



**The Department of Justice's 'Rehabilitation of Offenders': A  
consultation on proposals to Reform Rehabilitation Periods in  
Northern Ireland**

02 March 2021



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## 1. Introduction to NIACRO

NIACRO is a voluntary organisation that has been working for 50 years to reduce crime and its impact on people and communities across Northern Ireland. Our vision is of a society in which the needs and rights of all citizens, including victims of crime, adults and children who offend and those who are at risk of offending, are equally respected.

The Charity's Articles of Associations, approved in October 2015 by the Charity Commission for NI, identify NIACRO's objects which meet public benefit test, as being:

- to alleviate need and disadvantage through the provision of services, assistance, advocacy and representation to care for, resettle and rehabilitate offenders and ex-offenders, alleged offenders, persons at risk of becoming offenders and to care for the victims of crime and their families.
- to work for the prevention and reduction of crime for the benefit of the public in Northern Ireland.

Specifically, NIACRO's contributions are to:

- support the resettlement of adults leaving prison and those on community supervision.
- build skills, confidence and employability of people both in prison and in the community.
- support children, young people, families and adults who are displaying behaviour that would put them at risk of engaging with the criminal justice system, to make positive lifestyle choices.
- influence service providers in the statutory, voluntary and community sector and build their capacity to provide appropriate support to those affected by the criminal justice system.

At the heart of NIACRO's work is the aim to reduce (re)offending in the belief that integrated and flexible approaches towards desistance are most effective.



## 2. Experience in the provision of Employability Programmes

Evidence demonstrates that having a job is the single biggest contributor to reducing re offending. Engaging in training and sustaining that engagement is also seen to reduce reoffending.

For this reason, NIACRO has been delivering employability support programmes for people with convictions for over 30 years. The current programme 'Working Well', established in 2018, is supported by the European Social Fund programme, managed by the Department for the Economy. The Probation Board for Northern Ireland (PBNI) and the Northern Ireland Prison Service (NIPS) provide matched funds and partner with us; together we are committed to enrolling 900 individuals a year onto the programme.

In 2015, a NISRA Data Lab Reoffending Analysis for a previous NIACRO employability programme, 'Jobtrack' was published. Examining the reoffending rates of a cohort of participants in 2011, the publication confirmed that the programme reduced the reoffending rate to 24%, meaning that 76% did not reoffend in the period under review. Given the cost that crime puts on the public purse, as well as the hurt and harm that it puts on victims and the wider community, it is important that we understand that employment acts as a protective measure and that having people in work protects society.

Alongside the current 'Working Well' programme NIACRO runs a disclosure helpline which received calls from over 600 individuals in the last 2 years. Callers' experiences give us insight into the impact that having a criminal record has on applying for jobs, volunteering opportunities, insurance, travel visas and financial services to name the most common. In many cases, callers' convictions will never become spent. The case studies in Appendix 1 illustrate the range of difficulties people face.

In 2019/20, 115 employers from a range of industries responded to a NIACRO survey to gain perspectives on hiring people with criminal convictions. 96% of employers surveyed do ask about criminal convictions, with 82% asking at application stage. In many cases the employers were not in employment fields that enabled them to undertake a criminal record check, so they were not in an area of work where the many Exceptions Orders apply. However, the question was asked, we assume as an assessment measure, which only those with no or spent convictions would pass.

### 3. Intent of the 1978 Order

The stated aim of the legislation first enacted in England and Wales in 1974 and then transposed to NI in the 1978 Order was *“to restore the offender to a position in society to that of one no less favourable than that of one who had not offended”*. The purpose was to enable people who did not commit further crime to move on and have a second chance .

While there were concerns that anything over a 30-month sentence would require a lifetime disclosure, the intent of the legislation was seen as progressive; about restoring to full citizenship rather than being a further post sentence punishment measure.

It is important to remember that the purpose of the Rehabilitation of Offenders legislation is to protect people with criminal records from unjust discrimination; it is not for public protection or managing reoffending.

In 1979, an Exceptions Order was introduced identifying job roles and professions where full disclosure would be necessary. There have been several further amendments to the legislation over the years as well as industry specific measures such as dvetting processes for taxi licences and the Security Industry Authority (SIA) regulations. Details of the 1978 Order and the 1979 Exceptions Order and other legislative changes are noted in Appendix 2.

Safeguarding measures and public protection processes came to the forefront in the 1990s and at times the original intent of the Rehabilitation Order has been forgotten and misunderstood in political and social debate. The concept of spent convictions is not at odds with public protection, but rather has the potential to support it by enabling people to move away from offending and/or harmful risk-taking behaviour.

Public Protection Arrangements in Northern Ireland’s (PPANI) focus on those who have committed serious sexual and violent crime was subject to a 2019 Criminal Justice Inspection NI inspection which concluded *“Inspectors found the PPANI and the constituent agencies were delivering a good level of public protection in Northern Ireland.”*<sup>1</sup>

Other Public Protection architecture includes:

- AccessNI - three levels of criminal records checks
- Children and Vulnerable Adults Barred lists
- SOPOs / VOPOs (Sexual / Violent Offences Prevention Orders)
- VISOR (the Violent & Sex Offenders Register)
- Post custody licencing arrangements
- Parole Commissioners
- Community Supervision Orders
- Life Licences
- Strong recall powers

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<sup>1</sup> <http://www.cjini.org/getattachment/f7eba58b-6973-484d-a5b3-b9740f0a9184/report.aspx>

#### 4. The Need for the Legislative Review

The 1978 Rehabilitation Order stands alongside the safeguarding measures previously mentioned as the single legislative instrument providing the opportunity for those who move away from criminal activity to be re-integrated into society. This measure needs to be strengthened and reviewed. In the 43 years since its introduction much has changed including, for example:

- Public Protection arrangements are more prevalent with both new legislation and new sentencing arrangements in place
- Sentences have lengthened
- Sentences may now be served partly in prison and partly in the community which has led to confusion about when the rehabilitation period begins
- The same original legislation has been reviewed in England and Wales in 2014 and in Scotland in 2020. A further review is ongoing in England and Wales. Experience since the 2014 changes has identified concerns which the current NI review seems to be considering.
- The reviews of the legislation in other parts of the UK have confirmed the purpose of this legislation as confirming the concept of spent conviction to support rehabilitation and not as an aspect of ongoing punishment or public protection.
- There have always been inbuilt inconsistencies. For example, a fine must be disclosed for five years whereas a Probation Order is spent on the day it ends or after 1 year if the order was shorter than a year.
- Any sentence of over 30 months requires lifetime disclosure. There is no mechanism for an individual to apply for their conviction to become 'spent', irrespective of the passage of time or personal circumstances. This apparent incompatibility with Article 8 (Right to Private and Family Life) of the European Convention on Human Rights is currently being tested in the NI courts by the Northern Ireland Human Rights Commission.

#### **Welcome Developments in NI**

There have been some welcome developments in Northern Ireland including the Independent Criminal Records Filtering Review Scheme introduced in March 2016 and revised in March 2020.

Furthermore, PBNI's ability to revoke orders on grounds of good progress is now supported by showing this on a person's record. Since 2019, it appears on the person's record as 'revoked – good progress'. Formerly it was just 'order revoked'.

Access NI have also now produced guidance on assessing criminal records showing a positive disposition towards rehabilitation.



## 5. Issues with the Current Consultation

NIACRO has identified the following issues relating to the current consultation:

1. It has only focused on custodial sentences. All sentences currently under the scope of the legislation must be reviewed.
2. It is silent on the inconsistencies of the 1978 order e.g. Fines v Probation Orders.
3. The introduction of buffer periods in England and Wales in 2014 is now under review as it has been complicated and evidence of their value has not been substantiated.
4. There may be value in closer alignment with other UK nations as insurance and other providers do not understand the different legislations in different jurisdictions and this can lead to difficulties for individuals (please refer to Appendix 1 - case studies).
5. There needs to be a full description of Public Protection measures to allay public fears.
6. A robust concept of serious offences needs to be developed if there is to be exceptions for serious sexual/violent and terrorist crimes. This sits alongside sentencing decisions and is case specific. We therefore need an individualised process to review any proposed lifetime disclosure process which may be deemed unlawful if there is not a review mechanism built in. This may be a role for the trial judge or Independent Reviewer.
7. Conflict related convictions need to be addressed. Much work has been carried out in this area including published guidance advising employers to disregard conflict-related convictions unless materially relevant to the post to be filled. It is estimated that over 30,000 individuals have conflict related offences, mostly young men serving long sentences subject to the same disclosure arrangements as any other offences under the Rehabilitation Order 1978. We would question the use of language and the wording of 'terrorist' offences in question 6 of the consultation document and the implications of using such language in the Northern Ireland context.
8. It should be remembered that Northern Ireland is a unique place with its own circumstances and challenges and as such should not simply defer to the systems of England and Wales.
9. Any changes to rehabilitation periods and convictions becoming 'spent' would only be applicable to Basic Access NI checks. 'Spent' convictions will still appear on Standard and Enhanced Access NI checks and people may still face barriers and discrimination when seeking employment in excepted and regulated positions where such checks are required, particularly when positions involve working with children or vulnerable adults.
10. We would suggest that 'spent' convictions should be differentiated on these certificates to alert employers to the fact that they would be considered 'spent' in some circumstances and not be disclosable for many job roles.
11. We believe that legislative provision to tackle discrimination of those with a criminal conviction needs to be contained within Equality provisions.
12. In addition to the specific comments above, NIACRO would express our concerns about the short consultation period and the lack of any pre-consultation exercise for a critical review of legislation that is so long overdue.

## 6. Responses to the Consultation Questions

We consider that the views and comments given so far and the issues raised are all relevant and should be considered. From this point, we offer suggested answers / comments to the questions posed in the consultation document, reiterating some of the points made as appropriate.

### ***Q1. Do you think that the rehabilitation periods for custodial sentences in Northern Ireland should be reviewed?***

**YES**

It is NIACRO's view that a review of the Rehabilitation of Offenders (Northern Ireland) Order 1978 is long overdue. It is important to remember that the original intention of this legislation was in recognition of the social costs of excluding people from employment on the basis of irrelevant criminal records and that gaining employment was a key feature of successful resettlement. The stated aim of the legislation was *"to restore the offender to a position in society no less favourable than that of one who has not offended"*.

The concept of 'spent' and 'unspent' convictions was to restore not to punish; the concept of 'safeguarding' did not have currency at that time. Whilst recognising employers' need to recruit safely, rehabilitation legislation ought not to be used as a safeguarding measure. There are many measures in place to support safeguarding such as the Sex Offenders Register and other public protection measures; these are the most effective ways of keeping the public safe. 'Unspent' convictions do not offer potential victims meaningful protection and this legislation should not be thought of as a mechanism to protect the public.

NIACRO has a long track record of supporting people who have served prison sentences to find employment in the knowledge that much research has shown that a job can be the single biggest factor in reducing reoffending. It is crucial that barriers to the workplace are minimised for people with convictions, hence the importance that this legislation should be reviewed and be cognisant of its original aim.

The current disclosure periods, particularly that custodial sentences of 30 months or more can never become 'spent' is, in our view, unjust. With people receiving longer sentences and a significant number of people having lengthy sentences as a result of the conflict, the number of people with convictions that may never become 'spent' is increasing.

Northern Ireland is out of line with other UK nations which have enacted reforms to legislation, with further reforms under consideration in England and Wales. NIACRO recognises this has an opportunity to radically reform the Northern Ireland legislation, with a system in place which better supports rehabilitation and delivers the intention of the legislation, and which, in turn, supports a reduction in crime and its impact on victims of crime.





To bring the legislation up to date, all sentences available to the courts need to be given consideration, not just prison sentences. The current 5-year period of disclosing fines is unduly long and another barrier to effective resettlement. Indeed, there does not appear to be any robust evidence as to the validity of current disclosure periods or those proposed in this consultation. We would now ask that the setting of any disclosure periods within a new piece of legislation is based on research and evidence, thus removing the arbitrary nature of the existing Order.

The purpose of consulting on this legislation *'is to boost the chances of former offenders gaining employment and living within the law'*. It is important to consider other areas where people are prone to discrimination. The current regime means that people don't only struggle to find employment, but can also struggle with access to training, housing, insurance and other financial products long after they have turned their lives around.

***Q2. If you answered 'yes' to Question 1 do you think the rehabilitation periods should be reduced or increased?***

**REDUCED**

It is our view that rehabilitation periods should be reduced. The current regime and disclosure periods act as a major barrier to finding employment. We know that unemployment is a critical factor in contributing to reoffending, therefore it is crucial to shorten the length of time for convictions to be disclosed to help create any real change and protect people with criminal records from unjust discrimination.

Any increase in rehabilitation periods would have a detrimental effect and further reduce opportunities for people to find employment, potentially leading to further reoffending.

Any changes in rehabilitation periods should be robustly evidenced. The concept held in the current legislation that some people are inherently incapable of rehabilitation and must always disclose custodial sentences of 30 months or more is flawed. Evidence suggests someone's risk of reoffending is the same, or even less than, a person without a conviction after 7 - 10 years<sup>2</sup>.

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<sup>2</sup> (TIME FOR POLICY REDEMPTION? A REVIEW OF THE EVIDENCE ON DISCLOSURE OF CRIMINAL RECORDS Beth Weaver SCCJR and the University of Strathclyde March 2018)



***Q3. If you think that rehabilitation periods should be reduced, do you support the introduction of a two-part rehabilitation period, made up of the length of the sentence imposed by the court plus an additional “buffer” period?***

NIACRO believes that the concept of a ‘buffer period’ being added to the end of a sentence needs further, careful, consideration given they are the focus of debate in England and Wales where they are in place. Consideration should be given to allowing rehabilitation periods to begin at the point of returning to the community i.e date of release.

Using the example of a Determinate Custodial Sentence (DCS), the first half is served in custody and the second on licence in the community. We know from evidence that the riskiest time for reoffending is the first few months after release beyond which, the likelihood of reoffending decreases. If someone successfully completes their licence period remaining crime free, it would seem counter intuitive that they only begin their rehabilitation period at this point, perhaps in contrast to someone with the same sentence who had been recalled after release to serve the remainder of their sentence in custody.

Adopting this approach would strengthen the incentive to desist from crime after release on licence, knowing that recall would result in the disclosure period being reset.

It is important to note that any disclosure periods should be straightforward and easily understood. People with convictions should be provided with information on their rights and responsibilities regarding disclosure at the time of their conviction.

***Q4. Finally, in respect of sentences that can become spent, do you support a review of the custody bands under which rehabilitation periods are specified?***

**YES**

NIACRO supports a review that evidences the value of rehabilitation periods. Such a review needs to look at rehabilitation periods for all sentences available to the courts beyond custodial periods.

We know that prison sentences are longer now (according to DOJ) so more people are falling into the never spent category and many others need 10 years before their convictions are spent. This is putting them at great disadvantage compared to their counterparts in England, Wales and Scotland and leaving large numbers open to potentially discriminatory behaviour by employers, educators, insurers etc.

Any changes in rehabilitation periods and the need to disclose should be based on evidence that contributes to rehabilitation and supports public confidence. It is important to note that there is no evidence that wide ranging criminal record disclosure contributes to public safety.

***Q5. Currently, convictions resulting in a custodial sentence of over 30 months (2½ years) in Northern Ireland can never become spent. Do you think this should be reviewed?***

**YES**

Currently, any custodial sentences over 30 months can never become spent in Northern Ireland; it must always be disclosed, no matter the circumstances and how long ago the offence was committed. This implies that people with such sentences are incapable of being rehabilitated. We believe that this approach is unjust and may contribute to unemployment and reoffending. Such a broad and intrusive measure is not supported by evidence and it must be questioned whether lifelong disclosure is necessary or proportionate in all cases.

People ought to be given the opportunity to move on with their lives. The current blanket approach to lifelong disclosure for sentences of 30 months or more does not assist with rehabilitation; it has an adverse effect, creating a poverty of hope, leaving many people feeling that they can 'never' be rehabilitated in the eyes of the law. Without change, the current legislation may increase reoffending and victimisation as people may see no way out of offending.

We also believe that the current approach is disproportionate and incompatible with Article 8 (Right to Private and Family Life) of the European Convention on Human Rights.

***Q6. If you answered 'yes' to Question 5, please select one of the following options:***

**(Second Option) - limit of 30 months should be changed to include determinate custodial sentences of over 30 months with no upper limit (meaning that all determinate custodial sentences of over 30 months could become spent, (excluding serious sexual, violent or terrorist offences)?**

As these are the only available options proposed, we have gone for option two as it potentially allows for the greatest effect for positive change but arguably it doesn't go far enough as there is still potential for lifelong disclosure.

We would draw attention to the fact that lifelong disclosure and the discrimination that people face as a result is extremely harmful and doesn't only relate to employment. Difficulties in accessing services such as insurance and financial products are ongoing throughout life and are often required beyond a person's working age, ultimately far beyond any past offending.

It should be noted that the language used in relation to excluding "serious sexual, violent or terrorist offences" mirrors the language used in the Criminal Justice Act 2003 section 224 which does not apply to Northern Ireland. It must also be recognised that references to terrorist offences in England & Wales are notably different to that in a Northern Ireland context. Additionally, the seriousness of any offence would be expected to be measured by the sentence imposed and not the offence type.



NIACRO believes that, as well as reducing rehabilitation periods, there should be a mechanism to apply for any conviction(s) to become spent, after a predetermined timeframe, taking into consideration personal circumstances. Such a mechanism may be similar to the Independent Criminal Records Filtering Review Scheme. With something like this in place there would be an opportunity for someone who's conviction(s) may never become spent to challenge it. At present, too many people face unnecessary intrusions into their personal life and continue to be stigmatised when required to disclose, even after many decades have passed, literally right until their dying day.



## Appendix 1: Case Studies

The following are real life examples of how people with criminal records have faced difficulties and challenges in accessing employment and education and obtaining insurance. Individuals contacted NIACRO's helpline for advice and in many cases were very distraught. Names have been changed to protect identities and to comply with GDPR.

### ***CASE STUDY 1: Employment; 30 years on and still impacting on work opportunities***

Jane was 19 years old in 1990 when she was arrested at a house party for being in possession of LSD tablets. At arrest, the police advised it was a minor matter, so she did not need a solicitor present, nor did Jane ask for one. During questioning, the police asked who the drugs were for. Jane said one of the tablets was for her and when asked what she would have done with the other three in her possession, she said she would have given them to her friends. The initial possession charge was later changed to supply of class A drugs. Jane received a 3 month suspended sentence for the offence.

Jane went on to gain employment but throughout her career in the fitness sector she would refrain from progressing into managerial roles, when background checks were required, as she was so ashamed of her conviction. Jane later registered as a self-employed carer and most recently was subcontracted to a local Health and Social Care Trust. She was in the role for some months when the trust realised they hadn't completed an Access NI check. Jane confided to a manager that she had the conviction from 1990 and asked whether it would pose a problem. The manager's response was, 'what makes you think we'd want to work with someone like you?'

Jane expressed suicidal feelings when she phoned NIACRO's helpline last year as her conviction was flagged on the Access NI check and she was advised by the Trust that she had to tell the client she was caring for. He was an ex-police officer and she dreaded telling him. However, he replied 'I don't care about that, we all have a past, I'll see you on Wednesday as usual'. She was relieved but then was told she would have to disclose her conviction to every new client.

This has been a great cause of anxiety for Jane and has impacted on her mental health. She is trying to find a way for the Trust to approve her so she does not have to go through the indignity of routinely having to disclose her past to every client.

Jane took her case to the Independent Reviewer and they declared that revealing the 1990 conviction was 'disproportionate' and removed it from that Access NI certificate but stated that it could appear again on future statements. In November 2020 Jane informed us that she has had several subsequent Access NI checks completed and the offence has appeared again on three of these. Jane has had to contact Access NI each time. Within the current filtering arrangements, her conviction is not eligible for filtering as it is a specified offence with a suspended prison sentence. Should there be a statute of limitations to protect people like Jane for matters that happened such a long time ago?



***CASE STUDY 2: Employment; After 6 years of service, a misunderstanding of the legislation leads to instant dismissal***

In September 2019, a caller to the NIACRO helpline reported that he had been working as a forklift driver for a large transport company for six years, three as casual and three years as a full-time employee. Prior to his employment, he had been convicted of armed robbery (the first and last time he was in trouble) and spent two and a half years in prison. The sentence was for five years but when he looked up the spent convictions information online, he mistakenly took the time served in prison as being inside the 30 month rule so he considered his conviction as spent and did not disclose it at the time of application.

After a disagreement with his ex-girlfriend, she phoned his employer's HR department and reported that he had a conviction. He was immediately placed on disciplinary leave and even, though his line manager put in a request that he keep his job as he was one of the best workers, he was dismissed for not disclosing the conviction.

Confusion over the application of rehabilitation periods is common but employers often refuse to accept or understand this as a valid reason for not disclosing.

***CASE STUDY 3: Employment; Zero tolerance for convictions leads to instant dismissal***

Paul had been a delivery driver for three months for a company that was subcontracting to a large online company. He declared his five-year sentence for aggravated burglary that happened over 20 years ago. The company accepted his application as he had no other convictions since and had a good work record. After three months, Paul was the highest performing member of the team and had even been asked to do a session with his colleagues to show them how he managed to perform so highly. It was going so well that took a loan and bought his own van. The following week, the company lost the renewal contract and the staff were all invited to apply to work for another company doing the same job. Paul disclosed again and this time he was instantly dismissed as the new company said they could not work with him with his conviction. He now has no job and a significant loan to pay back. Paul has no redress for losing his job.



**CASE STUDY 4: Education; Further Education Regional College does not give applicants a chance to explain their convictions**

The following are anonymised emails from NIACRO's Working Well<sup>3</sup> team members to our Disclosure Specialist. They reveal inconsistencies in how several third level education establishments process criminal record information.

Sent: Wed 10/2/2019 3:30 PM

'Hi Jonny,

*Another client has rang there and he has advised he is now 5 weeks into his course, has paid the fee (we paid half) and they have rang and said he needs to come in for a safeguarding meeting. His conviction is quite serious, and he just can't believe he's been allowed in for these past 5 weeks and put this much time and money and effort into the course and will likely be withdrawn from the course. Surely the meeting should have been convened earlier given that he did initially disclose on the application form.*

Thanks,  
Claire.'

Sent: 02 October 2019 11:48

'Hi Jonny,

*One of my clients has withdrawn his application to (a regional college) as he felt that the initial meeting, even just to do the Access NI was going nowhere. He felt that the whole process was being made deliberately awkward for him and basically, they didn't want him enrolling. So, what do we do? That's 3 of my clients now who've attempted to get into the college and who have been refused. They feel they didn't even get a chance to put across their side. They get invited to a meeting with the safeguarding officer, and they go in, she takes notes on what course they've applied for and checks the client has completed paperwork such as the college's disclosure paperwork and takes ID and documents for Access NI. The client is then advised that the decision will be taken to the board and they will hear the outcome, which they do via letter. But they feel they've no opportunity to verbally chat about disclosure and their convictions. They aren't asked any questions about how they've changed, what they've done since they were released from prison etc.*

*I'm not suggesting the college just accept everyone but the fact that they accept funding to provide courses in (prison) and then when the client is released and wants to further themselves in the college, they are refused is very frustrating. Clients feel aggrieved that a decision has been made without even asking them questions and letting the board meet them face to face.*

*Any ideas on how we can go forward with this?*

Thanks,  
Claire.'

In this second example, at no point did the college ask questions about how the person had changed since the conviction. The decision seems to have been made entirely on the Access NI certificate which we believe to be only part of the story about the individual.

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<sup>3</sup> Supports people with convictions to secure education, training and employment

**5: Car Insurance; Between a rock and a hard place with Insurance**

Kate contacted the Helpline for help with insurance for her son Jack. Jack will be 18 in February 2021, and is an aspiring mechanic specialising in agricultural machinery.

When Jack was 15 he bought a car with the intention of fixing it and selling it on to practice his skills. In an error of judgement, he took the vehicle out on public roads but was signalled to stop by a police car. He panicked and did not stop, lost control and drove into a ditch. He was charged with failing to stop for police, dangerous driving, driving without insurance and driving whilst disqualified by reason of age.

The case came to the Youth Court in March 2019. He received a £50 fine, an 18-month driving ban and a Diversionary Youth Conference, (which he voluntarily completed). The judge said, when handing out the driving ban, that it was longer than normal, her intention being to ensure Jack saw the consequences of his actions by missing out on being on the road for 6 months once he was the legal driving age.

Jack has a very supportive family and understands and acknowledges that his actions were wrong; he fully understood the reasons for the sentence given. With the support of his family, he served his driving ban and complied completely with all aspects of his sentencing.

Kate sought advice from NIACRO about which insurance companies could help. We supplied a document with relevant contact details. Most of the companies informed Kate that Jack needs one full year no claims driving experience on a full licence before they will consider giving a quote. She found only a few willing to provide a quote for Jack as a provisional learner driver, finding quotes for £27,000 and £11,000.

The cheapest quote was £6,718 for one year's coverage (on a car worth £1,000). However, the company informed Kate that once Jack passed his test, they would be unable to insure him.

The company Jack works for agreed to put him on their trader's policy, but have also been unable to get an insurance company that will insure Jack. He needs one full year of no claims coverage after he passes his test to be added to his employer's insurance. However, no company is willing to provide this cover and thereby enable him to advance his chosen career.

Options for motor insurance in Northern Ireland are much more limited compared with the rest of the UK, even without a conviction. Whilst Jack's family understand the implications of a conviction in obtaining a reasonable quote, the lack of options and outright refusal of companies contacted to insure has placed a significant barrier to progression in his way.





***CASE STUDY 6: House Insurance; Confusion in legislation leads to no cover.***

Anne, a single mother with 2 small children was using a Banking App and saw they were offering home insurance. She applied online and input her (Northern Ireland) postcode. She was asked if she had any unspent convictions and was directed to the UNLOCK calculator which deals only with Rehabilitation relevant to England and Wales. She input her conviction details as requested and was informed her conviction was considered spent.

Unfortunately, there was a house fire, which made her property uninhabitable, and reported this to the insurance company. They sent out an inspector who asked her a number of questions including about unspent convictions. He realised that her conviction was not spent under NI legislation and within hours, she was informed that not only was the insurance invalid, but they were referring her case to the Ombudsman for possible fraud.

Understandably, this was devastating for Anne who had to find alternative accommodation and had lost everything. She also lost her job as she had to move locality and was unable to get home insurance on her new home. Her car insurance premium is also doubled. She checked back with the online application recently and there have been no changes to the website's incorrect advice.

Appendix 2: Rehabilitation of Offenders Legislation in Northern Ireland 1978-2020: the Impact of Amendments on Employment for People with Criminal Records

**1. Rehabilitation of Offenders (NI) Order 1978**

The period of time (i.e. the rehabilitation period) depends on the age at the time of conviction and the type of sentence received

Sentence	Aged 18 or over at conviction	Under 18 years at conviction
Absolute Discharge	6 months	
Probation Order, Bind Over, Conditional Discharge, Care/Supervision Order	Date Order ceases OR 1 year—whichever is longer	
Attendance Centre Order, Juvenile Justice Centre Order, Youth Conference Order, Reparation Order, Community Responsibility Order	1 year after Order expires	
Hospital Order	5 years OR 2 years after Order expires — whichever is longer	
Fine or Community Service Order Combination Orders	5 years	2½ years
Prison—(immediate or suspended) OR Young Offenders Centre—sentence of 6 months or less	7 years	3½ years
Prison—(immediate or suspended) OR Young Offenders Centre over 6 months—under 2 1/2 years	10 years	5 years
A period of detention of less than 6 months under Article 45 of the CJ(Children) (NI) Order 1998	N/A	3 years
A period of detention of over 6 months but less than 30 months under Article 45 of the CJ (Children) (NI) Order 1998	N/A	5 years
<b>N.B. A CUSTODIAL SENTENCE OF MORE THAN 2½ YEARS (30 MONTHS) CAN NEVER BECOME SPENT.</b>		

*Table A – sentence type/length of time for conviction to be ‘spent’*



It should be noted:-

- Consecutive prison sentences count as a longer single sentence
- If more than one sentence was imposed, the longer period applies
- If a person is re-convicted during a rehabilitation period, it may be extended
- Under this legislation an employer is not permitted to take into account 'spent' conviction information and cannot use this as a reason to dismiss or not to recruit an applicant

**TABLE B**

Legislation/Action	Main Points	Impact on Employability
Rehabilitation of Offenders Order 1978	The original piece of legislation in Northern Ireland based on the 1974 Act from Westminster which sets out time frames after which most convictions can be considered 'spent' and allows an ex-offender to legally say no to the question 'do you have any convictions?' Excludes any prison sentence over 30 months whether actual custodial or suspended.	A range of rehabilitation periods were introduced covering court disposals, which allowed people with convictions (who did not reoffend in the rehabilitation period) to be able to declare that their conviction was spent. Example: a fine from court is considered spent 5 years from the day of conviction. Convictions always stay on the criminal record held by police but are not necessarily revealed to third parties.
Rehabilitation of Offenders (Exceptions) Order (NI) 1979	This legislation sets out the positions to which the Rehabilitation of Offenders (NI) Order 1978 do not apply and where an individual is legally required to provide details of convictions that would normally be regarded as spent (known in Part V of the Police Act 1997 as 'asking the exempted question').	This legislation superseded the 1978 NI Order and introduced the concept of 'controlled activity' and 'excepted occupation' where 'spent' convictions must be continued to be declared; effectively making 'spent' convictions 'unspent' for certain roles.
The Pre-Employment Consultancy Service (PECS) established in 1981 following an inquiry into children's homes and hostels as a result of cases of abuse in Kincora Boys' Home. The Service was run by the Department of Health, Social Services & Public Safety.	The Pre-Employment Consultancy Service (PECS) used information from: <ul style="list-style-type: none"> <li>• Police (criminal records)</li> <li>• The Department of Health, Social Services and Public Policy (PECS Register)</li> <li>• The Department of Education (List 99)</li> <li>• Protection of Children Act List (POCAL).</li> </ul>	Employers were able to carry out background checks on people working with children and vulnerable adults.
Rehabilitation of Offenders (Exceptions) (Amendment) Order (Northern Ireland) 1987	Amendment extended to finance roles with access to confidential information in banks and building societies.	A widening of who could be background checked.



Police Act 1997 (Part 5)	<p>Provided for information regarding a person's criminal record history to be disclosed to persons registered under the Act for certain purposes including engaging in regulated activity. Paved the way for Access NI in 2008.</p>	Another expanding of criminal records checks.
Rehabilitation of Offenders (Exceptions) (Amendment) Order (Northern Ireland) 2001	<p>This defined exceptions to provision of health services and access to service users in receipt of services in the course of their normal duties. Covered any job involved with the health and social care sector which means all posts require an 'enhanced' level of background check.</p>	Opened up many roles in the health and social care sector to further criminal record checks including even jobs such as laundry or porter requiring an enhanced disclosure.
Rehabilitation of Offenders (Exceptions) (Amendment) Order (Northern Ireland) 2003	<p>Added air traffic control workers, National Lottery Commission personnel, professions of Chartered Psychologist, actuary, European lawyer, and controller appointed by the Office of Care &amp; Protection and regulated professions. Also added police trainees, police support staff, the Serious Fraud Office, the National Crime Squad, the National Criminal Intelligence Service, Her Majesty's Customs &amp; Excise and the Office of the Police Ombudsman for Northern Ireland.</p>	This placed even further restrictions on those regulated professions as well as any post in law enforcement and national security.
Protection of Children and Vulnerable Adult (NI) Order (2003) effective April 2005	<p>Made criminal record checks for people working with children (paid and voluntary work) a statutory requirement rather than best practice.</p> <p>The Protection of Children (NI) Service (POC(NI)) and the Protection of Vulnerable Adults (NI) Service are set up.</p>	A precursor to Access NI, POC(NI) checks carried out through the Criminal Records Office introduced for: youth workers, volunteers such as Sunday School teachers, sports coaches, counsellors, clergy, and drivers, if employed to be in sole charge of and supervise children/young people. Also included were work placement opportunities for children under 16 years, and Chairs of management committee if they manage individual in regulated post, and supervisor / line manager of above posts.
The Police Act 1997 (Criminal Records) (Disclosure) Regulations (NI) 2008	<p>Access NI set up in Northern Ireland to oversee the disclosure of criminal records to authorised agents using the Basic, Standard and Enhanced Certificate system.</p>	New authority brought in 3 levels of disclosure still used today. Police information allowed not just actual convictions to be revealed to third parties but also 'soft' information (e.g. suspect in a case even if not deemed a prosecutable case by the PPS).



<p>Rehabilitation of Offenders (Exceptions) (Amendment) Order (Northern Ireland) 2012</p>	<p>Those applying to work or volunteer in ‘regulated activity’ with vulnerable groups, including children, must declare any convictions. The law allows those engaging individuals to work or volunteer in regulated activity to verify that information through an Access NI enhanced disclosure with barred list check.</p> <p>The Protection of Freedoms Act 2012 changed the definition of ‘regulated activity’ (as defined in the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007). This Act also abolished the concept of ‘controlled activity’ and amended the definition of vulnerable adult in the 2007 Order.</p>	<p>Securing volunteering roles for those with convictions became that much harder, presenting a major obstacle to those who wanted to contribute positively to society following their rehabilitation. Prior 2012, roles in controlled activity would also have been eligible for an enhanced disclosure, with barred list check.</p> <p>The Protection of Freedoms Act meant only roles in the new definition of regulated activity were eligible for enhanced disclosure checks with a barred list check. Activities which were removed from regulated activity, for example, in a supervised capacity with children (formerly a controlled activity), still require enhanced checks, but without a barred list check.</p>
<p>Rehabilitation of Offenders (Exceptions) (Amendment) Order (Northern Ireland) 2014</p>	<p>Allowed for increased use of AccessNI to regulate eligibility for regulated professions through background checks’ related to those applying for taxi and Security Industry (SIA) licenses.</p> <p>The ‘filtering scheme’ was established in 2014 following a review of the criminal records regime by Sunita Mason in 2011 which recommended the Department of Justice should filter old and minor convictions from standard and enhanced criminal record certificates and take account of the findings of two court cases concerning the disclosure of criminal record material.</p>	<p>This introduced checks for those applying for taxi licences and roles in private security companies. This change has precluded many people from working in these sectors.</p> <p>A positive aspect of the 2014 amendment was the introduction of a ‘filtering mechanism’ for Access NI certificates but it only applied where ONE conviction was recorded and excluded any prison sentences no matter how long ago they were received. No specified offences could be filtered.</p>
<p>Part V of the Police Act 1997 in Northern Ireland through Part 5 of the Justice Act (NI) 2015</p>	<p>Amendments included introducing a minimum age for applying for a certificate, updating certificates, issue of a single certificate to applicants only and disputing police information included in certificates.</p>	<p>Individuals can now request basic Access NI certificates. (10,000 people applied for their Basic Access NI in 2018) though not their Enhanced Access NI before applying for work. Note: Under Freedom of Information legislation, people can request a DAT 1 form from the PSNI (a copy of the police held criminal record). It is illegal for an employer to ask to see a copy of a DAT 1; it makes no distinction between spent/unspent convictions so is not a reliable way of telling what will appear on an Enhanced Access NI certificate due to filtering etc.</p>



<p>Independent Reviewer was appointed in on 1 November 2015 and commenced work on individual applications on 1 March 2016.</p>	<p>The role of the Independent Reviewer (IR) of criminal record information in relation to Access NI certificates was established through implementation of Section 41 of the Justice (NI) Act 2015 and the specific details of the role are set out in Schedule 4 of the same Act. This appointment is unique to Northern Ireland in that no similar role exists in either of the other two UK disclosure services, (Disclosure and Barring Service and Disclosure Scotland).</p>	<p>A positive appointment, giving people the right to dispute their Access NI certificates. This independent service has seen up to 86% of disputes upheld in favour of the applicant. The downside is that there seems to be little knowledge of this option amongst callers to the NIACRO helpline. Some improvement was seen this year but last year some research showed that the web link in circulation did not work and the actual dispute page was 2 or 3 links deep into the website. We feel that IT literacy may be a serious barrier for people finding out how to dispute which may account for the low numbers of appeals (little over 100 disputes raised in 2018).</p>
<p>Rehabilitation of Offenders (Exceptions) (Amendment) Order (Northern Ireland) 2019</p>	<p>Amended the filtering arrangements for Access NI and came into force on March 16th 2020.</p> <p>This amendment stems from a Supreme Court judgment*, which ruled that elements of the 2014 criminal record ‘filtering scheme’ operated by the Department of Justice were disproportionate. Under that scheme having any more than one conviction automatically lead to the disclosure of all convictions. The Department has, therefore, adjusted the terms of the scheme to allow more than one offence to be filtered in order to comply with the judgment.</p> <p>(* <u><i>In the matter of an application by Lorraine Gallagher for Judicial Review (Northern Ireland) R (on the application of P, G and W) (Respondents) v Secretary of State for the Home Department and another (Appellants) R (on the application of P) (Appellant) v Secretary of State for the Home Department and others (Respondents) [2019] UKSC 3</i></u>)</p>	<p>Convictions can now be filtered after 11 years (or 5½ if under 18 when convicted) if the conviction is not for a specified offence listed in the 1979 Order (e.g. serious violent / sexual offences, those of specific relevance for posts relating to safeguarding children and vulnerable adults etc.) and did not attract a custodial sentence.</p> <p>We welcome the filtering scheme and its update, yet it is still impossible to predict precisely what will / will not appear on an Enhanced Access NI as it can change depending on the role. This can still lead to under or over disclosure by people when asked to declare relevant convictions <i>before</i> the certificate is issued. Although Access NI certificates come to the person before the employer, if there is information on the certificate the employer is informed of this meaning that even a certificate is successfully disputed, the employer is aware that there is a criminal record present.</p>

Table B changes to the Original Legislation in Chronological Order

Points of note:



- Having a spent conviction does not mean that it is removed from a criminal record, but that the person does not have to declare it for 'unregulated' work
- There has been a steady increase in the roles that have been added to the criminal records disclosure regime in the last 42 years (any statistics?)
- The original rehabilitation time frames have remained untouched despite the advances in our understanding about offender behaviour, human psychology, causes of offending, drug and alcohol rehabilitation processes and evidence that employment helps reduce the risk of reoffending.