

**WRITTEN QUESTION TO THE MINISTER FOR HOME AFFAIRS
BY DEPUTY M.R. HIGGINS OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 2nd JULY 2013**

Question

Will the Minister explain –

- a) what action, if any, has been taken to rehabilitate offenders back into society i.e. those who have committed a criminal offence or served their punishment;
- b) whether there is evidence that businesses are circumventing the Rehabilitation of Offenders (Jersey) Law 2001 and, if so, what steps he is taking to tackle this?

Answer

- a) The importance of offender rehabilitation is recognised in a number of ways by a variety of agencies within the Island, not all of which fall within my remit as Minister for Home Affairs. Further details can be found within Pillar 9 of the Criminal Justice Policy, which specifically addresses the issue of rehabilitation of offenders.

Centeniers have the power to decide not to charge offenders, in certain circumstances, even when an offence is known to have been committed, as does the Attorney General. The Code on the decision to prosecute, issued by the Attorney General, sets out the two stages in any decision to prosecute – the evidential test and the public interest test. Centeniers will only prosecute where a case has passed both tests.

Where a person has been convicted of an offence, the Loi (1937) sur l'atténuation des peines et sur la mise en liberté surveillée enables the Court to impose a probation order. As part of the Probation Order, appropriate interventions are identified to address offending behaviour, needs, victim awareness and community reintegration.

Alternatively, the Criminal Justice (Community Service Orders) (Jersey) Law 2001 enables the Court to impose a community service order as a credible community based custodial alternative penalty. Every person sentenced to Community Service would otherwise be serving a sentence of prison or youth detention. This benefits the offenders as well as the placement beneficiaries, who are charitable or non-profit making organisations.

Where a person is sentenced to a period of imprisonment or youth detention, there are a variety of learning and skills and work activities that are available to benefit the prisoners and increase their employability upon release. The recent HMI report into La Moye commented *“There was a useful learning and skills strategy which was managed particularly well. Much had been done to improve the provisions and the prison provided a varied and flexible curriculum with a good range of courses. Prisoners’ achievements were impressive. There was a reasonable and improving variety of vocational training in place. The library was accessible and spacious and provision was very good. Physical*

education was well managed with impressive facilities and high levels of attendance. Outcomes for prisoner were good.”

The prison runs a temporary release scheme for eligible prisoners as a function of the Prison (Jersey) Rules 2007, which allows the Minister to temporarily release a prisoner for the purpose of engaging in employment or receiving instruction or training; or in such other circumstances as may be approved by the Minister.

Prisoners become eligible for different types of temporary release at different stages of their sentence and are rigorously assessed for their suitability to be released temporarily by a Board, which comprises the Prison Governor, the Prison Probation Officer, the Prison Psychologist and an independent member.

Temporary release is used for the following:

- **Community visits** - to allow a prisoner to spend up to 4 hours in the community with a friend or relative, in whose company they remain during that time, and who collects them from and returns them to the prison.
- **Home leave** – for a maximum of 2 days, one overnight, per month. This helps to restore self-confidence by placing trust in a prisoner outside the prison environment and helps them re-adjust to life outside the prison.
- **Outside work** – this allows a prisoner to be involved in community work, progressing to paid work with an employer, who may retain them beyond their date of release. This enables prisoners to give financial support to their families prior to their release and equips them to make a constructive contribution to the community following release.
- **Home curfew** - this enables the prisoner to be at home, subject to a curfew, for a period prior to the end of their sentence. They can engage in paid employment and re-establish a home and relationship with family and friends.

Once a person’s sentence has been completed, the Rehabilitation of Offenders (Jersey) Law 2001 generally allows people not to have to declare certain convictions once they become ‘spent’. The rehabilitation period may vary depending on the age of the person at the time of conviction. After the rehabilitation period, an ex-offender is not normally obliged to mention the conviction when applying for a job, obtaining insurance or when involved in criminal or civil convictions.

There are, however, a number of exceptions to this, where people are expected to declare all their convictions, even if they are ‘spent’. These are in cases where people are working with children or vulnerable adults; where people are working in such professions as health, pharmacy or the law; where they are senior managers in banking and financial services; or are in professions where national security may be at risk. Where a person is applying for such a position, where all convictions will need to be declared, it should clearly state on the application form that the position is excepted from the provisions of the Rehabilitation of Offenders (Jersey) Law 2001. A sentence of imprisonment or youth custody exceeding 30 months will never become ‘spent’.

- b) There is anecdotal evidence that some employers may ask a person to obtain information held about them by way of a ‘subject access request’.

A person has a right under the Data Protection (Jersey) Law 2005 to be told whether any information is held about them on police systems and they also have a right to a copy of that information. This is a 'subject access request'. In order to obtain a full conviction history, a person will have to apply for the records held on them on the Police National Computer (PNC) and also on local States of Jersey Police conviction records. This is because some Jersey convictions are recorded directly onto PNC and are not locally recorded. The individual will also have to prove their identity.

A 'subject access request' will contain full details of all recorded convictions, whether they are 'spent' under the Rehabilitation of Offenders (Jersey) Law 2001 or not.

If a person is asked by their employer to obtain a 'subject access request' to disclose to the employer, this may, depending on the nature of the work that they are applying for, negate any protections afforded by the Rehabilitation of Offenders (Jersey) Law 2001, as the employer may not be entitled to see the 'spent' convictions.

'Subject access requests' are different from Disclosure and Barring Service (DBS) checks. Certain organisations and employers are legally entitled under the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002, to request anyone wishing to volunteer or work for them in a role set out in the Regulations, to obtain a criminal record check through the DBS. The types of roles that may require a DBS check are any role where a person comes into contact with children or vulnerable adults.

It is difficult to quantify the instances of employers seeking to circumvent the Rehabilitation of Offenders (Jersey) Law 2001 and it is therefore important that people understand the difference between 'subject access requests' and criminal record checks through the DBS. If a person is applying for a role and is unsure as to whether or not their employer has a right to see all their convictions, they can find further information on the 'criminal records checks' page on the States of Jersey Police website.

I have given thought as to how former offenders who have 'spent' convictions can be safeguarded against unreasonable employers who insist on seeing the outcome of a subject access request in circumstances which do not lead to an exemption applying. The only possible solution to this problem which has occurred to me is to make the making of such an unreasonable request a criminal offence. However, I am concerned that this could criminalise individuals who have not understood what is, already, a complicated law.