

Response from the Northern Ireland Commissioner for Children and Young People to the Consultation on Part One of the Criminal Records Regime Review, 29 February 2012

1.0 Introduction

The office of the 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)(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. The remit of our office is children from birth up to 18 years, or 21 years of age where a young person is care experienced or has a disability.

In determining how to carry out her functions, the Commissioner's paramount consideration is the rights of the child and NICCY bases all its work on the United Nations Convention on the Rights of the Child (UNCRC).

2.0 Children's Rights

In our May 2011 submission to the Sunita Mason consultation, we observed that the UK Government, including devolved administrations, is a signatory to the UNCRC and has agreed to uphold the rights of children based on the Convention. NICCY's submission recommended that the guiding principles of the UNCRC, set out in the articles below, are incorporated as underlying principles in any review of the criminal records regime:

- 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.

We also highlighted that the following articles require special consideration:

- 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.

We draw particular attention to the obligation placed on government under article 19 of the Convention to take all legislative, administrative, social and educational measures to protect children from violence, abuse, maltreatment or exploitation. The Review offers an important opportunity to fulfill this commitment and to ensure that standards for the recruitment of staff and volunteers entrusted to work with children and young people provide high levels of protection in Northern Ireland.

3.0 Research

The protection of children and young people has been a key priority for NICCY since it was established. In 2005 the office published research in relation to vetting and barring which highlighted the importance of integrating the management of vetting across government and the need for compatible arrangements with the Republic of Ireland. The 2007 follow up report to this made further recommendations, including advocating that an EU wide system for vetting be developed. Copies of this research were provided to Sunita Mason as part of her meeting with the Commissioner on 20 April 2011.

4.0 Consultation with Children and Young People

As noted in our previous submissions, NICCY has regularly expressed concern that the UNCRC article 12 obligation to seek the views of children and young people and the Section 75 duty in relation to the age criteria has not been properly adhered to. We remain keen to hear how the Department has sought to include the views of children and young people as part of this Review.

5.0 Comments for the Review

Introduction

NICCY has closely monitored the progress of the Protection of Freedoms Bill and have enclosed a copy of our 13 May 2011 evidence to the Public Bill Committee in Westminster. We have also enclosed a copy of our 31 May 2011 submission to the Mason consultation. This response echoes many of the



concerns set out in these submissions, which were also raised directly with the Minister on 24 February 2012.

Integrated approach to vetting and barring

It is vital that the proposed changes to vetting and barring arrangements are considered and scrutinised in an integrated manner. Current proposals are fragmented across Westminster and the Assembly, between the Departments for Justice and Health and now across two separate processes concerning the Mason report within Justice. Proposals will substantively alter the scope and operation of arrangements and the Review cannot be considered in isolation from this wider context of changes. NICCY has significant concerns that a fragmented approach to assessing the implications of current proposals risks government failing to fully appreciate the consequences of changes to our standards for protecting children.

Ensuring a high standard of protection in Northern Ireland

Following on from this NICCY is of the view that the Department and the Executive as a whole should ensure that, where it is necessary to effectively protect children, arrangements in Northern Ireland will operate to a higher standard than that required by the Protection of Freedoms Bill. For example, we have previously noted our serious reservations that the definition of regulated activity within the Bill excludes many trusted positions which have frequent and ongoing contact with children, including volunteers in schools and helpers in sporting and faith organisations.¹

We welcome assurances given at our meeting with the Minister on 24 January 2012 that the Department will ensure full checks are available for all trusted roles working with children, such as volunteer youth club assistants. We request confirmation in writing that AccessNI will provide enhanced criminal records checks for such positions, even if they do not fall within the restricted definition of regulated activity. Such checks must include all relevant police intelligence, barring status details and information held by the Independent Safeguarding Authority and the new Disclosure and Barring Service.

NICCY has further concerns that under the Protection of Freedoms Bill individuals will only be placed on barred lists if they have been, will be, or are likely to be engaged in regulated activity. As noted above, the restricted definition of regulated activity will exclude many posts which have substantive

¹ House of Commons Library (2011) Protection of Freedoms Bill Research Paper 11/20, (London: House of Commons Library).



contact with children and therefore this high barring threshold is not appropriate. The Department should ensure that in Northern Ireland all individuals who pose a risk to children and young people are barred from occupying such positions of trust.

Reflecting the needs of Northern Ireland

The Review must recognise that as the only jurisdiction in the UK which borders another state the sharing of vetting information, including non conviction intelligence, with the Republic of Ireland must be fully addressed. It is, of course, also important that the exchange of vetting and barring information across all EU Member States and beyond is progressed. The Review must also consider how conflict related offences will be managed.

Public protection - retrospective checks

We endorse the recommendation of the Mason Report that the Department and Executive must address the need to conduct checks on posts where adults are working with children and young people but have not been subject to vetting and barring procedures.

Eligibility checks and guidance

A 2010 AccessNI consultation expressed concern about the management of the Registered Body Network which raised concerns that support offered to employers needed to be increased². NICCY is of the view that the provision of effective guidance, training and support, rather than the introduction of penalties, is an appropriate response to concerns that organisations request unnecessary checks. We note that it is not helpful to consider the de-registration of employers who provide services to children and young people.

The provision of guidance and support which meets the needs of the Registered Body Network and employers is particularly important in the transition to revised vetting and barring arrangements. While the consultation document states that employers hold responsibility for deciding which positions are eligible for checks, we would highlight that government must provide proper advice to ensure that children are protected through vetting and barring arrangements.

² AccessNI (2010) Consultation Exercise: Review of the AccessNI Registered and Umbrella Network, (Belfast: AccessNI).



Checking of children

NICCY acknowledges the Mason Report concerns in regard to children under 16 years of age being subject to criminal records checks. While much of the Review relates to adults who have contact with children in settings including schools, community and sporting groups, the arrangements will also apply to home based roles such as fostering, adoption and childminding. It is important that enhanced disclosure checks, including for those under 16 years, are available in such cases to support a full assessment of the suitability and safety of these home environments for other children.³ In such circumstances, it should be noted that age appropriate information and forms should be provided to children undergoing checks.

While we recognise that young people under the age of 16 should not be placed in positions of trust and responsibility with other children, the Department should consider whether checks should also be available in other specified situations. This assessment should be based on an analysis of roles that disclosures have previously been provided for.

Portability and one or two certificates

We welcome moves to ensure that criminal records checks can be made portable and in principle support sectoral checks, such as across the children's sector. It is important to note that the portability of checks must be timed with the continuous updating of disclosures or checks will not remain valid. NICCY would also highlight that if limited information appears on disclosures for positions of trust outside of regulated activity, checks for posts across regulated and non regulated activity, even within the same organisation or sector, will not be portable.

NICCY is concerned that the proposal to issue only one criminal records check, which will be provided to the applicant, both provides opportunity for individuals who may pose a risk to children to negate or tamper with the information while also placing an additional administrative responsibility on those who are applying to volunteer with organisations. While we acknowledge that consideration is being given to notifying Registered Bodies when a check has been issued we would point to suggestions, such as delaying when employers receive certificates, that could more effectively resolve concerns.⁴

³ NSPCC (2011) CRB Checks for Young People Under 16, NSPCC Briefing for the Protection of Freedoms Bill, (London: NSPCC).

⁴ Evidence from the Scouts Association to the Public Bill Committee available at:



Police intelligence and non conviction information

As we have previously noted, it is critically important that relevant non conviction information and police intelligence is available as part of the disclosure process to allow a thorough assessment of an individual's suitability to work with children. We welcome in principle the proposal to develop a statutory Code of Practice for the sharing of non conviction information which is 'reasonably believed to be relevant' to support consistency in decision making in relation to this and 'additional information'. NICCY also supports in principle that disclosure information should be provided in a consistent manner and that individuals should have access to a representation or appeals process.

It is however not appropriate for criminal records checks to be released where details, such as police information have not yet been provided. We would note that a time limit for the release of information by the PSNI should not be introduced and highlight the Mason Report finding that there was no significant delay in the disclosure of information by PSNI.

We are disappointed that the disclosure of non conviction information, such as cautions, warnings and other diversionary disposals is not being fully considered until Part Two of the consultation. On a related issue we note that the Department must urgently address the current position, as observed in the Mason Report, whereby AccessNI is not disclosing details of non conviction information held on the Northern Ireland Criminal History Database but will provide this information where it is documented on the Police National Computer. Sunita Mason recorded that among the 31, 000 cautions and diversionary disposals around 4, 000 of these could be defined as sexual offences. We request that the Department confirms in writing how this issue is being addressed.

While this stage of the consultation is not considering the introduction of a filtering process where old and minor convictions not relevant to the role could be excluded from disclosures, NICCY is supportive of this being explored in more detail. We note that any assessment process for this must be rigorous and that such a mechanism could review for example, the cases of young people with minor Schedule 1 offences.

Equality Impact Assessment



This must take account of the negative impact of the proposals on children and young people across Northern Ireland if weaknesses, such as those highlighted in this submission, are not addressed and the proposals fail to effectively protect children.

We note that in relation to the potential positive impact for those under 16 years of age subject to checks for roles outside of home based caring this should include detail of the numbers likely to be affected by this change based on previous data.

Other

We request that the Department confirms in writing the timescale for the consultation on Part Two of the Mason Report and the legislative and policy forward plan for proposals.

6.0 Conclusion

Key Recommendations

- The Department and Executive must ensure that the range of proposals relating to vetting and barring arrangements are considered and scrutinised in an integrated manner.
- The Department and the Executive should, where it is necessary to effectively protect children, ensure that arrangements in Northern Ireland operate to a higher standard than that required by the Protection of Freedoms Bill. This includes providing enhanced criminal records checks for all relevant positions of trust and barring individuals who pose a risk to children from positions of trust. We request that the Department confirms in writing that enhanced checks will be available for such posts.
- The Review should address the need to share vetting and barring information, including non conviction information, with the Republic of Ireland and other states.
- The Department and Executive must address the need to conduct retrospective checks on posts where adults are working with children and have not been subject to vetting and barring procedures.
- AccessNI should provide employers and the Registered Body Network with effective guidance and support, rather than introduce penalties.



- Criminal records checks, including for those children under 16 years, should be available for home based caring roles, such as fostering and child minding. In such circumstances, age appropriate information and forms should be provided to children undergoing checks. The Department should consider whether checks should also be available for this age group in other specified situations.
- Criminal records checks should be portable across sectors, such as the children's sector, but this will be problematic if lower levels of disclosure are provided for positions of trust not defined as regulated activity.
- The Department should reconsider the proposal to issue a single criminal records check which is provided to the applicant.
- Relevant non conviction information and police intelligence should be shared as part of the disclosure process and the introduction of a statutory Code of Practice is welcome.
- The Department must urgently address AccessNI not disclosing details of non conviction information held on the Northern Ireland Criminal History Database. We request that the Department confirms in writing how this issue is being resolved.
- The EQIA must take account of the negative impact of the proposals on children and young people across Northern Ireland if weaknesses, such as those highlighted, are not addressed and the proposals fail to effectively protect children.
- We request that the Department confirms in writing the timescale for the consultation on Part Two of the Mason Report and the legislative and policy forward plan for proposals.

