



## NIACRO Policy Paper: Access to Further Education

### 1. Introduction

This paper has been prepared by NIACRO to highlight particular issues and challenges regarding access to further education (FE) college courses for people affected by the criminal justice system. The information in this paper is based on our experience of supporting service users for a number of years, both through our resettlement projects and our criminal records advice line.

It is this service delivery experience that has helped us identify inconsistencies in the admissions process across the FE sector in Northern Ireland, including inappropriate requests for disclosure, breach of the Access NI code of practice, and a lack of support or advice for both colleges and those disclosing conviction (or non-conviction) information.

NIACRO has often raised the issue of people with criminal records experiencing difficulty in accessing further education; our 2015 policy campaign [Off The Record](#) highlighted the lasting impact of old and minor convictions, including restricted access to education, employment and training. However, access to such opportunities significantly reduce the risk of reoffending. Therefore, ensuring people who have offended have access to sustainable and meaningful employment pathways, particularly through FE courses, contributes to the Northern Ireland Executive's Strategic Framework for Reducing Offending.

We therefore call on the Department for Employment and Learning (DEL) and all colleges across the FE sector to implement clear and consistent policies, based on risk assessment and relevancy, concerning disclosure, admissions and support. Further, we recommend that an accurate training and advice service is available to colleges, applicants and students, as previously provided by NIACRO.

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## **2. The Issue**

Every year, more than 30,000 people are convicted of a criminal offence in Northern Ireland. However, only a small number of those who offend pose a significant and ongoing potential risk to public safety. Despite this, both this group – and the huge numbers of people who receive alternative disposals – will have to declare their convictions in a wide range of circumstances for varying periods of time.

The requirement to disclose convictions therefore affects many people in society. The consequences of having to do so have a lasting impact on a person's ability to gain employment, access further or higher education or training opportunities, volunteer, or obtain insurance or a bank account. Yet having access to such opportunities is central to reducing the risks of re-offending and as such is in the interests of public safety and of wider society, both of which are best served by encouraging and enabling people to move beyond their offending behaviour.

The barriers for people with convictions in Northern Ireland have increased over recent years as a result of complex and ad hoc legislation, such as the Safeguarding Vulnerable Groups legislation developed in response to particular social events, which has placed greater requirements on individuals to disclose their past convictions, and continues to increase the structural barriers to accessing education, employment, training, etc. While there have been recent changes to the criminal records disclosure processes with the introduction of the filtering system – and the upcoming associated review mechanism – it is clear that the changes are not well understood by applicants and colleges alike.

Our experience of college application processes highlights a lack of awareness about the importance of managing risk appropriately and increasing opportunities for those who have come through the criminal justice system.

### **2.1 Applicants: Accessing FE Provision**

NIACRO has connections with a number of further education colleges and students, as the organisation is a natural reference point across Northern Ireland for those with previous contact with the criminal justice system who wish to pursue a range of vocational, educational and personal development courses. As well as providing a signposting service for our service users, we assist them to complete application forms, and accompany them to interviews and review sessions in accordance with individual needs. NIACRO has also provided support to colleges in the development of their recruitment and vetting processes for prospective students (see section 2.2 for more detail). This was designed to ensure that students are not unfairly discriminated against because of their conviction(s). Where evidence of discrimination existed, NIACRO previously provided an advocacy service to support students.

Our service users, particularly in the past six years, have experienced varying degrees of success in accessing FE college courses. This is mainly because the daunting disclosure process has discouraged them from applying, or they have been refused access to their preferred course because they have disclosed a conviction or other criminal record information. Please turn to [Appendix 1](#) for case study examples from our service users.

We know from engagement with AccessNI that the number of college applicants who applied for disclosure checks during September/October 2014 and evidenced convictions was low. However, this exercise did not - nor could it - identify how many potential students were discouraged from progression to FE by the awareness of the need to complete the criminal records disclosure process and the perceived inevitability that admission to their chosen course would be refused. Further, the AccessNI exercise identifies that many of those who did have records would not actually have to disclose them following recent changes in the law due to be implemented in 2016. This evidences that there is a lack of understanding on the part of those with convictions concerning disclosure requirements. As a result, NIACRO remains very concerned that without clear guidance concerning disclosure requirements incorporated into the application process for each course, FE Colleges are indirectly discriminating against those with a criminal record and undermining their own efforts to promote social inclusion.

### ***Recommendation***

- We recommend that FE colleges publish clear guidance for applicants concerning disclosure requirements, based on risk assessment, for the course and subsequent field of employment, and that this is incorporated into the application process for each course.

## **2.2 FE Colleges: Understanding the Legislation**

As referenced above, NIACRO has previously engaged with FE colleges to develop their processes and policies for recruiting and vetting prospective students. Similarly, we have also provided advice to colleges who seek assistance regarding disclosure of convictions to employers offering placements and to other third parties. We received an increase in calls from colleges regarding disclosure of convictions on UCAS applications, and offered to work with them continuously to ensure not only that people are not treated unfairly because of their convictions, but also that the colleges' policies and procedures operate effectively and provide appropriate protection for them.

Due to the issues brought to our attention through calls from both colleges and applicants, we previously contacted colleges to raise awareness of legislative guidance and best practice regarding the disclosure process for student applicants. While some colleges were willing to work with us and availed of NIACRO's 'Working With Conviction' training (see [Appendix 2](#)), there was a wide variation in engagement and best practice policy implementation, representing a worrying level of inconsistency in approach across the FE sector.

Our engagement with colleges highlighted a number of positive aspects in relation to our service user group, including:

- colleges are well resourced by DEL to provide academic and vocational qualification routes as well as Essential Skills;
- courses are available on both a full- and part-time basis;
- participation in a course can provide a positive route for service users to integrate with the community; and
- reduced fees are offered for people who are unemployed.

However, this engagement also identified some challenges and areas for improvement, including:

- essential skills provision in colleges did not suit the majority of NIACRO service users, who required (and felt more comfortable with) one-to-one provision – colleges could encourage participation in literacy and numeracy programmes by offering this format of teaching;
- inconsistent practice existed across most colleges in relation to the acceptance or refusal of individuals to courses;
- some colleges advised that unspent conviction information was not required if the conviction was not of a sexual or violent nature or related to drugs – in such cases we were concerned about how risk is managed and also the level of realistic careers advice provided by the college to students;
- inappropriate AccessNI Enhanced Disclosure Checks requested by colleges for applicants applying for non-regulated courses (which do not require such a level of check);
- inappropriate and unlawful requests for disclosure information relating to spent convictions and other disposals such as cautions, which the college may not have been entitled to have – we continued to raise this with DEL, Colleges NI and individual colleges, highlighting that the format and content of such disclosure questions was in breach of the Data Protection Act and the Rehabilitation of Offenders (NI) Order 1978. As a result, two colleges amended the wording on application forms; and
- requests for enhanced disclosure checks carried out for regulated work placements half way through a course. These processes should have been addressed at the outset. This practice led to cases where students have been removed from courses they have already started. As a result of this failure to comply with various aspects of the AccessNI Code of Practice, three cases were granted leave for full Judicial Review hearings, with the college conceding that practices were flawed.

In short, the difficulties experienced by NIACRO and our service users, when considering college provision, reflect a lack of understanding by colleges about the impact of having a criminal record and factors and processes to be considered. It also reflects a lack of understanding of colleges of their role in promoting social inclusion generally and access to further education.

To redress this imbalance, NIACRO has previously attempted to break down these barriers by offering training to colleges, with a view to establishing

working relationships to develop policies and practices which increase opportunities and reduce risks.

### **Recommendations**

- We recommend that consistent policies and procedures, in line with best practice, are introduced across all colleges to ensure a safe, fair, equal and risk-assessed admissions process is in place.
- We recommend that DEL ensures that individual colleges are informed of and trained in the relevant legislation and criminal records disclosure mechanisms, including the different levels of AccessNI checks, and the appropriate application of the same.
- We recommend that the FE sector complies with the AccessNI Code of Practice.
- We recommend that Essential Skills be delivered in a range of formats, including one-to-one, in recognition of the barriers people may face to learning.

### **3. What Needs To Happen**

It is critical that the FE sector acknowledges its role in reducing reoffending and promoting resettlement, as advocated by the Strategic Framework for Reducing Offending.

Colleges have an important role to play in promoting social inclusion and reducing the barriers to education, employment and training faced by people with convictions. The FE sector can do this by better recognising the needs of this group and introducing consistent, fair policies that assess risk and improve outcomes.

Specifically, we call for the following:

- The FE sector must acknowledge the barriers to FE people with convictions face and recognise the personal and societal benefits of access to education, employment and training, particularly in the context of reducing offending.
- FE colleges should be required to develop and implement consistent policies and procedures, in line with best practice and the Access NI Code of Practice, to ensure a safe, fair, equal and risk-assessed admissions process is in place.
- FE colleges must publish clear guidance for applicants concerning disclosure requirements, based on risk assessment in relation to the particular course and associated field of employment.
- Appropriate training and advice should be in place for both colleges and applicants in relation to disclosure.

## Appendix 1: Service User Case Studies

1. Applicant applied for a place at a college to study a 1 year NVQ course in Social Care. He commenced the course in September and was due to commence a work placement in January. In November the College applied for Enhanced Disclosure Certificates (EDCs) in advance of the work placement. The Applicant's EDC showed 3 convictions and a caution, all for Disorderly Behaviour. Two of the convictions and the caution were from more than 20 years ago; the other conviction was administered in 2010. The Applicant attended a meeting to discuss this but the College ultimately refused to allow the Applicant to continue with his course due to the most recent conviction. The Applicant sought legal advice and we wrote to the College advising that they had failed to comply with the Access NI Code of Practice and breached the Applicant's Article 8 rights. The College refused to retake the decision and Judicial Review proceedings were issued. Leave was granted and in preparation for the substantive hearing, an Affidavit was lodged by a College staff member indicating that the version of events given by the Applicant was different to the circumstances confirmed by the PSNI and it was this inconsistency that led to the College's decision not to permit the Applicant to continue with his studies. The College confirmed that the additional disclosure was made during a telephone call between the College and PSNI Criminal Records. Ultimately the College accepted that they should not have received the additional disclosure on which they based their decision and accordingly conceded the case and permitted the Applicant to return to the course (albeit he had missed a year). Proceedings are still ongoing between the Applicant and PSNI; we have separately sued the PSNI for breach of Article 8 rights as the additional unlawful disclosure made by the PSNI directly resulted in the Applicant losing his place on the course. An offer of compensation has been made and is being considered by the client. (*Aug 14*)
2. Applicant applied for a place at a College to study a 2 year BTEC Diploma in Health and Social Care. He commenced the course in September and was due to commence a work placement in January. In November, the College applied for EDCs in advance of the work placement. An EDC was provided which showed that the Applicant had a minor driving conviction and cautions for Possession of a Class B Drug, Possession of a Class C Drug from 2008 and Indecent Behaviour from 2005 (when he was under 18). In light of this the Applicant attended a meeting to discuss his EDC but the College ultimately refused to allow him to continue with his course. The Applicant sought legal advice and we wrote to the College advising that they had failed to comply with the Access NI Code of Practice and breached the Applicant's Article 8 rights. The Applicant had previously had an issue with cannabis for which he had sought professional help, he had become heavily involved in charity work, working with young people and was an example of someone who had really turned things around. The College refused to retake the decision and Judicial Review proceedings were issued. Leave was granted and the matter was listed for substantive Hearing. Before the full Hearing took place in this

case, Justice Treacy handed down judgment in a similar case of JR 54. This case highlighted that caution information held on the Causeway System was not disclosable, only conviction information held on the Causeway System should have been disclosed. We wrote to Access NI to determine how the Applicant's caution information had been held and they confirmed that it was held on the Causeway system. Accordingly the College conceded that they had based their decision on information which should not have been made available to them and that in the circumstances they permitted the Applicant to return to the course (albeit he had missed a year). Proceedings are still ongoing between the Applicant and PSNI, we have separately sued the PSNI for breach of Article 8 rights as the additional unlawful disclosure made by the PSNI directly resulted in the Applicant losing his place on the course. This case highlighted the issue of the holding of caution information on the appropriate system. *(Aug 14)*

3. An applicant with unspent motoring related convictions applied for an NVQ Motor Vehicles course with a college. The college advised him that they did not need to know about any offences apart from those detailed above. On further exploration with the applicant and the college we advised that career opportunities in this area would be difficult and an alternative occupational area was identified. *(Feb 15)*

- Various calls from FE/University students who were seeking advice about convictions acquired for various things including theft, common assault, and possession of cannabis or indecent behaviours. Questions include: "will this conviction stand in my way for placements" and "will I be able to get a job when I graduate?".
- Until March 2015, approximately 30% of calls made to our advice line were from young people.
- Approximately 20% of calls were in relation to FE colleges. This included calls from students, both current and prospective, careers staff and teachers / lecturers and often parents.

## Appendix 2: Best Practice Case Study

### Belfast Met, PBNI and NIACRO Joint Protocol

As an example of best practice, Belfast Met has been working closely with NIACRO for the past four years and has helped with:

1. Assessing the risk that each prospective student applying to the college could potentially pose on campus, and assessing whether the college has the capability to manage that risk safely.
2. Building a partnership-approach (alongside PBNI) to manage the risk associated with having students with particular convictions on campus (including contracting with the students and regular monitoring).
3. Developing criminal disclosure operational protocol and a Policies and Procedural document concerning criminal disclosures, and providing criminal disclosure training for relevant staff.

Consequently, Belfast Met has introduced a Joint Information Sharing Protocol, which was agreed with NIACRO and PBNI in April 2014, regarding good practice in the admissions and risk management of people engaged with PBNI and NIACRO.

### Positive Outcomes

The progress made has meant that Belfast Met is experiencing a “systematic year-on-year” increase in the percentage of applicants with convictions who are being offered places and going on to successful completion of their courses. The college is also experiencing a rise in the number of applications disclosing convictions, as the “fear factor associated with this has been alleviated”.

Progress with other colleges has not advanced to the same level.

Belfast Met has reported an increase in confidence in its process since the introduction of the new procedures. The college also reports that staff have a clearer understanding of their legislative duties under the relevant Rehabilitation of Offenders legislation and the Data Protection Act. Risk management processes have been improved, with greater transparency in the process and increased communication with NIACRO and Probation.

Since this change, Belfast Met admissions for applicants who are NIACRO service users has increased approximately 70%.

### The Way Forward

We hope to continue improving access to further education for our service users by working in partnership with colleges to assist the sector in developing its understanding of the needs of our service users, the impact of criminal records and the benefits of access to FE, and to establish consistent protocols which address the education and training needs of those with criminal records within the FE sector.