



Off The Record

“a criminal record shouldn’t be a life sentence”

Position Paper

January 2015

Contact:

Julia Kenny

Policy and Research Co-ordinator

NIACRO

julia@niacro.co.uk

028 9032 0157

1.0 Introduction

NIACRO is a voluntary organisation which works to reduce crime and its impact on people and communities.

Our vision is of a society in which the needs and rights of all citizens, including victims of crime and adults or children who offend – or who are at risk of offending – are equally respected.

In recent years, NIACRO has repeatedly raised the issue of old and minor convictions restricting options for people as they move through life, with often minor convictions or cautions received as a child barring an adult from accessing certain types of employment or travel. We have supported the England-based ‘Wipe The Slate Clean’ campaign in Northern Ireland through a variety of events and editorial pieces in both the media and NIACRO News, and we have spoken publicly about the need to implement Recommendation 21 of the Youth Justice Review (2011).

In the context of the current **Justice Bill** currently being considered by the Northern Ireland Assembly Committee for Justice, we now believe it is time to achieve this implementation and explore the potential for extending it beyond the scope suggested in the Youth Justice Review. This short briefing paper outlines our rationale and the policy, political and social context for this call to change the current criminal records practice for people who received convictions under the age of 18.

1.1 Background and Context

In the financial year 2010/11, **3,248 young people** received a non-custodial disposal at court, a diversionary disposal or were released from custody¹.

Between January 2005 and June 2009, more than **7,800 cautions** were handed out by the PSNI to children and young people aged under 18 over the same five year period, with some as young as 10-years-old.²

Between 2012/13 and 2013/14 the proportion of youth conference court ordered referrals increased from 41% to 44%³.

This means a significant proportion of young people in Northern Ireland are receiving criminal or police records which bar them from accessing many education, employment or training opportunities, therefore increasing their risk of reoffending.

¹ <http://www.dojni.gov.uk/index/statistics-research/stats-research-publications/reoffending-stats-and-research/6-2014-youth-reoffending-in-ni-2010-11-cohort.pdf>

² <http://www.thedetail.tv/issues/7/youth-crime/serious-concerns-raised-as-children-criminalised-at-10>

³ <http://www.youthjusticeagency.ni.gov.uk/news/271/>

1.1.1 Youth Justice Review

In 2011, the Review of the Youth Justice System in Northern Ireland said:

“It is somehow perverse that while all the research evidence suggests that providing offenders with stable employment is one of the most powerful ways of preventing re-offending, the current system of informing potential employers of an offender’s criminal history acts as the most potent barrier to accessing such employment. What chance do young offenders have of securing employment when the only entry on their CV is a criminal record?” (page 82)

The review acknowledged that “contact with the criminal justice system, even for relatively minor matters, can have serious implications for young people’s future life chances” and that even those young people who are not convicted, but rather receive a diversionary measure, can find that their past offending behaviour is disclosed at a later date under enhanced pre-employment checks. It also highlighted that gaining a criminal record actually acts as a precursor to more offending, rather than as a deterrent.

The review accepted it is important for the police – for criminal justice purposes – to hold information about people of whatever age who have committed offences. However, it raised issue over whether that information should be released to anyone outside the criminal justice system, noting the arguably zealous nature of disclosing conviction and non-conviction information and the perceived necessity for enhanced disclosure checks. While the review acknowledged that it is important to screen out those who pose real danger to children and adults from certain jobs, “the vast majority of children and young people who offend do not however fall into this category”.

It said an underpinning principle of any new arrangements in the youth justice system should be that “children must be given the best chance possible to succeed in life and become responsible citizens”:

“As young people approach adulthood and assess their prospects for a fulfilling and responsible life, they should be given every opportunity to put youthful misdemeanours and even serious offending behind them. In most cases, there should be a real possibility of having the “slate cleaned” at age 18 or 21 on application by the young person.” (page 85)

Amongst the review’s 31 recommendations, the Review Team made the following recommendation (*emphasis added*):

21. Policy and legislation relating to the rehabilitation of offenders should be overhauled and reflect the principles of **proportionality, transparency and fairness**. Specific actions should include:

- a. diversionary disposals should not attract a criminal record or be subject to employer disclosure;

- b. **young offenders should be allowed to apply for a clean slate at age 18;**
- c. for those very few young people about whom there are real concerns and where information should be made available for pre-employment checks in the future, a transparent process for disclosure of information, based on a risk assessment and open to challenge, should be established. The decision to disclose and the assessment on which it is based should be regularly reviewed.

While NIACRO endorses all parts of this recommendation, this particular campaign focuses on **Part B**, with the additional proposal that anyone – whether aged under or over 18 – should be allowed to apply to have their criminal record reviewed and potentially expunged.

1.1.2 Rejection of Recommendation 21, Filtering & Criminal Records Review

Around the same time as the Youth Justice Review, Sunita Mason was commissioned to carry out a Review of the Criminal Records Regime in Northern Ireland. This did not specifically relate to young people, but its recommendations were said to be made mindful of the Youth Justice Review's recommendations. In spring 2014, Justice Minister David Ford announced that the new filtering arrangements proposed in the Criminal Records Review would be implemented in April 2014 – seemingly in lieu of recommendation 21 in the Youth Justice Review.

While we welcome this amendment to the Rehabilitation of Offenders (Exceptions) Order (NI) 1979, we have several concerns regarding the rejection of recommendation 21 in favour of filtering:

- The filtering arrangements do not allow for young people to apply to have their record 'wiped clean', as proposed in recommendation 21;
- A conviction received under the age of 18 for a non-specified offence will not be filtered from someone's record until five and a half years after conviction: if a young person is convicted for a non-specified offence aged 17, they will be almost 23 before it is filtered, impacting on their ability to access education, training and employment at a critical age in engaging with the labour market, thereby increasing their risk of reoffending;
- A conviction (or a caution or diversionary youth conference) for a specified offence will never be filtered, even if the young person was under 18 at the time of conviction – in direct contrast to the Youth Justice Review's assertion that "diversionary disposals should not attract a criminal record or be subject to employer disclosure";
- A conviction resulting in a custodial (including suspended) sentence will never be filtered, even if the young person was under 18 at the time of conviction;

- If a young person has more than one conviction, these will not be subject to filtering;
- The list of specified offences includes ‘possession of cannabis’, ‘destroying or damaging property’ or ‘breach of the peace’, meaning many young people may have convictions that will never be filtered from their records as adults – including those caught up in disturbances at flag protests;
- Information and advice given to young people and their parents is often inaccurate, with the PSNI and legal professionals sometimes mistakenly advising young people that cautions or diversionary mechanisms do not form part of their criminal/police records. Similarly, there is little incentive for a young person to participate in a Youth Engagement Clinic and accept a diversionary disposal if it means getting a criminal record; and
- The disclosure of non-conviction information remains a concern, with information being disclosed sometimes unnecessarily to potential employers; without the ability to apply to have a criminal record ‘wiped clean’, this information may still act as a barrier to accessing education, training and employment, in turn damaging the likelihood of desistance.

While we recognise the new filtering arrangements are a step in the right direction for people who offend as adults, we are concerned that people, including young people and their families, are being misinformed about the short and long term consequences of the disposals they receive. We also have serious concerns that the arrangements do not go far enough in facilitating effective resettlement of people who offended as youths. Therefore, we believe that the implementation of recommendation 21 – and the exploration of extending its scope – is the effective way to facilitate resettlement and desistance for young people who offend.

1.1.3 ‘NEET’ Crisis

It is well documented that in Northern Ireland, too many young people are not in education, employment or training (‘NEET’).

- For the period April - June 2014, the Northern Ireland ‘NEET’ rate for those aged 16-24 stood at 14.8%, compared to a UK average of 12.8%.
- Of the countries within the UK, Northern Ireland had the second highest 16-24 ‘NEETs’ rate.⁴
- For April - June 2014, there were 16,000 ‘NEETs’ who were unemployed young people (aged from 16 to 24).
- It should be noted there is also a number of unemployed persons who are in education who are not included in the NEETs definition.

The Department for Employment and Learning (DEL) published ‘Pathways to Success’, a strategy for addressing the ‘NEET’ situation, in 2012. Though the strategy acknowledges the negative impact of the current economic climate in

⁴ http://www.detini.gov.uk/lfs_quarterly_supplement_-_april_-_june_2014.pdf?rev=0

Northern Ireland, it highlights that this is not the only reason for our high economic inactivity rates amongst young people:

“The fact that the number of young people who are NEET has increased both in absolute terms and as a proportion of the 16-24 age group both before and since the recession tends to indicate that the issue is a deeper structural one and not simply a product of the economic situation. ... This represents thousands of blighted lives, which if not addressed in a comprehensive way will lead to long term consequences for individuals, their families and the local economy.”
(*Pathways to Success*, DEL, 2012, p6)

The strategy notes that young people who face barriers to education, employment or training are young people who:

- are or have been in care; left care; or are on the edge of care;
- have had a negative experience of education;
- have suffered from bullying at school;
- have literacy and numeracy problems;
- are carers;
- are parents;
- have been involved with drug and alcohol abuse;
- have a physical or learning disability;
- have committed a crime;
- have a mental illness;
- suffer an economic disadvantage; and/or
- are homeless.

While the strategy notes that having committed a crime – and therefore having a criminal record – is a barrier in itself, many of the other points listed are characteristics of young people who offend, particularly literacy/numeracy problems, care experience, addiction, mental illness, poor educational experience and homelessness. Additionally, there is the added risk of threats or intimidation within the community. However, while services exist to support young people to improve or move away from these issues to enable them to access education, employment or training, currently a criminal record received as a young person can have an unexpected lasting impact as a person moves into adulthood, compounding the ‘NEET’ situation in Northern Ireland.

1.1.4 Minimum Age of Criminal Responsibility (MACR)

The age of criminal responsibility in Northern Ireland is currently 10 years old. This is despite the Youth Justice Review team’s assertion that it should be raised to 12, with a view to considering raising it to 14 at a later stage.

The MACR is also 10 in England and Wales and in New Zealand, but elsewhere it is generally higher. The official age of prosecution in Scotland has been increased from eight to 12 in recent years, and in the Republic of Ireland it is 12 in all but the most serious cases.

The Youth Justice Review found that this MACR was not internationally acceptable. By criminalising children at the age of 10, young people may develop a “criminal identity”. The impact of gaining a criminal record from the age of 10 can mean that a young person’s chances of accessing education or training opportunities are compromised and may in fact lead to re-offending.

1.1.5 Rest of UK

- In 2002⁵, the Home Office Review of the Rehabilitation of Offenders Act 1974 called for those with convictions or cautions to be given the chance – in certain circumstances – to wipe the slate clean and start afresh. This has not yet been implemented.
- In June 2014, the Supreme Court ruled that not all police cautions and minor convictions should have to be disclosed in criminal record checks. Judges said any requirement to do so would be incompatible with human rights legislation in England and Wales.⁶
- An inquiry into the operation and effectiveness of the youth court in England and Wales, chaired by Lord Carlile, said in its final June 2014 report that “children who have committed non-serious and non-violent offences, who have stopped offending, should have their criminal record expunged when they turn 18”.⁷

1.1.6 Rights Basis

- The United Nations Convention on the Rights of the Child (UNCRC) General Comment No. 10 states: “The Committee also recommends that the States parties introduce rules which would allow for an automatic removal from the criminal records of the name of the child who committed an offence upon reaching the age of 18, or for certain limited, serious offences where removal is possible at the request of the child, if necessary under certain conditions (e.g. not having committed an offence within two years after the last conviction).”
- The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules) 1990 state: “Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.”
- Article 8 of the European Convention on Human Rights states “everyone has the right to respect for his private and family life, his home and his correspondence”.
- The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), 1990, state: “The need for and

⁵ <http://webarchive.nationalarchives.gov.uk/+/http://www.homeoffice.gov.uk/documents/breaking-the-circle?view=Binary>

⁶ <http://www.bbc.co.uk/news/uk-27895472>

⁷ <http://www.ncb.org.uk/what-we-do/policy/youth-courts-inquiry>

importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognised. These should avoid criminalising and penalising a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:

- (a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;
- (b) Specialised philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;
- (c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;
- (d) Safeguarding the wellbeing, development, rights and interests of all young persons;
- (e) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood; and
- (f) Awareness that, in the predominant opinion of experts, labelling a young person as "deviant", "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons."

1.1.7 Wipe the Slate Clean Campaign

The campaign *WipeTheSlateClean* was founded in 2012 by Bob Ashford when he was forced to step down as the Labour candidate for Police and Crime Commissioner in Avon and Somerset due to a conviction received as a 13 year old – 47 years previously. The campaign advocates for a change in legislation to allow for old and minor convictions to be wiped from criminal records. More information about the campaign is available [here](#).

Bob campaigns proactively in England and Wales. He has also lent his support to NIACRO's efforts to effect change in this area in Northern Ireland, speaking at our Justice Series event in spring 2013, our AGM in November 2013, and at a fringe event we hosted at the Xchange Summer School in Enniskillen in June 2014. At the latter, he was joined by Simon Weston, the former soldier badly injured in the Falklands War who also was unable to pursue his candidacy as a as a Police and Crime Commissioner due to a conviction he received as a teenager.

WipeTheSlateClean is supportive of this Off The Record campaign and Bob and Simon appear in the campaign film, which they will launch in January 2015.

1.1.8 Republic of Ireland

Extract from Dr N. Carr et al (2014): 'Barriers experienced by young people with criminal records: interim report to NIACRO and The Bytes Project' – this work is ongoing and the below extract is taken from the first draft of the paper.

“In the Republic of Ireland there is a Spent Convictions Scheme for young people who have committed an offence before their 18th birthday. Section 258 of the Children Act, 2001 provides that a conviction would not be subject to disclosure if the following criteria were met:

- The offence was committed before the person was 18 years;
- The offence is not an offence required to be tried by the Central Criminal Court (this applies to serious offences such as murder, rape or manslaughter);
- The person has not been dealt with for an offence within a three-year period;
- Three years have elapsed since the conviction.

According to information provided by the Irish Penal Reform Trust (IPRT) once this criteria is met such convictions are automatically considered spent, i.e. the person does not have to make an application to anybody to seek expungement of a record⁸. However, there is no available research to indicate how this is done in practice and by what body. The IPRT notes also that many people are not aware of the provisions set out in the Children Act, 2001 and may be disclosing convictions where they are not required to do so.

Furthermore this legislation only applies to the jurisdiction of the Republic of Ireland and where information is sought in relation to criminal records when a person is seeking to work or travel abroad they may still be required to declare convictions acquired under 18 which based on the criteria mentioned would be considered spent in the Republic of Ireland.”

1.1.9 Wrexham Model

An inspection of youth offending work in Wrexham, Wales led by HMI Probation and published in January 2014⁹ paid tribute to the Wrexham Youth Justice Service's (YJS) use of 'Review and Congratulate Panels':

⁸ IPRT (2012) *Briefing on Criminal Records under 18 (04.01.12)*. Available at:

<http://www.iprt.ie/contents/2335> (Accessed on: 01.10.14)

⁹ <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmiprobation/youth-inspection-reports/inspection-of-youth-offending-fjs-sqs/Wrexham-full-joint-inspection.pdf>

“Review and Congratulate Panels

These were chaired by a YJS manager and included the case manager, child or young person, parent/carer and a magistrate from the local youth bench. Their purpose was to congratulate the child or young person for the progress they had made and affirm a baseline for their future behaviour. The case manager explained what work had been done and what progress the young person had made. The magistrate then focused on the offence, victims and the need to maintain progress. The meeting ended with a handshake with all present at the meeting. It was followed up by a letter from the Chair confirming what had been said. This was valued by parents/carers and children and young people, who were not used to receiving praise.” (p29)

The opportunity for a young person to come ‘full circle’ was found to create a sense of pride that contributed to desistance.

We believe something like this mechanism for assessment could be applied in Northern Ireland to provide an opportunity to formally review a young person’s progress and assess if it is appropriate to remove the conviction information from the young person’s criminal record. This could take the form of a police or court appearance that would in effect be the inverse of the sentence hearing. This would be a powerfully symbolic and positive ‘ceremony’ in terms of the reinstatement of full citizenship and be affirming for the person concerned.

1.2 Proposed Way Forward

Based on the reasons outlined in this paper, NIACRO – with the support of several sector colleagues - believes Recommendation 21 of the Youth Justice Review should be implemented and its scope extended. We believe there is an opportunity to include this amendment to the current criminal records regime within the Justice Bill currently being considered by the Committee for Justice.

We propose that young people and adults should have the opportunity to apply to a multi-agency panel to have old and minor offences committed when they were under the age of 18 removed from their criminal record.

Similarly, they should be able to apply to have non-conviction information relating to when they were aged under 18 removed from their police records.

1.2.1 Eligibility to apply

Anyone could apply, regardless of their age or how long ago the record was acquired: the only criteria would be that the offence (or non-conviction information) relates to when they were under the age of 18.

1.2.2 Multi-agency panel

We suggest this would consist of representatives of the justice sector, social services, and the voluntary and community sector.

1.2.3 Old and minor offences

Guidance regarding the definition of 'old' and 'minor' convictions should be outlined in the terms of reference for the multi-agency panel. NIACRO is currently conducting research into these definitions.

1.2.4 Proposed Process

1. An individual applies to the multi-agency panel for their criminal record to be reviewed.
2. The official documents relating to the relevant conviction(s) / non-conviction information are retrieved and considered by the multi-agency panel. The individual and any agency working with him/her then make representations to the panel.
3. The panel invites the individual to a Record Review, in the style of the Wrexham 'Review and Congratulate' panels.
4. The panel delivers its decision and explains the reasoning behind the decision taken.
5. If the decision is made in favour of the applicant, the relevant information is removed from the criminal and/or police record and is no longer disclosable to employers or training/education providers.

In instances where the panel decides against the individual, that person should then be able to appeal to an independent review panel.

Contact:

Julia Kenny
Policy and Research Co-ordinator
NIACRO
julia@niacro.co.uk
028 9032 0157