Independent Reviewer of Criminal Record Information

Annual Report 2017-2018

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Introduction

This is the second annual report of the Independent Reviewer and it is my pleasure to present the report for the period April 2017 to March 2018.

In my previous report I made three recommendations which can be seen at Appendix A.

My first recommendation was that the Statutory Guidance on the review of criminal records information was issued as soon as possible. I am pleased to say that the guidance was issued very soon after my report was published and is available to view at www.justice-ni.gov.uk/sites/default/files/publications/justice/statutory-guidance-2-may-2017.pdf

My second and third recommendations both related to issues which would be considered by the review of filtering which had been initiated at the time of my last report. Unfortunately due to the current political situation the review has not yet concluded. When it is able to progress I would ask that my previous recommendations be considered.

Cases reviewed.

During this reporting period I have reviewed a total of 510 cases. The majority of these have been automatic referrals, where the criminal record information on a certificate all relates to a time when a person was under 18 and is reviewed before the certificate is released by AccessNI. An appeal can be made by any person after the certificate has been issued, provided that the criminal record information is spent. This is as shown in the charts below which indicate the number of cases completed in each category and the outcome of my reviews.

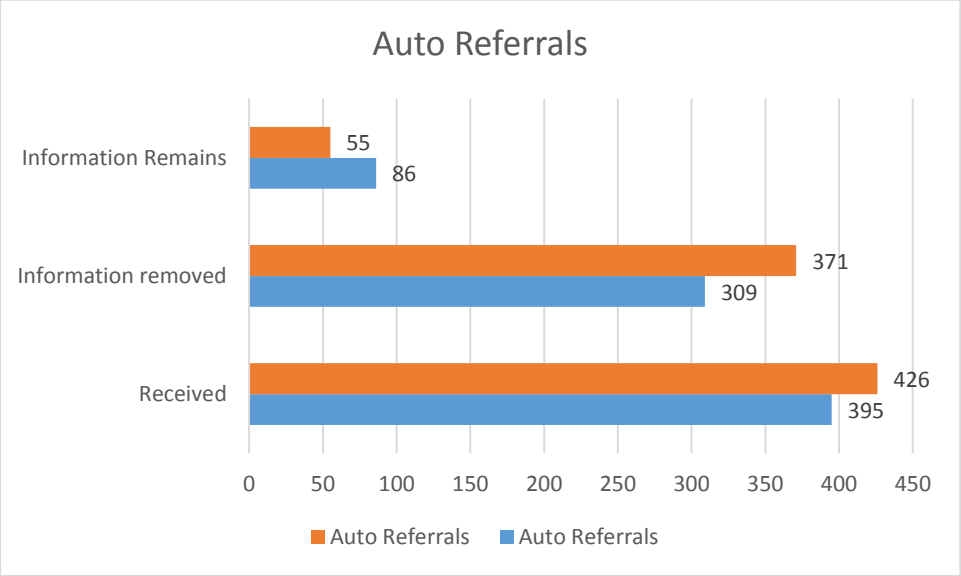
Auto Referrals.

This is by far the largest category of referrals. In many cases the information removed has related to minor offences from a number of years ago, where the applicant has not offended in the interim period and I have felt that the information is no longer relevant to the specific role applied for. In those cases I may have also considered that the presence of the information is likely to have a disproportionate impact on the person who is seeking to work with the vulnerable. The overarching consideration for me is that the removal of the information will not undermine the safeguarding of the vulnerable people the system is designed to protect.

Where I have retained the information I have considered the gravity of the offence, its currency and the impact of the disclosure on the applicant or of non-disclosure on the vulnerable people the process is designed to protect.

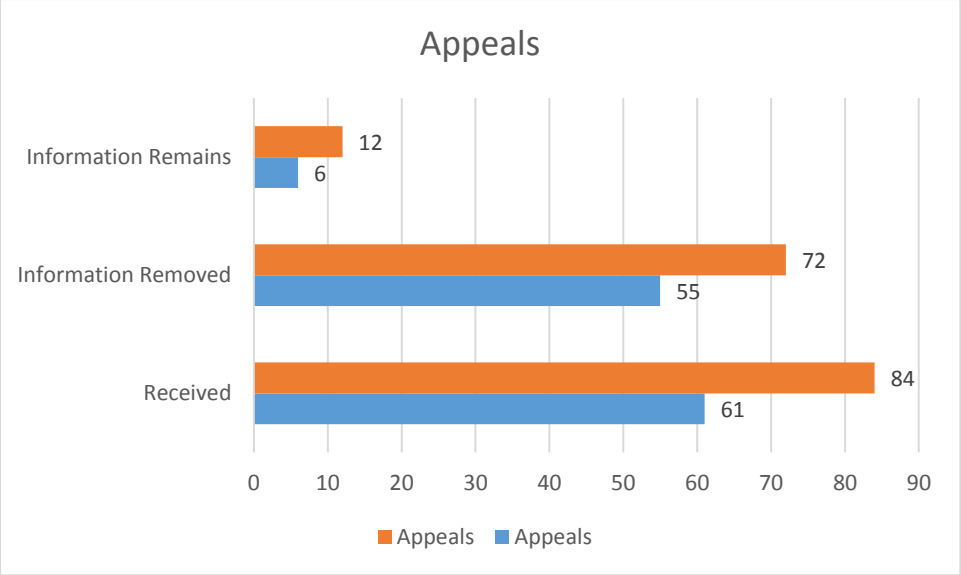
During the reporting period I received a number of referrals from the same applicants who may have been applying for a number of different roles at various times. In

cases where I removed the information on the first application and in order to reduce the impact on those individuals, I have decided that where there has been no change of circumstances and the application is for a similar role in the same workforce; my decision from the first review will stand. In that way the applicant will receive their certificate promptly and the employer will not be aware that there may be information which is being considered for disclosure.



Appeals.

In this reporting period, as can be seen from the chart below, I have received more appeals than in the first year of the scheme. This is understandable as people become more aware of the appeals process. The majority of appeals have come from people who have received cautions or convictions for very minor offences, some of which were committed many years previously. In general they are appealing due to the likely impact on their chances of gaining the role applied for and in the majority of cases, using the same criteria as for Auto Referrals, I have deleted the reference on the certificate.



Stakeholder engagement.

During this reporting period I visited Access Northern Ireland on a number of occasions and have also met with representatives of the Police Service of Northern Ireland (PSNI) to discuss any current issues of concern for either of us.

I have continued to receive prompt responses to my requests for information from stakeholders and would like to thank the PSNI, Probation Service and Youth Justice Agency for their continued support to my role and the Independent Review process.

Conclusion

The system remains in its infancy but I have been pleased with the support I have received from Access NI staff and I remain satisfied the scheme is performing its function. I look forward to the coming year and whilst I have no specific recommendations to make, I will welcome the opportunity to contribute further to the review of the filtering scheme in order to ensure that the vulnerable remain protected whilst those who wish to work with them are dealt with by a system which is timely and proportionate.

Simon Pountain

Independent Reviewer.

Appendix A – Background to the establishment and powers of the Independent Reviewer

Background

On 14 April 2014, as a result of recommendations made by Mrs Sunita Mason in her 2011 report on the criminal record disclosure scheme in Northern Ireland (A Managed Approach), a scheme to filter old and minor convictions from Standard and Enhanced AccessNI certificates was introduced. This scheme was almost identical to that established for the Home Office incorporating the same conditions, timescales and requirements.

Later in 2014, the Minister of Justice, David Ford MLA agreed to introduce provisions to give effect to other recommendations in Mrs Mason's report into a Justice Act for Northern Ireland. This would, in relation to criminal record disclosure, replicate similar provisions set out in the Protection of Freedoms Act 2012 in England and Wales. At the same time, he agreed with specific legal advice received, to include in this Act provisions to enable individuals, in certain circumstances to be able to seek a review of their case where a conviction or disposal had not been filtered from their certificate. The Minister agreed reviews should be undertaken by a person appointed by but independent from, the Department of Justice, to be known as the Independent Reviewer.

In taking this approach, the Minister believed there should be scope for a review mechanism. This would allow for a review of the circumstances of individual offences that would normally have been disclosed to ensure that such disclosure was relevant and proportionate set against the aims of the disclosure regime which is to protect vulnerable groups and the public from the risk of harm.

The position of Independent Reviewer of criminal record information (the Independent Reviewer) was established through the Justice Act (Northern Ireland) 2015.

Section 41 of this Act provides for the inclusion of a Schedule 8A under section 117B of Part V of the Police Act 1997. This Schedule sets out the duties and obligations of the Independent Reviewer and in particular the circumstances in which a review of criminal record information provided on a Standard or Enhanced AccessNI certificate can take place.

I was appointed as the Independent Reviewer on 1 November 2015 and began to consider cases from 1 March 2016. This report covers my work from April 2017 to March 2018. Section 2(8) of Schedule 8A enables me to hold the position as Independent Reviewer and as Independent Monitor of police information under section 119B of Part V of the Police Act 1997.

Powers of the Independent Reviewer

Under Section 4(1) of Schedule 8A of Part V of the Police Act 1997 (the Schedule), I can, at the request of the applicant, review any spent convictions or other disposals included in a Standard or Enhanced certificate issued by AccessNI.

Under Section 6(1) of the Schedule, where AccessNI proposes to issue a Standard or Enhanced certificate with details of spent convictions or other disposals and all of this information relates to a time when the person was under 18 years of age, AccessNI must automatically refer this certificate to me for review before it is issued.

Under sections 5(4) and 6(4) of the Schedule I can determine that details of spent convictions or other offences should be removed from the certificates and sections 5(5) and 6(5) requires the Department to amend the certificate in line with my determination.

Under section 7 of the Schedule, I can ask the Chief Constable of the PSNI, the Department of Justice's Youth Justice Agency or the Probation Board for Northern Ireland for any information that I reasonably require in connection with the exercise of my functions.

Finally, I have an over-arching statutory duty under section 5(5) and 6(7) of the Schedule not to remove any details of spent convictions or other disposals unless I am satisfied that the removal of those details would not undermine the safeguarding or protection of children and vulnerable adults or pose a risk of harm to the public.

Appendix B. Recommendations from 2016-17 Annual Report.

Recommendation 1. That the Statutory Guidance on the review of criminal records information is issued as soon as possible.

Recommendation 2.To consider the non-disclosure of informed warnings in all but the most recent cases.

Recommendation 3. To review the list of specified offences and give consideration to the removal of minor matters such as the simple possession of cannabis for personal use.