

Consultation document on the “Draft Guidance for the Operation of the Criminal Records Filtering Review Mechanism”.

Response from Fermanagh and Omagh District Council.

Fermanagh and Omagh District Council (Council) welcomes the opportunity to respond to the consultation. Within the Corporate Strategy, Council’s mission or core purpose is stated as “Leading and serving our community, working with others to promote quality of life, quality places and quality services for all”.

One of the current problems in relation to Criminal Records, is that there is no definition of what a ‘Criminal Record’ is within legislation. The majority view tends to generally accept it to be a record of convictions and specific non-court disposals held in regards to individuals.

Council believes that all Criminal Records Filtering should be fair not only to the individual but also to any potential employer. Standard and Enhanced Criminal Record Certificates are generally used by employers and voluntary organisations to assess the suitability of individuals for employment/volunteering positions, which will result in working with children and/or adults who may be regarded as vulnerable.

Council supports the proposal to develop an increasingly proportionate system of filtering and disclosure. Whilst the PSNI and other Criminal Justice organisations may need to use information on an individual’s ‘full record’ (which may include issues such as Jaywalking, Littering, Speeding, etc), in general Criminal Records should be filtered with only information which is proportionate and relevant being accessed or disclosed. This would mitigate against young people being prevented from taking up employment or training due to a minor past misdemeanour.

Council wishes to highlight concerns with the following aspects of the Draft Guidance:

1. Section 5.4, ‘Timelines’, the document states:

‘In order to ensure that any delay is kept to a minimum, time limits have been set in relation to the review process. These may be summarised, as follows:

- An individual seeking a review must apply to AccessNI within 90 days of the certificate being issued.
- The IR will review the case and, where practicable, inform AccessNI of his/her determination within 28 calendar days of receiving the application from AccessNI.
- In those cases subject to automatic referral, where the IR decides to disclose information, AccessNI will respond to the applicant within 5 working days of being informed by the IR, and will seek representations within 10 working days.’

The implication of the above timelines brings the potential that an individual, or indeed a

possible applicant, could wait for approximately three months for the result of their review. This will cause significant problems in relation to both recruitment and service delivery and Council would recommend that the timeframe for the application of a review could be reduced to 30 days in order to significantly speed up the entire process.

2. The potential for the proposed 'Criminal Records Filtering Review Mechanism' to dilute the efficacy of the Individual Risk Assessment process carried out by Council. Currently the Council risk assesses each individual (employee and volunteer) whom may interact with children, or adults, considered to be vulnerable. To date this process has worked very well and has allowed the Council to individually assess each individual on a case by case basis. Any updates to the Filtering Process should be done so fairly to the individual and the perspective employers, enhancing (rather than eradicating) any current systems/checks.

Possible measures the Department should put in place to help support young people

Council stresses that, in order to reduce any stigmatisation and/or detrimental impacts that young people may experience, they should be offered every possible opportunity to change. Consequently, Council supports the proposal that the time period for filtering should be different for those who committed offences when young, especially given the various arguments around the age of criminal responsibility.

Councils strongly recommends that The Department should proactively communicate the impacts of the Criminal Records Filtering Mechanism. The information contained within this Draft Guidance may not be easily digested by young people so every effort should be made to break the information contained in it down and to distribute it in easily understood Plain English. The methodology for distributing the information should take the form of visual (leaflets, online i.e. website/webpages) and verbal communication (visual and interactive presentations). This should be promoted to relevant groups and delivered in joint partnership working with other relevant agencies such as NIACRO, Youth Justice Agency, Northern Ireland Probation Board, PCSPs amongst others.

The Department also need to engage in further 'prevention' work in educating young people on the significant impacts that acquiring a Criminal Record could play in young people's future. For example, outlining the different types of Criminal Records, the length of time that each type of Criminal Record remains on an individual's record and the drawbacks for having such records. This 'prevention' may help to deter young people from getting into trouble.

Conclusion

Fermanagh and Omagh District Council agrees with the Department in that there should be a 'filtering out process for old and minor offences' and that any 'Disclosure of Criminal Records Information' should always be both proportionate and relevant.

The Council also agrees that, in the interests of public safety and protection, certain information on serious offences will always be required to be disclosed.

The Filtering Mechanisms with regards to Criminal Records should always be assessed on an individual case by case basis with proper consideration given to:

- The severity of the offence(s).

- The risk of re-offending.
- Any mitigating factors.

Criminal Records Filtering Mechanisms should be clear and straightforward to prevent the process from being slowed down during application.