

# Ex-offenders, charity trustees & managers

## Charities (Protection and Social Investment) Bill 2015-16

### Written Submission to Public Bill Committee – Scrutiny Unit

This written submission to the bill committee of the Charities (Protection and Social Investment) Bill 2015-16 is a joint submission by the charities Unlock, Clinks and the Prison Reform Trust.

- **Unlock** is an independent award-winning charity that supports ex-offenders (a group which we refer to as “people with criminal records”) and seeks to remove the barriers that result from criminal records. Unlock is a peer-led charity – this means that we recruit staff, volunteers and trustees that have criminal records. At a board level, we aim to have at least 50% of our trustees who have personal experience of living with a criminal record.
- **Clinks** is the national infrastructure organisation supporting voluntary sector organisations working with offenders and their families. Our aim is to ensure the sector and those with whom it works are informed and engaged in order to transform the lives of offenders and their communities. We do this by providing specialist information and support, with a particular focus on smaller voluntary sector organisations, to inform them about changes in policy and commissioning, to help them build effective partnerships and provide innovative services that respond directly to the needs of their users. We are a membership organisation with over 600 members including the sector’s largest providers as well as its smallest, and our wider national network reaches 4,000 voluntary sector contacts.
- The **Prison Reform Trust (PRT)** is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, national and local government and officials towards reform. PRT provides the secretariat to the All Party Parliamentary Group on Penal Affairs.

The submission raises concerns that have been raised in an [earlier briefing](#), which had the support of a number of other charities. It also builds on a [consultation response published by Unlock in February 2014](#). The concerns were featured in an article in *Third Sector* on Wednesday 25<sup>th</sup> November, titled *Extension of disqualifications in charities bill 'unnecessary'*.<sup>1</sup> Concerns were also raised by the former Solicitor General, Sir Edward Garnier MP, in the second reading debate on the bill.

## Summary

A number of the proposals in the Bill represent a direct threat to charities that work to rehabilitate people with criminal records, many of whom employ former offenders either as trustees or in senior management positions. At the heart of the voluntary sector is the principle of working with our service users, rather than doing things to them. This is no less important with people in the criminal justice system than with any other group. Any unnecessary barriers to the recruitment of people with convictions as trustees and in senior positions is a threat to the core mission of our sector.

As the Secretary of State for Justice himself has stated, we should not judge individuals by the worst moments in their lives. Instead of seeking to narrow opportunities for ex-offenders to reintegrate and contribute to society, we should be supporting efforts to contribute to civil society through paid employment in the voluntary sector or as volunteers.

The provisions of the Bill, which extends the disqualification framework to a broader range of offences and roles within charities, will undermine the ability of people with criminal records to participate actively in society through legitimate voluntary and paid work. The automatic barring of people on the sex offenders register from becoming charity trustees is a crude and ineffective means of safeguarding children and vulnerable adults.

The Government acknowledges the potential for waivers to be issued in cases where an individual seeks to be a trustee of, or senior manager in, an “ex-offender” charity. It has said it will ask the Charity Commission to review the waiver process and to consult with charities. Unlock’s own direct experience,

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<sup>1</sup> Available at <http://www.thirdsector.co.uk/extension-disqualifications-charities-bill-unnecessary/policy-and-politics/article/1374365>

and the support we've provided to other organisations, shows the waiver process is woefully inadequate and not workable in a way that allows charities like Unlock to fulfil their charitable purposes. The extension of the disqualification framework to cover senior management positions will place additional burdens on the waiver process. However, the government has not provided any estimate of how many people will be affected or what additional resources will be provided to the Charity Commission to meet these demands.

This submission seeks to address these concerns as well as others that we have about the Bill. It proposes amendments to clauses 10 and 11 which seek to mitigate the negative impact of the bill's provisions.

## Senior management positions

An amendment to ensure that disqualification does not automatically apply to senior management positions

Clause 10, page 7, leave out lines 37 to 40

Clause 10, page 8, leave out lines 1 to 8

### Purpose

This amendment removes the automatic application of the disqualification criteria to senior management positions. The Charity Commission would still have the discretion to impose disqualification on senior managers where necessary by imposing a disqualification order under the provisions of clause 11.

### Summary

Clause 10 of the Bill significantly extends the remit of the current (and proposed) disqualification framework to cover a number of additional roles within charities, beyond the role of Trustee. Currently, those individuals with an unspent conviction<sup>2</sup> for an offence relating to dishonesty or deception are automatically disqualified from acting as a Trustee. The Bill would extend this power so that those in senior management positions in charities would also be disqualified. This raises the prospect of an

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<sup>2</sup> As determined by the Rehabilitation of Offenders Act 1974

unknown but potentially significant number of existing charity employees being legally prevented from doing their job. It also risks having a long-standing impact on the potential career prospects of ex-offenders working within charities and a wider negative impact on the ability of ex-offenders to establish their own charities to help others.

## Background

The existing disqualification framework has to date not applied to senior management positions and senior management positions were not in scope of the original draft charities bill. The provision will have a significant impact on the 1,750 voluntary sector organisations whose main client group are people in the criminal justice system, as well as the additional 4,900 organisations that support them as part of their work'.<sup>3</sup> The proposals would create unnecessary additional obstacles in the way of recruiting senior staff with criminal convictions. Many of these charities are contracted to deliver justice services under the government's Transforming Rehabilitation programme. The government has acknowledged the value of former offenders working in criminal justice charities, for instance in the role of mentor to prison leavers. However, the proposals will discourage service-user involvement in charities which work with, or are led by, former offenders.

The provisions could impact on a significant number of people employed in the charitable sector. In England & Wales, one-third of the adult male general population, and nearly one-tenth of adult women, is likely to have at least one criminal conviction.<sup>4</sup> However, as far as we are aware, the government has not conducted an impact assessment of the new provision and has not provided an estimate of how many people currently employed in the charitable sector it is likely to effect.

The proposal in the Bill to extend the criteria by which people must be excluded from serving charities is at odds with the Ministry of Justice's own research. A NOMS (2010) briefing, 'Understanding Desistance From Crime'<sup>5</sup> shows how the proposed legislation could increase the risk of re-offending. This shows that working as an employee or contributing as a trustee facilitates:

- Opportunities to contribute to society

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<sup>3</sup> TSRC working paper 34: <http://www.birmingham.ac.uk/generic/tsrc/publications/index.aspx>

<sup>4</sup> Ministry of Justice (2010) Conviction histories of Offenders between the ages of 10 and 52

<sup>5</sup> Maruna, S (2010) "Understanding desistance from crime", Ministry of Justice/Professor Shadd Maruna

- Networks that provide social capital
- A sense of belonging that is inconsistent with crime.

'Understanding Desistance From Crime' highlights the following as important factors in promoting desistance:

- Something to give. People who feel and show concern and empathy for others are more likely to desist from crime. Offenders who find ways to contribute to society, their community, or their families, appear to be more successful at giving up crime.
- Having a place within a social group. Those who feel connected to others in a (non-criminal) community of some sort are more likely to stay away from crime. Criminologists call this "social capital" – the amount of social support that someone has "in the bank" to draw upon.
- Work with and support communities. Individuals who feel like they are a welcomed part of society are less likely to offend than those who feel stigmatised. The voluntary sector, faith-based and other community groups, and local employers, are all key components in reintegration. Their influence can last far beyond the criminal justice agencies. . . . Without community reintegration, the only place where an offender can find a warm welcome and social acceptance will be the criminal community.

We hope MPs will support an amendment to clause 10 to exclude senior management positions from the disqualification framework. We also hope MPs will use the opportunity of the committee stage debate to probe the government on:

- How many people employed in the charitable sector will be affected by the extension of the disqualification framework to senior management positions?
- What assessment has been made of the impact of the new disqualification framework on former offenders employed in the charitable sector, including their career prospects and long-term rehabilitation and resettlement?
- What assessment has been made of the impact of the legislation on charities which work with former offenders and who are employed by Community Rehabilitation Companies (CRCs) as part of the government's Transforming Rehabilitation reforms?

# An effective waiver process

## New Clause XX

A new clause to lower the test for a waiver to be granted to individuals who are disqualified due to offences involving dishonesty/deception, where the charity is concerned with relieving the disadvantage faced by people with criminal records and the individual has the support of the charity trustees.

After Clause 10 insert the following new clause -

(1) The Charities Act 2011 is amended as follows

(2) Section 181, subsection (6), at end insert -

(i) If—

- (a) P is disqualified under Case A and makes an application under subsection (2) in relation to a particular charity,
- (b) the particular charity is concerned with relieving the disadvantage faced by people with criminal records, and
- (c) a majority of not less than two thirds of the charity trustees support an application made by P under subsection (2)

the Commission must grant the application unless it is satisfied that, because of any special circumstances, it should be refused.

## Purpose

This amendment lowers the test for a waiver to be granted to an individual who is disqualified due to unspent dishonest/deception offences, where the charity is concerned with relieving the disadvantage faced by people with criminal records, and where a majority of not less than two thirds of trustees support the application for a waiver, unless there are special circumstances that mean it should be refused.

## New Clause XX

A new clause to lower the test for a waiver to be granted to individuals who are disqualified due to sexual offences, where the charity is concerned with relieving the disadvantage faced by people with criminal records and the individual has the support of the charity trustees.

After Clause 10 insert the following new clause -

(1) The Charities Act 2011 is amended as follows

(2) Section 181, subsection (6), at end insert -

() If -

- (a) P is disqualified under Case K and makes an application under subsection (2) in relation to a particular charity
- (b) the particular charity is concerned with relieving the disadvantage faced by people with criminal records, and
- (c) a majority of not less than two thirds of the charity trustees support an application made by P under subsection (2)

the Commission must grant the application unless satisfied that, because of any special circumstances, it should be refused.

## Purpose

This amendment lowers the test for a waiver to be granted to an individual who is disqualified due to sexual offences, where the charity is concerned with relieving the disadvantage faced by people with criminal records, and where a majority of not less than two thirds of trustees support the application for a waiver, unless there are special circumstances that mean it should be refused.

## New Clause XX

An amendment to strengthen the Charity Commission's waiver process for people with convictions.

Clause 10

After 10(13), insert

(1) The Charities Act 2011 is amended as follows.

“Amend 181 of Charities Act –

After (3) Insert

If P is disqualified under Case A or K and makes an application under subsection (2), the Commission must grant the application unless it is satisfied in all the circumstances that to do so would increase the risk of criminal activity or malpractice on the part of P or the charity

## Purpose

This amendment strengthens the waiver process that enables people with convictions to be granted a waiver by the Charity Commission.

## Summary

These set of amendments present options for improving the Charity Commission’s waiver process to enable people with criminal records to be employed by charities as trustees or senior managers. The Charities Act 2011 provides a framework for how the Charity Commission should grant waivers for people previously removed due to mismanagement (s.181(3)(a) states that

*If—*

*(a) P is disqualified under Case D or E and makes an application under subsection (2) 5 years or more after the date on which the disqualification took effect, and*

*(b) the Commission is not prevented from granting the application by subsection (5),*

*the Commission must grant the application unless satisfied that, because of any special circumstances, it should be refused.*

These amendments would introduce a similar framework for people disqualified under Case A or Case K. Please note that the first two amendments should be tabled together. The third amendment would negate the need for the previous two.

## Background

Although it is welcome that the Government acknowledges the potential for waivers to be issued in cases where an individual seeks to be a trustee of, or employed in a senior management position by, an “ex-offender” charity, we know that the Charity Commission’s waiver process is woefully inadequate and is not fit to relying on as an adequate safeguard. The minister for civil society, Robert Wilson MP, has assured us that the Charity Commission will consult with the criminal justice voluntary sector on the waiver process prior to the introduction of the new disqualification framework, with a view to issuing improved guidance. We hope that MPs will use the opportunity of the committee stage debate to clarify the scope of the proposed review and that charities will be consulted.

Since 1993, the Commission estimates that it has granted approximately 10 waivers relating to unspent convictions, which is incredibly low given the numbers of people with unspent convictions. From the numbers of those seeking waivers (which again is very low), it could be inferred that the requirement to seek a waiver is creating a chilling effect, leading to fewer expressions of interest in such positions from those who have relevant convictions. The Charity Commission’s starting position is that if disqualified by the legislation, it is Parliaments’ intention for that individual to be disqualified, and therefore the Charity Commission currently grant waivers in ‘exceptional circumstances only’, which is a high threshold.

The concern is that suitable individuals, who could well contribute a great deal to the governance of charities, may simply not come forward. A significant proportion of voluntary sector organisations begin as self-help groups, founded by lived experience of the issues they are working to resolve. The widening of the disqualification framework therefore represents a real danger to the future diversity and vibrancy of the voluntary sector working in criminal justice. The disqualification framework and waiver process conflicts with the charitable purposes of those charities promoting the rehabilitation and social integration of people with criminal records.

Furthermore, the widening of the disqualification framework to include senior management positions will mean that many former offenders currently employed by charities will have to seek a waiver in order to continue in employment. The government has not provided any estimate of how many people this is likely to affect or what additional resources will be provided to the Charity Commission to enable it to deal with the likely increase in waiver applications.

We hope that MPs will support amendments to ensure that the waiver process does not unfairly discriminate against charities, particularly those who work with or on behalf of people with criminal records, who wish to appoint people with criminal convictions as a trustee or to a senior management position. At the very least, we hope MPs will seek assurances that the waiver process will be reviewed with a view to producing improved Charity Commission guidance, and that charities will be consulted as part of the review. We hope MPs will use the opportunity of the committee stage debate to probe the government on:

- What is the projected increase in the number of people applying for a waiver as a result of the extension of the disqualification framework?
- What additional resources will be provided to the Charity Commission to enable it to deal with the likely increase in waiver applications?

## Sexual offences

An amendment to ensure that sexual offences do not result in automatic disqualification

Clause 10, Page 7, leave out lines 34 to 36.

### Purpose

This amendment ensures that people who are subject to the notification requirements under part 2 of the Sexual Offences Act 2003 do not become automatically disqualified from becoming a trustee or hold a senior manager position in a charity.

### Background

Clause 10 significantly extends the types of offences which, if unspent under the Rehabilitation of Offenders Act 1974 (ROA), would disqualify an individual from becoming a Trustee or a senior manager. In particular, Clause 10 extends the disqualification criteria to include disqualifying any individual currently subject to the notification requirements under the Sexual Offences Act 2003, even once the conviction is spent under the Rehabilitation of Offenders Act 1974. The presumption by Government is that being

subject to the notification requirements (i.e. a “registered sex offender”) makes an individual unfit to be in a position of trustee or employed as a senior manager, even once the conviction becomes spent. The idea of an automatic disqualification in this situation is troubling and would raise the prospect of people with old spent sexual convictions being barred from serving as trustees or senior managers of a whole range of charities where safeguarding of children or vulnerable beneficiaries is not an issue.

Consider this example:

*David has been a trustee of a charity in his local community for 6 years. He has a spent conviction for sexual assault which he obtained 12 years ago for which he was sent to prison for 3 years. None of his fellow trustees are aware of this as he didn't need to disclose it. The charity is involved in policy and campaigning on environmental issues and doesn't deliver front-line work.*

*As it stands, David would become automatically disqualified from his role because he remains on the sexual offences register for life. He will have to either agree to disclose his convictions to his fellow trustees, so that they can decide whether to support a waiver application, or he might decide to resign his position due to fear of the reaction and the potential risk to his personal safety and relationships in the local community.*

The proposal to extend disqualification to those subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 would mean over 46,000 people would be automatically disqualified from trustee positions and senior management posts.<sup>6</sup> An unknown number of existing trustees and senior staff would become automatically disqualified in their roles. There are currently in excess of 1,000,000 trustee positions in England and Wales. An unknown number of existing trustees would become automatically disqualified in their roles. An unknown number of senior managers in charities would become disqualified from their roles.

There are existing safeguards in place for charities that appoint trustees and recruit staff that work with children or vulnerable adults. This additional legislation is unnecessary from a safeguarding perspective, yet creates additional burdens on charities who work with and/or employ ex-offenders. It was not the Governments' original intention to introduce legislation to disqualify those subject to the notification

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<sup>6</sup> In 2013/14, 46,102 individuals were subject to the notification requirements (see [here](#))

requirements and the provision was not included in the original draft bill. Indeed, the Government rejected this proposal in their consultation response in October 2014 due to existing safeguards:

*We carefully considered whether or not an unspent conviction for sexual offences should result in automatic disqualification from charity trusteeship for charities primarily involved with children or vulnerable adults. In such circumstances primary responsibility rests with the charity to have its own safeguarding policy and processes in place, which may include undertaking checks of the trustees before they take up their post. The Charity Commission would also be able to exercise its discretionary disqualification power ... in such cases if the person had exhibited conduct damaging to public trust and confidence in charity (or a particular class of charity – in this case charity working with children or vulnerable adults) on grounds of unfitness to serve as a charity trustee (for that class of charity).<sup>7</sup>*

Trustees working in charities that work with children or vulnerable adults conduct DBS checks – guidance from the Charity Commission ('Finding new trustees') states:

*The appointment of a new trustee to a charity is an important matter. Before appointing a new trustee the trustee board must make sure it is acting within the law, in accordance with the charity's governing document, and that the prospective trustee is not disqualified from being a trustee. The commission recommends that DBS checks should be obtained for trustees of charities which work with children or vulnerable adults. Charities should also ensure that a prospective trustee understands the responsibilities they are taking on and can be relied on to carry them out responsibly.*

Those individuals subject to the notification requirements are monitored by the Police. Any moves to increase the disclosure of information relating to these individuals should be done via the Police, rather than through self-disclosure by the individual. The disqualification criteria rely on self-disclosure by individual trustees as a trigger for the disqualification and/or waiver process. However, those most likely to be a risk are those who are least likely to self-disclose.

We hope MPs will support an amendment to ensure that people who are subject to the notification requirements under part 2 of the Sexual Offences Act 2003 do not become automatically disqualified from

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<sup>7</sup> Para 29 of Government response to the Consultation on Extending the Charity Commission's Powers [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/365710/43820\\_Cm\\_8954\\_web\\_accessible\\_Draft\\_protection\\_of\\_charities\\_bill.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/365710/43820_Cm_8954_web_accessible_Draft_protection_of_charities_bill.pdf) (page 48-9)

becoming a trustee or holding a senior manager position in a charity. Without the provision, the Bill still provides for a discretionary power to disqualify people with unspent convictions for sexual offences under the remit of Clause 11(7)F. Clause 11 sets out the framework for disqualification orders, and the reasons why the Charity Commission may impose one. Clause 11(7) sets out the conditions, and condition F is:

*“that any other past or continuing conduct by the person, whether or not in relation to a charity, is **damaging or likely to be damaging to public trust and confidence** in charities generally or in the charities or classes of charity specified or described in the order.”*

Clause 11(7)F has sufficient scope to enable the Charity Commission to impose a disqualification order against those individuals which they believe are unfit to be a trustee or senior manager.

# Inconsistencies with the Rehabilitation of Offenders Act

An amendment to ensure spent criminal convictions do not disqualify an individual from becoming a trustee or senior manager of a charity

Clause 10, Page 7, line 36, at end insert -

( ) Case K does not apply where the offence is spent under the Rehabilitation of Offenders Act 1974

## Purpose

This amendment ensures that that where an individual has become legally rehabilitated under the Rehabilitation of Offenders Act 1974, they are able to stand as a trustee (or hold a senior manager position in a charity) without needing to obtain a waiver from the Charity Commission.

## Background

Clause 10 would apply to individuals subject to the notification requirements even once their conviction becomes spent. It is unclear how the disqualification criteria would be legally permissible under criminal

record disclosure legislation. The proposals widen the automatic disqualification criteria to all individuals subject to notification requirements. This, by consequence, would apply to sexual convictions that are legally 'spent' under the Rehabilitation of Offenders Act 1974. Since the Rehabilitation of Offenders Act 1974 was reformed in 2014, most convictions become spent much earlier. However, an individual may remain subject to the notification requirements for longer.

Take, for example:

*An individual convicted of a sexual assault and sentenced to 3 years in prison. Assuming the individual doesn't re-offend, the conviction will become spent 7 years after the end of the sentence. However, they will remain subject to the notification requirements indefinitely, with a right to review after 15 years.*

In the example above, under the proposals of the Bill the individual would be automatically disqualified from being a trustee for *at least* 15 years, and potentially for the rest of their life. Under the Rehabilitation of Offenders Act 1974 (ROA), once an individual has been convicted, if they remain conviction-free for a defined period of time (based on the sentence they receive) they are legally recognised as being 'rehabilitated'. The periods of time that apply were significantly altered in 2014 as a result of amendments contained in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, supported by the Coalition Government. These periods are significantly different to the periods which apply to the notification requirements under Part 2 of Sexual Offences Act 2003, which Clause 10 would otherwise extend the disqualification framework to cover. For example, a 4 month prison sentence for a sexual offence becomes spent 2 years after the full sentence but results in a 7 year notification period on the sexual offences register.

We hope MPs will support an amendment to ensure spent criminal convictions do not disqualify an individual from becoming a trustee or senior manager of a charity. This would ensure that where an individual has become legally rehabilitated under the Rehabilitation of Offenders Act 1974, they are able to stand as a trustee (or hold a senior manager position in a charity) without needing to obtain a waiver from the Charity Commission. Without the amendment, the legislation would be inconsistent with the provisions of the ROA and could be open to legal challenge.

## An amendment to ensure that convictions that are spent under the Rehabilitation of Offenders Act, but that were obtained overseas, do not result in disqualification

### Clause 11

Clause 11(2)(11), Page 11, line 45, leave out “which is spent under the law of the country or territory concerned” and insert “which would be spent under the Rehabilitation of Offenders Act 1974 if it had occurred in England and Wales”

## Purpose

This amendment ensures that the disqualification frameworks uses rehabilitation legislation as it applies in England & Wales.

## Background

It is common practice for employment and charity law to apply the laws that cover the jurisdiction that the activity operates in. However, Clause 11(2)(11) appears to suggest that the legislation used to determine whether a conviction is spent is the laws in “the country or territory concerned”. If this is the intention, it would erode the protections afforded by the Rehabilitation of Offenders Act 1974 and open citizens of this country to be subjected to the harsh treatment that might apply in other countries in other parts of the world. It is not clear whether this would be legally permissible or indeed workable. Official determination of whether overseas offences are spent is carried out by Disclosure Scotland, which applies the laws as they apply in either England or Wales, or Scotland, depending on the address of the applicant. We hope MPs will support this amendment to ensure that the disqualification framework uses rehabilitation legislation as it applies in England & Wales.

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