COMMENTS FOR THE REVIEW OF THE REHABILITATION OF OFFENDERS ACT (1974)

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The self same moment I could pray;
And from my neck so free
The Albatross fell off my neck., and sank
Like lead into the sea.

Introduction

The Rehabilitation of Offenders Act (1974) owes its origin to a report. Living Down, produced in 1972 by a committee set up jointly by Justice, the Howard League for Penal Reform and NACRO under the chairmanship of Lord Gardiner.[1]

It is a short but complex Act which allows offenders to have their Official Records concealed once they are spent. Expenditure occurs a number of years after sentencing depending upon the sentence awarded, provided the sentence does not exceed 2½ years. However the act also allows for certain professions and occupations to be excepted, so that the person cannot conceal his spent sentence if he applies for such a job. Spent sentences are also revealed to foreign immigration and other authorities. Unspent records last for life.

The list of exceptions has now grown so long that there are few which are not excepted. This is unfairly discriminatory for professionals and those who wish to better themselves.

The Act has now almost ceased to have any purpose. It needs to be re-written.

This paper discusses the various issues and defines what the purpose of this very necessary Act should be and suggests ways in which these things might be achieved.

This paper was written following a public request by the Home Office for comments[2] to be made by members of the public before the end of July 2001.

The author is not a lawyer, has not had a criminal conviction and holds no official position. However he has made a close study of these matters for the last six years.

This paper is addressed to the Home Office Review Team, but has also been distributed widely to MPs and Members of the House of Lords, the Howard League for Penal Reform and the Prison Reform Trust and other influential people and organisations.

A summary of what is said can be found by reading the Conclusions on the last two pages.

The only recommendation is that recipients read and consider what is said.

[1] App 5 The ROA by Brian Harris, QC
[2] Home Office Website

Discussion

The Aim of this Review

The Home Office's Rehabilitation of Offenders Act (1974) (The ROA) Review Consultation document[3] gives three aims:

"It [the Review] will contribute to the following Home Office aims:

- *crime; and the maintenance of public safety and good order*
- *the delivery of justice through effective and efficient investigation, of the reduction of crime, particularly youth crime, and the fear of prosecution, trial and sentencing, and through support for victims*
- *the effective execution of the sentences of the courts so as to reduce re-offending and protect the public."*

The 1974 Act starts by saying something very different:

"An Act to rehabilitate offenders, who have not been reconvicted of any serious offence for periods of years, to penalise the unauthorised disclosure of their previous convictions, to amend the law of defamation, and for purposes connected therewith"

On the other hand Mr Charles Clarke, MP, the Minister of state, Home Office said[4]

"The underlying philosophy of the ROA (1974) is that people who offend should be able to reform, pick up their lives and make a fresh start, after paying a penalty. That has been the common ground in the House for a considerable time. …"

Baroness Blatch[5] said:

"The purpose of the 1974 Act is to help those who have offended, who have served their sentence and then led a law abiding life, to go about their daily life and to obtain employment without being unfairly penalised or disadvantaged. It is an opportunity for someone who has truly reformed to wipe the slate clean and start again…."

Purpose of the Act

So what should an ROA be for?

The purpose of the act cannot be what is spelled out in the Home Office aims. These things are just parts of the context in which in the Act is framed and which merely impose constraints upon it. These and many other constraints, have nothing at all to do with the purpose of the act itself. It is fundamentally important that the distinction

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3 Home Office Consultation leaflet for the Review of the ROA

4 HMSO 20 Mar 01 page 6 col 2 - Fourth standing committee on delegated legislation

5 Crime (Sentences) Bill Report Stage – Lords 18 Mar 1997 *Extract Hansard Record 199*

between the purpose of the act and the constraints imposed upon it be thoroughly understood.

The first paragraphs of the 1974 Act, Mr Clarke and Baroness Blatch do agree that the act is there simply to help rehabilitate offenders who have served their sentences and been reformed. Any reasonable person, would take this to be self-evident.

In his book "The Rehabilitation of Offenders", Brian Harris QC[6] says in the Preface that the 1974 Act's central proposition *is "that some people should be permitted to lie with impunity"*. This is strictly true; because it enables a person, who has a spent conviction, to conceal it. It also protects him from impertinent enquiries about it and it allows him to deny its existence if he is challenged. Harris questions whether this is unprincipled. Perhaps, but this protection is not without many precedents. One only has to remember that all records and convictions are withheld from jurors in a trial so that they only consider what has been done according to evidence and not what might have been done. This is an ancient, unchallenged and fundamental right. So, surely, it must be right, principled and in the public interest to allow a reformed person similar protection whilst he is trying to rehabilitate himself and become an asset to society.

Thus, the purpose of an ROA should be: **"to enable people, who have offended, suffered the appropriate penalty and reformed, to be legally entitled to rehabilitation, by concealing their official records".**

The 1974 Act

The 1974 Act lays down very arbitrary criteria for deciding when sentences should be "spent". Essentially any person who is sentenced to 30 months or less in prison spends his sentence after either three, five, seven or ten years from the date of his conviction, provided he is not reconvicted. Once a sentence is spent the offender is treated *"for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction..."* and that person *"shall not ... be asked , and, if asked, shall not be required to answer any question relating to his past which cannot be answered without acknowledging or referring to a spent conviction ..."* [7].

In practice this means that no one, particularly prospective employers or officials, may ask and need not be told about spent convictions. Anyone breaking this rule, apart from the person concerned, commits a criminal offence. Thus a reformed person can legally conceal his past and so, perhaps, become rehabilitated.

Limitations

There are some limitations, or "exempt proceedings" to this rule which are spelt out in Section 7 of the Act. These are concerned with the administration of criminal (but not civil) court proceedings, adoption, children, supervision etc. Section 9 also makes provision for officials, particularly police to keep records so that they can carry out their duties. But this section also applies strict limitations on unauthorised disclosure of this information.

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[6] Barry Rose Law Publishers Third edition 1999 (also appendix 5)
[7] ROA 1974 Section 4

In addition to these limitations the expenditure is disregarded upon subsequent conviction when any court, anywhere, is considering sentence for a subsequent offence, which is, or is recognised as an offence under British law.

Exceptions

No offences can be spent, when it comes to assessing the person's suitability for employment in certain professions and occupations, if these occupations are classified as "Exceptions". These classifications are decided by the Secretary of State[8] after consideration and recommendation by the Standing Committee on Delegated Legislation. The list of exceptions is now very long, complicated and obscure and includes for example: any employment concerning the care or education of those under 18, doctors and nurses, vets, accountants, chemists, teachers, lawyers, policemen, the armed forces, traffic wardens and osteopaths. In these cases a person seeking such employment must reveal his spent convictions when asked. The list is no so long that the whole purpose of the ROA has been almost negated. The list is also complicated and inaccessible. It took the Home Office ROA Review Team 10 days to compile the list for me. No layman can be expected to know what is included and what is not.

Consequential penalties

Because there are so many Exceptions, courts are not only convicting they are also handing down consequential penalties which are life sentences for those who hope for a professional career or wish to travel. These consequences are not spelled out by the judge as part of the sentence. and most people do not find out about them until, much later, when they finish their sentence and try to find employment or want to travel abroad.

Professional and Class Discrimination

The fact that at all the Exceptions are for professions and occupations, that require a degree of education or trust, means that the ROA has become highly discriminatory. It perpetuates some sort of old-fashioned class discrimination that we all thought died with the last War. The consequences can be far more severe than the sentence itself for a professional person. For example a young person who shares one ecstasy tablet with a friend at the age of 18 and who is convicted of supplying a Class A Drug under the Misuse of Drugs Act (1971) must always declare his conviction and stands little chance of becoming a teacher or doctor when he graduates and becomes fully qualified as a teacher or doctor 5 or 6 years later. He can entertain little hope for his chosen career even at the age of 28, or, indeed for the rest of his life, when his sentence is spent. This would not apply to someone who wanted to be a builder, plumber or labourer.

Of course this does not only effect the so-called "professional classes". It completely removes the incentive for a reformed person to improve his qualifications or status. Why should an uneducated person educate himself in prison and perhaps get a degree when he knows that he is never going to get a job when qualified? A burglar might do much better to remain as he is.

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[8] ROA 1974 (Exceptions) Order 1975 et seq

Because the 1974 Act is ineffective outside Great Britain foreign authorities may insist that spent convictions be admitted to them. For example: the United States Immigration Department demands that British Citizens admit all convictions, whether spent or not, upon Visa and Green Card applications. So a person takes a certain risk if he chooses not to reveal a spent conviction and can take little comfort from a presumption that it still remains an offence for British Record keepers, such as the Criminal Records Bureau, to tell them about spent convictions. These demands are also made by most other countries outside the European Union.

Access to records

Records are kept by the Criminal Records Bureau (CRB). Similar records are kept on the Police National Computer (PNC). These contain some 400 gigabytes of information on old IT systems which are reported as being highly inaccurate.[9] If an employer wants, or is obliged, to find out whether someone has a record, he must ask the applicant to produce a Criminal Records Certificate from the CRB to show whether he has any record. If the job is not excepted then the certificate will not record spent convictions, but it will show unspent convictions. If the job is excepted it will also show spent convictions. The employer cannot access the applicant's record. It must be done by the applicant.

The Effect of a Record

It is open to the employer to employ a person with a record if he wishes unless that employment is specifically barred by certain acts such as the Criminal Justice and Court Services Act, 2000. Some might say that this is fair enough; because then the employer will have all the facts at his disposal and make his judgement accordingly. However this is simply not true. The record is a bare statement of fact (which, currently, may be inaccurate) and gives none of the circumstances of the person's crime or circumstances. For example: a person convicted of supplying a Class A drug may have given a friend one ecstasy tablet when they were both students[10] or that person may have supplied thousands of them indiscriminately and for profit. The employer cannot know which was the feckless student and which was the ruthless drug baron because he does not know the circumstances and cannot make an informed judgement. The same applies when considering immigration, or visa applications or any circumstance where an official holds power over the individual, especially if these decisions are being made by low-grade officials according to some rule book.

Most people are bound to be prejudiced by reading a person's record. It is without doubt an albatross around the person's neck, which distinguishes that person from all others. If the albatross is not allowed to fall, rehabilitation is almost impossible.

At this point it must be remembered that the purpose of the ROA is to allow rehabilitation of those who have been reformed. The purpose of the ROA is not to protect the public from those who have. To do so would be purely vindictive.

Reformation

How do you define who has reformed?

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[9] Charles Arthur, Technology Editor Independent 11 Jul 01

[10] e.g. Joanna Maplethorpe 15 Aug 1997 Guildford Crown Court (9 months imprisonment later reduced on appeal)

The 1974 Act muddles itself by failing to differentiate between " reform" and "rehabilitation". Perhaps it's best to get the semantics out of the way first. Reform means that someone, admits their culpability and has mended their ways. Rehabilitation is the process by which a reformed person re-assumes their part in accepted society. They are not the same thing at all and must not be confused. It is perhaps possible for a saint to be completely reformed, but it is rarely achieved by the common man. However society will usually re-accept someone, who has erred, so long as he is reformed enough. So reformation is a process in which "good enough" is sufficient.

The 1974 Act is arbitrary, because it defines "rehabilitation" (by which it means "reform") according to length of sentence and time spent since sentencing without re-offence. Thus someone, who committed a crime and who reforms, but, who gets a sentence of more than 30 months imprisonment, is never allowed expenditure of his sentence. However, an incorrigible rogue who gets only two years in prison can be in the clear 10 years after his sentence if he does not get caught again. It is a rough and ready system, which is irrational, inhuman and usually unjust.

The purpose of the penal system is to punish, deter and reform. Imprisonment has the additional purpose of removing someone from society, whilst he remains a threat to it. The Universal Declaration of Human Rights declares that a penal system may have no other purpose or function.[11] Once the penalty is imposed the penal system takes over and attempts to persuade, educate and otherwise help the offender to reform, not for altruistic reasons, but because society does not want the offender to re-offend and remain a burden, nuisance or threat.

This process would be impossible if the reformed offender could not rehabilitate himself, because he could not get a job, or advance himself. Nor can he be re-accepted by society if the stigma of his conviction is always evident. So it is very much in society's interests to make sure that it knows when and if a person has reformed, so that he can start to rehabilitate himself.

Transparency in Sentencing

Because consequential penalties are not spelled out as part of the sentence, but are left for the convicted person to find out for himself, there is no transparency in the sentencing and the principle of "justice being seen to be done" is broken. This is a fundamental injustice. Of course the judge cannot control all the consequential penalties. He cannot prevent a child or mother's broken heart, he cannot prevent the convicted person's wife leaving him, but he can tell the convicted person what the State is going to do to him as a consequence of his crime and sentence. All judges know that a prison sentence of more than 30 months cannot be spent. In many cases they will try and award a sentence of 30 months or less, particularly if the mitigation is strong; but the judge need not explain this to the convicted man.

It is as though the State allows judges a kind of secret discretion to grant or withhold acts of mercy which the convict can only find out about from his solicitor or brief or, as usually happens, much later, for himself. This practice is not "justice being seen to be done": indeed there is something creepily despicable about it. If it were just a little act of mercy, no one would deny the judge his pleasure at playing with his ghoulish

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[11] UN, 10 Dec 1948 Art 11

powers, but granting or denying a man his chance of rebuilding his life is not a little act of mercy. For many people this decision will have far more effect than any number of years in prison itself. It is fundamental to basic justice that the consequential penalties be stated in open court as an integral part of the very sentence itself.

The Home Secretary, David Blunkett, very recently said that all sentencing should be "transparent, consistent and clear". He also said that the offender "needs to know precisely what's going to happen as a consequence."[12] This is a fundamental principle which has been enshrined in British law since time immemorial. However when it comes to consequential effects it is not applied. It is simply not acceptable to claim that it is up to the individual to know what consequential effects apply in his case. If there are consequential effects, he must be told; and he must be told by the person who sentences him when he is sentenced. If he is not told, then the consequential effect should not apply.

Sentencing in Minor Cases

In minor cases, such as all those dealt with by magistrates, it is pragmatic and probably acceptable that expenditure of sentence be calculated in the old, arbitrary, rough and ready fashion by an equation of sentence and time spent out of trouble. Similarly, in minor Crown court cases, because he has access to all the experts, and in most, but not all, cases, the judge should will know that either: reform has occurred before sentence, or, it is likely to occur soon. He can then direct when the sentence is to be spent as he awards it. However even minor offenders should be told, when they are sentenced, when their sentence will be spent and what, if any, exceptions will apply.

Sentencing in Major cases

In some complex or major cases it will be necessary for the offender to go before a tribunal to make this assessment later on. We already have a Parole Boards who could probably perform this function. If reform is detected during imprisonment then the offender can be brought before them for an assessment and ruling. If not, then the Probation Service should do this detection. If they cannot then it should be for the offender to apply for a review. If none of these things happen then the sentence is never spent. Some people may have a personality disorder or dysfunction, which cannot be cured, and may be incapable of reform. Others may be perpetually incorrigible.

If a tribunal sits and then decides that reform has not occurred then they should say when and if a further review is to held.

Each tribunal should be competent to make an informed and professional assessment depending upon all the relevant circumstances of the person and the case.

If a person is sentenced to life imprisonment or an indefinite term, then the judge should state that the tribunal will not meet until a specified date, or, in certain rare cases, not at all.

Authority

[12] BBC Radio 4 Today 5 July 2001

This review procedure should always be administered and executed by the judiciary, and or members of tribunals, who are wholly independent of the Government.

Offences arising from disclosure of spent convictions.

It should be a criminal offence for any British official, especially those with access to the in the Criminal Records Bureau or Police National Computer records, to divulge a spent sentence to anyone, particularly foreign immigration officials, Interpol, foreign intelligence service or foreign police forces, who may request such information.

Information about past convictions, which have already entered the public domain and been recorded in the media, Internet, private papers, histories, stories, rumour, memory or gossip cannot be considered to be the official record and cannot be protected by an ROA. However the convicted person should always be able obtain a copy of their own record, particularly if they need to correct or counter inaccuracies that may arise in the media etc.

It will be an offence under the Data Protection Act for anyone to keep duplicates of the official records or extracts of the official records, if this data is then kept so as to make them available as a record which is capable of identifying the people concerned, or capable of being correlated with another record which does so. Thus a criminal research centre may keep records of sentences awarded, but not the names and addresses of the criminals, or even addresses which might be correlated with, say, an electoral roll.

Constraints

As I mentioned when I explained the purpose of the Act it is important not to confuse those things which constrain the Act's purpose which is : **"**to enable people, who have offended, suffered the appropriate penalty and reformed, to be legally entitled to rehabilitation, by concealing their official records**".**

By "constraint" I mean something which is relevant to the ROA but not actually part of its purpose. It may be something which supports the proposals which I make or it may be something which, perhaps, may seem to put difficulties in the way of my proposals.

- It is pure nonsense to say that a rehabilitated person's spent sentence should be revealed if he applies for a job as a school teacher, or a lawyer or a doctor, or a carer of minors. Either a person is reformed and his sentence is spent, or he is not; and that is that.

- There are certain Acts which make it an offence for anyone to employ a person who has been convicted of certain offences, even though that sentence may be spent. These usually relate to sex offences, against minors for employment in caring for minors: e.g. the Crime and Disorder Act, 1998 and the Criminal Justice and Police Act 2001 and the Criminal Justice and Court Services Act, 2000 . The prohibitions in these examples are absolute, since for other offences an employer may employ a person with a record if he chooses to. Under a new ROA, people with incurable personality disorders such as paedophilia and other dysfunctions will never be allowed to have spent sentences,

whilst the threat persists. So, it follows that people, who do have spent sentences, should not be excluded from employment by constraints in these or any other Acts.

- There may be further legislation and, perhaps treaties and confidential memoranda or understanding which may also impose constraints upon an ROA. There are also various UN conventions which may impose constraints; Article 5 (1) of the Human Rights Act 1998 for instances makes it clear that: *"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law."* Thereafter it does not stipulate that the State may curtail a person's liberty by imposing consequential effects which arise from his conviction.

- Later in Article 7 (1) the same Act states: *"No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."* This surely means that it is unlawful to punish someone with a consequential effect which is not part of the sentence handed down by the judge? These two constraints are ones which militates strongly in favour of my proposals.

- Article 23 (1) of the UN's Universal Declaration of Human Rights categorically states that *"Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."* This declaration may not be incorporated in British Law, but its spirit certainly underlies our employment laws and rights. It would be invidious if an ROA were to curtail *"the free choice of employment"* to a reformed person.

- Examination of Hansard's account of the standing committees' on delegated legislation discussions it is clear that MPs and Ministers are confused by a desire to provide access to spent sentences by prospective employers in what might be termed "respectable profession" or "caring professions". On 20 Mar 2001 much of the debate concerned whether child minders and nannies should be excluded professions and MPs wrestled with the importance of preventing people in position of trust being able to abuse children with the competing need not to close off employment opportunities to ex-offenders[13]. This dilemma need not exist at all since, under my proposals, such people will not be granted spent sentences. There is simply no need for there to be any list of "Exceptions" at all. A person with a spent sentence is perfectly entitled to become a judge, a nanny, a prison warder, a scout master or the Archbishop of Canterbury without his employers ever knowing of his past conviction.

[13] Hansard 20 Mar 01 11.23 am

Retrospection

Normally new laws cannot be retrospective. In this case retrospection cannot be avoided for, if my proposals are adopted, they will affect people, who were sentenced a long time ago, and it would be inequitable if they did not benefit. For instance all those people who were awarded prison sentence of over 30 months might now be eligible for expenditure of their sentences. Similarly those people who committed crimes which have since ceased to be crimes such as those homosexuals who committed acts with consenting adults in private, or as now seems likely, those who committed cannabis offices under the Misuse of Drugs Act would have to be considered. In straightforward cases it will be possible to review the official records and simply write off such offences as spent. When this is done the person concerned must be informed. In some cases it may be necessary to call the newly eligible person for a review by a parole board.

Diversions

A Diversion is something which might seem, at first sight, relevant or pertinent to the discussion and proposals which I have put forward, but which is, in fact, something that is irrelevant. Diversions are usually the arguments put forward most vociferously by people who have not thought about the issues clearly and they are things which are always very obvious and plausible I will mention just a few, as a examples, just so that such red herrings are not raised.

- **Licenses.** Licenses are permits issued by the state for activities which are otherwise illegal. For example: all driving of motor vehicles on the public highway is illegal, unless the driver is licensed to do so by the state. If a driver infringes the driving regulations his license may be endorsed or withdrawn. The infringement is not a criminal offence and does not appear on the official record. Of course drivers may break the criminal law, by say, driving recklessly, but this is another matter. So it will remain possible to endorse a license without affecting the ROA in any way. The same applies to licenses issued for guns, tobacconists, pubs, dangerous animals, casinos and all manner of things.

- **Morality.** Some will say that it is immoral, or against their religion or that its sticks in their craw that people who commit certain crimes should ever be given the chance at rehabilitation. One only has to remember the Bulger - Thompson - Venables case to be aware of this. Thompson and Venable received life sentence and may never achieve spent sentences, but others will. The new ROA must be firm, political considerations wholly absent, and the tribunals who decide on expenditure very competent and firm in their resolve. The law is there to protect society as a whole, including those who have reformed.

- **Police Access to Police Records.** The Police will need to access comprehensive records including spent sentences so they can do their job. Customs and Excise may also need access and perhaps the Secret Services. This will always be necessary, but these officers will only be

allowed to use this information in the performance of their national duties. They will not be allowed to share this information with others without committing an offence. The record will not be made available to courts until after conviction unless the defendant pleads his good character as part of his defence. This is the situation now: so I am not proposing any change other than by making it clear that these officers may not divulge recorded information to foreign officials who make enquiries for reasons that have nothing to do with British law.

- **Practical difficulties and expense.** Some may claim that the review procedure will be too difficult and that it will be too expensive and difficult to maintain and to up-date records accurately. This need not be so. Judges and magistrates are already advised by professionals and social workers when they consider sentence and the probation service and parole boards already exist. So do the recording systems. They may need to become more efficient and improve. As to expense, if Parliament, which created no less than 139 new offences between 1999 and 2000,[14] cannot afford to administer the laws which create crimes, it had better repeal them.

[14] Hansard 11 Jul 2001, House of Lords Debate on Prison Lord Dholakia

CONCLUSIONS

1. The purpose of an ROA should be: "**to enable people, who have offended, suffered the appropriate penalty and reformed, to be legally entitled to rehabilitation, by concealing their official records**".
2. Either a person is reformed well enough and his sentence is spent, or he is not; and that is that. A person with a spent sentence is perfectly entitled to become a judge, a nanny, a prison warder, a scout master or the Archbishop of Canterbury.
3. The purpose of the ROA is to allow rehabilitation of those who have been reformed. The purpose of the ROA is not to protect the public from those who have. To do so would be purely vindictive.
4. It is very much in society's interests to make sure that it knows when and if a person has reformed, so that his sentence can be spent and he can start to rehabilitate himself.
5. Because consequential penalties, which come from having an official record, are so severe and have such a penalising effect for life it is unacceptable that they are not spelled out as part of the sentence. Thus, there is no transparency in the sentencing and the principle of "justice being seen to be done" is broken.
6. It is fundamental to basic justice that these consequential penalties be stated in open court as an integral part of the very sentence itself. If he is not told, as part of the sentence, then these consequential effects should not apply.
7. The current list of Exceptions is no so long that the whole purpose of the ROA has been almost negated.
8. The fact that at all the Exceptions are for professions and occupations, that require a degree of education or trust, means that the ROA has become unfairly discriminatory to professional people. It also completely removes the incentive for others to improve their qualifications or status.
9. There is no need to have any Exceptions at all for spent sentences.
10. It should be an offence under the Data Protection Act for anyone to keep duplicates of the official records or extracts of the official records.
11. A person who travels takes a certain risk if he chooses not to reveal a spent conviction and can take little comfort from a presumption that it still remains an offence for British Record keepers to reveal details of spent offences to foreign immigration officials etc.
12. Spent sentences should not be revealed to anyone, especially foreign immigration officials, except to British courts considering sentence for a subsequent offence.
13. It is open to the employer to employ a person with a record if he wishes unless that employment is specifically barred by certain acts. But since employers

cannot know all the facts surrounding they are bound to be prejudiced by reading a person's record.

14. A Record is an albatross around the person's neck, which distinguishes that person from all others. If the albatross is not allowed to fall, rehabilitation is almost impossible.
15. The 1974 Act muddles itself by failing to differentiate between " reform" and "rehabilitation".
16. The 1974 Act is arbitrary, because it defines "rehabilitation" (by which it means "reform") according to length of sentence and time spent since sentencing without re-offence.
17. In minor cases, such as all those dealt with my magistrates, it is pragmatic and probably acceptable that expenditure of sentence be calculated in the old, arbitrary, rough and ready fashion by an equation of sentence and time spent out of trouble.
18. In some complex or major cases it will be necessary for the offender to go before a tribunal to make this assessment later on.
19. This review procedure should always be administered and executed by the judiciary, and or members of tribunals, who are wholly independent of the Government.
20. Information about past convictions, which have already entered the public domain and been recorded in the media, Internet, private papers, histories, stories, rumour, memory or gossip cannot be considered to be the official record and cannot be protected by an ROA.
21. People, who do have spent sentences, should not be excluded from employment by constraints in these or any other Acts.
22. There are also various UN conventions which may impose constraints. These constraints are ones which militate strongly in favour of change.
23. Retrospection cannot be avoided, since changes will affect people, who were sentenced a long time ago, and it would be inequitable if they did not benefit.
24. The Police need to access comprehensive records including spent sentences so they can do their job. This will always be necessary, but these officers will only be allowed to use this information in the performance of their national duties.
25. If Parliament cannot afford to administer the laws which create crimes, it had better repeal them.