Submission

DCLG consultation on disqualification criteria for Councillors and Mayors

Unlock welcomes the opportunity to provide a short written submission to the Department for Communities and Local Government's consultation on disqualification criteria for Councillors and Mayors.

Unlock is an independent award-winning national charity that provides a voice and support for people with convictions who are facing stigma and obstacles because of their criminal record, often long after they have served their sentence.

For the purposes of this response, we refer to "councillors" as a catch-all phrase, unless otherwise specified.

Our response

Are the changes necessary? Is there evidence that this is a problem?

The consultation does not refer to any evidence that the changes are *necessary* to achieve a legitimate aim. The proposals are intended to ensure "those who represent their communities are held to the highest possible standards". However, with the focus of the proposals on sex offenders and anti-social behaviour, no evidence is presented that people with these types of criminal records are being elected to their local council without the knowledge of the voting community. It is perhaps understandable that voters should be entitled to know certain things about their prospective candidates. However, it is ultimately for the electorate to make a voting decision on the available candidates and not for a government department to impose top-down restrictions that prevent individuals from becoming candidates in the first place. Given that the proposals in this consultation would not apply retrospectively, it would appear that there is not a serious immediate problem. That raises serious questions about whether these changes are necessary and, indeed, what has motivated them.

A risk to democracy

The consultation does not make any impact assessment about the numbers of people that would be impacted by these proposals. For example, a key question concerns how many people who are eligible to become a councillor will be barred from doing so as a result of these proposals?

What we do know is that people affected by the impact of criminal records are predominantly more disadvantaged and from less well-off backgrounds. They are also more likely than the average population to be from black and minority ethnic (BAME) backgrounds and so proposals of this type *must* involve an equalities impact assessment.

The need for consistency with rehabilitation legislation

The proposals in the consultation add to arrangements for councillors that are already inconsistent with the Rehabilitation of Offenders Act 1974 (the ROA).

The "five-year rule" (for example, section 80 of the Local Government Act 1972) was, up until 2014, not particularly problematic – because all convictions that led to a prison sentence took more than five years to become spent under the ROA.

However, since reforms to when convictions become spent came into force on the 10th March 2014, there has been a significant disparity, meaning that technically many spent convictions still bar people from becoming a councillor. For example, the 2014 reforms to the ROA mean that a four month prison sentence becomes spent two years from the end of the sentence. So if someone was convicted in January 2017 and given a four-month sentence, this would become spent in May 2019. However, because of the "five-year rule" for councillors, they would be barred from becoming a councillor until January 2022. This extends the civic exclusion of that individual beyond the period when the ROA has determined (under section 4) that "a rehabilitated person" under the Act "shall be treated for all purposes in law" as though they had not acquired the conviction or committed the offence.

The DCLG is aware of a particular case that Unlock raised with the Electoral Commission in 2015 which highlighted this inconsistency.This inconsistency will remain following this consultation, and we recommend that this be dealt with in the government's response, ensuring that, as a general rule, once a conviction is spent that it does not bar the individual from becoming a councillor.

A misplaced justification

The consultation states in the introduction that *"the Government considers that there should be consequences where councillors, mayors and London Assembly members fall short of the behaviour expected of anyone in a free, inclusive and tolerant society that respects individuals and society generally, and where this has led to enforcement action against an individual."*

This suggests that the consequences should relate to those serving as councillors at the time they have "fall[en] short of the behaviour expected", yet these proposals are not linked in that way to existing councillors, and instead apply in a blanket fashion to anyone seeking office, regardless of their standing at the time of their conviction.

The proposals have provided no evidence that the presence of prior convictions is a good indicator of potentially poor conduct of elected officials. However, the absence of prior convictions does not appear to be a particularly successful in guaranteeing the *future* good conduct of elected officials. We note here the absence of previous convictions amongst those convicted following the parliamentary expenses scandal of 2009 and the conviction and imprisonment (for perverting the course of justice) of a government minister in 2013.

An inconsistent and incoherent approach to criminal records

The Government does not have a consistent or coherent approach to rules relating to criminal records and seeking public office. For example, there are different rules for:

1. Councillors

2. MP's
3. Police and Crime Commissioners

Furthermore, there are different rules that apply to:

1. Being disqualified from being a director of a company
2. Being disqualified from being a trustee or senior manager of a charity

The proposals in this consultation will simply add to what is already an incredibly fragmented approach. In addition to being unnecessarily complicated, this suggests that prohibitions on seeking various forms of office have not been based on any assessment of evidence. Instead of further exacerbating this piecemeal approach, we recommend that government undertakes a cross-department review of the various rules which relate to criminal records, with the aim of achieving a common framework which is respectful of the principles of a 'spent conviction' laid down in the ROA.

The types of offences covered by the proposals

The barring that would apply to sexual offences (in this case, notification requirements, SHPO's and notification orders) are unnecessary. The individuals subject to these orders are regularly monitored by the police, and this process allows for a flexible approach to future risk to be taken.

The proposals would therefore seem to be excessive in scope for the aim which they set out to achieve.

Under these proposals, some people will be unnecessarily barred from participation in the democratic process. For example, an 18-year old that has sex with a 17-year old could end up on the sex offenders register, and if they are sentenced to more than 30 months in prison, this will be for an indefinite period (i.e. for life). Although they will be entitled to have this reviewed after 15 years, there is no guarantee that this review will result in their removal from the register, and there is no way this period can be reduced.

As a possible solution, some form of discretionary process might be introduced under which the Electoral Commission can disqualify certain individuals from becoming candidates in local elections. This would enable individual circumstances to be taken into account. As the proposals stand, they will apply in a blanket fashion to all individuals on the sex offenders register, regardless of individual circumstances, the time which has passed since their last relevant offence, or assessment of current risk.

Consultation questions

Q1. Do you agree that an individual who is subject to the notification requirements set out in the Sexual Offences Act 2003 (i.e. who is on the sex offenders register) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

No.

Q2. Do you agree that an individual who is subject to a Sexual Risk Order should not be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

Yes.

Q3. Do you agree that an individual who has been issued with a Civil Injunction (made under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014) or a Criminal Behaviour Order (made under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

No.

Q4. Do you agree that being subject to a Civil Injunction or a Criminal Behaviour Order should be the only anti-social behaviour-related reasons why an individual should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

No – we believe no anti-social behaviour-related reasons should prohibit an individual.

Q5. Do you consider that the proposals set out in this consultation paper will have an effect on local authorities discharging their Public Sector Equality Duties under the Equality Act 2010?

Yes.

Q6. Do you have any further views about the proposals set out in this consultation paper?

Yes. These are set out above.

Conclusion

The proposals appear to be a knee jerk response to a problem that the government has not quantified or provided any evidence to its scale. However, the proposals will undoubtedly have a number of unintended consequences, including further limiting the number of councillors from disadvantaged, underprivileged and BAME backgrounds.

The government should rethink these proposals and take forward our recommendation of achieving consistency with rehabilitation legislation.

More information

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