



Community Law & Mediation

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5th November 2020

By email to: spentconvictions@justice.ie

Re: Department of Justice Consultation on Spent Convictions

Dear Sir/Madam,

I write in relation to the Department of Justice's consultation on Spent Convictions. We welcome the opportunity to make a submission.

Community Law & Mediation (CLM) is a community based, independent law centre and charity operating in two locations: Dublin and Limerick. It was founded in 1975 and assists more than 3,000 people annually through its services, which include free legal advice and representation; information and education; and mediation and conflict coaching. CLM also campaigns for law reform, and for the safeguarding of rights already enshrined in law.

In response to the increased need for legal information and advice in the context of the Covid-19 pandemic, CLM is running free legal advice clinics over the phone, as well as publishing information on specific areas of law affected by the pandemic. We continue to provide advocacy and legal representation in a number of areas of law, including employment and equality. We have also commenced mediation services remotely.

Criminal Justice (Rehabilitative Periods) Bill 2018

CLM welcomes the review by the Department of Justice of the 2016 Act. We also broadly support the amendments proposed in the Criminal Justice (Rehabilitative Periods) Bill 2018, particularly in relation to introducing the principle of proportionality to the relationship between the length of the sentence and the length of the rehabilitative period before the conviction becomes spent.

Spent Convictions: Issues that arise for the people who use CLM's services

Through its legal advice, advocacy and representation services, CLM often assists individuals who have encountered barriers accessing housing, employment or services due to historic convictions. Criminal convictions can impact upon a person long after they have served their sentence for instance, when seeking employment or accessing housing, which will impact an individual's ability to participate fully in their community.

Amendment to Equality Legislation

It is important that individuals who have been convicted of a minor offence or who have spent convictions are appropriately protected from discrimination.

While those who have a spent conviction have the right not to disclose that conviction in a job interview, in the era of widespread social media, current and prospective employees need to be protected from being disadvantaged if their employer finds out about the conviction. Similarly, previous convictions can severely impact an individual's ability to avail of services such as accommodation.

CLM recommends that the ground of discrimination in the Employment Equality Act 1998 and the Equal Status Act 2000 be extended to include a broad prohibition on discrimination on the grounds of spent convictions.

Social Housing and Spent Convictions

Housing is fundamental to well-being and participation in society. It should be noted that the homelessness and insecurity that can result from a person's exclusion from social housing is likely to lead to increased criminal activity, drug use and recidivism in ex-offenders.¹

Currently there is a lack transparency around the treatment of those with convictions (spent and unspent) who are on or who wish to access local authority social housing lists. CLM has assisted families who have found themselves excluded or suspended from their local authority housing list as a result of past convictions or as a result of investigations or arrests that have not resulted in convictions.

While good estate management is essential to a well-functioning community, it remains vital that any exclusion from social housing is proportionate to the aim of maintaining good estate management, and is in accordance with the law and the requirements of natural justice and fair procedures.

Sections 14 and 15 of the Housing (Miscellaneous Provisions) Act 1997 allow for discretion on the part of a local authority to exclude persons from availing of social housing on estate management grounds as a result of information received from the Gardaí. This information can include minor offences, cautions, investigations without charge and dismissals under the Probation Act 1907.

We note that the current legislation (Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016) provides that only 'unspent' convictions need be revealed by an ex-offender. However, it does not expressly exclude the disclosure of 'spent' convictions, cautions, investigations without charge and dismissals under the Probation Act 1907 to another person or body, including local authorities carrying out their functions under sections 14 and 15 of the 1997 Act.

CLM recommends that appropriate amendments are made to the Housing (Miscellaneous Provisions) Act 1997 to ensure that only information relating to 'unspent' convictions should be disclosed to the local authorities when they are exercising their powers under the 1997 Act and also that cautions, investigations without charge and dismissals under the Probation Act 1907 would also be prohibited from being shared.

We would like to thank you for considering this submission and we would welcome the opportunity to

¹ Focus Ireland and PACE, *Crime and Homelessness* (Claire Hickey 2002), <http://www.focusireland.ie/files/publications/Crime%20and%20Homelessness%20-%20full.pdf>

provide further information or to discuss any elements of this submission.

Yours Sincerely,

Sent by email and accordingly bears no signature

Rose Wall
CEO, Community Law & Mediation