

**ENHANCING EMPLOYABILITY
IN PRISON AND BEYOND:**

A Literature Review

by **Kieran McEvoy**

Queen's University Belfast

for **NIACRO**



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KIERAN McEVOY

Queen's University Belfast

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northern ireland association for the care and resettlement of offenders

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FOREWORD

Helping ex-offenders access the job market has been part of NIACRO's work from the very start. Over the 35+ years of our existence, we have worked, in partnership with others, to increase people's employability and to help them access education and training. We have worked with employers to break down barriers of misunderstanding and mistrust. And we have campaigned for better legislation governing the rights of ex-offenders to (re)join the labour market. As long ago as 1977 in our response to the proposed Rehabilitation of Offenders Order we said, "A person's conviction should be taken into account by employers and others only in the most exceptional circumstances".

Why has this been such an important part of our work? There is overwhelming evidence that having a good job is a key element in keeping people out of the criminal justice system. But this hasn't always worked out in practice: people still face structural, legislative and attitudinal barriers.

We need to draw on the best practice which is appropriate to our needs here in Northern Ireland. We need legislation that actually resettles and reintegrates. We need incentives that encourage individuals to believe in their own abilities, and support employers to recruit them. We also need to develop and build on the support that NIACRO provides those individuals and employers. This paper brings together a wealth of relevant local, national and international research that will assist in promoting employment-led resettlement which is ultimately concerned with reducing crime and recidivism.

Olwen Lyner
CEO, NIACRO

Enhancing Employability In Prison & Beyond

A LITERATURE REVIEW

“People who have been in prison account for one in five of all crimes. Nearly three in five prisoners are re-convicted within two years of leaving prison. Offending by ex-prisoners costs society at least £11 billion a year. This all tells us we are failing to capitalise on the opportunity prison provides to stop people offending for good. We need to make sure that a prison sentence punishes the offender, but also provides the maximum opportunity for reducing the likelihood of re-offending. That means we need to redouble efforts to rehabilitate prisoners back into society effectively... Just as striking are the deep problems faced by many prisoners. Many have very poor skills, are unemployed on entering prison, and have a history of homelessness, drug addiction and mental health problems. These problems do not excuse criminal behaviour, but they do begin to show how we help people put a stop to it.”

Rt Hon Tony Blair MP,

foreword “Reducing Offending by Ex-prisoners”

(2002)

INTRODUCTION

The cyclical relationship between imprisonment, release and recidivism has ensured that policy makers have given this subject considerable attention over the past two decades in particular. As noted above, of those prisoners released in 2004 in Britain, 58% were convicted of another crime within two years (Home Office 2007:1). The figures are even more startling when one considers young offenders. 18–20-year-old male prisoners in England & Wales were reconvicted at a rate of 64% over the same period (Home Office 2007:6). In fact such figures actually mask the true nature of the problem since criminologists and policy makers work on the premise that for those convicted in the two years following release, each will actually have received an average of three further convictions (Social Exclusion Unit 2002). While the reconviction rates in Northern Ireland are only slightly lower for adults (46% in 1998 within two years), the figure for young offenders (74% within two years) underlines the deeply rooted nature of the problem of recidivism.¹

Many of the social and financial costs of re-offending by ex-prisoners are less easily quantified, but they can be both devastating and long-term. Most obviously, the considerable impact upon victims and their families is often felt in the most disadvantaged of communities (Goodey 2004). The families of offenders who are reconvicted and imprisoned are in turn forced to shoulder a considerable financial and emotional burden. The financial cost to the criminal justice system of dealing with the consequences of crime committed by ex-prisoners is estimated by the government at £11 billion per year (Social Exclusion Unit 2002). Again, such a figure underestimates the true financial cost since it refers only to the criminal justice system and only to recorded crimes. Recorded crimes are normally estimated as representing somewhere between a quarter and a tenth of total crime and since some ex-prisoners are likely to be prolific offenders, they may, therefore, be responsible for a large proportion of unrecorded crime and its costs as well (Maruna 2001).

¹ Figures reproduced from the NIPS/NIPB Resettlement Strategy (2003:5).

In light of these staggering costs it is perhaps understandable that the issue of reducing levels of criminal recidivism has been afforded increased attention. The current British government's commitment to 'joined up' thinking within and beyond government departments (Prime Minister Strategy Unit 2000) has meant that much of the discussion concerning this topic has been directed towards greater interagency co-ordination between the relevant statutory, voluntary and community organisations involved in prison and post-prison work with offenders. The merging of the Prison and Probation Services in England & Wales into one Department of Corrections in 2004 and the Resettlement Strategy in Northern Ireland published in the same year give concrete expression to the contemporary emphasis upon co-operation and partnership in efforts to break the cycle of incarceration and re-offending.²

The focus of this report is therefore upon enhancing employability both within and beyond prisons. Given that the phenomenon is a major problem for many countries in Europe and elsewhere, the report draws widely upon American, Canadian, Australian and European Union academic and policy sources as well as the UK literature. The report is divided into a number of sections which are designed to provide:

- (a) an overview of the crime/unemployment relationship;
- (b) a discussion of the literature on prison based education and employment programmes designed to improve the employability of prisoners after their release;
- (c) an assessment of the role of employability focused professional practice after release considered through the 'What Works' framework;
- (d) an exploration of the ways in which such employment initiatives intersect with efforts by the offender themselves to 'self change' through the notion of 'desistance' from criminality;
- (e) an analysis of the ways in which family, community and other networks of support relate to employment in reducing offending through the concept of developing 'social capital';
- (f) an examination of the obstacles which militate against offender employability including offenders' lack of skills, lifestyles and characteristics and employers' attitudes;
- (g) an assessment of the different models of legislative protection and practices and inadequate legislative protection.

² The Northern Ireland Prison Service Resettlement Strategy was written after a consultation process and includes a 'statement of shared commitment' signed by the Chief Executives of a number of key government departments and other relevant statutory agencies as well as one major voluntary organisation. These include the NIPS, Dept of Education and Learning, Housing Executive, Central Services Agency NI Health and Social Services, Dept of Health and Social Services and Public Safety, Probation Board, Department for Social Development, Social Security Agency and Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO). The contents of that document are discussed below.

CRIME, EMPLOYMENT AND OFFENDING

The relationship between crime, employability and recidivism is a complex one.³ While some critical commentators have argued that crime rates can be linked directly to rises in unemployment and the associated social and economic consequences (e.g. Box 1987), most opt for a more subtle explanation which describe it as a complex relationship between various factors (e.g. Currie 1995, Downes 1995, Nillson & Agel 2003). Certainly as Machin and Meghir (2000) have argued with regard to the UK and Gould, Weinberg and Mustard (2002) have contested regarding the US, decreases in unskilled workers' wages can be linked directly to increases in crime. Similarly Raphael and Winter-Ebmer (2001) report results indicating that a substantial portion of the decline in US property crime rates during the 1990s is attributable to the decline in the unemployment rate. Fougere et al (2003) in France have found similarly that drugs and property offences were directly related to unemployment. However, as Currie has argued, and the idea has been developed by others (Downes 1995, Kelly 2000, Fajnzylber, Lederman and Loayza, 2002), unemployment cannot be divorced from broader questions which may be grouped under the heading 'inequality'. As Currie (1985) put it, access only to insecure under-employment is little better than unemployment as a source of livelihood to support a family and experience an active sense of citizenship.

The particular complexities of this crime/unemployment relationship have been clarified to an extent by studies which have focused specifically on the employment status of offender populations rather than on the more general crime/unemployment nexus. A number of studies have contended that for offenders who succeed in moving out of a criminal lifestyle, employment plays a central role. For example, Mischkowitz reported that "*erratic work patterns were substituted by more stable and reliable behaviour*" amongst his sample of non-offending ex-offenders (1994:313). Sampson and Laub (1993:220-222) describe their success stories as having "*... good work habits and were frequently described as 'hard workers'.*" Similarly, Horney et al found that starting work was related to reductions in offending, whilst ceasing to work was associated with the re-initiation of offending (1995:665). Like Ouimet and Le Blanc (1996) and Cusson and Pinsoneault (1986), Uggen (2000) also found that those aged 27 and over are more likely to desist from offending when provided with employment opportunities than those who are not offered such opportunities.⁴ One Probation based study (Bridges 1998) which examined over 700 probation clients across 11 probation areas found that twice as many offenders who were

³ For a now quite dated but still classic review of the literature see Chiricos (1987). For more recent accounts see Fagan & Freeman (1999) and Buannon (2003).

⁴ While a number of studies have failed to establish a relationship between employment and offending, and indeed some have even suggested a negative relationship wherein greater access to the labour market amongst adolescents may actually increase levels of crime (e.g. Wright et al 2002), both Uggen (2000) and Ouimet and Le Blanc (1996) make the important point that the impact of various life events upon an individual is age related. Thus as Uggen argues it is only after the age of 27 that he was able to say definitively that work may be described as contributing to the desistance from offending of male adult offenders.

unemployed at the time supervision started, and who received employment interventions, got jobs as those who received no help with employment.

Perhaps one of the best known of such studies is Farrington et al's 1986 analysis of the self-reported job history and official criminal records of the 411 young males followed up in the Cambridge delinquency study. They found that the rate of offending during periods of unemployment was significantly higher than during periods of employment. Nagin and Waldfogel (1995) subsequently re-examined the data from Farrington et al.'s study to model the link between convictions and job opportunities. The results of this exercise confirmed the earlier results indicating that early criminal convictions can deny young offenders job opportunities throughout their lives by precluding entry into apprenticeships and training opportunities. Thus, they argued, young offenders' long-term career advancement becomes limited which in turn puts a ceiling on their potential earnings and perpetuates the crime/social exclusion cycle.

Consistent with such findings May's 1999 study of more than 7,000 offenders who started community sentences in 1993 found that, in all six of the areas studied, unemployed offenders were significantly more likely to be reconvicted within two years than those whose records showed them to be in employment. The corollary is that getting offenders into meaningful employment reduces their likelihood of offending. Thus for example, Lipsey's (1992) meta-analysis of 400 control or comparison group studies from 1950 to 1990 reported on treatment intervention with over 40,000 juveniles aged 12–21 and found that employment was the single most effective factor in reducing the re-offending rates.

In sum therefore, while results have varied between different studies, accessing and maintaining employment has been long viewed as 'a turning point' (Uggen 2000) in the lives of offenders who cease offending.

EMPLOYABILITY, EDUCATION & TRAINING IN PRISON

Much of the discussion concerning the literature on prison based job training and pre-release programmes refers to the lack of rigorous evaluation of such programmes (e.g. Bushway and Reuter 1997, Gaes et al 1999, Webster et al 2001). As Webster et al (2001) argue, the more successful programmes (judged by recidivism rates or access to employment)

tend to have high dropout rates. Thus, it is not clear whether such programmes genuinely brought about change, or whether those who stayed the course were the most motivated, most able offenders who may have resettled successfully without much formal assistance (see discussion below on desistance). Bushway and Reuter (1997) also argue that, even when positive results were reported, it was not always clear which element of a programme made the difference as prisoners have often attended a range of employment interventions, including job search preparation, vocational training, participation in prison industries and post-release support. Similarly Wilson et al (2000) suggest that there is a lack of theoretical connection in the literature between the activities of prison education and work programmes and the post release behaviour of prison inmates. With these caveats on the literature in mind, this section therefore considers the key themes which emerge from the national and international research on prison employment and vocational programmes.

In the past the notion of prison work has been thought of primarily as a form of constructive occupation ('keeping prisoners busy') rather than as a means of imparting skills which would be useful to prisoners after release. However, over the past decade or so, attitudes amongst correctional professionals have changed considerably. The presence of educational, vocational and employment based programmes has been described recently as 'core business' in prisons (Wilson & Reus 2000), one of the key values or aspects of 'moral performance' upon which modern prisons are judged (Liebling 2004). 'Purposeful activity' which includes education and training, employment and resettlement focused activities has become one of the most important Key Performance Indicators in contemporary British prison management (Solomon 2004). Prisoners are expected to have a set amount of hours of purposeful activity (24 hours per week in prisons in England and Wales) which is intended to be linked to their 'assessed needs and planned targets' (Morgan & Owers 2001). In 2001/2 the UK government also established an Offenders Learning and Skills Unit and a Custody to Work Unit linked to the Home Office which are intended to better co-ordinate effective and measurable delivery of resettlement focused education and work programmes to prisoners.⁵

Such an increased focus upon developing employability skills in prisons is also evident in the international literature. For example, a number of features identified in the Australian research resonate strongly with both the US and UK positions on prison based interventions designed to improve employability. Australian policy makers have identified similar problems as the UK amongst prisoners of low levels of educational attainment, poor employment histories and ongoing health and social problems (Steering Committee for the Review of Commonwealth State Service Provision 2003:7.1). In order to deal with these problems recent reports and strategies have sought to more closely align education and training in

⁵ The Vision of the latter is that "offenders according to need should have access to education and training both in prisons and in the community, which enables them to gain the skills and qualifications they need to hold down a job and have a positive role in society, and that the content and quality of learning programmes in prisons, and the qualifications to which these lead, are the same as comparable provision in the community." (http://www.dfes.gov.uk/offenderlearning/about_the_unit.cfm).

prisons with the Vocational Education and Training (VET) system on the outside and to identify the prison population as a client group under VET equity strategies (Bearing Point 2003, Borzycki, & Baldry 2003). Despite the fact that Australian state prison ministers have since 1989 formally adopted standard guidelines enshrining the right of offenders serving a custodial sentence to access education and training – in practice the application of these standards has been hampered. Noonan (2003) argues that prisoners' access to education and training relevant to developing their employability skills is often impeded by a range of problems including the primacy of security and management concerns, the poorly suited nature of particularly older prisons, competition for prisoners' time, transfer of prisoners between establishments and the difficulties of devising programmes for short term prisoners.

In the United States there is a considerable historical and contemporary literature which examines the effectiveness of prison-based education and employment-focused programmes. It should be acknowledged however that some of the reviews of this research are contradictory. Thus, Gerber and Fritsch (1995) interpreted the available evidence to suggest that vocational and correctional work programmes were effective in reducing recidivism. In particular, the most successful programmes were those which had multiple components, follow up programmes and focus on skills relevant to the job market (Bushway & Reuter 1997). However, Bouffard et al (2000) concluded in their review that the evidence of success was much more mixed. Similarly, in their widely cited meta-analysis of 33 different studies with control groups of a total of 53 work and education programmes, Wilson et al (2000) found an overall recidivism rate of 50% of prisoners who had not been on a programme, the recidivism rate was 39% for those who had been. The reduction of re-offending was greater for education rather than work focused programmes; in fact they were unable to conclude definitively that work focused programmes were effective in reducing re-offending although the indicators were described as 'positive' – Wilson et al (2000:361). As with all meta-analysis studies, the effect of grouping such a large number of studies may mask particularly effective (or indeed ineffective) styles of programme. As noted above, variables such as the influence of the motivation of the individual offenders to change is difficult to distinguish from the effectiveness of particular programmes.⁶

As in the Australian context, one of the obvious but noteworthy points to bear in mind in assessing the effectiveness of prison based programmes is that such programmes are difficult in the prison setting because the primary institutional goals of security and effective prisoner management will always trump the goals of the programme i.e. successful re-entry (Lawrence et al 2002, Bushway 2003, Petersilia 2003). This dynamic was underlined in Lattimore et al's (1990) review of the Vocational Delivery System in the US, which tried to organise the prison experience from intake to release including a community component

6 Thus for example Porporino and Robinson's 1992 evaluation of a cognitive skills programme in prison (not included in Wilson et al's meta-analysis) found a much higher rate of success amongst prisoners who had volunteered for the programme suggesting that motivation is highly relevant determining factor for the success or failure of a programme.

around the goal of obtaining work upon release (much as in envisaged in the Northern Ireland Resettlement Strategy). The Protocol “suggested that the VDS include (1) working individually with inmates to identify vocational interests and aptitudes, (2) developing individual plans of study for improving vocational skills, (3) providing the identified training as well as other needed services, and (4) helping inmates secure post-release employment” (Lattimore et al. 1990:118). Despite the best efforts of a committed staff, only 16% of the experimental group at least started all of the components of the programme for which data was available. According to the authors, “(t)his simple list represents a complex program requiring employees within two prisons to coordinate among themselves and with employees of other agencies” (Lattimore et al. 1990:118). This coordination apparently proved very difficult, especially in a prison setting where inmates were released and transferred without warning, programme slots were not always available at the right time and myriad other assorted problems. Even with implementation problems, the experimental group still had a 20% reduction in recidivism after two years compared to the control group (from 46% to 36%). Such a finding underlines the need for an explicit and measurable goal for resettlement, otherwise other managerial concerns will inevitably take precedence.

Three studies by Finn (1997, 1998, 1999) of programmes in the US support the idea that the detailed organisation of a prison-based programme can have an effect. Finn (1997) found that the amount of time inmates spend on a programme is important, in that moderate amounts had a greater effect on recidivism than did longer periods (46 plus days), possibly because the effect of the programme is eroded as it loses its novelty.

In a second study, Finn (1998) reviewed the work of the Center for Employment Opportunities (CEO) in New York City. CEO provides day labour for participants recently released from boot camp. It also acts as a free human resources department to employers by screening participants for suitability and as an employee assistance programme by offering help with problems such as substance misuse. In some circumstances, the programme may also pay for half of salary costs for several months. About 70% of its participants are described as finding full-time employment within two to three months, with most jobs paying more than the minimum wage and providing fringe benefits. Approximately three-quarters of participants placed were still in the same job after one month and of these about half were still in the same job after six months.

Finally, Finn (1999) reviewed the operation of the Corrections Clearinghouse (CCH), which begins with employability assessment during incarceration and ends with job placement and ongoing assistance after employment. CCH claims that nearly 60% of its clients

(N=1,312) obtain work and 68% were still working in the same job 45 days later. Also, 15% of 500 CCH clients who found employment had returned to custody after five years, compared with a historic rate of 30%. While the programme is poorly documented and no control groups' results are available, the CCH model is considered very successful in the USA and federal and other funds have been made available for its replication across the country (Petersilia 2003).

In the United Kingdom a number of similar studies have been carried out on employability and prison based work (Simon 1999). Simon and Corbett (1996) carried out a large-scale qualitative review of prison work in six UK prisons. The study set out to compare prison- and industry- based work and training at that time and came to a number of conclusions:

- prison work is similar to that done by outside counterparts in terms of products, processes, equipment and emphasis on high quality;
- the pace of work was slower and many more workers were required for the same level of output;
- instructors were concerned with inmates' welfare but tended to treat them as children;
- inmates looked on work as way of getting through their sentence rather than having any connection with work outside;
- many inmates missed out on training because of waiting lists, short sentences or being transferred;
- inmates were more satisfied with training courses than work because training related more closely to life outside;
- only half of those who said they wanted to work on release did anything about it and prison and probation staff rarely helped them to do so;
- half the follow-up sample did some sort of paid work on release: half of these could only get occasional casual work; most got work through family or friends despite vigorous job search through more formal routes;
- researchers found a mismatch between the kinds of work occupying many prisoners and job opportunities.

Although 33% of the inmates interviewed felt they had benefited from work, training or education done in prison, statistical analysis suggested that work and training in prison had no effect on inmates' chances of getting work on release (Simon & Corbett 1996). In a separate study focused exclusively on female offenders, Hamlyn and Lewis (2000) reached the same conclusion.

In 2001 Webster et al carried out a major survey of the types of help and assistance offered by prisons in England and Wales with a response rate of 103 (78%) of the 132 prisons and young offender Institutions surveyed. The table below shows the type of employment interventions offered by prisons and young offender institutions in Britain. Basic skills training was the most common form of help given and at least three-quarters of the prisons surveyed said that they offered help with CV preparation, interview techniques and general confidence building, devising individual employment plans and becoming self-employed. Two-thirds also provided advice on disclosing criminal convictions and assisted inmates to contact their home employment service. The least common forms of assistance were psychometric testing, follow-up support on release, work release, work experience and day release for job interviews.

TYPE OF ASSISTANCE AND MODE OF DELIVERY (Webster et al 2001:22)					
Type of assistance	MODE OF DELIVERY				Total N3
	Programme	One to one	Group	Not specified	
Literacy work	62	13	13	8	96
Numeracy work	62	14	12	7	95
Other basic skills work	58	11	8	8	85
CV preparation	56	11	7	10	84
Job Search skills	51	10	6	10	77
Interview skills	60	8	4	9	81
Psychometric testing	24	12	4		28
Disclosing criminal convictions	45	9	6	8	68
Individual action plans	47	11	7	13	78
Vocational training	48	11	2	13	74
Information on New Deal	30	11	6	11	58
Information on est. own business	45	15	6	9	75
Contact with home Employ Service	35	14	0	14	63
General confidence building	48	7	10	10	75
Work release	14	2	1	8	25
Day release for interviews	11	19	2	8	40
Work experience	13	8	3	4	28
Follow up support on release	12	13	2	11	38

Webster et al (2001) found no differences in provision between male and female establishments or when YOIs were compared with adult prisons. Only one (high security) establishment said it did no work at all in relation to employability or employment.

Similar to the American meta-analysis studies, Webster et al point to the poor quality of some of the research in the field as an inhibitor from making overly definitive assertions about the impact of prison based interventions on employment. However based on their own literature review, the responses from the prisons and young offenders institutes in England and Wales and the examples which the institutions put forward as their examples of best practice, they did feel sufficiently confident to put forward some “generally applicable learning points.” These included that:

- prisons *can* deliver high quality programmes and interventions aimed at increasing the employment chances of inmates on release;
- some prisons had worked through difficult questions concerning levels and types of assistance required, the advantages and disadvantages of programmes being delivered by external agencies or discipline staff, how to offer help to inmates with literacy problems, how to involve external agencies (e.g., the Employment Service) in work delivered inside, how to engage with agencies offering post-release support before an inmate leaves prison; and how to encourage employers to give jobs to current inmates or ex-prisoners – these schemes offer many good practice lessons;
- despite the best efforts of staff, the consistency with which interventions are delivered is frequently compromised in some establishments by difficulties in ensuring that inmates are escorted to them;
- many interventions were a product of the commitment and enthusiasm of one or two key staff and therefore are vulnerable to staff change.

They also identified three over-arching issues at three different levels which seemed to inhibit the quality, range and spread of employment interventions at some case study sites and which could have done so in others, if programme staff had not developed ways of working around them. First, even the best work delivered in prison may not result in prisoners finding and maintaining employment if this is not linked to, and supported by, good aftercare provision. Second, cultural and organisational constraints within the English and Welsh Prison Service as a whole may make this a difficult environment in which to deliver employment interventions. And finally, attitudes and organisational habits within an individual institution may inhibit or even undermine the efforts of the best employment interventions (Webster et al 2001).⁷

⁷ Examples offered included getting the prisoner in the right room at the right time, the low priority accorded employment and resettlement work, staff shortages, the natural tendency for keeping the prison running (e.g., getting inmates to meals) and security considerations to be given priority and good quality work being delivered in some instances *in spite of* the prison in which they were running, and without the active support of the prison management and staff (Webster et al 2001:70).

In sum, while many of the studies on prison based employment and education interventions are not as methodologically rigorous as one would wish, some broad lessons may nonetheless be drawn from the Australian, American and British literature.

Firstly, for prison-based employability to withstand the pressures of other competing prison and indeed prisoner priorities, it must be 'mainstreamed' into the prison planning and delivery process and occupational culture of the institution and formally assessed and evaluated accordingly. Secondly, given the wide range of other social and personal problems offenders face, employment interventions alone are unlikely to succeed. As Webster et al and Morgan & Owers (2001) point out, it is much harder to deal with employment and training needs for an offender who is homeless or who has an untreated substance misuse problem. Therefore properly integrated programmes are required which address personal development, accommodation and substance misuse needs as well as training and employment issues. Finally, the literature suggests that two types of employment related work are *unhelpful*. Raising job expectations through training without any serious prospect of a job on release may be actively damaging rather than just ineffective which makes properly targeted interventions to the local job market and/or employer involvement in programmes core to the potential success of any programme. Similarly, employment in prison workshops (activities previously designed to 'keep prisoners busy') does not appear to increase the chances of employment on release.

POST RELEASE POLICY & PRACTICE : WHAT WORKS ?

One obvious starting point for considering the role of employment in the broader process of reducing offending behaviour is to explore the professional practice and academic literature which guides those working with offenders after release i.e. Probation and related voluntary agencies. The dominant theoretical framework in contemporary rehabilitative and aftercare practice is referred to as 'What Works.'⁸ As in other aspects of rehabilitation and resettlement work, What Works is a key framework to guiding professional practice aimed at enhancing employability amongst ex-offenders.

In part, What Works can be traced to a reaction to the pessimistic assessment wrongly attributed to Robert Martinson (1974 – discussed in greater detail below) that 'Nothing Works' (Seiter & Kadela 2003). In the 1990s Canadian psychologists in particular began to

⁸ It should be noted that What Works has also been applied, albeit less systematically, to pre-release programmes inside prisons.

appear at British policy and academic conferences claiming to have successfully utilised cognitive behaviour programmes to reduce re-offending rates (Ross et al 1988, Weaver & Bensted 1992). British psychologists James McGuire & Philip Priestley and former Probation Officer Peter Raynor published a range of papers in the mid 1990s challenging the 'nothing works' pessimism and suggesting that there was increased room for cautious optimism under the 'What Works' banner (McGuire & Priestley 1995, Raynor 1995, 1996, Robinson 2001). They identified a series of principles which they argued could lead to more effective interventions with offenders including 'the allocation of offenders to resources according to an assessment of their propensity to re-offend (the 'risk' principle); a focus on 'criminogenic needs' (i.e. problems or needs which contribute to or are supportive of offending) ; an emphasis on methods of intervention drawn from cognitive behaviour and the maintenance of programme 'integrity'.

The wholesale adoption of What Works in Britain was also political and it is worth offering some brief background in order to understand its significance in the delivery of employment services to ex-offenders. Its origins can be traced to what George Mair (2004:14) has described as '*...an almost legendary lack of interest in measuring effectiveness*' amongst the Probation Service. During the 1980s the Thatcher government had become increasingly frustrated by the Probation Service's apparent inability to measure whether its efforts made any difference in reducing offending and re-offending rates. Despite the introduction of the Statement of National Operations and Purpose (SNOP) in 1984 (which was designed to universalise standards), the very viability of Probation as a service was under clear attack by the mid 1990s (Farrall 2002). What Works was seen by Graham Smith, the then Chief Inspector of Probation, as a strategy for saving Probation as a service. Smith recognised in particular that evidence based practice was a mantra for the delivery of public services under the New Labour administration and that the delivery of criminal justice and social work services to offenders would be no different.

The 1998 Underdown report reported on the need for greater evidence based practice, and it was followed by *Evidence Based Practice: A Guide to Effective Practice* (Chapman and Hough) was published by the Home Office and a range of other initiatives. In 2000 a What Works strategy was announced, in 2001 a National Probation Service was created and in 2004 this was amalgamated with the Prison Service to become the National Offender Management Service. As Chapman (2005) has argued recently, a huge amount of financial, organisational, and intellectual capital has been invested in what some commentators have called the "*largest initiative in evidence-based corrections to be undertaken anywhere in the world*" (Raynor and Vanstone 2002: 95).

Kemshall et al (2004:171) have reviewed the range of documents which make up the What Works agenda in Britain and helpfully thematised the most significant elements as follows:

PRACTICE

- The challenge to individualised practice and the increased need for accountability, performance management and consistency.
- Greater attention to targeting offenders to the correct programmes.
- Greater attention to motivational issues, securing compliance and reducing programme attrition.
- Quality assuring programme integrity.

MANAGEMENT

- Increased performance management and embedding an objective and outcome-led culture into organisational life.
- Managing resources towards desired ends in a more rational and accountable manner.
- Ensuring quality of service delivery and effective practice to reduce crime.
- Managing and using information to inform organisational decision making and resource deployment.
- Effectively managing the change process.

ORGANISATIONAL

- To ensure that the logistics of service delivery are well managed.
- To ensure that the supporting processes for effective practice and the delivery of programmes are in place (e.g. case management, training of staff, assessment and targeting procedures, key structures and processes).
- To ensure communication structures are in place and work well.
- Strategic planning and resource management.
- Leadership and change management strategies.

The influence of the What Works agenda has spread well beyond the UK. For example, within the European Union, the European Offenders Employment Forum, a body which has been active in bringing practitioners and policy makers together in the EU for the past decade to develop best practice (e.g. Wall 1995, McCall 1998), recently conducted EU wide research under that very rubric. The EOEF research project, entitled, '*What Works with offenders in Europe*', was funded by the European Commission's 'preparatory actions to combat and prevent social exclusion' programme (EOEF 2002). The research considered information provided by over 100 offender employment programmes with representation from each EU member state, as well as hosting a number of thematised conferences focused on different aspects of the research.

While considerable resources were expended on this research, as the EOEF themselves acknowledge, it is however important to exercise considerable caution in drawing firm conclusions concerning 'best practice' in Europe based upon their data for a number of reasons. Firstly, the organisations participating in their research were either self-selecting or selected by the EOEF because they were aware of their work, thus it was not a fully representative sample. Secondly, the circumstances in each member state are so different that it is difficult to make meaningful comparisons particularly in relation to factors such as funding, staffing levels and how outcomes are assessed. Thirdly, the EOEF themselves questioned the accuracy of some of the data.⁹ There is little evaluated evidence of the effectiveness of programmes. A combination of the above factors has resulted in a very mixed pattern of development. With those caveats in mind, they did develop a number of key themes relevant for best practice upon their findings.

Funding: Almost all projects surveyed identified funding as being of major importance. Most projects had multiple funding sources which were time limited. The level of resourcing to undertake similar projects varied considerably. On the whole Southern European countries had the most difficulty securing funds. Delegates at the seminars stressed the need for adequate resourcing.

Management: Irrespective of the size or complexity of projects management capacity was identified by most of the projects surveyed and many of the delegates as a key success factor. The research concluded that a very broad set of management, social work and administrative skills is required to develop, manage and maintain an effective offender employment programme.

Qualified staff: The research suggested that the skills and experience of the staff was a more important factor than the staff/clients ratio in the delivery of effective best practice.

⁹ Certainly in reviewing some of the project self descriptions without external evaluations the current author would share some of those misgivings about the quality of the data.

Effective partnerships: The research indicated that effective partnerships were crucial to the success of projects in terms of funding, development, operations and maintenance of programmes. Although there is invariably a lead agency most successful projects develop strategic relationships with key local partners and usually involve them in the management committee of most projects.

An individualised approach: The research suggested that delivering a flexible, individualised response to the needs of participants was a major factor in the success of projects.

While few could quibble with the above features of best practice suggested by the EOEF research, the level of detail of either project work or policy implications based upon such a large comparative study is somewhat disappointing. The lack of scholarly and/or objective evaluative analysis as opposed to descriptive self analysis (written in English at least) in the European criminology literature also makes substantive comparisons across the European Union somewhat problematic.¹⁰

Perhaps of more immediate use for comparative purposes have been developments in the Irish Republic concerning the resettlement of offenders. Many of those developments resonate with the Northern Ireland Resettlement Strategy. In 2002 the National Economic and Social Forum (NESF) published a major report on the reintegration of prisoners which stipulated that *"...the successful re-integration of prisoners into society should be the primary function and central objective of the justice system and that this function should be given increasing priority by the judicial, prison and post-release systems. As few people as possible should be sent to prison and prison should have a clear function to prepare the prisoner for release."* (NESF 2002:30).¹¹ That report, launched by the Taoiseach Bertie Ahern, suggested a raft of measures to implement this change in policy in the criminal justice system and beyond. While it does not specifically draw on the What Works literature, the report's emphasis on evaluation, best practice, more effective management, partnership arrangements, targeting offenders towards appropriate programmes and so forth certainly fits well within that framework. The NESF report includes proposals for the establishment of an interagency steering group on reintegration to oversee policy. It recommended that each prison should specifically address reintegration in its Business Plan, the introduction of 'Positive Sentence Management' for each prisoner with an emphasis on reintegration in particular, greater co-operation between the prisons and voluntary and community sector and the inclusion of the needs of ex-prisoners in the strategic planning processes of local housing and health authorities (NESF 2002:20).¹² The NESF also suggested that specific

¹⁰ While Redondo et al (1997, 2001) have carried out statistical meta-analysis on recidivism rates across different European countries amongst juveniles and adults, their emphasis on statistics and behavioural and cognitive behavioural treatment programmes (and lack of detail as to what these programmes actually did) means that they are of limited analytical use for current purposes.

¹¹ The NESF is one of the most important policy making bodies in the Republic of Ireland. It draws its membership from the Oireachtas, employer, trade union and a range of civic and community and voluntary sector organisations. For a review of its role in Irish public life see McCashin et al (2002).

¹² See also O'Donnell (2002) and Kilcommins and O'Donnell (2003) for analysis.

reference should be made to the category of 'prisoners and offenders' in all equality and social inclusion programmes, and the Employment Equality Act be amended to include protection against discrimination on the basis of a criminal record.¹³ In November 2004, assessing progress on their recommendations, the NESF commended a number of areas of progress including the establishment of the Co-ordination Group on Offender Reintegration, the inclusion of ex-prisoners in social inclusion strategies (particularly the Republic's National Action Plan Against Poverty and Social Inclusion) and the requirement by local authorities to review the needs of ex-prisoners in housing. However they also indicated concerns at the slow pace of reform, suggesting that what had taken two years could have been achieved in six months (NESF 2004).

The political dominance of the What Works model in the European Union and in the UK in particular is highly significant for current purposes. Programmes which are designed to increase the employability of ex-offenders and ex-prisoners will inevitably be judged by policies and evaluation practices which reflect the What Works criteria. Thus for schemes which are designed to tackle drug or alcohol dependency, literacy or numeracy, training or other employability related skills, accommodation, mental health, cognitive reasoning etc – all of these will be framed around evidence-based practice and related What Works discourses. Certainly much of the language in the Northern Ireland Resettlement Strategy either consciously or unconsciously mirrors the emphasis on risk, criminogenic needs, measurement and so forth in the various What Works documentation.¹⁴ While the management and evaluation of such projects is inevitably based upon What Works criteria, such programmes cannot be artificially divorced from the efforts of the offender him or herself to desist from criminality.

GOOD PRACTICE AND DESISTANCE FROM CRIME

Desistance is a term used to explain the factors which contribute to the long-term abstinence of people who have previously engaged in patterns of criminal behaviour (Maruna 2001). It is described as an amalgam of the efforts of the individual themselves, assistance by professional agencies, and informal support from family, friends and/or significant others – all of which contribute towards changing criminogenic lifestyles (Maruna et al 2004). Thus desistance from criminality requires initiating a change in behaviour but also the maintenance of that change. Indeed, as Earls et al (1993) have argued, often '*...the skills*

¹³ Legislative protections for ex-offenders are discussed in greater detail below.

¹⁴ For example, the term resettlement is defined as "A systematic and evidence based process by which actions are taken to work with the offender in custody and on release, so that communities are better protected from harm and re-offending is significantly reduced. It encompasses the totality of work with prisoners, their families and significant others in partnership with statutory and voluntary organisations" (NIPS/NIPB 2003:5).

required for initiating behaviour change are usually different from those required for maintaining it.'

Much of the discussion on desistance from crime is premised upon the idea of individuals 'growing or maturing out of crime' in tandem with changes to their life circumstances, what Maruna (2001:30) has described as the theory of 'a steady job and the love of a good woman.' In this sense, moving out of a life which involves criminal offending is a *process* rather than an event. Such a distinction is illustrated by former prisoners who leave the institution genuinely determined to 'go straight' but whose determination is gradually eroded by what is often a combination of personal factors (e.g. lack of skills, cognitive abilities) and social circumstances (e.g. structural exclusion, family circumstances - see Petersilia 2003). What this means for policy makers is that it may require a broadening of the focus from the always important question of "what works" to more precise questions of "how it works" (see Lin, 2001, Maruna et al 2004).

While the study of desistance has been credited with 'breathing new life into rehabilitation' within academic and policy-orientated criminology, its origins actually lay in a *critique* of the professionally driven "medical model" of rehabilitation. To explore desistance was to study those persons who change *without* the assistance of correctional interventions. Thus, one either "desists" on one's own accord or else one is "rehabilitated" through formal interventions or treatment. Some commentators suggested that since most offenders 'mature out of offending,' (e.g. Nettler 1974), doing *nothing* might work just as well as expensively designed post prison or diversionary programmes. Thus the famous "nothing works" finding was largely a misinterpretation. It never suggested that criminals could not change their offending behaviour. Rather, it suggested that the members of the "no treatment" control groups also tended to reform themselves at the same rate as members of the treatment groups. As Toch (1997) has argued, the "most salient finding in therapeutic research is that the control group members tend to improve too." Such a view did present a problem to supporters of rehabilitation however, since why should policy makers invest money in rehabilitative programmes if offenders would naturally mature out of crime on their own?

Sue Rex's 1999 study was one of the first to consciously try to bring together the literature on What Works with that on why people desist. Based upon a based on a small sample (60 probationers), Rex found that most of the probationers said that their period of supervision had helped them to stop offending (p.369), some of this was the result of trying to help a probationer sustain a decision to stop offending, discussing past offending, addressing low levels of social ties and pro-social work. Similarly, Farrell's 2002 longitudinal study

(N5199) found that desistance, when it was observed, was centrally related to employment or family relationship experiences. As is discussed in greater detail below, this led Farrall (2004) to propose that the focus of probation work be shifted away from 'offending related' to 'desistance focused' matters. That is, less emphasis should be placed on the factors that led to the original offending and instead probation work could concentrate on those factors thought to correlate with desistance. This idea was developed by Fergus McNeill (2003:155-6) who argued:

"Being offence-focused might in some senses tend to accentuate precisely those aspects of an offender's history, behaviour and attitudes which intervention aims to diminish. It may also tend towards identifying the problem as one of individual 'malfunctioning'. Being desistance-focused, by contrast, implies a focus on the purpose and aspiration of the intervention rather than on the 'problem' that precipitates it. It tends towards recognising the broader social contexts and conditions required to support change. Thus, where being offence-focused encourages practice to be retrospective and individualised, being desistance-focused allows practice to become prospective and contextualised."

As all of these studies demonstrate, in reality there is no good reason why knowledge on desistance and official intervention (reintegration, treatment, resettlement and so forth) should be understood as binary opposites. As Maruna et al (2004) have argued, recent research in psychology has begun to blur the distinction between those who change with the help of support groups or professional interventions, on the one hand, and "self-curers" who change "without any assistance" on the other. In short, desistance (self-change) and rehabilitation (change through intervention) are part of the same process. People who change criminal lifestyles while in a programme are still "self-changers." They spend only a small proportion of their daily lives undergoing formal treatment or counselling, so most of the hard work involved in changing one's sense of self takes place *outside* of the programme. Similarly, it is highly dubious as to whether those in a control group are completely devoid of outside support. As Maruna et al further contend (2004:13):

"Try telling that to the parents, friends, partners and children of ex-convicts and recovering addicts. No person is an island. So-called 'spontaneous self-changers' seek out and receive tremendous amounts of outside support, help and advice. Whether it is from a trained therapist, a friend or a family member, this is still "intervention."

For professionals working either in prisons or indeed in aftercare professions the practical implication of desistance theory is therefore a move away from a focus on generic *interventions* towards an emphasis on the development and maintenance of systems which

are individually tailored to support offenders taking responsibility for moving out of criminal lifestyles. As Uggen (1999) has argued, the relationship between social ties and desistance has 'strings attached.' While as Sampson and Laub contend (1995), employment 'by itself' will not guarantee desistance, rather '*employment coupled with job stability, commitment to work, and mutual ties between workers and employers*' is more likely to reduce criminality (p.146). The relationship between desistance from crime and social attachments such as employment or home circumstances depends not only on the existence of such attachments but also upon '*...the perceived strength, quality and interdependence of these interactions*' (Maruna 2001:32).

EMPLOYMENT, "CONNECTEDNESS" AND THE NOTION OF SOCIAL CAPITAL

A key concept in developing the theory and practice of the connections and relationships which help individuals desist from crime is the notion of social capital. The concept of 'social capital' has recently been utilised to describe those factors and relationships which can militate against re-offending behaviour.¹⁵ Social capital has been described as originating in "*relations between individuals, in families and in aggregations of individuals in neighbourhoods, churches, schools and so on. These relations facilitate social action by generating a knowledge and sense of obligation, expectations, trustworthiness, information channels, norms and sanctions*", (Hagan and McCarthy, 1997:229). The ways in which people are 'connected' to their families, communities or indeed employers and co-workers can be seen as a resource in seeking to reduce offending or re-offending behaviour.

Employment and employment opportunities have been described as central to the process of fostering mature relationships which produce social capital (Hagan, 1997, Sampson and Laub 1993, Laub, Sampson, Corbett and Smith 1995, Laub & Sampson 2001, and Nagin and Paternoster, 1994). Employment, especially if it is in some way rewarding for the individual concerned, is one of the most important ingredients of social capital for the individual in western societies. Farrell in particular has analysed in some detail the interaction between employment and family relationships. As he argues:

"Paid employment has the potential to achieve all of the following: a reduction in 'unstructured' time and an increase in 'structured' time; an income, which enables 'home-

¹⁵ The phrase has been most recently associated with Robert Putman's now classic 2000 text *Bowling Alone* which charts the decline of civic and communal ties in the USA.

leaving' and the establishment of 'significant' relationships; a 'legitimate' identity; an increase in self-esteem; use of an individual's energies; financial security; daily interaction with non-offenders; for men in particular, a reduction in the time spent in single sex, peer-aged groups; the means by which an individual may meet their future partner; and ambition and goals, such as promotion at work." (Farrell 2004:64).

In highlighting the centrality of employment in developing social capital and helping offenders desist from criminal behaviour, Farrall further argues that such interventions should, where possible, be accompanied by a focus on the importance of the family as a second key factor in creating desistant behaviour (Farrall 2002). His central argument is for a broadening of the professional gaze away from the obsession with 'offending related' factors towards 'desistance related' factors. Good family relationships share many of the features of employment. An increase in 'structured' time and a decrease in 'unstructured' time, legitimate identities and increased self-esteem, contentment and emotional support and 'something to lose' – all of which are associated with desistance from criminality. For example, in his research tracking the progress of a group of probation clients aged 17-35, he found that many of them were still heavily dependent upon their families as a source of social capital. Often for such individuals it was not enough that the offenders should gain employment (and in a number of instances in his sample this was actually achieved through the efforts of parents or extended family) but that it was also important for Probation officers to intervene to re-establish or help maintain family relations for probationers who were genuinely trying to desist from offending.

As noted above, one traditional criticism levelled against Probation officers and other ex-offender professionals is that despite their focus on referring offenders to employment partnerships, alcohol and drug courses etc, sometimes studies of such employment schemes have been unable to demonstrate a clear impact on offending because, regardless of the quality of the programme or the enthusiasm of staff or clients, they have little influence over wider economic factors such as general high unemployment rates (Crow 2000). Farrell argues that the Probation and other after-care agencies should therefore reorientate their work towards not just a focus on employment and employability but also the key arena of social capital through work with offenders' families.

"If probation work became desistance-focused rather than offending-related, Officers may feel that they had a clearer mandate to help probationers tackle their family problems. From the wider investigations into desistance, and from the analyses reported herein, the family has appeared to be a particularly strong resource for those attempting to desist to call upon. Families are (often) better resourced than individuals, have wider networks which

penetrate other social circles to which the individual may not be able to gain access, and for some people provide an avenue to escape from more harmful social contexts. The call for a greater focus on probationers' families as a source of social capital which might aid desistance may in turn result in the greater involvement of Officers in the attempts to tackle the 'family problems' and hence a greater success in actually resolving such problems." (Farrall 2004:72).

Of course many offenders do not come from families where one can assume a ready-made source of social capital. Where improved relations with families is either not possible, or indeed in some instance not desirable for offenders seeking to desist from criminality, Farrell's argument is that the challenge is for professionals is to find alternative networks of social capital through community of other civic structures. Thus for example, restorative justice initiatives which have been established to assist offenders reintegrate back into local communities often have well developed mentoring, circles of support or other peer focused schemes which are designed to assist in developing exactly those supportive relationships (e.g. Johnston 2002, Roche 2003). The key point is to have the notion of social capital to the fore in the efforts to aid desistance, rather than simply focusing upon an individual's offender orientated needs.

In sum therefore, contemporary academic and policy literature on reintegration or resettlement suggests three overlapping frameworks through which to understand and implement initiatives designed to assist with the employability of ex-offenders. First, the notion that professional interventions will inevitably be heavily influenced by the prominence of the evidence based practice and associated elements of the What Works philosophy in cotemporary government policy. Second, such offender-focused initiatives should be viewed as contributing to a broader process designed to assist offenders in 'desisting' from crime. And thirdly, absolutely central to such efforts at encouraging desistance is a focus upon networks of 'social capital' amongst the family or community of an ex-offender.

BARRIERS TO EMPLOYABILITY: SOCIAL EXCLUSION, EMPLOYERS' ATTITUDES AND INADEQUATE LEGISLATIVE PROTECTIONS.

In considering employability through these interlocking frameworks, one must also consider the range of structural obstacles to the employment of ex-offenders which directly impact upon their potential to access meaningful employment in the labour market. These barriers may be addressed under three broad headings:

- Criminal Records and Social Exclusion
- Criminal Records and Employers' Attitudes
- Criminal Records and Lack of Legislative Protection from Discrimination

CRIMINAL RECORDS & SOCIAL EXCLUSION

While it is widely accepted that levels of unemployment are high amongst ex-offenders, it is often more difficult to distinguish the extent to which this may be based on their criminal convictions or offending behaviour or whether it may be due to other factors such as low educational qualifications, health problems, lack of practical experience in employment or lack of motivation (see for example, ALBSU 1994, ACOP, 1994; Simon and Corbet, 1996, Conalty, 1998; McCall, 1998, NACRO, 1997 & 1999, Metcalf et al 2001, Farrell 2004). As the 1990 Prison Survey points out (and was underpinned again by Mair and May's 1997 study of probationers) prisoners and ex-prisoners can be distinguished from the general population by a range of social features which impact upon employability including:

- lower socio-economic groups are over represented (IV and V);
- around 25% have been in care (compared to 2% in the general population);
- high levels of drug and alcohol abuse;
- high levels of illiteracy and lack of basic skills – 27% of prisoners score below level 1 (corresponding to National Curriculum Level 4, the target for 11 year olds) in basic skills tests, 39% for writing and 35% for numeracy;

- a high proportion (e.g. two thirds of young prisoners) are unemployed prior to imprisonment;
- approximately 40% left school before the age of 16 (compared to 11% of the general male population).

In a similar vein Fletcher et al (1998) analysed five examples of employment interventions in the criminal justice system. They concluded that among the main barriers to employment for offenders were:

- employer attitudes;
- criminal records and offenders' concerns about disclosing their records;
- low self-esteem, confidence and motivation;
- poor health, lack of qualifications, including poor basic skills;
- lack of recent work experience and participation in segregated social networks (which meant they lacked informal contacts for jobs);
- and finally poverty, debt and insecure housing all of which militated against the solid foundations required to get onto the employment ladder in the first place.

Two other probationer based studies, Bridges (1998) and May (1999), found similar factors and also included accommodation problems and what they described as 'chaotic lifestyles' which militated against the employability of offenders. For example, Bridges (1998) found that drug or alcohol misuse was an 'inhibiting factor' in 48% of unemployed offenders on probation. With few skills, a lack of motivation and lifestyles that are not conducive to employment, many offenders may accordingly have had little or no experience of legitimate employment.

Much of the US literature on the employability of ex-offenders mirrors such findings. Many ex-offenders have limited formal educational qualifications (e.g. about 70% are high school drop outs – Travis et al 2001) with, according to one study, almost half the offenders and ex-offenders population being "functionally illiterate" (Hirsch et al. 2002). They have limited employment experience, suffer from a range of alcohol and substance abuse problems, and are drawn disproportionately from African American and Hispanic communities, which already suffer considerable structural exclusion from the labour market (Holzer 1996, Kling et al 2000, Holzer & Stoll 2001, Western et al 2001, Petersilia 2003). Thus as Holzer et al

argue (2003), the barriers faced by ex-offenders because of their very limited skills, poor health, substance abuse problems and race or area of residence – as well as their criminal records - often reflect a “mismatch” between these characteristics and those sought by employers on the demand side of the labour market. Indeed some Australian research has suggested that many employers use the presence of a criminal record as a de facto shorthand for this range of related characteristics which may inhibit offenders’ access to employment (Lam & Harcourt 2003).

In the European context, Andrew McCall (1998), reporting on earlier work of the European Offender Employment Forum, has argued that policy must take account of these multiple problems faced by offenders which cannot be solved by assistance with employment alone. His argument is that widespread alcohol or drug misuse, housing and family problems require not just employment initiatives but also must take account of these multiple problems experienced by offenders and develop appropriately tailored ‘integrated’ approaches to tackle them.

Direct surveys of offenders themselves (as opposed to secondary research on for example Probation records) have suggested a similar pattern. In 1997 NACRO carried out a survey of its own ex-offender clients. The survey, of 190 of its service users, found similarly high rates of social problems among the sample, including ill health, family problems, homelessness, drink or drug problems, low self-esteem and self-confidence. The offenders themselves attributed their employment to a combination of their criminal records and their lack of relevant qualifications or experience. NACRO suggested that these findings actually underestimate the problem of employer discrimination because many respondents would not know they had been refused employment because of their record. A similar study by NACRO in 1999 yielded similar results. Fletcher et al (1998) also used interviews to survey offenders and ex-offenders on barriers to employment. As with the above research, this study too found lack of educational and vocational qualifications, low skills, lack of experience and low self-esteem as contributing factors to the exclusion from employment of ex-offenders – together with discriminatory attitudes towards offenders from employers.

ATTITUDES OF EMPLOYERS TOWARDS EX-OFFENDERS

In their review of employer attitudes towards the recruitment of offenders and ex-offenders, Albright and Denq (1996) argue that there are considerable limitations to some of the research which has been done in this area, a view echoed by Metcalf et al in their 2001 review. Small sample sizes, wildly varying attitudes reported between employers' attitudes (e.g. variances of between 6-51% of employers who would be willing to consider hiring an ex-offender - Miller 1979), insufficient account of local and regional differences, and variances in the use of language on questionnaires (e.g. between using the word "would" and "might" consider employing an ex-offender) – all of these mean that the literature on employers' attitudes needs to be treated with some caution. With that in mind however, one does find interesting similarities across a broad range of studies. While these are discussed in more detail below, the most consistent finding across almost all research in the field is that employers are most concerned about (a) the type of offence/s committed and (b) the relationship of the crime to the post for which they are recruiting. These two issues have been central to recent British research on employers and offenders/ex-offenders.

In 1991 APEX conducted a survey which covered a wide range of issues relating to practices and attitudes towards offenders and ex-offenders. The scope of the survey was national, and sampled 2,300 employers, although the survey was biased towards employers in the south east of England. One of the main findings of the APEX research is that only a small minority said they had knowingly employed an ex-offender in the previous year. Employers' practices in relation to asking applicants whether they have a criminal record are not clear from the research, which reports that 83% of private sector companies 'will ask'. What is not clear is whether they ask *all* candidates and for *all* jobs. Only a minority ruled out employing someone with a criminal record under any circumstances, but sexual offences were viewed as most serious, followed by offences against property, violence, fraud and forgery and robbery. Only a minority of employers looked at the relevance of candidate convictions in relation to the job, but took a more general view on the 'seriousness' of the crime. However, there was particular concern about applicants who had committed an offence against a previous employer.¹⁶ The report concludes that what most employers are looking for is someone with basic skills, which include honesty, reliability and motivation, and who are willing and capable of being trained in the company's specific processes. Referring to knowledge about ex-offender characteristics, the report comments that these basic workforce skills are not ones which employers would automatically associate with their idea of a 'typical' ex-offender. Therefore, the report concludes that there is great reluctance amongst employers to consider recruiting people whom they know to have a criminal record.

¹⁶ A small survey (44 employers) conducted by the South Glamorgan Probation Service (1991) found similarly that employers were most unwilling to employ people who had committed theft against a previous employer, or crimes of a violent or sexual nature.

A similar survey was conducted at about the same time by researchers at Bristol Polytechnic in co-operation with Somerset Probation Service (Donlan and Withers 1991). This survey also aimed at investigating the attitude of employers to offenders in order to identify any reasons why offenders were experiencing such difficulty in obtaining employment. They particularly wanted to investigate whether the nature of the offence or sentence imposed made any difference to employers' attitudes towards offenders and ex-offenders. Their postal survey achieved a similar response rate to APEX, at only 35%, resulting in 171 completed questionnaires. Most respondents were from small companies and the retail sector was over-represented. The findings are similar to those of the APEX study, with most respondents stating they had not knowingly employed anyone with a criminal conviction. However, the survey did not ask employers whether they ask applicants if they have a criminal record. The main findings can be summarised as follows:

- The larger companies were the most likely to consider employing offenders and ex-offenders in the future.
- Employers were most favourable towards civil, traffic and alcohol related offences, while sex offenders were least likely to be considered for employment.
- A large majority of organisations said that explaining the circumstances of an offence at interview would improve an offender's chances of obtaining employment.
- A large majority of employers were concerned at the safety of their organisations' goods and property and were concerned about the reliability of an offender as an employee.
- The majority of employers said that possession of a skill or qualification in short supply would not improve an offender's or ex-offender's chances of employment.

More recent research studies from the late 1990s onwards are generally based on small samples and focus on particular regions. Perhaps surprisingly, most do not ask employers whether job applicants are asked if they have a criminal record. A 1999 NACRO study in London found from a sample of 69 employers that fewer than half would give a job to someone with a criminal record. Another London-based study (see Conalty and Cox, 1999) examined employers' concerns about recruiting offenders. The project intended to identify what services might be needed by offenders and employers and to make links with

employers who would consider recruiting offenders. As with other studies, the achieved sample size is small, at 81 out of 243. Although 72% said they would consider employing an offender, Metcalf et al (2001) suggest that this may be because of a higher response rate from sympathetic employers. Indeed, while this group of employers appears to be fairly liberal in their views to employing offenders across the board, they were 'New Deal' employers (who might be more likely to offer opportunities to the long-term unemployed) and as the study used face to face interview methods, perhaps were less likely to openly express prejudicial views.

As with other studies (e.g. Newsum-Brown 1996, Buffery 1998), Conalty and Cox's echoed the findings of earlier research on the importance of the nature of the offence with employers demonstrating least tolerance towards offences of a violent and sexual nature and most tolerant of the offence of driving whilst disqualified. They also make the interesting point that negative views (e.g. of sex offenders) may be less to do with real assessments of risk rather than feelings of anger or outrage at the particular offence.

A study involving a partnership between a Probation Service and a Training and Enterprise Council achieved a higher response rate than many other surveys, at 64% from a sample of 250 (Buffery, 1998). Like other recent studies, it found employers to be fairly positive, with more than 80% saying they would consider employing an offender (if they were recommended by the Probation service). The report believes its findings are the cause for some optimism among offenders and ex-offenders. A serious omission of this research however is a lack of any evidence about employers' actual policies and practices in relation to asking applicants if they have a criminal record. This question was not asked of employers. Like previous researchers, Buffery also found that employers are concerned about the type of offence. Applicants with convictions for sexual offences, violence, supplying drugs, as well as fraud and other employment related offences were likely to face the greatest difficulties. In the most recent survey in Britain, the Chartered Institute of Personnel & Development conducted a telephone survey of 510 Human Resource Managers (CPID 2002). In this study, again managers indicated again that the nature of the offence was the key factor in making a decision to employ an ex-offender.

A number of studies in Scotland have also suggested that the level and nature of support provided may have an impact on employers' attitudes. For example, in a survey on hard-to-employ groups in a locality in Glasgow, Scott and Sillars (2003:2) found that views on employing ex-offenders were not always clear-cut. Although some of the employers surveyed said they would employ ex-offenders, they indicated that their views were also conditional on the nature of the offence. However, employers also suggested that the

nature of support offered could also affect their future position. Similarly Apex Scotland highlighted encouraging results from new approaches to providing support for prisoners that take a more holistic view and highlight the potential for such support to continue following release from prison, including help to address the barriers that inevitably arise (Apex Scotland, 2003).

Existing research does not allow for analysis by industry, or indeed by any other criteria, because sample sizes are too small. Moreover, few studies have targeted specific industries and occupations to examine the barriers to employment for offenders and ex-offenders.¹⁷ However general patterns may be discerned as to what employers are looking for. As Donlan & Withers (1991) found "*[employers] are looking for innate abilities and generic skills, just as much as specific technical skills. Sometimes, therefore, offenders simply require training in, for example, confidence, personal hygiene, communication, time-keeping, showing initiative, working in a team and applying themselves to the task in hand.*" Similarly, McCall (1998) found a preference among employers not so much to have a 'finished product', of people trained in a specific trade, but rather people with the 'necessary basic skills', including good motivation, reliability, trustworthiness, literacy and numeracy and the ability to work in a team. The policy implications drawn from this are that large scale and specific vocational training projects may not always be appropriate, particularly if relevant jobs in the particular skill area are not available.

In sum therefore, research on employers' attitudes to employing offenders and ex-offenders has reached a broad consensus on a few generic themes. Key issues for employers are the type of offence and whether the offence is related to the job. However, it says little about which employers are concerned about which types of crime and for which occupations. Another more recent finding of a number of studies is the importance to employers of a 'positive attitude' in an offender or ex-offender, including motivation to change past behaviour (Metcalf et al 2001). Although existing research identifies employers' general concerns, it says little about employers' *actual practices* in relation to the recruitment of offenders and ex-offenders. This is because many studies¹⁸ did not ask employers whether they ask applicants about convictions and therefore discriminate against offenders and ex-offenders.

INADEQUATE LEGISLATIVE PROTECTION FROM DISCRIMINATION

As with other socially excluded groupings, legislative protection has long been viewed as key to the prospects of ex-offenders gaining access to employment. Drawing from the

17 For an exception see McManus' 1999 survey of secondary school principals.

18 For an exception see the CIPD study 2002 and the NIACRO surveys (2000) and (2005 unpublished).

international literature, there are broadly two types of model for dealing with criminal records through legislation. These are the *Discriminatory or Rights Based Model*, the *Spent Convictions Model* and, in some instances, a combination of both.

The Human Rights Anti-Discriminatory Model

The *Human Rights Anti-Discriminatory Model* prohibits discrimination on the grounds of a criminal record in relation to a range of social and civil activities including employment. Under such a model discrimination on the grounds of a criminal record is unlawful unless it can be justified by the inherent requirements of a particular job. In 1976 the UK ratified the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR) and in 1992 the UN *Convention on the Rights of the Child* (CRC). These three treaties prohibit the UK government from discriminating against any person on grounds including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any 'other status'.¹⁹ International jurisprudence indicates that discrimination on the grounds of criminal record could fall into the 'other status' category.

For example, the European Court of Human Rights has interpreted non-discrimination on the grounds of 'other status' to include non-discrimination on the basis of criminal record (see *Thlimmenos v Greece*, 6 April 2000, Application No 34369/97). This case concerned the refusal by the Greek government to permit a person with a criminal record to become a chartered accountant. The applicant, a Jehovah's Witness and a committed pacifist had been convicted and served a prison sentence for his refusal to do military service. The court held that the state had a legitimate interest to exclude some offenders from the profession of a chartered accountant. However, unlike other convictions for serious criminal offences, "*....a conviction for refusing on religious or philosophical grounds to wear the military uniform could not imply any dishonesty or moral turpitude likely to undermine the offender's ability to exercise this profession. Excluding the applicant on the ground that he was an unfit person was not, therefore, justified. The applicant had served a prison sentence for his refusal to wear the military uniform. Imposing a further sanction on him was disproportionate.*"²⁰ In effect the court looked at the reason behind his offending behaviour, its relevance to the post in question and introduced a proportionality test as to whether the exclusion was relevant in the context of the original offence and the sentence received.

A number of jurisdictions have adopted specific anti-discrimination or human rights provisions with regard to irrelevant criminal acts. In Australia for example, in 1989 the provision of the Human Rights and Equal Opportunity Act (1986) was extended to include

19 See ICESCR article 2(2); ICCPR articles 2(1), 26; CRC article 2(1).

20 See also S Joseph, J Schultz and M Castan, *The International Covenant on Civil and Political Rights; Cases, Commentary and Materials*, Oxford University Press, 2nd ed, 2004, p689 which discusses UN Human Rights Committee decisions suggesting that a clearly definable group of people linked by their common status is likely to fall under the definition of 'other status'.

discrimination on the grounds of a criminal record. Article 1(2) provides for an exception to this general definition, known as the ‘inherent requirements exception’, which states: “*Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.*”²¹ Therefore for an act to be discriminatory an ex-offender must demonstrate that it impaired or nullified his/her equality of opportunity in employment and that the distinction was not premised upon the inherent requirements of the post.

The “inherent requirements” exception has been considered by the International Labour Organization, the Australian courts and by the Australian Human Rights and Equal Opportunities Commission in its consideration of complaints. While the cases do not reveal any simple test, the following principles appear to represent the current state of the law:

- An inherent requirement is something that is ‘essential’ to the position rather than incidental, peripheral or accidental.²²
- The burden is on the employer to identify the inherent requirements of the *particular* position and consider their application to the *specific* employee before the inherent requirements exception may be invoked.²³
- The inherent requirements should be determined by reference to the specific job that the employee is being asked to do and the surrounding context of the position, including the nature of the business and the manner in which the business is conducted.²⁴
- There must be a ‘tight correlation’ between the inherent requirements of the particular job and an individual’s criminal record. There must be more than a ‘logical link’ between the job and a criminal record.²⁵
- The inherent requirements exception will be interpreted strictly so as not to defeat the purpose of the anti-discrimination provisions.²⁶ The Full Federal Court of Australia described the purpose and operation of the HREOC anti-discrimination laws as follows:

21 The Australian government drew their definitions from the International Labour Organization Convention 111, the *Discrimination (Employment and Occupation) Convention 1958* (ILO111). The ILO 111 requires all countries that are party to the Convention to ...*declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.* Article 1(1)(a) of ILO 111 defines ‘discrimination’ in employment as: *Any distinction, exclusion or preference made on the basis of [gender, etc] ... which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.* While the Convention specifies certain grounds of non-discrimination, including race, colour, sex, religion, political opinion, nationality and social origin, it also leaves room for parties to add further grounds of non-discrimination. It was under this provision that Australia added a variety of grounds, including criminal record. The UK government ratified this Convention in 1999 and therefore could follow the Australian example in extending its non discrimination protections to include criminal records under the principle of the broader commitment to upholding international law.

22 See for example *X v The Commonwealth* [1999] HCA 63 (2 December 1999) (X’s Case), *Qantas Airways v Christie* (1998) 193 CLR 280 (Christie’s Case) or Hall’s Case p32, 34.

Respect for human rights and the ideal of equality – including equality of opportunity in employment – requires that every person be treated according to his or her individual merit and not by reference to stereotypes ascribed by virtue of membership of a particular group... These considerations must be reflected in any construction of the definition of 'discrimination' ... because, if they are not, and a construction is adopted that enables the ascription of negative stereotypes or the avoidance of individual assessment, the essential object of the [Human Rights and Equal Opportunity Commission] Act to promote equality of opportunity in employment will be frustrated.²⁷

Further, in order to avoid discrimination under ILO 111 and the HREOC Act in Australia, there should be an opportunity for an individual assessment of (a) a person's *particular criminal record* (b) the *inherent requirements* of the *particular job* and (c) the correlation between the criminal record and the inherent requirements of the particular job (Human Rights & Equal Opportunities Commission 2004:23).

At the local state level in Australia a number of states have also enacted anti-discriminatory provisions with regard to irrelevant criminal records. Thus for example, the Northern Territory Anti-Discrimination Act 1992 provides for the elimination of discrimination on the grounds of an irrelevant criminal record in the area of work, accommodation, or education, in the provision of goods, services and facilities, in the activities of clubs and in provision of insurance and pensions. The Tasmanian *Anti-Discrimination Act 1998* has very similar provisions to the Northern Territory legislation. In both instances, there is a specific exemption for discrimination in relation to the education, training or care of children. In both the Northern Territory and Tasmania a variety of legal remedies are available if a finding of discrimination is made including that the court can order an employer:

- not to repeat or continue the prohibited conduct;
- pay compensation;
- or to take specific action, including re-employing a person.

Discussions concerning protection from discrimination for ex-offenders in Northern Ireland have also been framed within the human rights discourse. For example, the draft Bill of Rights prepared for consultation by the Northern Ireland Human Rights Commission in 2001 includes a provision which states : "*Everyone has the right to be protected against*

23 Hall's Case p36, S Selleck, 'Criminal Records Discrimination – When the Law Speaks with a Forked Tongue', paper presented to CSEPP consultants, 26 May 2004, p10 (S Selleck); *Zraika v Commissioner of Police, NSW Police* [2004] NSWADT 67.

24 X's Case, Christie's Case, Hall's Case p33, S Selleck p10.

25 Hall's case p35-36, S Selleck p13.

26 See also Hall's case p34-5, S Selleck p10.

27 *Commonwealth v Bradley* (1999) 95 FCR 218 at 235 per Black CJ. See also *Commonwealth v Human Rights and Equal Opportunity Commission and Ors* (1998) 158 ALR 468 at 482, per Wilcox J.

any direct or indirect discrimination whatsoever on any ground (or combination of grounds) such as race or ethnic origin, nationality, colour, gender, marital or family status, residence, language, religion or belief, political or other opinion, possession of a criminal conviction, national or social origin, birth, disability, age, parentage, sexual orientation, status as a victim or any other status." The draft Bill of Rights also contains an exception wherein discrimination on the grounds of a criminal conviction may be adjudged legitimate if the characteristic used to discriminate is "...a genuine and determining requirement." The draft Bill of Rights also states: "*The State shall take effective measures to ensure that favourable conditions are created for the reintegration of ex-prisoners into society.*"

This draft became stalled in the political negotiations concerning devolution in Northern Ireland. Following the St Andrews Agreement in 2007, a Bill of Rights Forum made up of politicians, churches, civil society and other groupings presented a report to the Northern Ireland Human Rights Commission which contains recommendations on the contents of a Bill of Rights. One option discussed in that report is to prohibit discrimination on the grounds of an "irrelevant criminal record or conflict related convictions". Following this consultation, the Human Rights Commission is committed to presenting its revised views on the contents of a Bill of Rights for Northern Ireland to the Secretary of State in December 2008.

In addition, in 2001 the Office of the First Minister and Deputy First Minister produced a consultation document designed to build upon existing equality legislation in preventing discrimination and promoting equality of opportunity for all. The Bill is designed to harmonise existing anti-discrimination laws and to 'consider the extension of protection of new categories.' A number of influential bodies argued in their submission that equality provisions relating to people with criminal records should be enhanced. Perhaps most notably the Equality Commission for Northern Ireland argued:

*"The Single Equality Act and the Rehabilitation of Offenders legislation [discussed below] should be complementary, the former protecting against discrimination based upon an irrelevant conviction and the latter dealing with the process of rehabilitation including issues relating to when convictions should be considered 'spent'. The Commission supports the view that there should be a process of rehabilitation and that there is a legitimate social policy in protecting the public from dangerous individuals. We therefore see the need to have safeguards where certain crimes can never be considered spent or irrelevant e.g. certain violent crimes and sexual offences including abuse. We maintain, however, that it is important to develop an equality provision that assists in the wider rehabilitation of offenders."*²⁸

²⁸ Equality Commission for Northern Ireland: *Update on the Single Equality Act, Position Paper*, Autumn 2002. Belfast : Equality Commission for Northern Ireland.

The Commission went on to recommend that *“legislation is introduced to outlaw discrimination against those who have past convictions, with proper safeguards in place through necessary exemptions.”* It also suggested that OFMDFM should consider incorporating the criteria of ‘an irrelevant criminal record’ in the ensuing legislation. At the time of writing, the Single Equality Act has not yet been passed into legislation.

The Spent Convictions Model

A number of jurisdictions have also introduced legislation to provide for offences to become ‘spent’ or expunged (in most circumstances) from a person’s record if they do not re-offend within a specified period. The only country in the European Union which does not provide for some form of expunging short-term prison or non-custodial sentences is the Republic of Ireland (NESF 2002, Kilcommins and O’Donnell 2003).

By way of examples, in France criminal records may be removed either via an amnesty or by rehabilitation. For less serious offences, there is a blanket amnesty after every presidential election for offenders who have received certain sentences. Offenders can also become automatically rehabilitated after having a clean record for a certain period according to the type of sentence received (e.g. three to five years for a fine to ten years for a custodial sentence) or a court can grant judicial rehabilitation on request from the offender after three to five years. In Greece records are deleted after three years on completion of a sentence of less than six months; after five years on completion of a sentence of less than 12 months and after eight years for a sentence of more than 12 months. Offenders can also apply to the office of the President to have their record expunged. In Germany the Federal Public Prosecution Office maintains criminal records on adults, on the Central Federal Register (Bundeszentralregister) for between five and 20 years depending on the severity of the sentence. For sex offenders, it is always 20 years, and for those sentenced to life imprisonment the details are never deleted.²⁹

The Rehabilitation of Offenders Act 1974 in the UK (Order 1978 in Northern Ireland) is fairly typical of the spent convictions model. It provides for offenders to treat their records as ‘spent’ under the legislation after proscribed periods of non-offending (e.g. five years after a fine) providing the sentence was for not more than 30 months and that the post applied for is not one of the long list of ‘Excepted Professions’ under the legislation. The Rehabilitation of Offenders legislation has been widely criticised by organisations working with offenders on a number of grounds. The 30-month threshold has the effect of excluding large numbers of former prisoners from any legislative protection.³⁰ The expansion of the range of Excepted Professions has been criticised as unnecessarily undermining the fundamental objectives of the legislation (Maxwell & Mallon 1997). In addition, the

29 For details on these and other jurisdictions see e.g. NIACRO 1996, Loucks et al 1998, Home Office 2002.

30 The Prison Reform Trust estimate that the average sentence length has increased by over 30% since the legislation was introduced and that 63% of prisoners in 1999 were serving sentences of more than 30 months (<http://www.prisonreformtrust.org.uk/responses1.html>).

legislation has also been described as confusing and poorly drafted, largely unknown to many offenders and employers and containing few effective sanctions against employers who discriminate unlawfully on the basis of spent convictions (Earnshaw 1989, Harris 1999, Home Office 2002). In 2002 a Home Office sponsored review of the Act issued a number of proposals and the government responded to these in April 2003. The proposals included:

- Retaining the system of excepted professions but tightening the criteria to limit it to those that genuinely require a higher level of vetting (accepted by government).
- Explanation of R.of O. legislation at sentencing (rejected).
- A voluntary code of conduct for employers governing disclosure of records during recruitment (accepted).
- 'As at present', sanctions should apply if an applicant or existing employee loses a position on the basis of a spent conviction (accepted).³¹
- A reduction and simplification of the rehabilitation periods to match the original sentence plus an additional 'buffer' period to cover the period of greatest risk of re-offending (accepted). The government propose that for those given a non-custodial sentence, the period of disclosure shall be the length of the sentence plus one year ; a custodial sentence of less than four years, the period shall be as order by the court plus a buffer period of two years : for a sentence of four years or more, as ordered by the court plus an additional buffer period of four years.

The UK government has indicated that a draft Bill to enact these changes will be placed before parliament 'as soon as practicable'.

As noted above, some jurisdictions (including Canada and Australia) actually employ both the human rights and the spent convictions models. While the two models may appear superficially similar (i.e. both seek to prevent discrimination based on criminal record) they have fundamentally different means of achieving this goal and different degrees of effectiveness (Australian Human Rights & Equality Commission 2004). The spent convictions approach may reduce the chance of discrimination at the point of recruitment because it should prevent an employer asking about spent convictions. However, it often offers little protection from other forms of employment-related discrimination after hiring, if the employee's criminal history advertently or inadvertently comes to the employer's attention.

³¹ It is not clear whether the government envisages improving the legal process under the Act to ensure that such sanctions are actually applied in practice.

In contrast, the human rights approach applies more generally, because it covers, not only hiring, but also all other aspects of employment as well. If a human rights statute includes criminal record as a prohibited ground, the presence or absence of such a record cannot be used as the basis of any decision to hire, promote, transfer, layoff, dismiss, or remunerate, unless there is a bona fide occupational requirement for doing so. Human rights legislation also typically forbids employers from asking any question in a job application about any prohibited ground. Sometimes, this is worded as a very specific provision in the statute. At other times, it is implied as part of the general prohibition against employment discrimination.

Human rights legislation also ordinarily extends beyond employment to other areas. For example, the Australian Northern Territory's Anti-Discrimination Act 1996 applies to education, accommodation, and the provision of goods, services and facilities. In addition, while spent convictions legislation usually offers no protection from discrimination on the grounds of unspent conviction, human rights legislation can also offer protection from discrimination on the basis of irrelevant convictions which remain unspent. For example, in British Columbia, Canada, Section 13(1) of the Human Rights Code [RSBC 1996] states that no one should be denied employment "*because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.*" Similarly, in the USA, the Equal Employment Opportunity Commission has provided guidelines advising that no employer should automatically deny employment to applicants with criminal records. These guidelines suggest that employers consider the following criteria in their human resource decisions: likelihood of guilt (if the case disposition is not completed at the time), nature and severity of the crime, time period since conviction, and nature of the position (Long, 2001). Kondrasuk et al (2001) further add that, in making their decisions, the employer should also consider the number of convictions and the applicant's likelihood of rehabilitation. Such laws and guidelines attempt to minimise discriminatory employment decisions based on past convictions, spent or unspent.

In sum therefore, as Larn & Harcourt (2003) argue, the available international literature would appear to suggest that the most effective way to protect ex-offenders from unreasonable discrimination and thereby improve their employability is to use the human rights framework as a base. This does not mean abandoning the spent convictions model. Rather, in the Northern Ireland context, it means supplementing the Rehabilitation of Offenders Order through the Single Equality Act and the Northern Ireland Bill of Rights. This would have the effect of mainstreaming ex-offenders as a protected group in society, ensuring that they are not unreasonably excluded from a broad range of goods and services, strengthening the enforcement mechanisms, and increasing penalties for miscreant employers.

EXECUTIVE SUMMARY

Based upon an extensive survey of the Australian, Canadian, American, British and European Union literature (published in English), below are some of the key themes to emerge concerning the employability of offenders in prison and beyond.

THE CRIME UNEMPLOYMENT RELATIONSHIP

- The relationship between crime and unemployment is a complex one. However, studies which focus in particular on the relationship between employment and groups of identified offenders have found that accessing meaningful work may be viewed as a turning point in the lives of offenders who cease offending.

EMPLOYABILITY AND EDUCATION & TRAINING PROGRAMMES IN PRISON

- Much of the literature on education and training in prison refers to the lack of rigorous evaluations of such programmes. When offenders do not re-offend after release, it is not clear whether such programmes genuinely brought about the change, or whether such ex-prisoners were the most motivated who may have resettled successfully without much formal assistance. Given the range of activities in which prisoners may engage, it is also sometimes difficult to discern which element of a programme made the difference. With those caveats in mind a number of broad themes emerge.

- In Australia there have been considerable efforts to link prison education and training to mainstream provision outside the prisons.
- Work programmes in prison have been prioritised and are viewed in the UK as Key Performance Indicators and part of the allocated hours of 'purposeful activity' which prisoners may expect. In addition in the prison system of England and Wales, the Home Office has established an Offenders Learning and Skills Unit and a Custody to Work Unit which are intended to better co-ordinate effective and measurable delivery of resettlement focused education and work programmes to prisoners.
- Despite that prioritisation, even the best work delivered in prison may not result in prisoners finding and maintaining employment if this is not linked to, and supported by, good aftercare provision.
- Prisons *can* deliver high quality programmes and interventions aimed at increasing the employment chances of inmates on release.
- Many interventions are the product of the commitment and enthusiasm of one or two key staff and therefore are vulnerable to staff change.
- For prison based employability to withstand the pressures of other competing prison and indeed prisoner priorities, it must be 'mainstreamed' into the prison planning and delivery process and occupational culture of the institution and formally assessed and evaluated accordingly.
- Given the wide range of other social and personal problems offenders face, employment interventions alone are unlikely to succeed. Properly integrated programmes are required which address personal development, accommodation and substance misuse needs as well as training and employment issues.
- The literature suggests that two types of employment related work are *unhelpful*. Raising job expectations through training without any serious prospect of a job on release may be actively damaging rather than just ineffective. Thus, properly targeted interventions to the local job market and/or employer involvement in programmes are core to the potential success of any programme. Similarly, employment in prison workshops (activities previously designed to 'keep prisoners busy') does not appear to increase the chances of employment on release.

POST RELEASE POLICY & PRACTICE : WHAT WORKS ?

- The primary academic and policy framework for assessing post release work with offenders is known as 'What Works'. The political dominance of this framework means that any programme which is designed to tackle drug or alcohol dependency, sex-offending, literacy or numeracy, training or other employability related skills, accommodation, mental health, cognitive reasoning etc – all of these are will be framed around evidence based practice and related 'What Works' discourses. A major review of 'What Works' in developing best practice to work with ex-offenders in Europe suggested the following themes.
- **Funding:** Almost all projects surveyed identified funding as being of major importance. Most projects had multiple funding sources which were time limited. The level of resourcing to undertake similar projects varied considerably. On the whole Southern European countries had the most difficulty securing funds.
- **Management:** Irrespective of the size or complexity of projects management capacity was identified by most of the projects surveyed and many of the delegates as a key success factor. The research concluded that a very broad set of management, social work and administrative skills is required to develop, manage and maintain an effective offender employment programme.
- **Qualified staff:** The research suggested that the skills and experience of the staff was a more important factor than the staff/clients ratio in the delivery of effective best practice.
- **Effective partnerships:** The research indicated that effective partnerships were crucial to the success of projects in terms of funding, development, operations and maintenance of programmes. Although there is invariably a lead agency most successful projects develop strategic relationships with key local partners and usually involve them in the management committee of most projects.
- **An individualised approach:** The research suggested that delivering a flexible, individualised response to the needs of participants was a major factor in the success of projects.
- While few could quibble with the above features of best practice suggested by the EOEf research, the level of detail of either project work or policy implications based upon such a large comparative study was adjudged as disappointing. The lack of scholarly and/or objective evaluative analysis as opposed to descriptive self analysis (written in English at least) in the European criminology literature also makes substantive comparisons across the European Union somewhat problematic.

- The actions of the government of the Republic of Ireland in taking forward the recommendations of the 2002 National Economic and Social Forum resonate with ongoing developments related to the Northern Ireland Resettlement Strategy. The NESF report includes proposals for the establishment of an interagency steering group on reintegration to oversee policy, reintegration addressed in the Business Plan of each prison, the introduction of 'Positive Sentence Management' for each prisoner with an emphasis on reintegration, greater co-operation between the prisons and voluntary and community sector and the inclusion of the needs of ex-prisoners in the strategic planning processes of local Housing and Health Authorities (NESF 2002:20). The NESF also suggested that specific reference should be made to the category of 'prisoners and offenders' in all equality and social inclusion programmes, and to amend the Employment Equality Act 1998 to include protection against discrimination on the basis of a criminal record.

GOOD PRACTICE AND DESISTANCE FROM CRIME

- The emphasis on improving practice through the What Works framework should not detract attention from the process of 'desistance' from crime. Desistance is described as an amalgam of the efforts of the individual themselves, assistance by professional agencies, and informal support from family, friends and or significant others – all of which contribute towards changing criminogenic lifestyles (Maruna et al 2004). Thus desistance from criminality requires initiating a change in behaviour but also the maintenance of that change.
- Desistance focused probation and aftercare studies highlight that there is no good reason why knowledge on desistance and official intervention (reintegration, treatment, resettlement and so forth) should be understood as binary opposites.
- For professionals working either in prisons or indeed in aftercare professions the practical implications of desistance theory is therefore a move away from a focus on generic *interventions* towards an emphasis on the development and maintenance of systems which are individually tailored to support offenders taking responsibility for moving out of criminal lifestyles.

EMPLOYMENT, “CONNECTEDNESS” AND THE NOTION OF SOCIAL CAPITAL

- A key concept in developing the theory and practice of the connections and relationships which help individuals desist from crime is the notion of social capital. The concept of ‘social capital’ has recently been utilised to describe those factors and relationships which can militate against re-offending behaviour. Social capital has been described as originating in *“relations between individuals, in families and in aggregations of individuals in neighbourhoods, churches, schools and so on. These relations facilitate social action by generating a knowledge and sense of obligation, expectations, trustworthiness, information channels norms and sanctions”*, (Hagan and McCarthy, 1997:229). The ways in which people are ‘connected’ to their families, communities or indeed employers and co-workers can thus be seen as a resource in seeking to reduce offending or indeed re-offending behaviour.
- Employment and employment opportunities have been described as central to the process of fostering mature relationships which produce social capital.
- In highlighting the centrality of employment in developing social capital and helping offenders desist from criminal behaviour, such interventions should, where possible, also be accompanied by a focus on the importance of the family as a second key factor in creating desistant behaviour. Good family relationships share many of the features of employment including an increase in ‘structured’ time and a decrease in ‘unstructured’ time, the construction of legitimate identities and increased self-esteem, contentment and emotional support and ‘something to lose’ – all of which are associated with desistance from criminality.
- Where offenders do not come from families where one can assume a ready made source of social capital, the challenge for professionals is to find alternative networks of social capital through community or other civic structures. Thus for example, restorative justice initiatives which have been established to assist offenders reintegrate back into local communities often have well developed mentoring, circles of support or other peer focused schemes which are designed to assist in developing exactly those supportive relationships. The key is to have the notion of social capital to the fore in the efforts to aid desistance, rather than simply focusing upon an individual’s offender orientated needs.

BARRIERS TO EMPLOYABILITY: SOCIAL EXCLUSION, EMPLOYERS' ATTITUDES AND INADEQUATE LEGISLATIVE PROTECTION

- While levels of unemployment are high amongst ex-offenders, it is often difficult to distinguish the extent to which this may be based on their criminal convictions or offending behaviour or whether it may be due to other factors such as low educational qualifications, health problems, lack of practical experience in employment or lack of motivation.
- In the adjudicated offender population in Britain, lower socio-economic groups are over represented, around 25% have been in care (compared to 2% in the general population), there are high levels of drug and alcohol abuse, there are high levels of illiteracy and lack of basic skills, a high proportion (e.g. two thirds of young prisoners) are unemployed prior to imprisonment, approximately 40% left school before the age of 16 (compared to 11% of the general male population).
- In assessing the views of employers towards the recruitment of offenders and ex-offenders, as in other aspects of this study, there are considerable limitations to some of the research which has been done in this area including the failure to ask employers about their 'actual' practice, a view echoed by Metcalf et al in their 2001 review.
- Across the American, Australian and British literature, a common finding is that employers are most concerned about (a) the type of offence/s committed and (b) the relationship of the crime to the post for which they are recruiting.
- As with other socially excluded groupings, legislative protection has long been viewed as key to the prospects of ex-offenders gaining access to employment. Drawing from the international literature, there are broadly two types of models for dealing with criminal records through legislation. These are the *Discriminatory or Rights Based Model*, the *Spent Convictions Model* and, in some instances, a combination of both.
- There are international human rights standards and there is some case law to suggest that discrimination against persons on the grounds of an irrelevant criminal record may be unlawful. For example, the European Court of Human Rights has interpreted non-discrimination on the grounds of 'other status' to include non-discrimination on the basis of criminal record.

- A number of jurisdictions have adopted specific anti-discrimination or human rights provisions with regard to irrelevant criminal acts. In Australia for example, in 1989 the provision of the Human Rights and Equal Opportunity Act (1986) was extended to include discrimination on the grounds of a criminal record. Article 1(2) provides for an exception to this general definition, known as the 'inherent requirements exception', which states: "*Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.*"
- Similar provisions have been included in the Draft Bill of Rights for Northern Ireland prepared by the Northern Ireland Human Rights Commission and suggested for inclusion by the Equality Commission in the Single Equality Act. Neither piece of legislation has yet been enacted.
- The other model for dealing with discrimination against people with a criminal record is the '*spent convictions*' model, exemplified by the UK's Rehabilitation of Offenders legislation. This legislation has been widely criticised as ineffective and following a Home Office led review, intention to lay a new piece of legislation has been indicated by the current government. The principle elements to the new legislation are retaining the system of excepted professions but tightening the criteria to limit it to those that 'genuinely require' a higher level of vetting; a voluntary code of conduct for employers governing disclosure of records during recruitment; an extension of protection for subsequent discovery of spent convictions; a reduction and simplification of the rehabilitation periods to match the original sentence plus an additional 'buffer' period to cover the period of greatest risk of re-offending.
- Based on the international literature, it is proposed that the most effective way to protect ex-offenders from unreasonable discrimination and thereby improve their employability is to use the human rights framework as a base and retain the spent convictions model. This would have the effect of mainstreaming ex-offenders as a protected group in society, ensuring that they are not unreasonably excluded from a broad range of goods and services (not just employment), strengthen the enforcement mechanisms, and increase penalties for miscreant employers.

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