NICCY ADVICE PAPER ON THE DOJ CONSULTATION: REHABILITATION OF OFFENDERS

February 2021

1. **Introduction**

The Northern Ireland Commissioner for Children and Young People (NICCY) was created in accordance with ‘The Commissioner for Children and Young People (Northern Ireland) Order’ (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Under Articles 7(2) and (3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people.

Under Article 7(4), NICCY has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons. The Commissioner’s remit includes children and young people up to 18 years, or 21 years, if the young person has a disability or experience of being in the care of social services. In carrying out her functions, the Commissioner’s paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising her functions, the Commissioner has to have due regard to all relevant provisions of the United Nations Convention on the rights of the Child (UNCRC).

**2. International framework and UK Policy in context of the rights of the child**

NICCY appreciates that there are complexities in implementing the rights of children and young people who offend. We recommend that the following articles of the UNCRC are incorporated as underlying principles within the Department of Justice (DoJ) proposals to reform rehabilitation periods in Northern Ireland. Specifically:

* **Article** 2: Children shall not be discriminated against and shall have equal access to all articles in the UNCRC.
* **Article** **3**: All decisions taken which affect children's lives should be taken in the child's best interests.
* **Article 6:** All children have the right to life and to the fullest level of development.
* **Article 12**: Children have the right to have their voices heard in all matters concerning them
* **Article 19**: Children have the right to be protected against all forms of violence, abuse, maltreatment or exploitation.
* **Article 34**: Children should be protected from all forms of sexual exploitation and abuse.
* **Article 36**: Children should be protected from all other forms of exploitation prejudicial to the welfare of the child.
* **Article 37**: Children should not be subject to cruel, inhuman or degrading treatment or punishment.
* **Article 40**: Children accused of breaking the law have the right to legal help and fair treatment. There should be lot of solutions to help these children become good members of their communities. Prison should only be the last choice.

It is an agreed principal, implemented in NI, that the criminal justice system should take into account the unique situation of children. Therefore, there is a bespoke youth justice system in NI that recognises children’s inherent vulnerability and opportunities for the future. Article 40 (3) (a) of the UNCRC outlines that States Parties shall:

*seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.*

Following the devolution of Justice to the NI Assembly, the independent “Review of the Youth Justice System in NI (YJR)” was published in 2011 and made 31 recommendations, the majority of which were accepted by the then Minister for Justice. The Review recommendations are still of significant relevance today. It stated the following:

*“In a worsening economic climate, where rates of youth unemployment are increasing, effective reintegration – which relies heavily on accessing education, training and stable employment – becomes more difficult. This is not made any easier when the only entry on a young person’s CV is their criminal record. Poor choices and adolescent misbehaviour in early life should not blight a young person's prospects and life chances forever.*

*Rehabilitation policy and legislation therefore needs to be overhauled to reflect the principles of proportionality and minimise the counterproductive impact of a criminal record on desistance from off ending. On reaching the age of 18, an opportunity should be given to some young offenders to start again with a clean slate.[[1]](#footnote-1)*

The UN Committee on the Rights of the Child’s General Comment No 24 on Children’s Rights in Juvenile Justice states that:

*“children differ from adults in their physical and psychological development. Such differences constitute the basis for the recognition of lesser culpability, and for a separate system with a differentiated, individualised approach”*.[[2]](#footnote-2)

Alongside the UNCRC, other international instruments for youth justice include the UN Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the Beijing Rules); the UN Guidelines for the Prevention of Juvenile Delinquency 1990 (the Riyadh Guidelines), the UN Rules for the Protection of Juveniles Deprived of their Liberty 1990 (the Havana Rules) and the UN Standard Minimum Rules for Non-custodial Measures 1990 (the Tokyo Rules). Taken together, these provide the basis for a youth justice system based on prevention of offending through early intervention to meet children’s needs; diversion and alternatives to prosecution; fair trial and respect for children’s privacy; restorative measures; minimal use of detention with provision of appropriate alternatives; rehabilitation and resettlement of the child into the community on release.

The Rehabilitation of Offenders (Northern Ireland) Order, 1978 must stand alongside the rights standards and safeguards outlined above, as the single legislative instrument providing the opportunity for young people to move away from their past. However, it is now outdated and inefficient. For example, changes in types of sentencing or that they can be split between prison and community with no understanding of when ‘rehabilitation period’ begins. There are inconsistencies in disclosures, for example between a probation order and a fine, and finally the continuation of any sentence over 30 month requires lifetime disclosure with no mechanisms for an individual to apply for their conviction to become ‘spent’. It is disappointing that this consultation has not sufficiently addressed the special circumstances for children.

It is a requirement of the Justice (NI) Act, 2002 that children involved in the youth justice system have their best interests taken into account. **NICCY recommends that DoJ should reconsider these proposals in light of this obligation and make the necessary changes to the Rehabilitation of Offenders Order, 1978 to reduce the length of rehabilitation periods for children.**

In September 2013 the Michael Sieff Foundation, working with the National Children’s Bureau, launched a Parliamentary Inquiry into the operation and effectiveness of the Youth Court. Its stated aim was to determine whether the system of criminal courts for children was achieving its objectives of preventing offending and having regard to the welfare of the children that appear before them[[3]](#footnote-3). The consequent Carlile Inquiry Report was published in June 2014 setting out recommendations, including children who have committed non-serious and non-violent offences, who have stopped offending, should have their criminal record expunged when they turn 18,[[4]](#footnote-4). A commissioned review of Youth Justice System in England (2016) goes on to identify that attempting to judge a teenager’s future risk of offending on the basis of, even fairly recent criminality, will often be impracticable, especially where offending is symptomatic of a crisis in the child’s life. The potential benefits of disclosing such criminality appear to be substantially outweighed by the probable negative effects of disclosure. [[5]](#footnote-5)

Regrettably, there is no “wiping clean of the slate” when a young person reaches 18 years of age, therefore a criminal record could potentially disadvantage them their whole life. Studies have shown the high correlation between a criminal conviction and unemployment[[6]](#footnote-6). In 2019/20 NIACRO surveyed 115 employers on their attitudes on employing people with criminal convictions, 96% of employers surveyed do ask about criminal convictions with 82% asking at application stage. The assumption the study made was it was an assessment measure only those with none or spent convictions would pass.[[7]](#footnote-7)

There is a compelling case for a fuller reform of the Rehabilitation of Offenders Act, 1978 taking into account the rights and best interest of children and **the** **Commissioner urges the DoJ to reconsider its position on the implementation of recommendation 21 of the Youth Justice Review, 2011** which states:

*21. Policy and legislation relating to the rehabilitation of offenders should be overhauled and reflect the principles of proportionality, transparency and fairness. Specific actions should include:*

*a. diversionary disposals should not attract a criminal record or be subject to employer disclosure;*

*b. young off enders should be allowed to apply for a clean slate at age 18;*

*c. for those very few young people about whom there are real concerns and where information should be made available for pre-employment checks in the future, a transparent process for disclosure of information, based on a risk assessment and open to challenge, should be established. The decision to disclose and the assessment on which it is based should be regularly reviewed.*

**NICCY strongly recommends young people who have committed offences in childhood should move into adulthood without a criminal record. The only exceptions should be with young people who have committed pre-defined ‘serious’ crimes, which should be independently reviewed on a case by case basis.**

**3. Criminal Records Filtering Review Scheme**In March 2016, ‘The Independent Criminal Records Filtering Review Scheme’ came into effect in Northern Ireland to allow for an independent review of criminal record information that could be or is disclosed on a Standard or enhanced AccessNI criminal record certificate. In cases where a criminal record is recorded prior to a person’s 18th birthday, it is automatically reviewed before the certificate is issued. The Independent Reviewer can consider and may decide not to disclose information if it’s a non-conviction disposal, or a spent conviction.[[8]](#footnote-8)

If the Independent Reviewer examines the information and decides that some or all of it should be disclosed, AccessNI will write to the person to ask if they would like to provide further information for the Independent Reviewer to consider. Any information provided will help the Independent Reviewer when reconsidering the case, before coming to a final decision about whether or not to disclose information. Factors considered by the Independent Reviewer - The kind of position being applied for. - The seriousness of the offence(s). - How long ago the offence(s) occurred. - How many offences are being disclosed and - if there is more than one, whether or not they were awarded at a single court hearing.[[9]](#footnote-9)

Some offences cannot be filtered by AccessNI when they check a person’s criminal history; these are known as specified offences. However they can still be reviewed by the Independent Reviewer, who may decide that it is appropriate not to disclose them. This does not mean that it is removed from a person’s criminal record – the information remains and may be disclosed on a future certificate if a person applies for a different job or training opportunity[[10]](#footnote-10). As of April 2018, there are 1,210 specified offences, the majority relate to serious sexual or violent offences which are thought to be relevant when making sure that children and vulnerable adults are protected, but they also include a wide range of other minor offences, such as a theft, damage to property, underage drinking and illegal use of drugs[[11]](#footnote-11).

*“It is important to recognise, however, that the impact of minor convictions goes beyond Access NI and disclosure certificates. Having a criminal record can impact on a person’s ability to travel or purchase essential services like home or car insurance, which can in turn negatively impact that person’s family. We (NIACRO) will continue to make the case for minor childhood convictions to be permanently expunged from criminal records.” NIACRO (2016)*

NICCY strongly believes that rehabilitation periods for childhood offending should be far shorter than for adult offenders, and the government should reduce further the periods before which childhood convictions become spent. When a conviction becomes legally spent, it does not appear on a Basic AccessNI certificate but can appear on a Standard or Enhanced AccessNI check. This can cause confusion and misunderstandings of ‘spent’ convictions can lead to job applicants to omit offences, particularly if they were convicted under the age of 18 years old. Once childhood cautions and convictions have become spent, they should very immediately become non - disclosable, on all AccessNI Checks including standard and enhanced.

**NICCY recommends the DoJ introduces a criminal filtering review system that ensures all childhood offending (with the exception of the most serious offences) are non-disclosable after a period of time or before their 18th birthdays for all AccessNI checks.**

**4. Child’s Rights Impact Assessment (CRIA)**

A child rights approach requires the State to see the whole child, taking a tailored approach to children and young people in a manner that protects their dignity and best interests. A children’s rights impact assessment (CRIA) is a tool for looking at a policy, law or decision, and assessing its impact on children and young people and their rights. It allows the impact to be predicted, monitored and, if necessary, avoided or mitigated. It is apparent when reviewing the consultation documents that there has been little or no consideration of the rights of children and young people or their particular circumstances.

**NICCY recommends that the DoJ carries out a child’s rights impact assessment to strengthen their commitment to a process that supports a systematic assessment and communication of the impact of a proposal or measure on the rights, needs and interests of children and young people in regards to their work on rehabilitation of offenders.**

**5. Concluding Comments and Recommendations**

NICCY welcomes the opportunity to provide advice to the Department of Justice (DoJ) on the Rehabilitation of Offenders consultation. The Commissioner calls on the DoJ to take into account the recommendations made in this submission, which she provides in her statutory advice capacity under Article 7(4) of ‘The Commissioner for Children and Young People (Northern Ireland) Order’ (2003)’ and would be happy to discuss any element.

**Recommendations**

1. **NICCY recommends that DoJ should reconsider these proposals in light of this obligation and make the necessary changes to the Rehabilitation of Offenders Order, 1978 to reduce the length of rehabilitation periods for children.**
2. **The Commissioner urges the DoJ to reconsider its position on the implementation of recommendation 21 of the Youth Justice Review, 2011**
3. **NICCY strongly recommends young people who have committed offences in childhood should move into adulthood without a criminal record. The only exceptions should be with young people who have committed pre-defined ‘serious’ crimes, which should be independently reviewed on a case by case basis.**
4. **NICCY recommends the DoJ introduces a criminal filtering review system that ensures all childhood offending (with the exception of the most serious offences) are non-disclosable after a period of time or before their 18th birthdays for all AccessNI checks.**
5. **NICCY recommends that the DoJ carries out a child’s rights impact assessment to strengthen their commitment to a process that supports a systematic assessment and communication of the impact of a proposal or measure on the rights, needs and interests of children and young people in regards to their work on rehabilitation of offenders.**

1. A Review of the Youth Justice System (2011) Recommendation 21. pg.13 [↑](#footnote-ref-1)
2. UNCRC/GC24/2009 [↑](#footnote-ref-2)
3. Lord Carlile of Berriew CBE QC (2014) Independent Parliamentarians’ Inquiry into the Operation and Effectiveness of the Youth Court [↑](#footnote-ref-3)
4. [Implementation of the recommendations of the Carlile Inquiry Report (michaelsieff-foundation.org.uk)](https://www.michaelsieff-foundation.org.uk/implementation-of-the-recommendations-of-the-carlile-inquiry-progress-report-2020/) 2020 [↑](#footnote-ref-4)
5. [Review of the Youth Justice System (publishing.service.gov.uk)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/577105/youth-justice-review-final-report-print.pdf) in England and Wales (2016) [↑](#footnote-ref-5)
6. [Offending, employment and benefits – emerging findings from the data linkage project (publishing.service.gov.uk)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217428/offending-employment-benefits-emerging-findings-1111.pdf) 2011 [↑](#footnote-ref-6)
7. NIACRO(2021) RoO Consultation guidance 10.02.21 [↑](#footnote-ref-7)
8. DOJ (2016 Revisded 2020) [Short guide to NI criminal records filtering scheme (arcuk.org.uk)](https://arcuk.org.uk/trainingservices/files/2016/05/short-guide-filtering-review-scheme.pdf) [↑](#footnote-ref-8)
9. *Ibid pg 6.* [↑](#footnote-ref-9)
10. *Ibid pg7.*  [↑](#footnote-ref-10)
11. [list-of-specified-offences-april-2018.pdf (nidirect.gov.uk)](https://www.nidirect.gov.uk/sites/default/files/publications/list-of-specified-offences-april-2018.pdf) [↑](#footnote-ref-11)