The Rehabilitation of Offenders Act 1974

In 1972, The United Kingdom was the only member country of the Council of Europe which did not limit disclosure requirements for people with criminal convictions. Concern led to the setting up of an independent inquiry by three criminal justice reform pressure groups - Justice, the Howard League for Penal Reform and NACRO – chaired by a Conservative peer, Lord Gardiner. The Gardiner Report, "Living It Down: The Problem with Previous Convictions", was issued in 1972. [1] The Introduction states - "Most civilised societies recognise that it is in their interests to accept back into the community a person who, despite one or more convictions, goes straight for a sufficient number of years."

The inquiry concerned itself primarily with a particular type of person who had been in trouble with the police. The Report does not look at the problem of long-term "recidivists", persons with many criminal convictions over many years. It was concerned with those people who had been convicted of one or more offences, perhaps as children or young persons, but who had thereafter led responsible, crime-free lives. Similarly, the inquiry looked at the citizen who had committed an isolated offence perhaps after many years of responsible crime-free life. The report gave an example of such a person – a trusted clerk who embezzles money from his employer "through entanglement with a fast woman or slow horses."

The Report described the many problems faced by persons with one or more previous convictions which often emerged after decades of respectable, offence-free lives. It gave examples of how convictions were revealed by prosecutors in court hearings for minor traffic cases, how job applications were summarily rejected, mortgages and insurance cover refused, how any appearance in any court, including civil courts, could reveal a distant past. Many years passing and irrelevance gave no relief. Even cautions given by the police to children could become opened since accepting a caution amounts to an admission of guilt to an offence. Moreover, revelations about previous offences however revealed, whether in open court hearings or otherwise, could be repeated by newspapers at any time without constraint. The information was true, however unjustified the revelation.

The damage done to the reputations, personal, employment or business, of persons by revelation of a "criminal record" was often considerable. Moreover, these people had to live with the possibility of the information being revealed to their families, friends and community at any time. Witnesses told the Gardiner inquiry how they were haunted by this possibility for decades. It led many citizens to take extraordinary steps to minimise the risk of revelation and, above all, "to keep a low profile" in their communities to safeguard against chance or malicious revelation.

It was clear to the Committee that the only way to bring about protective changes for such "rehabilitated persons" was to persuade the UK Parliament of the need for legal reform. But Parliament would hardly be so persuaded to consider legislation if the number of citizens so affected were small.

Research for the inquiry on samples of files of offenders in court and police records in the London metropolitan area in 1957 showed that 90% of the persons concerned had remained free of offending for more than 10 years. The number of offences committed more than 10 years later was minimal. The inquiry considered conviction rates were little different in England and Wales outside the London area. Were the findings to be multiplied by the total population, it meant the estimated number of "rehabilitated persons" was about one million.[2] Other research, such as Age/Crime profiles, how criminal activity falls rapidly with the aging of offenders, supported the findings.

The inquiry looked at schemes for legal rehabilitation of offenders in other countries, including USA, Canada, Germany, Sweden and Denmark.[3] It rejected as unsuitable for British conditions those schemes which had to be initiated by rehabilitated persons themselves. Court hearings defeated the very purpose of an application. It was the passing of time without offending which had marked the rehabilitation in reality. What scheme could bring about the necessary corresponding legal rehabilitation?

The outline scheme recommended by the Gardiner Report in 1972 was that persons convicted of "lesser offences" should become legally rehabilitated by the passage of appropriate time without further conviction. Such "rehabilitated persons" under the scheme should be treated in law – with certain exceptions – as if they had not been convicted. This could be achieved by making inadmissible in any court any evidence "tending to show they have committed the relevant offence, or been charged with it, or convicted of it, or sentenced for it." The crime and penalty would have become "spent".

The rehabilitated person would be protected by the law in any denial of a previous offence. This would protect him or her from revelation of past offences by newspapers since the newspaper could be sued for libel and would be unable to bring any evidence of the wrongly revealed offence. Past offences could be denied in written and verbal applications to prospective employers, insurers and for credit subject to exceptions, mainly for types of sensitive employment.

The Committee was very conservative in its selection of sentences and appropriate time periods for rehabilitation in the hope of general support for a practical scheme. It proposed three rehabilitation periods – 1) five years from conviction, where no custodial sentence was imposed; 2) seven years, where a custodial sentence not exceeding six months was imposed; 3) ten years, where a sentence of more than six months but not more than two years, was imposed. For young persons, the time periods for rehabilitation were halved. It suggested that the Home Secretary should to be given powers to vary the time periods and other details to reflect changes in the law and in society, particularly in the light of future criminological research.

The Committee had rejected "expunging" or sealing up the criminal records of persons rehabilitated by a scheme for the UK, unlike in many other countries. The Committee felt the records must be available to courts, the police and many public authorities such as the General Medical Council, the Gaming Board and the Department of Education, "if they are to carry out their statutory and administrative

duties in the public interest." Strong safeguards against unauthorised revelation would be needed.

The Gardiner Report was presented to Parliament in autumn 1972 "as a matter of urgency" and found immediate support in a Private Member's Bill. The legislated scheme, very similar to that proposed in the Gardiner Report, was passed as The Rehabilitation of Offenders Act 1974. It was not enacted immediately. The Conservative government was promoting a heavy programme of legislation. The Act took a backseat and came into force on 1 July, 1975. A reason was that many organisations wished to be "exempted" and the Exemption Order 1975 contained a much longer list of employments requiring full disclosure of convictions than envisaged by the Gardiner Committee.

A problem envisaged by the Gardiner Committee was that the sentences and time periods for rehabilitation in any scheme would become inappropriate as the law and society's needs changed, notwithstanding that the sentences and rehabilitation periods might be varied by statutory instruments laid before Parliament by the Home Secretary. The Rehabilitation of Offenders Act 1974 began to lose effectiveness. The problem became very evident in the 1990s when "penal populism" began in earnest with Michael Howard's "prison works" and prison sentences began to increase in what has been described as an "arms-race" between successive governments.

The UK prison population grew slowly from 1975 to 1993 when it was about 42,000. In May 1997, with the new Labour government, the figure had reached 60,000. In 2017, the figure exceeds 86,000 and is planned to grow further. Between 1997 and 2007, the Labour governments made 3,500 new criminal offences, more than made in the previous century. This was despite that numbers of crimes were not increasing. Annual British Crime Surveys show that crime peaked in 1995 and then fell by 42% over the next 10 years.

A further, unfortunate, coincidence arose with the reduction in resources for the local Probation services. It seems the Labour government did not mean "what works" as its aim in 1997 for reducing reoffending – "They meant "what works" in appeasing the views that emerged from a simplistic interpretation of focus groups, even if those views meant increasing prison numbers even further and meant playing down the success and effectiveness of probation, toughening up its image and its language, despite the negative impact such polices would have on reducing reoffending."[4] For politicians and their immediate advisors to ignore the advice of experts appeared to become a standard practice.

There were amendments to orders under the Rehabilitation of Offenders Act during these years. In 2008, all types of cautions became spent on being given. However, the number of former offenders who could never become rehabilitated legally had grown greatly and the number of exempted organisations and employments under the Act had reached 38. With the publication of the Green Paper "Breaking the Cycle: Effective Punishment, Sentencing and Rehabilitation of Offenders" by the Ministry of Justice in December, 2010, research into the problems of ex-offenders, particularly with employment, strengthened.[5]

The major problems were the consequences of sentence inflation, the increasing number of organisations and employments exempted from the Act and the burst of information available online concerning convictions. This information explosion had led to the formation of the Criminal Records Bureau in 2008 and availability of "CRB" (now "DBS") checks which reveal to all employers previous non-spent convictions and all convictions to those exempted.

After wide consultation, including the devolved governments, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 adjusted rehabilitation periods from 2014 to start not from conviction but from the end of the sentence. In summary, all rehabilitation periods for imprisonment sentences up to 4 years and all order periods have been drastically reduced as have the employment exemptions.[6]

But a central problem remains. The Rehabilitation of Offenders Act 1975 scheme was only partly intended to help offenders into employment, and the restriction on sentences, rehabilitation periods and the growth in exemptions undermined this intention. Probation experience, notwithstanding Probation's many reorganisations,[7] and criminological research has many times found that the outstanding route out of reoffending and reintegration into society for ex-offenders is employment – "the pay check".

Disclosure of convictions to employers whether after deletion of spent convictions or fully to exempted employers does not, of course, prevent employment being given. But the history of employment of ex-offenders is not encouraging. Successive governments have been reluctant to promote knowledge of the rehabilitation scheme to both employers and ex-offenders. Good understanding is poor among recruiters for employment and research has shown that only 2% of prisoners have an adequate understanding of the scheme.[8]

At a time when the UK has decided on a major reduction in immigration and the "baby bulge" of the 1940s and 1950s is passing into recruitment, perhaps a more robust solution is needed for the reintegration of ex-offenders into society than that partly provided by the Rehabilitation of Offenders Act 1975. As well as practical reasons, there are moral reasons. These were faced and answered firmly in the Gardiner Report in 1972. Rehabilitation, redemption, should not be closed. After 40 years of "penal populism" by successive governments, it is surely time to re-educate and rehabilitate society, as well as prisoners, with liberal, indeed Unitarian, values.

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[1] See https://justice.org.uk/wp-content/uploads/2015/01/LivingItDown.pdf
[2] Report, Appendix C.
[3] Report, Appendix D
[4] See "Speaking up for Probation" by Judy McKnight in Howard Journal, Vol.48, No.4, Sept. 2009.
[5] See https://www.gov.uk/.../breaking-the-cycle-effective-punishment-rehabilitation-and-sentencing.
[6] For the ROAct1975 as at 30 September, 2017 see http://www.legislation.gov.uk/ukpga/1974/53/contents
[7] See PAP Issues Paper 18 Probation' Rehabilitation Agenda – Can Organisational Change Produce Results?
[8] See http://dera.ioe.ac.uk/15691/1/rrep784.pdf for "Qualitative study of offender review: final report" by Fletcher et al.