



Northern Ireland  
Assembly

**Committee for Justice**

# **OFFICIAL REPORT (Hansard)**

**Review of the Criminal Records Regime in  
Northern Ireland: Part 2**

**26 April 2012**

# NORTHERN IRELAND ASSEMBLY

## Committee for Justice

### Review of the Criminal Records Regime in Northern Ireland: Part 2

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**Members present for all or part of the proceedings:**

Mr Paul Givan (Chairperson)  
Mr Raymond McCartney (Deputy Chairperson)  
Mr Sydney Anderson  
Mr Tom Elliott  
Mr Alban Maginness  
Ms Jennifer McCann  
Mr Patsy McGlone  
Mr Peter Weir

**Witnesses:**

Ms Frances Martin	Department of Justice
Mrs Sunita Mason	Independent Reviewer

**The Chairperson:** I welcome Mrs Sunita Mason, the Independent Advisor for Criminality Information in England and Wales, and Frances Martin from the criminal record review support team in the Department of Justice. I invite Sunita to outline the findings of her report.

**Mrs Sunita Mason (Independent Reviewer):** Good afternoon, everybody, and thank you for the invitation to give evidence. I am aware that there have been some changes to the Committee's membership since I last attended in June 2011, so I will briefly introduce myself. Since 2009, I have held the public appointment of the Independent Advisor for Criminality Information in England and Wales. In "real life", I am a lawyer, specialising in acting for children. I hold another public appointment as a member of the family procedure rule committee, which makes secondary legislation for family law in England and Wales. I also sit as a deputy district judge in the County Courts in England and Wales, specialising in family matters. So my take on this issue and most of my experience has been in the realms of public protection, which is how I have come to look on the reports that I have given to the Minister of Justice.

In March 2011, I was invited to undertake the review in two parts. I came here to give evidence on my part 1 report on 30 June 2011. At that point, I was consulting and asking for ideas and feedback from the Committee, as the report had not yet been published. The part 1 report, which focused on disclosure and employment checking, was published in August 2011. I understand that consultations on its findings took place between December 2011 and March 2012, and the responses are being considered.

The part 2 report concerns the more technical, interesting, but also quite complicated, side to the management of criminal records and criminal record data. The part 2 report was published on 7 March and has been circulated to Committee members. Today, I will speak briefly about part 2 and talk to you about one or two points from the part 1 report that are aligned to part 2, on which I will seek your views and answer your questions.

As an independent person, I conducted the review on a completely independent basis, but I was supported by some officials from the Department of Justice. I consulted more than 100 people face to face and had over 180 responses to the online survey. What I wanted, and was brought in by the Minister of Justice to do, was to look at the criminal records regime from a Northern Ireland perspective and at issues that are unique to here. I found that there are real differences in Northern Ireland in comparison with England and Wales. In my part 2 report, I make 10 recommendations in the definition and recording of criminal records and in the management of, and access and guidance on, such records.

A lot of the management of, and access and guidance on, criminal records is about good housekeeping and looking at the procedures in Northern Ireland to see whether they were good, could be improved or how they could be made more accessible to individuals. I recognised that the Causeway system is unique to Northern Ireland. It was interesting that, when I asked those with whom I consulted whether they would ever go back to how the system had been previously, they all said no. Obviously, the system works really well. The part 2 report states that, given that it is a really good tool, it needs to be placed on an even footing and sustained. In fact, my report for England and Wales states that Causeway is unique and works, and that they may like to think about using it there. Their system is very different and does not work in the holistic way in which Causeway works, which, I think, is a real bonus to Northern Ireland.

The recording and management of criminality information is essential to an effective criminal justice process to protect the public. I wanted to look at striking the right balance. I wanted my recommendations to have a common-sense resonance and to recognise civil liberties. That is really important.

I think that Northern Ireland is now in a strong position with regard to the management and handling of criminal records. However, I want to bring out a few points in my part 2 report that may be of interest to you and on which you may wish to comment. I will take some of them out of turn. Recommendations 5 and 6:

*"relate to the enhancement of sharing criminal records with England and Wales (through the Police National Computer) and the Republic of Ireland".*

It is interesting that, although Northern Ireland has access to material on the police national computer in England and Wales, they could not access records here. There was a big public protection loophole that the Government in England and Wales have stumped up £6.4 million to close. That is very important. In an update from the Home Office just before I came here, I was told that those links are moving well and that the links for biometrics and fingerprints are all coming into play and should be well in place within the next year, which is reassuring.

Another issue that I looked at that you may find of interest was how long an individual's criminal record should be retained. In England and Wales, I undertook a report in 2009-2010 that recommended criminal records being retained for 100 years before deletion. I also stressed the importance of the difference between retention and disclosure. Keeping something is very different from giving it to people, and the issue of whom it is given to needs a completely different set of rules, so to speak. Therefore, the access that Access NI has and uses would be different, for example, from what the courts or the criminal justice system use. I understand that there was a recent court case in Northern Ireland involving grandparents in their 80s, which demonstrates the resonance of keeping criminal records for a sustainable period of time. I have made the same recommendation in my part 2 report that criminal records should be kept for 100 years.

I will move on to the definition and recording of criminal records. It is quite a complicated issue, but, without going into too much depth, let me say that there is a difference between what are known as

recordable offences and non-recordable offences. All criminal offences are not the same. A recordable offence is an offence for which someone could be imprisoned, and a non-recordable offence is an offence for which the maximum term is not imprisonment but, for example, a fine. This system seems to have grown organically over some 100 years. Nobody is to blame for it, but it does not really work. I was concerned that some non-recordable offences — offences that would never be part of someone's criminal record — could be a concern for public protection purposes. One of the most poignant examples is cruelty to animals. I have seen, especially in the type of work that I have done previously, that there is a real and direct link between cruelty to animals and, perhaps, cruelty to children or torture — really nasty crimes that are very, very serious in nature. However, such offences could never be part of someone's criminal record because they are deemed non-recordable. There should be a review of recordable and non-recordable offences so that the offences that are of importance and that people would want to know about if they were thinking about employing someone to look after vulnerable adults or children can be made known. Therefore, there should be a change in status for those types of offence, and they should be made recordable. The issue is quite deep, but the gist of it is that, if there is a public protection concern, such offences should be part of someone's criminal record rather than being brushed to one side and not disclosed so that nobody knows about them. That could cause real concerns and problems in the future.

I also looked at a working definition of a criminal record. It is interesting that there is no actual definition. All those in the criminal justice agencies with whom I consulted said that they thought that a definition would be really helpful. It would be helpful for individuals to know what their criminal record was. You may ask why that is. Many of the individuals to whom I spoke thought that, if they had been arrested and subsequently released without further action, they might still have a criminal record. It needs to be made really clear that that is not a criminal record. I suggest that a criminal record should be proven breaches of the criminal law that involve the establishment of guilt by a court or the admission of guilt. I state that that should be a working definition, because I think that further consultation is needed. In addition, in England and Wales, and in Scotland, there are different definitions of what is included in a criminal record.

As we become more aligned with the EU and look at criminality exchange across Europe, it is important that what we send to Europe and what Europe sends to us is understandable. As of April 2012, the entire UK can now exchange criminal records electronically with Europe. When Europe asks us for something, we need to be able to send it, and we need to be able to send Europe something that is consistent across the UK. Therefore, we will get like-for-like information that we can understand and decipher. That is one reason why I suggest that we have a definition of a criminal record.

The work on the EU is really important. The Home Office has asked me to do some further work on the sharing of criminal records. I am also consulting with colleagues in Northern Ireland to get their perspective. Although I understand that EU matters are reserved, it is important to have the perspective and input of Northern Ireland in looking at the exchange of criminal records across Europe. Likewise, I am also consulting with Scotland.

Those are the main part 2 issues. I want to mention briefly two issues from my part 1 report on non-conviction information, such as cautions, being disclosed by Access NI. I understand that that is not possible now. The reason why I mention the issue is because I have looked at recent caution information — redacted, obviously — that the PSNI provided to me. In just a couple of months of looking at those cautions, I saw cautions for rape and for aggravated assault, and a caution for arson with intent to endanger life. That is really important information that would be missing to an employer if those cautions are not disclosed through Access NI, and I think that that would be a detriment to safe public protection. That is one reason why I recommend that cautions should be disclosed by Access NI.

However, to mitigate people saying that a caution is not as important as a conviction, I also recommend that filtering should be introduced so that old and minor information on convictions should never be disclosed to Access NI. One would need to look at the rules for that, but I am referring to examples such as an 18-year-old who had a shoplifting conviction and then goes on to become a teacher. Is that shoplifting conviction a public protection issue? Should that prevent someone from going on to do that sort of work? I do not think that it should, and I consulted very widely on the matter. The majority of people whom I consulted were keen for some form of filtering so that we could

have a fair and proportionate system. That goes back to not discriminating against young people who may have had a one-off minor offence that they regretted but are not then able to go on to a profession and to make something of their lives because they are stigmatised. That is really important. I have asked for that to be considered, and I have recommended that it is. I understand that that needs to be part of a consultation.

I want to be brief, so I will finish off now. I understand that the Minister has accepted a majority of my recommendations, at least in principle, but that he needs to undertake some further consultation. I wonder if anyone has any questions for me.

**The Chairperson:** The report is a very good piece of work, and the way in which you outlined it to us is very useful. Thank you very much for your work; it is much appreciated.

**Mr Weir:** Thank you, Sunita, for your report; it is very interesting and, as the Chair said, very thoroughly researched. I welcome in particular the harmonisation across different jurisdictions because we have seen such cases in the past from a public protection point of view. The most obvious example that I can think of in my constituency was when somebody had been convicted of child abuse and had moved between different jurisdictions, from Northern Ireland to the Republic of Ireland, where he was convicted, and then to Liverpool. That was a number of years ago, but the lack of a flow of information may have meant that there was an opportunity to commit certain crimes that could have been prevented if the information had been shared in a much fuller way or at a much earlier stage.

I want to touch on two issues. I understand the thinking behind having a consistent definition, particularly across the jurisdictions. From a practical point of view, does the definition that has been arrived at have any implications for what is currently held by way of excluding or including additional information?

**Mrs Mason:** From my vast discussions with the PSNI, it broadly falls into what it considers to be a criminal record. I think that the definition clarifies the issue not only for the PSNI but for an individual. It is about not including the elements that might otherwise fall into someone's criminal record — for example, a fine for not having a TV licence. That should not be a criminal conviction.

**Mr Weir:** If we take that as an example, or a situation in which an arrest has been made but there has been no charge, is a record kept? A defendant who, for example, was arrested but not charged for a particular crime may want to use that as evidence, perhaps even as alibi evidence that they were somewhere else at that time. I appreciate that it is not a criminal record, but is that information held anywhere?

**Mrs Mason:** As I understand it from the PSNI, that information would be held somewhere, perhaps as part of a different database. I wanted the matter to be clarified for individuals that it would not become part of their record, so that if they were subsequently asked whether they had a criminal record, they would not think, Gosh, when I was 18, I was stopped and taken to a police station, but then they let me off — does that count? I want to get rid of any doubt.

**Mr Weir:** My final point is about recommendation 4 and the 100-year rule. The logic seems to be quite a sensible approach. At the end of the 100 years, is there any provision, from a historic point of view, for the retention of records if there was anything of significance? An example from many years ago is the conviction of Dr Crippen, which has a Northern Ireland connection because the telegraph messages that led to his conviction were relayed through Northern Ireland. That might apply to documentation from a small number of cases. Is there a catch-all position to allow public records or anything that is considered to be of historic significance to be retained beyond the 100 years? Has any thought been given to that?

**Mrs Mason:** It is interesting that you say that. Universities in England and Wales that undertake research in that area would want to keep those types of records. The question is whether they are kept in a redacted or lockdown form that can be accessed only if there is a proper and genuine reason, as you suggested. That sounds very sensible. I have not gone into the detail of the issue, but the fact that you have raised the point shows that it should be considered.

**Mr Weir:** A very small number of particularly controversial or high-profile cases might be of interest to future historians. Modern historians in this country could find that documentation on a certain topic that would have been of great interest 100 or 200 years ago has been destroyed. I am talking in a broader sense, not specifically about criminal records.

**Mrs Mason:** That is a really good point; thank you for raising it.

**Mr McCartney:** Thank you very much for your presentation. If a person has a conviction and it runs out, is he or she informed about it?

**Mrs Mason:** I do not think that people are automatically informed. As I understand it, the rules are provided in the Rehabilitation of Offenders (Northern Ireland) Order 1978. It is really left to an individual, which is not necessarily ideal. Perhaps the reason why people are not automatically told that a conviction is spent is because of the complications that would occur if they applied for an enhanced or standard check from Access NI. A conviction would no longer apply, so a person might, in the normal sense, have been rehabilitated, which should never be disclosed, but it comes back because someone has applied for an enhanced check. That might be the reason why. It is not necessarily a perfect system; it causes individuals confusion. You have raised a good point.

**Mr McCartney:** If people make applications, they might be asked whether they have a criminal record. They could reply that they did have a record, but when a search is done, it might come up with nothing. There could be a credibility issue because an employer might say that, although the person had declared that he or she had a record, the employer does not see any instance of it.

**Mrs Mason:** That is an interesting point. I spoke to many registered bodies and employers, and I was heartened to hear that they are very considerate of the issues. They looked at in a very measured way, more so than in England and Wales, where the attitude is that if people have a criminal record, they are discarded and their applications are put in the dustbin. Those to whom I spoke said that they would look at the issue and ask the person whether it was relevant, what it was about and how long ago it was.

It was also interesting that many people said that, because Northern Ireland is a smaller place and employers sometimes know the applicants, they actually know a lot about them anyway. Northern Ireland is unique and small, and people know each other through connections. If anything, it shows that people are being honest because they disclosed something and employers knew about it anyway through other sources. I talked about better guidance, which is needed for individuals, employers and registered bodies so that they know what they are supposed to do with the information when they get it.

**Mr McCartney:** Paragraph 1.29 states that there is the potential for rehabilitation orders here to be more severe than those in the other jurisdictions.

**Mrs Mason:** The reason I said that is that the UK Government in England and Wales have made a change to the Rehabilitation of Offenders Act 1974, which is awaiting Royal Assent, that will bring down the time limits. So certain offences there will be spent quicker than the same offences here, because the legislation will not be in line; for example, if a basic check were done on somebody in the UK because the time limit for showing that the offence had been spent is quicker, it would come back clear. However, because there is currently a longer time limit in Northern Ireland, if a basic check were done on someone here who had been convicted of the same offence at the same time as that individual in the UK, it would not come back clear. That is why I raised it as an issue. Therefore, you may want Northern Ireland to be aligned with England and Wales, because you do not want your citizens to be at a disadvantage compared with those in England and Wales. It might create a false perception if people from England can come over here and say that they have a clear basic check so they should be given a job, when somebody from here who had been convicted of the same thing at the same time cannot do so. That would be unfair.

**The Chairperson:** You have convinced everybody. Thank you very much.

**Mrs Mason:** Thank you very much. It has been a real honour to come here today. If the Committee wants me to report back after I have done my work on the EU exchange, I am more than happy to come and talk to you about that in the future.