

IN THE UNDERCOVER POLICING INQUIRY

SUBMISSIONS ON THE REHABILITATION OF OFFENDERS ACT 1974 AND ITS IMPACT ON THE INQUIRY'S WORK ON BEHALF OF PETER FRANCIS

1. These submissions are provided on behalf of Peter Francis in response to the Chairman's Directions, dated 1 March 2017, which invites CPs to give their views on the interpretation of the Rehabilitation of Offenders Act 1974 ('the Act') and its potential impact on the work of the Inquiry.
2. Once more we are grateful to Counsel to the Inquiry ('CTI') for their Note on this matter, which sets out a clear exposition of the relevant law, and the possible implications for the progression of the Inquiry. The central question is identified as whether it is necessary for the Inquiry to seek exception(s) from the normal operation of the Act.
3. We will deal with the issues outlined by CTI in their Note in turn.

Relevance/Necessity of Spent Convictions:

4. We agree that it will be necessary to receive, consider, and, where necessary, admit evidence of spent convictions, in order to allow the Inquiry to fulfil its terms of reference, and comply with its duty of fairness. In particular, we would wish to minimise the possibility of "*misleading and unfair*" conclusions as

to the adequacy of justification, if the Inquiry were prohibited from considering spent convictions (CTI, para 15).

Section 4(1); 4(6):

5. We take the view that the receipt and consideration of spent convictions cannot of itself constitute 'treatment' for the purposes of s.4 (1) of the Act. Provided it is for a purpose in law, we are of the view that the Inquiry can only be said to 'treat' a rehabilitated person contrary to s.4(1) if it admits evidence of the fact of the spent conviction (CTI, paras 29, 30).
6. We take the view that the treatment of a rehabilitated person '*for all purposes in law*' includes a legal purpose, a purpose designated by law, or the legal implications of such treatment. Specifically, we agree that the work of the Inquiry is for a purpose in law to the extent that it has a statutory duty to determine facts and make recommendations (CTI, para 31).
7. We consider that section 4(6) should be construed in a purposive manner, so as to only concern the substantive questions determined by the Inquiry. On this basis, the Inquiry constitutes '*proceedings before a judicial authority*', in so far as it determines matters which may well affect certain rights, such as reputation. We are of the view that the word 'affecting' must be construed widely so as to include its general, rather than legal, effect (CTI para 57, 58). Further, the word 'determine' must be similarly construed to include making findings of facts, rather than only legally binding determinations.
8. The Inquiry's proceedings receive evidence which affects rights in the sense that the evidence informs the findings which, in turn, may affect reputation. However, the proposed nexus between such evidence and any resultant policy or legislation is too remote (CTI, para 59).

Section 4(2):

9. Questions put by the Inquiry at the hearing stage will not fall within the scope of section 4(2) of the Act, as they concern proceedings before a judicial authority under section 4(6) (CTI, para 70). However, it seems to us that s.4 (2) will apply for questions posed for procedural purposes (e.g. restriction order applications).
10. It seems to us that section 4(2) (a) of the Act does *not* confer a discretion on the relevant person as to whether or not to give a truthful answer. The effect of the statutory wording '*may be framed accordingly*', is to require, rather than sanction, a false answer to be given in response. We agree that the alternative construction would "*not sit easily with the mandatory terms at the start of the subsection*" (CTI, para 69) nor with the underlying purpose of the Act.

Section 4(3)(a)

11. The provision does not prevent the relevant person from voluntarily disclosing the fact of the spent conviction or related circumstances (CTI, para 72).
12. In order to give effect to the important exception under section 7(3) of the Act, we submit that section 4(3)(a) must be construed narrowly, so as to not allow the recipient of a s. 21 notice to omit disclosure of a spent conviction or related circumstances.

Section 7(3)

13. This provision should be construed widely, so as to permit the Chairman to make a single, inclusive decision as to the admission of all relevant spent convictions. We share the concerns of CTI that the alternative approach would seriously debilitate the progress of the Inquiry (CTI, para 84).

General Issues:

14. In relation to the questions posed by CTI at paragraph 109 (6), our responses are as follows:
- (i) No. Specifically, under section 4(2) of the Act, where no such question is asked, the same information can lawfully be volunteered (CTI, para 69). See also paragraph 11 above.
 - (ii) No. The request, or incidental receipt, of information about spent convictions cannot constitute treatment contrary to section 4(1) of the Act (CTI, paras 28, 29).
 - (iii) No. For the reason outlined above.
 - (iv) No. The Inquiry is empowered to do so under section 7(2)(f) of the Act.
 - (v) The Act only restricts this under section 4(2), when read with section 4(4) and section 7(4).
 - (vi) The Act only restricts this under section 4(1)(a)(b), when read with section 7(3) and 7(4).
15. It would seem therefore that the Inquiry should request from the SSJ for an exemption from section 4(1) of the Act, under section 7(4), in the terms suggested in paragraph 99 of CTI's note. It seems to us that this exemption would probably be sufficient to circumvent the restrictions under section 4(2) and/or 4(3), in so far as they relate to section 4(1) of the Act. However, in view of the need for the Inquiry to progress on a clear basis, unfettered by any restrictions on this matter, an exemption under section 4(4) should also be sought. We endorse the terms suggested by CTI at paragraph 96 and 97 of the note.

Maya Sikand

Garden Court Chambers

27 March 2017

