



Merchants Quay Ireland
Homeless & Drugs Services

Briefing: Criminal Justice (Rehabilitative Periods) Bill

Background

Merchants Quay Ireland (MQI) is a national organisation that helps people who are homeless and those caught in addiction. We provide frontline services, practical supports, pathways towards recovery and innovative responses to the issues of drug use and homelessness in Ireland.

MQI runs drug treatment services across the country, including stabilisation services, detox, rehabilitation, and aftercare. Working with the Irish Prison Service, we also deliver the National Prison-Based Addiction Counselling Service. In 2017, across these services, we provided drug treatment and counselling to over 3,000 people.¹

MQI believes that Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 fails to reflect current understanding of addiction. The stigma surrounding addiction and recovery, and the requirement to disclose convictions, acts as a considerable barrier to work, education and housing. This puts at risk the recovery for which people fight so hard.

Despite the Government's current health-led response to addiction, it is clear that the current criminal justice policy is failing people in addiction and in recovery. We therefore strongly support the Criminal Justice (Rehabilitative Periods) Bill.

Current legislation

Spent convictions are currently governed by Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016. Under this legislation, convictions which may be regarded as spent after 7 years are set out in Section 5 of the Act. They are:

- All convictions in the District Court for motoring offences except for convictions for dangerous driving which are limited to a single conviction
- All convictions in the District Court for minor public order offences
- A single conviction (other than a motoring or public order offence) in the District or Circuit Court which resulted in a term of imprisonment of 12 months or less (or a fine)

Addiction and Crime

The majority of those serving custodial sentences for drugs offences have more than one offence to their name and will thus never qualify for their convictions to become spent.² There is strong evidence to suggest that criminality is exacerbated by or initiated as a result of drug addiction. Clients at MQI

identify their addiction as the root cause of their crimes, with many making clear that they offended only in so far as it fed their addiction.

One study found that only around half of drug users with criminal convictions had committed a crime prior to using drugs; another found that those who had reported criminal activity prior to drug use also reported their criminal activity had escalated as a result of that addiction.^{3 4} A survey of the Irish prison population found that 51% of male and 69% of female prisoners reported being under the influence of drugs when they committed the offence for which they were serving a sentence.⁵

It is also important to consider the broader circumstances of a person's addiction. Evidence suggests that many of those who in are active addiction use drugs as a coping mechanism in response to trauma or mental health difficulties.⁶ Of almost 400 people working with MQI's mental health team, 89% reported recent drug use. It is in these circumstances that addiction and attendant criminality occur.

Criminal records and recovery

"It doesn't only hurt the person that's going for a job, because when an employer finds out, and that's the fear I have of people knowing who I was and not who I am, but it's families as well. Imagine a father with a past and he can only settle on minimum wage because of a stupid mistake he made when he was younger? It's not only affecting him, but his kids and their quality of life."

- Alan, MQI Client

This understanding of addiction is reflected in the current National Drugs Strategy, which promotes a health-led response to addiction. However, this is not reflected in legislation surrounding criminal records and spent convictions. As the National Drugs Strategy states:

*"[T]he operation of the Act should be reviewed after a period in operation to ensure that pathways to rehabilitation and a normal life for those who have committed offences during a period of drug use are not unduly affected by the system of recording of convictions."*⁷

In its report on the current legislation, the Committee on Justice and Equality came to a similar conclusion, stating that *"the current position does not take into account in any way the circumstances that may have contributed to a person's offending behaviour at the time, which could have been youth, addictions, poverty or any range of other circumstances"*.⁸

The European Monitoring Centre on Drugs and Drug Addiction identified the three pillars of social re-integration as housing, education and, employment. The current regime on spent convictions is creating a barrier to each of these.

People in recovery will often face criminal background checks for jobs, education, and housing. A study of 115 recovering drug users in Scotland found that the two most commonly cited barrier to employment were criminal record and stigma.⁹ The stigma associated with drug use is further reinforced further where drug use is viewed as a criminal justice matter rather than a health and social issue.^{10 11} This is an experience echoed by clients at MQI recovery services.

"It's the fear, because I know that if I go for a job they're going to check me out and that's it. They're not going to hire me. So, in my head, what's the point if they're not going to? They say 'Look at these convictions? We don't want a thief around us.' So I don't bother."

- Donal, MQI client

In addition to failing these clients, the current law is placing additional costs on society. The barrier of a criminal conviction makes it less likely that an individual can move on to employment or education, and this in turn makes relapse and re-offending more likely.¹²

Conclusion

“You do the crime, you go in and do your time, that’s fair enough. But then to be tarred with it for the rest of your life and for it to affect someone that is willingly trying to change and turn their life around? It kind of defeats the purpose. What’s the point in saying ‘Give them a second chance’ if you’re not willing to? So, yeah, it annoys me. It angers me sometimes.”

- Derek, MQI Client

MQI sees over 3,000 clients in treatment each year. This treatment is a difficult process, as one client stated “they break you to a certain extent. Not in a bad way, but they break the image, the deceitfulness and then it’s just like they pour a new you into a new mould and build you back up from there”.

People who go through this process should not be faced with additional, unnecessary barriers in their recovery. Current legislation around criminal records creates such barriers and are outdated when the Government is focused on promoting treatment and a health-led response to drug addiction.

The proposed legislation introduces the proportionality and understanding lacking in the current legislation and will help to give people a second chance.

“Can you imagine how rehabilitated or how much of a new person you can become within two or three years, never mind seven. Seven you just give up hope, you know? So it really is like walking around with a sign on you.”

- Alan, MQI client

¹ In 2017, MQI provided in-prison counselling to 2,547 people; drug and alcohol treatment support to 460 people in the Midlands, and detox and rehab for 170 people.

² Irish Prison Service/Central Statistics Office, Irish Prison Service Recidivism Study 2013. Available at: <http://www.irishprisons.ie/images/pdf/recidivismstudyss2.pdf> [accessed 18 June 2018]

³ Keogh E (1997) Illicit drug use and related criminal activity in the Dublin Metropolitan Area. Dublin: An Garda Síochána.

⁴ Dillon L (2001) Drug use among prisoners: an exploratory study. Dublin: Health Research Board.

⁵ Hannon F, Keleher C and Friel S (2000) General health care study, of the Irish prison population. Dublin: Stationery Office.

⁶ Wu, N. S., Schairer, L. C., Dellor, E. & Grella, C., 2010. Childhood trauma and health outcomes in adults with comorbid substance abuse and mental health disorders. Addictive Behaviors, Issue 35, pp. 68-71.

⁷ Department of Health (2016). Reducing Harm, Supporting Recovery: A health-led response to drug and alcohol use in Ireland 2017-2025

⁸ Joint Committee on Justice and Equality (2018) *Report on Penal Reform and Sentencing*. Houses of the Oireachtas. pp58-59

⁹ Scottish Executive (2001) Moving On: Education, training, and employment for recovering drug users. P19

¹⁰ Ahern, J., Stuber, J. and Galea, S. (2007), 'Stigma, discrimination and the health of illicit drug users', *Drug and Alcohol Dependence* 88, pp. 188–196.

¹¹ Lloyd, C. (2010), *Sinning and sinned against: the stigmatisation of problem drug users*, UKDPC, London.

¹² Louks et al, *The Employment of People with Criminal Records in the European Union*, *European Journal on Criminal Policy and Research*, Issue 6, 1998 at 195.