abuse (SEU 2002). Some 150,000 offenders are released from prison every year; they serve their time and there's no reason, legal or otherwise, to hold them longer. But two-thirds will end up back in prison, primarily because they don't get the help they need to "go straight."

The Second Chance Act would be a welcomed change in direction from the political mood of the past several decades when state and elected officials fell over one another in the rush to promote and pass draconian crime bills designed to lock up offenders and throw away the keys. Nationally, the oppressively harsh laws passed during that period have gotten us an annual prison bill of £44 billion as of five years ago and it's still climbing, with the cost of keeping a person in prison averaging £35,650 annually. There are those who would argue that's a reasonable price to pay for public safety, but it's hard to maintain that argument when two-thirds of those released end up back behind bars.

There has long been reason to believe that the attitudes of the voting public are often more enlightened than the views of their political representatives would suggest when 7.3 million people in the UK hold a criminal conviction. More than 80 percent of the voting public feels a lack of job training, mental health services, drug treatment and adequate housing are important to the successful re-entry of ex-offenders into society. A Second Chance Act and its objectives would help achieve a safer society.

## Appendix 1: Relevant Research

### General

Updated and Revised Prison Population Projections 2005 – 2011: Home Office Statistical Bulletin – Nisha de Silva, Paul Cowell, Terence Chow. *July 2005*

Reducing re-offending by ex-prisoners Office of the Deputy Prime Minister, Report by the Social Exclusion Unit, *July 2002*

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Prison- it's hurting but is it working? RSA Lectures. 26<sup>th</sup> September 2002

Lost in Transition, A Report of the Barrow Cadbury Commission on Young Adults and the Criminal Justice System. Barrow Cadbury Trust

The National Reducing Re-offending Delivery Plan. NOMS.

The National Reducing Re-Offending National Action Plan. NOMS. July 2004

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Reducing Re-Offending Through Skills and Employment. Home Office, DWP, DfES. *December 2005*

<http://www.dfes.gov.uk/consultations/downloadableDocs/Reducing%20Re-Offending.pdf>

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Casing it out: Why it can make sense to employ ex-offenders. Chartered Institute of Personnel & Development (CiPD). *2002*

Employing People with Conviction, A Good Practice Guide on the Employment of People with Criminal Records. Chartered Institute of Personnel & Development (CiPD). *2001*

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## APPENDIX 2: Political Enfranchisement: Key Texts & Sources

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Unlock, The National Association of Ex-Offenders and Prison Reform Trust. (2004) *Barred from Voting: The Right to Vote for Sentenced Prisoners*, [www.unlock.org.uk/campaign.aspx](http://www.unlock.org.uk/campaign.aspx) stating that, "Telling offenders that they have no part to play in our democracy is no way to end the cycle of crime". The Conservatives dismissed the human rights argument, with the shadow attorney general declaring that "Giving prisoners the vote would be ludicrous". Lord Falconer, the Lord Chancellor, said "I can make it absolutely clear that in relation to convicted prisoners, the result of this is not that every convicted prisoner is in the future European Court of Human Rights Grand Chamber, (2005) *Case of Hirst V. The United Kingdom* (No. 2) Judgement, HUDOC Collection Database at <http://cmiskp.echr.coe.int/>

### Key Facts and Figures on Voting issues

On 11th March 2005 the prison population in England and Wales stood at 75,479. The vast majority, just under 62,000, are sentenced prisoners who are denied the right to vote.

The electoral ban on sentenced prisoners voting is contained in Section 3 of the Representation of the People Act 1983, amended by the Representation of the People Acts 1985 and 2000.

The only other adults who cannot vote in General Elections are hereditary peers who are members of the House of Lords, life peers, foreign nationals, patients detained in psychiatric hospitals as a result of their crimes, and those convicted in the previous five years of corrupt or illegal election practices. Remand prisoners, people imprisoned for contempt of court and fine defaulters held in prison are eligible to vote. Protocol 1, Article 3 of the European Convention on Human Rights guarantees "free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature." This guarantee is now contained in the Human Rights Act, which became part of law throughout the United Kingdom on 2 October 2000.

In March 2004 the European Court of Human Rights ruled that the UK Government's blanket ban on sentenced prisoners voting was in violation of Protocol 1, Article 3 of the European Convention on Human Rights. The finding was unanimous. The Government is appealing against the Judgment to the Grand Chamber of the Court.

Many European countries allow all prisoners to vote. Eighteen European countries, including Ireland, the Netherlands and Spain have no ban. Eight other European countries only ban some sentenced prisoners from voting. In France and Germany, courts have the power to impose loss of voting rights as an additional punishment. The UK is one of only nine European countries automatically disenfranchising all sentenced prisoners, the others being: Armenia, Bulgaria, Czech Republic, Estonia, Hungary, Luxembourg, Romania and Russia.

This briefing provides an update on the Barred from Voting campaign, which is calling for sentenced prisoners to be given the right to vote. It looks at the European Court of Human Rights 2004 judgment in the *Hirst vs. United Kingdom* case, which found that the UK Government's blanket ban on sentenced prisoners voting in



General Elections violated the European Convention on Human Rights. It revisits the case for reform, and calls on the UK Government to overturn the ban and give prisoners the right to vote. It also looks at the situation in other countries and considers how voting could take place in practice.

#### The Barred From Voting campaign

In March 2004 the Prison Reform Trust and Unlock, the National Association of Ex-offenders, launched a campaign to review the 135 year old law which means that when people are sentenced to prison, they are also stripped of their voting rights. The disenfranchisement of sentenced prisoners is a relic from the nineteenth century which dates back to the Forfeiture Act of 1870. The origins of the ban are rooted in a notion of civic death, a punishment entailing the withdrawal of citizenship rights.

The campaign has received cross party support and is backed by a wide coalition including the Bishops of Prisons for the Anglican and Catholic churches, the current and former Chief Inspectors of Prisons, the President of the Prison Governors Association, the civil liberties group Liberty, The Aire Centre and the 50 members of the Penal Affairs Consortium should have the vote. The issue was discussed at greater length in the two-day High Court hearing than at any stage in Parliament's history. John Hirst, one of the three applicants, subsequently decided to appeal to the European Court of Human Rights.

#### The European Court of Human Rights: Hirst vs. United Kingdom judgment

In March 2004 the European Court of Human Rights considered the case of John Hirst. It unanimously found that the UK Government was in violation of Article 3 of Protocol 1 of the European Convention on Human Rights, which guarantees "free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature." The panel of Judges that considered the case included Sir Nicolas Bratza, a British judge. The UK Government is required to comply with this judgment and change its automatic and blanket restriction on sentenced prisoners' right to vote. The Court reaffirmed that: "the fact that a convicted prisoner is deprived of his liberty does not mean that he loses the protection of other fundamental rights in the Convention" and argued that the right to vote must be acknowledged as: "the indispensable foundation of a democratic system". 6

During the hearing, the UK Government stated that the restriction on the right to vote pursued two legitimate aims: to prevent crime and punish offenders; and to enhance civic responsibility and respect for the law.

However, the Court: "found no evidence to support the claim that disenfranchisement deterred crime and considered that the imposition of a blanket punishment on all prisoners regardless of their crime or individual circumstances indicated no rational link between the punishment and the offender."

The Court also maintained that: "*removal of the vote in fact runs counter to the rehabilitation of the offender as a law-abiding member of the community and undermines the authority of the law as derived from a legislature which the community as a whole votes into power.*"

The Court was particularly concerned by the indiscriminate way in which a large category of people are disenfranchised in the UK. It noted that the ban on voting applies to all sentenced prisoners irrespective of the length of their sentence or the nature or gravity of their offence, and observed that its actual effect depends arbitrarily on the period during which the prisoner happens to serve their sentence. It observed that: "*there is no evidence that the legislature in the United Kingdom has ever sought to... assess the proportionality of the*

ban as it affects convicted prisoners.” It criticised countries where restrictions on the right to vote derive essentially from unquestioning and passive adherence to a historical tradition, which can be seen to be the case in the UK. The Government is seeking to overturn the judgment and has appealed to the Grand Chamber of the ECHR.

An Early Day Motion, posted by the Liberal Democrats Shadow Home Secretary, Mark Oaten, on the day of the launch, calls on the Government to review the merits of the ban. It has been signed by 42 MPs who agree that: ‘the ban does not enhance security, punishment, or act as a deterrent... it impedes the rehabilitative objectives of the Prison Service by failing to encourage prisoners to be active responsible citizens on release’. The EDM also states that: ‘the Government has embarked on an ambitious programme of civic renewal to improve community cohesion and that the notion of civic death undermines this agenda by excluding those who are already on the margins of society and encouraging them to be seen as alien to the communities to which they will return to live.’<sup>1</sup>

In a recent television interview the Leader of the Liberal Democrats, Charles Kennedy, said he fully supported the campaign to win prisoners the right to vote. Asked whether or not notorious offenders such as Ian Huntley should be granted a vote Mr Kennedy said: ‘If you take the view as we do in principle that an individual citizen is an individual citizen, that means you have entitlements that go with it in terms of voting.’<sup>2</sup> The Barred from Voting campaign follows on from legal cases attempting to overturn the ban through UK Courts.

#### Judgment of the High Court

In April 2001, three sentenced prisoners took a case to the High Court stating that the ban on their voting was incompatible with the Human Rights Act (Pearson & Martinez vs. Home Secretary and others; Hirst vs. Attorney General). Edward Fitzgerald QC (acting for Pearson & Martinez) argued that it was both “*illegitimate* and illogical to use disqualification from the vote as a punishment.”<sup>3</sup>

The High Court dismissed the case, ruling that: “there is a broad spectrum of approaches among democratic societies [to the question of prisoners voting], and the United Kingdom falls into the middle of the spectrum. In the course of time, this position may move, either by way of fine tuning, as was done recently in relation to remand prisoners and others, or more radically, but its position in the spectrum is plainly a matter for Parliament, not for the courts.”<sup>4</sup>

Explaining the Court’s decision, Lord Justice Kennedy said that: “in deference to the legislature, courts should not easily be persuaded to condemn what has been done, especially when it has been done in primary legislation after careful evaluation and against a background of increasing public concern about crime.”<sup>5</sup>

However, Parliament has not given detailed consideration to the question of whether prisoners European Court, which considers cases that raise serious questions relating to the interpretation and application of the European Convention on Human Rights. Lord Filkin, the Parliamentary Under-Secretary of State at the Department for Constitutional Affairs told Parliament that this action had been taken because: “It has been the view of successive Governments, including this Government, that persons who have committed crimes serious enough to warrant a custodial sentence should forfeit the right to have a say in how the country is governed while they are detained. The judgment of the European Court of Human Rights in the Hirst case challenges this position. We wish to ensure that the issues in relation to this important and long-standing policy are fully considered. One of the central arguments given by the court was the

recognition of a large measure of discretion for nation states in this respect. While recognizing that, the judgment did not appear to apply that test to its own judgment. It did not in any way indicate the limits of the discretion that the court thought would be appropriate.

For many years it has been part of our society's tradition that, when people are imprisoned, they lose a range of rights, one of which is the right to participate in elections." 7 The Grand Chamber has agreed to consider the case, and a hearing is taking place on 27th April 2005, with a judgment due six months to a year later.

#### John Hirst's response

John Hirst has hailed the Court verdict a victory, and calls on the Government to fulfil its obligations to secure the right to vote. He argues that: "*the case has laid the foundation stone on which to build a democratic future in prison to replace the authoritarian rule which currently exists*". 8

Mr. Hirst says that he hopes that the ballot box would finally force MPs to take issues about prison welfare seriously: "That was the reason I took the case. Until now there have been no votes in jails and so MPs did nothing about penal reform. I hope it will force politicians to talk to prisoners. They will have to go knocking on our doors like they do other people." 9

#### The case for reform

The case for reform is powerful. It rests on the view that voting should not be a privilege; it is a basic human right. This entitlement is not a selective reward for those who have been judged morally decent by a Government. The ban perpetuates social exclusion and the notion of 'civic death'. Social exclusion is a major cause of crime and reoffending. Removing the right to vote increases social exclusion by signalling to serving prisoners that, at least for the duration of their sentence, they are dead to society.

The Right Reverend Dr Peter Selby, Bishop of Worcester and Bishop to HM Prisons states that: "Denying convicted prisoners the right to vote serves no purpose of deterrence or reform. What it does is to state in the clearest terms society's belief that once convicted you are a non-person, one who should have no say in how our society is to develop, whose opinion is to count for nothing. It is making someone an 'outlaw', and as such has no place in expressing a civilised attitude towards those in prison"<sup>10</sup> The notion of civic death is applied selectively. People serving a sentence of any length continue to contribute financially to society from within prison. They pay tax on their savings, capital gains and any earnings that they receive during their sentence. If they are civically alive when it comes to financial contributions, they should be treated in the same way when it comes to basic human rights. Minority ethnic groups are disproportionately affected. Black men are eight times more likely to be barred from voting than their white counterparts due to their over-representation in the prison population. In 2002 there were more African Caribbean entrants to prison (over 11,500) than there were to UK universities (around 8,000) <sup>11</sup>. This situation does significant damage to their political representation. The ban militates against ideas of resettlement and civic responsibility. The UK Government is pursuing an ambitious programme of civic renewal aimed to improve community cohesion. The notion of civic death works against this policy by excluding those who are already on the margins of society and further isolating them from the communities to which they will return on release. Many senior managers in the Prison Service believe that voting rights and representation form part of the process of preparing prisoners for resettlement in their communities. Peter Bottomley, Conservative MP and former Minister, notes that: "Ex-offenders and ex-prisoners should be active, responsible citizens. Voting in

prison can be a useful first step to engaging in society.” 12

The Catholic Bishops of England and Wales also support the view that prisoners should have the right to vote. Their recently published report ‘A Place of Redemption’ states that: “Prison regimes should treat prisoners less as objects, done to by others, and more as subjects who can become authors of their own reform and redemption. In that spirit, the right to vote should be restored to sentenced prisoners.” 13 The ban contributes to the failure of imprisonment. Reconviction rates show that imprisonment fails to rehabilitate six out of ten offenders<sup>14</sup>. More than half of all jails are currently overcrowded, and the Prison Service faces a cut in its budget for the next financial year. It has already failed to meet nearly half of its performance targets and prisoner suicides have reached a record level. Without the vote, prisoners have no formal, organised and protected right to a voice. This removes one of the pivotal ways of being heard by a Government and leaves prisoners with limited, if any, recourse to challenge their worsening conditions. Former Conservative Home Secretary Lord Hurd states that: “If prisoners had the vote then MPs would take a good deal more interest in conditions in prisons.” 15 The ban is an unjust additional punishment that achieves nothing. It does not protect public safety. It is not an effective deterrent. It is not a means to correct offending behaviour or to assist in the rehabilitation of offenders. It is an unjust additional punishment imposed, but not articulated, by the court at the point of sentence and bears no relation to the causes of crime.

What is the situation in other countries? Voting by sentenced prisoners works successfully elsewhere, and almost all of our European neighbours have partial or no restrictions on voting – without detrimental social effects. Eighteen out of 51 Council of Europe countries, including Ireland, the Netherlands and Spain have no ban. Many other European countries only ban some sentenced prisoners from voting. For example, in France and Germany, courts have the power to impose loss of voting rights as an additional punishment. The UK is one of only nine Council of Europe countries automatically to disenfranchise sentenced prisoners, the others being Armenia, Bulgaria, Czech Republic, Estonia, Hungary, Luxembourg, Romania and Russia. The Council of Europe is in the process of revising the European Prison Rules, which aim to establish common principles in the area of penal policy. It is anticipated that the new rules may require Member States to enable prisoners to participate in elections, in so far as their right to do so is not restricted by national legislation. In 2002 the Canadian Supreme Court stated that: ‘Denial of the right to vote...undermines the legitimacy of government, the effectiveness of government, and the rule of law...It countermands the message that everyone is equally worthy and entitled to respect under the law.’ 16

It ruled that to ban prisoners serving over two years from voting was too broad. In South Africa, all prisoners have the right to vote. Handing down a landmark ruling in April 1999, the Constitutional Court of South Africa declared that: “*The universality of the franchise is important not only for nationhood and democracy. The vote of each and every citizen is a badge of dignity and personhood. Quite literally, it says that everybody counts.*”

17

In Australia and New Zealand, the length of their sentence determines whether or not convicted prisoners retain voting rights.

How would the right to vote work in practice? In the UK, people held on custodial remand maintain their voting rights, and are able to vote by post or proxy. They cannot register at the prison address, but the Representation of the People Act was amended in 2000 to enable remand prisoners to register using a declaration of local connection (this means that they use the address where they would be living if they were

not on remand or an address where they have lived in the past). A similar procedure could be used for sentenced prisoners. The Chief Executive of the National Offender Management Service (NOMS), Martin Narey, has said that sentenced prisoners voting: *“poses no problems for the Prison Service”*.<sup>18</sup> Under the new NOMS arrangements, there is scope to re-assess the need for a continuing ban. The ban is outdated and questions have been raised, for example, about the disenfranchisement, or otherwise, of those serving the new sentence of intermittent custody.

## Conclusion

The UK ban on prisoners voting is a relic from the nineteenth century, which is neither a deterrent nor an effective punishment. The right to vote poses no risk to public safety. Giving prisoners the vote would encourage them to take the responsibilities that come with citizenship. It would also encourage politicians to take more of an active interest in prisons, which in turn should raise the level of debate about prisons and penal policy. There is widespread support for the removal of the ban, which the European Court has ruled violates human rights law. The Government should act to restore the right to vote to sentenced prisoners without delay.

1 Early Day Motion 729

2 Daily Mail, 3rd March, 2005

3 Levenson, J. (2001) Barred from Voting, Prison Reform Trust

4 England and Wales High Court (Administrative Court) Decisions (4th April 2001) Pearson & Martinez vs. Home Secretary and others; Hirst vs. Attorney General BAILII Database EWHC Admin 239

5 England and Wales High Court (Administrative Court) Decisions (4th April 2001) Pearson & Martinez vs. Home Secretary and others; Hirst vs. Attorney General (Cases CO/31/01 and CO/448/01)

6 European Court of Human Rights (30 March 2004) Judgment in the Case of Hirst vs. The United Kingdom (No.2) (Application no.74025/01)

7 Hansard House of Lords 14 July 2004

8 Hirst, J. (2004) Building a Democratic Future Inside Time June 2004

9 Hirst, J. cited in Rozenberg, J. and Born, M. (31/03/04) Euro Court backs prisoner over voting rights Telegraph

10 Prison Reform Trust and Unlock (2 March 2004) Barred From Voting: Coalition calls for prisoners to be given the vote Press Release

11 HM Prison Service and Commission for Racial Equality (2003) Implementing Race Equality in Prisons – a shared agenda for change, London: HM Prison Service

12 Prison Reform Trust and Unlock (2 March 2004) Barred From Voting: Coalition calls for prisoners to be given the vote Press Release

13 Catholic Bishops' Conference of England and Wales (2004) A Place of Redemption, London: Burns and Oates

14 Home Office (2004) Offender Management Caseload Statistics England and Wales 2004, London: Home Office

15 Lord Hurd cited in Leech & Shepherd (2003) Prisons Handbook 2003/4 Manchester: MLA Press

16 Supreme Court of Canada (31 October 2002) Richard Sauvé v Attorney General of Canada and Others  
2002 SCC 68

Prison Reform Trust E-mail: [info@prisonreformtrust.org.uk](mailto:info@prisonreformtrust.org.uk) Web:[www.prisonreformtrust.org.uk](http://www.prisonreformtrust.org.uk) Registered  
Charity No. 1035525 Company Limited by Guarantee No. 2906362

Unlock – The National Association of Ex-offenders E-mail: [unlock@tinyworld.co.uk](mailto:unlock@tinyworld.co.uk)

**[www.unlockprison.org.uk](http://www.unlockprison.org.uk)** © Prison Reform Trust and Unlock, March 2005.

17 Constitutional Court of South Africa (1 April 1999) August and another v Electoral Commission and Others  
CCT8/99

18 Levenson, J. (2001) Barred from Voting, Prison Reform Trust

### Appendix 3: Employing Ex-offenders

Rehabilitation Periods: The Rehabilitation of Offenders Act 1974 enables some criminal convictions to become 'spent' after a period of time has elapsed from date of conviction.

The rehabilitation period depends on the sentence imposed by the court.

After this period an ex-offender is not normally obliged to mention their conviction when applying for a job. A spent conviction shall not be proper grounds for not employing someone.

#### Motorists - Disqualification

The rehabilitation period is the length of the disqualification, or any other penalty imposed, which ever is the longer.

#### Motorists - Endorsements

These do not come within the Act and therefore do not affect the rehabilitation period. e.g. A motorist with their licence endorsed and a fine for drink driving would have a rehabilitation period of 5 years (see listing) rather than the 11 years it takes to be entitled to a clean driving licence.

#### Further Offences

If a person commits a minor offence (one that can only be tried in a magistrate's court) it does not affect the rehabilitation period. Each rehabilitation period will expire separately.

If the further offence is one that could be tried in a Crown Court then neither conviction will become spent until both periods are over.

### GOOD PRACTICE

#### Recruitment

1 Employers should tell job applicants that they do not have to disclose spent convictions (unless the post is an exempt one)

Job application forms/information packs should state that 'offences deemed spent under the Rehabilitation of Offenders Act 1974 do not have to be declared'.

Having been alerted to it, applicants can either make their own enquiries into the Act or you can provide advice and information about it or refer them to the [seequality.org.uk](http://seequality.org.uk) web-site for help. Many applicants - deeply ashamed and embarrassed at having convictions, which may be very old (as well as spent), relatively minor and not relevant to the job - will be very grateful for the advice that they do not have to disclose.

1.1 Cautions, reprimands and final warnings\* are part of a criminal record but are not criminal convictions and so are not covered by the Act.

These penalties are generally imposed for less serious offences, mostly on offenders (mainly young offenders) who commit the odd offence and do not re-offend. Cautions are deleted from the criminal record after five years, if there is nothing else on it. At the time of writing, no decision had been made about how long records of reprimands and final warnings should be kept. A decision is expected shortly. If you want applicants to disclose these, before the five year period has elapsed, you should make this clear.

If you simply ask applicants if they have a 'criminal record' they may understand this to mean criminal convictions and answer 'no' when in fact they have a caution, reprimand or final warning (but no convictions).

Convictions, cautions, reprimands and final warnings

2. When employers ask applicants to declare, they should do so either at the application form or shortlisting stages - and not at the interview or job offer stage.

The advantage in asking for disclosure on the application form is that it provides applicants with an immediate basis for deciding whether to apply for the job on offer. The disadvantage is that it may deter some potentially very good applicants from applying in the belief that undue weight will be given to their conviction (or record). Where possible, it is best to ask for disclosure after applicants have been shortlisted.

This has the disadvantage that some applicants who are unsuitable for the job on offer because of their convictions may have taken much time and trouble applying for something that they stood little chance of getting. But it has the advantage of ensuring that you do not give undue weight at an early stage in the recruitment process to the convictions/record and sends out a positive message to all applicants with a record about the fairness of your recruitment policies and practices.

Example A:

Declaration of Criminal Convictions.

Have you ever been convicted of a criminal offence? (You do not need to disclose convictions deemed as spent under the Rehabilitation of Offenders Act 1974). Yes/No?

If yes, please give details of offences, sentences and dates.

Example B:

Declaration of Criminal Records.

Have you ever been convicted of a criminal offence or cautioned, reprimanded or given a final warning by the Police? (You do not need to disclose convictions which would be deemed as spent under the Rehabilitation of Offenders Act 1974 or cautions, reprimands and final warnings which are over five years old). Yes/No?

If yes, please give details of offences, sentences or cautions, reprimands, final warnings and dates.

\* Reprimands and final warnings were introduced by the Crime and Disorder Act 1998 to replace cautions in cases involving young offenders. They are currently being piloted in five areas around the country with a view to national implementation during 2000-2001.

3. Employers should ignore any spent convictions applicants inadvertently disclose (unless it is an exempt post).

Under the Rehabilitation of Offences Act 1974, ex-offenders are legally rehabilitated persons once their convictions are spent. A long period will have passed since their last conviction, proof in most instances that the person has in practice put their offending behind them and represents no more of a risk than someone without convictions. On this basis, spent convictions should not be taken into account.

4. Employers should take any relevant unspent convictions into consideration when deciding whether to shortlist/appoint the applicant, but convictions should not necessarily be a bar to employment.

When deciding whether to shortlist or appoint someone, you should decide whether the person can do the job, whether he or she has the essential skills or experience for the post or an ability to develop those skills - standard good practice in recruitment.

If the person has the skills or experience, should the convictions/record be taken into account?



It may be clear from the application form that a person is unsuitable for the post they have applied for because of their criminal convictions/record.

Someone recently convicted of fraud, perhaps work-related, may be unsuitable for a job handling money, unless there is an appropriate degree of supervision.

Someone convicted of violent or sexual offences is likely to be unsuitable for work with vulnerable people (in this instance, such posts will be exempt from the Rehabilitation of Offenders Act).

It may not be clear whether a person is suitable until questioned at interview stage or references are taken up.

It may be that at the interview the applicant can provide the reassurance that you need

- by taking responsibility for the offence(s)
- by making it clear that it is/they are in the past (eg., they are old, if unspent, or that they were committed when they were young or going through particular difficulties)
- by indicating that they have changed (eg., they have family and other responsibilities now and are keen to work and get on).

If the offence is not work-related or if the job on offer is at a level of responsibility or carries with it a degree of close supervision which means that the employee does not represent a risk, you should consider taking on the applicant if in all other respects he or she is the best person for the job.

You could endeavour to reassure applicants - on the application or shortlisting monitoring form (if you have one) - that disclosure of convictions will not necessarily be a bar to employment and that only relevant convictions will be taken into consideration at shortlisting or interview stage.

#### Exceptions to the Act

There are some jobs, offices and professions which are 'excepted' from the Act where employers can ask for disclosure of all convictions, both spent and unspent.

Separate guidance is available for employers working with vulnerable people. (See NACRO 'Offenders Working in Care' Tel: 0171 582 6500)

The principal exceptions are:

Any post providing accommodation, care, leisure and recreational facilities, schooling, social services, supervision or training to people aged under 18. This includes, teachers, school caretakers, youth and social workers, childminders.

Employment providing social services to elderly people, those with a mental illness or learning disability, physically disabled people, alcohol or drug misusers or the chronically sick.

Health Service appointments

Any office or employment involving the administration of justice.

Certain professions which have legal protection (e.g. lawyers, doctors, dentists, nurses, chemists and accountants)

Jobs where national security may be at risk.

1. Where a post is exempt from the Rehabilitation of Offenders Act, employers can ask for the disclosure of spent as well as unspent convictions.

However, you should make this clear on the application form (or monitoring form at shortlisting stage) by stating in effect that 'because of the nature of the work on offer, this post is excepted from the Rehabilitation

of Offenders Act 1974 and so all convictions, both spent and unspent, have to be disclosed'.

Again, you could endeavour to reassure applicants that disclosure of convictions will not necessarily be a bar to employment and that only relevant convictions will be taken into consideration at shortlisting or interview stage.

2. Employers should be absolutely certain that the post in question is exempt.

Employers sometimes claim that posts are exempt from the Rehabilitation of Offenders Act when clearly they are not. Not only does this deter potentially very good people from applying, it leaves employers open to legal challenge. Before claiming exemption, you ought to be able to identify the specific provision in the Exceptions Order (not the Act as some employers claim) by which a post is exempt.

Where posts are exempt, employers should ask for disclosure on the application form and not wait until the interview or job offer stage.

Some employers who claim posts are exempt often make no mention of this on the application form and only ask for disclosure at the job offer stage, often when they advise the chosen candidate for the first time that the post is subject to a police check. This is poor practice and sometimes results in the applicant withdrawing at the last moment, requiring in some instances the whole recruitment process to be done again.

#### Police checks

1. Employers should not require applicants to run police checks on themselves.

Most employers, including many of those who are exempt from the Rehabilitation of Offenders Act, cannot run police checks. Some employers choose to get around this by requiring applicants to run police checks on themselves. Such 'enforced subject access' will become an offence under Section 56 of the new Data Protection Act.

2. Good recruitment policies and practices will provide a better guide to applicants' suitability for posts.

Police checks can be a poor indicator of a person's suitability for employment. This is because the police checks system is not sophisticated enough for vetting purposes and so a simple error in the spelling of a person's name, or date of birth, address, etc., may result in no record being found of an ex-offender or in someone else's record being revealed. Even where a record is revealed, the record will only state the bald facts - the name and dates of offences, for instance, and the sentences and cautions etc. It will not put them into context, for good or ill.

By carefully scrutinising applicants, looking for any inconsistencies and gaps in the information they provide, asking the right questions in interview concerning applicants' suitability for the posts on offer, taking up references and, where necessary, questioning referees, employers are in a much better position to determine whether they have a suitable person for the job

#### Dismissal

1. Employers should not automatically dismiss an employee if undisclosed convictions come to light.

If, following recruitment, someone's conviction or record comes to light, they should not necessarily be

dismissed. It may be that they failed to disclose their conviction in order to secure employment and prove that they could make a hard-working and conscientious employee. While this should not be condoned, you may wish to take into account the employee's performance to date before making a decision. The employee may simply not realise they had a conviction. Many young people are told by officials that their convictions will be wiped from the record when they reach age 21. This is not true but ex-offenders do not necessarily know this. A surprisingly large number of people do not know whether or what convictions they have as a result of not understanding court processes or because they have blocked shameful memories of appearing in court from their minds.

2. It is against the law to dismiss someone on the basis of a spent conviction.

If an employee can prove that they have been dismissed for a spent conviction and they have been in employment for two years or more, they may be able to claim unfair dismissal under employment legislation. Because ex-offenders have much to offer those wanting to recruit staff from the widest possible base, employers should consider including ex-offenders within their recruitment policies and practices. Employers can begin by including ex-offenders within their equal opportunity policy statements, making it clear they are committed to the principle of equality of opportunity and that they will make all efforts to prevent unfair discrimination against ex-offender staff and job applicants. Policies, however, need to be backed up by good recruitment practices. Other elements which could be considered include staff training, the confidentiality of personnel records, and advising unsuccessful candidates. If you would like to discuss these further, you could contact our local probation services to see whether they have an officer specialising in employment (many of them do) or one of the national agencies working with offenders.

### Recommendations

Organisations should develop policies on employing people with criminal records and make appropriate changes to their recruitment and employment practices. Management should be involved in the design of policies and committed to making them work and there should be general awareness training to educate and inform the workforce.

Objective assessments will:

- focus on a person's abilities, skills, experience and qualifications
- consider the nature of the conviction and its relevance to the job in question
- identify the risks to the organisation's business, customers, clients and employees
- recognise that having a criminal record does not always mean a lack of skills, qualifications and experience

Assessing criminal records will:

- always be based on confidentiality and discretion when requesting and handling criminal records
- encourage applicant honesty by stating that applicants will be considered on merit and ability
- not include requests for spent conviction records unless the job is exempt under the terms of the ROA
- advise applicants to submit confidential records separately from the usual application form and to a

named employee

- comply with the data protection law ensure access to criminal record information is only on a need-to-know basis.

Considering the relevance of a criminal record

Arguably, a convicted fraudster is at less risk working as a gardener than a cashier in a garden centre. Risk assessment should be based on:

- an examination of circumstances leading up to an offence
- repeat offences
- the length of time since an offence(s) took place
- the nature of the job, workplace environment, exposure to money, property and vulnerable people
- the extent of job supervision
- an individual's attempt to 'go straight'.

Managing risk and providing safeguards

Adequate supervision is important. You should also:

- agree policies on access to criminal records
- inform applicants of this policy
- explain to employees the various reasons to give a fair chance of employment to people with criminal records
- review insurance arrangements and consider fidelity guarantee schemes.
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Training and informing

Effective policies require the knowledge, understanding and actions of key employees and clarity about their personal roles and responsibilities. They should understand about:

- the ROA and 'spent' convictions
- the types of disclosures
- handling confidential information
- assessing risk
- identifying safeguards
- making balanced objective judgements.

Accessing expertise and support

Contact with organisations that offer information about the employment and support of people with criminal records is helpful. Some key points: There are 7.3 million people in England and Wales on the Home Office Offenders Index, the official register of all those with criminal convictions. Less than 10% of convictions are for violence to the person. One in three men and almost one in ten women born in 1953 had been convicted of

an offence before the age of 46.

- 82% of offenders are male.
- Employment is the single most important factor in reducing re-offending. According to CIPD research. Of 144 HR professionals who have knowingly employed ex-offenders, only 8 have reported cases of re-offending.
- Current estimates suggest it is at least eight times harder for a person with a criminal record to obtain employment.
- Prisoners achieved 89,201 key work skills awards in 2002-03.
- During 2003, nearly 33,000 prison leavers took up employment, training or education places - 5,000 more than the Prison Service's 'Custody to Work' target. This outcome has been helped by a number of new initiatives, including the introduction into some prisons of Jobpoints (guaranteed advice for recently released prisoners provided by local Jobcentre Plus offices) and industry-focused training linked to job placements such as Ambition Construction.
- There is a pressing business case to employ ex-offenders. A CIPD survey revealed that 85% of employers are experiencing recruitment difficulties due to skill shortages and lack of experience.