COMMITTEE FOR JUSTICE

OFFICIAL REPORT
(Hansard)

AccessNI: Statutory Rule under Part V of the Police Act 1997

30 June 2011

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Paul Givan (Chairperson)
Mr Sydney Anderson
Mr Stewart Dickson
Ms Jennifer McCann
Mr Basil McCrea
Mr Alban Maginness

Witness:
Mr Tom Clarke) AccessNI

The Chairperson:

The next item on the agenda is the SL1 for AccessNI regulations to improve its operational service. Tom Clarke is here to brief the Committee on the proposals for a statutory rule. This session is being recorded by Hansard. Tom, I invite you to outline the proposals, after which members will have an opportunity to ask questions.

Mr Tom Clarke (AccessNI):

Thank you for the opportunity to present proposals for a new set of regulations to assist AccessNI with its day-to-day operations. I propose to make only a short statement, to give Committee members the opportunity to ask questions.

The regulations seek to make five changes, as set out in the SL1 that has already been given to the Committee. The Committee in the previous mandate was consulted about two of the

proposed changes. First, the reduction in the number of organisations registered with AccessNI, so that AccessNI can give greater assurance that applications and the information provided on checks are being handled correctly. Secondly, a reduction in the number of applications that have to be sent to police forces in Great Britain, thus speeding up the process without reducing safeguarding in any way.

Two further changes are relatively minor matters. The first would allow registered bodies to have a longer period in which to pay their accounts for applications that are processed. At present, that period is 15 days. The proposed changes would extend that to 31 days. The second change tidies up the current regulations. For example, forms that no longer exist are prescribed in the regulations.

The final change would enable AccessNI to recommence the practice of routinely disclosing informed warnings, cautions for adults and young people and diversionary youth conferences held in the Northern Ireland criminal record database on standard and enhanced certificates. The disclosure of such information was the clear policy intention and the practice from AccessNI's inception. However, legal advice obtained in mid-April stated that the regulations did not achieve that objective. These regulations provide an early opportunity to correct that.

At a briefing on 2 June, Simon Rogers indicated that he would return to the Committee with proposals regarding the fees charged by AccessNI. We are not in a position at this time to bring those to the Committee, as we are continuing to take advice about the scope of costs that AccessNI is required to cover under the Department of Finance and Personnel's 'Managing Public Money Northern Ireland' document. When we have considered that and consulted with the Minister, we will seek the Committee's views through policy proposals, in the first instance, rather than bringing an SL1 to you. We hope to do that shortly after the summer recess.

The Committee may wonder why we are bringing the proposals now, while the review of the Northern Ireland criminal record regime is ongoing, as you have just heard from Ms Mason. There are three key reasons for that. First, once Ms Mason reports, the government have to consult on our proposals. That is going to take some time. Secondly, it is likely that the changes suggested by Ms Mason around, for example, portable, updatable disclosures, are likely to require primary rather than secondary legislation. Finally, from our close contact with Ms Mason, we do not expect her to take a different position on any of the areas covered by the regulations. We

believe that there are clear benefits in introducing the legislation at this time.

In conclusion, we appreciate any views that the Committee may have on our proposals.

The Chairperson:

Thank you very much, Tom. As with officials in the previous two sessions, you were brief, which is good.

A significant minority of respondents to the consultation, 29%, indicated that AccessNI has not correctly identified the minimum number of applications required to be submitted each year to qualify as a registered body, which is 20 or more, and 24% felt that the impact of this change had not been appropriately identified. What specific issues were raised in relation to that and what account have you taken of those?

Mr Tom Clarke:

A number of the organisations were worried that they would fall outside AccessNI registration. That is where those issues came from. When we looked at the flow of applications coming into AccessNI and the number of applications that registered bodies actually make, we saw that there is quite a differential. Quite a large number of bodies make between zero and 20 applications in a year. There then seems to be quite a jump, and the remainder of bodies make quite a few more than that. There was a natural point at which we felt it appropriate to make the decision that 21 was the best way to do it.

As for taking account of those bodies that would fall outside that, we will put forward a plan that would enable them to get disclosures in other ways, either by getting some of the smaller registered bodies to form umbrella bodies or by pointing them in the direction of existing umbrella bodies that could do the checks for them. The important thing is to make sure that everybody can get a check and nobody is left out in any way. The other important point is that only 5% of applications that come to AccessNI will be affected by the removal of the large number of registered bodies that we are seeking to remove.

Mr B McCrea:

The only point that worries me is that you say that you plan to inform people about informed warnings. The whole point of a caution is that it is less serious than criminal proceedings. Surely

there is some danger, particularly with younger people, of stigmatisation and so on. Has that been considered?

Mr Tom Clarke:

I recognise your point. Enhanced disclosure gives out a lot of information about an individual. We are trying to ensure that the public are protected and that people who look after children and vulnerable adults are suitable people to do so. We already create exceptions within the Rehabilitation of Offenders (Northern Ireland) Order 1978 so, for example, on an enhanced disclosure you already get information about convictions that are spent. In addition, we ask the police to provide non-conviction information, such as information on a pending prosecution or an arrest.

Therefore, when we looked at the scope of what information should be disclosed, we concluded that informed warnings, cautions and diversionary youth conferences should be included. We take account of the fact that those are disclosed routinely in England and Wales and that, while they are outside the judicial process, they involve an admission of guilt of offending by the offender. In fact, an offender could have more than one caution or informed warning on a certificate. Finally, we take account of the fact that enhanced disclosure certificates in other parts of the UK have that information on them. So, we weighed up those factors in deciding to bring forward the legislation in this way.

Mr B McCrea:

I am all for speeding up AccessNI and getting information out. However, at some stage, the Committee will presumably look at how you deal with young people under the age of 18. They get special protection under the law on all sorts of issues. With an informed warning, you are trying to get somebody to own up and say, "It's a fair cop". Then you can do something better with them and try to show them the error of their ways. When the police try to get people to engage in dispute resolution, people say, "Hold on a tick; if I admit to anything, it is on the record", and you do not get the result that you are looking for. So, I am just flagging that up to you. I am sorry to do that at this stage of the proceedings, but you have a wee bit of work to do to convince me that that is OK.

Mr Tom Clarke:

We can give you the assurance that, a year after an informed warning is given, it will not be

disclosed on an AccessNI disclosure. So, if a young person had received an informed warning in June 2010, it would not appear if we were to do a disclosure on them tomorrow. It remains only for the period that the police keep it on the criminal record. That is the other point: these are recorded on the criminal record, and that is what we disclose against. So, I accept your point, but we have safeguards that will help. I also think that, when employers get the information, they are sophisticated enough to ask the young person about the circumstances of and the background to the warning. It is wrong to say that an informed warning on an enhanced disclosure automatically leads to people not being allowed on a further education course or not being employed. We have built safeguards into it, and, on that basis, we hope that the proposals are acceptable to the Committee.

Mr B McCrea:

If we agree to this now, will it become a statutory rule? Is this the last chance that we have to make our feelings known on the issue?

Mr Tom Clarke:

What we are doing here is trying to put the legislation back to where it should have been. In other words, until April 2011 it had been our practice to disclose that information. On the basis of legal advice that our regulations did not achieve what we thought they were achieving, we stopped issuing them in April 2011. What we are doing is taking an early opportunity to try to put right a flaw in the original legislation.

Mr B McCrea:

Forgive me, Chairman. I am nearly finished.

Tom, I can see your point about what you are doing. If it is a criminal record and you previously disclosed it, I can understand why you would want to bring it out. I am not an expert in this, but it is something of a surprise to me that informed warnings or diversionary activity can constitute a criminal record.

Mr Tom Clarke:

They are held on the criminal record for a period of time, but once they are removed, we would not disclose.

Mr B McCrea:

I understand your process-orientated position, but I am concerned at this, particularly if you make the information readily available. You look at all sorts of things about orders other measures that are introduced. Sometimes they do not work because they become medals of honour, whereas we are trying to get people to stop offending. The idea of making this information readily available to all rings some alarm bells. That is all I will say to you. I am not sufficiently prepared to argue with you about it at this stage. We are trying to avoid convicting and stigmatising young people, by giving them informed warnings or diversionary activities, so this runs the risk of being extremely counterproductive and is probably against the original intent of the law.

Mr Tom Clarke:

I take your point, but we are not in the business of stigmatising young people; that is not what this is about. This is about providing employers with all the relevant information that we believe is essential for safeguarding children and vulnerable adults. It is not our intention to stigmatise young people in any way, shape, size or form.

Mr B McCrea:

We are where we are.

The Chairperson:

From a process point of view, this issue will come back to the Committee in September as a statutory rule. At that point we will see the specific proposals in detail and we can then take a decision.

Mr A Maginness:

You say in the briefing document that:

"Up to mid April 2011, AccessNI had in addition to convictions, routinely disclosed informed warnings, cautions and diversionary youth conferences on disclosures, which are not convictions. Legal advice obtained in April 2011 was that we were acting beyond our legislative authority in doing so."

I am very sympathetic to the point that Mr McCrea made. Informed warnings, cautions and all those things give people the benefit of the doubt. They say, "You have made a mistake and held up your hands. You are taking your medicine and admitting to something." However, the idea is to give the person a chance; that is the whole intent of it.

If I were a young person going for a job in a shop, the shopkeeper may accept me but he has to

go through the process of vetting me. If he finds out that I have got a warning, he might think, "Maybe this guy is not as good as he looks." It creates a doubt in the mind of the potential employer. That could damage a young person on the cusp of employment, and I do not think it fair in the circumstances. He has admitted guilt and been given another chance, yet he is not given another chance if that is going to be revealed to the potential employer.

Mr Tom Clarke:

I would say two things about that. First, we would not release such information in the case of a person applying for a job that involves working in a shop.

Mr A Maginness:

Sorry, I have misunderstood.

Mr Tom Clarke:

It would be released only on enhanced disclosures. For the purposes of a basic certificate we would regard a caution or informed warning as being spent immediately; we would disclose that only on enhanced disclosures. Also, we disclose that information to the individual who is entitled to receive the information; it is not made more widely available. For example, it is not the case that everybody in the firm gets to know that so-and-so has an informed warning. Our code of practice ensures that only the people who need to have the information see it.

So, in those sorts of jobs, or, for example, if someone is applying for a job in the Civil Service, that information would not be revealed. It would be revealed if an 18-year-old was going to take their first job in a care home working with vulnerable adults.

Mr A Maginness:

Are the circumstances in which an enhanced disclosure is needed very narrow?

Mr Tom Clarke:

They are narrow in that they are restricted to those working with children and vulnerable adults, but most of our applications are, clearly, for those working with children and vulnerable adults. They are narrow in that sense, but not narrow in that that is where most of our —

Mr B McCrea:

If you will excuse for coming in on that. Quite a lot of the applications are for people working as care assistants in hospitals or schools. I can understand the issue if you are going to be working directly with vulnerable adults, but quite a lot of people end up being told that that they are working in an environment with children and vulnerable adults because they are applying to work in a hospital or clinic, for example. That is the difficulty.

Mr Tom Clarke:

We have to be careful here because, in theory, any application we get must be within the terms of what is called regulated activity. In other words, there must be a direct contact between children and vulnerable adults and the applicant. That is the basis on which the eligibility is created to get a certificate. We would, on occasion, challenge eligibility for certificates. For example, we have had applications from council leisure centres for the receptionist to be checked, and we will not do those.

Mr B McCrea:

What about dinner ladies in schools?

Mr Tom Clarke:

Schools are different because there is a certain set of regulations for schools that say people working in schools must be checked. Those are not our regulations; they are set by the Department of Education.

Mr B McCrea:

But that is the point.

Mr Tom Clarke:

A dinner lady would require an enhanced disclosure certificate. A dinner lady with a caution for theft may be something that you would want to know about.

Mr A Maginness:

I am very grateful for this explanation but I am still a wee bit unhappy about the proposal.

Mr Dickson:

My point is on the same theme. Paragraph K tells us that the perceived wisdom around this is that:

"Those representing young offenders believe that employment opportunities are a deterrent to reoffending and are worried that the information could be used by employers in a disproportionate way."

If you were 16, 17 or 18 years old and looking for your first job, and you had an informed warning that drops off after a year, you could be that unfortunate person who has done 11 months and 29 days. That seems a very jobsworth approach.

I accept that the broader concept of the police giving information is important. I am just concerned that what needs to be done is slightly more sophisticated, and the reason for the informed warning has to be looked at. If the reason flags up an issue in relation to working with children or vulnerable adults, that may be a reason to pass the information on. However, if the reason for the informed warning, or any other issues highlighted, has no connection with the disclosure request, I have concerns about it being disclosed.

I am particularly concerned that something that lasts for only a year could affect someone's first employment opportunity, leaving them sitting at home or out on the street doing nothing. If somebody has worked with the person to get them to the point of getting a job, it would be very disappointing —

Mr Tom Clarke:

I understand. Part of this programme involves ensuring that employers have all the information about what an informed warning actually means; that it is minor offending and something that has been given by the police. Employers would know that an informed warning had occurred but also know what an informed warning is, thereby enabling them to ask relevant questions of the potential employee. Employers must bear in mind their very important role in safeguarding children and vulnerable adults, and they have to be absolutely sure that there is nothing that could cause a difficulty. That is one reason why we routinely disclosed that information. We had thought that the legislation covered us for that but then found that it did not. That is why we have come back to the Committee to ask for the ability to recommence the routine disclosure of that information.

The Chairperson:

OK, thank you very much, Tom.