

Advice to Access NI regarding Draft Statutory Guidance for Chief Officers of Police

The office of the Northern Ireland Commissioner for Children and Young People (NICCY) was established under the Commissioner for Children and Young People (Northern Ireland) Order 2003. The principal aim of the Commissioner is to safeguard and promote the rights and best interests of children and young people. Under articles 7(2) and (3) of the Order, NICCY has a duty to keep under review the adequacy and effectiveness of law, practice and services relating to rights and welfare of children and young people.

In providing this advice, NICCY is mindful of Recommendation 21 of the Youth Justice Review¹ which we support. The recommendation states:

“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 offenders 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.”*

General Comments

NICCY recommends the inclusion of an overarching principle(s) in the draft guidance. For example, NICCY considers that chief police officers should be reminded at the outset of the guidance that their responsibility to safeguard vulnerable groups should be their paramount consideration and should underpin all decisions regarding disclosure.

Another overarching principle should remind chief officers that disclosures should only be

¹ A Review of the Youth Justice System in Northern Ireland (2011)

made where absolutely necessary, particularly where the person was under 18 at the time the information being considered refers to as the disclosure will likely prove a barrier to education, training, employment and travel. The rights of children and young people as outlined in the United Nations Convention on the Child (UNCRC) and other international instruments² must be explicitly referenced in the over-arching principles for disclosure. An existing example of such reference is contained within the PSNI Manual of Policy, Procedure and Guidance on Conflict Management where it is stated “*officers should take cognisance of the United Nations Convention on the Rights of the Child (UNCRC). Article 3 of the Convention requires the best interests of children to be a primary consideration in all actions concerning children.*”

Reference should also be made to the aims of the youth justice system provided for under s.53 of the Justice (Northern Ireland) Act 2002 (as revised by s.98 of the Justice Act (NI) 2015). The latter states that all persons and bodies exercising functions in relation to the youth justice system must:

*“(a) have the best interests of children as a primary consideration; and
(b) have regard to the welfare of children affected by the exercise of their functions (and to the general principle that any delay in dealing with children is likely to prejudice their welfare), with a view (in particular) to furthering their personal, social and educational development.”*

NICCY does not consider that the draft guidance affords sufficient protection to those who were under 18 at the time the information being considered refers to. This protection is necessary not only for conviction information but particularly for information relating to diversionary disposals or information held by police. In respect of diversionary disposals, both the Criminal Justice Inspection Northern Ireland³ and the UN Committee on the Rights of the Child⁴ have confirmed that such disposals should not form criminal records and as such should not be shared. NICCY considers that diversionary disposals are not usually offered for very serious offences whereby the offender poses a risk to children or vulnerable adults and therefore should not be disclosed. NICCY is of the view that children and young people should not be burdened by, in effect, ‘life sentences’ which will impact

² In particular, Rule 4A United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the ‘Havana Rules’)

³ CJINI, Youth Diversion (2011)

⁴ General Comment No. 10 (2007) Children’s Rights in Juvenile Justice, para 27

on their ability to access education, training and employment. The ability to avail of these opportunities will protect the public by reducing further offending, thereby assisting the criminal justice system to achieve its overarching aim. Children and young people should be given every chance to address and move on from their behaviours and fulfil their potential without obstruction. As the Youth Justice Review stated “*we...recognise the importance of screening out from the workforce those who pose a real danger to children and vulnerable adults. The vast majority of children and young people who offend do not however fall into this category.*”⁵

Comments on the Draft Guidance

In providing our comments, NICCY will refer to the numbered paragraphs of the draft guidance for ease of reference.

17. NICCY is concerned by the provision to permit chief officers to disclose information which has been filtered. NICCY considers that much more clarity should be provided as to precisely when filtered information can be disclosed and what constitutes “a very specific purpose.” NICCY is concerned that this element of the draft guidance is too vague and as such could lead to inconsistencies depending on the views of the officer making the decision. NICCY recommends that clear criteria or guidance is issued to support officers in making a decision to disclose offences that have been filtered out. Such criteria must have the safety of children and vulnerable adults as it’s paramount consideration and balance this with the right of the subject of the disclosure to rehabilitation and privacy.

18. As stated above, NICCY considers that more protection is required for those who were under 18 at the time the information being considered refers to than that contained within the draft guidance. This protection should be reinforced throughout the draft principles. NICCY recommends that clear guidance should given for officers to consider the offence, the circumstances of the offence, the person’s account of the event, the time since lapsed and the person’s behaviour during that time.

19. NICCY is concerned as to how it will be determined whether the information is from a “credible source.” This section of the draft guidance is vague and so could lead to inconsistencies due to subjectivity. NICCY recognises the importance of intelligence in identifying individuals who may pose a risk but the intelligence must be sufficiently robust

⁵ Page 84

to merit such a disclosure. Clear guidance must be developed when to ensure that information is credible.

20. NICCY considers that clear guidance must be given to chief police officers to disclose circumstances behind the information so that it can be put in context. NICCY considers this particularly important where the person was under 18 at the time the information being considered refers to.

26 – 28. NICCY is particularly concerned about this section of the draft guidance from two perspectives, namely safeguarding and the presumption of innocence. NICCY recognises that delivering on both can prove a challenging exercise; however we consider that this section of the draft guidance does not provide sufficient protection in either respect.

While safeguarding and child protection must *always* take priority, a necessity to disclose information must be balanced with the rights of the person who enjoys a presumption of innocence in accordance article 40(2)(b)(i) of the UNCRC and article 6(2) of the European Convention on Human Rights (ECHR) as enacted into domestic legislation through the Human Rights Act 1998. The police investigation may ultimately result in no further action being taken against person but yet the disclosure of the investigation could likely prove a barrier to education, training and employment. NICCY recommends that clear criteria are given to police officers as to when they disclose such information. Consideration should also be given that, where possible, indication is also given in the disclosure as to when an investigation may end.

29. NICCY considers that an important relevant factor to this consideration is whether the person was under 18 at the time the information being considered refers to and so this factor should be included in this section of the draft guidance.

Conclusion

NICCY would be happy to discuss our views further with Access NI.

Whilst outside the scope of this specific consultation, NICCY wishes to take this opportunity to highlight the need for further work (namely training, guidance and support) to be undertaken with recipients of Access NI disclosures so that they may fully understand the information they are provided with and use this appropriately.