NIACRO

12th September 2014

Dear Christine,

Thank you for the opportunity to respond to the Committee Stage of the Justice Bill. NIACRO is a voluntary organisation, working for more than 40 years to reduce crime and its impact on people and communities. NIACRO provides services for and works with children and young people, with adults in the community, and with people in prison and their families, whilst working to influence others and apply all of our resources effectively.

NIACRO receives funding from, and works in partnership with, a range of statutory departments and agencies in Northern Ireland, including criminal justice, health, social services, housing and others.

We welcome the opportunity to provide comments on the proposals and are keen to engage further if that would be helpful.

If you require any further information, please do not hesitate to contact me.

We look forward to receiving the final document.

Yours sincerely

Olwen Lyner
Chief Executive

Justice Bill – Comments on Part, 3, 4, 5 and 8

Introduction

- NIACRO welcomes the opportunity to respond to the Committee Stage of the Justice Bill.

- NIACRO is a voluntary organisation working for more than 40 years to reduce crime and its impact on people and communities. We provide services for children and young people, people in prison and their families, and adults in the community. The services we deliver inform our policy position and provide us with the insight needed to provide meaningful comment on policy and legislation.

- We have previously provided responses to many of the consultations which have formed the basis of the proposals in this legislation including: the NIO Alternatives to Prosecution Discussion Paper; the DOJ consultation on the Victims and Witnesses Strategy; Part 1 and Part 2 of Sunita Mason's Review of the Criminal Records Regime in Northern Ireland; the DOJ consultation on Managing Criminal Cases; the DOJ consultation on the Reform of the Committal Proceedings; and the DOJ consultation on Encouraging Earlier Guilty Pleas.

- In developing our response to the draft Justice Bill, we have engaged with Victim Support Northern Ireland. Many of the points made in this response are supported by Victim Support, and we would be happy to provide joint oral evidence with the organisation – particularly on Parts 4 and 8. This is indicative of both NIACRO and Victim Support's commitment to justice, truth and connectivity, as well as partnership working in the voluntary and community sector.

- We have provided comments in this paper on **Parts 3, 4, 5 and 8,** which are informed by our work with people in, affected by or at risk of entering the Criminal Justice System.

Part 3 Prosecutorial Fines – Clauses 17 - 26

- Part 3 of the Bill creates new powers to enable public prosecutors to offer people who have committed lower level offences a financial penalty, up to a maximum of £200 (the equivalent of a level 1 court fine) as an alternative to prosecution of the case at court.

General Comments

- We welcome proposals to divert people from the courts process which can have a detrimental financial and emotional impact.

- However, we believe that many of the people who currently receive fines for minor offences or for civil matters should, as an alternative, be offered appropriate intervention on a voluntary basis at an early stage and be diverted out of the Criminal Justice System altogether. Using financial penalties in lieu of prosecution will mean that people who don't have the financial capability to pay will be discriminated against and will be more likely to end up with a criminal record.

- Our position in relation to defaulting on the payment of fines, imposed for minor offences or for civil matters, is that it should not result in imprisonment. It is estimated that a four day committal to prison costs £3,000 per person and this doesn't include the financial cost to families and children. We have examples of people being imprisoned for not paying penalties as little as £5 and £10. The cost of sending people to prison for such minimal amounts is grossly disproportionate to the cost of the original fine, to the detriment of the person imprisoned, their family and the Criminal Justice System. We recognise that the practice of automatically imprisoning fine defaulters is currently on pause, however **we recommend this policy is clarified and formalised**.

- Under these proposals**,** failure to pay a Prosecutorial Fine is likely to lead to enforcement and the possibility of imprisonment for a matter which the Public Prosecution Service initially regarded as a low level summary matter. NIACRO therefore is concerned that this could regress recent progress in fine default.

Using Prosecutorial Fines

- It is proposed that Prosecutorial Fines will be used for low level summary offences. However, no definition has been given in the legislation by what is meant by a 'low level summary offence'. **We recommend that a low level summary offence is clearly defined in the secondary guidance and reviewed regularly to an agreed timescale**.

Fine default

- We welcome that the recovery of Prosecutorial Fines will use existing court fine recovery mechanisms. We welcomed the proposals[1] to establish a Fine Collection and Enforcement Service in the DOJ's consultation on Fine Collection and Enforcement in Northern Ireland. The new Service should carry out a financial assessment so that the individual's responsibilities in respect of his/her self and his/her dependents are taken into consideration before a fine is given.

- In this consultation, we also welcomed the proposals to establish a civilian based approach to fine collection instead of a police arrest warrant approach. We believe that it would be appropriate for the Fine Collection Service to become involved as a first step where a fine has been imposed, offering the opportunity to complete a Supervised Activity Order (SAO) to those for whom payment of a fine is unrealistic. The service could use positive measures such

[1] NIACRO (2014) Consultation response to the DOJ Consultation on Fine Collection and Enforcement in Northern Ireland http://www.niacro.co.uk/filestore/documents/current_issues/web_response1.pdf

as extending the time available to pay; making arrangements to pay by instalments; and issuing reminders when a fine is overdue, which have already been shown to be useful in reducing default.

- We understand, for many people, under the present arrangements, it just doesn't make sense to pay. For example, for those individuals who have been in and out of prison in the past, their choice is between either paying a fine out of a limited income, or going into prison for a relatively short period of time. Going into prison may well be the 'lesser of two evils' or the easiest choice to make. For others who are still appearing before the courts on other matters and there is perhaps a likelihood of imprisonment in the near future, it might make sense to them to have the fine warrant lodged at the same time so that the required period of time can be served concurrently with their sentence.

- **Based on this, we recommend that**:

  - any legislative proposals to improve the system need to recognise the choices individuals will make depending on their particular circumstances; and
  - any improvements to the system must also make sense to and appeal to, the individuals concerned.

Alternatives to financial penalties

- Conscious of the impact that a criminal conviction can have on access to a range of services and employment opportunities, it is important that society does not impose penalties which can have far reaching negative consequences and which could be regarded as disproportionate to the seriousness of the original offence.

- In our response to the DOJ Consultation on Fine Collection and Enforcement in Northern Ireland[2], we recommended that for those individuals who are unable to pay a fine in the first place, they should be offered the opportunity to complete a Supervised Activity Order as a direct alternative to paying the fine. It should not be an alternative to going into custody for non-payment of a fine. We recommended that an SAO should be offered as an direct alternative for payment of fines up to £500 given that 86% of fines imposed are for less than £500 and 90% of people defaulting on fines do so for amounts less than £500.

- We know from experience that the reasons why people offend are complex and varied. Fines continue to be the most popular disposals used by courts, and for the majority of people appearing there for the first time, paying a fine will be a salutary lesson and they are unlikely to re-offend. However, imposing repeat fines is clearly not addressing the offending behaviour and **we recommend that the courts should be able to direct people to complete an appropriate SAO as an alternative to a payment of a fine**.

- We welcome efforts by the courts to establish clarity about a person's financial circumstances before imposing a fine. If a person has been shown to have had a history of defaulting in respect of fines, then the Court could consider allowing a Supervised Activity Order (SAO) to be completed instead of going into prison.

[2] NIACRO (2014) Consultation response to the DOJ Consultation on Fine Collection and Enforcement in Northern Ireland http://www.niacro.co.uk/filestore/documents/current_issues/web_response1.pdf

However, the person with such a history is likely to view going to prison as the option which makes most sense to them. It is therefore not surprising that the pilot SAO scheme experienced a significant number of people breaching the order. Furthermore, it stated in the DOJ consultation on Fine Collection and Enforcement in Northern Ireland that "those participating agreed that the SAO had a deterrent effect and if the same situation arose in the future they would pay the fine". This comment appears to suggest that completing the SAO would effectively deter a person from defaulting on their fine in future.

- **We recommend that an SAO (which will be established in statute in the forthcoming Fines and Enforcement Bill) should be purposeful and relevant**. It should be related to the original offence, proportionate, and contribute towards desistance from offending. For example, if an individual is experiencing difficulty managing money, they could be directed to participate in a Managing Money Matters accredited programme, such as that delivered regularly by NIACRO. **We recommend that if a person has been fined for an alcohol related offence, which is common, they could be directed to complete an Alcohol Awareness programme**.

Right to seek legal advice

- It must be noted that the person who is alleged to have committed an offence has the right to due process and justice. They can choose not to accept the Prosecutorial Fine notice and go to court and challenge it. NIACRO believes that anyone in contact with the Criminal Justice System has the right to seek legal advice before accepting a disposal.

Avoiding criminal record?

- Prosecutorial Fines aim to divert people out of the Criminal Justice System like diversionary disposals. However, such disposals, even though they aren't convictions, can be disclosed in an Enhanced Check if deemed relevant by the police.

- On page 18 pt 77 of the Explanatory Memorandum, it states that a person will avoid a formal criminal record if the Prosecutorial Fine is accepted and paid; however, the justice system will retain a record of such disposals to inform decision on any future offending by the recipients of Prosecutorial Fines. **We recommend that clarification is given about how long this information will be disclosable for and under what circumstances.** Information such as this (non conviction) can be disclosed in an Enhanced Disclosure Check for certain convictions. If the aim of a Prosecutorial Fine is to divert people from entering the Criminal Justice System and getting a criminal record, retaining this information would constitute that they have some sort of record (informal).

- For certain convictions, there are rehabilitation periods after which they become spent and aren't disclosable anymore. **We recommend that clarification is needed about whether Prosecutorial Fines will be subject to the new filtering arrangements.**

- We believe that there should be a duty on the solicitors and the legal profession to make the defendant aware of the potential impact that accepting a Prosecutorial Fine could have. For example, it could show up on an Enhanced

Disclosure Certificate. By making their client aware, the client can make an informed decision about what course of action to take.

- People also need to be made aware that if they default on the fine, it will become a court ordered fine, which is a conviction and is disclosable under the Rehabilitation of Offenders legislation.

- We comment on non-conviction information in Part 5 of this response. Non - conviction information can result in barriers to an individual's employment. We know from our experience of working with those seeking training and employment that education or placement providers may choose to cancel offers of enrolment on a course or of employment on the basis of non-conviction information. Employers and training providers do not understand how to interpret, or make any distinction between, conviction and non-conviction information, resulting in people being excluded from opportunities, unfairly judged and criminalised.

- NIACRO has repeatedly called for non-conviction information to be stepped down immediately and not disclosed unless there is a proven risk of harm. This should apply to adults as well as young people.

- In our comments on Clause 39 (Part 5, pg 12) of the Justice Bill, NIACRO states that the current system in relation to disclosure of conviction information is inconsistent and open to interpretation, because the PSNI uses its discretion to disclose information that "might be relevant", which is not always necessary or proportionate. **We would therefore recommend a more robust system that allows information to be disclosed in a consistent manner with clearer guidelines in place for the PSNI**, as currently the wrongful disclosure of this kind of conviction has a negative impact on the employment opportunities of people.

- **We recommend that the PPS publishes guidance for individuals who have been offered a Prosecutorial Fine**. The guidance must be published and subject to full public consultation before this part of the Bill is enacted. It should outline: the Prosecutorial Fine process; what a low level summary offence is; in what scenarios the Fine will be offered; outline the obligation of the prosecutor to explain what the Fine is; the long terms impacts it could have; the alternatives available to not paying the Fine; what the record on the Fine will be used for; and who can access the record. **We also recommend that the guidance clarifies how or whether the record of the Prosecutorial Fine could be accessed by the PSNI or AccessNI**; as stately previously, where non conviction information has been wrongfully disclosed, it can lead to people being denied access to education, training, employment and other services.

Part 4 Victims and Witnesses

The Victim Charter

- NIACRO understands that the Justice Bill will place the Victim Charter currently being developed by the Department of Justice (DOJ) on a statutory footing. We support the Charter being included in the Justice Bill, and in general agree with the principles outlined and the approach of the Charter. We have provided more detailed comments on the content of the Charter in our response to the DOJ

consultation on the Draft Victim Charter (September 2014). **Key recommendations made in our response include**:

- The Charter should recognise the specific circumstances of victims who are family members of the defendant (see case study 1, Appendix 1).
- It should also be expanded to recognise the indirect victims of crime, which includes the families of the defendant who also need the guidance and support provided in the Charter when they come into contact with the Criminal Justice System. These families are victims of the Criminal Justice System and of the sentence, especially when there is a custodial sentence. There must be a clear emphasis on the concept of 'innocent until proven guilty' and the 'silent sentence' handed to the families of defendants (see case study 4, Appendix 1).
- The Charter (or the information contained in it) must be accessible and clearly communicated. This should include the use of visual aids such as diagrams, plain and understandable language, audio descriptions, and copies in different languages. Victims should also have the opportunity to have it explained to them face-to-face.

Meaning of Victim

- The draft Bill describes a victim as "an individual who is a victim of criminal conduct". We agree with the definition of victim given, in relation to the Victim Charter, but advise that "an individual who is a victim of criminal conduct" can reasonably also include *indirect* victims and victims of the Criminal Justice System, namely the family of the defendant. **We therefore recommend that the meaning of victim is expanded to include all those impacted by the offence, the System's processes and the sentence, and that the Charter relates to all those affected by the Criminal Justice System.**

The Witness Charter

- The Witness Charter should recognise the specific circumstances and vulnerabilities of witnesses who are family members of the defendant.

Effect of Non Compliance

- **We recommend that stringent measures are put in place** to ensure that criminal justice agencies take their responsibility to comply with each Charter seriously, to ensure the best interests of victims and witnesses are protected.

Victim Personal Statements

- NIACRO recognises the merit of Victim Personal Statements and acknowledges that they can be cathartic for the victim, as well as insightful for the judge. We also see the potential for the Statement to be incorporated into a restorative justice approach; for example, **we recommend that the Statement is shared with PBNI if appropriate**, particularly if it has been taken into account in sentencing, to promote effective resettlement and understanding, thereby helping to reduce the risk of reoffending.

- **We recommend that clarity is provided about how the Statement can and should be used by judges.** This is important in relation to managing the

expectations of victims and in making the process clearer to both the victim and defendant.

- We welcome that victims have the opportunity to provide a statement "supplementary to, or in amplification of" their original Statement. **We recommend that victims are also given the option to withdraw their Statement before a certain point in proceedings**, in recognition of the heightened emotions often present in the aftermath of an offence.

- The vulnerability of victims in the immediate period after a crime must be acknowledged and their best interests protected. **It is for this reason that we recommend the DOJ introduces clear guidelines and regulations as to who can access the Statement.** While arguably the victim can share the content of their Statement with whoever they choose, the actual Statement must remain within the Criminal Justice System and shared with only a finite and specified group of people or organisations – including, for example, PBNI. It should not be published online. We are concerned that victims may regret granting permission for the publishing of their own statement more widely in the longer term and that the easy accessibility of their Personal Statement by the media and general public may make it more difficult for them to move on from the offence; similarly, it may negate resettlement efforts when the person who offended completes their sentence. The current system, where the victim can request or allow for their Statement to be shared with anyone, has the potential to allow for the exploitation of the victim's vulnerability at that time.

- As outlined above, **we recommend that the Justice Bill acknowledges the families of people who offend or who are accused of offending are indirect victims of crime and of the System.** As with Victim Statements, **we recommend that there is a statutory right for children of defendants to also be given the opportunity to submit personal impact statements, to be taken into account in sentencing.** This is recommended in the Quaker United Nations Office report 'Collateral Convicts: Children of Incarcerated Parents' (2012). Alternatively, there is scope for this to be included in the pre-sentencing report. It is estimated that 1,500 children in Northern Ireland are affected by parental imprisonment at any moment. Every year, there are more children with a parent in prison than the number of children on the Child Protection Register or the number of children affected by parental divorce. However, we are concerned that there is no statutory responsibility for these children. Evidence shows that when a parent goes to prison, their child is three times more likely to suffer mental health problems than other children and is susceptible to bullying, isolation and stigma. These children also typically have poorer educational outcomes and are unfortunately more likely to develop offending behaviour. We are concerned that the impact of custodial sentencing on children and the wider family is often underestimated by the judiciary and that by giving the child the opportunity to submit – with the help of an agreed representative – a personal statement, alongside the Victim Personal Statement, the judge will have a better insight into what disposal is the most appropriate and effective for all parties concerned.

Part 5 Criminal Records

Introduction

- NIACRO accepts that when people break the law, it is right that they are held to account for their offending behaviour through the justice system. It is for the justice system to decide the appropriate severity of any given person's sentence, and we in NIACRO believe that these decisions should always be proportionate, with custodial sentences reserved for those most serious offences. What the justice system seems to fail to consider at present are the long term effects of a criminal record on a person's ability to gain employment, access further or higher education or training opportunities, volunteer, or obtain insurance or a bank account. Not only are these long term effects manifestly unfair, but they are also counter-productive as they prevent people from securing the basic support they need to reduce their risks of becoming involved in anti-social or offending behaviour, such as stable accommodation and employment, and they disempower people from reducing their dependence on welfare support. In other words, they run completely contrary to the desistance approach to reducing offending.

- As highlighted in the Northern Ireland Strategic Framework for Reducing Offending[3], access to education, training and employment is a key factor in reducing the risk of offending and reoffending. Research shows that employment can reduce re-offending by between one third and a half[4]. We believe that barriers (attitudinal, structural and legislative) to accessing education, training and employment need to be minimised to ensure that people with convictions can be supported to effectively resettle back into their community and desist from offending.

General comments

- We welcome the intent of the proposals, which aim to streamline the arrangements for criminal records disclosure, put in place a number of additional protections regarding what information can be disclosed, and clarify the age limit for young people subject to criminal records checks. However, we believe that there needs to be a balance between the need to protect the public and ensuring effective resettlement. Whilst any process of criminal records checking must have the protection of society's most vulnerable at its core, we are concerned that in recent years the respect for the rights of those with criminal records has disproportionately declined.

- As stated in our previous responses to Sunita Mason's Part 1 and Part 2 Reviews of the Criminal Records Regime in Northern Ireland, we are concerned that no measures have been put in place to gauge the extent to which the new provisions have achieved their purpose of providing increased protection in Northern Ireland. There is further evidence that the introduction of AccessNI has led to a practice of unnecessary/inappropriate "weeding" (using legislation to discriminate when that was not its intention).

- In general terms, we would question whether the criminal record vetting regime protects the most vulnerable in society, and indeed whether rehabilitation legislation does enable rehabilitation. Since the introduction of vetting, evidence

[3]DOJ (2013) Strategic Framework for Reducing Offending
http://www.dojni.gov.uk/index/publications/publication-categories/pubs-policing-community-safety/community-safety/reducing-offending/doj-strategic-framework.pdf

[4] Home Office (2002), Breaking the Circle: a report on the review of the Rehabilitation of Offenders Act. London: Home Office.

suggests that employers can arbitrarily use criminal record information to deny people access to opportunities without penalty. This often malevolent use of criminal record information should be addressed by Government as a matter of urgency and explicit statements made that the inappropriate use of such information will lead to sanctions on those organisations who unfairly discriminate.

Clause 36 Restriction on information provided to certain persons

- In our response to Sunita Mason's Review of the Criminal Records Regime Part 1 in April 2011, we welcomed the exploration of portability in providing updates about conviction information. The current system places unnecessary administrative and financial burdens on both employers and AccessNI.

- We agree with the concept of portability on the basis there is a clear mechanism for employers to use. Portability could potentially allow any employer to request copies of Standard or Enhanced AccessNI Checks. **We recommend that the new arrangements are closely monitored to ensure discrimination does not increase.**

- To avoid disputes and inaccurate information being forwarded directly to employers, we agree that individuals should be given the opportunity to have sight of the information in the first instance to enable them verify its accuracy or otherwise.

- The portability of disclosures should be sector specific i.e. within the context of either the children's or vulnerable adults sector. Where an individual moves between sectors, a new Enhanced Disclosure should be requested.

- **We recommend that clarification is needed on how AccessNI intends to regulate and monitor the usage of portability** to ensure that organisations fully comply with the AccessNI Code of Practice requirements and do not unfairly discriminate against those who submit their copies of disclosure certificates.

Clause 37 Minimum age for applicants for certificates or to be registered

- In work or training settings, NIACRO does not consider it appropriate to carry out criminal record checks on under 16s. The only circumstances where it may be appropriate would be where childcare takes place in a domestic setting, for example, fostering, adoption or child-minding, where risk factors may be increased.

Clause 38 Additional Grounds for refusing an applicant to be registered

- In previous responses we have repeatedly highlighted the inappropriate, unlawful and illegal acquisition of AccessNI disclosures requested on individuals by Registered Bodies. These are extremely worrying, yet we are unaware of any sanctions or penalties imposed on any employers to date.

- In our 2010 response to the AccessNI consultation on Registered Bodies (RBs), we stated that AccessNI compliance teams should be more adequately resourced to carry out effective and meaningful monitoring and controlling of RBs. We would question the effectiveness of compliance checks in their current form given that, where self assessment audits have been requested, there has been little evidence of follow up with RBs. We have been told this is a "resourcing issue".

- **Based on this, we recommend that**:

  - AccessNI needs be more proactive in monitoring requests for checks and take appropriate action where illegal checks have been requested;
  - Registered and Umbrella Bodies need clear guidance about their roles and responsibilities when obtaining and assessing disclosure certificates;
  - AccessNI must ensure implementation of its own Code of Practice to hold Registered Bodies to account and address the issue of discriminatory practices of employers;
  - a schedule of comprehensive audits is implemented based on increased awareness-raising for employers on their responsibilities under the AccessNI Code of Practice; and
  - there is a greater commitment by the DOJ and the Executive regarding enforcement of an individual's rights is needed.

Clause 39 Enhanced Criminal Record Certificates: additional safeguards

Relevancy test

- NIACRO believes that non-conviction information should be stepped down immediately and not disclosed unless there is a proven risk of harm. This should apply to adults as well as young people. We accept that it may be necessary to disclose police intelligence when there is a direct risk of harm to the child or vulnerable adult with whom the individual seeks to engage. Information must be relevant and current. **Where non-conviction information is disclosed on an Enhanced Disclosure Certificate, we recommend that it is relevant and up to date.**

- NIACRO considers the current system to be inconsistent and open to interpretation, as the PSNI uses its discretion to disclose information that "might be relevant", which is not always necessary or proportionate. We would therefore welcome a more robust system that allows information to be disclosed in a consistent manner with clearer guidelines in place for the PSNI.

- Whilst NIACRO welcomes greater transparency and accountability in the decision making process, **we recommend that any new system of a "higher test" is clearly defined.** There needs to be a clearer process of quality assurance checking to ensure any decision making is not subject to subjective interpretation by one individual i.e. proposed chief officer. Any decision to disclose information that the chief officer "reasonably believes to be relevant" should therefore be examined and signed off by a panel of experts. NIACRO has encountered previous disparities regarding differences between PSNI Criminal Records Office (CRO) staff in the decision making process which, by their own admission, is due to a lack of guidance and under resourcing

- **We therefore recommend that the CRO needs to be adequately resourced to implement and apply new guidance** which should be underpinned by a transparent quality assurance process to reflect greater openness and fairness for those affected by the criminal record checking process. **We also recommend that the guidance for chief officers should clearly outline the restricted circumstances in which information should be released under Section 113B (4)(a) i.e. in cases where public protection and risk factors are clearly overarching factors.**

- In addition to the above recommendations, **we recommend that there should be clear guidance produced and made available to the public as to how decisions are made in releasing police intelligence.**

- Non-conviction information, such as non molestation orders, adult cautions, informed warnings, juvenile cautions and diversionary youth conferences, while attempting to deal with causes of crime, can also result in barriers to an individual's chance of employment. For instance, if an individual requires an Access NI Enhanced Disclosure Check, there is a possibility that non conviction and conviction information will appear. We know from our experience of working with those seeking training and employment that education or placement providers may choose to cancel offers of enrolment on a course or of employment on the basis of non-conviction information. Employers and training providers do not understand how to interpret, or make any distinction between, conviction and non-conviction information, resulting in young people being excluded from opportunities, unfairly judged and criminalised. To avoid this practice, organisations should only receive information about non conviction disposals in circumstances where the risk factors are significant.

- Evidence gathered through NIACRO's Employment Advice Line reflects the difficulties encountered by Registered Bodies and employees when non conviction information has been released under section 113B (4)(a). The reality is that employers, in the main, are not equipped to deal with the information and, as a result, often fail to explore the information with applicants and put a halt to their recruitment process. We would therefore question the necessity to release information in many instances which is often not relevant to particular posts and which presents difficulties for all parties involved.

Code of Practice

- Clause 39 makes provision for a statutory Code of Practice when chief officers are discharging their functions under section 113B (4) of the 1997 Police Act and allows parties other than the applicant to dispute the accuracy of info on certificates.

- Whilst NIACRO welcomes the provision to include a statutory Code of Practice, **we recommend this should be subject to full public consultation**.

- We are concerned about the proposal in Clause 39 to allow parties other than the applicant to dispute the accuracy of information on certificates. Would this be third parties carrying out an advocacy role on behalf of the applicant e.g. legal advisors / advocacy organisations such as NIACRO? We would question how this would fit with Data Protection legislation. **We recommend that there needs**

to be a clear definition of who this does and does not cover and clear guidelines need to be published.

Independent Monitoring

- We welcome that Clause 39 allows a person to apply to the Independent Monitor to determine whether information provided under section 113 (B) (4) of the 1997 Act is relevant or ought to be included on an Enhanced Criminal Record Certificate. We called for a structure similar to this in our previous consultations. We believe that this development will provide a fairer process and remove the current difficulties individuals are experiencing.

- In our experience, AccessNI's current disputes and complaints procedures are unclear to many of our service users. Some have attempted to raise disputes but have had very negative experiences of the process. Quite often, final responses from AccessNI state that "AccessNI has fulfilled its statutory duty", meaning that some callers have not been able to obtain satisfactory and timely responses to queries or disputes.

- **We recommend that AccessNI needs to be more customer focussed,** on those individuals subject to criminal record checks, which would be aided by more accountable processes for dispute resolution. Given its role as an agency of the DOJ, it is questionable how the public would perceive AccessNI's representations process as independent.

Clause 40 Updating Certificates

- We welcome the exploration of portability in providing updates about conviction information. The current system places unnecessary administrative and financial burdens on both employers and AccessNI. In principle, NIACRO agrees with the concept of portability on the basis there is a clear mechanism for employers to use. Portability could potentially allow any employer to request copies of Standard or Enhanced AccessNI Checks. The new arrangements must therefore be closely monitored to ensure discrimination does not increase. To avoid disputes and inaccurate information being forwarded directly to employers, individuals should be given the opportunity to have sight of the information to verify its accuracy or otherwise prior to disclosure. We agree that the portability of disclosures should be sector specific i.e. within the context of either the children's or vulnerable adults sector. Where an individual moves between sectors, a new Enhanced Disclosure should be requested.

- **We recommend that further clarification is given as to how AccessNI intends to regulate and monitor the usage of portability** to ensure that organisations do not unfairly discriminate against those who submit their copies of disclosure certificates. We therefore question how portability fits with the AccessNI Code of Practice compliance.

- We welcome the proposal (to issue a single certificate to the applicant only) as it will provide individuals with the opportunity to have greater control over their personal information. Particularly, it will provide opportunities to challenge discrepancies, in regards to accuracy of information directly with the disclosure body, before employers receive it.

Clause 41 Applications for Enhanced Criminal Record Certificates

- NIACRO welcomes the opportunity for self-employed individuals to access Enhanced Checks on the basis that Checks are requested and obtained legally for host organisations/Registered Bodies. **We recommend that clarification is provided regarding the circumstances under which it is appropriate to obtain Enhanced Checks.** Does this cover the following kinds of occupations?

  - Taxi Drivers
  - Construction Contract Works e.g. in schools
  - Fitness Instructors e.g. contracted by leisure centres
  - Personal Trainers
  - Those providing services in their homes e.g. music teachers etc…

Clause 42 Electronic transmission of applications

- This need to be clearly regulated to ensure information transmitted from Registered Bodies is secure and fully compliant with Data Protection. The information Commissioner should play some kind of advisory role in the establishment of this process with its support services actively promoted among Registered and Umbrella Bodies.

Amendments to the Bill

- AccessNI's Circular 2/2014 sets out their proposed amendments to the Justice Bill. They have proposed the following additions to the Bill:

  - to give AccessNI powers to share conviction and other information found on applicants to the Disclosure and Barring Service for the purposes of considering whether that applicant should be barred from working with children or adults; and

  - to introduce an appeal mechanism for applicants who consider, even after filtering has been applied to any convictions or other diversionary disposal information on the criminal record, that the release of such information is disproportionate.

- We welcome the proposal to incorporate an appeals mechanism into the new filtering scheme to reflect a fairer and more transparent process for those with more than one conviction or a diversionary disposal that under current arrangements would not be subject to filtering. **We recommend that this process is included in the Justice Bill.** The appeals process must be monitored and should be overseen by the proposed Independent Monitor. We strongly believe that people should have the opportunity to apply to have old and minor convictions wiped form their criminal records, as recommended in the Youth Justice Review (Recommendation 21).

- **We recommend that there needs to be a provision for considering offences committed as a child (under the age of 18) and to afford greater protection to those with minor or older disposals or sentences who cannot avail of the protection under the current filtering scheme.**

- In the four months since the Scheme has been introduced, NIACRO's advice line has encountered numerous cases where individuals were unable to have their convictions filtered. Examples are highlighted below:

  – A young person, aged 16, with one caution for a specified offence of possession of cannabis, which means it will not be filtered. He hopes to apply for teaching courses and is concerned about the impact of his disclosure in the short and longer term.

  – An individual, aged 22, with two fines: one for disorderly behaviour and the other for allowing his car to be driven without insurance. Again, these are not filterable because there are two convictions. He obtained employment in the financial services sector and was subsequently dismissed when his AccessNI Standard Check was returned with the information displayed.

  – An individual, aged 31, applying for a law degree had three separate fines for obtaining goods by deception and two counts of non payment of a TV licence. His last conviction was 11 years ago however these are not filterable as he has more than one conviction. In the interim, the individual is attempting to gain part time work in the care sector and cannot access employment opportunities due to the information on the AccessNI Enhanced Check.

  – An individual, aged 19, with a two year conditional discharge for a specified offence of breach of the peace, had experienced difficulties being accepted for a nursing degree due the information on the AccessNI Enhanced Check. As a result she has decided to follow an alternative career path to avoid her conviction being a continual barrier, despite having the skills and abilities to follow her chosen path of nursing.

- The examples cited above provide just a small sample of the kinds of issues we are encountering through our advice line. These people, and many like them, are unfairly denied opportunities due to the current restrictive and discriminatory disclosure practices.

- While NIACRO welcomes an appeals mechanism, we believe it does not go far enough for young people. **We therefore continue to call for the implementation of recommendation 21 of the Youth Justice Review for under 18s to be able to apply to wipe their slate clean of old and minor convictions.**

Part 8 Miscellaneous - Clause 77, 78, 79 and 80

Avoiding unnecessary delay (Clauses 79 and 80)

- We strongly support any efforts to reduce unnecessary delay within the Criminal Justice System. Delay has detrimental impacts not only on the accused and the victim, but on their families, witnesses, prisons, courts and the police as well as the public confidence in the system.

- Delays in the system were highlighted in the Northern Ireland Strategic Framework for Reducing Offending and the Youth Justice Review (YJR). The YJR recommended that there needs to be a meaningful connection between offending behaviour and the outcome of the case (acquittal, disposal or sentence). It was stressed that delays such as of a year (which commonly occur) between an allegation arising and the conclusion of youth justice cases means that sentencing is so remote from the offending behaviour that it is often too late to achieve the intended effect.

- Based on our experience of working with people going through the Criminal Justice System, we know that people who offend and the victims of offending behaviour wish to see the process made more efficient. This was also a finding in a recent report by CJINI[5] which found that people who had offended wished to see their cases progress swiftly so that they had certainty in terms of sentence and outcome. However, this should not be to the detriment of justice: it is critical that justice is delivered efficiently and appropriately and not in haste. Our engagements with both those who offend and those who are the victims of offending behaviour show that it is more important for the Criminal Justice System to communicate effectively with those affected by it at every stage, rather than to just speed up an already isolating process.

- Delays within the Criminal Justice System can also prolong the bail and remand process. Long periods spent on bail limit the opportunities to address the root causes of offending behaviour and increase the risk of further offending, and long periods on remand can have a detrimental impact on the person's life[6]. Unnecessary delays also do not support desistance from reoffending. Research shows that effective responses to reducing reoffending work when practical support is provided both in custody and in the community, including access to housing and welfare advice. In our experience, long periods on remand or bail impacts on a person's ability to access training, employment and education which has been proven to reduce reoffending. We recognise, therefore, that long remand periods are often a dysfunctional period in the delay and should be addressed. We would consider this to be one of the most injurious periods in delay.

- In Appendix 1, we have provided case studies of our service users who were impacted negatively by delays in the Criminal Justice System.
- We also have provided an overview of the experience (see Appendix 1) of working with an individual who was negatively impacted upon as a result of delays in the system. He was convicted of an offence he committed when he was 17. As a result of this delay, his conviction will become spent under the adult rehabilitation period instead of the rehabilitation period for those aged under 18.

- **Based on this, we recommend that steps are taken to**: reduce unnecessary delay at all stages of the Criminal Justice System; to reach a just outcome for

[5] CJINI (2013) The use of early guilty pleas in the Criminal Justice System in Northern Ireland. Link: http://www.cjini.org/CJNI/files/6b/6bf65923-3cab-4dee-a2a3-717cee809e80.pdf
[6] YJR Team (2012) A Review of the Youth Justice System in Northern Ireland - http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/report-of-the-review-of-the-youth-justice-system-in-ni.pdf

the accused, the victim and their families; and minimise the impact delay can have on the accused, the victim and their families. In parallel to this recommendation, **we recommend that the mechanisms for explaining decisions, to the accused and to the victim, taken at all stages of an investigation and trial are enhanced**.

General Comments on Clause 79 and 80

- We welcome that Clause 79 will give the DOJ the power to bring forward regulations to impose a general duty to reach a just outcome. In making those regulations, **we recommend that they should take in particular account the needs of all those individuals coming into contact with the Criminal Justice System, regardless of what circumstances preceded that initial contact.** In some cases, an individual who has offended could be a victim as well.

- We believe that a general duty (Clause 79 and 80) will allow for sufficient flexibility dealing with complex cases whilst still ensuring people are held accountable by placing a duty and obligation on the judiciary, rather than just the prosecution or defence counsel, to ensure that case management rules are applied in a manner appropriate to each case.

- **We recommend that the onus must be placed on the legal profession to increase efficiency in case preparation, and the courts system to process cases quickly**, given that these two elements combined constitute the largest proportion of the overall time taken to progress cases. Statistics cited by the CJINI (2013)[7] in the inspection report on 'The use of early guilty pleas in the Criminal Justice System in Northern Ireland' showed that at the case progression stage of proceedings, the vast majority of all adjournments in Adult Magistrates and Crown Courts could be attributed to the prosecution, defence or the court.

- In making regulations which will govern the management and conduct of criminal cases, **we recommend that attention must be given to the relationships between the PPS and PSNI**, as we know that delays often occur over issues such as file accuracy, file preparedness, etc.

- Conscious that the DOJ has consulted on introducing Statutory Time Limits (STLs) in youth courts, which we welcome with the recommendations made in our response to that consultation[8], **we recommend these are introduced in the adult courts as well**. STLs will enforce the importance of case preparation and management by requiring agencies to work collaboratively and be jointly accountable for achieving the scale of reductions that are required.

- Whilst we advocate greater partnership working between each of the agencies involved in the system, we believe it is unreasonable to expect any agency to re-prioritise their workload as a result of the failings within another. **We, therefore,**

[7] CJINI(2013) The use of early guilty pleas in the Criminal Justice System in Northern Ireland. Link: http://www.cjini.org/CJNI/files/6b/6bf65923-3cab-4dee-a2a3-717cee809e80.pdf

[8] NIACRO and Victim Support NI(2014) Response to DOJ Consultation on Statutory Time Limits in youth courts. Link: http://www.niacro.co.uk/filestore/documents/current_issues/Response_by_NIACRO_and_Victim_Support_NI.pdf

recommend that time limits place clear targets on each agency involved at each stage of these processes, with clear penalties outlined should an agency fail to meet its obligation.

- We welcome that case management (Clause 80) has been given a statutory footing and look forward to commenting on these proposals when they are published for consultation. We support CJINI's recommendation[9] that the DOJ should consider how sanctions should be applied to address unnecessary delay and **recommend that a mechanism is included to address breaches**. **We also recommend the introduction of penalties for legal representatives who repeatedly request adjournments** as they have failed to meet the court's deadlines. Their lack of preparation should not be allowed to impact upon the defendant and victim's right to access swift and effective justice.

Use of communication

- Professionals in the justice system should be aware of the language they use when communicating with vulnerable people, including young people. **We recommend training is given to justice professionals to ensure they recognise vulnerabilities and potential mental capacity issues**. If the police or defence encourage an accused person to plead guilty because evidence against them exists, it could unfairly coerce an innocent person into pleading guilty because they believe they will be found guilty even though they didn't commit the offence. The person has a right to wait for a clear summary of the evidence to be put to them so that they can clarify what they accept in terms of the evidence against them and also what areas they wish to challenge. They should have the opportunity to discuss the evidence with their solicitor and another individual, such as an Appropriate Adult, to ensure that they have a full understanding of the case against them before entering their plea.

- People who have experience of the Criminal Justice System will often tell us of cases that are adjourned for reasons that are never properly explained, or of times when they simply didn't know how or whether a case was progressing. They were frustrated by the lack of communication or explanation of potential outcomes as a case progressed, rather than the time that a particular case may be taking per se. **We therefore recommend that communication is central to all proceedings, and that all parties – victim, witness and defendant – are kept up to date and appropriately informed**.

- People coming into contact with the Criminal Justice System are more likely to have literacy issues, mental health difficulties or learning difficulties. This can result in problems such as the accused receiving a letter, which they cannot fully understand, advising them of a hearing date and attending court unaware of the subject of the hearing. **We recommend that the Department should seek to mitigate these issues by engaging with the voluntary and community sector to scope needs**.

- Victims need to be included in discussions about the strength of evidence available against the accused, what charges will be put before the sentencing court and what aspects of the case are being challenged. Otherwise, it can come as quite a shock to them to find charges reduced and a lenient sentence

[9] CJINI(2013) The use of early guilty pleas in the Criminal Justice System in Northern Ireland. Link: http://www.cjini.org/CJNI/files/6b/6bf65923-3cab-4dee-a2a3-717cee809e80.pdf

imposed. This can leave victims of crime feeling very let down by the Criminal Justice System and should be addressed.

- **We recommend, therefore, that in parallel to any measures that are introduced to tackle unnecessary delays, steps are taken to enhance the mechanisms for explaining decisions**, to the accused and the victim, taken at all stages of an investigation and trial, and support offered to those who may be traumatised by the process itself.

Impact of advice

- We know from experience that some of our service users have received poor advice and guidance during the police investigation into the offence they were accused of committing. Some people were inappropriately advised by their solicitor about pleading guilty and the impact of that. There sometimes appears to be a focus on quickly finding someone guilty of a crime, rather than examining the evidence, searching for the truth and reaching a just outcome for all those involved.

- **We recommend that independent advocacy services are made available for people with particular difficulties as they move through the Criminal Justice System**. People who are vulnerable may feel pressured into pleading guilty as they don't fully understand the process or the evidence against them.

- Vulnerable people and young people, in particular, need to be supported through the Criminal Justice System, from initial contact through to the outcome to ensure that they can talk through their case with someone outside of the System such as an Appropriate Adult, so that they have a full understanding, are informed and then can make an informed decision in terms of their plea, bail etc. If someone is identified as being vulnerable, there should be a duty, on those people advising them, to ensure that the person fully understands the charges against them, so that they are informed, can make informed decisions, and can give informed instructions.

- Any advice/legal advice given in the course of criminal proceeding needs to be governed by a statutory code of practice including police officers and solicitors. **We recommend that there should be a statutory code of practice for solicitors in relation to the advice underpinned by a general duty when providing advice to their client about entering a plea (Clause 78)**. This will ensure that anyone receiving legal advice will receive the same information about their case from investigation through to disposal/outcome. We have found that some people are misinformed about the consequences of pleading guilty i.e. when their conviction will become spent and that they will have a clean record after they have served a custodial sentence.

- **We recommend that there is a mechanism built into the sentencing process where the person is informed about the following**: the outcome of their case (acquittal, sentence, dismissal); what it means; the impact it will have on accessing training, education or employment and other services; when it will become spent; and under what circumstances it will be disclosable. NIACRO provides free independent advice on disclosure through its Employment Advice Line to employers and individuals currently in or seeking employment, education or training. The long term impact of criminal records on peoples' access to

education, training and employment is often entirely disproportionate to their initial offence, creating barriers to effective resettlement and desistance.

Data collection

- In measuring reduction in delay, we must ensure that all agencies are measuring the same thing. The introduction of Statutory Time Limits in the adult courts will enable measurement of the start and end point of a case, the number of and reasons for adjournments and benchmark how long on average it takes to start and end a case. In our response to the consultation on the introduction of Statutory Time Limits in the youth courts, we highlighted that the "delay" as most people understand and experience it, is from the actual incident occurring until disposal by the courts not, as some would suggest, from the time a charge is issued.

- The only real "start" point for measuring the time taken to complete a case for a victim can be the date of the offence, and the only "end" point the final disposal. The only real "start" point for someone accused of an offence is either the moment of arrest (in a charge case) or the moment they are informed that they are being referred to the PPS for prosecution (in a summons case), and the "end" point can again only be the final disposal. These are the moments at which the people affected by the decisions that the system will make become emotionally involved and will experience varying degrees of stress as the case progresses. Whilst there are understandable reasons why a time limit could not commence from the moment an offence is committed, there does not seem to be any clear reason why measurement cannot commence from the date the offence is reported/detected, which is a defined and, therefore, measurable point in any case, and is the moment at which the case becomes part of the victim's, and indeed the accused person's, reality. By delaying the start point beyond this, the Statutory Time Limit does not take into account the emotional distress and other impacts on the victim, the accused and both of their families.

- **We recommend that it is defined in legislation that Statutory Time Limits start from the date the offence is reported/detected and end when the case is disposed of**. Recommendations of the Prison Review Team, the Youth Justice Review Team and CJINI have been well documented and contain clear expectations that any Statutory Time Limit would cover the whole period from arrest to disposal.

- By establishing data collection systems and benchmarking time limits, gaps and issues in the system can be identified and addressed.

- CJINI[10] showed that there were a quite a high number of cases (more than 11,000) withdrawn or had alternative charges put forward in 2010-2011. One of the reasons for this was overcharging by the police. **We recommend that data is collated on the numbers and reasons for withdrawn/reduced charges to identify trends and gaps in the system**.

Early guilty pleas (Clause 77 and 78)

[10] CJINI(2013) The use of early guilty pleas in the Criminal Justice System in Northern Ireland. Link: http://www.cjini.org/CJNI/files/6b/6bf65923-3cab-4dee-a2a3-717cee809e80.pdf

- We strongly disagree with the terminology 'early guilty pleas' and the focus on encouraging them. This terminology creates an expectation that the defendant is guilty. We should not be seeking to extract more guilty pleas at any stage of the process. Instead, **we recommend that the emphasis is placed on 'efficient case resolution', ensuring justice and thereby better outcomes for victims and defendants.** This approach would protect the statutory presumption of innocence, and encourages greater focus on resolving cases efficiently and effectively. We are disappointed this was not taken into consideration in the Department's analysis of the consultation responses and **we recommend this terminology is reconsidered**. This change in terminology and approach is supported by Victim Support NI.

- We note that achieving this efficient case resolution approach will be dependent on the reform of Committal Proceedings, changes in processes and procedures and the ability of PPS, PSNI and legal representatives to work together.

- As highlighted in the CJINI report 'The use of early guilty pleas in the Criminal Justice System in Northern Ireland'[11], there is no single coherent approach to 'encouraging early guilty pleas.' This is concerning as it means there are inconsistent approaches in how early guilty pleas are encouraged, which means those who are accused will receive different information and advice as they move through the justice system.

- We advocate that there needs to be a balance between reducing unnecessary delay and achieving a just outcome. Faster cases may not necessarily be better and longer cases in certain circumstances will be required. Too much focus on reducing delay may inadvertently affect the System's ability to achieve the right outcome. This emphasis is in line with Victim Support NI's view that speed should never act in a manner contrary to the interests of justice.

Early engagement between the prosecution and defence

- In our response to the consultation on early guilty pleas, we recommended that the accused should be provided with a clear summary of the case against them at the earliest possible opportunity. This would allow the person to clarify what they accept in terms of the evidence against them and also what areas they would wish to challenge. We believe that the defendant has the right to have a clear understanding of the extent of the case against them before entering a plea – regardless of incentives. **We recommend clarification is given about the recognised 'earliest reasonable opportunity'**. The defendant may want to wait until after the first sitting for the case to be put forward against them, before entering a plea.

- Statistics show that significant delay in terms of adjournments in courts proceedings at the case progression stage can be attributed in to the prosecution, defence or courts.[12] To enable early service of evidence and early disclosure of evidence, CJINI[13] has recommended that early engagement

[11] http://www.cjini.org/CJNI/files/6b/6bf65923-3cab-4dee-a2a3-717cee809e80.pdf

[12] In 2011, 84.2% of all Adult Magistrates' court cases were adjourned; 48.1% of adjournment reason were attributed to the prosecution, 47.9% were attributed to the defence and 3.8% to the court. 60.2% of all court cases were adjourned in the Crown Court.13.6% reasons were attributed to the prosecution, 47.5% to the defence and 38.8% to the court.

between the defence and the prosecution, to enable early service of evidence and early disclosure of evidence. Not only is engagement between the prosecution and defence important, the relationship between the PPS and the PSNI is also important as we know that delays occur over issues such as case file quality, case readiness, over-charging etc.

- The focus on encouraging 'an early guilty plea' to obtain a reduced sentence might put pressure on vulnerable individuals to plead guilty to the title charge. In reality, many accused persons will say "I did this…but I was not responsible for that…."

- Under present arrangements, the person has a choice only to plead guilty or not guilty – or to negotiate (between defence and prosecution) a "lesser" charge which may come closer to what the accused person believes he was actually responsible for.

- Whilst it is necessary to examine the strength of evidence, there seems to be insufficient emphasis on the "search for truth". And in reality, whilst the practice of "plea-bargaining", or "sentence-bargaining", is not enshrined in legal practice, the willingness of an individual to plead guilty will certainly be encouraged if facing a less serious charge which attracts a lesser penalty.

- We want to see an early/efficient case resolution approach which encourages greater focus on resolving cases efficiently and effectively. We believe that an efficient case resolution approach would actually be more positive for victims of criminal behaviour, for the accused and indeed for the wider public. This should be supported by reforms to reduce necessary delay in other areas of criminal proceedings, such as case file quality, case readiness and early service of evidence.

Sentencing credit

- Clause 77 will require a court in certain circumstances to indicate the sentence that would have been passed had the defendant entered a guilty plea at the earliest reasonable opportunity. We believe that this approach would not effectively address offending behaviour of the defendant and has very little merit in terms of encouraging other defendants in different circumstances.

- **We recommend that the 'earliest reasonable opportunity' is given clarity in regulations and practice guidance.** If a person wishes to wait until the case against them has been put forward and then enter their plea, it must be outlined whether they will be unfairly disadvantaged because they did not show willingness to plead guilty at the police interview.

- In order to achieve efficient case resolution, **we recommend that there should be greater certainty about credit available and greater transparency in sentencing for the person accused from the outset**. Some people believe that if they enter a guilty plea at any stage of legal proceedings, they will get sentencing credit no matter the nature of the crime. **We recommend that there needs to be a requirement on the police, solicitors etc. to explain information in a format to the person which they understand, the consequences of pleading guilty, not pleading guilty and withholding a plea**. We note that early indication of sentence is dependent on early

engagement of prosecution, defence, and a summary of evidence being available.

Victim Impact

- As stated previously, w**e recommend that the particular needs of all those individuals coming into contact with the Criminal Justice System should be considered**, regardless of what circumstances preceded that initial contact. In some cases, an individual who has offended could be a victim as well.

- Any proposals need to take into account the impact of crime on victims. Victim participation across all stages in the Criminal Justice System is important and will provide a more positive experience of going through the system. Victims need to be included in discussions about the strength of evidence available against the accused, what charges will be put before the sentencing court and what aspects of the case are being challenged. Otherwise, it can come as quite a shock to them to find charges reduced and a lenient sentence imposed. This can leave victims of crime feeling very let down by the Criminal Justice System and impact on their overall confidence in the system.

- **We recommend there should be a restorative justice approach where the victim's journey through the Criminal Justice System is brought alongside that of the accused.** Victims should be kept informed about the investigation, trial and sentencing arrangements and given explanations of how and why decisions were reached. We welcome the proposed Victims Personal Statements which will give victims the opportunity to put forward in their own words how they have been affected by crime during proceedings.

- We believe that Clause 77 would not have any rehabilitative effect on the accused and will have little impact for the victim. The judge in summing up and during sentencing should focus on the effect and impact of the crime. The process of encouraging the accused to admit to his/her part in an offence could perhaps be strengthened by a different, more transparent approach which gives emphasis to the impact of the crime and away from focussing primarily on the interests of the accused. This would involve prosecution, those representing the victim(s), and defence. The prosecution process should provide opportunity for the accused person to really consider and be encouraged to understand the impact of their offence(s). The present adversarial approach allows accused persons to focus mainly on themselves and their case, and what might happen to them - rather than on the impact of what they have done. This is often only addressed at the point of imposing sentence, when assessments are carried out by the Probation Board on behalf of the Court.

Appendix 1

The following case studies are based on real life examples of people who have engaged with NIACRO.

Case Study 1: Family Members as Direct Victims

Sarah*, is a single parent to her son Joe*, who is 23 years old. Joe has been in and out of custody for the last four years for minor offences. However, recently his offending behaviour has been directed towards his mother. He has physically assaulted her on a

number of occasions and has stolen from her house. However, as Sarah is his mother she does not want to press charges. Joe is therefore arrested for other, lesser offences including disorderly behaviour and resisting arrest, and receives a custodial sentence. Sarah is conflicted but, as his mother, does not want to exacerbate his situation by formally reporting the offences carried out against her. As Sarah does not press charges, she is not referred to an official support service for victims. Instead, she contacts NIACRO's Family Links project, initially to find out more information about supporting her son in prison. The Family Links Project Worker becomes aware of what has happened and offers Sarah emotional and practical support to help her come to terms with the assault and theft, and to help her support Joe and visit him while he is in custody. Although Sarah is a direct victim of an offence, she is reluctant to be formally recognised as such and so sought support from Family Links rather than seek prosecution.

* *Names have been changed*

Other examples of victim journeys are presented on Victim Support NI's YouTube channel: http://www.youtube.com/victimsupportni

Case Study 2: The Consequence of Delay

An individual, aged 17, has been on bail for a significant period of time waiting to be sentenced. He has several pending charges which are quite serious. As a part of his bail conditions, he is subject to a curfew. He has to attend one-to-two appointments on a daily basis as part of his bail package.

His case has been adjourned on several occasions. Reasons for this have included case files not being ready, waiting for forensic reports and communication issues about the court date.

Overall, delay has resulted in the young person being on bail and not sentenced for a long period of time. His restrictive bail conditions have impacted on his ability to access education, training and employment in the interim period. It has also affected his family, both emotionally and financially.

Case Study 3: The Consequence of Delay

An individual, aged 19, was convicted of an offence he committed when he was 17. As a result of delay in his case getting to court, his conviction became spent under the adult rehabilitation period and not the rehabilitation period that applies to those under the age of 18.

This meant he had to disclose his conviction for a longer period of time in circumstances such as accessing education and employment and in obtaining insurance; if he had been convicted as child, he would not have had to disclose his conviction as it would have become spent after a shorter period of time. The impact of this longer rehabilitation period was increased barriers to education, training and employment, hindering effective resettlement and desistance.

Case Study 4: The Silent Sentence

“The night my mother and father were arrested was one of the worst days of my life. Nothing prepared me for the year that lay ahead. I was sitting in my room doing my school work when I heard heavy banging at out door. It made me jump so I went to see what it was. My dad answered the door and it was the police. I was curious why they were calling at our door. I heard them telling my dad something about a search warrant and cannabis but I never thought for one minute it had anything to do with my family. My dad let the police in and we all sat in the living room. My mother was crying as she was so confused. She doesn’t speak English so my dad and I had to keep explaining to her what was happening. The police explained that they were arresting my mother and father and that immigration was also going to be looking into our legal status in this country.

That night my brother and I spent the night in our house alone. I didn’t slept all night thinking about my parents and worrying about what was going to happen to them. Were where they? When would they be coming home? Who could I ring to find out what was happening? The police had given me a number for a police officer to phone but I couldn’t find it due to all the chaos earlier.

Within two days Social Services had called and a lady phoned me from NIACRO’s Family Links project. I felt more at ease. She explained that they were going to help support me and my brother as best they could. She explained that my mother and father were both in custody. I realised I would have to fend for myself and my brother. I was in school so I didn’t know how I was going to cope financially. How was I going to pay the bills? What would I tell the school? Would I be able to visit my parents?

The lady from Family Links explained that housing benefit would pay for my rent and that Social Services would pay me money on a weekly basis for electric, oil and food. She helped me get some money to get us new clothes and shirts and trousers for school. She also arranged for me and my brother to visit my mother in custody.

Visiting my mother was a very distressing experience for me. I hated seeing my mother in prison. She was very distressed as she was so worried about me and my brother. She had not spoken to my dad either and was concerned about him too. I was finding this whole experience very stressful.

Over the next six months, until my mother was released, I did not tell any of my friends were my parents were as I was so ashamed. The only people who knew were my head teacher, Social Services and Family Links. These were the only people I would speak to about my situation as I was so embarrassed.

I wasn’t sleeping as I was worried about my brother and my parents. Family Links advised me to go to the doctor and he gave me sleeping tablets and referred me to a mental health counsellor who I had to meet with weekly. We were visiting mum as much as we could but for a long period we were unable to visit as our passports were being held by immigration. Family Links applied for citizen cards for us but they took weeks to come back. I had to attend a few meetings with the Law Centre and immigration to talk to them about our legal status. Family Links supported me through this which was great and she helped keep me calm and feel at ease about the whole situation. There were still so many questions running through my head. Were we going to be sent back to Hong Kong? What about my parents? What about all the school work I had done to try to get a place in university?

In December my mother was released without charge just in time for Christmas and a few months later my father was released on bail. Things started to get back to normal again, however there were many problems. My dad's health had deteriorated with the stress of the court case and he was unable to work. My family were trying to survive on just my father's benefits which was very stressful. Social Services had to help us pay some of our bills and Family Links got us food parcels when they could.

Everyday we waited to hear from immigration and from the courts about a date for my father's trail. We didn't know where to get the information and it felt like we were in limbo. As time passed, things became harder. I was concerned about immigration sending us back to Hong Kong and dad's health was deteriorating.

In September, my father had a heart attack and passed away due to stress of the past eighteen months. This was a devastating time for myself and my family. My mother is still finding it very hard to cope as she misses my father. She is still unable to work as we still have not heard back from immigration and therefore is very lonely. I am at college and my brother is finishing school this year. We need to hear soon from immigration about our legal status as we all need to know whether we can work or not so we can stay in Northern Ireland and support ourselves."