

Criminal Records Review Implementation Team
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10 August 2012

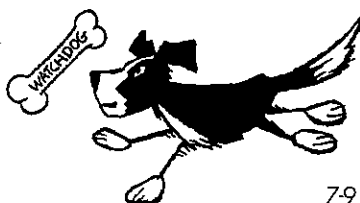
Dear Sir / Madam

Consultation on Part Two and Recommendations 9 and 10 from Part One of the Criminal Records Regime Review

The Northern Ireland 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. Vetting and barring arrangements, including the criminal records regime, are a key part of measures to protect children and young people from abuse by seeking to ensure that those who pose a risk to children are not placed in roles, paid or voluntary, which enable them to establish relationships of trust which may be exploited.

The UK Government as a signatory to the United Nations Convention on the Rights of the Child should ensure that the general principles of the Convention, including the child's best interests and right to life and fullest level of development, are reflected in the Review. It is also important that Government remains mindful of its particular obligation under article 19 of the Convention to take all legislative, administrative, social and educational measures to protect children and young people from all forms of violence, abuse, maltreatment or exploitation.

NICCY has engaged extensively in legislative and policy debates concerning the review of vetting and barring arrangements by the Northern Ireland Executive and the UK Government and our previous evidence papers and responses have been enclosed. Earlier submissions noted concerns that the fragmented nature of these developments in Northern Ireland does not support an integrated assessment of the implications of proposals. NICCY has also stated that the Department and the Executive should ensure that, where it is necessary to effectively protect children,



arrangements in Northern Ireland should operate to a higher standard than that required by the Protection of Freedoms Act (2012).

This response is not intended to be comprehensive but instead highlights key concerns and should be considered in the conjunction with the previous papers enclosed.

Comments on recommendations not subject to consultation

It is helpful that the Department has produced an outcome paper on Part One of the Review. While acknowledging that the Executive is mindful of forthcoming changes associated with the Review and the Protection of Freedoms Act (2012), NICCY would note concern that no timeline has been given for conducting retrospective checks identified as necessary by Sunita Mason and requests further information on this.

In relation to the Part One consultation we welcome the commitment to ensuring that checks will not be issued after 60 days if they contain incomplete information due to the public protection implications of this.

NICCY welcomes the acceptance of the Mason recommendation that information from Northern Ireland will be routinely updated on the Police National Computer (PNC) and observes that this should be implemented as soon as possible.

We also welcome the acceptance, in principle, to enhance cross border working between PSNI and An Garda Síochána and information sharing on an EU wide basis and request details of work that is being undertaken in relation to this.

NICCY is concerned that the decision to review recordable and non recordable offences has been deferred. The Mason recommendation that criminal records should only contain details of recordable criminal offences where an individual has been convicted (or received a caution, informed warning or diversionary youth conference which has not yet been stepped down) is based on the principle that recordable offences will be reviewed to ensure that all public protection or safeguarding related offences are included. We request that the Department set out the timeline for the review of offences and the relationship between this and other developments such as the establishment of a filtering mechanism for old and minor offences.

Retention of data for 100 years

In considering the retention of data, a timeline of 100 years from an individual's date of birth appears to be reasonable. It is however important that the Department ensures

that significant information cannot be deleted over the lifetime of an individual and that consideration is given to whether the introduction of a timeline will impact adversely on related work such as historical inquiries and research.

Working definition of a criminal record; cautions, informed warnings and other diversionary disposals and filtering of old and minor convictions

As discussed in our previous submissions, NICCY is of the view that the disclosure of relevant non conviction information and police intelligence including cautions, informed warnings and diversionary youth conferences is an important aspect of criminal records checks for individuals who will be placed in positions of trust with children and young people. Indeed, we have expressed concern that from April 2011 AccessNI has not been disclosing details of non conviction information held on the Northern Ireland Criminal History Database although this information is provided where it is documented on the PNC. Sunita Mason assessed this change in practice as having public protection implications and noted that among the 31,000 cautions and other diversionary disposals in the Northern Ireland database around 4,000 cautions could be described as relating to sexual offences.¹

In raising this issue, NICCY would observe that we welcome the concern expressed in the consultation that care should be taken to ensure that the disclosure of non conviction information in relation to young people does not have a disproportionate impact on their access to employment and their wider life chances. The Review provides an opportunity to reinforce that safeguarding must remain the primary concern of the records regime while also making sure that the disclosure of non conviction information is proportionate. For example, criminal records checks and related guidance and information should differentiate between conviction and non conviction information and non conviction information should be disclosed where it is considered relevant to safeguarding and public protection concerns. Indeed, the development of a new statutory Code of Practice should further address these issues.

This approach to disclosure also reflects the ethos of the Council of Europe recommendation that while efforts should be made in relation to the non disclosure of young people's criminal records for employment purposes, exceptions should apply where required by the nature of employment.² It is important to recognise that

¹ Mason S. (2011) A Managed Approach, A Review of the Criminal Records Regime in Northern Ireland, (Belfast: DoJ).

² Council of Europe (2003) New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice. Available at: <https://wcd.coe.int/ViewDoc.jsp?id=70063>

safeguarding concerns will constitute exceptions in this case and in other areas, seen for instance in the processing of checks for young people under the age of 16 in relation to home based activities such as fostering, adoption and childminding. NICCY is of the view that the proportionate disclosure of relevant non conviction information regarding young people for safeguarding and public protection purposes is not incompatible with the principles set out in the Review of the Youth Justice System.

In commenting on the disclosure of non conviction information, it is of particular importance that young people are able to make informed choices when accepting diversionary disposals and are fully aware that the disposal, while being subject to the step down policy, may be disclosed on a criminal records check. While NICCY acknowledges that figures indicate that less than 0.08% of records checks are amended following challenges to information, the development of accessible information regarding the records regime and the process through which data can be challenged is welcome.

In relation to the disclosure of information we also note that consideration must be given to ensuring that, where it is required by professional and regulatory bodies such as the Nursing and Midwifery Council, appropriate and relevant information for registration and fitness to practice purposes should be available. This example also illustrates the importance of consistent arrangements operating across UK due to both the movement of students and professionals, such as teachers, nurses and sports coaches across jurisdictions and the UK wide remit of many professional bodies.

In considering the development of a filtering mechanism for old and minor offences it is important that this is examined alongside the current step down arrangements and application of the Rehabilitation of Offenders Order 1978 in relation to non conviction information. NICCY has previously noted support for the principle of filtering old and minor offences from disclosure where they are not relevant to the position the records check is concerned with. We note that the development of proposals must ensure that filtering operates in accordance with the legislative framework, the statutory Code of Practice as this develops and current provisions for the police to disclose relevant information. The proposals should give special consideration to the application of filtering offences in relation to disclosure of young people's criminal records for employment purposes and the application of filtering in relation to conflict related offences.

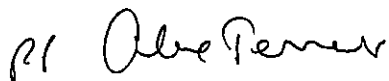
Proposals regarding the filtering of offences must contain robust safeguards to ensure that public protection concerns are not compromised and that effective processes are in place to respond to issues such as repeat offences. The arrangements should also recognise that there will be offences which due to their nature should always be disclosed.

NICCY acknowledges the sensitivity and complexity of these areas and notes that the Department may find it useful to engage in further dialogue with interested agencies to discuss in particular the disclosure of non conviction information and police intelligence, the filtering of old and minor offences and the review of recordable offences. It is important that an integrated and consistent approach is taken to considering these related areas and we request that the office is made aware of any further engagement on these matters.

Finally, NICCY would note that the Department must ensure that any additional measures that are put in place to secure the effectiveness of the criminal records regime do not result in inappropriate changes to the financial cost of records checks.

Please do not hesitate to contact my office if you would like any further information.

Yours sincerely



Patricia Lewsley-Mooney
Commissioner for Children and Young People

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