

Justice Committee

Oral evidence: Disclosure of Youth Criminal Records , HC 751

Wednesday 15 March 2017

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Members present: Robert Neill (Chair); Richard Arkless; Alex Chalk; Alberto Costa; Kate Green; Mr David Hanson; Victoria Prentis; and John Howell.

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Witnesses

I: Christopher Stacey, Co-director, Unlock; and Ali Wigzell, Chair, Standing Committee for Youth Justice.

II: Dr Phillip Lee MP, Parliamentary Under Secretary of State, Ministry of Justice; Sarah Newton MP, Parliamentary Under Secretary of State for Vulnerability, Safeguarding and Countering Extremism, Home Office; and Christian Papaleontiou, Head of the Public Protection Unit, Home Office.

Written evidence from witnesses:

- [Unlock](#)
- [Standing Committee on Youth Justice](#)
- [Ministry of Justice and Home Office](#)

Examination of witnesses

Witnesses: Christopher Stacey and Ali Wigzell.

Chair: Good morning. Welcome to both of our witnesses. Thank you very much for coming to give evidence to us. Before we start, can I ask if any of my colleagues have any declarations of interest? As per the Register, I am a non-practising barrister and consultant to a law firm.

Victoria Prentis: I am a non-practising barrister.

Alex Chalk: I am a practising barrister.

Alberto Costa: I am a practising English solicitor and non-practising Scottish solicitor.

Richard Arkless: I am a non-practising English and Scottish solicitor.

Q1 **Chair:** Would you like to introduce yourselves and your organisations and then we will go straight into the questions?

Ali Wigzell: Brilliant. I am Ali Wigzell. I am chair of the Standing Committee for Youth Justice and we are a coalition of over 40 third sector and other not-for-profit organisations, campaigning for a better youth justice system.

Christopher Stacey: I am Christopher Stacey. I work for Unlock, an independent charity for people with convictions. We give advice and support to people with convictions on overcoming the issues to do with criminal records. We work at a policy level with Government and employers to try to change the system so that it is fairer.

Q2 **Chair:** Both your organisations have given us written evidence as well, for which I am very grateful and which we have read. Looking at the evidence that you have already given us, I get the sense that, despite what people may think, youth criminal records are disclosed almost as a matter of routine. Can you give us a sense of the scale of this?

Ali Wigzell: Yes, we can. It is worth saying, to begin with, that there is a lack of publicly available and easily accessible data on the number of criminal records given to children, but there are a number of different figures that we can talk about that are helpful in understanding the issue.

The first is with respect to arrests of under-18s. We know that that is relevant because arrests can be disclosed on enhanced DBS checks and they will be recorded on the police national database. For example, we know that 88,600 children were arrested in 2015-16—that is the total number of arrests of under-18s rather than distinct individuals arrested who are under 18.

In terms of understanding the number of criminal records experienced by under-18s, the figures are slightly different in that respect. The most accurate figures we have are based on MOJ data, regarding the number of youth cautions and the number of sentences handed out to under-18s.



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This is the most accurate data that we have because it is much more similar to the data captured on the police national computer as the figures are extracted from police and court databases. These show that in 2015-16 around 18,000 children received youth cautions and 27,900 received sentences.

Q3 Chair: I understand that, but what I am interested in is the amount of disclosure of those. This inquiry is specifically about disclosure; it is not about the broader topic.

Christopher Stacey: I understand the Committee has an interest in both under-18s and also 18-to-25s.

Q4 Chair: Yes, that is right. It is the problem of disclosure that we are interested in.

Christopher Stacey: Absolutely. Figures for 18-to-25s are difficult to obtain. I would welcome the Government trying to do a little bit more to provide some of that.

Chair: Yes, it is not broken down very well.

Christopher Stacey: We know that around 50,000 DBS checks in 2014-15 included convictions from when a person was under 18, and there are around 10,000 disclosures that included cautions from when people were under 18. That sits within a slightly wider context of around 240,000 disclosures in 2015-16 that included convictions and cautions where we do not know the age of the person, but, given that most people who commit crime do so when they are young, you can assume a fairly high proportion of those were from that point.

It is right to characterise the system as one where, essentially, when we talk about DBS checks, we still pretty much disclose everything that we hold on convictions and cautions. You will no doubt hear from the Government that the filtering system has filtered a significant number, but within that context we still have nearly a quarter of a million people every year affected by the disclosure of what are generally old and minor criminal convictions.

Q5 Victoria Prentis: Can you help us with understanding the impact of disclosure on individuals? Let us deal with the areas separately. The ones that strike us as significant are: education—applying to go to college; housing—we have heard evidence that disclosure makes it very difficult for young people to live anywhere, really; and insurance—car insurance and all sorts of insurance—seems to be very problematic. If there are other areas, please let us know, and could you tell us about the impact in all three of those areas?

Christopher Stacey: You did not really mention employment. Do you want me to talk about that as well?

Victoria Prentis: Let us do that in a minute.



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Christopher Stacey: Okay. Particularly when we are talking about young people, education is an important route forward. When you apply to a university, for example, you will normally go through UCAS and you will have a question that says, "Do you have a criminal record?" Then you will be presented with about a page-worth of guidance to try to understand how to answer that question. A lot of people get put off from applying at that point. There has been research done in the US to show that, at that point, about a third of people will not apply if they have something to disclose.

Q6 **Victoria Prentis:** Do we have any figures in this country?

Christopher Stacey: There has not been a similar study done in this country. That will be an area that would be quite interesting. We certainly know, anecdotally, that people who contact us are worried about how that information is going to affect the judgment of them as a person. There was a recommendation last year by Sally Coates, in her review of education in prisons, to suggest that that box from UCAS should be much further down the process than before you start university. It has a really big impact in the US. The SUNY University in New York has removed that box from its questions because it recognises the impact.

You asked about housing. Since 2011, the rules around local authorities and their approach to social housing has enabled them to have, effectively, blanket bans towards people with unspent criminal convictions. We know, for example, a couple of local authorities in London publish housing allocations policies that say, "If you have an unspent conviction, we will refuse to put you on our housing register." That is a significant problem for people because, if they cannot find a house, how do they progress forward?

Finally, touching on insurance, clearly the issues around insurance are mostly limited to house and car insurance. For young people, house insurance may not be the top of their priority, but car insurance, particularly, certainly is. With an unspent conviction, it is very difficult to find insurance through the mainstream market. Insurance companies take the view, without any real evidence to show this, that they believe people are higher risk with a criminal conviction. The specialist insurers that do exist here, who sometimes charge more but do exist, show the customers who are disclosing a criminal record to be much lower risk.

It is a problem, and you had evidence from the Financial Ombudsman Service to show a really interesting example that we hear a lot of, where insurance companies are misleading customers into disclosing information that is now spent under the Rehabilitation of Offenders Act. They highlighted a case where they took action against an insurer on that basis, and we hear that all the time. That is, I believe, linked back to the fact that the Rehabilitation of Offenders Act is not enforced. Insurance companies regularly ask questions such as, "Do you have a criminal record?" and will not give guidance and will not make it clear that people do not need to disclose things that are spent. We have a set of rules that



means that convictions can become spent and, for young people, not at some time in the future.

Ali Wigzell: To build on some of the points that Chris has already made, as he said, education is especially important with respect to under-18s. As you have seen in many of the written submissions that have been made to this inquiry and our own experience of talking to children and youth offending teams, we know that so many children, particularly those who want to work with children themselves and want to share their experience with children at risk of offending, are prevented from doing so. There are countless examples where children have been marched off the premises because their spent convictions have come up and they cannot continue doing their course or placements.

Q7 **Victoria Prentis:** Shall we move on to employment then? Could you touch on those types of employment that need enhanced DBS checks first?

Ali Wigzell: Yes. There are a number of points to make around employment. For example, we know that there is evidence from the US and Belgium showing that criminal records inhibit a young person's employment prospects. There is not the same research in the UK with respect to under-18s, but, for example, a Belgium study submitted applications. They were equivalent, apart from one who had a criminal record, and that showed that children with convictions received 22% less callback for the same positions.

Q8 **Victoria Prentis:** Would your experience tell you that our position would be similar here?

Ali Wigzell: Yes, it would. All the anecdotal evidence that we have had, in terms of case studies and speaking to young people, suggests that young people are often rejected outright because they have a criminal record. As Chris has already said, that also affects children's motivation to apply for jobs because they feel that there is no prospect of getting them.

There is also some interesting research in relation to the link between employment and desistance. There is growing research to say that there are three stages in the process of desistance. The first is act desistance—so the physical stopping offending. The second is about identity desistance—about changing your identity and becoming a prosocial person. The third is about relational desistance, where you have your non-offending identity reflected back to you by the significant ones in your life—by employers and society.

Linked to that, there is also a lot of evidence now to show that part of the process of desistance is giving back to society in some way. The example I gave earlier was that children who wanted to share their experience of offending and help children who are at risk of offending were stopped from doing so. It is clear that, particularly in relation to identity and



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relational desistance, a criminal record can act as a key barrier in that way, because it essentially labels that person as an offender and prevents them from developing a prosocial identity by gaining employment and seeing that reflect back to them by their significant others.

Q9 Victoria Prentis: Chris, do you have anything to add about employment?

Christopher Stacey: With regard to enhanced checks in particular, it is worth thinking about the types of jobs we are talking about. This is a huge generalisation, but jobs that involve criminal record checks, particularly standard and enhanced checks, are much more likely to be higher-paid, professional jobs. If we have a very wide-ranging set of disclosure rules for those, the perception for many people is that they are not achievable.

I would be the first to say that many people with convictions do secure jobs that involve enhanced checks, having disclosed them, but that perception is not widespread among people who have criminal records, so they do not bother applying. There is this problem across all types of employment of the way that employers recruit—in the way that they ask people to self-disclose during the recruitment process.

I am sure the Committee is familiar with the Ban the Box campaign and trying to encourage employers to remove that, because a lot of people, particularly when applying for jobs in the social care sector and teaching, often do not realise that at the moment they need to disclose their criminal record even though it is spent. People get sold this concept that it is okay; once it is spent, it is done with. We know, and clearly the system shows, that that is not the case. There is something to be said for the way that companies recruit, but I know that the focus here is on what gets disclosed.

There is a huge problem with the way that many employers think that somebody must have a clean DBS certificate, with nothing on it. That results in some quite perverse operations of employers, often saying, "If you can get this removed, I will be okay; I will employ you. If you can just go back to the police and ask them to remove this, we will take you on." That is a really strange way of approaching risk because it is like saying, "I do not want to know that."

That leads on to something, which is that the current system often tells employers a lot of information that is irrelevant, but as they are being told it they believe it is relevant because the Government would not be giving them that information unless it was.

Q10 Chair: I understand that. Have any of the local authorities, with their blanket exclusion, been challenged in the courts about it, or not?

Christopher Stacey: In the courts, not on those blanket bans. There was a case last year against Hammersmith & Fulham, where they had taken into account a spent conviction of a person of whom they were



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aware because they had grown up through the care system, so they knew of this person's offending history. In their early-20s they had refused them entry on to the housing register and so they had taken a claim against them. That was successful, and we are in the process of trying to use that to encourage other local authorities to change their policies. But I believe it is an area that needs some consideration because it is clear there is an increasing area of local authorities using it as a way of managing a short supply.

Q11 Chair: If you are not on the list, you cannot be nominated to the RSL either, can you?

Christopher Stacey: Precisely.

Ali Wigzell: To add to that, even though in terms of housing it is often about spent convictions, often for those applying it is not clear whether it is about unspent or spent; so that adds an additional layer of issue.

Q12 Mr Hanson: Can we look at international comparisons for a moment? I know, Ali, that the Standing Committee did a report last year looking at a range of countries in Europe, America and beyond. From the Committee's point of view, is there any particular jurisdiction that you have looked at that you think is a model that we could at least examine and consider?

Ali Wigzell: We have always held off from saying that there is a particular jurisdiction that England and Wales should follow, in large part because the criminal records systems and youth justice systems of the jurisdictions that we examined are often so intertwined that it is difficult to have one without the other. However, there are particular principles that we could apply here, having looked at the 16 jurisdictions that we did in our study. There are two particular principles that are important in this respect.

The first is about treating records acquired as a child differently from those acquired as an adult. That is not something that really happens in England and Wales at the moment. You could argue that some of the rehabilitation periods are shorter, but, for all intents and purposes, it is essentially the same system, whereas, if you look around the world, many of those jurisdictions that we looked at have entirely separate databases for childhood criminal records. Germany, Ohio, Texas and Spain are some examples of that.

The second particular area of learning is that England and Wales are quite unusual in how long we disclose childhood offences for, and we disclose those offences to quite a large list of people, whereas if you look around the world the practice is quite different. For example, in Spain, access to criminal records is extremely limited. In Ohio, Texas and New Mexico, criminal records acquired as a child can be sealed so that they are no longer disclosed. It is the same practice in New Zealand, so they would be sealed after seven years, for example, whereas, here, offences could feasibly be disclosed for 100 years.



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Q13 Mr Hanson: Within that, are there any assessments of seriousness of offence in relation to that, or is it simply all offences?

Ali Wigzell: No; there are assessments of seriousness. For example, in Germany, only those childhood offences resulting in custody, which is itself very rare in Germany for children, are disclosed. It is not a blanket “everything is disclosed or it is not”. The systems all work slightly differently, and if you wanted some more information on that point then we would be happy to provide it.

Q14 Mr Hanson: Christopher, are you aware of any other comparative studies other than that Standing Committee study? Are there any other examples you would like to draw to the Committee’s attention?

Christopher Stacey: In 2014 I had a fellowship from the Winston Churchill Trust to go to three countries in Europe. There were some themes that are broader than simply children, but it is worth mentioning. Ali has touched on different systems of sealing, expungement or wiping. I found the French system particularly interesting, in that they have a discretionary process called judicial rehabilitation, where they have a role for the court. It is only the court that has the ability to deliver a lifelong sentence, so it is only the court that can then have an ability to remove that, in a sense.

It is quite interesting that across France, Spain and Sweden—the three that I looked at—they do not tend to have this culture of having to self-disclose criminal records. Their culture is that, if an employer needs to check, they will do a check at the appropriate stage in the recruitment process. In Sweden, in particular, they have seven different categories of jobs where they target the disclosure much more closely to the type of job, whereas, at the moment, compared with England and Wales, we have standard and enhanced. It is a very blunt set of relevance. They have sought to identify that a little more closely and think about what information is relevant to the job that you are applying for.

Q15 Richard Arkless: Moving on to young adults, as you are probably aware, as part of this inquiry we have heard much evidence that the consequences of having a criminal record for an adult can sometimes frustrate them in being able to desist from crime and leading a positive life and contributing to society. In relation to young adults, would you agree with that assessment?

Christopher Stacey: Yes, without a doubt. It is clear that, given that young people commit crime and they typically stop in their mid-20s, recognising the need for a distinct system for under-18s, we should look at a more nuanced system for young adults. That is, in part, because many young people at that point stop committing crime. That happened in a part of their life where they were very different; they were maybe somewhat immature; and now it has very little bearing on them moving forward in the future, but in fact it carries that lifelong stigma in a way that is disproportionately affecting them.



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If you compare somebody who commits a crime when they are 20 with somebody who commits a crime when they are 40, the 20-year-old has a much longer period of stigma in their life, which is quite interesting to think about. We are almost penalising people more because they were young when they committed crime.

- Q16 **Richard Arkless:** Do you think that therein develops a kind of “them and us” mental approach by some young adults who have been convicted and can’t shake it off? For example, do you think that their perceptions of the justice system, or indeed themselves, can become distorted and be another factor that can make it harder for them to desist from crime, which develops this “them and us” that is disproportionate and prohibits them from leading full and active lives?

Christopher Stacey: There is certainly an element of that. We speak to over 6,000 people every year and, probably disproportionately, we regularly speak to people who are really angry and have a sense of injustice. We hear a lot about paying your debt to society, making reparation, making positive steps, becoming an active contributor. Your efforts are frustrated in doing that, often for the rest of your life. I would say that there is a feeling of anger towards the system for feeling as if they have been sold a lie to some extent.

- Q17 **Richard Arkless:** It is not just not being able to get the job or not being able to get that insurance, but there is a build-up of resentment that can happen.

Christopher Stacey: No, because a lot of people that we speak to have found work and they continue to find work; they just constantly find it difficult to, and they constantly feel as if they are having to explain themselves, yet again, to somebody else.

I read an email on the train in this morning from somebody who was convicted when they were 12. They are now in their 50s and they have been in continuous employment for the last 30 years, but every time they move on to different jobs they have to go through this process yet again and explain to somebody else. That just feels like an injustice to them. They feel really angry; it is shaming, it demotivates them and it feels like they cannot move on.

Ali Wigzell: It is also important to recognise that those points that you have raised around young adults and legitimacy are likely to apply to under-18s as well. For example, we know that children, particularly from black and minority ethnic backgrounds and looked-after children, are very overrepresented in the youth justice system, so they are far more likely to get a criminal record than their peers who do not come from the same backgrounds. It is really important to recognise there is an equality issue there and there may already be feelings, among those groups, of issues of legitimacy of the system. A criminal record can just add to that.



Just on the young adult point as well, obviously the SCYJ's remit is under-18s, but there is clearly a strong case for a separate approach for young adults, as Chris has already highlighted. It is important that any approach recognises that children are a group with distinct needs and a special status, as outlined in the UNCRC, that they should deserve special protection. It is important that any reformed criminal records system for children is probably different from that of young adults.

Q18 Richard Arkless: Chris, as to "them and us" and the perception of the justice system, being frustrated and not feeling as if you can integrate into society because they are always asking questions and you always have to justify it, in situations where you have dealt with young adults—because they come to you about these issues—are there any circumstances where that has been the clinching factor of that person not being able to reintegrate into society and then falling back into crime? It strikes me that not getting the job and not getting the insurance are the real, firm barriers, but this is something that could trigger that move back into crime. If you have come across some examples, that would be helpful.

Christopher Stacey: Having done this job for eight years, I have undoubtedly spoken to people who will make comments such as, "I could have gone back to crime so easily." We tend not to hear from the people who have, instead, gone back to crime. This is always worth remembering. We should not really be worrying about the people who are facing these problems, because they are the ones who are trying to do the right thing: to get a job; to get a house; to get a mortgage to look after their family. It is, without doubt, something that people constantly come back to, which is to reflect, "It could have so easily been different for me. Actually, I was quite resilient," but other people are not so resilient and so will do that.

We have to be careful, though, of linking the problems with the criminal records system to an argument around reoffending and the risks attached to that. There is a dangerous path that you could go down there. There are efforts that our system could make to promote rehabilitation more, but I do not like the argument that we have to change the system, otherwise you are going to force them to commit crime, because that is a slightly dangerous one.

Q19 Alberto Costa: Could I turn your attention to identifying an appropriate balance between protecting employers and the public, on the one hand, and the rehabilitation of young offenders, on the other? My first question is to Ali Wigzell. As you know, our inquiry terms of reference ask whether the disclosure regime strikes an appropriate balance between protection of employers and the public, on the one hand, and the rehabilitation of people committing offences when young, on the other. Surely you are not suggesting that rehabilitation should take precedence over public protection.



Ali Wigzell: We would say that public protection is very important and we do not feel, at the moment, that the system is appropriately balanced though between public protection and rehabilitation. In our view, it is entirely possible for a reformed system to focus on both public protection and rehabilitation, but at the moment there is far greater weight on public protection than rehabilitation. There is absolutely no evidence that placing a greater emphasis on rehabilitation would have an adverse effect on public protection. As our international research has shown, most of the jurisdictions that we examined had a greater focus on rehabilitation and there were no reports of that having had a negative effect on public protection.

Q20 **Alberto Costa:** Where was your international research conducted?

Ali Wigzell: In sixteen jurisdictions. We looked at the UK, a number of European countries, the US and Commonwealth countries. We can provide more information on that in relation to public protection, if needed. It is also important to note that, given what we know about childhood offending and given what Chris has said that it peaks during the late teens and tends to stop around the mid-20s, using a child's offending to judge their risk as an adult is really a poor predictor of their risk.

Thinking about the evidence that has already been received by this inquiry, we noted that the National Police Chiefs Council has already expressed its support for a more nuanced approach to disclosure.

It is always helpful to talk about examples here. An example that we have come across is a 50-year-old applying to be a traffic warden and they have been prevented from getting that job because they have two shoplifting offences that they committed when they were 12. We would argue, how does that protect the public? This underlines the point that the system currently discloses more information than is necessary to protect the public and impedes rehabilitation in the process, which is the ultimate aim of the youth justice system.

Q21 **Alberto Costa:** Could I ask Christopher Stacey a similar question? Unlock's written submission casts doubt on the value of searching for a balance between the interests of people with convictions and the need for public protection. Can you explain why your organisation has these doubts about the need for a balance between disclosure with public protection?

Christopher Stacey: Yes. First, it is important to say that both are very important—both rehabilitation objectives and public protection. When you set them up as a balance you are setting it up as a zero-sum game, where you have to do more of one and less of the other to seek the right balance. It rather strangely suggests that we have two different groups of people— people with convictions, who are risky, and society, which is vulnerable. In fact, we have over 10 million people in the UK who have a



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criminal record, so those lines are not as clear-cut as we might like to think they are.

We have to think about what type of message that sends if we think of it as a balance, because one of the problems in the way that the system has developed is that employers, particularly, equate a clean criminal record as meaning that somebody is not a risk, and they assume that a criminal record means that they are a risk. Many people—in fact everybody—commits a crime at some point in their lives when they have a clean criminal record. The criminal records of most people are not relevant to the reasons why they are applying for jobs. It is the metaphor that is unhelpful in terms of balance, as opposed to not recognising that both systems are important.

We are saying that the system needs to be much more closely aligned to what is required to achieve public protection. At the moment, we are disclosing significantly more than is needed to achieve that, and Ali's example of two shoplifting offences demonstrates that the bluntness of the current system is not achieving that level of public protection. It may well be, but it is going way beyond it as well, and disproportionately so. We may come on to this, but I would argue that to suggest that the current system has been developed in a calibrated, very carefully targeted way would be a huge mischaracterisation.

Q22 Alberto Costa: Have you asked employers what sort of disclosure they feel they would like? Perhaps, on first blush, they might say "everything", but have you had any proper discussions with employers to raise the issues that you have just raised and get clarification from various industries as to what sort of disclosure they would really be aiming for? For example, in the legal sector you would want to know about honesty, fraud and so on, as opposed to maybe a very minor offence, which involved driving a car or something of that ilk.

Christopher Stacey: To answer your question, we have not done that comprehensive study, but, in reforming the system to make it a much more proportionate one, they are the types of conversations that the system would need to have. You are absolutely right; a lot of people would characterise employers as saying, "We want to know everything," when, in fact, in a recruitment process, speaking to HR professionals and vetting people, they want to know the things that are relevant to their organisation and to the risks of the job.

I know that Business in the Community submitted a response to the inquiry—I have alluded to this already—to suggest that employers generally tend to assume that the information that they are given is relevant. Many ordinary jobs will have assumptions such as, "If you have an unspent conviction, it must mean that we cannot take you on because that must be relevant; that is why we are being told it." That is almost a culture of the way the system has developed over time, because we were never there 20 years ago but we are now because of the culture of criminal record checks.



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Q23 Richard Arkless: Within the rehabilitation versus the public protection tension, if you like, and the balance, within public protection how do you see the current system? Is it geared towards public protection or is it geared towards managing the risk of employers? It strikes me that much of what you are saying about disclosure and the unintended circumstances is all to do with managing the risk of employers and it is not really substantively to protect the public. What are your views on that tension? Is it really about protection, or is it really about managing the risk of employers?

Christopher Stacey: That is a difficult one. The perception is that the role of Government has been to push that decision down to employers, expecting, understandably to some extent, that employers will make carefully calibrated decisions. All the evidence over the last 20 years of having criminal record checks is that that often does not happen, and that is because of the way that employers perceive their role in that process.

We can learn from other countries here in the ways that they have sought to achieve public protection, having systems of saying people cannot do certain jobs. We have a system like that at the moment, the barring system, but that exists on top of a very expansive disclosure system. Other countries have expanded their barring system to say, "We'll just say that that person is not able to do that type of job, but they can do every other job and they do not have to disclose their record because it is not relevant."

But as to that particular job, where the public protection element is so important, they are disqualified from that job. That is another way of going about it, but it potentially brings you closer to a position where you are targeting the information to the relevant job or sector that somebody is going into. The barring system that we have has come about in more recent years and has been thrown on top of a disclosure system that already exists; so we now have a double system in a sense.

Q24 Kate Green: We have heard a lot of your concerns about the system. We would be interested to know what changes you would like to see to the regime. For example, do you think that these offences should be spent more quickly than at present?

Ali Wigzell: We have set out our very detailed recommendations in our submission, but, broadly, we feel that rehabilitation periods should be shortened to give children a much greater opportunity to turn their lives around and to focus on what the system should be doing, which is about rehabilitation.

We feel that, in terms of filtering, there should be an expansion to the system. There should not be a list of exempt offences. It should be about the disposal and the sentence, because that is a much better guide to the seriousness of the offence and the offence itself. There are countless examples, many of which you will have received in written evidence, of



children who have been convicted perhaps of distributing a sexual image of a child, and that, unfortunately, with sexting, can be done relatively innocently and they will not realise what they have got themselves into.

Similarly, another example is a robbery offence. It could be a child taking a phone from another child outside the school gates and they will be cautioned or convicted of robbery. It is very important to look at the disposal and the sentence.

We also feel very strongly that the two offences rule, in terms of convictions, should be removed for some of the reasons that I have already outlined, but also, very often with children's offending, they might go through a short period of offending where they are committing quite a number of offences. Perhaps something has happened in their life; their parents have split up or a very close family relative has died, and they are committing a number of offences as their behaviour responds to that, or it is only one offence but it is counted as a number of offences. We know, from our FOI request, for example, that 88% of convictions of children were not filtered, and, often, many of the offences were quite minor and could have been filtered, which suggests that it is the two offences rule that is the issue here.

Finally, we feel that there should be the possibility of wiping the slate clean for childhood criminal records, after a certain period of non-offending has elapsed—10 years, for example—based on what we know about reoffending. We may also, therefore, need to make exceptions for certain serious and violent offences. There could also be a review mechanism, which hopefully we will come on to later, which could be introduced so that even those offences could possibly be wiped in the long term.

Christopher Stacey: We have been actively involved as a member of SCYJ and their recommendations, so we support those wholly. There are some broader points about the Rehabilitation of Offenders Act, which may take the Committee a little bit broader. I had mentioned about the abuses of the Act, by local authorities, insurance companies and employers to some extent, which means that, if we had a situation where childhood criminal records became spent sooner, it is important that that is followed. At the moment, there are a lot of abuses to the Rehabilitation of Offenders Act and there is a need for a much wider review on the way that that operates, because we regularly come across spent convictions causing people problems.

There is a really interesting technical anomaly with the legislation at the moment, which affects young people particularly, in that motoring offences, under the Rehabilitation of Offenders Act, currently take five years to become spent. That has been the case since the law changed in 2014, because they were the one thing left that was too hard to do at the moment. We are now three years later and the Government have still not done anything about that.



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On the filtering side, I would echo everything that Ali said. There are just a couple of things to pick up on. The system needs to have a few principles attached to it; it needs to be transparent and fair, which means that people need to know what will be disclosed.

At the moment, there is a very bizarre system, which is that you cannot get a copy of your own DBS certificate. So, when you are applying for a job and an employer asks you to disclose, you can't make that decision because it is very difficult to. That is one of the things that we spend a lot of time, on our helpline, trying to give advice around. Having that ability to obtain your own certificate would be a positive step forward and introduce a level of discretion and flexibility. At the moment we have a hard set of rules, such as two offences, which means that one of the cases going through the courts at the moment of somebody—

Chair: We are going to have to speed up a bit, I am afraid.

Christopher Stacey: Sorry. Somebody has two offences from when they were 18 and 19 and they are with them now that they are 50. It is a very arbitrary line. We would echo everything that they have said.

Q25 **Kate Green:** On that in particular, do you think there should be a right to appeal or to request a review, as there is in Scotland or Northern Ireland, for example?

Christopher Stacey: Yes. The current blunt system has hard lines that people fall outside of—such as multiple offences, two offences within the same incident. We have views as to how that could operate, whereby you still have automatic rules as we have now, which would cover the vast majority of cases, but recognising in these individual cases a discretionary process. The NPCC response supports the role of chief officers being given more responsibility to be able to look at individual cases, because it is about human intervention.

Q26 **Kate Green:** Yes, sure. I understand that. It is not quite the same as initiating a review or an appeal, but I understand what you are saying.

Christopher Stacey: A review process, I believe, in a similar way to how that works for police intelligence disclosure at the moment. The police make a decision and it would be important to have an independent review system.

Q27 **Alex Chalk:** Should there be a review of the rules governing disclosure of police intelligence so far as young people are concerned?

Ali Wigzell: We have not looked specifically at the rules and the guidance at the SCYJ, but, as you have seen from our submission, we feel that there should be a presumption against disclosing police intelligence in the case of under-18s. That probably would lead to some changes in the rules and guidance at present, because, at the moment, the principle is that there should not be a presumption either way. We



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feel that there very much needs to be a distinct approach to disclosing police intelligence of under-18s.

Q28 Alex Chalk: Let us just test that for a second. Suppose there is intelligence that a 17-year-old is involved in abuse of minors and then, aged 18, applies for a job in a school. Are we suggesting that that, therefore, should not be available in an enhanced DBS check?

Ali Wigzell: We are saying it is about the presumption against. There are clearly always going to be exceptions to that rule. As Chris has said, there is potential for a review mechanism to work quite well here. Also, it is worth looking at the reoffending information on this. Obviously, with reoffending, it is police intelligence and slightly different, but we know that for a child who is involved in a sexual crime the reoffending rate is very low.

Q29 Alex Chalk: This is about intelligence, as you said. You say presumption against. Would you agree, broadly?

Christopher Stacey: One of the shifts in police intelligence, in recent years, has led to a decrease in the number of disclosures. That is as part of an aim to achieve consistency. There are still 43 police forces that all make their own decisions on that, which does still lead to inconsistency. There are changes to the DBS systems—a move to an online process—which can undermine the current protections. One of the current—

Q30 Alex Chalk: Should we be treating it differently? That is what I really want to know.

Christopher Stacey: There is a detailed framework, which I believe works well in principle, but in practice that system requires people to proactively challenge. We are talking about, potentially, young people having to challenge the decision of a police force to decide to disclose something. Structurally, where they are making disclosures, I am not quite sure that the current system is—

Q31 Alex Chalk: There needs to be a better system for young people to assert their rights, effectively, to have it not disclosed.

Last question: is 18 the relevant age in all this? Do you think that criminal records, intelligence and everything, should be treated differently for under-18s, or is 25 the age? What do you say is the relevant age here?

Ali Wigzell: Given that our focus is under-18s at the SCYJ, we would say that children—under-18s—have distinct needs; they have a distinct status and require special protections, as set out in the UNCRC. It should be a different approach.

Q32 Alex Chalk: You are not suggesting anything different for over-18s; this is purely about under-18s.

Ali Wigzell: We would say that there is a different approach required for 18 to 25s, but, as Chris has already said, it is perhaps a more nuanced



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approach so it is not necessarily extending the system. It might be a slightly different system for 18 to 25s.

Christopher Stacey: We believe there are ways that a system should be distinct for children and that has flexibility for young adults, in short. That flexibility just does not exist.

Alex Chalk: That is helpfully summarised. Thank you.

Chair: That puts it very well. Thank you very much for your time and for your evidence. It has been very helpful to us. It is much appreciated.

Examination of witnesses

Witnesses: Dr Phillip Lee MP, Sarah Newton MP and Christian Papaleontiou.

Q33 **Chair:** Good morning. Welcome, Ministers, and Mr Papaleontiou. Thank you very much for coming to give evidence to us. I am grateful to both of you coming as Ministers from the two relevant Departments. For the record, could I ask all three of you briefly to introduce yourselves?

Dr Phillip Lee: I am Phillip Lee, Minister responsible for Youth Justice, Victims Policy, and a long list of other things, Chair.

Sarah Newton: I am Minister for Safeguarding Vulnerability and Countering Extremism, but with particular responsibility for the DBS.

Christian Papaleontiou: I am Christian Papaleontiou. I head up the Public Protection Unit in the Home Office.

Q34 **Chair:** I am going to talk about the division between the two in a second, but, looking at first principles, both Ministries have helpfully provided a joint submission of evidence to us, for which we are grateful. Both of you accept that children offend but they may benefit from a second chance “following their earlier errors,” is the phrase. It seems like common sense, but it has been put to us quite forcefully that the system we have makes it extremely hard for them to get that second chance. Is not the reality that, whatever the theory, in practice it is really tough, really hard, to get that second chance?

Dr Phillip Lee: By way of introduction, the youth justice system, Chair, has to have this balance between protecting society and providing the environment in which to be rehabilitated, and supporting those young offenders as they mature and go on and hopefully lead law-abiding lives in the future. It is a difficult balance to strike, particularly when you start talking about sexual crimes and more violent crimes. I am persuaded that the current balance is right, but it is important that all agencies involved should keep a constant eye on reviewing that, because life changes—society changes.

Q35 **Chair:** We understand, obviously, about those issues that are sensitive and so on. We have heard evidence about people who have fairly minor convictions, repeatedly, up to the age of 50, having to disclose them



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every time that they want to change their job. That is hardly helping people to rehabilitate themselves, is it?

Sarah Newton: Can I just make a few introductory remarks about the principle of what you are saying that young people deserve a second chance? I absolutely agree with you. Also, part of my role is to encourage really good education, so that young people do not even commit offences in the first place. That is a big part of our work, which we jointly do with the Department for Education. I hope the Committee would welcome, as I do, the fall in the numbers of young people committing crimes in the first place. That demonstrates that we are making some real progress.

We also take a view, by working with our police partners, that, if, say, a young person is picked up by the police in possession of a knife or drugs, we can often see them as much as a victim as we do as a perpetrator of an offence. We look at that person in the round and look at ways that we can divert them. We have a lot of work that we do, for example, in our gangs programme, where once a young person comes into the police station then they will go through the criminal justice system. They also have a youth worker who speaks to them. We think that is a really teachable moment.

Then, at the same time, in parallel, they will be offered support to give them every opportunity to turn their lives around and get re-engaged with education or employment. This is happening in lots of areas where young people are coming into a police station, where we identify their vulnerability and see them, as I say, as a victim or certainly a young person who needs a lot of support to prevent them from escalating their criminal activity.

Q36 **Chair:** Nobody is going to dissent from that, Minister, but the problem seems to be in the way this operates in practice. We are moving very specifically not on to those laudable objectives of rehabilitation but the way that the disclosure system works, both with spent convictions and the DBS. The evidence we have heard, quite compellingly, seems to suggest that it is going beyond those crimes that inevitably you think ought to be disclosed because of sensitivity or some potential risk. It has been characterised to us, by a number of witnesses, as a blunt instrument. Don't you accept that maybe it needs to be refined?

Sarah Newton: Chair, I can absolutely assure you that we keep the regime under constant scrutiny. As you will be aware, it has been amended by legislation over the years, as recently as 2013, in response to a High Court trial and all the evidence that came out of that. This summer I asked the Law Commission to review the disclosure list, to make sure that the list of offences is the right list of offences because that is best practice—good practice—to be constantly reviewing the effectiveness of legislation and making any changes.

In the spirit of keeping it under constant review, I would like to draw the attention of the Committee to the written evidence, where we say that in



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the disclosure regime we separate out young people under 18 from those over 18. The whole system balances the two objectives of keeping people safe but enabling people the right to a private life, and that they can be rehabilitated and go on to lead a full life in society.

There are a whole series of things we do. For example, the rate at which convictions are spent is accelerated; it is half the time that it is for adults. There are a range of measures within the disclosure system that aim to seek to address the very problem that you highlight.

Q37 Victoria Prentis: You mention the Law Commission report, Minister. That report describes the current legislation as hard to understand and fraught with operational problems. What actions are you planning to take in response to that report?

Sarah Newton: As I say, I commissioned that report myself because it is really important that we get clarity. As the Committee will know, there are a number of cases in court at the moment. We are also waiting on those rulings to provide that additional clarity. We will take the Law Commission findings and put that alongside the rulings that we will get from the cases that are in the courts. Then we will take whatever action needs to be taken to provide the additional clarity that will enable us to operate the system fairly.

Q38 Victoria Prentis: They also mentioned, in their report, that there was a compelling case for a wider review of the disclosure system. Is that also something that you are going to commission them to undertake?

Sarah Newton: Thank you for that question and the opportunity to talk about that. It is something that we constantly keep under review. These are fundamental issues. We are trying to strike the right balance between keeping people safe and making sure people have their right to a private life and that their opportunities for employment are not unnecessarily impinged upon. With each month, there are new revelations about different occupations, different people, the type of harm that they are undertaking, revelations about football coaches with the FA.

These things are happening virtually on a monthly basis, which means that we need to keep the regime constantly under review and learn from where it is and is not working, and take action, and always keep it under review. Any suggestions made by the Law Commission we will take seriously. Overall, we feel the regime works well. Overall, the regime provides the right balance, and there are opportunities for redress. If people feel that they are being unfairly treated in the system, there are opportunities for them to pursue that.

Q39 Victoria Prentis: You mentioned education earlier and how important that is in the rehabilitation of a young offender, in particular, from an offending- type of behaviour. The difficulty with the under-18s is that, as soon as they are released or move on from their offending behaviour, they have to apply for college, or we would like them to apply for college



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or further education of some kind. Immediately, they are stuck with having to fill out a form on which they detail their offending behaviour. Is this an area in particular that concerns you?

Sarah Newton: For young people going into education, for them to be fully supported by that institution, it is important that they have the information, because it could be a critical part of their rehabilitation. Good colleges, good schools, will have services for vulnerable young people—mental health services and other support services—to make sure that that vulnerability is properly looked after. Disclosing information can be beneficial in that situation.

Q40 **Victoria Prentis:** The evidence is that the very fact of disclosure is putting young people off making that application in large numbers of cases. Do you think more needs to be done, with universities and other colleges, to educate them in what you have just said?

Sarah Newton: There is always more that can be done, but perhaps I can pass to my colleague to talk about this.

Dr Phillip Lee: The nub of the issue is, to what extent should crimes committed in childhood be carried through adult life? The difficulty here is the type of crime that has been committed. This is where I am quite prepared to declare that we need to continue working on what constitutes criminal activity in childhood, particularly around sexual behaviour.

Q41 **Victoria Prentis:** Sexting, for example, is a new area.

Dr Phillip Lee: Absolutely. The age of consent and what constitutes criminal activity for young people in this area is a moving picture. That is why I am pleased that the review is ongoing and I know that the Home Office is working on this area. What concerns me more is this idea of whether something that you do at 12 or 13, which is not on that list of appalling crimes that we can all imagine, can shape your future opportunities.

I personally think that we should try to get away from it having such an adverse impact. The difficulty always is the balance with security for the wider public. In those areas, particularly where you are working with children, perhaps going for a teaching qualification or whatever, to what extent should acts figures that were committed, say, between the ages of 12, 13 and 14? That comes down to an assessment of risk on the part of professions. One thing of which I am persuaded is that there is some flexibility in the system as it currently stands.

Q42 **Victoria Prentis:** Do you mean with the chief police officers being able to—

Dr Phillip Lee: Both with the police and the judiciary as well.

Q43 **Victoria Prentis:** Do you think that is being sufficiently used, because one of our concerns is that it is not and there are discretions built in that are not being sufficiently explored?



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Dr Phillip Lee: I am happy to take that away if you think that there is evidence that they are not being appropriate in the way in which maybe they use cautions as opposed to custodial sentences, because both are admissible and can be declared. I do not think that in these situations we can sit here and make some sort of arbitrary decision. Each individual case can be quite nuanced around consent, consensual activity and the like. We have to task the police and the judiciary, and, indeed, any other agency, to make a judgment on risk.

With regard to going to college, yes, it should be the case that we should try to give people a second chance at that stage and encourage them to go into secondary education. In my experience, having met quite a few people who are currently in custody, we have been successful in going from 3,000 down to 900 in youth custody over the last 10 years. There has been a dramatic fall in the number of young people who are in custody, which means that the 900 who are—the 900 places because it flows—are individuals who are quite challenging to deal with. Therefore, their chances of going on to college and the like are not—

Q44 **Victoria Prentis:** We accept that but we are talking here about records. We are not just talking about the children in custody; we are talking about the wider range of children who can be impacted almost as badly with a caution on that form, or it will put them off applying for college, as much almost as another form of criminal record or a spell in custody. It is very important, is it not, that we have the full range of ability to deal with every different case?

Dr Phillip Lee: Yes, but what underpins my entire file today is, where do you take risk? It is the balance of risk. It concerns me that there is a tendency towards risk aversion in Government generally; it is not just justice. The problem is that the list of exceptions grows and the list of circumstances in which we had better err on the side of caution grows. Be assured that I constantly keep looking at that because I want to give as many children as possible a second chance.

Q45 **Chair:** It strikes me that you say the list of exception grows, and that is right. You have, essentially, two Departments running two systems. You originally had the system under the 1974 Act that the MoJ was running, with disclosure records, and the DBS has been overlaid on it. Are they really joined up or is it the fact that, rather, it is two separate systems creating an additional complexity, which creates some of the problems?

Sarah Newton: We are here today; we gave a joint submission.

Dr Phillip Lee: We talk a lot.

Sarah Newton: We work together on a lot of interministerial working groups, and it represents the challenge that you have quite rightly confronted about this balance of safety versus rehabilitation. We all need to be very mindful of that at all times, and we have the two Departments working closely on that. The Department for Education often gets



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involved in our work in this area as well. That is really important. Two heads are better than one.

- Q46 **Chair:** Somebody said the last major look at this was about 2002 and not much has happened since. Are there any plans to have a look at it with a view, perhaps, to rationalising—

Sarah Newton: I am not aware of any plans.

Dr Phillip Lee: Rationalising?

- Q47 **Chair:** The fact that we have these two separate systems. Should there, in fact, be one that is more closely linked?

Sarah Newton: I am not aware of any plans, no.

Dr Phillip Lee: I am not aware of anything.

- Q48 **Chair:** You were saying that you work together pretty closely. At the official level, is that the case too?

Sarah Newton: Yes, our officials have very good working relationships. Christian can answer better than me.

Christian Papaleontiou: Again, the two Departments work very closely together, and, as the Ministers have stressed, you have the Ministry of Justice with a clear focus on rehabilitation of young people and offenders. We have the Home Office. My job in the public protection unit is thinking about safeguarding vulnerable people. That dual departmental role, where we are able to challenge each other's positions and priorities, ensures that we try at least to strike the right balance.

- Q49 **Richard Arkless:** What concerns me about unnecessary disclosure, in certain circumstances, is that it can really inhibit people getting on in life. That is something that we all want to prevent and we would all have that in common. I am not talking necessarily about the heinous crimes that clearly, in circumstances, would need to be disclosed, but we have heard lots of evidence that young people commit relatively trivial crimes and it inhibits them for life. It is not necessarily tied to the profession, because you will detail the excepted profession, but then any crime fits within that and gets sucked within that excepted profession to be disclosed.

What about a review process, where the individual can go to court or go to a review body, put the facts and circumstances of their case, and have the judge or that body remove it entirely from their criminal record so that it did not have to be disclosed for excepted professions? There is something similar in Northern Ireland, and we can make applications to the sheriff court in Scotland. Where is the UK with this? Is that something that you would like to do? If so, why, and, if not, why not?

Sarah Newton: Thank you for that question. We do have that built into our system, which I will go on to describe. It is not the same as the devolved Administrations. These are devolved matters in Northern Ireland and Scotland, but there is that opportunity.



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First, if we take a step back, unless a young person then subsequently goes on to apply for an occupation that does require an enhanced level of disclosure, most people, if they are even asked for a certificate, will be asked for a basic certificate. Of course, spent convictions are not reported and not disclosed. As I mentioned before in my opening remarks, an activity that somebody committed under 18, whether it was a caution, a conviction or a prosecution, will be taken off the disclosure.

Q50 Richard Arkless: But not for excepted professions though.

Sarah Newton: It would only be if they were going to be a nurse or going into social care or whatever. Then there are the filtering arrangements. For example, say the young person only ever once got caught shoplifting—not that shoplifting is a minor offence for a retailer. Most of us would think, for a young person shoplifting a Mars bar or a lipstick at the age of 14 who got a caution, that that would be a piece of information that would probably be filtered out, because the filtering regime is about taking out minor and old offences.

Q51 Richard Arkless: We have a filtering regime and not a review regime.

Sarah Newton: I will come on to the review. So, we have that. There are a number of safeguards. There is the filtering, which is one safeguard to prevent that from happening. Ours is a very open, transparent and rules-based process, so anybody can see what the rules are. If, for example, something was put on their certificate that they felt was unfair, they can go back to the DBS and say, "This is unfair." We have an independent monitoring system within the DBS. There is an independent monitor, who randomly checks the decisions that the DBS is making over the course of a year to make sure that they are accurate.

Q52 Richard Arkless: Yes, but that is not the same as being able to go to a review panel and have it removed entirely, on the discretion of that panel. There is quite a gap between what you have in play and what we are talking about in Northern Ireland and Scotland, is there not?

Sarah Newton: It is different because it is not a panel, but it is an independent monitor. I would say that that independent monitor is providing the same function, i.e. giving people an opportunity to say, "This is inaccurate. The rules have not been applied properly. This is unfair on me," and it can be reviewed.

Also, you can complain to the police. If you feel that the police have disclosed some information that is having this adverse impact on you, you can make a complaint to the police and the police can take information off the database, because it is the police national computer files that are used in this process. There are avenues of redress that you are basically asking us for; they are just not the same as in Scotland and Northern Ireland.

Q53 Richard Arkless: I would suggest that they are not as strong as they are in the other areas and they are not as beneficial to young people who



are trying to rid themselves of the past and rehabilitate themselves into society. Just to finish off on that point, are the Government inclined to move from the position you are to a more all-encompassing review position, as we have in Northern Ireland and Scotland?

Sarah Newton: As I said, I believe our system is a good system that strikes the right balances. However, we are not at all complacent, and if your Committee produces really good evidence that shows that we should review it, of course we want to be evidence-based policy makers who do strike the right balance.

Richard Arkless: That is very helpful; thank you.

Q54 **Kate Green:** I have a quick question first, pursuing what was being discussed a moment or two ago, and then the thing I really want to ask. We have obligations, including international obligations, in which the best interests of the child are paramount. Are you confident, particularly Sarah Newton, that the criminal records system that we have aligns with our responsibilities to the rights of the child and the purpose of the youth justice system in this country, which is to rehabilitate and prevent reoffending?

Sarah Newton: Perhaps I will ask my colleague to answer that question first and then I will chip in, because that is his policy area.

Dr Phillip Lee: Is this with reference to the UN's committee report?

Kate Green: Yes.

Dr Phillip Lee: We have a timespan in which to respond to those recommendations, as I understand it. I am confident that the system, as it currently stands, is in line with what the UN has concluded. We have a system that stands comparison with anywhere else in the world, to be honest with you.

I keep saying this, but the difficulties are around what constitutes criminal activity in young people, particularly in the area of sexual behaviour. That is where there are difficulties at the moment, because where those cautions and convictions are placed follows people through life most. The theft convictions are spent. As you have already said, the rehabilitation period is shorter for under-18-year-olds. The challenge for us—there is a challenge for legislation and a challenge for all agencies in this area—is around the activity of young people and whether or not it constitutes criminal activity.

Q55 **Kate Green:** Do you think the disposal rather than the nature of the offence might indicate the seriousness of it?

Dr Phillip Lee: What, in terms of—

Kate Green: The penalty that is imposed. That might be a shortcut to deriving how serious the event has been.

Dr Phillip Lee: Yes.



Q56 Kate Green: Pursuing your point about your confidence that we are meeting our international obligations and stand comparison with any in the world, can I ask how the Government square their obligations under the UNCRC with the rule that child reprimands cannot be filtered if there is more than one of them? Two very minor offences, potentially, perhaps committed as part of one incident, mean that there is no opportunity for filtering. Are the Government comfortable with that?

Dr Phillip Lee: As I say, yes, we are. We have until 2022 to respond, which is a remarkable period of time.

Kate Green: It is quite a long way off.

Dr Phillip Lee: Yes, currently we are. There are no plans to change that.

Sarah Newton: In terms of thinking about the rights of the child, we must also think of those children who are victims. They have rights too, and we must think about the victims as well as the children who have perpetrated the crimes.

Q57 Kate Green: I am talking about quite minor penalties with long-tail effects for the perpetrators.

Sarah Newton: My colleague and Victoria have mentioned quite a lot about the new sorts of offences that we are seeing young people perpetrate: the use of technology; sexting; looking at images of child sexual abuse online. It can be quite difficult for young people to understand the age of consent, to even know that some of these activities are crimes, and then they find themselves with quite severe criminal penalties and are put on the sex offenders register.

This is an area that we are very concerned about—both the fact that this activity is happening, because it is so harmful for the people who are the victims of sexting and for the victims who are being exploited online and those images shared, as well as the possibility of young people being criminalised as a result of participating in this activity.

We are putting a huge amount of work into prevention, making sure that young people understand what the law is and what the consequences are. We are investing a lot of money in that, in online advertising campaigns; we work a lot with NGOs. Young people themselves help us develop this material, so that as we have this new, emerging threat as a result of new technology, we are trying to prevent this harmful activity in the first place. We would all have to agree that that is a good way that the Government should use its resources.

Q58 Chair: Fine, but it does not have much to do with disclosure, Minister.

Sarah Newton: Sorry?

Chair: It does not have much to do with disclosure though, Minister. With respect, of course we all have concern for the victims too, but the disclosure regime does not impact upon the victim. It is nothing to do



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with the case, is it? Our concern is this. Although we have concern for the victims, all the evidence shows that, if you want rehabilitation, the two key things for people to be rehabilitated are a decent home in terms of a roof over their head and employment, and education often leads to employment.

The evidence that we have consistently seems to suggest that the blunt instrument that has been used of the putting together of the rehabilitation of offenders regime with the DBS regime is getting in the way of young people pursuing those opportunities for rehabilitation. The concern for the victims is always there, but the disclosure regime is not victim-facing.

Sarah Newton: Going back to the point about the blunt instrument question, we believe that over time, in response to court cases, debates in this House, the work that this Committee and its predecessors would have done, through the filtering regime, we are addressing these concerns; and the way that we deal with rehabilitation and spending the convictions, differentiated between those under 18 and over 18, addresses that and strikes that right balance.

Q59 **Chair:** Mr Papaleontiou, do you have any operational view about the impact on the blunt instrument point?

Christian Papaleontiou: As to the things the Committee is discussing, it strikes me that there are some operational things in how offences are recorded in the first place. To use the example of sexting, which has already come up today, the police already have a new outcome 21, which is not to pursue it in the public interest, and guidance around the use of that outcome in the particular context of sexting cases, which would mean, for example, that perhaps an individual would not be cautioned or taken through the criminal justice system in the first place. That is quite important in terms of the investigation and the disposal at the outset.

Following on from that on the disclosure rules, there is a deliberate mechanism within the system that accounts for children's offending and the shorter periods that are in place for filtering. It is important that, when we think about this, we think about it in an end-to-end way.

Also, coming back to the point on victims, the disclosure regime is designed to allow employers to make decisions around employment, which is about safeguarding children and future potential victims. You cannot actually separate the two out as clearly as that. Again, it is difficult getting that right balance between public protection and safeguarding, but also making sure that young people have the chance and are not tainted by their past experiences. The disclosure rules and the way they are set up, and the rehabilitation periods for young people in the first place, try to mitigate the potential damaging impact of childhood crime on people's future opportunities.

Q60 **Chair:** What evidence does either the Home Office or the MOJ collect about the effects of the way the regimes operate on young people at the



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moment? Concentrating just on young people, do we have any collected evidence as to what impact it has?

Dr Phillip Lee: In terms of the impact of disclosure impacting upon employment?

Chair: Indeed, yes.

Dr Phillip Lee: I have not seen any evidence being collected in that area; it sounds like a good suggestion, Chair.

Q61 **John Howell:** I have a couple of questions about article 8 of the ECHR and how it relates to this matter. The first one relates to a suggestion from the Information Commissioner's Office that any scheme that does not permit the use of discretion by data controllers would conflict with article 8 of the ECHR. Do any of the three of you have an opinion on that?

Dr Phillip Lee: No, because there are cases ongoing, in which what you have just said is part of those cases.

Q62 **John Howell:** I am surprised you do not have a view on it. It may be—

Dr Phillip Lee: It is not that I don't have a view; it is that I cannot have a view.

Q63 **John Howell:** With regard to the cases of P and A and G, on which we are waiting for the Court of Appeal to comment, I am not asking you for a comment on the legal arguments, but if the appeals are rejected what steps will the Government take?

Dr Phillip Lee: There are four cases, as I understand it, and it is ongoing. I am not going to set out what our response is before those judgments are made.

Q64 **Chair:** Would you be prepared to come back once the judgments have been made?

Dr Phillip Lee: Absolutely. I am always happy to come back, Chair.

Q65 **John Howell:** We will look forward to seeing you back here. Let me just ask some questions in relation to the inquiry that we did on the treatment of young adults. The approach that we took there was a far more nuanced approach than the one we have heard today in the handling of young adults in the criminal justice system. The question there is, would you be willing to consider the evidence that we have put forward in our report?

Dr Phillip Lee: On what, sorry, specifically?

John Howell: On the treatment of young adults in the criminal justice system.

Dr Phillip Lee: I am not responsible for young adults; maybe the evidence in that report suggests that I should be, but it is to do with maturation of the brain, the evidence from 18 through to 25, and that



young adults should be treated differently from adults beyond that point, as I understand it. I am not responsible for that area. My own personal opinion on this is that you have to draw a line somewhere between being a child and an adult, and where we are at the moment is appropriate.

Q66 John Howell: One question that is not answered in your joint submission is the point about the age, either 21 or 25, about the disclosure of offences. Would you like to comment on that?

Dr Phillip Lee: The problem with all of this is the arbitrariness of drawing an age of competence, of responsibility, a point at which your disclosure should change because you are under 25 or under 21. The age of consent is 16. In preparation for this Committee, it struck me that we are not really sure across the whole of Government. For example, I cannot prescribe a contraceptive to a girl unless I deem her competent. Fraser competent is what it means. That usually happens round about 13 or 14, in my clinical and professional experience, yet the criminal age of responsibility is 10. There are some contradictions here around what constitutes a child or an adult that transcend not just criminal justice but our provision of healthcare.

I would encourage Government, more generally, to talk about this, but this is the problem when it comes to arbitrarily saying between 18 and 25 you are going to treat people differently. There is something in this, because you can find some individuals who are emotionally immature, reach 25, reflect upon their behaviour and realise that they were wrong. There are others who do not do that.

You can find 15 and 16-year-olds, particularly girls, who are incredibly mature. The law and the Government, in the way in which it approaches these issues, has to be flexible, which is why I am going back to my original point that trusting the police and judiciary to make judgments is the right way forward, because each individual case is different.

Chair: I understand that. That is helpful. Do any other colleagues have questions around this? We are very grateful to all three of you for coming. I am grateful, Minister, for your willingness to return and perhaps to take up any thoughts that may come from the Select Committee's report.

We have the written evidence, which is quite detailed as well, which is appreciated too. If need be, we can always do a follow-up with one or both of you once we have had a chance to look at the report and see what recommendations there are and when there are less constraints perhaps around what can be said. We are all very grateful to you for your time and for your evidence. This session is concluded.