

“A Right to Protection”
REVIEW OF VETTING IN
NORTHERN IRELAND

By

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EXECUTIVE SUMMARY

A review of the arrangements for vetting people who work with children was carried out between July 2004 and March 2005.

- The aim of the review was to identify changes to the vetting arrangements which would increase the protection of children
- The review examined current arrangements for carrying out police checks operated by the PSNI, the Pre-employment Consultancy Service (PECS) administered by the Department of Health and Social Services and Public Safety, and the operation of List 99 by the Department of Education.
- The review examined the sources of information used to make a check, what posts are the subject of checks and who carries out checks. It also examined the mechanisms for ensuring that checks take place, and the links between the checking system and good recruitment and child protection policies.
- The review was informed by the responses to questionnaires on vetting policy and practice issued to all government departments, all district councils, and all further education colleges. It was also informed by a sample survey of religious organisations and of employers.
- The review took account of the well advanced plans to reform the arrangements, in particular by implementing Part V of the Police Act 1997, The Protection of Children and Vulnerable Adults (NI) Order 2003 (POCVA) , and implementing the recommendations in the Bichard Report in Northern Ireland.

Current Arrangements

The review identified the following general weaknesses in the current arrangements:

- The system has no statutory basis, leading to uncertainty about its scope and validity and absence of due process in the listing arrangements.
- There is no requirement to vet, and no duty to report information that a person may pose a risk if working with children. In practice government departments generally do not take steps to report concerns that an individual may be unsuitable to work with children.



- The overall operation of the system is split between the PSNI, the Department of Health and Social Services and Public Safety, the Department of Education and the NIO. There is no one access point for vetting information, or for guidance, training and information.
- It takes between four and eight weeks to process a vetting request on a potential appointee. This delay was a disincentive to carry out vetting.
- There is a general failure by the respondents to the questionnaires to monitor or audit their own vetting practice, or that of agencies or affiliated bodies.
- There is inadequate guidance, support and training for organisations wanting to carry out vetting effectively.

The review identified the following key weaknesses in relation to the information used to make a check

- There is no systematic sharing of the various sources of information within Northern Ireland, and between Northern Ireland and other jurisdictions in the UK
- The limitations of the provision for vetting in the Republic of Ireland and the absence of reciprocal vetting arrangements throughout Ireland, places children in Northern Ireland at risk.
- The data used as the basis for making checks does not draw on all relevant sources of verified information, such as findings in disciplinary proceedings, that an individual is unsuitable to work with children.

The review found weaknesses in relation to the posts checked:

- A check can generally only be carried out in anticipation of appointment. It is possible to carry out a check on an existing employee, or to carry out a repeat check, only in very restricted circumstances.
- Checks can not be carried out on individuals who are self- employed
- Checks can not be carried out on many posts which give an individual access to personal information about children, including individuals administering the vetting system.
- Checks can not be carried out on many individuals whom children will regard as trustworthy because of the position they hold.



- There is considerable uncertainty and confusion about the meaning of the substantial unsupervised access test, which forms the basis for authorising a check. This has led to inconsistency in vetting practice.

The review found weaknesses in relation to who carries out checks:

- There is no requirement to carry out a check for any post
- It is not possible for a parent to vet an individual for instance tutoring his or her child
- The PECS register indicates that some bodies who provide services for children do not carry out checks
- There is inadequate information about how vetting is carried out by religious organisations.

The review found a general failure to enforce good vetting practice

- There is no legal obligation to carry out a check on any post.
- There is a failure to mainstream, audit and monitor vetting practice in all sectors

The review found a general failure to link vetting to good recruitment and child protection policies

The Reformed Arrangements

The implementation of Part V of the Police Act, of POCVA and of the recommendations in the Bichard Report will provide important improvements to the vetting system. The review found that there is a high level of commitment to carrying these reforms through. Their exact impact cannot be judged until implementation is complete.

It is clear however that reform will achieve the following key improvements

- The vetting system will be governed by statute, providing procedural safeguards both prior to listing an individual and for accessing information.



- The links between information held on systems within Northern Ireland and between Northern Ireland and the other jurisdictions of the UK will be significantly strengthened.
- There will be greater clarity about the obligation to share information between agencies, and in particular between social services and the police.
- The links between vetting and recruitment and child protection will be strengthened in the education sector.
- The substantial unsupervised access test will be replaced by a statutory definition of regulated position.
- Child care organisations will have a duty to report individuals as unsuitable to work with children and to carry out checks before appointing to a child care position.
- The provision for accrediting non-child care organisations will provide a mechanism for extending reporting and checking duties to them, primarily by making funding and other benefits including insurance, dependent on accreditation.
- Certain individuals will be disqualified from working with children.
- It will be an offence in certain circumstances to employ a disqualified person to work with children.

The review found that other necessary changes will not be achieved by the reforms proposed

The changes proposed fall short of the standard almost universally accepted by participants in the review, that there should be a requirement to vet anyone working with children. The reforms leave the law in a complex and potentially confused state, which will perpetuate current uncertainty about the scope of vetting requirements.

Further changes are needed in the substantive law. These include:

- A reconsideration of the criminal law as it applies to children in Northern Ireland, and of the scope of duty to report suspected criminal conduct against children.
- The introduction of an express general duty to check individuals appointed to a regulated position.
- A reconsideration of the meaning of regulated position to widen and clarify its scope, and ensure it harmonises with the comparable concepts in Part V.



- A strengthening of the disqualification provisions in POCVA, to link them to the commission of specified offences, regardless of sentence.

Further changes are needed in the organisation and implementation of the vetting system

One of the key findings of the review was that there is a gap between the system as described and the understanding of it by those who need to use it. This was reflected in the failure to systematically monitor and audit vetting arrangements, in the lack of awareness about the implications of POCVA, and in a strongly expressed desire for information support and training. The following changes are recommended

- The management of the vetting system should be integrated across responsible Government Departments. This would provide a central access point for service users, maximise the use of existing expertise and facilitate the issuing of consistent guidance on vetting standards, recruitment policy and the links between these and child protection.
- Each Department, Council and other autonomous public bodies should assume responsibility for mainstreaming vetting policy and practice by an ongoing process of monitoring and auditing vetting and reporting arrangements.
- The reforms should be supported by an effective awareness raising and training programme which includes employers, parents and children.
- The reforms must be supported by an adequate allocation of resources.

The one key change required to protect children is the development of compatible cooperative vetting arrangements between Northern Ireland and other jurisdictions from which individuals come to work with children here. This is the most difficult failing to address as it is beyond the control of authorities in Northern Ireland.

Two practical steps are recommended. First, the fullest possible accessible information should be available on the vetting arrangements in other jurisdictions. Second, everything possible should be done to use the various mechanisms for cooperation between the two jurisdictions in Ireland to devise such arrangements.



Future reform

The future direction of reform will depend on whether it proves possible to introduce a registration scheme, as proposed in recommendation 19 of the Bichard Report, which will bar certain individuals from working with children. Northern Ireland should be included in the coverage of any such scheme. The development of centralised management of the system here, and strengthening of the disqualification provisions proposed would be compatible with, and preparation for such a development.

Ruth Lavery
April, 2005



Review of child protection vetting arrangements in Northern Ireland
**Report to the Commissioner for Children and Young People in Northern
Ireland**

PART 1 SCOPE OF THE REVIEW

Background

- 1.1 In March 2004, the Secretary of State for Northern Ireland announced that the Northern Ireland Commissioner for Children and Young People would lead a review of the current vetting arrangements in cooperation with the relevant Northern Ireland Departments.
- 1.2 The review was in response to the tragic circumstances which led to the deaths of Jessica Chapman and Holly Wells in Soham in August 2003. It was motivated by concern to ensure that a similar tragedy in Northern Ireland would be made less likely by a vetting system which was more fully protective of children.
- 1.3 The review aimed to examine the clarity and effectiveness of current arrangements for carrying out employment suitability checks on individuals wanting to work with children in Northern Ireland, culminating in a report to the Commissioner, which would inform his recommendations to the Secretary of State.



Terms of reference

- 2.1** The terms of reference cover a range of specific issues and reflect the fragmented nature of the vetting arrangements in Northern Ireland.

The terms of reference were:

Northern Ireland's arrangements for child protection vetting differ from the arrangements in the remainder of the UK. There are many features, especially those coming into force with the new Protection of Children and Vulnerable Adults Order that are innovative and effective.

This interdepartmental review, initiated by the Commissioner for Children and Young People with the agreement of the Secretary of State for Northern Ireland, will examine the clarity and effectiveness of current arrangements for carrying out pre-employment suitability checks on individuals seeking to work with children, including:

- (a) In the context of the current review of Part V of the Police Act and any relevant recommendations arising from the Bichard Inquiry; the collection, retention, and passing on of relevant conviction and non-conviction information by the PSNI;
- (b) The provision of information by employers under the new POCVA Order arrangements;
- (c) The administration of the PECS system;
- (d) The operation of 'List 99' by the Department of Education (NI);
- (e) The range of organisations entitled to carry out pre-employment checks on those with substantial access to children, with specific reference to employment agencies and the self-employed;
- (f) The arrangements for enforcement of the system;
- (g) The promotion of vetting as one element in effective child protection arrangements;
- (h) Inter jurisdictional exchange of information within the UK, with the ROI and elsewhere in Europe;
- (i) The range of posts on which pre-employment checks are carried out.
- (j) Any other relevant matters agreed by the review team.



The review was to take account of:

1. The outcome of the Bichard Review¹ in the UK;
2. The outcome of the work commissioned by NIO on the implementation of Part V of the Police Act²;
3. The outcome of work into 'List 99' arrangements and child protection circulars to schools;
4. The new statutory arrangements under the POCVA Order³;
5. Any other relevant work done on these issues within and outside the UK.

2.2 The comprehensive nature of the terms of reference and considerations had the potential to be self-defeating by attempting to cover too much, at the expense of dealing with anything properly. Any one issue might have been the subject of a full report in its own right. Indeed (a) has already been very thoroughly dealt with in the Daniell⁴ report commissioned by the NIO in anticipation of implementing Part V, and (c) has been fully considered in the report of the DHSSPS Internal Audit Group published during the course of this review.

2.3 This report is not therefore an exhaustive examination of the ground covered by each of the terms of reference. It seeks to relate them to the overall purpose of the review, which is to identify ways in which vetting arrangements can better protect children. This applies both to the scope of the arrangements, and to how they are implemented in practice. This is consistent with the principal aim of the Commissioner in exercising his functions under Article 6 of The Commissioner for Children and Young People (NI) Order 2003, which is to 'safeguard and promote the rights and best interests of children and young persons'.

2.4 The report takes account of the terms of reference by grouping them under five headings which will be more accessible to people not familiar with the current vetting system, and also reflects the concerns underlying the specific considerations listed. The intention is to take an integrated approach, rather than reinforce the existing fragmentation.

¹ The Bichard Inquiry Report, June 2004

² Part V, Police Act 1997

³ The Protection of Children and Vulnerable Adults (Northern Ireland) Order, 2003

⁴ 'Implementation in Northern Ireland of the Police Act 1997', Daniell, J., 2004



The headings are:

1. The information used to make a check [(a) ,(b) , (c) , (d) ,(h)]
2. Who is checked [(i)]
3. Who must do checks [(e)]
4. Enforcement [(f), (g)]
5. Links to child protection [(g)]

2.5 The terms of reference reflect the complexity of the context in which this review took place. It not only was an attempt to take a comprehensive view of the vetting arrangements in Northern Ireland and examine how those arrangements worked in practice, but was also taking account of plans to change the arrangements by implementing Part V of the Police Act 1997, and the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003. This was as well as taking account of the developing response to the Bichard inquiry recommendations.

2.6 These reforms are ongoing; in particular, the thinking about the best way to respond to the recommendations in the Bichard Report is still evolving. The report does not examine all of these developments in detail, but takes account of them, bearing in mind that the overall aim of the review is to assist the Commissioner to make constructive recommendations to the Secretary of State as to what remains to be done to better protect children. The report takes as its cut-off point the state of arrangements and proposed changes at March 2005.

The first finding is that there is a need for ongoing review of the development and implementation of the vetting system as the various reforms are implemented. This should be carried out by DHSSPS, DE, and NIO, as Departments responsible for vetting, through a continuing steering group with responsibility for overseeing arrangements.



Methodology

- 3.1** The review was a collaboration between NICCY and those Government Departments which have lead responsibility for checking arrangements. They also formed a reference group which devised the terms of reference, and informed the review.
- 3.2** The first stage of the review was the issuing of questionnaires in relation to checking policy and practice to all 12 Government Departments, 26 local Councils, and 16 Further Education Colleges in Northern Ireland, as well as to a sample of religious organisations. The Northern Ireland Court Service was not issued with a questionnaire, but provided details of its vetting policy and practice in the course of the review.
- 3.3** Eight Government Departments and eight District Councils replied in time to be included in the analysis, as did six Further Education Colleges and six religious organisations.
- 3.4** During both Phase I and the consultation, there was a disappointing number of responses from Government Departments and child care organisations. It cannot be assumed that those who did not respond do not effectively carry out checks, but there is no evidence that they do.

The second finding is that the response rate indicates some indifference from public bodies to the importance of vetting. The Secretary of State should ensure that all Northern Ireland Government Departments accept their responsibilities for this aspect of child protection.

- 3.5** Questionnaires were also sent to the PSNI in relation to the administration of the police checking system, to the Department of Education (DE) in relation to the operation of List 99 and to the Department of Health and Social Services and Public Safety (DHSSPS) in relation to the operation of the PECS system. Additionally, a survey of employment practice was carried out. The replies were analysed and informed the basis of the understanding of the system in practice relied on in the report.



- 3.6** A summary of phase 1 of the review is set out at Appendix 6. The detailed responses to the questionnaires and survey are not published with this report in the interests of not highlighting specific areas where children are at risk. The review uses them to highlight areas where improvements can be made in order to protect children, rather than as a definitive description of current practice. Some clear gaps and weaknesses emerge, which this report highlights and addresses.
- 3.7** The review was also informed by an issues paper highlighting gaps in the vetting system, prepared by the NICCY working group which included staff who have considerable expertise and understanding of the current system of employment checking in Northern Ireland.
- 3.8** Interviews were held with representatives of all Departments and agencies administering the current system and engaged in its reform. These are the PSNI, NIO, the ECRIT team, OFMDFM, DHSSPS, DE, DEL, DCAL and the NI Court Service. Other organisations with a key contribution to the practice of vetting, and with experience of using the system, were contacted. A complete list of meetings and written responses is attached at Appendix 1.
- 3.9** Direct consultation took place with children, and in addition, a public consultation process resulted in 28 written responses from the statutory and voluntary sector and from individuals. These made an invaluable contribution to the review.
- 3.10** The report is also based on consideration of current documentation governing vetting, on the legislation and proposals for change to the system, and on updates on the implementation of the Bichard recommendations provided by the ECRIT team, and by the Departments. A list of documents considered is set out at Appendix 2.
- 3.11** This report aims to draw on the documentation, the results in the questionnaires and subsequent consultations to draw some general conclusions and make recommendations to meet key concerns about the checking system in Northern Ireland in order to better protect children here.



3.12 Part 111 of the Report deals with the system operational at the start of the Review. A number of the criticisms are redressed by recent developments which are discussed in Part 1V.

Disclaimer

The report inevitably involves consideration of the current and proposed law. It is not however intended to be used as guidance on the law and no liability is accepted for reliance on any statement of law contained in it, or the accompanying documentation.

Definitions

- 4.1** *Vetting* - means checking that a particular individual has no recorded history which would indicate that he or she is unsuitable to work with children and taking account of that information when deciding whether the person should work with children. The vetting process does not prove that an individual is suitable to work with children. It is just one element of a recruitment process and a child protection policy which protects children from adults who may pose a risk to their welfare.
- 4.2** *Child* - means a person under the age of 18.
- 4.3** *Enforcement* – is used broadly to mean any measure which a body has power to take in order to ensure compliance with vetting standards.



PART 11 – GUIDING PRINCIPLES

- 5.1** One of the terms of references required the report to evaluate the system in Northern Ireland in light of best practice. Examples of good practice will be referred to in the report.
- 5.2** There is no model of vetting that can simply be lifted and applied to Northern Ireland. This report therefore tries to set out some guiding principles, based on existing values and legal principles, and on the core principles underlying the Bichard recommendations, and use them to test existing and proposed arrangement. These are set out below.

1. The UN Convention on the Rights of the Child gives the State responsibility for the vetting system

1(i) The Convention does not create enforceable individual rights, but does set standards which signatories, including the UK and Ireland, accept. As “Making it r wrld 2”, the Consultation paper on the Draft Strategy for Children and Young People in Northern Ireland states, it is a legally binding international obligation on government, and it sets out the relationship between Government and every child. The Convention does not deal directly with vetting, but contains principles which must influence the scope of the responsibility to vet.

1 (ii) The applicable Convention standards are Articles 3, 12, 19, and 31 and they are set out at Appendix 3.

1(iii) The Convention is applicable to the United Kingdom as a State Party. The implementation of the standards is not therefore the responsibility of any particular Government Department. The Convention demands that the State takes responsibility for the arrangements in the UK as a whole.

1(iv) The tenth report of the Joint Committee on Human Rights reinforced the importance of clear responsibility for compliance with the Convention. The creation of the Children and Young People’s Unit in OFMDFM, and the Draft Strategy for Children and Young people in Northern Ireland which aims to find ways of “ensuring that children and young people’s rights and needs are co-ordinated, monitored and promoted within government”, reflects this. It therefore reinforces the integrated approach, which Bichard endorsed, and the need to ensure that the system in Northern Ireland is of the same standard as the rest of the UK.



1(v) Article 3 provides that in all actions by public and private social welfare institutions the best interests of child must be a primary consideration.

1(vi) Article 3.3 in particular is relevant as it requires the State Party to ensure that those providing services and facilities for the care and protection of children conform with standards set in the area of suitability of staff. This underpins the emphasis in this report on the importance of setting, monitoring and enforcing vetting standards.

1(vii) Article 19 requires the State to take appropriate measures, including administrative and educational measures, to protect children from all forms of physical and mental violence, injury or abuse and neglect or negligent treatment maltreatment of exploitation, including sexual abuse. In the Garda Report on Vetting, Article 19 was taken to mean that this creates a corporate responsibility to adopt and consistently apply a safe and clearly defined method of recruiting and selecting staff and volunteers It means also there is an obligation to inform and educate about vetting requirements.

1(viii) The combined effect of Articles 3 and 19 is to make vetting a Convention obligation.

1(ix) Article 31 requires the State to recognise the right of the child to rest and leisure in play and recreational activities. Implicit in this is that this right should be exercised safely, and vetting practice can help to achieve this. There is a genuinely held view that vetting in itself inhibits the development of play and cultural activities for children. The implementation of system must address those fears in order to make Article 31 a reality for children.

2. Children have a right to be consulted on the scope of vetting arrangements

2(i) Article 12 of the UN Convention on the Rights of the Child states a child's right to express his or her views freely in all matters affecting them, due weight being given in light of the child's age and maturity. Children must be included in the consultation process about reform of the vetting system. Their views informed the current report.

The Secretary of State should satisfy himself that the reformed vetting arrangements comply with the standards in the UN Convention on the Rights of the Child.



3. Parental Responsibility must be respected in formulating and implementing vetting arrangements

3(i) One of the fundamental principles underlying the provisions of the Children (NI) Order 1995, the main legislative provision for children in Northern Ireland, is that the primary responsibility for a child lies with the person who has parental responsibility for him or her.

3(ii) The criminal law reinforces this, making a parent responsible for wilful neglect of a child resulting in harm (Children and Young Persons Act (NI) 1968, s 20). A parent's role in keeping his or her child safe should be recognised by allowing parental access to relevant information in situations where no one else can carry out a check, and parents must be included in efforts to raise awareness of child protection issues in recruiting and volunteering.

4. The principles in the Bichard review should be followed

4(i) The vetting system in Northern Ireland must take account of the principles underlying the Bichard Inquiry Report, as well as the specific recommendations which are the current focus of attention. The elements of an effective vetting system deduced from the report include the following:

4(ii) The information on which vetting decisions are based must be reliable, integrated, up-to-date, comprehensive, calling on all relevant sources domestically and across jurisdictions, simply and centrally accessed and with clear guidance as to what non- conviction information may be used.

4(iii) The management of the vetting system should be integrated and cut across departmental boundaries, use resources efficiently, involve the minimum of bureaucracy, and take account of the need to share information between agencies and jurisdictions, within and outside the United Kingdom.

4(iv) The system must be supported by effective consistent guidance and training, and inspection and monitoring arrangements.



5. The relevant general principles of law should be known and taken into account

5(i) There has been no comprehensive legislation which establishes and regulates the vetting system. Current reforms are focusing on changing the systems and processes for managing the collection, retention and issuing of information relevant to the vetting decision. This is natural, in light of the Bichard recommendations, and is crucially important. The review itself is concerned in part with process and procedures. These alone are not enough to create a fully effective vetting system.

5(ii) There must also be a clear understanding of the general principles impinging on the use of information in order to generate confidence in those using the system, and an effective way of implementing the requirements created. Respect for the rights of children is best fostered in an environment which respects rights generally.

5(iii) It is important to be aware and take into account some general provisions and principles which will overarch any vetting scheme. Indeed, confusion about the requirements of data protection law contributed to the flaws in the holding and exchange of information available on Ian Huntley. Any effective vetting scheme must be based on a clear understanding of broader legal principles, including data protection, the human rights law, privacy, the rehabilitation of offenders' legislation, and must also take account of areas of law where NI has distinct provisions in relation to children, in particular in the criminal law.

5(iv) Concern to highlight the importance of these general principles was addressed by commissioning the advice of counsel, set out at Appendix 4.

6. Principles and values in child protection must form the context for vetting arrangements

6(i) Even the most effective vetting scheme cannot of itself protect children from harm from individuals working with them.

Vetting is crucial as a starting point in child protection, but many responses to this review stressed the importance of placing vetting in the context of sound recruitment policy and practice, and of an effective child protection policy.



6(ii) This report completely accepts this; indeed changes to the vetting system, and arrangements to highlight awareness about vetting, must be accompanied by reinforcement of the importance of protective recruitment policies and child protection policies. Changes in vetting arrangements provide an opportunity to revisit generally the principles of good practice in recruitment. They provide a hook on which to hang more general change.



PART 111 – THE CURRENT SYSTEM IN NORTHERN IRELAND

- 6.1** The arrangements described below are already time-limited. The system for using information held by the police will be transformed by the implementation in Northern Ireland, of Part V of the Police Act 1997. A consultation paper on the implementation of Part V, Safer Recruitment in Northern Ireland, was issued in February 2005. The system administered by the Department of Health and Social Services and Public Safety (DHSSPS) will be superseded when the Protection of Children and Vulnerable Adults Order (NI) 2003 (POCVA) commences in April 2005.
- 6.2** The extension of the changes proposed in the Bichard report and follow-up to it have the potential to radically change the entire approach to vetting. In addition, if implemented, the proposals in the report of the working group on Garda vetting in February 2004 will change the vetting process in the Republic of Ireland.
- 6.3** Nevertheless, the terms of reference demand an assessment of the current arrangements. This is of value for two reasons. Firstly, it is vital to understand what is currently happening in order to evaluate the impact of change, in particular to identify any remaining gaps. Further, change to the substantive rules will not of itself address some of the defects in practice found in the review.
- 6.4** The report sets out below a description of the system, which integrates its various strands. A good overview of the system is found in *Safer Recruitment in Northern Ireland*.

Scope

- 7.1** There is no single vetting system in Northern Ireland. Rather, there are three systems providing information on which vetting decisions can be based. These systems have developed separately, are loosely plaited together, applying distinct rules, and with distinct management systems.

Strand one is the system of police checks operated by the PSNI. It is an information, not a vetting system, which has evolved in the context of the holding and issuing of criminal records and non-conviction information generally. It therefore leaves the employer to evaluate the impact of the information.



Strand two is the pre-employment consultancy service (PECS) managed by the Department of Health and Social Services and Public Safety. The PECS system is set out in *Making the Right Choice: A Guide to using the Pre-Employment Consultancy Service* (the guide), which gives a detailed view of the system and how to operate it. It is a recruitment and not a child protection service, but it is the closest Northern Ireland has to a vetting system, with the protection of children and adults with learning disabilities in mind. There are currently 30 names on the list.

Strand three is the List 99 system run by the Department of Education. List 99 is a list owned and maintained by the DfES in England of teachers in Northern Ireland, England, Wales, and it seems Scotland, who have been found to be ineligible to teach because of misconduct, and for other reasons such as competence, or health. There are currently 24 names from Northern Ireland on the list.

General Issues

- 8.1** The analysis in this review concentrates on the flaws in the system as it operates in the area of child protection. In fairness these must be put in the context of a system devised without statutory guidance, and run with dedication, which compares favourably with arrangements in the rest of the UK and particularly the Republic of Ireland (where aside from criminal record checks no such equivalent lists operates). While the review uncovered specific criticisms of the arrangements, there was also recognition of the level of service provided, with some respondents expressing appreciation of the courteous response to queries, and two respondents indicating that they thought this review unnecessary.
- 8.2** There is a high level awareness of the need for change. The operation of the police system has already been the subject of self scrutiny in anticipation of the implementation of Part V of the Police Act 1997. In addition, the implementation of the Protection of Children and Vulnerable Adults Order will transform the scope and operation of the list held by the Department of Health and Social Services and Public Safety. The Department has recently carried out an audit of the management of the system and is therefore acting to identify deficiencies in the system.



The internal audit makes detailed proposals for improvement of the management of the system, which are not rehearsed here, but clearly should be implemented, taking account of the changes which the commencement of POCVA will make. The issues set out below derive in part from this examination, and from the experience of users of the system as described in the review.

No Statutory basis

9.1 The first general point of concern is the lack of any statutory basis for the vetting system. This gap is a contributor to the deficiencies and uncertainties in the system. It means that the exact scope of the scheme is nowhere authoritatively defined. The implementation of Part V and of POCVA will largely rectify this, leaving only the operation of List 99 without statutory basis.

Procedural safeguards

10.1 Secondly the system does not have adequate procedural safeguards for those who are the subject of disclosure. There is no adjudicative system of challenging the accuracy of the data held on the police or PECS database. A teacher who has his or her eligibility to teach withdrawn, is not informed that their name will be on List 99 and there is no procedure for challenging placement or removing names from the list.

10.2 This failure of process is partly because the entire scheme is not statutory, but mechanisms for appeal could be included within the current scheme. This does not run contrary to the goal of child protection, as apart from respecting the rights of the subject, it will enhance the reliability of and confidence in the information on the list.

Department of Education needs to consider devising a framework for the operation of list 99 which includes procedural safeguards prior to the listing decision.



Delay

11.1 The third concern was about delay in processing checks. This was a common complaint, stated by 17 respondents, who cited waits of 4 - 8 weeks. This point was also made in the consultation event on reforming employment checking held by the NIO. This was a disincentive to vet, particularly for short -term posts. This point ties in with the concern about the provision of adequate resources when the demand for vetting increases.

Resources

12.1 The PSNI respondents expressed concern at the level of resources available to the vetting team, given the complexity of the task and the potential for a fuller vetting system to generate greatly increased demand, and the need for operational guidelines for officers administering the process. The implementation of Part V and POCVA will heighten this problem and create a need for a review of resources required.

NIO and DHSSPS must ensure that the implementation of reforms are supported by adequate resources so that an efficient user-friendly system is created.

Guidance and Awareness

13.1 There is no single publicly available, accessible guide to the system as a whole, which would assist people working with children, and parents or children, who want to ensure children's safety. Seventeen consultees expressed the need for accompanying guidance to the checking system generally, and five to the need for help evaluating conviction information in particular. Article 19 of the UN Convention requires appropriate educational measures to be taken to protect children. This includes educating children, parents and those with a responsibility to check, about the checking system.

DHSSPS should consider funding an authoritative, accessible guide or handbook which explains the vetting system, and processes, once the current reforms are in place. Joint authorship by writers with a legal and a child protection expertise would be most effective.



Who is checked

Consent

14.1 A police check and a PECS check can only be carried out with the consent of the person who is to be checked, and takes place prior to appointment. In both systems protocols govern the use of information, which is disclosed in confidence.

Basis for police check

15.1 There are two justifications given for disclosure of conviction and other information by the police. The first is that the welfare of the child justifies it, and the second that it is necessary for public protection. Criminal records checks are carried out by the Criminal Records Office in PSNI on those being recruited to work with children. It is unclear if there is a particular definition used of "working with children", but in practice it includes students, employees and volunteers, and those requesting checks must be registered with the PSNI.

15.2 A list of those for whom police checks were carried out in 2003 includes voluntary organisations in child care, nursing homes, checks in relation to education, social services checks and checks on students, checks on posts involving children, checks on probation staff, checks for training schools, the Social Care Council and checks in relation to the Special Olympics⁵.

15.3 There were 75,024 such checks in 2004, accounting for around half of all police checks carried out. It is possible for an individual to pay for a criminal record check to be done on his or her personal information, and this will include coverage of conviction information. While not including non-conviction information, it would allow a self-employed person to give some limited reassurance to a private employer such as a parent or other employer.

15.4 The system is illustrated by the example of the use of police checks by the education sector, where clear and comprehensive practical guidance has been developed in Circular 1990/28⁶. It uses the criterion of substantial access to children to mandate a police check on all professional, ancillary, administrative and clerical staff. In deciding this, the one to one nature of the contact, its frequency, the level of supervision, and the vulnerability of the children concerned is relevant.

⁵ Op cit n.4, 7.2

⁶ Disclosure of Criminal Background of Persons with Access to Children, DENI Circular 1990/28



15.5 The list is wide ranging, including home tuition teachers, youth workers in residential centres, supply teachers, drivers and escorts who transport children and school crossing patrols, and staff employed by private contractors on a long term basis. It generally excludes student teachers and maintenance staff employed by education boards. In addition, Appendix 11 of the document Pastoral Care in Schools⁷: Child Protection governs the need for checks on volunteers. The substantial access criterion is used, but it is helpfully supplemented by specific examples, for instance a sports coach.

Basis for PECS Check

16.1 The basis of the PECS check is explicitly the protection of the child. The key criteria used to ensure that this is the case, are that the post applied for involves substantial unsupervised access to children, and management of supervisory arrangements cannot be changed to limit or remove the access.

16.2 These criteria have been the subject of a lot of criticism, but are nevertheless, a defensible attempt to avoid widespread checking, beyond that which is justified.

16.3 Checks can be made on paid, volunteer or student/training posts provided the substantial access criterion is satisfied. A wide range of organisations belong to the register including statutory providers in health and education, voluntary bodies and some employment agencies. In addition, the Northern Ireland Court Service, which carries out a counter terrorist police check on all staff, carries out a PECS check on members of the judiciary and on newly appointed lay magistrates.

16.4 In general, checks cannot be made on existing employees working with children, and this was a key subject of concern in the consultation process. The guide⁸ provides for such checks where there are serious allegations made or new information comes to light.

16.5 Since this is an employment service, checks will not be made on the self-employed, for example, home tutors.

⁷ Pastoral Care in Schools Child Protection, DENI Circular 1999/10

⁸ Making the Right Choice, A Guide to Using the Pre-Employment Consultancy Service, DHSSPS, May 2003



- 16.6** Since 2002 it has been possible for employers in the Republic of Ireland to get a PECS check done on staff from NI working in ROI; this is despite the fact that there is no equivalent list in that jurisdiction.

Basis for List 99 check

- 17.1** While the operation of List 99 is not governed by statute, there is at least a statutory background to the selection of the names on the list. The Department of Education may prohibit or restrict a person's eligibility to teach on medical grounds or on the grounds of misconduct, whether or not evidenced by conviction of a criminal offence (Education and Libraries (NI) Order 1986, arts 70 (2) and 88A (2) and Teachers (Eligibility) Regulations (NI) 1997, reg 9⁹). It would make a nonsense of regulation 9 not to keep a record of teachers prohibited from teaching and not to check it.

Issues in relation to who is checked

Not Comprehensive

- 18.1** The provision for checks does not apply to everyone working in a position where they may pose a risk to a child. In particular, seven consultees expressed concern that it was not possible to check an existing employee or to make repeat checks after a period of time. The restricted basis on which this is possible was not generally understood.
- 18.2** It does not apply to the self employed. There is no way a parent can access information, for instance when a child is being privately tutored. Four respondents also held the view that people with access to information about children and who run the checking process should be checked. This is not done at present.

Substantial unsupervised access

- 19.1** Above all, the review process revealed widespread dissatisfaction with the substantial unsupervised access criterion. Its use reflects a proper concern not to carry out unjustified checks, but its implementation was widely criticised.]

⁹ Education & Libraries Order (NI) 1986; Teachers (Eligibility) Regulations (NI) 1997



- 19.2** The Garda report (which to date has not been accepted by Government) recommends the use of the unsupervised access test, just as it is being replaced in Northern Ireland by the concept of regulated position, under POCVA. It would be important for consistency to have the same test in both jurisdictions, if this is developed.
- 19.3** Some consultees indicated that it was possible to get a police check done on an applicant, when they did not qualify for a PECS check, indicating that the criterion used for doing a PECS check was narrower. It remains however, the key basis for carrying out a check, as Circular 1990/28¹⁰ shows.
- 19.4** Seventeen respondents expressed concern that it was too narrowly interpreted, or did not catch all those whom employers thought should be checked. Many examples were given of situations where an organisation thought that the check should be carried out, but the application for this was refused. One was of a local Council, which had very well-developed vetting and child protection policies, wanting Santa Claus to be vetted before taking part in Christmas parties for children.
- 19.5** Other examples were staff in statutory and voluntary bodies who were not working directly with children, but were in positions of trust and had access to information about children. One health and social services trust had not been able to vet contracted catering staff working in a children's home. Furthermore, one Trust noted that the criterion did not seem to apply to medical staff working with children in general wards, and in A&E, while another checked all staff who had substantial access, regardless of where they worked. The Arts Council were unable to get a check done on artists to be included on a database as available to work with children on the basis that they did not meet the requirement for sustained individual contact required by the substantial unsupervised access test.
- 19.6** There was also confusion about who could use PECS. The submission from the Child Protection in Sport Unit revealed a misunderstanding among some groups that it did not apply to volunteers. It also listed a range of sporting activities involving children where vetting is not carried out. The employers' survey is consistent with this, although the sample there is small.

¹⁰ Op cit n. 6



- 19.7** The review found a high level of inconsistency as to who was vetted in practice. The sample of 8 local Councils showed that one included leisure centre attendants, including casual staff, dance teachers, fitness instructors, tourist staff, duty officers and supervisors. Another vetted all recreation and coaching positions within leisure centres, attendants at children's play areas and a crèche leader, while another one only vetted one post, a summer scheme leader. Its view was that this was the only post involving substantial unsupervised access to children. Some included management posts, and others just those where there was direct contact with children. Even allowing that different Councils provide a different range of services, there is inconsistency in the understanding as to who should be vetted.
- 19.8** In general, the six Further Education Colleges who replied were strong in terms of the posts vetted. Four checked all posts, including academic and all academic, temporary or permanent, support or agency staff. Another concentrated on permanent posts, and another did not necessarily include agency staff. Inconsistent practice is again evident, which cannot be entirely attributed to the inherent ambiguity in the substantial unsupervised access test. It reflects a need for consistent guidance on vetting. Only five Departments indicated that they had particular procedures governing vetting of their own staff.
- 19.9** Civil service recruitment is carried out centrally, and individual Departments decide whether a post needs to be vetted. Departmental representatives who took part in consultation agreed that there was scope for inconsistency in the use of this criterion across Departments.
- 19.10** Indeed, one response from the Department of Education, Community Relations Branch stated that it advised organisations to have a PECS check done on staff at any level who have any contact with children, so using entirely different criterion. This is consistent with the finding of the employer's survey that there was a low level of awareness of PECS checking procedures in the education sector.
- 19.11** POCVA removes the substantial unsupervised access criterion, but the question is whether the replacement concept of regulated position will be better understood, and give adequate coverage.

Consistent guidance from DHSSPS on the posts for which vetting is required is needed.



Religious groups

20.1 The survey of religious groups did not give a clear picture as to who was vetted, although it did indicate awareness of the PECS system in particular. One group identified that it had a problem checking on its relatively high number of overseas workers. One other important area needing clarification is whether ministers of religion, rather than church youth workers, are routinely vetted. This links to a more general concern that children are at risk when they trust a person because they are in a position of authority.

Further research is needed into vetting practice by religious groups

List 99

21.1 List 99 does not include the names of teachers disqualified on conduct grounds in jurisdictions outside the UK and there is no other procedure for checking the suitability of teachers from abroad. The Northern Ireland section of List 99 does not include names of other workers in schools or youth workers with children who are prohibited from working with children, unlike the list for England and Wales. This is so even though Article 88A of the Education and Libraries Board (NI)¹¹ allows for the removal of staff who do "work otherwise than as teachers which brings them into contact with persons who have not attained 18 years of age" but it is not clear if such people are reported via the PECS system. This may be explained by the different statutory powers in the jurisdictions but requires further exploration.

21.2 The omission of youth workers also requires further exploration, particularly since the consultation process revealed a lack of awareness of List 99 within the Youth Service and Community Relations Division.

21.3 A monthly list of new teachers is sent from Northern Ireland of teachers who have taken up appointment for checking. It seems therefore that a teacher may be in post before the check is made.

The difference in the posts included in the Northern Ireland section of List 99 from those in England and Wales needs to be reconsidered by DE.

¹¹Education and Libraries (Northern Ireland) Order 1986



- 22.1** The employers' survey finds a high level of acceptance of the need to vet and awareness of vetting procedures in the voluntary/youth/church/disability segment. In the consultation process there was widespread acceptance of the need to vet anyone working with children, regardless of the employment context. This commitment should be built on, and not undermined.

Who carries out checks

Not mandatory

- 23.1** There is no direct statutory requirement on any employer to carry out checks. An employer in the statutory sector may have such an obligation under the guidance issued by the Department in which the employment is located. Importantly, this includes the health and social services and education sector. Circular 1990/28¹² is directed to Education and Library Boards, Association of Governing Bodies of Grammar Schools, Council for Catholic Maintained Schools, Boards of Governors and Principals of Grant-Aided Schools, Universities, Colleges of Education, Teachers Unions, NI Association or Special Education, Sports Council for NI, AECP&T Staff Council and proprietors of Independent Schools.

Not complete

- 24.1** The PECS unit at DHSSPS register lists organisations working with children and vulnerable adults which are eligible to make a check. In 2003 there were 24,000 requests for checks against the PECS list.
- 24.2** There are currently around 600 organisations being considered by the Department for continued inclusion, covering statutory bodies, religious groups, voluntary groups and employment agencies. Inclusion on the register does not necessarily mean that the organisation is regularly carrying out checks. An ongoing audit shows that 248 of the 728 non-statutory bodies listed have been finalised to use the list, and even some of these rarely use it. There may be good reason for this in some cases, but there are those where the failure to use the system is prima facie very worrying indeed. There are also worrying omissions from the list, for instance two District Councils are not included.

Each relevant Department needs to ensure that there is appropriate monitoring of organisations who carry out checks and on what posts.

¹² Op cit n.6



Information checked

Information in police check

- 25.1** The key source of information for police checks is held on the Integrated Criminal Intelligence System (ICIS). There is therefore a centralised database in Northern Ireland. This is a key strength of the N.I. system.
- 25.2** The information on ICIS includes convictions, pending prosecutions and non conviction information, such as failed and withdrawn prosecutions, allegations of criminal behaviour not subject to prosecution, and other "soft" information. The police information held is drawn from records kept since 1921. It does not include convictions processed by other agencies, such as the Inland Revenue. One response stated that there are over 70 individual prosecution agencies in Northern Ireland. Checks can also be made against records held on domestic violence allegations in local Northern Ireland police stations.
- 25.3** The unit also has access to the Police National Computer, which holds information on convictions in England, Wales and Scotland. This will be checked if the subject discloses an address there in the previous five years. There are also links to the Republic of Ireland. If an address is disclosed there, information is sought by fax sent to the Garda who carry out the check. Any weakness in the information systems in England and Wales, Scotland and the Republic of Ireland obviously apply to checks made against information held there.
- 25.4** There is no systematic sharing of or checking all information held in the United Kingdom or the Republic of Ireland.
- 25.5** There is a detailed procedure for the release of non-conviction information, which ultimately requires the approval of an Assistant Chief Constable based on evaluation by a Detective Superintendent. The criteria applied to release include an assessment of the truth of an allegation, the nature and context of the offence and the reasons why there was no prosecution. The basis for disclosure is set out in counsel's opinion at Appendix 4.
- 25.6** Despite the structuring of the release of this information by the Criminal Records Office, it is clearly unsatisfactory that there is no statutory control of the criteria for holding and issuing information. In practice there is a very limited release of non-conviction information. The ICIS system does link to the information held on PECS and List 99. It flags up whether individuals are on these lists, and has



access to the information leading to them being placed there. The implementation of Part V should remedy this.

Information in PECS check

- 26.1** The distinctive feature of the PECS system is the information held on the PECS register of the names of people who have been reported to the Department by their employers, because of behaviour which would put a child at risk. The guide encourages the reporting of "serious" matters which indicate someone is "fundamentally unsuitable for work with children or adults with a learning disability". Appendix 7¹³ in Making the Right Choice, gives examples as sexual misconduct /abuse, physical or emotional abuse, substance abuse or theft where a risk of harm has been created. There are currently 30 names on the list.
- 26.2** Appendix 3 to the guide¹⁴ sets out in detail the six different types of requests for information and the appropriate forms. One respondent strongly stated that the process involves a lot of bureaucracy for access to really very little information.
- 26.3** The key point is that application can be made in certain circumstances, to access both criminal record information and List 99 via the PECS system.

Issues in the Information checked

Accuracy

- 27.1** The first issue is the accuracy of the information held. The report accepts the view, expressed by a representative of the Information Commissioner, that the accuracy of the data held is the key to an effective vetting system. It is foundational to the system for disclosure.
- 27.2** It is therefore critically important that police records, are reliable. The Daniell¹⁵ report highlighted this as an issue. Three consultees expressed concern at inaccuracies they were aware of, information missing from checks they had requested. On the other hand, two respondents expressed satisfaction with the reliability of the checks. In addition, the consultation with the PSNI revealed that their own check of the database revealed a high level of accuracy. Such an important issue requires further consideration.

¹³ Op cit n.8

¹⁴ Ibid.

¹⁵ Op cit n. 4



PSNI should consider back checking the accuracy of existing records.

28.1 Recommendation 5 of the Bichard report is relevant for the future. The code of practice of dealing with the quality and timeliness of data placed on to the Police National Computer should as the PSNI intends, be replicated here.

Value

29.1 The second issue relates to the value of the information. The check results in the issue of information only. There is no advice as to how to use the information, other than to respect its confidential nature. It would not be appropriate for the PSNI to give advice about how to use the information.

29.2 The conviction information issued includes offences not necessarily relevant to child protection issues, and can be difficult to interpret because of the legal language used. Some consultees expressed concern that there is no guidance as to how to evaluate the relevance of some convictions to the employment decision. Others commented on the value of the support provided by NIACRO which through an advice line and training workshops works to support organisations to make an informed decision when dealing with applicants with criminal convictions.

29.3 In particular, there was concern about how to treat convictions linked to terrorist and paramilitary activity, and convictions which did not appear to indicate that a person was a risk to children.

29.4 Young people consulted were particularly concerned that criminal conduct by a young person should be seen in the context of their age and circumstances at the time, and should not inevitably prejudice them from working with children in adulthood. This was of special concern to young people who have been through the care system, which made them more likely than their peers to be involved in the criminal justice system.

DHSSPS needs to develop clear guidance on the proper use of the information provided in the recruitment process, building on the work already done.



- 30.1** Recommendations 8 - 11 of the Bichard report on the need for a code of practice setting out the principles of effective and fair information management and standards for systems, accountability training and audit, with particular emphasis on the retention or deletion of intelligence in cases of sexual abuse are relevant here. The code will not apply directly to Northern Ireland, but the PSNI intention is to examine the scope for replicating it here. This should be carried out.
- 30.2** The criminal law which protects children in Northern Ireland is found in a variety of statutory provisions, some of which were passed in the nineteenth century and use antiquated concepts. These provisions need to be reviewed and updated. In the course of the review the NIO indicated an intention to consider reforming the law on sexual offences, but were not specific about the scope of change. It plans to have draft legislation published for consultation later in 2005.

The NIO should consider reform of the criminal law which extends beyond sexual offences, and includes the scope of the criminal law as it protects children from all sorts of harm.

Completeness

- 31.1** The third concern is that the information is not complete. Six consultees also expressed dissatisfaction with the level of soft information issued by a police check, and concern that this was provided in very few cases. The implementation of Part V will give a firmer basis for issuing this information.
- 31.2** There is a need to further examine how relevant information held by the military authorities is made more widely available. In the course of consultation a concern was expressed that a locally managed records system would not have access to such information.

The system for accessing findings and information held by military authorities indicating that a person poses a risk of harm to children should be explored further.



- 32.1** A further question raised in consultation was whether the fact that an individual who has not been convicted of a sex offence, but is subject to a Risk of Sexual Harm Order or Notification Order under the Sexual Offences Act 2003, will be included on the database.

There should be further consideration of whether and how a Risk of Sexual Harm Order or Notification Order can be included on the database of those who pose a risk to children.

- 33.1** Recommendations 1,2 and 4 of the Bichard report apply here as regards access to data held in the UK. These are that there should be a national IT system for England and Wales, giving national solutions to a national problem. The proposal does not directly extend to Northern Ireland, but the principle of inclusion does. The PSNI are exploring how they might engage with the IMPACT¹⁶ programme which is taking this forward. Information sharing is a two way process, so it is important that that the PSNI is included in the UK wide development of an IT procurement strategy.

Republic of Ireland

- 34.1** Neither the police check nor a PECS check will routinely include a search of information held in other jurisdictions. There is no pro-active checking of information sources outside Northern Ireland, unless the subject reveals an address in The Republic of Ireland, or the rest of the UK in the last five years. The value of the check is anyway affected by the gaps in the checking system in the Republic of Ireland, where there is no equivalent to Part V or to a PECS list or to List 99. This review has no jurisdiction to examine the arrangements in the Republic of Ireland, but it is clear that the lack of fully reciprocal vetting arrangements means that the reforms here are bolting the front door more tightly shut, while the back door is lying open.
- 34.2** The Report of the Working group on Garda Vetting¹⁷ in February 2004 sets out proposals for police vetting but also recognises the benefit of vetting performed beyond the scope of the criminal justice system, and recommends the development of employment history registers like PECS. An implementation group chaired by the Garda is in place.

¹⁶ Impact is a new intelligence system which will replace PLX

¹⁷ Report of the Working Group on Garda Vetting, February 2004



- 34.3** The need to plug this gap in the vetting system in Northern Ireland and the rest of the UK was one of the most frequently expressed and serious concerns in the consultation process. The gap was also readily acknowledged in interviews with officials in the key government Departments. The same concern has been expressed in the debate of the NI Assembly prior to the introduction of the Protection of Children and Vulnerable Adults Order¹⁸, and by peers from Northern Ireland in debate in the House of Lords¹⁹. As one MLA put it, "this is not an all Ireland issue, this is an all children issue". The issue was on the agenda of the Inter-governmental conference²⁰. A cross -border conference has discussed it²¹. The ECRIT²² team has the objective of putting mechanisms in place to interface with the rest of Ireland as well as Great Britain, as part of its brief. The NIO is seeking to work closely with the Department of Justice to ensure effective and compatible arrangements, as part of the response to the Bichard Report. The consultations with relevant Northern Ireland Departments indicated good working relations between parallel Departments in the two jurisdictions. The recognition of the need to develop a compatible system in the interests of protecting children is there.
- 34.4** This report is therefore saying nothing new or controversial about the need for such compatibility and sharing of relevant information. It is clear that while the population flow between the islands is a problem for all the jurisdictions, Northern Ireland is best placed to develop effective mechanisms and relationships with the rest of Ireland.
- 34.5** It would be unforgivable if it took a tragedy to happen to a particular child before there was effective high level action taken to encourage the development of effective, consistent vetting arrangements throughout the British Isles.

¹⁸ Op cit n. 3

¹⁹ Debate on Child Protection, Hansard cols. 624-644, 3 March 2004

²⁰ Reforming Employment Checking in Northern Ireland: Report of Interactive Consultation Event 30 November 2004, NIO, December 2004

²¹ Beyond Borders, Protecting Children on the Island of Ireland, Conference Report, Barnardo's Ireland, Barnardo's NI, ISPCC, NSPCC

²² Employment Checking Reform Implementation Team



The Secretary of State should satisfy himself that everything possible is being done to encourage the implementation of reform in the Republic of Ireland and to develop effective and compatible vetting arrangements throughout Ireland.

Convictions by other agencies

35.1 The ICIS system does not routinely record convictions by agencies other than the PSNI, unless these are reported to the PSNI. However, the implementation of the Causeway information system should ensure that all conviction data is accessible to the police. Legislation is being brought forward in response to the Bichard report, to enable the Criminal Records Bureau in England to access data held by, amongst others, the National Criminal Intelligence Service, HM Customs and Excise and the National Crime Squad. It is important that this legislation extends to Northern Ireland.

Information on the PECS register

36.1 Information on the PECS register will be inadequate if individuals who pose a risk of harm to children are not reported for inclusion on the list. The replies received in the review show that 4 Departments and 3 District Councils had identified steps for reporting someone for consideration for inclusion in the PECS list. Encouragingly, all six responding Further Education colleges identified such steps. One respondent, a major statutory employer, expressed concern that employers will “let people go” rather than take steps to refer concerns. Clearly this needs to be addressed. The adequacy of the requirement in POCVA to report an individual as unsuitable to work with children is considered below.

Information held by social services

37.1 The PECS listings system does not ensure that sources of information about people who may be unsuitable to work with children are included on the database, notably information held within the social services system itself. This is considered more fully in the context of evaluating current reforms (see Para. 59-61).

37.2 The Bichard Inquiry and Kelly Report both highlight the need for access to relevant information held by Social Services Departments when a police check is initiated.



- 37.3** The Kelly Report advocated that all allegations of criminal conduct against children should be passed by Social Services to Police, other than in exceptional circumstances. It also recommended that all agencies, particularly those in the learning and child care directorate, should consider how their information systems might more effectively support the identification of alleged offenders. There is already a duty to report arrestable offences under the Criminal Law Act (NI) 1967, but it emerged in the course of the review that no one has ever been prosecuted for a failure to comply with this provision.
- 37.4** Recommendations 12 – 15 of Bichard require new guidance to be given to social services staff on when to refer suspected criminal conduct against a child to police, and require that a decision not to refer should be recorded and inspected. This area involves an important balancing of the rights of suspected offenders and the child's right to protection, and so will need detailed consideration. It is a very sensitive issue, which requires full consideration of the quality of information held, information systems and the rights, not just of children who require protection, but the rights of adults, and indeed children who may pose a risk of harm. Account must be taken of the risk of undermining preventative and protective childcare work by inhibiting the reporting of concerns.
- 37.5** The DHSSPS is developing PCIS, a person centred information system which will have an integrated electronic community health and social care record for all people receiving community services from trusts. All Health and Social Services professionals will be able to add to the shared records, to underpin the sharing arrangements. It will revisit the guidance in *Co-operating to Safeguard Children* once the regional Area Child Protection has revised its policies and procedures, and once the new guidance is issued in England. This is due for publication in 2006.
- 37.6** The Social Services inspectorate is leading an inspection of child protection services, including an examination of the arrangements for informing the police of offences against children. The Department also envisages that the new Health and Personal Social Services Registration and Inspection Authority (HPSSRIA) in operation from April 2005 will review failures to make appropriate referrals.

The scope of the duty to report suspected criminal conduct against children should be reconsidered as part of the review of criminal offences against children.



Other Sources of Information

- 38.1** It may also be worth considering whether the fact that a parent has had a care or supervision order made in respect of their child, should be included on the database. Children consulted on the review opposed this, but if concerns about privacy and stigma could be met, the data is relevant and has been tested by a court process, and should be included as part of a check.
- 38.2** A few respondents also wanted clearer guidance on information sharing arrangements between agencies, and indeed voluntary organisations and statutory bodies. Information held by other professional bodies, in the health and care fields in particular, may also be of relevance and have credibility as it will have been tested by due process. (e.g. tested by disciplinary processes).
- 38.3** Clearly disclosure of such information must be surrounded by strict safeguards. It is perhaps because to date, vetting has been seen as an employment checking service that this broader range of information relevant in the child protection context has been disregarded.

List 99

- 39.1** In relation to List 99, the inter-jurisdictional sharing is clearly a strength, however List 99 does not adequately connect to the other databases. The information placed on the list is not systematically shared with the DHSSPS. The prohibition on grounds other than conviction would seem to be relevant non- conviction information which should be reported to both. In practice, the PSNI tell the Department of Education about convictions involving a teacher.
- 39.2** Conversely, a check of List 99 is not enough to ensure that a teacher is not unsuitable to teach children and young people. Circular 1990/28, supplemented by Circular 2004/21, sets out the procedures to be followed in getting a police check done on teachers and other staff and volunteers. The circular does not cover a PECS check, although it emerged in the consultation process that this had been introduced very recently. The links between List 99, the PECs list and the police database will be streamlined when Part V as amended by POCVA is enforced.

There needs to be a reconsideration of what available information, which indicates that someone is unsuitable to work with children, should be used as the basis for vetting, and consideration of the safeguards governing access to such information.



Enforcement

40.1 There is no statutory duty to vet, or direct sanction for a failure to vet.

Guidance

41.1 Government Departments consulted in the review accepted that the enforcement of the checking system is the responsibility of each Department employing staff or controlling arrangements under which an agency operates. The body issuing guidance about when a check is required should ensure that guidance is followed. Departments have a responsibility to enforce guidance in relation to their own staff.

Monitoring and Audit

42.1 The arrangements for auditing the implementation of guidance by Departments are therefore crucial. A key finding of the review is that auditing of implementation is rarely happening. For instance, the Department of Education is currently auditing vetting arrangements in its sector, but has no ongoing routine process of auditing implementation.

42.2 The DHSSPS referred to various auditing mechanisms including inspection and efficiency scrutiny, but it is not clear how specific a part, vetting plays in these. Eleven Departments indicated that they had next steps agencies, some of which provide leisure and cultural activities, who have very important contact with children. Responsibility for ensuring vetting takes place in these bodies needs to be clearly identified.

42.3 Six Departments gave guidance on the employment and vetting of staff working with children, and three audited its implementation. Obviously in some cases there is no potential for staff having contact with children. The review also found examples of bodies which are developing good practice without Departmental oversight. For instance, the Arts Council require all organisations which they fund to have a child protection policy, and are taking independent advice to assess the value of the policies, and to prepare for the introduction of POCVA. There is a case however for central guidance which each Department could work to, and consciously decide whether it is applicable to them and their affiliated bodies or not.



- 42.4** Eight District Councils identified procedures which they used in employing and vetting staff who work with children. None audited or monitored implementation, although one is currently auditing all relevant policies and procedures. Three issued guidance to affiliated bodies, and one stated that there was a requirement to adhere to the guidance.
- 42.5** The six Further Education Colleges which responded all issued guidance, and one audited the guidance. Only one of the Further Education Colleges which responded, gave guidance to an affiliated body, and indicated that it audited these arrangements. This encouraging response from the Further Education Colleges involved in the survey is important, as consultation revealed that increasingly children as young as 14 are being educated there.

There should be clearly allocated responsibility for monitoring and auditing vetting arrangements in relation to all bodies working with children.

Information

- 43.1** The employers survey found that just over half of the participants agreed that they had received adequate information on vetting procedures, and around 75% would welcome training and support to follow correct procedures. In saying this, the value of the guide and its companion document Our Duty to Care was acknowledged by those consulted. There was also appreciation among respondents of the supportive work of NIACRO and the VDA in this area.
- 43.2** Some consultees who were very committed to improving their understanding and use of effective vetting arrangements became involved in the review in order to get more information and seek guidance and training.

The demand is there and should be met.

There is a need for fuller and more effective information and training on the vetting system.



Financial incentives

- 44.1** Indirect enforcement can be achieved by financial incentives. This means either making compliance with vetting standards a condition of a contract or of funding. The DE provides an example of this as the Special Funding Initiative Branch indicates that future letters of offer will ask for confirmation that PECS checks are carried out on all employees.
- 44.2** This runs contrary to the advice at Para, 16.5 of Making the Right Choice. It states that because the use of PECS is not mandatory, Health and Social Services Boards and Trusts may not include a requirement to use PECS within a service contract, or make its use a precondition to the award of the contract. This seems wrong and a seriously missed opportunity, and is questioned by the internal audit.
- 44.3** This kind of compliance mechanism seems a very direct and effective way of ensuring good vetting and recruitment practices. One respondent, who provides insurance to voluntary and religious groups providing services for children, indicated a recent policy of not providing insurance unless standards in relation to recruitment are agreed. While this may leave some victims without redress; it is an effective way of encouraging compliance.

The potential for making insurance for children's play and leisure activities conditional on appropriate recruitment safeguards, including vetting, should be explored.

Links to recruitment and child protection

Recruitment

- 45.1** The system does not adequately take advantage of the opportunity to link vetting procedures to good recruitment practice.

A bench mark statement drafted by the working group early in the review emphasised that vetting is only one part of protective recruitment and selection procedures. It stated that in order for the vetting process to be effective, recruitment processes should include the following:

- *Application form and job description;*
- *Interview;*
- *References, independently obtained, which ask questions on the applicant's suitability to work with children.*



45.2 The questionnaires reveal poor and inconsistent practice in relation to these standards. This is illustrated by the variety of advice and practice on identity checking.

Identity checking

46.1 The review revealed a high degree of inconsistency in the proofs of identity asked for in all sectors. Some Departments issued no guidance on the matter. Others relied on the guidance in the Our Duty to Care, advising that some form of identification should be requested. The guidance states that a long birth certificate or a national insurance number is the most reliable form. Other forms of identification which give the applicant's full name, date of birth, and current address with a signature and photograph are acceptable. This advice is not being routinely followed.

46.2 Five of the District Councils required a birth certificate; the others had no guidance on identification. In the Further Education sector, four colleges requested a birth certificate, one requested no proof except for a driving licence when the post also required driving, and one required no proof. The employers' survey found that 46% of participants always conduct identity checks, with half accepting a birth certificate as proof.

46.3 An example of good practice was found in the proposal (not yet implemented) of the Youth Justice Agency in the NIO to require photographic identification, proof of residence, and a birth certificate as proof of identity.

46.4 Recommendations 22 - 26 of the Bichard report deals with identification. The essence is that identity should be confirmed by verified photographic evidence, and that the accuracy of addresses stated should be checked, along with guidance on how this should be done.

Northern Ireland must be covered by the provisions in the SOCP Bill which will allow for checks to be made on passports and driving licences, so that the same standard in relation to identification can apply here as in the rest of the UK.



Child protection

- 47.1** The administration of PECS provides the best opportunity for both linking vetting to good recruitment and child protection practice and to raise awareness of the need for these, given the relationships which the DHSSPS has with key providers of services to children. The internal audit recommended that management of the PECS system should take appropriate measures to make sure that organisations are fully aware of the service provided and to ensure that organisations do not rely on PECS, as opposed to having sound recruitment and selection procedures.
- 47.2** There is a requirement that users of PECS must be registered with the Department, and registration is subject to acceptance of child protection and recruitment standards. The internal audit found however that there was not a general insistence on acceptance of the standard, before registering an organisation to use PECS. 5/12 users audited had not provided written confirmation that they would comply with Our Duty to Care.
- 47.3** It is also of concern that Our Duty to Care does not put a consistent emphasis on the value of checking. For example, although the action checklist on recruitment and management of workers asks for a declaration of past convictions or cases pending, for two referees and signature to a copy of the organisation's child protection policy, it does not refer to the need to vet.
- 47.4** The UN Convention means that responsibility for child protection does not lie with the DHSSPS alone. There is a responsibility on all limbs of Government to ensure that they are fulfilling their responsibilities, particularly in relation to the activities of agencies and sponsored bodies.
- 47.5** That policy should then be implemented and audited and kept under review. Compliance with the policy should be a condition of contractual and funding arrangements. A similar model of policy implementation cascading down should apply to local councils. In this way the current gap between policy and practice might be closed.
- 47.6** Given its context, it was natural that the Bichard inquiry focussed on the changes needed to protective recruitment practice in schools.
- 47.7** Recommendations 16 – 18 of the Bichard Report recommended that head teachers and school governors are trained to ensure that recruitment processes reinforce the importance of child protection; that no interview panel should be



convened without one member being so trained, and that future school inspections should include an examination of the effectiveness of the recruitment process.

- 47.8** In the course of the review the Department of Education confirmed that it had agreed that governors and principals should receive training in child protection issues in the recruitment and selection of teachers and other school workers, and will consider the need for supporting guidance. The Department has also agreed that at least one member of an interview panel must receive this training. The Education and Training Inspectorate has undertaken to take forward, by way of inspection, the monitoring of new arrangements in schools for the vetting, selection and recruitment of staff.
- 47.9** There remains a need for consideration of whether this approach should be extended to other areas of recruitment of individuals working with children. Young people who took part in the consultation process, some of whom had experienced the care system, supported this.

There is a need for centralised guidance on both recruitment and child protection policies, which can be tailored to the needs of each Department when it is recruiting people to work with children.

Conclusion

- 48.1** When the current system as a whole is evaluated using the guiding principles set out above, there are a number of common key failings.

Fragmented

- 49.1** The system of holding and issuing information is not integrated. Rather it is split between Departments, and it is bureaucratic involving a large number of different application forms. Seven responses specifically supported a more integrated organisation of the system. This would also be required by the Bichard principles. The information itself is incomplete; it draws on limited sources internally and is insufficiently linked to databases throughout the UK. It has no systematic link to information held in the Republic of Ireland

Failure to implement guidance

- 50.1** There is some good guidance as to how to use the system in Our Duty to Care and Making the Right Choice as well as Circular 1990/28, but no ongoing monitoring arrangements or audit of how that guidance is being implemented. The questionnaires issued to Departments, employers and to District Councils



revealed a high level of inconsistency in relation to vetting practice on key areas such as identification requirements, awareness of the relevant policies and the information and guidance available.

50.2 There is no systematic monitoring of vetting in practice, and compliance with vetting standards is not generally included in the governance arrangements of Departments. The questionnaires returned by Government Departments found that six issued guidance to next steps agencies, and three undertook a monitoring or audit role of their own vetting policies and procedures or those of sponsored bodies. The high-level of uncertainty and lack of confidence among users, about the demands of the system and the protection it can offer shows the need for monitoring and support for those actually working with children.

50.3 It is clear that guidance has not been consistently implemented, and that some Departments have not taken responsibility for implementation either internally or in relation to agencies or affiliated bodies for whom they are directly responsible or are in a position to influence. This is an abdication of responsibility on the State under articles 3 and 19 of the UN Convention. A change in the substantive rules applying to vetting will not alter this. There needs to be a change in culture within some Departments, and District Councils, so that responsibility is accepted for protecting children via the checking process.

Uncertainty

51.1 There is evidence from the consultation process that uncertainty about its scope and demands threatens children's safety when taking part in sport and leisure activities.

51.2 There is also a real concern among some volunteers that the wrong kind of vetting system will inhibit participation in sporting and cultural activities. There is a need for confidence building through clear guidance and training and support in order to make the child's right to play safely a reality.

Not mandatory

52.1 There is no duty to report information or conduct indicating that a person is unsuitable to work with children.

52.2 There is no requirement to vet and no sanction for not vetting. This is despite the finding in the survey of employers that the vast majority of respondents thought vetting was or should be compulsory.



- 52.3** The views of children who are centrally affected by the system have not been taken into account, as Article 12 requires. Consultation with children in the course of this review revealed unequivocal support for a strong vetting system, which would cover all people working with children.
- 52.4** The system described will soon be obsolete. The changes proposed will be outlined and their impact evaluated below.



PART 1V - REFORM OF THE SYSTEM

53.1 This part of the report takes account of the considerations which were stated as part of the scope of the review. A number of very important reforms are well advanced.

Part V of the Police Act 1997

54.1 Part V of the Police Act 1997 applies to Northern Ireland, but is not yet in force here. Its implementation is the responsibility of the ECRIT team, an interdepartmental group led by the NIO. Put very generally, the implementation of Part V and the associated recommendations of the Bichard Report will enhance the integration of and the quality of the information issued under a police check.

54.2 The consultation paper *Safer Recruitment in Northern Ireland*, currently under consultation, details the issues involved. There will be a separate NICCY contribution to the consultation.

54.3 This review has been informed by the work done in preparation for the implementation of Part V, and the ongoing considerations and consultations taking it forward. The implementation team are fully apprised of all the technical and practical issues involved and are consulting on these, so that it is not productive for this review to focus in detail on how Part V should be implemented in Northern Ireland.

54.4 Rather, the review will concentrate on highlighting issues associated with introducing Part V here, which link to the creation of an effective vetting system for protecting children overall. It is clear that implementing Part V will not in itself create such a system, given that it was force in England when Holly and Jessica were murdered.

Scope

55.1 Part V puts the police checking system on a statutory footing and so will remove the uncertainty about the scope of police checks. It will govern the issuing of information held by the PSNI.



- 55.2** It defines the types of check which can be done, but does not make checking mandatory. It introduces criminal offences, for instance in relation to the falsification of identification, but generally enforcement of vetting is covered by the Protection of Children and Vulnerable Adults Order.
- 55.3** It provides for the Secretary of State to issue three types of check; basic, standard and enhanced.
- 55.4** Since the Bichard Report recommended (recommendation 21) that all checks relating to the employment of people working with children should be enhanced, it is these which are most important to this review.
- 55.5** An enhanced criminal record certificate will include details of any unspent convictions as well as cautions, reprimands and warnings, and will disclose information held on the list kept under POCVA and List 99, if the criteria for those checks are met. It will also disclose relevant information held in police records. The enhanced check will therefore systematically pool information in a way not done at present. This is a major improvement.
- 55.6** Enhanced checks can be carried out where a subject is regularly caring for, training, supervising or being in sole charge of a person under 18 (Police Act 1997, s113).
- 55.7** This differs from the definition of regulated position in the Protection of Children and Vulnerable Adults Order (POCVA, see below). It was not possible in the course of this review to fully explore the legislative basis for enhanced checks in the Police Act as amended, and how that relates to the rehabilitation of offenders legislation exceptions, and the definition of regulated position, or the basis for inclusion in List 99. It seems logical that there should be a consistent definition of the posts justifying vetting under all the databases, but it was not possible to confirm that this will be the net result of the current reforms. This would be useful preparatory work towards the development of a registration scheme (see para 71.1 – 71.4).
- 55.8** There needs to be an agreed understanding of what is meant by all posts that involve working with children, the description used in the Bichard Report (Recommendation 21).



There should be a consistent statutory definition of the type of contact with children which warrants a check being carried out, and the concepts used in the Police Act 1997 as amended in the Protection of Children and Vulnerable Adults (NI) Order 2003, the list of exceptions under the Rehabilitation of Offenders (Exceptions) Order (NI) 1979 and the basis for inclusion in List 99, should be compared with the view to ensuring such consistency.

Other jurisdictions

56.1 The changes will not provide for systematic accessing of relevant criminal justice information from the Republic of Ireland, Europe or other jurisdictions. Clearly the increased mobility within the workforce means that devising arrangements for checks outside the UK and Ireland is a key priority in the long term. The report on Garda²³ vetting usefully sets out the arrangements for checks in some other jurisdictions. It would be useful if a fuller guide to arrangements were published and made widely available to employers, drawing on the work done to implement Recommendation 30 of the Bichard Report. Consideration should be given to the feasibility of monitoring the numbers and countries of origin of overseas workers, working with children.

A guide to securing vetting on workers from other jurisdictions should be issued. Consideration should be given to monitoring the numbers and countries of origin of overseas workers working with children.

Accuracy

57.1 The enhanced check will be informed by data already held. Concerns were expressed during the consultation process about the completeness and accuracy of the records held. Obviously accurate information is crucial to an effective, protective vetting system. Thought should be given therefore as to whether it is possible to back check records per accuracy, and to ensure that they are complete by, for instance, including orders made in relation to domestic violence, which it is understood are currently held at local level.

The scope for back checking the accuracy of existing records should be considered.

²³ Op cit n. 17



Management

- 58.1** The current intention is to have a disclosures service provided from inside Northern Ireland, building on the existing vetting unit within the criminal records office of the PSNI. There was strong support for this in the Daniell²⁴ report and at the consultation conference organised by ECRIT on Part V. This review endorses this, in particular, because of the opportunity it offers to build stronger links with arrangements in the Republic of Ireland and to foster local confidence in the system.
- 58.2** This review would also support interdepartmental management of the vetting system, the exact nature to be decided between the Departments concerned which includes the NIO, OFMDFM, DE, DHSSPS, Northern Ireland Court Service and the PSNI. It found a wide range of expertise in the key departments which should be pulled together to strengthen the system as a whole. Reform provides the opportunity for issuing consistent guidance, including on the key issue of identification of the subject, where Part V gives specific powers to the Secretary of State.
- 58.3** The internal audit of the PECS arrangements recommended considering a more joined up approach to vetting within Northern Ireland which would result in a single source of reference for carrying out checks, and lead to the provision of a comprehensive and effective vetting service which maximises value for money from the use of staff, information and other resources currently employed across the Northern Ireland Civil Service and other public bodies. The questionnaires and consultation found a variety of approaches to recruitment practices, and this would target that problem. Central consideration of policy would facilitate consistency on vetting, recruitment, and child protection policy, and help users to know where to go for advice. The review process uncovered a failure for guidance to cascade down to those who need to use it and a lack of confidence among users about where to seek authoritative advice. A 'one-stop shop' would counter this. The reforms have developed separately and are not based on a first principles reconsideration of the entire vetting system. The convergence of the changes proposed does however present an opportunity to look at the system overall. The process of change should be harnessed to maximise the potential for an integrated set of arrangements managed centrally and supported by consistent guidance and training.

²⁴ Op cit n. 4



Consideration should be given to establishing a single interdepartmental body responsible for the management of the vetting system which would work towards integration of the information used in checking, consistency in the posts checked and the issuing of consistent guidance on vetting policy and practice.

- 59.1** In practice, the implementation of Part V by the ECRIT team has been linked to the implementation of the relevant proposals in the Bichard report, so giving implementation greater significance. These reforms will be very important to the type and quality of information held by the PSNI in the future, and will further integrate the system in Northern Ireland with the rest of the United Kingdom.
- 59.2** The PSNI is taking the lead in ensuring that it is included in the proposed National IT system to support intelligence for England in Wales 9 (recommendation 1). The PSNI is also exploring how it might link to the PLX²⁵ system, with the Criminal Records Bureau (recommendation 2), and with PITO²⁶ to ensure that the needs of Northern Ireland are taken into account in developing a national IT procurement strategy (recommendation 3). It is also liaising with the IMPACT²⁷ project to secure the interests of Northern Ireland as work on investment in the future of the PNC develops (recommendation 4). The intention to replicate the new code of practice for inputting data onto PNC, and the code on information management has already been considered (see para 25.1 -25.6).
- 59.3** The consultation process on implementing Part V includes consideration of the structural arrangements supporting vetting, and will give the basis for developing standards governing how vetting is carried out in keeping with the implementation of recommendation 20. These include importantly consideration of the standard to be applied to checking identity, and verifying addresses.

²⁵PLX is an intelligence flagging system indicating that a particular police force holds intelligence on an individual.

²⁶ The Police Information Technology Organisation responsible for the strategic development and delivery of IT systems.

²⁷ Impact is a new intelligence system which will replace PLX



- 59.4** The completion of the work by the DHSSPS in response to recommendations 12-15, on revision of the guidance on reporting crime or suspected crime against children will also strengthen the value of a police check (see para 37.1 – 37.6).
- 59.5** The accuracy and timeliness of data will also be strengthened by the implementation of plans to transfer court results to the PSNI electronically. At present the Court Service notifies parties of a conviction via facsimile or copy orders. The criminal module of ICOS, the court IT system, is due for implementation in January 2006. Court orders and court result information will be available to other criminal justice agencies from June 2006, subject to appropriate protocols, via the Causeway system which links criminal justice agencies in Northern Ireland.

The review found that Government Departments and bodies in Northern Ireland are committed to following the recommendations of the Bichard Report and have engaged with the reform process it generated. It is important that this commitment remains and is fully supported by adequate inclusion in legislation originating in England and Wales, and by adequate resources.

The Protection of Children and Vulnerable Adults (NI) Order 2003

- 60.1** Protection of Children and Vulnerable Adults (NI) Order which replaces the PECS system will be in force in April 2005.

Scope

- 61.1** The Order defines the duty to report information, the procedure for listing a person, the grounds for listing, the duty to check and the posts for which a check must be carried out and the basis for disqualifying individuals from working with children.
- 61.2** The Department of Health and Social Services and Public Safety (the Department) has a duty to keep a list of people considered unsuitable to work with children. Suitability is defined in terms of misconduct, which harmed a child or placed a child at risk of harm, whether in the course of employment or not, and which led to the individual leaving his employment. After due consideration of the information leading to this, the Department makes a decision whether the reporting organisation reasonably considered the



- individual to be guilty of misconduct which harmed a child or placed a child at risk of harm, and he or she is unsuitable to work with children. If so, the individual is listed, after compliance with the detailed procedure in the Order. Article 15 extends the basis on which a teacher or non-teaching member of school staff can be restricted or prohibited from employment to include unsuitability to work with children, and inclusion on the list held by the DHSSPS under POCVA. A right of appeal to the Social Care Tribunal is appended to this.
- 61.3** The Order replaces the substantial unsupervised access test with the concept of a regulated position. A child care organisation offering employment in a child care position, which is basically a regulated position, not in the education sector, must check the list under POCVA, and List 99. A child care organisation is one regulated by statute and concerned with the provision of accommodation, health services or personal social services or the supervision of children.
- 61.4** The links to criminal records and to List 99 are strengthened. A police check for a person working either in paid or unpaid child care position, or working in a school, will include the information on the POCVA list and on List 99.
- 61.5** The Order protects vulnerable adults by a separate list of individuals who are unsuitable to work with them. Any check in relation to a post working with children will not include a check of the vulnerable adults list. It is understood that this is based on human rights considerations. It does seem likely however that a person who is unsuitable to work with vulnerable adults, will also be unsuitable to work with children, and vice versa. This should be reconsidered. While the new arrangement for listing only applies retrospectively, the information on the PECS register will be included on the new list if the criteria for inclusion under the Order are satisfied.
- 61.6** The Order meets the fundamental criticism that checks are not authorised by statute. It also deals with the lack of due process in the listing system by introducing detailed rights of notification and appeal. It also introduces important sanctions for a failure to check.
- 61.7** Nevertheless, some concerns remain about the scope and effect of the Order. These are discussed below.



Complexity and Awareness

- 62.1** The Order is extremely difficult to understand. The consultation process revealed differing views on interpretation of key issues, such as the scope of the regulated position definition and the enforcement of the duty to check, among consultees with a lot of expertise in this area. The views below are therefore offered tentatively.
- 62.2** The first challenge will be to make the Order comprehensible and authoritative for users, and to raise awareness of its effect among children, parent and user organisations. This is urgent. For instance, an interview with officials of the Northern Ireland Court Service, consulted in March, who are reviewing the vetting policy in relation to the services' outreach programme to schools, revealed awareness that there was new legislation, but not of its scope and impact. This is unsatisfactory given an implementation date of April 2005.

There is an urgent need for guidance training and awareness raising about the effect of POCVA among government departments, public bodies, other organisations and groups working with children, and among parents and children.

Duty to report

- 63.1** The first substantive concern is the scope and enforcement of the duty to report that a person is considered unsuitable to work with children.
- 63.2** A child care organisation is defined as a statutory organisation providing accommodation, health or social services to children, or the supervision of children. It includes also, bodies prescribed under the Protection of Children and Vulnerable Adults (Definitions) (NI) Regulations 2005, such as Further Education Colleges. An employment nursing agency, certain professional bodies, namely, the Northern Ireland Social Care Council, the Nursing and Midwifery Council, and a health council services board also must report.
- 63.3** The sanction for a failure to report by a child care organisation is set out in Article 19. The body regulating the child care organisation concerned can take whatever action is appropriate, including taking steps in relation to inspection and registration. This links to the requirement in the draft standards issued in anticipation of the Northern Ireland Health and Personal Social Regulation and Improvement Authority assuming responsibility for care standards in health and care settings, including crèches, day-care and childminding. These include a



- requirement or a whistle-blowing policy which encourages staff to report concerns about the practice of fellow workers in caring for children. Confusingly, the standards proposed use the substantial access criterion as the basis for checks. This is inconsistent with the Order, and requires clarification.
- 63.4** It is however a very low key duty linked to a very vague sanction which provides no clear consequence for a failure to refer.
- 63.5** Other organisations may report, but don't have to. This includes other apparently relevant professional bodies in the health, education and legal professions who may have similar information, and many organisations working with and for children such as sporting bodies and religious organisations, which the review found had not consistent reporting practice.
- 63.6** Article 18 provides for non- child care organisations to be accredited as child care organisations which would then have a reporting duty. This is a creative provision, but a duty to report could be created without waiting for accreditation.
- 63.7** A general duty to report, applied to all organisations providing services for children, would be far more protective of children, by ensuring that all those who pose a risk of harm to them are included on the list.

DHSSPS should reconsider the definition of a child care organisation as the current definition excludes, for example, educational establishments. Only childcare organisations have an express obligation to check regulated positions. This could potentially expose children to risks if other organisations are not required to check their staff.

Links to child protection

- 64.1** The second concern about reporting is the very limited connection between the investigative and protective duties of Health and Social Services Trusts under the Children (NI) Order 1995 and the information on the list.



- 64.2** Article 9 of POCVA gives a Board power to refer an individual, who has been employed to provide funded care, whom it considers had been guilty of misconduct which harmed a child or placed a child at risk of harm after making inquiries under Article 66 of the Children Order. This links the information which is uncovered when an authority carries out its duty to investigate the need to protect a child, because it has reasonable cause to suspect that the child is suffering or at risk of significant harm, to the list.
- 64.3** It seems obvious that in general investigations under article 66 will in general uncover a lot of information, which with proper safeguards would help to identify those who pose a risk if permitted to work with children. Further consideration should be given to whether the links between the investigative process and the list should be strengthened. This should be part of the consideration by the Department in response to the concerns expressed by Bichard and Kelly on information sharing, even though it is sharing within the one Department.

The scope of the duty to report should be reviewed, with consideration being given to placing a duty to report on non-child care organisations and professional bodies who have validated information that an individual has placed a child at risk of harm and is unsuitable to work with children.

Regulated position

- 65.1** The third area of concern is the definition of regulated position. There is no simple answer to the question of who should be checked, or to what is meant by working with children. The Order represents a real attempt to deal with this difficult issue. There remains however some significant points of concern about its coverage.
- 65.2** Regulated position is defined in Article 31. It is too complex to set out in full here, but the definition is included in appendix 5. The complexity means that it will be a challenge to communicate who is included. There is a real possibility that will lead to the same confusion as surrounded the meaning of substantial unsupervised access.



- 65.3** It includes, unlike the comparable definition in the Protection of Children Act 1999 applying to England and Wales, those who counsel or supervise children. It includes advising children, and so extends to the legal profession. This would seem to extend beyond the current practice identified by the Law Society, which represents solicitors, of requiring a PECS check as a condition for accreditation to represent children in public law cases. It will also include barristers advising children.
- 65.4** In practice at present, only organisations and not individuals can request a check, although there is no express restriction on this in POCVA. This means a parent cannot request a check on a tutor hired privately to teach his or her child. This limitation should be reconsidered in the course of the implementation of Part V of the Police Act 1997.
- 65.5** The definition includes some people, by virtue of their position, such as members of Health and Education boards. This is welcome, but there is still a gap in relation to some people, for instance ministers of religion who may be in similar positions of trust. A minister may be a person whose normal duties include advising children, but it is not clear. The questionnaires issued to religious bodies indicated in some cases, a worrying tendency to rely on internal investigation and management of child protection concerns. It is important that children are protected in such communities where there is a high degree of loyalty and trust. Parents may share that trust, so parental responsibility alone is not sufficient protection.
- 65.6** It also does not cover people who have access to information about children, including those administering the vetting system. It is also not clear that those carrying out consultations with children are covered. It includes positions in a hospital, which is exclusively or mainly for the reception and treatment of children. This does not meet the concern expressed in the review about the contact children have with staff throughout hospitals, and in A&E in particular. It is not clear whether General Practitioners or dentists are included. Arguably, these are positions whose normal duties include caring for children, but this is not certain. They are positions of trust which give intimate access to young people, and should be included. It seems that checks can only be made on new recruits.



- 65.7** It will still not be possible to check existing employees, whatever the post. Provision should be made for a check to be required on anyone in a regulated position. Obviously this extension, will have considerable resource implications, and may only be achievable in the longer term.
- 65.8** The definition does not include situations where the duties of caring, training, advising, supervising or counselling children arises in the course of the children's employment with children aged 16 or over. In the course of the consultation, children affected by this, expressed concern that they need protection in the course of employment, citing examples of when they felt vulnerable. This is a very serious concern. If however the definition dropped this exclusion it would considerably widen the scope of vetting. It was pointed out in the course of consultation that 16-year-olds work throughout the Northern Ireland Civil Service, so every civil servant would require to be vetted. There needs to be some targeting of situations where children are most at risk. It may be that what is required is stronger support for young people in employment, via harassment policies or mentoring or advocacy arrangements.

Clear and comprehensive guidance is need on the posts covered by the definition of regulated position. Consideration should be given to extending the definition to cover existing posts, and a broader range of positions of trust. The application of the definition to children in employment should be kept under review.

Duty to Check

- 66.1** The fourth area of ambivalence is the scope of the duty to check. Childcare organisations employing a person in a child care position have an express duty to vet under Article 16. Other bodies and organisations do not. This means that many of the bodies included in the review including it seems Councils, schools and providers of cultural and leisure services for children have no direct duty to vet.
- 66.2** Article 30 however provides that an individual is guilty of an offence if he offers work in a regulated position or procures work in such a position or fails to remove from such a position, a person who is disqualified from working with children. Disqualification arises from inclusion in the list under the Order, or in List 99. This seems to indirectly require a check on all regulated positions.



- 66.3** There is therefore an inbuilt instability between the two provisions, which is bound to compound the confusion uncovered in the review about the scope of the obligation to vet.
- 66.4** Arguably the absence of an express duty to check will provide a defence under Article 30, in that it means the individual could not reasonably be expected to know about the disqualification.
- 66.5** It is also arguable that only checks specifically authorised by statute can be carried out after the introduction of the Order and Part V. It is crucial therefore that there is clarity that the net result of the legislative changes is that checks may be carried out by non-childcare organisations.
- 66.6** This distinction between child care and other organisations cannot be defended when the totality of the principles of the UN Convention are considered. Arguably Article 3(3) applies only in the care context; but when the rest of the articles and Article 19 are considered, the responsibility to protect from neglect, exploitation and abuse, includes voluntary activities.
- 66.7** The restrictions on the type of position covered should be sufficient safeguard against overwhelming the system.
- 66.8** The concern that volunteers will be deterred if vetting is required is very genuine. It should be possible however to deal with these fears, by having an efficient and effective vetting system which is well-publicised and for which effective training is given. The message should be that vetting protects the adult as well as the child; that it carries no stigma; the willingness to undergo it indicates commendable concern for children, rather than casting aspersions on the adult. Vetting should become a matter of routine.
- 66.9** The fact that some religious groups participating in the review have made a shift in culture so as to require vetting shows that this can be done. The general response from voluntary groups was that they wanted help to check efficiently and effectively without undue administrative burden or cost, rather than resisting the need to do so. The employers' survey found that 96% of respondents strongly agree that it is important to vet everyone who will have contact with children.



66.10 There was also considerable support for this approach from young people consulted. There is no evidence of support for a distinction between childcare and other organisations, in either theory or practice at present.

In summary, the question of who must carry out checks requires reconsideration. There should be a duty to check all individuals working in a regulated position. If additional resources are needed to fulfil this, they should be provided.

Disqualification

67.1 The disqualification provisions are the fifth area which requires reconsideration. They form part of the protective scheme in the Order and underpin the vetting provisions. A person is disqualified from working with children if he or she is included in the list kept under the Order, or in List 99, or has been convicted of certain offences listed in the Order, and a qualifying sentence has been passed. This basically means a sentence of imprisonment or detention of 12 months or more, and certain orders under the Mental Health (NI) Order 1986.

67.2 It must be a matter of concern that some people will be convicted of offences which harm children, but will not be disqualified because the sentence is less than 12 months. There at least needs to be some research into the link between the sentences passed and the kind of conduct it penalises before the 12 months criterion is accepted as being sufficiently protective of children.

67.3 Disqualification is there to protect children, but as it stands the other factors about the offender, which affect sentencing, but not the risk of harm to the child, reduce the protection of children. Arguably, commission of any of the offences is the least comparable to the kind of conduct leading to person being listed under the order, or included in List 99. There should be a consistent basis for disqualification, based on the risk of harm to the child. The protection of children would also be better safeguarded if there were a reconsideration of the offences scheduled, with a view to identifying those which would automatically lead to disqualification. This would be consistent with the development of a registration scheme (see para. 71.1 – 71.4).

The basis for disqualification from working with children should be reconsidered. It should be consistently linked to the risk an individual's conduct poses to children.



68.1 The criminal law reinforces the provision for disqualification under Part II Chapter II. It is a criminal offence for a disqualified individual to apply for, accept or to do work in a regulated position. It is also an offence for an individual to knowingly offer or procure work to a qualified person or to fail to remove them from a regulated position. The onus is on the defendant to show that he or she did not know and could not reasonably be expected to know about the disqualification. The offence is committed by an individual. It is not clear how this relates to responsibility within an employing organisation or a profession. The provision that failure to remove is an offence opens up the need for proactive communication with employers when disqualification takes place. Effective enforcement will also depend on there being a clear understanding of what positions are regulated.

69.1 *Accreditation*

When Article 18 is in force, non child care organisation can be accredited, and so assume the obligations placed on a child care organisation. This is a novel and creative way of extending responsibility to vet. If widely implemented, it would meet some of the concerns about the gaps in the obligation to report. It is important therefore, that every effort is made to progress its implementation.

69.2 It is a voluntary scheme, so there needs to be incentives to take part in it. A key way of doing this is for Government Departments, Councils and statutory bodies to make contractual arrangements and funding dependent on accreditation, or at least on the implementation of proper vetting arrangements. It may also be that insurance arrangements are made conditional on accreditation.

69.3 A gap still remains in that accreditation is unlikely to be an effective method of enforcement in relation to autonomous self- financing voluntary organisations, notably sporting and religious organisations.

The implementation of accreditation needs to be monitored to identify the number and type of organisations for which it is an effective mechanism for setting standards. Organisations seeking accreditation must be fully supported by the necessary training and resources.



70.1 In parallel with these enforcement mechanisms, the role of Government in setting and implementing standards in relation to vetting is crucial. The replies to questionnaires indicate that this is not being carried out consistently at present. There needs to be uniform guidance which is adapted to the purpose of particular Departments and organisations, issued from a central body managing the vetting system. Each Department should audit its particular arrangements, and review its role on setting standards for affiliated bodies as part of its governance arrangements. Likewise, Councils should assume responsibility via contractual relationships, for adherence to vetting standards by bodies using their premises. Such indirect enforcement is vital in the absence of more direct sanctions.

The future direction of reform

71.1 Recommendation 19 was one of the most innovative proposals in the Richard Report. It proposed that there should be a registration scheme to determine whether an individual is unsuitable to work with children and vulnerable adults.

71.2 The aim is to have a centralised proactive approach to determining unsuitability, based on a consideration of all the relevant information rather than relying on checks by individual employers at the time of recruitment. An individual would be barred from working with children on the basis of the risk he or she poses to a child in advance of seeking employment, so removing the employer's discretion.

71.3 Legislation will be needed to implement the scheme. It will require the resolution of very difficult questions, such as what posts it should apply to, and what information should be taken into account. It will also face the practical challenge of integrating information systems. It is a very ambitious scheme and a feasibility study is ongoing.

71.4 It is vital that the legislation introducing the scheme is capable of extending to Northern Ireland and that the scheme operates throughout the UK. There is the potential to build on current changes in Northern Ireland, in keeping with the spirit and intent of Recommendation 19. The proposals in this report, that the criminal law should be reviewed, that the basis for disqualification should be more consistent, that there should be an integrated approach to the management of the vetting system, are in line with the recommendation and are strengthened by it.



Legislation governing a registration scheme which bars individuals from working with children should extend to Northern Ireland. The implementation of current reforms should take account of the need to prepare for a registration scheme.



PART V - CONCLUSION AND RECOMMENDATIONS

- 72.1** The reforms underway address many of the flaws identified in the current arrangements. The arrangements have a statutory basis which will provide clarity and certainty. There will be a right of appeal against inclusion in the DHSSPS and DE lists. The links between the three information strands will be strengthened. The basis for an enhanced check will be consistent throughout the UK.
- 72.2** Key bodies have a duty to report workers for consideration for inclusion on the POCVA list. There is much fuller definition of who may be checked. The disqualification provisions reinforce both the criminal law's protection and the listing provisions. Accreditation provides a clear mechanism for extending compliance to non-childcare organisations. The review however identified a number of additional changes which would strengthen the operation of the checking arrangements which have been identified in the course of the report.
- 72.3** The recommendations below summarise the key changes which are recommended in order to create an effective vetting system.

The system in Northern Ireland should be integrated with the vetting system throughout the UK.

- 73.1** This will be achieved by the implementation of Part V and by ensuring that legislation amending it, and developing vetting arrangements extends to Northern Ireland. It will require individual Departments to fulfil the responsibilities which they have accepted, arising from the recommendations of the Bichard Report. This will result in each jurisdiction in the UK, being able to access the same databases in relation to information which has been through a process of verification and which indicates that a person poses a risk of harm to children, and to consistent guidance on data collection and retention, on information sharing between agencies and on identity checking.

The system in the UK should be compatible with the arrangements in the Republic of Ireland.



74.1 The review was not set up to examine the arrangements in the Republic of Ireland. It is clear however that the arrangements in the rest of Ireland impact significantly on the safety of children in the UK, and vice versa. Every effort should be made to strengthen compatibility between the arrangements in the two jurisdictions.

The management of the vetting system should be integrated across the responsible Departments.

75.1 The review revealed a variety of guidance and practice in relation to vetting across Departments, Councils, Colleges, and in the non-statutory sector. It found that in general there was no ongoing monitoring or auditing to follow through on the implementation of guidance. There was an appetite for consistent guidance, advice and training and a need for awareness raising about the demands of the impending changes. The convergence of reforms means that this is an ideal time to consider integrating not just the information held, but the management of the vetting system in the interest of harnessing expertise, and providing a clear point of reference from which authoritative guidance issues. This guidance could then be adapted by individual users to reflect their situation.

75.2 The precise form of the management arrangements should be decided by the Departments with particular responsibilities for the vetting system. Such a change would reflect the overarching responsibility of the State for the welfare and safety of children as expressed in the UN Convention, as well as meeting concerns about efficient use of resources, and transparency about the level of resources required.

Each Department should take responsibility for compliance with vetting standards.

76.1 The level of failure to participate in the review revealed indifference to the issue of vetting. The responses showed that Departments, Councils and Colleges do not consistently monitor the arrangements which are in place. Obviously the exact relationship between a Department and an associated body will determine the level of responsibility on each for vetting practice. As a general principle however, each Department should have responsibility in terms of governance and accountability arrangements for compliance both within the Department and by associated bodies.



- 76.2** District Councils are autonomous, but the review found that the Local Government Staff Commission was committed to the importance of vetting. It should consider issuing central guidance on vetting, in order to assist Councils in their responsibilities.
- 76.3** A first step would be for each Department, Council and College to consider the findings of the scoping report, and consider if there is a need for action in response to it. One Department, the Department of Education and Learning, has already taken this step.

There should be a duty to vet all regulated positions.

- 77.1** The apparent distinction in POCVA between the duties on childcare organisations and others should be reconsidered. It does not reflect the wishes of adults or children who took part in the review, it does not protect children in relationships and situations where they may be at risk, and it does not fulfil the demands of the UN Convention on the Rights of the Child. The provision for accreditation will only modify this, and is not sufficient to safeguard children in autonomous self-financing organisations.

The scope of the duty to report information indicating that a person poses a risk to children should be reconsidered.

- 78.1** The review has set out the ongoing responses to the recommendations in the Bichard Report and The Kelly Report. It has also identified other sources of information held by professional bodies, military authorities, religious organisations and in the child care system which would indicate that a person is unsuitable to work with children. It has also recognised in the general principles that the disclosure of such information must be strictly in line with the requirement to comply with human rights and data protection law and principles. There needs to be a first principles reconsideration of the duty to report, which takes account of these principles and the requirement to protect children as set out in the UN Convention on the Rights of the Child.



Training and Awareness Raising

79.1 The review revealed a gap in understanding between those running and reforming the system and those using it. There is a clear need for increased training and education to raise awareness and understanding, particularly at a time of change. This is absolutely crucial to having an effective system in practice. It should target not just relevant organisations and employers, but also parents and children.

The Commissioner should keep the development of vetting arrangements and practice under review.

80.1 The arrangements are in transition and the Commissioner should keep their implementation under review. He should consider in particular whether it is, or becomes, appropriate for him to exercise his functions under The Commissioner for Children and Young Persons (NI) Order 2003.



Summary of Findings and Recommendations

General

1. There is a need for ongoing review of the development and implementation of the vetting system as the various reforms are implemented. This should be carried out by DHSSPS, DE, and NIO, as Departments responsible for vetting, through a continuing steering group with responsibility for overseeing arrangements.
2. The response rates indicates some indifference from public bodies to the importance of vetting. The Secretary of State should ensure that all Northern Ireland Government Departments accept their responsibilities for child protection.
3. The Secretary of State should satisfy himself that the reformed vetting arrangements comply with the standards in the UN Convention on the Rights of the Child.
4. Department of Education needs to consider devising a framework for the operation of list 99 which includes procedural safeguards.
5. NIO and DHSSPS must ensure that the implementation of reforms are supported by adequate resources so that an efficient user-friendly system is created.
6. DHSSPS should consider funding an authoritative, accessible guide or handbook which explains the vetting system, and processes, once the current reforms are in place. Joint authorship by writers with a legal and a child protection expertise would be most effective.
7. The Secretary of State should satisfy himself that everything possible is being done to encourage the implementation of reform in the Republic of Ireland and to develop effective and compatible vetting arrangements throughout Ireland.



8. **The Secretary of State should consider establishing a single interdepartmental body responsible for the management of the vetting system which would work towards integration of the information used in checking, consistency in the posts checked, and the issuing of consistent guidance on vetting policy and practice.**
9. **Government Departments and bodies in Northern Ireland are committed to following the recommendations of the Bichard Report and have engaged with the reform process it generated. It is important that this commitment remains and is fully supported by adequate inclusion in legislation originating in England and Wales, and by adequate resources.**
10. **Legislation governing a registration scheme which bars individuals from working with children should extend to Northern Ireland. The implementation of current reforms should take account of the need to prepare for a registration scheme.**
11. **The management of the vetting system should be integrated across the responsible Departments.**
12. **The implementation of current reforms should take account of the need to prepare for a registration scheme.**
13. **The Commissioner should keep the development of vetting arrangements and practice under review.**
14. **PSNI should consider back checking the accuracy of existing records.**
15. **The NIO should consider reforms in criminal law which extend beyond sexual offences and include the scope of the criminal law as it protects children from all sorts of harm.**
16. **NIO needs to reconsider the scope of the duty to report suspected criminal conduct against children in the review of criminal offences against children.**



17. **The system for accessing findings and information held by military authorities indicating that a person poses a risk of harm to children should be explored further.**
18. **NIO should give further consideration to whether and how a Risk of Sexual Harm Order or Notification Order can be included on the database of those who pose a risk to children.**
19. **There needs to be a reconsideration of what available information, which indicates that someone is unsuitable to work with children, should be used as the basis for vetting, and consideration of the safeguards governing access to such information.**
20. **Northern Ireland must be covered by the provisions in the SOCP Bill which will allow for checks to be made on passports and driving licences, so that the same standard in relation to identification can apply here.**

Who is Checked

21. **Consistent guidance from DHSSPS on the posts for which vetting is required is needed.**
22. **The difference in the posts included in the Northern Ireland section of List 99 from those in England and Wales needs to be reconsidered by DE.**
23. **DHSSPS, NIO, DE and PSNI should collaborate to ensure that there is a consistent statutory definition of the type of contact with children which warrants a check being carried out; and the concepts used in the Police Act 1997 as amended, in the Protection of Children and Vulnerable Adults (NI) Order 2003, the list of exceptions under the Rehabilitation of Offenders (Exceptions) Order (NI) 1979, and the basis for inclusion in List 99, should be compared with view to ensuring such consistency.**



24. **DHSSPS and NIO should issue a guide to securing vetting on workers from other jurisdictions.**
25. **Clear and comprehensive guidance is need on the posts covered by the definition of regulated position. Consideration should be given to extending the definition to cover existing posts and a broader range of positions of trust. The application of the definition to children in employment should be kept under review.**

Who must be Checked

26. **The question of who must carry out checks requires reconsideration. There should be a duty to check all individuals working in a regulated position.**

Enforcement

27. **Each relevant Department needs to ensure that there is appropriate monitoring of organisations who are required to carry out checks and on what posts.**
28. **All Government Departments should clearly allocate responsibility for monitoring and auditing vetting arrangements in relation to all bodies working with children.**
29. **The potential for making insurance for children's play and leisure activities conditional on appropriate recruitment safeguards, including vetting, should be explored.**
30. **DFP needs to ensure centralised guidance on both recruitment and child protection policies, which can be tailored to the needs of each Department when it is recruiting people to work with children.**
31. **There is an urgent need for guidance training and awareness raising about the effect of POCVA among government departments, public bodies, other organisations and groups working with children, and among parents and children.**



- 32. The basis for disqualification from working with children should be reconsidered. It should be consistently linked to the risk an individual's conduct poses to children.**
- 33. The implementation of accreditation needs to be monitored to identify the number and type of organisations for which it is an effective mechanism for setting standards.**
- 34. Each Department should take responsibility for compliance with vetting standards.**

Links to Child Protection

- 35. DHSSPS needs to develop clear guidance on the proper use of the information provided in the recruitment process, building on the work already done.**
- 36. There is a need for fuller and more effective information and training on the vetting system.**
- 37. Organisations seeking accreditation must be fully supported by the necessary training and resources.**



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Serious Case Review, Ian Huntley, North East Lincolnshire 1995-20001, Report of Sir Christopher Kelly, July 2004

The Bichard Inquiry Report, June 2004

The Use of Substitute Teachers Provided by Employment Agencies, DENI Circular 2004/21

Working with Child Check Guidelines, New South Wales Commission for Children, April 2004



APPENDIX 1

ORAL CONSULTATIONS IN THE COURSE OF THE REVIEW

Arts Council for Northern Ireland

Children's Law Centre

Concerned Parent

Department of Culture Arts and Leisure

Department of Education

Department of Education and Learning

Department of Health and Social Services and Public Safety

ECRIT Team

Information Commissioner for Northern Ireland

Irish Football Association

Local Government Staff Commission

Ministry of Defence

NICCY

NIO

Northern Ireland Court Service

Northern Ireland Prison Service



NSPCC, Northern Ireland

Opportunity Youth

Royal Sun Alliance

VOYPIC

Youth Justice Agency

WRITTEN RESPONSES

Barnardos NI

Belfast City Hospital Trust

Child Protection in Sport Unit, NSPCC NI

Children in Northern Ireland

Committee on the Administration of Justice

Craigavon Area Hospital Trust

Department of Education

Department of Education and Learning

Department of Finance and Personnel

Department of Health and Children

Department of Health and Social Services and Public Safety

Down Lisburn Health and Social Services Trust

Eastern Health and Social Services Board

Homefirst Community Trust



Law Society of Northern Ireland

Lisburn City Council

Mencap NI

North and West Belfast Health and Social Services Trust

North West Institute of Further and Higher Education

Northern Ireland Association for the Care and Resettlement of Offenders

Northern Ireland Court Service

Northern Ireland Social Care Council

Northern Ireland Volleyball Association

Scout Foundation NI

Sorcha McKenna, Transitional Justice Institute, University of Ulster Scout
Foundation NI

South and East Belfast Health and social Services Trust

Southern Education and Library Board

Southern Health and Social Services Council

SSAFA Forces Help and Army Welfare Services

Translink

United Hospitals Health and Social Services Trust

Victim Support

Volunteer Development Agency



APPENDIX 2

DOCUMENTS AND LEGISLATION

Children (NI) Order 1995

Commissioner for Children and Young Persons (NI) Order 2003

Education and Libraries (NI) Order 1986

Health and Personal Social Services Act (NI) 2001

Health and Personal Social Services (Quality and Improvement and Regulation)
(NI) Order 2003

Police Act 1997, Part V

Protection of Children and Vulnerable Adults (NI) Order 2003

Protection of Children and Vulnerable Adults (Definitions) (NI) Regulations 2005

Rehabilitation of Offenders (Exceptions)(NI) Order 1979

Rehabilitation of Offenders (NI) Order 1978



APPENDIX 3

RELEVANT UNCRC ARTICLES

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.



Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.



APPENDIX 4

EMPLOYMENT CHECKING IN NORTHERN IRELAND: AN ANALYSIS OF APPLICABLE LEGAL PRINCIPLES.

1. I have been asked to advise the Independent Vetting Review which is currently being conducted by the Northern Ireland Children's Commissioner on the legal principles which are applicable to the practice of employment checking or vetting.
2. I am advised that two pieces of legislation are about to be implemented in Northern Ireland which will have a significant effect on the practice of employment checking. Part V of the Police Act 1997 is about to be commenced in Northern Ireland and the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 ("POCVA") will come into force in full later in 2005. The relevant provisions of Part V of the Police Act 1997 came into force in England and Wales in 2002 and have already been the subject of litigation before the High Court and Court of Appeal. Similarly, analogous provisions to those contained in POCVA were enacted in the Protection of Children and Care Standards Acts in England and Wales.
3. The legislative framework which is about to be implemented in Northern Ireland will place the practice of employment checking on a statutory footing for the first time. However, the practice of disclosing information about previous convictions or "soft" police intelligence about possible offending has previously been regulated by common law principles, and latterly, Convention arguments. These background principles will continue to be applicable and will inform the Courts as they come to determine contentious issues which are likely to arise under these statutes.



4. In broad terms the practice of pre-employment checking raises the following legal issues:
- (i) Is disclosure of information related to actual or suspected past offending a breach of confidence? Is failure to disclose likely to be actionable?
 - (ii) Is disclosure of such information a breach of common law principles of procedural fairness?
 - (iii) Is disclosure of such information a breach of Article 8 of the European Convention on Human Rights as patriated by the Human Rights Act 1998?

5. **Breach of Confidence.**

It has been contended that the release of information about an individual record of convictions (or, more problematically, information which does not relate to convictions but to allegations) may breach the equitable principles of confidentiality. This argument was canvassed before the Bingham LCJ and Buxton J in the Divisional Court in *R v Chief Constable of the North Wales Police and others ex parte AB* [1997] 4 All ER. In that case a husband and wife were released from prison having served lengthy sentences for serious sexual assaults against children. They attempted to resettle in a number of locations and where subjected to harassment and abuse when the history of their offending was made known to local communities. They eventually settled on a caravan site in North Wales. The police disclosed material to the caravan site owner about the applicant's past offending and they were forced to move on. They sought judicial review of the police decision.

6. It was argued on behalf of the Applicants that the police had breached a duty of confidentiality in providing the site owner with information about their past convictions. The problem with this argument is that any duty of confidentiality is based on the existence of a relationship of confidence. It is difficult to argue that a person in possession of information about past offending holds that information as a consequence of a confidential relationship. Further, even if information about such offending is considered to have the necessary quality of confidence the approach of the United Kingdom courts has been to permit breaches of confidence where to do so would be in the public interest. (See, for example, *W v Egdell* [1988]).



7. In *AB Bingham* LCJ rejected the contention that information about previous offending was protected by any duty of confidentiality. He held that:

“I have great difficulty in accepting that the information which the NWP held which enabled them to disclose this connection was the subject of any duty of confidence owed to the applicants. But even if it was, it seems clear to me that the circumstances were such as to entitle the NWP to make such disclosure. It is hard to imagine circumstances in which the police could acquire information subject to a duty of confidence which would not entitle them to disclose that information when the public interest required them to do so.”

This aspect of the decision in *AB* indicates that there was little scope for arguments about equitable duties of confidence prior to the enactment of the statutory provisions on employment checking. It seems likely that there will be virtually none once those provisions are in force.

8. The converse side of the breach of confidence argument arises when one comes to consider whether the law recognises a “duty to warn” third parties of risk or danger. This concept was established in a series of psychiatric cases in the United States where clinicians were found liable in negligence for failing to warn third parties of an identifiable risk to identifiable persons. The leading case is *Tarasoff v Regents of the University of California* (1976) 17 Cal 3d where the Court held that a psychiatrist did have a duty to warn third parties. The point was considered by the Court of Appeal in *W v Egdell* [1990] 1 All ER 852. In that case a consultant psychiatrist had sought to send confidential information about a convicted murderer’s propensity to re-offend to the Home Secretary. The prisoner argued that such a disclosure was a breach of confidence and *inter alia* that there was no such duty to warn in the United Kingdom. Bingham LJ outlined the circumstances in which he considered disclosure was warranted. He stated:

“A consultant psychiatrist who becomes aware, even in the course of a confidential relationship, of information which leads him, in the exercise of what the court considers a sound professional judgment, to fear that such decisions may be made on the basis of inadequate information and with a real risk of consequent danger to the public is entitled to take such steps as are reasonable in all the circumstances to communicate the grounds of his concern to the responsible authorities.”



This authority stands to date as the definitive view on the discretion a clinical professional has to “warn” third parties of a risk posed by a patient which was disclosed in a confidential consultation. The clinician must ensure that he or she is acting in accordance with the practices of their peers and that the decision will be in accordance with the public law principle of reasonableness. Since the decision in *W v Egdell* there has been no further advance in the direction of a duty to warn.

8. **Common Law Principles.**

The general common law principles which should be applied to questions of disclosure of this type of information were also considered in *AB*. In that case the Secretary of State put forward three important principles which were broadly accepted by the Court. These were:

- “(1) There is a general presumption that information should not be disclosed, such a presumptions being based on a recognition of (a) the potentially serious effect on the ability of the convicted people to live a normal life; (b) the risk of violence to such people and (c) the risk that disclosure might drive them underground.”
- (2) There is a strong public interest in ensuring that police are able to disclose information about offenders where that is necessary for the prevention or detection of crime, or for the protection of young or other vulnerable people.
- (3) Each case should be considered carefully on its particular facts, assessing the risk posed by the individual offender; the vulnerability of those who may be at risk; and the impact of disclosure on the offender.

9. Bingham LCJ accepted the first of these principles as “important and necessary”. He found that where a public body comes into possession of information which is not generally available and is potentially damaging to that member of the public then that information ought not to be disclosed except to the extent necessary for performance of a public duty. He found that the second principle required an acceptance that the presumption against disclosure was not absolute but that the police would have to consider whether a limited disclosure was, in fact, necessary for the purpose of preventing crime or alerting the public to apprehended danger. On the third point Bingham LCJ held that it would be objectionable if a police force were to adopt a blanket policy of disseminating information about previous offending or the risk of future offending.



10. The decision of the Divisional Court in *AB* was appealed to the Court of Appeal. Lord Woolf MR upheld the stance taken by Bingham LCJ. He stated:
“Each case must be judged on its own facts. However, in doing this, it must be remembered that the decision to which the police have to come as to whether or not to disclose the identity of paedophiles to the public is a highly sensitive one. Disclosure should only be made when there is a pressing need for that disclosure. Before reaching their decision as to whether to disclose the police require as much information as can reasonably practicably be obtained in the circumstances.”

11. The second important case which considered the application of common law principles to the practice of pre-employment checking was that of *R v Local Authority in the Midlands ex parte LM* [2000] 1 FCR 736. Mr LM was the owner of a bus company which had a contract with a local education department for the transport of children to schools. This contract was terminated after police and social services disclosed details of two allegations of sexual offences against minors. The first allegation related to an incident some ten years previously when LM was employed as a care worker in a children’s hostel. The allegation had been fully investigated and no action was taken because of lack of corroborating evidence. The second allegation related to LM’s own daughter. During acrimonious divorce proceedings his wife had alleged that seven years previously LM had behaved inappropriately towards his daughter. There was no corroborating evidence and although the police investigated the only action taken was to place the family name on the Child Protection Register.

12. The matter came before the High Court by way of judicial review application. LM had sought assurances from police and social services that this information would not be disclosed in future contract applications. Dyson J found that such a disclosure would be unlawful. He referred back to the decisions in *AB* and held that:
“a blanket approach was impermissible. Having regard to the sensitivity of the issues raised by the allegations of sexual impropriety made against LM, disclosure should only be made if there is a “pressing need”.
The learned judge went on to identify three factors which should be considered in determining whether disclosure of allegations of sexual abuse should be made.



- Firstly, the public authority must reflect upon its own belief in the truth of the allegations. The greater the conviction that the allegation was true, the more pressing the need for disclosure. Secondly, the public authority should consider the legitimacy of the interest of the third party seeking disclosure of the information. The third factor to be weighed by the public authority was the degree of risk posed if disclosure was not made.
13. Both *AB* and *LM* were decisions which predate the introduction of the statutory framework in England and Wales. An obvious question is whether these common law principles can have any application in disclosure determinations made under the POCVA Order and Part V of the Police Act 1997. This question has, in fact, been the subject of detailed consideration by the High Court and Court of Appeal in *X v Chief Constable of the West Midlands Police*.
 14. X was a social worker with no previous adverse record. After a police interview he was charged in relation to two incidents of indecent exposure. When the complainant was unable to identify X the prosecution offered no evidence and the case collapsed. X subsequently applied to a social work agency for a position. The agency sought an enhanced criminal record certificate (ECRC) from the Criminal Records Bureau (CRB) under section 115 of the Police Act 1997. Approval was sought from the deputy Chief Constable of the West Midlands police for disclosure of the arrest for indecent exposure. Section 115(7) provides that:
“Before issuing an enhanced criminal record certificate the Secretary of State shall request the chief officer of every relevant police force to provide any information which, in the chief officer’s opinion – (a) might be relevant for the purpose described in the statement under subsection (2), (b) ought to be included in the certificate.”
 15. In the High Court (see [2004] 2 All ER 1) Wall J expressly considered whether common law principles were relevant to the application of section 115. He found that the Act did not exist in a vacuum and that the principles outlined in *AB* and *LM* were applicable. He noted that there was nothing in the body of the Act which displaced the principles of natural justice or procedural fairness. He considered whether the Applicant should have been afforded the opportunity to make representations on the Chief Constable’s proposed disclosure.



- He found that this fell within the duty to act fairly which was outlined in *Doody* [1993] 3 All ER 92 and that the failure to permit representations was a breach of procedural fairness. The decision to disclose the information on the ECRC was quashed.
16. The matter was subsequently considered by Woolf LCJ in the Court of Appeal (see [2005] 1 All ER 610). He affirmed the view expressed in the court below that the statute did not displace the common law duty of procedural fairness (see para 29). However, he held that the position is more positive in favour of disclosure of information under the Police Act 1997 than the learned judge had found. Woolf LCJ noted that the chief constable was under a duty to disclose if the information might be relevant, unless there was some reason for not making the disclosure. He then stated:

“This was obviously required by Parliament because it was important (for the protection of children and vulnerable adults) that the information should be disclosed even if it only might be true. If it might be true, the person who was proposing to employ the claimant should be able to take it into account before the decision was made as to whether or not to employ the person. This was the policy of the legislation in order to serve a pressing social need. In my judgment, it imposes too heavy a burden on the chief constable to require him to give an opportunity to a person to make representations prior to the chief constable performing his statutory duty of disclosure.”

17. **Article 8.**
The decisions in the *X v West Midlands* case provide an essential guide to the application of common law principles of fairness to the practice of employment vetting within the new statutory framework. However, the decisions are also of critical importance because they address the difficult issue of the application of Article 8 to employment checking. Prior to incorporation of the Convention in October 2000 the Article 8 point had been argued in a number of vetting cases. In both *AB* and *LM* the Article 8 points were taken. In one sense the argument had a greater potency at that stage because there was no statutory framework surrounding the disclosure of such information.



Consequently, it was always open to an applicant to argue that disclosure of vetting information was not “in accordance with law.” Now that statutory provisions have been introduced that argument cannot really be advanced as any such disclosure should be in accordance with the statutes.

18. The question of whether disclosures under Part V of the Police Act 1997 would be in contravention of Article 8 was considered by the Court of Appeal in *X v West Midlands* [2005] 1 All ER 610. In that case the parties were driven to accept that the legislation itself could not be held to have contravened Article 8. However, the Court did go on to consider whether the individual Chief Constable’s decision could be held to be a breach of Article 8(2). Lord Woolf noted that the statutory function fulfilled by the Chief Constable was insulated from challenge in large part, because the statute itself was in compliance with Article 8 (2). He went on to state:
“I accept that it is possible that there could be cases where the information should not be included in the ECRC because it is disproportionate to do so; the information might be as to some trifling matter; it may be that the evidence made it so unlikely that the information was correct that it again would be disproportionate to disclose it.”

Lord Woolf’s formulation on this point provides an essential indicator of the circumstances in which public authorities risk exposure to a successful challenge for breaching Article 8 of the Convention. It is clear that the scope for such a challenge will be limited.

Tony McGleenan

Bar Library
2nd March 2005



APPENDIX 5

POCVA - PROTECTION OF CHILDREN AND VULNERABLE ADULTS (NI) ORDER (2003)

Extract from Information Note 2, DHSSPS,
Child Care Policy Directorate, November 2004

MEANING OF A 'REGULATED POSITION'

The examples given below are intended to be illustrative and list is by no means exhaustive. Positions listed include those in the voluntary, community sector and sporting organisations. A full definition of regulated position is set out in Article 31 of the Order.

1. A regulated position is a position whose **normal duties** include:
 - work on day care premises;
 - caring, training, advising, counselling, supervising or being in sole charge of children;
 - unsupervised contact with children in arrangements made by a responsible person;
 - caring for children under the age of 16 in the course of the children's employment;
 - supervising or training in certain circumstances of children under 16 in the course of the children's employment; and
 - the supervision or management of an individual in a 'regulated' position.

2. A regulated position also refers to a position whose **normal duties** involve work in a **range of establishments**.



These include:

- institutions where children are exclusively or mainly detained under a court order or statutory provision;
- a hospital used exclusively or mainly for reception and treatment of children;
- a residential care or nursing home used mainly or exclusively for children;
- an education establishment; and
- a children's home.

3. Regulated positions also specifically include:

- members of Health and Social Services Boards and Health and Social Service Trusts;
- Directors of Social Services;
- a member or Chief Education Officer of an Education and Library Board;
- a member of the governing body of an education institution;
- trustee of a children's charity; and
- Commissioner for Children and Young People in Northern Ireland.



APPENDIX 6

REPORT OF PHASE 1 OF VETTING REVIEW BY THE NORTHERN IRELAND COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE (NICCY)

Contents

1. Introduction
2. Process
3. Issues from analysis and survey
4. Conclusion



1. Introduction

On 18th December, 2003, Nigel Williams, Commissioner for Children and Young People wrote to Paul Murphy, Secretary of State for Northern Ireland to express concern about the potential risks to the protection of children by perceived inadequacies in the system of vetting staff and volunteers who work with and care for them. In March, 2004 with the support of Mr Murphy, the Commissioner announced that he was conducting a review of vetting procedures. The review was prompted by Nigel Williams concerns that during the Bichard Inquiry in England, it was disclosed that Ian Huntley, who had been known to Social Services and the Police in North East Lincolnshire, slipped through the systems which had been set up to protect children. The Bichard Inquiry addressed concerns in relation to record keeping, vetting and information sharing in Humberside Police and Cambridgeshire Constabulary.

The Northern Ireland review which then proceeded has concentrated on vetting practices only. However issues relating to information sharing have been raised as part of this outside vetting processes review, but have not been thoroughly examined by the review team.

It is important at the outset to make a very clear statement that vetting is one part of recruitment and selection of staff and volunteers. It should not in any way lull employers into a false sense of security. The working group decided that there should be a minimum benchmark against which practice is assessed as follows:

No person should be placed in a position (either paid or unpaid), which involves contact with children, without being properly and effectively vetted.

In order for the vetting process to be effective, it should include the following:

- **Application form and job description;**
- **Interview;**
- **References, independently obtained, which ask questions on the applicant's suitability to work with children;**



- **Identity check including sight of birth certificate (and if appropriate marriage certificate) and photographic verification of identity, e.g. passport, driving licence; and**
- **For those who meet the current criteria (significant and unsupervised contact) PECS check which includes check of List 99 and Criminal Records.**

The overall purpose of the Children's Commissioner's review is establish if policy, guidance and practice in relation to vetting is adequate in Northern Ireland, in order to safeguard and protect children and young people from potential abusers.

2. Process

The review began in May 2004 with the establishment of a Reference Group, made up of Departmental Officials (DHSSPS), OFMDFM, NIO, NICCY and PSNI. The Reference Group agreed the Terms of Reference and modalities of the review. A much larger working group was then established to ensure commitment from all Government Departments, to assist with planning and carrying out an evaluation of Departmental policies, and employers practices. The Working Group was also supported by NGOS with particular interest or expertise in child protection.

The review cannot claim to be a comprehensive examination of policy and practice throughout Northern Ireland. Instead it offers an opportunity to sample practice, to enable positive changes to be made to the current systems.

In the first stage of the review questionnaires were sent to:

- Government Departments x 11 plus NIO.
- District Councils (all 26 sent questionnaires 8 were returned)
- FE Colleges (16 sent questionnaires 6 returned)
- DE to review of List 99 - list of teachers disqualified from teaching.
- DHSSPS to review the PECS Register – list of staff, disqualified from working with children.
- PSNI to review practices in relation to checking by Criminal Records Office.
- All Churches in N.I to review of Church practices.(6 church policies were forwarded to NICCY)



The purpose of this work was to review Government and other's responsibility in terms of issuing Policy and Guidance as well as to look at internal practices in relation to vetting. In addition, the first stage of the review sampled employers working in the fields of child care, education and sport and leisure, to establish awareness of employers responsibilities in relation to vetting, review practice and identify gaps in policy and practice.

3. Issues from analysis of questionnaires and survey

The following issues emerged from the analysis of the information. The issues identified are either specific to individual Departments or of wider, more general relevance. These are preceded by a general introduction, which looks at vetting arrangements in Northern Ireland in the context of forthcoming policy developments.

Current Vetting Arrangements and Future Legislative and Policy Developments

- **PRE-EMPLOYMENT CONSULTANCY SERVICE (PECS) DHSSPS**

The current system of employment checking in Northern Ireland is known as the Pre-Employment Consultancy Service (PECS) and has been in operation since 1981. The service provides a checking and signposting service to employers on the suitability of individuals with current or previous addresses in Northern Ireland seeking paid or unpaid employment in positions that involve work with children. Checks include references to the Department's PECS Register, which contains the names of individuals unsuitable to work with children, the Department of Education's List 99 (teachers unsuitable to work with children) and criminal record information held by PSNI. A check may also include the disclosure by the police of relevant non-conviction information.

PECS has tended to lead the way in the UK and although similar arrangements were started by the Department of Health (DoH) England and Wales, in Northern Ireland employment checking was extended to a much wider consumer base, being available to voluntary and community organisations where posts met the criteria for checking. The importance of suitability checking those who work with children and the role of PECS were highlighted by the SSI/DHSS inquiry following the Martin Huston Inquiry in 1993.



- **PROTECTION OF CHILDREN AND VULNERABLE ADULTS ORDER**

There were however problems with the structural arrangements for employment checking both in NI and England and Wales. In particular, the procedural basis for listings and referrals, the non-statutory basis for existence of lists of those unsuitable to work with children and lack of appeal for those subsequently listed. In England and Wales the UK government subsequently enacted a number of pieces of legislation (the Protection of Children and Care Standards Acts) to deal with these problems and associated human rights issues that they raised.

In Northern Ireland, equivalent legislation the Protection of Children and Vulnerable Adults (NI) Order 2003 (POCVA) was enacted by Parliament in February 2003. The Order which will be implemented in stages through 2004 and 2005 establishes:

- A requirement for childcare organisations to carry out checking for childcare positions and to refer (to the DHSSPS) those dismissed (or individuals who would have been dismissed), suspended or transferred from a child care position on the grounds that an individual had harmed a child or placed a child at risk of harm;
- A new statutory list the 'Disqualified from Working with Children List' with a right of appeal to a Care Tribunal;
- Accreditation arrangements for non-child care organisations. Organisations when accredited, will have similar duties as child care organisations in terms of checking and referrals;
- A whistle-blowing facility;
- Disqualification orders and a new criminal offence of applying for work in regulated positions while disqualified or Listed.

- **PART V OF THE POLICE ACT AND REFORM OF PRE-EMPLOYMENT CHECKING**

On 22nd June 2004, the Secretary of State for Northern Ireland announced his intention to reform the current system of pre-employment checking in Northern Ireland. The review will also consider issues of reform through the implementation of Part V of the 1997 Police Act.



Part V of the Police Act, while applying to Northern Ireland had never been commenced by government. The legislation allows the provision by the Secretary of State, of a number of types of criminal record certificate (basic, standard and enhanced) for a number of purposes. The legislation also gives the police, through its Chief Officer, a statutory scheme to disclose relevant non-conviction information (soft intelligence) and has facilitated government in the creation of the Criminal Records Bureau (CRB).

In implementing Part V, it is likely that there will be substantive changes to the system, process and architecture of vetting and employment checking in Northern Ireland. NIO have established the Employment Checking, Reform and Implementation Team (ECRIT) to take this forward and a public consultation will take place on models later this year.

- **THE BICHARD INQUIRY**

The Bichard Inquiry Report was published in June 2002 and made 31 recommendations to government about reform to the system of vetting. Some of these recommendations have UK-wide significance and Sir Michael Bichard intends reconvening his Inquiry in November to look at progress. The Home Office has established a number of inter-departmental working groups to take forward the recommendations in Bichard. While work is at an early stage, the outworking of these groups will also have implications for employment checking and vetting in Northern Ireland. Some possible developments may include:

- Amalgamation of the Department for Education and Skills (DfES) List 99 and DoH Lists into one composite list;
- Possible new mechanisms to refer unsuitable individuals and ways to have them listed that move away from an employment-based context. For example, on the foot of a serious social services/police investigation into child abuse; and
- New information sharing protocols between child protection agencies and police forces.



ISSUES ARISING FROM WORKING GROUP AND QUESTIONNAIRES.

a. **NEED FOR CENTRAL GOVERNMENT POLICY AND GUIDANCE**

Many Departments deferred to the Central DFP recruitment Policies, there is a need to clarify whether these policies take account of child protection vetting and whether they are consistently applied across Government and out through government funded organisations.

b. **SIMPLIFYING CURRENT ARRANGEMENTS** - The current system of employment checking as it has evolved has become very complex in terms of processes. Pending new arrangements with the implementation of Part V of the Police Act, should DHSSPS give consideration to simplifying PECS arrangements, including the process of checking and the request forms used? For example, is it feasible for the arrangements currently in place for HSS Trusts to be extended to all registered PECS users.

c. **QUALIFYING POSTS** - Current PECS criteria restricts the range of posts on which checks can be carried out. DHSSPS, as of November 2004, will be changing the criteria to access employment checking using the definition of regulated positions as set out in Article 31 of POCVA. This will replace the substantial and unsupervised access threshold currently in use. There is a need to establish the precise impact the introduction of the Protection of Children & Vulnerable Adults (NI) Order (2003) (POCVA) will have on existing rules. In particular while the requirement to check and offences (under POCVA) relate to clearly defined posts, can the facilitation of checking be extended to a much wider range of posts? Examples of posts which do not qualify under current or new definitions include:

- Caretaker in Community Centres (where Playgroups are run);
- 11 plus tutors or any tutor working independently;
- Self employed children's entertainers. There has been an example of a registered sex offender attempting to get work as a children's entertainer;
- Those in positions of trust and authority but with no **direct** contact with children.



- d. **RETROSPECTIVE CHECKS** — Will this be possible under new legislative arrangements and are there plans to deal with retrospective checking through phased introduction?
- e. **GUIDANCE** – The issue of guidance to support a system of vetting needs to be explored. There is evidence, particularly among smaller voluntary and community organisations, of a need for guidance which covers:
- *Dealing with criminal convictions.* The issue of paramilitary-related convictions is unique to Northern Ireland and makes decision-making very difficult for employing organisations;
 - *Identity checking.* Organisations need to be guided on what checks should be conducted to verify an individual's identity. It is worth noting that identity fraud is one of the difficulties experienced by the Criminal Records Bureau (CRB) in England and Wales. While this issue was dealt with in the DHSSPS publication 'Safer Organisations Safer Children', it perhaps needs to be restated or re-affirmed, particularly in light of the events at Soham and some of the varying practices highlighted in questionnaire returns.
 - *Sharing information.* Organisations need to be made aware of whistle-blowing arrangements under POCVA. Clear procedures for reporting concerns about failures to comply with requirements under POCVA need to be established. A system which is designed to protect children needs to not only prevent unsuitable individuals from working with children (through vetting systems) but also ensure that such individuals are removed from positions which give them access to children.
 - *Monitoring/auditing of sponsored bodies.* Almost all Government Departments fund other agencies/bodies, however there was little reference by any of the Departments to their considerable role in auditing practice in relation to vetting. Consideration needs to be given to making funding dependent upon good vetting practices which would be monitored by the sponsoring Department. There was particular reference to staff employed to carry out consultations with children and young people on behalf of Government undergoing proper vetting checks.



f. **CROSS-GOVERNMENT SUPPORT FOR CHILD PROTECTION** - There is some evidence that not all government departments believe that they have a role to play in protecting children. This was apparent in returns to the NICCY questionnaires where there appeared to be a degree of confusion between checking of staff in government departments and responsibly in developing employment-checking policy in next step and sponsored agencies. A number of common themes came across in returns which included:

- The need to develop specific employment checking guidance based on each government department's role. This should be customised to the particular functions of next step agencies and sponsored bodies.
- A customised departmental child protection policy document or policy statement that incorporates employment checking as one of its features;
- Audit, review and inspection arrangements for employment checking in departments and next step agencies etc;
- Procedures for government departments to be made aware of staff in next step agencies who may be deemed to be unsuitable to work with children. Note while the new reporting requirements in POCVA will apply to childcare organisations for childcare posts and accredited bodies, there will be no statutory requirement to report staff dismissed for harming children to DHSSPS. Most next step agencies will fall outside the statutory requirements to refer or accreditation.
- Funding arrangements and grant making to be related to appropriate child protection and employment checking standards.

In relation to these points, whilst DHSSPS carries policy and legislative responsibility for child protection, there are opportunities for other departments to assist DHSSPS as the lead government department. Of particular relevance is the system of accreditation which will be established under POCVA and the potential to link funding awards to the voluntary and community sectors, to clearly defined child protection quality standards. The NI Bichard Programme Board, chaired by NIO and OFM/DFM, should be asked to advise on the most suitable and effective mechanism for achieving co-operation across all relevant departments.



- g. **SUPPORT FOR THE VOLUNTARY SECTOR** – New requirements of suitability checking in regulated positions and the effects of accreditation in POCVA are likely to have a major impact on the voluntary sector where 50% of current PECS checking originates. Support is available in the form of the PECS in Partnership model. It does not operate in some areas, significantly Belfast, and relies on the goodwill and support of the Volunteer Bureau Network. Some Bureau are not prepared/cannot afford to operate the scheme. This model could be examined to establish if it could be developed.
- h. **LIMITATIONS OF VETTING** – All group members were keen to place ‘vetting’ and ‘vetting systems’ in the overall context of a recruitment and selection package. It needs to be supported by effective interviewing, reference taking and follow-up and supportive induction and training regimes.
- i. **TEACHERS** – There is a need to ensure that all teachers in all schools, including those in the independent sector, are being checked to required levels and against all relevant sources of information, including lists of individuals considered unsuitable to work with children. It has been established that a list of substitute teachers exists which is administered by the Belfast Education & Library Board. All schools, employing substitute teachers, should ensure that they are selected from the substitute teacher register (www.nistr.org). ETI should be responsible for ensuring the adequacy of employment checking regimes across the education sector.
- j. **OTHER EDUCATION ISSUES ANCILLARY AND CONTRACT STAFF** – The position in relation to the consistency of checks on non-teaching staff in schools and those employed in the Further Education sector needs to be clarified. Schools and Colleges should ensure that ancillary staff are suitability checked before taking up post. Some schools will employ contract staff, see I. below, and for certain posts these may not be within existing criteria for checking notwithstanding contact with children. Schools may also have contractors on site who by the nature of their duties may have contact with children but fall outside existing vetting criteria and arrangements. These positions underline the need for good practice arrangements in employment to be set in the context of child protection practices.



- k. **District Councils** – District Councils have considerable responsibilities for Play and Leisure facilities, and therefore employ staff who would interact through Parks, Leisure Centres etc with Children and Young People and who are required to be vetted. However there appears to be a lack of consistent practice across Northern Ireland, and it would be very useful for those responsible for District Councils to meet to determine policies and procedures applicable to employment practices and to examine child protection policies to draw out similarities and differences to enable standardization across Northern Ireland.
- l. **EMPLOYMENT AGENCIES** – The position in relation to checks on staff ‘supplied’ (through employment agencies) to work with children needs to be clarified. Where does the responsibility for carrying out checks currently lie? It is not possible to regulate for all circumstances and awareness raising may need to be supplemented with other types of guidance and support.
- m. **CHURCHES** – NICCY’s approach to Churches was to ask for a copy of their Child Protection Policies which were then reviewed by the Volunteer Development Agency. For the purpose of this report, it must be noted that not all referenced recruitment and selection procedures. It would be helpful if all churches could clarify the roles of all those who occupy positions of “trust” as part of their congregational activities, in terms of contact with children and young people, and whether vetting occurs in relation to those who hold these positions.
- n. **POLICE INTELLIGENCE INFORMATION** – There is a need to establish confidence in the disclosure of soft intelligence by PSNI. What is disclosed? How many disclosures have there been in the past? Is there a consistency in disclosure process, for example, would the police be less likely to disclose to a voluntary or community group? What criteria are applied?
- o. **IDENTIFIED GAPS** – A number of gaps have been identified including :
- Registration by the NITB of B&Bs does not require police check notwithstanding vulnerable children may be placed there by social services/NIHE. Recent example of a registered sex offender trying to set up a B&B;
 - PSNI Officers who have direct contact with children and young people should be vetted on child protection grounds;



- Prison Services are not PECS checking staff including those in a Young Offenders Centre which provides access to very vulnerable children/female offenders under 16;
 - Taxi drivers checked by DoE but not PECS checked (note that a taxi driver is listed in the Rehabilitation of Offenders Exceptions Order in England and Wales but not in NI);
 - Doctors and other NHS staff. Checks on staff in hospitals is currently restricted to those working with children. Is there a need to expand this to all hospital staff with access to patients particularly in light of the announcement by John Hutton that all new recruits to the NHS would be checked through CRB.
 - Military personnel. This raises complex inter-jurisdictional and intercountry questions about prosecution and conviction data as well as soft intelligence data that is held by RMP and MoD police forces. It is far from clear about what information is held on military personnel and their families and how it is disclosed. Given the number of military personnel and their families living in Northern Ireland and at times their transient lifestyle this is an important to clarify.
- p. **COSTS** - A number of concerns have been expressed about costs particularly with the planned introduction of new legislation, which will result in greater numbers of posts being checked. The voluntary and community sectors are particularly nervous, given their reliance on unpaid volunteers. Even if checks for volunteers are free, as provisionally indicated by government, there may be significant hidden costs in processing of these. Departments should seek to clarify their plans to introduce charges as soon as possible.
- q. **CROSS-BORDER ISSUES** – The land border with the Republic of Ireland has the potential to be exploited by individuals unsuitable to work with children. In addition most sporting organisations are organised on a four county all-Ireland basis making policy development and practice quite complicated for large sporting organisations. This also applies to many of the main churches. Until recently, employment checking in RoI was limited to criminal record checks and this was only available to a relatively small number of bodies and posts and did not include teachers.



- Following an announcement by the Minister, Brian Lenihan, TD on 23rd September, Garda vetting is to be extended to a much wider range of posts although it is uncertain if the recommendations contained in the Garda Vetting Review (Annex 2) will be acted upon. Government should seek to harmonise vetting arrangements across the island of Ireland to ensure that the risks posed by these individuals in employment settings are kept to a minimum.
- r. **PARENTAL RESPONSIBILITY** - Whatever system to vet staff and volunteers who work with children is put in place, it cannot be full proof. Children and young people can be exposed to risks in situations where checking is not possible, e.g. in shops, through their own employment etc. There is a need for parents to exercise caution and vigilance when placing their children in situations where parental supervision is absent. "Have Fun and Be Safe", a leaflet produced by the Volunteer Development Agency and NSPCC in 2000, provided some advice to parents in these situations.
 - s. **EMPLOYERS** - Awareness of documents and procedures that relate to vetting varies widely, with Pre-Employment Consultancy Service (Pecs) being the most widely known and list 99 prompting the least awareness. Recruitment practices differed significantly with most organizations conducting interviews but with fewer undertaking Pecs checks and asking for identity verification. Less than two thirds of the sampled survey (794) had a formal policy in place for vetting employees/volunteers.
 - t. **PUBLIC AWARENESS** – There is significant activity in this area including the imminent introduction of two major pieces of legislation, the Protection of Children & Vulnerable Adults Order (2003) and Part V of the Police Act (1997). There is the potential for confusion among organisations. We need to ensure that introduction of the above is synchronised as far as possible and that both are supported by effective awareness-raising campaigns and that all relevant departments play a role by ensuring that their constituents are kept informed of developments.



4. Conclusion

Phase 1 of the review has now been completed. The Independent Chair, Mrs Ruth Lavery, is reviewing all the papers, analyses and reports produced by NICCY. Mrs Lavery will identify areas for further enquiry. She has made plans to meet a range of key professionals at Government and organisational level. Focus groups with parents and children will be set up in January 2005. Mrs Lavery then intends to produce a report based on the analysis of information produced in phase 1, and on her own enquiries, as well as written and oral submissions made in phase 2 of the Review.

Teresa Devlin
December, 2004

