

Prison Reform Trust response to the Charity Commission consultation on power to disqualify from acting as a trustee

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective prison system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for prisoners and their families. The Prison Reform Trust's main objectives are reducing unnecessary imprisonment and promoting community solutions to crime; and improving treatment and conditions for prisoners and their families. www.prisonreformtrust.org.uk

We welcome the opportunity to respond to the Charity Commission consultation on power to disqualify from acting as a trustee. PRT has worked closely with Unlock and Clinks to highlight concerns about the provision of the Charities (Protection and Social Investment) Act 2016 and their potential impact on people with criminal convictions and charities which work with or employ former offenders. Our response to the main points of the consultation is below.

Test 2: How the commission assesses whether the person is unfit to be a trustee

PRT's overriding concern, one shared with Unlock and Clinks, is the legality of the Charity Commission using spent convictions/cautions as a basis for deciding whether a person is unfit to be a trustee as part of its discretionary disqualification power. We recommend that spent convictions are excluded from the scope of the Commission's discretionary powers of disqualification.

- Condition F of Test 1 includes scope to take account of "some convictions that do not mean automatic disqualification".
- Test 2 includes scope to take account of "conduct which indicates or relates to a risk to a charity and those it is meant to help - for example a person with convictions for offences against children being involved in a charity working with children or vulnerable adults"

The following points are unclear in the Commission's policy paper on its powers of discretionary disqualification:

- Whether the Commission intends to take account of spent convictions/cautions of charity trustees and how it will lawfully do so? It is unclear how spent convictions could be taken into account without putting the Commission or charities in breach of the provisions of the Rehabilitation of Offenders Act 1974. We share concerns expressed by Unlock that charities will interpret this power to mean that they must begin to collect details of spent convictions and cautions from trustees. The Charity Commission should make clear that this is not the case.
- What convictions will fall within the scope of its discretionary disqualification power? Condition F of test 1 power could potentially mean any type of criminal conviction, not just those listed as offences that result in automatic disqualification, could result in discretionary disqualification. The policy paper refers to two examples (serious sexual offences and animal cruelty). We recommend that the Commission specifies

what types of offences it categorises as likely to damage public trust and confidence, and which offences would be out of scope of this power.

Furthermore, we are concerned about the potential for the blurring of accountability and responsibility for safeguarding under the new provisions. There is a danger that the new policy sets the Commission up in a position of responsibility in relation to the safeguarding of children and vulnerable adults, which it is not qualified to meet. For similar reasons, we did not support the inclusion of sexual offences as a criteria for automatic disqualification in the legislation, as a wholly separate regime exists in relation to the safeguarding of children and vulnerable persons.

The Commission's own risk assessment framework, to which the policy paper refers, requires that the Commission's role is "limited to ensuring that charities have appropriate safeguarding policies in place and comply with them and to liaise with other agencies and authorities which have primary responsibility for safeguarding." The new policy is a clear step beyond this limited role, and means that the Commission's position and responsibilities in relation to safeguarding are now unclear. It is vital that the Commission clarifies its position so that proper procedures for securing the welfare of children and vulnerable adults are not compromised.

Finally, the Commission will need to produce clear guidance to enable charities and people with criminal convictions/cautions to understand the legislation and their responsibilities under its provisions. This should be done in close and regular consultation with the voluntary sector and people with criminal records. We welcome the efforts made so far by the Commission to consult with charities such as PRT, Unlock and Clinks on the implementation of the new legislation.

Test 3: How the commission assesses whether the disqualification is desirable in the public interest in order to protect public trust and confidence

We endorse Unlock's view that, where it relates to criminal records, the Commission should make an addition to the list of factors to take into account. This should include the length of time passed since the conviction/caution, with particular emphasis on whether the offence is now spent under the Rehabilitation of Offenders Act 1974.

Deciding on the period of disqualification

The policy paper includes the following aggravating factor:

- Where the relevant conduct relates to a caution or conviction, an individual has more than 1 relevant caution or conviction.

As elsewhere, it is unclear whether the Commission intends for spent cautions or convictions to be in scope of the policy. We believe it is contrary to the provisions of the Rehabilitation of Offenders Act 1974 to allow a spent conviction or caution to count against an individual as an aggravating factor. It is also counter to the Commission's own commitment in the policy paper to take account of "the principles of rehabilitation".

Furthermore, we note that the provisions of the Rehabilitation of Offenders Act 1974 are not "principles"; they are legal requirements which impose statutory obligations on individuals, public and private bodies. Merely taking account of the "principles of rehabilitation" – not specified in the policy - is not sufficient for the Commission to be compliant. The Commission should clarify what it means by "principles of rehabilitation", and that it will comply with the legal requirements of the Rehabilitation of Offenders Act 1974 in drafting and implementing the policy on its powers of discretionary disqualification.

Scope of the disqualification

When the reason for disqualification relates to criminal records, particular attention should be given as to whether the disqualification order should also apply to so-called “ex-offender” charities.

There are 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'. Many of these organisations employ former offenders either as trustees or in senior management positions. The government has acknowledged the value of former offenders working in criminal justice charities, for instance in the role of mentor to prison leavers. 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.

For this reason, we recommend that the policy paper is amended as follows:

The starting point for using this power will be that the commission will disqualify an individual from being a trustee in relation to all charities, unless the individual can demonstrate why they should only be disqualified in relation to a particular charity or class of charities, **or there are circumstances which mean the individual should not be disqualified in relation to a particular charity or class of charities.**