



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Review of the Criminal Records Regime in
Northern Ireland

14 November 2013

NORTHERN IRELAND ASSEMBLY

Committee for Justice

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Sydney Anderson
Mr Tom Elliott
Mr Alban Maginness
Ms Rosaleen McCorley
Mr Jim Wells

Witnesses:

Mr Tom Clarke	AccessNI
Mr Gary Archibald	Department of Justice
Ms Maura Campbell	Department of Justice
Ms Debbie Pritchard	Department of Justice

The Chairperson: I formally welcome to the meeting Maura Campbell and Gary Archibald from the criminal justice development division of the Department of Justice; Debbie Pritchard from the protection and organised crime division in the Department; and Tom Clarke, who is the operation manager at Access NI. The meeting will be recorded by Hansard and published in due course. Maura, I hand over to you to take us through your briefing.

Ms Maura Campbell (Department of Justice): Thank you very much, Chair. As the Committee will be aware, since the publication of Sunita Mason's report on the review of the criminal records regime, we have provided you with a series of briefings on how the Department has been responding to her recommendations. A number of those recommendations were implemented very swiftly since they were within existing policy and reinforced current best practice; however, we have also undertaken two public consultations on her remaining recommendations.

The purpose of today's briefing is to update you on the outcome of a second public consultation exercise covering two recommendations from her first report, which considered the regime for the disclosure of criminal records; and two from her second report, which looked at the management of criminal records information. Consultation on some of the part 1 recommendations was completed in June 2012; however, recommendations 9 and 10 from her part 1 report were held over for consultation, alongside the part 2 report, given that there were some important linkages between the issues covered. Those recommendations were in relation to, first, the routine disclosure by Access NI of non-conviction information, such as cautions on standard and enhanced checks; and, secondly, proposals to filter out convictions that are both old and minor and non-conviction information for disclosure purposes.

As the Committee will be aware from the briefing provided by my colleagues on 17 October, the Minister has decided that, in view of the judgements in the MM case and the Court of Appeal in England and Wales, a statutory scheme to filter convictions that are both old and minor and disposals such as cautions should be introduced here. The filtering scheme will, in effect, implement recommendations 9 and 10 of the first report. At the meeting on 17 October, the Committee agreed that the Department should bring its proposals for the introduction of the new filtering system for Access NI disclosures to the Executive and that it would consider the matter further in due course. The Minister has written to Executive colleagues about the proposal, and we hope that it will be considered at the Executive meeting scheduled for 28 November. The relevant recommendations in the part 2 report are recommendations 2 and 4, which cover the proposed working definition of a criminal record and the period for which records should be retained in the Causeway system.

We have provided a detailed analysis of the responses received during the consultation, which were broadly supportive of Mrs Mason's recommendations and also set our proposed response to them. I want to highlight one issue that attracted particular attention, which is the question of what should be held on a young person's criminal record. As you will be aware, the youth justice review recommended that, for young people, diversionary disposals should not attract a criminal record or be disclosed to employers, and the review team also thought that young offenders should be able to apply for a clean slate at the age of 18. I should make it clear that Mrs Mason was fully aware of the review team's recommendation when she was completing her part 2 report, and she reflecting very carefully on its conclusions. Her recommendation was that an individual's criminal record should be defined as all recordable criminal offences in respect of which an individual has been convicted or received a caution, an informed warning or a diversionary youth conference.

Although on the face of it, the recommendations from the two reports look quite different, I think that the supporting narrative in each of the reports indicates that the thinking was not that far apart. The review team acknowledged that some young people would need to be screened out of the workforce because they posed a real danger to children or to vulnerable adults. The review team also acknowledged that the proposed clean-slate approach would not be suitable for cases involving serious offences. We think that both reviews were very mindful of the need to avoid young people being stigmatised by having a criminal record, and both also acknowledged the need to balance that with the need to protect the public, particularly vulnerable people. As a result of the consultation exercise, the Minister has decided to accept three of the four recommendations in full. As I said earlier, filtering will address recommendations 9 and 10 from the part 1 report.

With regard to the part 2 recommendations, we intend to implement the new timescale for the retention of a criminal record, which is 100 years from birth, with effect from 1 January, by creating the facility to do that in the Causeway system. In response to an issue raised by Mr Weir during a previous Committee appearance, at the 100-year point, the information will be archived so that it will be available for future research.

The Minister has accepted in principle the recommendation on the working definition of a criminal record, but we intend to look at that again following a review of recordable and non-recordable offences in light of the consultation feedback.

We are happy to take questions at this point.

The Chairperson: Thank you. The main issue that I want to home in on is where Sunita differs from what the youth justice review said about young people. Can you elaborate on what the Minister is doing to reconcile those two? I am not 100% clear on what the Minister plans to take forward.

Ms M Campbell: The Minister has agreed in principle to adopt the working definition that Mrs Mason proposed. A number of consultees noted that we were planning to do this review of recordable and non-recordable offences and felt that, before they could take a definitive view on it, they wanted to see the outcome of the review, which is why we have undertaken to look at it again. We highlighted to the Minister that there was a slight difference in emphasis in the two reports; we made that very clear to him. That has been reflected in the implementation plans for the youth justice review, where we have made it clear that, in effect, adopting Mrs Mason's recommendation means that we are not accepting the recommendation in the review team's report.

However, the Minister was keen to ensure that the full package of measures that we are taking would achieve proportionality. I think that there is consensus on proportionality, which is that you cannot go to one extreme or the other. On one hand, you do not want to stigmatise young people or leave a permanent blight on their record; on the other, however, you need to ensure that there is protection for

the public. Moreover, the best interests of the child have been foremost in our considerations, although it could be argued that, in relation to Mrs Mason's approach, it is a fuller consideration, as we are also looking at the interests of child victims and not just at young people who offend, which was the focus of the youth justice review team. Given the number of ways in which a criminal record can be narrowed down — recordable or non-recordable, spent convictions, stepping-down arrangements for non-conviction information, filtering, and the operation of the disclosure regime, which differentiates between standard and enhanced checks — I think that the Minister was persuaded that, taking all that together, it should ensure that the focus will be on offences committed by young people that have a direct bearing on public protection and ensure that we are not putting vulnerable people and children unnecessarily at risk.

The Chairperson: Sunita Mason, as you point out, was concerned that public protection could be diminished if we implemented the youth justice review's recommendation. Part of that was in respect of the victim. Did she spell out exactly her concerns around public protection? In what way would public protection be diminished?

Ms M Campbell: I think that, if you adopted a clean-slate approach at 18 and there was no information on the individual's criminal record from that point, the risk would be that the danger that that individual posed would not be identified in future through disclosure regimes. Given that young people can commit serious offences, and even the offences for which non-conviction disposals can be given can be quite serious and involve an admission of guilt, she felt that it was too big a risk to go down that route.

The Chairperson: And the Minister agrees.

Ms M Campbell: He agrees with that position.

The Chairperson: Recommendation 10 proposes filtering out convictions that are old and minor, and states:

"The Department should consult widely on this to ensure their proposals command appropriate support."

Do you envisage any difficulty with that recommendation?

Ms Debbie Pritchard (Department of Justice): I think that we briefed the Committee on 17 October on our filtering proposals. We received legal advice from the Attorney General and from senior counsel, which we sent to the Committee that day, that there was a risk that we are now in breach of article 8 of the European Convention on Human Rights, so we need to move quickly to put a filtering scheme in place.

It will be akin to the filtering scheme at the Home Office, but it will recognise that there are other offences in Northern Ireland that we need to add in to ensure that the scheme recognises the position of young people. There will be shorter timescales in relation to filtering out offences, although certain serious offences will never be filtered out.

On the basis that we had Sunita Mason's report, we had at least already consulted on the principle of filtering. With the advice from the Attorney General and from senior counsel that we needed to move quickly, we decided that we did not have time for a further public consultation. We hope to go to the Executive at the end of November with the detail of the scheme and come back to the Committee.

The Chairperson: Recommendation 9 states:

"Where this involves a young person the information should only be disclosed if the offence is recent."

How is that reconciled with Sunita Mason saying that it should be revealed?

Ms Pritchard: The two recommendations go almost hand in hand because she said that non-conviction information should be disclosed only if it was recent. For a young person, an informed warning will be disclosed after only a year. Under the filtering scheme, a caution, diversion or youth

conference will be disclosed after two years. It is two and a half years at the minute. A conviction, provided that it refers to non-specified offences, will be filtered out after five and a half years.

The Chairperson: Thank you very much.