DÁIL ÉIREANN

AN COMHCHOISTE UM DHLÍ AGUS CEART AGUS COMHIONANNAS

JOINT COMMITTEE ON JUSTICE AND EQUALITY

Dé Céadaoin, 10 Iúil 2019

Wednesday, 10 July 2019

The Joint Committee met at 9 a.m.

Comhaltaí a bhí i láthair / Members present:

Jack Chambers,	Frances Black,
Catherine Connolly,	Martin Conway.
Jim O'Callaghan,	
Thomas Pringle.	

I láthair / In attendance: Deputy Donnchadh Ó Laoghaire.

Teachta / Deputy Caoimhghín Ó Caoláin sa Chathaoir / in the Chair.

Business of Joint Committee

Chairman: I remind members to, please, switch off their mobile phones, as they interfere with the recording equipment in the committee rooms, even when left in silent mode. Apologies have been received from Senator Ó Donnghaile.

Before we go into private session, I extend a warm welcome to An Teachta Connolly, ball nua den choiste. I understand she is to be joined by Deputy Pringle.

Deputy Catherine Connolly: He is on his way.

Chairman: They are replacing, in no particular order, former Deputies Mick Wallace and Clare Daly, whom we wish the very best in their new roles and responsibilities. We welcome the new representatives of Independents 4 Change.

The joint committee went into private session at 9.05 a.m. and resumed in public session at 9.30 a.m.

Spent Convictions: Discussion

Chairman: The purpose of today's meeting is to examine the issue of spent convictions and the potential for reform in this area. We are joined by Senator Lynn Ruane, who has undertaken considerable work in this area. She has beavered away to ensure that this meeting was scheduled before the recess. I am very pleased to say that has been done. We are also joined by representatives of the Irish Penal Reform Trust, namely, Ms Fíona Ní Chinnéide, executive director, and Ms Michelle Martyn, senior research and policy project manager. They are both very welcome. From University College Dublin, we are joined by Dr. T.J. McIntyre. He is very welcome back. We are also joined by Mr. Niall Walsh, manager of the Pathways Centre, an aftercare programme for former prisoners. Mr. Walsh is also very welcome. I have to go through the formal notification of privilege, after which I intend to invite the witnesses to speak in the order in which I have just introduced them.

I draw the attention of witnesses to the situation in respect of privilege. They should note that they are protected by absolute privilege in respect of the evidence they give to the committee. However, if they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable. Members should be aware that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable.

Senator Lynn Ruane: I thank the Cathaoirleach and colleagues for allowing me to present to the committee today. I will mainly be covering the Private Members' Bill, the Criminal Justice (Rehabilitative Periods) Bill 2019, which I was delighted to see pass Second Stage in the Seanad in February with unanimous, cross-party support. The Bill would expand access to spent convictions to people other than those allowed for under the limited and unfortunately inadequate provisions of the Criminal Justice (Spent Convictions and Certain Disclosures) Act,

passed by the Oireachtas more than three and a half years ago. I also welcome the fact that we will be discussing spent convictions reform more generally.

My motivation for introducing the Bill was based in the rehabilitative principles that underlie the justice system and my belief that a person who committed an offence in the past should be given a fair and reasonable opportunity to reintegrate into society after a set period has passed without him or her reoffending. Previous convictions for minor, non-violent offences act as an unfair and disproportionate barrier to resources, opportunities a person needs to enter or re-enter employment, and education or travel after a period of offending behaviour. While our current law was a welcome first step in legislating in respect of this important area, it is unfortunately not fulfilling its rehabilitative aims. It is extraordinarily limited in scope and in practice and is simply not accessible to former offenders who need and deserve to benefit from its provisions. Of particular note is the limitation placed by the single conviction rule. Under this rule, only one conviction outside of minor driving and public order offences can become spent and the rehabilitative period one has to wait before a conviction is spent is set at a blanket seven years for all crimes, no matter how long or short the sentence handed down.

My Bill seeks to expand fair access to spent convictions in four ways, namely: by increasing the length of custodial and non-custodial sentences that are eligible to become spent; by removing the single conviction rule from the current Act; by making the waiting period, or rehabilitative period, proportional to the length of a sentence; and by creating a more generous regime for young adults between the ages of 18 and 23 in light of their greater rehabilitative needs. The reintegration and rehabilitation of former offenders protects society from further acts of crime. All international evidence demonstrates that a well-designed and fair spent convictions regime works to reduce recidivism and benefits both the individual and society as a whole. When access to spent convictions is made available to individuals, incidences of crime and reoffending decrease as unnecessary conviction disclosures for minor, non-violent, non-sexual crimes no longer serve as a barrier to progression.

As a former community worker, I know from first-hand experience that, when working in professions relating to addiction or homelessness or in the areas of teaching or social work, having similar experiences to those with whom one works is invaluable. Some of the best community workers and drug workers with whom I have worked have had previous convictions. However, there are many who will never get the chance to work within the communities that need them most due to old, minor offences on their records. These offences are simply no longer relevant to their lives due to a combination of the passage of time, changes in behaviour and circumstance, and major, substantive rehabilitation.

Since introducing this Bill, I have been inundated with heart-breaking testimony from people in these kinds of circumstances. I have heard from students who have reached the second or third year of their degrees in the social sciences and who have then been refused work placement based on old minor offences that are still on their records. We have had representations from professionals in high-level positions in the Civil Service and public bodies who will not apply for promotion due to a 20 year old mark on their record. This is not only harmful for the individual but detrimental to society as our laws are literally forcing people out of education, employment and progression. There is a cost to the individual and to society as a whole under the current regime and it needs to change.

This is an area that affects those from all walks of life and socioeconomic backgrounds. It impacts on everyone from young men who are refused entry to the Army point-blank, to young women and lone parents who locked out of education and courses such as courses in social

work, through to people from all sectors of society who are prohibited from visiting family members abroad who emigrated during the years of austerity. In cases like these, we are talking about convictions for possession of €15 worth of cannabis literally keeping families apart.

While this issue affects everyone, the limits of the current law have a disproportionate impact on marginalised, poorer and working-class communities. This is made worse by the fact that the Act makes no allowance for more than one conviction to become spent, apart from an unlimited number of minor driving and public order offences. This makes it easy to criticise the law as one written for the middle classes. Removing the single conviction rule is an absolute must in this respect.

I brought this Bill forward because a spent convictions law is of no use if people cannot access it, which is unfortunately the case under the *status quo*. My Bill is compassionate, fair and balanced and represents the right thing to do. I hope that the committee can give the Bill its full support. I thank members for their time.

Ms Fíona Ní Chinnéide: I thank the Cathaoirleach, Senators and Deputies. The Irish Penal Reform Trust, IPRT, is delighted to meet the joint committee today to speak on the issue of spent convictions. We will do our best to respond to any questions members might have following our opening statement. For 25 years, the IPRT has been promoting policies that make communities safer, based on evidence of what works to prevent and reduce offending and reoffending. One of our long-standing campaigns is for an effective spent convictions scheme in Ireland to allow people who are law-abiding and have stopped offending to move on with their lives. It is rooted in the recognition that having a criminal record presents barriers in the context of the protective factors that we know promote desistance from offending, including employment, education and training, accommodation, volunteering, insurance and travel, among others.

There are two existing schemes for expungement in Ireland. Section 258 of the Children Act 2001 applies to convictions for offences committed by children aged under 18 years, while the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 applies to offences committed as adults. The IPRT's position is that while the relevant provision included in the Children Act 2001 generally meets its rehabilitative aims, the spent convictions Act 2016 is so limited it fails to fulfil its rehabilitative purpose. Limitations of the 2016 Act have also been identified by the committee in its 2018 report on penal reform and sentencing, the steering committee for the national drugs strategy, in the Mulvey report and, by application, in the analysis of the Irish Human Rights Commission of previous versions of the legislation. To that end, the IPRT strongly welcomes the Criminal Justice (Rehabilitative Periods) Bill 2018 introduced by Senator Ruane as a positive step towards a better system and, in particular, the introduction of a new approach to dealing with offending by young adults aged 18 to 23 years. However, our position is that the Bill could go much further to facilitate reintegration and rehabilitation.

Our recommendations are as follows. The limit on the number of convictions that can become spent should be removed, as previously recommended by the Irish Human Rights Commission, IHRC. It is draconian, where a person has two convictions, other than minor motor or public order offences, that neither can ever become spent. Ireland's extremely conservative approach to allowing just one conviction ti become spent is an outlier in Europe. Two or more convictions for separate offences does not indicate a pattern or propensity for offending but rather a set of circumstances or factors that contribute to offending. It could be immaturity and impulsivity, or it could be poverty, mental health issues, homelessness, addictions, experience of violence or domestic abuse. Expanded spent convictions legislation would present an opportunity to support people who have recovered from such circumstances and moved on from

offending to lead law-abiding lives.

Eligibility of convictions that can become spent should be expanded by increasing the limit to 48 months for custodial sentences, as in England and Wales and, shortly, Scotland. Concerns about specific categories of offence that would be included could be addressed separately through vetting in regulated areas of work.

Rehabilitation should be incentivised by setting proportionate and reasonable rehabilitative periods. They must be proportionate to the gravity of the offence and the punishment received and should not be so long as to act as a disincentive. The current position where it takes seven years for a minor fine to become spent is completely disproportionate.

We recommend that the Employment Equality Acts be amended to ensure prospective employees would not be discriminated against on the basis of a conviction that had become spent. Discrimination can and should also be addressed through policy interventions such as the "ban the box" campaigns in the United States and the United Kingdom whereby questions about convictions would be removed from application forms and delayed until later in the recruitment process. Of course, this would not deal with other areas in which there is discrimination such as accommodation or insurance.

It should be recognised that rehabilitation is at the heart of a victim-centred criminal justice system. Research has found that crime survivors want the criminal justice system to focus more on rehabilitating people, rather than punishing them, by a margin of two to one. They want the person who harmed them to be held accountable, but most of all they want him or her to desist from reoffending.

Broadening access to spent convictions supports rehabilitation and reduces barriers to employment, education, housing and more. This, in turn, reduces the likelihood of reoffending, crime and the number of victims. The IPRT, therefore, asks the committee to consider amending the Criminal Justice (Rehabilitative Periods) Bill 2018 in line with our recommendations and to progress the legislation as a matter of priority.

I thank the committee for its invitation and attention on this issue. I emphasise that it represents an opportunity for it to support safer communities and a more equal society. My colleague Ms Michelle Martyn and I are ready to respond to its questions as best we can.

Dr. T.J. McIntyre: I am grateful for the opportunity to speak to the committee on the issue of spent convictions. It would be useful to discuss European law in that area and how it frames national responses.

Three areas of European law are important. One is the European Convention on Human Rights, of which Article 8 on private and family life shapes what the State can do and what our rehabilitation laws must look like. Two other areas which may be of interest to members of the committee and into which I am happy to go further if so they wish are the role of data protection law here - it goes beyond the role of the State - and what regulates what private actors do. The new GDPR limits what employers can ask for in relation to spent convictions and will limit what search engines can do. It give individuals a right, in some cases, to have search results using their name removed where they indicate past convictions. That is an important matter in practical terms.

Article 8 of the European Convention on Human Rights on private and family life specifies, in effect, that convictions can be part of someone's private life, such that disclosing them can,

in some cases, infringe his or her right to privacy. That sounds very unusual in an Irish context in which, unlike in some civil law or continental jurisdictions where there is greater privacy in the trial process, trials are always presumptively held in public. They are widely reported in the media and individuals are named in an unredacted form. The point made by the European Court of Human Rights in a case dating from 2012, M.M. *v.* the United Kingdom, was that offences and convictions practically became obscure as they receded into the past such that they were no longer immediately visible to people dealing with individuals and that individuals should be given an opportunity to grow and move beyond past convictions. Where disclosing past convictions can have an adverse effect on people's rehabilitation or employment, we must ask whether it is proportionate. Is it necessary in a democratic society to use the language of Article 8? Is it necessary for public protection in being weighed against the impact on the former offender?

Three cases - M.M. *v.* the United Kingdom and two judgments of the English Supreme Court in R (T. & Anor) *v.* Secretary of State for the Home Department and R (P, G and W) and Anor *v.* Home Secretary - have since developed this principle to set out a number of criteria which can be taken into account in looking at national spent convictions rules. Under the European convention, there is considerable discretion for member states in deciding how they want to shape their national rehabilitation laws, but what is clear is that, at a minimum, they must have some national rehabilitation law and that the law must provide clear rules on when details of offences can be disclosed. The national rehabilitation rules do not necessarily have to provide for an individual review mechanism, in the sense that individuals are entitled to have a case by case determination on when information should be disclosed, but the law must nevertheless have, at a minimum, clear categories to minimise the risk of unfairness or arbitrary results and try to avoid disproportionate results in individual cases. The rules have to be proportionate. We have to be able to identify a purpose being served by the rules such as are we protecting the public in that regard. We must be able to show that the disclosure rules serve that purpose in order that they are not arbitrary. For example, we would not necessarily find compatible with Article 8 a rule that states all old convictions of whatever nature must be disclosed, if somebody is working with children, for instance. We could imagine somebody with an old conviction for dishonesty who had that conviction disclosed not necessarily being treated fairly, even though it might be appropriate to treat other types of conviction as suitable for disclosure.

In the two cases in which the UK Supreme Court has addressed this issue, namely, R (T. & Anor) *v.* Secretary of State for the Home Department and R (P, G and W) and Anor *v.* Home Secretary, it has pushed out the boundaries of the rule somewhat from what the European Court of Human Rights articulated in M.M *v.* the United Kingdom. In particular, it has stressed that it is not only state disclosure which matters but also disclosure in the context of questioning by employers, even in the context of purely private employment. Even though a job does not fit within the general vetting scheme and an employer might not have access to state records as such, Article 8 is still implicated if the employer is entitled to ask a person about his or her previous convictions and he or she is, in effect, compelled to disclose them, the reason being that if one fails to do so, one is open to punishment. Very often it will be a criminal offence to fail to disclose convictions in such a situation, or it could be exposure to disciplinary action or dismissal. In addition to expanding these rules to the private employment context, the two UK Supreme Court decisions stressed that we must look closely at the way in which we graduate these rules and how we decide disclosure is appropriate. In both those cases, the UK Supreme Court found, contrary to Article 8, rules which provide for either blanket disclosure in, as was the case in MM *v*. United Kingdom, or rules which provide for blanket disclosure but based on crude criteria. For example, in the most recent case R (P, G and W) and Anor *v*. Secretary of

State for the Home Department and Anor, the UK Supreme Court held that a single conviction rule, where, if individuals have more than one conviction, then all their past convictions must be revealed when somebody is applying for employment that requires a criminal records certificate, was essentially arbitrary and disproportionate. Why? It was based on the idea that having more than one conviction shows that one has a propensity or a track record of wrongdoing when, in fact, the second or third conviction might stem from the same incident or might relate to a small pattern of behaviour five, ten, 15 or 20 years ago. It does not tend to show anything at all about the ongoing likelihood or an ongoing propensity to commit crime.

Instead, therefore, the UK Supreme Court has said that national rules of this type, if they are to be compatible with Article 8, should be more fine-grained and should take into account several factors. For example, they should consider what was the specific nature of the offence; what were the circumstances around the offence, how old was the person when they committed it; what was the sentence imposed in respect of the offence; have there been further offences since; what length of time has elapsed since the offence; how relevant is the particular offence to the decision to be made, be it, for example, child protection or avoidance against offences of dishonesty.

When one measures the 2016 Act against those criteria, it shows several problems. First, as the previous speakers indicated, the single conviction rule in the 2016 Act is deeply problematic. To my mind, it is clearly incompatible with Article 8 of the European Convention on Human Rights and would be found so if challenged in the Irish courts for much the same reason given by the UK Supreme Court in the R (P, G and W) and Anor *v*. Secretary of State for the Home Department and Anor case.

Second, Irish law applies a crude cut-off in the limitation to a 12-month or 24-month custodial or non-custodial sentence. As with UK law, it is permissible to have a graduated response based on the severity of sentence. A simple cut-off of that sort, particularly where it is combined with the conviction rule, seems to me to be incompatible with Article 8 of the European Convention on Human Rights. That is the case in particular when one thinks about the different nature of Irish law compared to the UK rules. The UK rules at stake in the MM *v*. United Kingdom and R (P, G and W) and Anor *v*. Secretary of State for the Home Department and Anor cases applied to particular classes of employment. They were rules which applied where somebody had to have a criminal background check or a criminal record certificate issued. These were cases involving people working with, for example, children or in sensitive occupations. The UK rules generally regarding the rehabilitation of offenders are much wider than that. Those narrow UK rules were limited to particular sensitive situations. In Ireland, under the 2016 Act, the rules apply across the board, not just in that category.

Insofar as the 2016 Act adopts a rigid single offence rule subject to these so-called "middle-class" exceptions for motoring offences, for example, to the extent that the 2016 Act adopts a 12-month to 24-month custodial cut-off and a rigid seven-year rehabilitation period, the combination of those factors means that the scheme, as it stands, would be found contrary to Article 8 of the ECHR.

Chairman: I thank Dr. McIntyre for his opening statement. I invite Mr. Niall Walsh to make his opening statement.

Mr. Niall Walsh: I thank the committee for the invitation to present.

I am the manager of the Pathways Centre, the post release centre for the educational ser-

vice to prisons, which is part of the City of Dublin Education and Training Board, CDETB. Founded in 1996, the centre offers respite to former prisoners in the crucial period after release by providing information, education, counselling, support and referral in a safe and understanding environment. Our work comprises four essential elements, namely, peer support, guidance counselling, educational programmes and activities, as well as personal addiction counselling. We work with upwards of 400 people every year, assisting them to change their life trajectory and reduce criminal behaviour.

Effective spent conviction legislation would assist in reducing recidivism and promoting reintegration through allowing individuals with previous convictions access education. Education has been and still is a proven method of reducing criminal behaviour. It allows individuals become productive members of society, break away from a cycle of poverty and imprisonment, as well as improving their life opportunities. This legislation has the potential to lead to safer communities and parents engaging in their children's lives and not in prison. It also has the knock-on effect of them contributing to the tax base and to their communities' prosperity.

There are some barriers to reintegration. Someone with a conviction may not be accepted to a college course or be able to complete a college course due to the placement element of the course. If the individual cannot complete and has to drop out, the way fees are structured, they may have to pay to do a repeat first year in a different course. This has the effect of education being financially impossible and that path may be forever closed.

Garda vetting affects all areas of life, college and employment. Someone could lose their educational course or employment due to their convictions becoming disclosed. Garda vetting is just that. It is not but can be seen as Garda clearance. We had a recent experience of a man with a serious conviction more than 20 years old, working as a bus driver. When his employer found out about his conviction, through the media, he lost his job, then his accommodation and, eventually, ended up back in prison. He had being doing well before losing his job.

If one has a conviction, no matter the type, when one discloses it to an insurance company, one will pay a higher premium for insurance. Some of these premiums can be excessive - more than €3,000 or more.

It can also act as a barrier to employment. If an individual must disclose historical convictions, regardless of the length of time since they offended, then they may be unable to obtain even minimum wage employment. Surely they have a right to work and provide for themselves and their families.

Section 55 of the Charities Act 2009 is a perfect example of discrimination. If someone who has a conviction wishes to serve on the board of directors of a charity, he or she must go to the High Court to get an exemption to serve on that board. He or she must have legal counsel and, through High Court affidavits, he or she must detail their life story. The judge then decides if it is in the public interest for the individual to serve on the board of the charity. If one wants to serve on another board of a charity, one must go back to the High Court each time.

Chairman: I thank Mr. Walsh and all our other witnesses.

Deputy Jim O'Callaghan: I thank everyone for attending the committee and Senator Ruane for producing this legislation. The committee is interested in this issue because it produced a report last year in which it recognised the current legislation in this area is limited and fails to support the rehabilitation of more serious offenders. That is why we welcome the legislation

performed by the Senator.

What does she think of the proposal put forward by Ms Fíona Ní Chinnéide that her legislation needs to be expanded? Ms Ní Chinnéide did not criticise the Senator but she believes it needs to be made less restrictive.

Senator Lynn Ruane: I agree with the IPRT. I was trying to judge what the mood was like. I wanted to bring people around to the idea that the single conviction rule is not enough and getting them to think in what other ways we can approach it.

As my legislation moves through the Houses, I am open to working with everybody to make the legislation as accessible and as liberal as possible. I am not married to every single measure in the Bill. It was more about getting the principle out there, the conversation going and having a starting point. I agree with Ms Ní Chinnéide's view on the legislation.

Deputy Jim O'Callaghan: There is a lot in what Ms Ní Chinnéide has suggested. That is no criticism of Senator Ruane. If we are going to introduce legislation, we should ensure that it deals with the reality of the problem. People can get into difficulties at a certain stage in their lives and have a series of convictions which, in years to come, may be remote and irrelevant to what one is seeking to do later on. I would be supportive of trying to expand the legislation if the Senator can and I would support her in that regard.

From my experience since being elected a TD, I know this is a real problem for people. A person who had been offered a good job in the State came to me recently. It had come to the last hurdle, which was the vetting of the person, and the person had a real fear about a conviction they had got some 15 years earlier for an offence they had to disclose. Unfortunately, it was not a spent conviction but it had to be disclosed and it created agony for that person who clearly was no longer in any way a threat. We need to do something about this.

With respect to the N.M., case, an interesting issue arises in terms of the article 8 rights. On the matter of the right to freedom of expression, does Dr. McIntyre see a conflict with it in that newspapers could argue that if, say, I had a conviction dating back 15 or 20 years ago - I am not saying that I do, but if I did - that they should be able to write about it?

Dr. T.J. McIntyre: That is a very good question. The N.M. case and the English cases are focusing very much on the question of state disclosure and requests by employers in the course of the hiring process. They do not address the question of what the media can do. There are two carve-outs here that are important. One relates to the data protection sides of things where, as the Deputy will be aware, there is an exclusion for journalistic activity from the GDPR rules that apply to processing of convictions. The second relates to article 8 where in a number of cases the European Court of Human Rights has said, most recently in a case brought by two murderers against Germany, that it is open to the state to decide to adopt rules that will allow, for example, newspapers to talk about old convictions and to include information about old convictions in their archives, and that is compatible with the article 8 rights of the individual.

Deputy Jim O'Callaghan: Mr. Niall Wash gave the example of a man who was working as a bus driver. He is not a public figure but a newspaper was able to write about a conviction he had going back some 20 years. Would that be affected by article 8 rights covering this area?

Dr. T.J. McIntyre: That is also a very good question because there were two conflicting judgments on exactly that point from Spain and Belgium in the past two years. The Deputy has put me slightly on the spot. I do not have the details of those in front of me. In one case the

court of cassation in Belgium took the view that this was information which should be deleted, so information in a newspaper archive about an old conviction of an individual where there was no great public interest in the case could be required to be anonymised. The newspaper could be required to redact the name of the individual in the old online report. Whereas in the Spanish case the supreme court took the opposite view and held that the integrity of the newspaper archives outweighed the privacy and article 8 rights of the individual.

Deputy Jim O'Callaghan: That is a difficult area and it an issue we probably do not have to deal with when we are dealing with Senator Ruane's legislation. I would have thought the way to deal with the legislation, as the Senator has done, is to try to emphasise in it that relevance and remoteness are the important aspects. For example, is the conviction relevant to something the person is doing and is it remote in terms of the years that have passed? It is clearly the case that if somebody gets a conviction they serve their sentence and the sentence denies them of liberty and has other impacts upon them but it should not affect them after they have served their sentence. They are only the comments and questions I have.

Chairman: Before I invite Deputy Donnchadh Ó Laoghaire to contribute, I advise that this is his last meeting of the joint committee. He is moving on to other areas of interest in the Houses.

Deputy Donnchadh Ó Laoghaire: I will try to pop in occasionally.

Chairman: Good.

Deputy Donnchadh Ó Laoghaire: I welcome the Bill. It is good legislation. Like Deputy O'Callaghan, I find people come into my clinic occasionally to ask about their situation and whether the spent convictions legislation would apply to them. Even before the facts of their cases are out of their mouths, I am thinking it probably would not apply to them. When the facts have been put before me, I have found the legislation may apply in one or two cases but much more often it does not apply and people have not been able to avail of it.

Incidentally, this is also an issue that delays citizenship applications proceeding, which is an area of a ministerial discretion. People may have had two or three convictions, some of which may be minor or not so minor, and from my experience the Minister has used his discretion not to grant citizenship even when the applicant has been living in Ireland for ten to 15 years, but that is an aside.

I agree with Deputy O'Callaghan's point that potentially we can agree with the approach taken by Senator Ruane. It is important we have this discussion but potentially if this legislation can be broadened out I would be happy to support it.

In a wider policy context, one of the representatives of the Irish Penal Reform Trust might indicate how Ireland rates in terms of rehabilitation and recidivism. Senator Ruane, Mr. Niall Walsh and Dr. McIntyre can also respond to that if they wish. Are our rates improving or disimproving?

Ms Fíona Ní Chinnéide: I thank the Deputy for his question. As of today, we do not know in that the latest recidivism statistics are due to be published shortly by the Central Statistics Office, CSO. The probation statistics for recidivism were published recently. Until we can compare the two we cannot say too much. I believe we are about average but it depends on the countries with which we want to compare ourselves. In Norway they were talking about the training and relationships between prison staff. In terms of prison recidivism post-release, its

rate has reduced from 25% to 20%. By comparison, our rate is in the region of 45% to 47%.

Deputy Donnchadh Ó Laoghaire: Has there been much change in that rate over the years? Have we made progress or fallen back?

Ms Fíona Ní Chinnéide: Progress is very slow. We will not know that until we have those statistics. The most recent statistics are the 2010 cohort and their three-year recidivism rate. We are expecting the 2011 and 2012 cohort to be published at the same time. More recently it has crept down a little by a percentage and another percentage over the three years that have been published. More generally, we need to focus on supporting particular age groups from moving on from their offending histories, particularly those in the 18 to 25 age group. We know that for people in that age group the adolescent brain is still in development, they have the highest rates of offending and reoffending but also the greatest capacity for change. It has been said clearly by businesses in the community in England that young people with recent convictions face a triple disadvantage in the employment market. They have no work experience, they do not have access to the same networks older people would have and, on top of that, they have the impact of a convictions history. We definitely must support young people to move on. They use the word "seismic" to describe the difference in a young person getting a job early on in life and moving on and the impact that will have on future decades in their lives. We need to focus on that age group in particular. I acknowledge Ireland has what we believe is an effective and generous provision for offending committed by people aged under 18. We have a system that is very good but it all stops when one commits the offence after the age of 18. Very few of us when we are aged 30, 40 or 50 would want to be judged by our behaviour when we were 18 or 19. We must do more.

Deputy Donnchadh Ó Laoghaire: I imagine people who have convictions or who have spent time in prison experience a disproportionately higher rate of unemployment. Does Ms Ní Chinnéide know what rate that is?

Ms Fíona Ní Chinnéide: I am referring to international figures. They state employment reduces the risk of reoffending, between one third and a half. The Chartered Institute of Personnel and Development in the UK stated that when people with criminal records find employment their likelihood of reoffending is cut by two thirds. It is quite dramatic. We recognise that getting a job in itself does not solve all the issues. There is much pro-social interaction, contributing to society and being part of the enfranchised population that goes with that. Receiving a job is part of a broader reintegration into the community but it makes sense. Being able to provide for oneself and one's family supports reintegration and resistance from offending.

Senator Lynn Ruane: Sometimes, we look at employment versus unemployment but there is also an issue about what jobs people are being pushed towards because of spent convictions. It is also about the type of employment, in particular if one is a young man from a working class community. We received many representations from young men who wanted to join the Army but who were excluded because of one minor offence that came back in the Garda vetting process. They were then pushed towards lower paid, low-skill jobs whereas they would have preferred to progress in very different directions but were prohibited. It is not only about whether they are in employment but about the nature of the employment they are forced into, which reinforces inequality. In low-skill jobs, they live closer to consistent poverty than if they had different opportunities and the type of employment they could gain.

The employment aspect is obviously an important one for rehabilitation, but spent convictions also impact on life within the community. If one wants to go on the summer project with

one's child, one is Garda vetted. If one wants to volunteer with one's son or daughter's GAA team, one is vetted. All these other spaces in which a family integrates into the community can be denied to a person because he or she has to be Garda vetted. Vetting involves a blanket approach. It is not just looking at sexual offences or offences that would require one to consider whether a person could go on a kids' summer project. If a drug offence or a minor shoplifting offence comes up, one is excluded from being part of community life with one's family and that has a negative impact on recidivism.

Deputy Donnchadh Ó Laoghaire: Very often, one could have a number of offences related to a single incident. Is there any scope to consolidate that particular incident for the purposes of spent convictions? There might be more than two convictions and, in fact, more than two serious convictions, but those might have been applied in respect of the same act or incident.

Senator Lynn Ruane: It is covered slightly in the current legislation. It looks at a single incident. As someone who has worked in the addiction sector, I have supported people who either had an episode of psychosis and ended up realising after one week that they faced ten different charges being dealt with in ten different courts. It is the management of that. I do not know whether Ms Ní Chinnéide wants to comment but the current legislation provides for a single incident.

Ms Fíona Ní Chinnéide: Where a number of convictions relate to a single incident, that is treated as a single conviction, but it is still limited to just one conviction and one incident beyond the minor public order or road traffic offences and that is very problematic if public safety is at the centre of the concern here. Two separate convictions for shoplifting can be on one's record for life and neither may become spent yet multiple motoring offences, which arguably put the public at greater immediate and direct danger, can be spent without limit. There is certainly a disproportionate approach taken in particular to property offences and so-called offences of dishonesty.

Dr. T.J. McIntyre: I make the same point regarding the limitation relating to one incident. This was flagged up in English litigation. As it stands, if one has a conviction for criminal damage and assault arising out of the same drunken incident, those two convictions can be treated together as one conviction. However, if one has a week-long mental health issue and a number of convictions arise from that or if one has a conviction for shoplifting in Boots and one for shoplifting in Marks and Spencer on the same day, those two convictions are treated as separate and not arising out of the same incident. As such, they can never become spent.

Chairman: Anyone on the panel is very welcome to come in at any time.

Mr. Niall Walsh: Everyone on the panel agrees the current legislation is very restrictive. While Senator Ruane's proposed legislation is a step in the right direction, this is the fourth time I have been privileged, or not, to be here campaigning through the IPRT to get legislation passed. The Senator's legislation reflects the political realities of trying to get this passed. Legislation like this leads to safer communities. While one is trying to strike a balance with public safety, if one acknowledges, which is not to forget, that a conviction is in the past and that the person can move on, it leads to safer communities. If that part of a person's past is allowed to remain in the past, they can reintegrate into society.

Deputy Donnchadh Ó Laoghaire: To an extent, this is about information. It is about how it exists and who has access to that information on spent convictions, albeit there are wider implications. The witnesses might have reflections on other regimes as well as ours. While access

to the information is restricted, is it deleted entirely or simply held in a secure manner by An Garda Síochána? How does that work regarding the information that exists or once existed on a spent conviction? Is it entirely deleted or held securely?

Dr. T.J. McIntyre: I will elaborate briefly on my understanding and Ms Ní Chinnéide might have something further to say. The short answer is that we are not talking here about deleting records. It is unlike some jurisdictions where criminal records are expunged after a period. What we are talking about here is the obligation of individuals to volunteer the information when employers or insurance companies are asking about convictions and the capacity of the State vetting service to provide information in the context of vetting; we are not talking about modifying information held on central databases at all.

Ms Fíona Ní Chinnéide: I echo that. It is about the disclosure so that the records history remains in the State. It is just what can be disclosed. Only unspent convictions can be disclosed, apart from the area of soft information and vetting but that is another area of discussion completely.

Deputy Donnchadh Ó Laoghaire: Are the witnesses satisfied that the manner in which the information is currently managed and stored is secure and kosher?

Dr. T.J. McIntyre: The big issue here is not so much central State records but rather media reports. What one has seen in the past few years are a great many newspaper archives, in particular from local newspapers, going online. As such, people's old convictions for assault from 20 years ago might now be visible. A great many court reports have gone online. If someone has a conviction from 15 years ago for a serious offence that is mentioned in a High Court judgment, that is suddenly searchable in a way that it was not previously. What has happened, anecdotally at least, to many people is that they have been caught out. Information that had been in the past has suddenly become a great deal more visible because it is now on the front page of the Google search against their name. I do not have any statistics on it - this is purely anecdotal - but I have heard more and more complaints from people who feel it is unfair that information that had been buried has resurfaced.

Deputy Donnchadh Ó Laoghaire: Mr. Walsh works with many people. Part of his discussions with them is about how they reintegrate into society and gain employment. Does he find that people are discouraged and feel there is not much prospect of them getting employment and that this then affects how they apply themselves with regard to education and so on?

Mr. Niall Walsh: Very much so. In the Pathways Centre, we try to help them to be a bit strategic about the courses they pick should they want to do a law degree. The realities or practicalities of doing the FE 1 exams are that those doors may be closed to them. As such, people need to be strategic in the courses they pick if they want to do social care work with young people. Depending on the nature of the conviction, people need to be careful or they may get on a course and spend a great deal of time and effort gaining a qualification with the support of their families, the Pathways Centre and other organisations but never be able to work in the area in which they are qualified. They might be more than capable and have all this life experience to use, but something that happened 20 years ago may prevent them. It can be soul-destroying and disheartening. When one sees people coming out of prison with a law degree, that is great, but they cannot work as solicitors. It very much limits what courses they pick and it is very disheartening for them.

Senator Lynn Ruane: We constantly put the onus in terms of employment on the person

with the conviction but an information campaign is also needed for employers to let them know it is Garda vetting, not Garda clearance. So many employers read the Garda vetting, see there is something on it and do not give the applicant the job, even though whatever is contained in the vetting has nothing to do with the skills the applicant has presented with or his or her abilities or capabilities. We need to put some onus on business and employers to use their discretion if they become aware of some minor offences in someone's past and those employers, not the applicant, being strategic about whether whatever is contained in the vetting will impact on the job and ignore the Garda vetting, which is quite okay to do.

Mr. Niall Walsh: If I can add to that point, some employers have a tick-the-box question - "Do you have a criminal conviction?" - and that gives no chance for explaining what it was, how long ago it was or if it was a minor thing. One is simply excluded at that stage.

Deputy Donnchadh Ó Laoghaire: Ms Ní Chinnéide mentioned that point and a campaign in Britain to eliminate that.

Ms Fíona Ní Chinnéide: Exactly. That campaign has been extremely helpful. The campaign is to ban the box and the same tag line has been used in the UK and US. It seeks to remove the question "Do you have any former convictions?" from application forms. The question can be asked much further down in the process, including at job offer stage.

We need a combination of policy change and the public information piece but also, on the other hand, support through legislation. There is a need for some form of anti-discrimination legislation that takes a proportionate and reasonable approach alongside that. Consider a situation where somebody is already performing a job very well when information of a previous conviction comes up and the person loses the job on that basis. That person has no avenue of recourse at all because there is no protection.

There are international examples. For almost 30 years, Australia has legislated that people should not be discriminated against in employment because of their criminal record if that record does not prevent them from carrying out "inherent requirements" of the job. It is described slightly differently in Tasmania where the words "irrelevant criminal records" are used. Approximately 23% of the cases of complaint that come before the Australian Human Rights Commission relate to discrimination cases on the basis of criminal records but the number that are successful is quite small - approximately six in 2012. We certainly advocate, and will be asking the committee to consider, two forms of anti-discrimination legislation. One is that no one should be discriminated against on the basis of convictions that are spent and the other relates to proportionality and the ability to meet and perform the inherent requirements of the particular job.

There is real fear for people who have former convictions. Even if they were never asked about them and they are not relevant to the job, the fear of that information coming out is enormous. I think Deputy O'Callaghan earlier referred to people being in agony and that is very real.

The other piece of it is people not going for promotions because a promotion might involve international travel at which point they have to talk about their conviction. The problem is not just getting the job, it is retaining it and advancing in one's life.

Ms Michelle Martyn: There is also a sense of frustration and a lack of hope for young adults. That is why we welcome the provisions for 18 to 24 year olds because somebody can

have a conviction at the age of 19 and still be affected by it at 23. We did research in 2015 and one young person said that, if one cannot get a job, one is going to go on the rob. That is important.

International and European countries have looked at extending provision from the juvenile system for those over 18 where international human rights law has requested that to be extended to include 18 to 21 year olds to take into account their development and brain maturity.

Deputy Donnchadh Ó Laoghaire: I have no more questions. That was very helpful.

Senator Frances Black: I welcome Senator Ruane and everyone who has spoken. There is no doubt that this is a vital issue and I was delighted to co-sponsor Senator Ruane's Bill.

This is about changing people's lives for the better and there is no doubt that everybody deserves a second, and possibly even a third, chance. I have worked in the field of addiction and with women in the prison service, the majority of whom, I am told by the governor of a prison, are in prison because of personal addiction or because they come from a family affected by addiction. Those women just want to have normal lives like the rest of it. The reality is that many of them are mothers. They want to go back out, live and be treated with respect and dignity, like the rest of us. That is what this Bill is about, especially when such women step into their own recovery. The Bill is about treating people with respect and dignity. That is the core piece of it.

Rehabilitation is obviously one of the core principles of it - becoming rehabilitated and moving on. I have met wonderful people in recovery. I am in recovery myself and have no shame in saying it. Recovery can bring one to an amazing place. I have worked with women and men who are in strong recovery and have reached unbelievable places. It is truly inspiring.

This is also about passing on down to the next generation. I have worked with families that experience a ripple effect when one person steps into recovery and the whole family gets recovery. Whether the problem is addiction or mental health, if one person steps into recovery, the whole family benefits. The children are impacted big time. A child sees their mother or father go through a recovery process and rehabilitation and watches them go back into college or do something that will give them back their dignity and respect through training courses. That is how children become inspired. It breaks the cycle. This is not just about the individual, it is about society as a whole and that is one of the core principles around this piece of legislation.

I commend Senator Ruane for introducing this vital legislation. I wanted to connect with the Senator and I have some questions and, if anyone else wants to come in, that is obviously no problem. What are the main arguments or barriers that Senator Ruane finds coming up in considering expanding access to spent convictions? What concerns must the committee address?

Could Senator Ruane give us a little more detail on the offences that are excluded from the general spent conviction scheme and the Garda vetting scheme? She might expand a little on that. References have been made to murder and things like that and that is not what this is all about. I ask those questions of Senator Ruane or anyone else who wants to come in.

Senator Lynn Ruane: Fortunately, while some barriers and concerns get raised the feedback has on the whole been hugely positive, publicly and politically. People have seemed open and welcoming to the idea of expanding spent convictions. That is probably down to the number of representations that people get in their offices and they see that it affects almost everybody, or almost every family, in some way.

Some small concerns get raised throughout the debate. We had a list of questions when we tabled the amendments to the legislation, one of which referenced the issue of whether more than one conviction represents a pattern of offending. I do not come at this with that frame of thinking. I think that if offending is a pattern, not offending is also a pattern. If a period of time has passed since one's last offence, that is a pattern of non-offending. It is about how we engage with the conversation and frame the questions we ask. I would much prefer to look at what has happened since the person left prison, what they have engaged in and how long it is since they last offended. Those are the patterns that are more important and that will benefit society more.

Another barrier which came up, and which also relates to the next question, is the issue of expanding the timeframe. For example, does expanding from a custodial sentence of 12 months to a custodial sentence of 24 months sentence mean we include more serious crimes? The question posed to me in the Chamber was what crimes are then included. I would look at this question the other way around because that is not how spent convictions legislation is framed and it is more a question of what crimes are excluded. If we were to look at included crimes, we would be making endless lists of every part of law, so it is best to look at what is excluded. It is serious violent crimes that are excluded. There is also the question of what court the case is heard in, and this would relate to the District Court and the Circuit Court. In addition, it is a combined sentence, so it might not be a 48 month sentence and the person might have two convictions that resulted in sentences of more than 12 months on two separate occasions. Therefore, the 48 months can be broken up in a number of different ways.

The victims of crime piece gets brought up as well because, obviously, people are concerned that victims of crime have their own trauma that they have to carry from the date of the offence, and it is very important that we support victims of crime to be able to deal with that. It is about when the person receives the sentence in the court and where the relationship ends between the victim and the perpetrator. It is about how we have those discussions in a way that is not hurtful or damaging to people who feel they have been wronged by an individual or by a certain circumstance. For the person who has committed the crime, their contract is with the State when they leave prison, and their contract to not offend is not with the victim. Ms Ní Chinnéide touched on this in her contribution. It is framed in a way that there is an assumption that victims of crime want punishment forever more for the individual, when many victims of crime actually want to see no more victims of crime from that perpetrator. In many cases, we believe that victims of crime would much prefer to see rehabilitation of a person so crime is reduced overall and nobody has to experience what they experienced.

Those are some of the issues that have come up. I answered the second question with the first. We look at crimes that are excluded rather than included because it would be such an exhaustive list. It is about making sure the crimes we all agree need to be disclosed in particular circumstances and employments would remain the same.

Ms Fíona Ní Chinnéide: I want to echo all of that and to outline one overarching theme. There is a contradiction at the heart of the criminal justice system if we are telling people they must reform but, at the same time, that they can never forget. We need to recognise when people have moved on and demonstrated they have desisted from offending behaviour. Another area of research is called "time to redemption" studies. This is where an examination of when a previous criminal record still holds a predictive value on future offending. This actually reduces over time and, on average, it is seven to ten years, beyond which the information is no longer relevant. Therefore, in terms of predicting future offending, after that period it is the same as for somebody who has never been convicted of an offence. While this would not be

palatable, an argument can be made that all offences should be able to become spent at some time in the future following a longer rehabilitative period and, in fact, that is the case in many countries across Europe. We are starting from a very conservative space on these two islands. I echo what Senator Ruane said. We need to focus on the relevance of this information into the future across all categories.

Ms Michelle Martyn: Senator Black referred to the limits on the numbers of convictions and how these do not take into account the circumstances of the offender. For example, addiction is one particular issue that should be taken into account, and that is why it is very important to examine the restrictions. As Ms Ní Chinnéide said, there is a lot of research in France, Spain and Sweden, and we should be looking at systems there, rather than just looking at England and Northern Ireland.

Senator Frances Black: Will Senator Ruane give us more detail on the length of the rehabilitative periods outlined in the Bill and some of the considerations?

Senator Lynn Ruane: In consultation with stakeholders, I created a table which contains a proportionality scale. It was an attempt to look at everything from fines upwards. At present, a person could have a fine or community service period on their record for seven years, although it is minor stuff. It did not feel proportionate to have a blanket seven years. What we attempted to do in the tables was to set a proportionality so whatever sentence a person was given, whether custodial or non-custodial, their waiting period was proportionate to the length of the sentence. For example, if someone only received a sentence of three months, their waiting period would be shorter, and if it was 12 months, the waiting period would be a little longer. It was to set a scale of proportionality.

Again, this is an area of the Bill I am open to looking at and discussing as time goes on. We need to ask are those numbers arbitrary, why they are set as they are, can we improve them and does this need to have a proportionality scale or do we just set a lower blanket of a two or three year waiting period. It was just an attempt by me to look at the seriousness of the crime and the sentence, and the proportion of waiting time. Right now, it is disproportionate that somebody with such a minor offence would have to wait seven years. It was trying to take that into account and to work on that as a principle in terms of whether proportionality should be part of spent convictions.

Deputy Thomas Pringle: I thank the speakers for the presentations. I apologise that I could not be here for the presentations but I have read the information. This is my first meeting as a member of the committee so I am only getting used to the work. I would say to Mr. Walsh that my daughter worked in Pathways on a job placement for a summer a few years ago, and she found it very worthwhile. It is an excellent organisation and I congratulate Mr. Walsh on the work he does.

The question I want to ask has largely been answered in the last contribution. Much of the issue around spent convictions is how society deals with them, rather than how the individuals deal with them. It has always been put on the individual to make the changes when the bigger onus is on society. It is useful that this debate has been taking place in the last couple of years. I was positively disposed towards the last spent convictions Bill when it first appeared because a couple of people in Donegal had contacted me about convictions from 30 years ago which they still had to disclose. I thought that Bill would go some way towards meeting the issue but the single-offence concept scuppered that straightaway. It raised people's expectations and then dashed them again when they actually saw it was not helping them.

It is probably part of an evolution for us, as a society, rather than for the people with the convictions, who are probably more in tune with what is needed. Although this is probably a rhetorical question, how much of this is about the rest of society getting used to the idea rather than spent convictions?

Ms Fíona Ní Chinnéide: I thank and welcome Deputy Pringle. It is interesting that we have an imagined public that has pitchforks at dawn. We have to look at the scale of the issue. There is an absolute silence and invisibility around this issue because, by virtue of the fact people do not want to disclose their convictions, they are not talking about it and they are not appearing as case studies and information. It would be useful if the Courts Service were to carry out some research to identify exactly how many people have convictions. There is a new chief information officer in the Department of Justice and Equality and a new data research strategy, which are welcome in identifying the scale of the issue. In the United Kingdom 11 million people, or 16.5% of the total population, have at least one conviction. Proportionally, that would equate to more than 750,000 people in Ireland, although one must be careful in matching because it is not a direct correlation. Nevertheless, it is in the hundreds of thousands. A Scottish Government analysis has shown that 38% of men and 9% of women born in 1973 have at least one criminal conviction. It extrapolated to the population as a whole, which suggests at least one third of the adult male population and almost one in ten of the adult female population are likely to have a criminal record. Given the scale, the imagined public is affected by having a history of convictions. Just as every family contains somebody who has been a victim of offending, we also know somebody who has committed an offence. Data would be welcome, but the welcome would perhaps be silent.

Dr. T.J. McIntyre: Deputy Pringle's point was fair and reflects a point my colleague Ian O'Donnell has made about the existing law, namely, that the problem is we treat spent convictions as a prize for rehabilitation. One receives a prize at the end of a rehabilitation period, rather than it being a tool that promotes rehabilitation. It is no good having it as a symbolic gesture at the end of seven years to say to somebody, "Well done. You have desisted for that period," when a shorter period could be much more effective in promoting rehabilitation in the future.

Senator Lynn Ruane: I agree. For spent convictions and convictions in general, it is not about what the public will or will not say about the matter. I did not have any negative push-back when I introduced the legislation. People understand it. It highlights the disproportionate way in which such laws and regimes affect people in minority groups and lower social classes. It is not that the likelihood of offending is higher because someone is from a lower social class but rather the likelihood of being caught is disproportionate. The presence of gardaí in communities, the unconscious bias in the justice system and so on contribute to a disproportionate implementation of the law, of which people are aware. Irrespective of what part of society someone is from, he or she may have an conviction or will understand it can negatively affect others more.

Mr. Niall Walsh: The existing legislation which provides for a one-year sentence has excluded many. It is scary, or at least should be acknowledged, that 95% of the prison population will be released back into society. They are our neighbours, sons, daughters and cousins and will be back living in the community, although I do not mean for victims to be left out of the matter in any way. A judge decides the sentence, but the reality is that it starts only on release, given the barriers to reintegration and so on. The legislation in question will lead to safer communities. I apologise for repeating myself, but I wish to get the point across.

Chairman: It is important. Well done.

Senator Lynn Ruane: I return to the aspect of young adults and society. A reason I am so interested in the matter is, as I have written publicly, I was a young offender and it is only because of societal interventions that I am where I am. It is because people ignored the Garda vetting process to give me employment at a young age in the area of addiction. At home I have a shoebox full of letters from young men, from the age of 12 years when they were in the Oberstown centre, young adults in St. Patrick's Institution and later in Mountjoy Prison. They have been my friends since we were kids. There is a pattern in their letters that when they are released, they will return to school, get a job, join Youthreach and stop using drugs. Something happens between institution and agency, when an individual returns to his or her community without the societal supports about which Mr. Walsh and Senator Black spoke in respect of addiction, homelessness, poverty and so on. There is an onus on us to examine that age group, 18 to 24 year olds especially, to carve out a space for them in the legislation. A large number of additional supports are needed. If I had not been caught and provided with the supports I was at 17 or 18 years of age, I do not know in what position I would be. I do not doubt that I could have ended up in the prison system. The section that relates to 18 to 24 year olds is very important in the legislation and any policy we look for on the rehabilitation of young offenders especially.

Deputy Catherine Connolly: Cuirim fáilte roimh na finnéithe. Is eispéireas eile é a bheith ag an gcoiste seo i gcomparáid leis an gCoiste um Chuntais Phoiblí.

It is my first time to attend the committee and a very different experience from that at the Committee of Public Accounts in listening, learning and debating. I apologise that I had to leave, not least because I like to remain for the duration of committee meetings.

I commend Senator Ruane for her Bill. What she stated to Deputy Pringle struck me, namely, that while the issue affects everyone, the limits of the current law have a disproportionate impact on marginalised, poorer and working class communities.

Ms Ní Chinnéide spoke about the scale of the convictions and how no research has been carried out in Ireland. The Courts Service is considering compiling figures for the numbers of people who have been convicted. Will she elaborate a little on that aspect? There was a slight divergence between the IPRT and Senator Ruane on the recommended age. The IPRT suggested the age should be higher.

Mr. Walsh is very welcome and I have great respect for his organisation. He stated it "would" reduce or help to prevent recidivism if spent convictions were acted on. Are there figures or research in that regard, or what are the best areas to examine?

Ultimately, I disagree slightly with Senator Ruane about people not being on board. In the context of the Parole Bill 2016, there has been an attitude that prison is for punishment. While victims must be paramount and we have all had related experiences with our families at some stage, part of the problem is that victims do not receive proper support all along. It is difficult, therefore, to zone in on offenders.

Mr. Niall Walsh: Ireland does not do research very well, particularly into prisoners on release.

Deputy Catherine Connolly: I refer to selling it to the public.

Mr. Niall Walsh: If the Deputy is seeking statistics, she has put me on the spot again. I am at a loss in that regard.

Deputy Catherine Connolly: I apologise.

Mr. Niall Walsh: It is okay. The Deputy is welcome to visit Pathways to see the effect of someone who engages versus someone who does not. Someone who engages in education-----

Deputy Catherine Connolly: I agree with Mr. Walsh. My background is in psychology and he is preaching to the converted. I refer instead to hard facts and selling to the public the message that education is an essential part of rehabilitation.

Mr. Niall Walsh: I will have to draw on international research for the moment. Foster proved the link between who engaged in education or obtained an education qualification and rehabilitation. To tie it into recidivism rates, they are approximately 30% or 35%, but one size does not fit all because the matter is so complex and it depends on the individual. If there was a panacea, Pathways would have patented and run with it. It is a tailored case for each individual who is released. I accept that it can be career suicide for a politician to appear soft on crime and that it must be sold to the public, although that is not the way to consider the matter. I apologise for repeating myself, but it leads to safer communities if the individual enters education. It has a ripple effect for the children of the people in question. While I do not mean to leave out victims, if someone engages in education and reduces criminal activity, his or her children will benefit and the multi-generational problem will be broken. That, in turn, will lead to safer communities. I am unsure whether that answers the question or assists in selling it to the public.

Chairman: That was in response to the last part but we will go to the earlier questions. Ms Martyn, will you take up on the questions from Deputy Connolly, please?

Ms Michelle Martyn: The Irish Penal Reform Trust makes a case for young adults between the ages of 18 and 24 years. It is based on our research for the report in 2015 around young adults in the criminal justice system. The reasons arise from the scientific evidence that shows the brain and maturity continue to develop beyond adolescence and into a person's 20s. Socio-economic factors have also been highlighted as placing young adults at higher risk of offending. Research in the United Kingdom has highlighted how young men between the ages of 15 and 23 years were more likely to sustain a brain injury than any other group. The national children and young people's framework of the Department of Children and Youth Affairs goes up to the age of 24 years. In line with that we are calling for the age to be up to 24 years. There are special provisions for young adults in 20 of 35 other European countries. Some go up to the age of 25 years, including Sweden and Netherlands. It is more a question of maturity rather than age that should be considered.

Deputy Catherine Connolly: I asked about the scale.

Ms Fíona Ní Chinnéide: I will speak about the courts. One important thing is to stop talking about victims and offenders as if they are two separate tribes. As Senator Ruane alluded to, often they are the same people. Males in the 18 to 24 years of age group are the most likely to offend but they are also by far the most likely to be victims of crime. Ironically, they are also the least likely to worry about it, but they are twice as likely to be victims of an offence than someone who is aged over 65 years.

There is no research that we are aware of in respect of courts statistics. The Courts Service published its 2018 report some days ago. It is difficult to drill down into the information. We know from the annual recorded crime statistics that there are in the region of 200,000 recorded crimes every year. In 2017 in the District Court some 290,000 orders were made. Not all of

those involved a criminal conviction. These related to 237,000 people before the courts. A total of 143,000 of those before the courts were there for road traffic offences. We believe that this is why the decision was taken to make minor motoring offences and public order offences unlimited. We believe the approach was taken that this would apply to the greatest number of people. Again, that is not linked to the main concern, which is protecting public safety. We would welcome some detailed research such as that published by the Ministry of Justice in the United Kingdom and the Scottish Government analysis. We would welcome for that to be conducted in Ireland.

Senator Lynn Ruane: I will have to find the research and submit it to the committee. I will follow up on Mr. Walsh's point. Research has been done in Scotland and it was found that when the spent convictions regime was improved there was a notable reduction in recidivism. That might be something we can look to in terms of research. The public would obviously like to see that any change results in a reduction of crime and victims. Maybe I will find that research and send it on.

Chairman: That would be helpful. Thank you, Senator. Deputy Connolly, are you finished?

Deputy Catherine Connolly: Ms Ní Chinnéide referred to research. Does it give the scale of convictions? We do not know the scale of existing convictions in Ireland at the moment.

Ms Fíona Ní Chinnéide: No, I do not know the methodology behind it but certainly the Ministry for Justice in England and Wales carried out analysis. Those responsible looked at a particular age group and a particular year. It was similar to the Scottish research. They found that one in three men born in 1971 had a criminal conviction and one in nine women. This is consistent with the Scottish analysis, which was similar. I read out the statistics earlier. The corresponding figures were 38% of men born in 1973 and 9% of women.

Deputy Catherine Connolly: It is a glaring gap in this discussion.

Ms Fíona Ní Chinnéide: It is a huge gap. The position now is that the Department of Justice and Equality has strongly recognised the need for evidence-informed policy. The Department is investing in data research and this is most welcome. There is a new Government chief information officer within the Department of Justice and Equality. There is a new strategy. It is all positive. This is one of the things we would like to see the Department undertake.

Chairman: Deputy Chambers is next.

Deputy Jack Chambers: I have read some of the Irish Penal Reform Trust analysis on the need to address the legacy of people and the positivity around that. What is the pathway for this in terms of the interaction of the trust with the Minister? Where is it at around the Bermuda Triangle of legislation that we have at the moment?

I was just thinking about a separate point when I heard the interaction. The parallel issue to all this is the Internet and the fact that someone may have a conviction and is labelled with that conviction forever. Has that in some way superseded legislative intervention? What solutions are there in that area? We all know employers. There is not only a formalised engagement around what conviction a person might have but there is also the obvious search that occurs and the trawl that happens. How is that squared? That will inevitably remove many people who we are talking about from potential employers.

Senator Lynn Ruane: I will answer the first question and then I will hand over to Dr. McIntyre for the second part.

Deputy Jack Chambers: The question may have been addressed.

Senator Lynn Ruane: It has been addressed somewhat, but Dr. McIntyre can repeat himself.

The Department of Justice and Equality has been open to the legislation. We have had numerous positive interactions. Obviously, we have had support across the Houses on Second Stage. That can materialise but then disappear. I believe there is a will around this.

I spoke earlier about the number of representations each political office gets on convictions. The Department of Justice and Equality is highly aware of the issue. The Department knows it started from a restrictive starting point in 2016. We were one of the last countries to introduce a spent convictions regime. We went back into all the commentary from the time the initial legislation was being brought in on spent convictions. It did not seem like anyone was sold on the restrictive regime but they had to get it in at the time. There has been an openness and a willingness to look at this right from the first tranche of legislation in terms of the single conviction rule and so on. For me, it is a question of keeping the pressure on. The committee has had hearings on spent convictions in general. There is a good chance. I hope to engage further with the Minister for Justice and Equality, Deputy Flanagan, and his office over the summer to bring my Bill back on Committee Stage in the Seanad in the autumn.

Chairman: Does Dr. McIntyre wish to come in?

Dr. T.J. McIntyre: The Deputy asked about the Internet and he is absolutely right that this is a problem. Of course it is not only a problem for convictions but for charges as well. Someone may have been acquitted but nevertheless the name turns up in a search. That is a problem. There are two questions. One is a narrow individual question. If an individual has an old conviction or an old mention of the fact that he or she was charged with an offence, can the person have it removed from the search results? In some cases it is possible. We have the so-called Google Spain principles and the so-called right to be forgotten, which was established by the European Court of Justice some time ago. If a conviction is spent then Google will normally de-list it. This means it will not show up in a search for the person's name although it will show up in the context of other searches. That makes it practically important to consider the reach of spent convictions. If a conviction is not spent, then Google is far less likely to de-list it.

That is a partial remedy. It is a remedy for people who are well-informed enough to know about the existence of this right and how to go about exercising it. However, it is not a great remedy for the average individual who is not aware of the finer points of European data protection law. Moreover, it does not really do anything to address the wider issue, which is that of employers searching against the names of job applicants and looking at the information thrown up. The information might be completely inaccurate. It might be information that relates to someone else of the same name. There are several people with the name T.J. McIntyre online. I am not a science fiction writer. I do not manufacture health foods in Boulder, Colorado. However, if someone searches my name these are some of the first results to be seen.

There is a wider data protection issue that we might consider. Should the Data Protection Commission be issuing guidance on this point? Should it restrict how employers search against job applicants on the Internet? The Data Protection Commission used to have guidance on this

point online but it seems to have been taken down in the meantime. It would be very helpful to see the Data Protection Commission issue guidance confirming that employers ordinarily should not be searching against people online, except having told them they are going to do that, with the opportunity to make representations on any information they find. In other words, if an employer finds information on T.J. McIntyre, it should show it to me and ask, "This guy who got the conviction, is he the science fiction writer, the health food manufacturer or the law lecturer in UCD?" On top of that, we should be making sure that employers are not looking for irrelevant information and information on old convictions, whether or not they are spent. It is very often going to be irrelevant information because it is not relevant to the particular employment.

To some extent, that is a problem that is outside the scope of the current discussion because it is not really within the reach of the spent convictions legislation. It is, however, within the reach of data protection law. As I said, the appropriate step would probably be for the Data Protection Commissioner to consider reissuing guidance in this area.

Chairman: We are at this final point and I believe the questions have been well covered over the period. Is there anything the Senator would like to say before we bring our hearing to a conclusion?

Senator Lynn Ruane: No, I think we have managed to cover everything. Dr. McIntyre's last point on the guidance from the Data Protection Commissioner in regard to people's privacy is an important one to consider. I thank the witnesses for their time and we look forward to the report.

Chairman: I would make two points. Senator Ruane talked about her objective and why she set it out in the first place. Today's meeting has certainly helped to get to a point where, it is fair to say, she has achieved her objective and she has created that wider address which is part of this and, ultimately, the passage of the appropriate legislation. We will continue to make a contribution to that journey and we will be preparing a report which will be laid before both Houses of the Oireachtas. Obviously, it will be into the autumn resumption period as we are currently working on another report in regard to direct provision. We would hope that, very early in the period following our first meeting on 18 September, we would be in a position to adopt the report in regard to today's hearing and the focus of the Senator's Bill.

On behalf of the committee, I thank Senator Lynn Ruane, Ms Ní Chinnéide and Ms Michelle Martyn, and I thank Dr. McIntyre for returning again - he probably knew his seat exactly from before. Mr. Walsh from Pathways is also very welcome. I wish all concerned the very best. My thanks to the committee also. Well done to Senator Black - I was not left on my own at the conclusion. In any case, I thank all members of the committee, in particular as this was the very first meeting for Deputies Pringle and Connolly, having replaced Deputies Wallace and Daly. It was a good morning's work. On behalf of the committee, I again thank each of the witnesses for joining us today.

The joint committee adjourned at 11.05 a.m. *sine die*.