20 March 2019

Rt Hon David Gauke MP
Lord Chancellor and Secretary of State for Justice
Ministry of Justice
102 Petty France, London
SW1H 9AJ

Rt Hon Sajid Javid MP
Secretary of State for the Home Department
Home Office
2 Marsham Street, London
SW1P 4DF

Dear Secretaries of State,

Re: Response to the Supreme Court judgment: [2019] UKSC 3

As litigants in the recent Supreme Court case on criminal records, we are writing to ask you to indicate how you plan to respond to the judgment.

As you are aware, the Supreme Court found that the disclosure regime was unlawful in the following two ways (at paragraphs 64 and 65 of the judgment):

1. Youth cautions should not be disclosed.
2. The "multiple conviction rule", set out Art 2A(3c) – Rehabilitation of Offenders Act (Exceptions Order) 1975 is incompatible with Article 8 ECHR.

This is an important ruling which stands to affect many thousands of people with old and minor criminal records who have been unnecessarily anchored to their past. It is therefore important that the Government act swiftly to give effect to this ruling, so that these people are no longer being forced to disclose irrelevant matters in their past.

However, you will no doubt be aware that there have been a number of other criticisms of the criminal records disclosure regime, which the Government had postponed dealing with until the outcome of this case. In particular, in its response to the Justice Select Committee inquiry, the Government committed to considering criminal record disclosure for children and young adults following the conclusion of this litigation. The Government delayed responding to David Lammy MP's recommendation on sealing criminal records until after the Supreme Court had given its judgment. Both the Taylor Review into the youth justice system, and the Law Commission review into the list of filterable offences, criticised the current regime. Lord Ramsbotham introduced a bill concerning rehabilitation periods, which again the Government stated it would not respond to until after the ruling on this case.

Given the Government has not responded to any of these concerns whilst waiting for the Supreme Court to hand down judgment, it is important that there is now consideration of the regime as a whole, in order to consider wider improvements to the system.

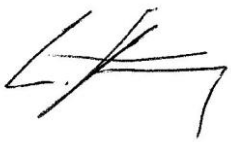
We appreciate that it would not be possible to implement wider changes quickly, and it is important that there is proper consideration of the issues involved. However, we do not consider it appropriate for those affected by the judgment to have to wait for such broader consideration.

We therefore urge the Government to pass a remedial order as soon as practical to deal with the judgment to ensure that all youth cautions, reprimands and warnings are now filtered out, and that the multiple conviction rule is removed.

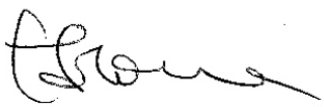
The remedial order itself would be straightforward, and as an annex to this letter we have set out the simplest and most effective way of amending the current legislation.

We look forward to your reply.

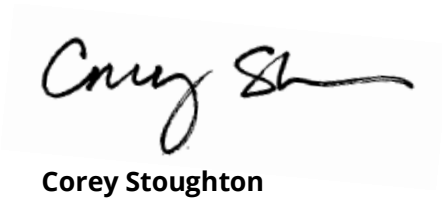
Yours sincerely,



Christopher Stacey
Co-director, Unlock
christopher.stacey@unlock.org.uk



Enver Solomon
Chief Executive Officer, Just for Kids Law
EnverSolomon@justforkidslaw.org



Corey Stoughton
Advocacy Director, Liberty
coreys@libertyhumanrights.org.uk

Annex – Amendments to current legislation to give effect to the judgment

1. Delete Art 2A(3C) Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, which reads:
"(c) the person has not been convicted of any other offence at any time."

2. Art 2A(1) currently reads:

"For the purposes of this Order, a caution is a protected caution if it was given to a person for an offence other than a listed offence and—
(a) where the person was under 18 years at the time the caution was given, two years or more have passed since the date on which the caution was given; or
(b) where the person was 18 years or over at the time the caution was given, six years or more have passed since the date on which the caution was given."

- Delete the words "it was given to a person for an offence other than a listed offence and"—
- In 2A(1)(b) add the words "and it was given for an offence other than a listed offence, and" after "the caution was given" and before "six years or more".

Therefore Art 2A(1) would read:

"For the purposes of this Order, a caution is a protected caution if —
(a) where the person was under 18 years at the time the caution was given, two years or more have passed since the date on which the caution was given; or
(b) where the person was 18 years or over at the time the caution was given, and it was given for an offence other than a listed offence, and six years or more have passed since the date on which the caution was given."

3. Amend s113A(6) Police Act 1997 which currently states:

"relevant matter", in this section as it has effect in England and Wales, means—
(a) in relation to a person who has one conviction only—
(i) a conviction of an offence within subsection (6D);
(ii) a conviction in respect of which a custodial sentence or a sentence of service detention was imposed; or
(iii) a current conviction;
(b) in relation to any other person, any conviction;
(c) a caution given in respect of an offence within subsection (6D);
(d) a current caution.

So it reads instead:

"relevant matter", in this section as it has effect in England and Wales, means—
(a) a conviction of an offence within subsection (6D);
(b) a conviction in respect of which a custodial sentence or a sentence of service detention was imposed; or
(c) a current conviction;
(d) where the person was 18 years of over at the time the caution was given, a caution given in respect of an offence within subsection (6D);
(e) a current caution.