Independent Reviewer of Criminal Record Information

Annual Report 2016-2017

Introduction

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 2016 and began to consider cases from 1 March 2016. This report covers my work from that time until 31 March 2017, a total of 13 months. 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.

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.

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.

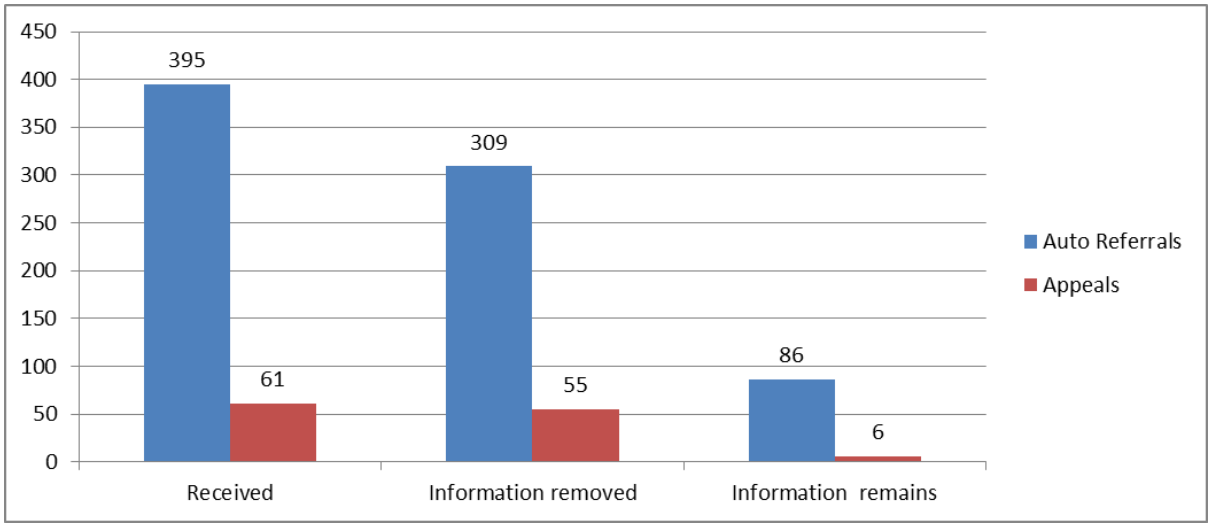
Under sections 5(4) and 6(4) of the Schedule I can determine that details of spent convictions or other offences should be removed from the certificates and sections 5(5) and 6(5) requires the Department to amend the certificate in line with my determination.

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.

Cases reviewed.

During this reporting period I have reviewed a total of 456 cases. The majority of these have been automatic referrals as shown in the figure below.



As can be seen by the chart above, I have deleted the information in a significant percentage of cases in both categories of referrals.

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.

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.

The majority of appeals have come from people who have received cautions or convictions for very minor offences 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.

Recommendations.

Upon taking up the Independent Reviewer role I met with representatives from the Police Service of Northern Ireland (PSNI), Probation Service and Youth Justice Agency to discuss the new system with them and also the types of information I would be likely to be requesting. In the first reporting period I have been pleased with the speed in which they have responded to my requests, this enabling me to complete cases in good time.

There are also cases where PSNI have decided to include information on the second part of the certificate and this is often information which explains the background to the caution or conviction shown. In some of these cases I have deleted the conviction information and I am pleased that the police in all of those cases has then withdrawn their disclosure.

This is a unique system within the United Kingdom and is one which I feel has benefitted a large proportion of people who wish to work with the vulnerable and for whom those roles may previously have been unattainable due to the presence of a minor conviction or caution on their certificate. This is either because in many cases an employer is more likely to accept a candidate with a clean record over one with a single caution or conviction; or that the applicant may choose to withdraw from a recruitment process due to the presence of such information. In either case this creates unfairness to the applicant even where the information has no bearing on the risk they pose to the vulnerable.

I have 3 recommendations to make in this report.

As the role is new I am pleased to have been able to steer the development of the process and have worked with the Department of Justice and Access Northern Ireland to develop guidance for my role as set out in paragraph 3 of schedule 8A to Part V of the Police Act 1997. Some progress has been made in this but the guidance is yet to be published. It would help my role greatly for this work to be complete and will also allow people in receipt of certificates, to understand the process which I have followed in order to reach my conclusions. I therefore recommend that the Statutory Guidance is issued as soon as possible. **Recommendation 1**.

I also welcome the opportunity to be involved in the review of the filtering scheme. I have now reviewed over 450 cases and have noticed some areas where I believe the current system is unwieldy. An example of this is the automatic disclosure of Juvenile Informed Warnings. These are the lowest level of formal outcome and are generally used for a person's first offence which is considered a low level matter. I feel that there would be value in considering the non-disclosure of informed warnings in all but the most recent cases. **Recommendation 2**.

The filtering review will also include a review of the list of specified offences. I welcome this and hope that consideration is given to the removal of several minor matters that are not regarded as specified offences in England and Wales. This would not have the effect of decriminalising this type of offence but would mean that lower level offending would not automatically be disclosed for long periods. **Recommendation 3.**

Conclusion

The office of the Independent Reviewer is supported by staff from Access Northern Ireland and I would like to thank them for their hard work over the reporting period. It has been my pleasure to have had the opportunity to undertake this role and I look forward to the coming year.

Simon Pountain

Independent Reviewer.

Summary of Recommendations

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.