

# A Common Sense Approach

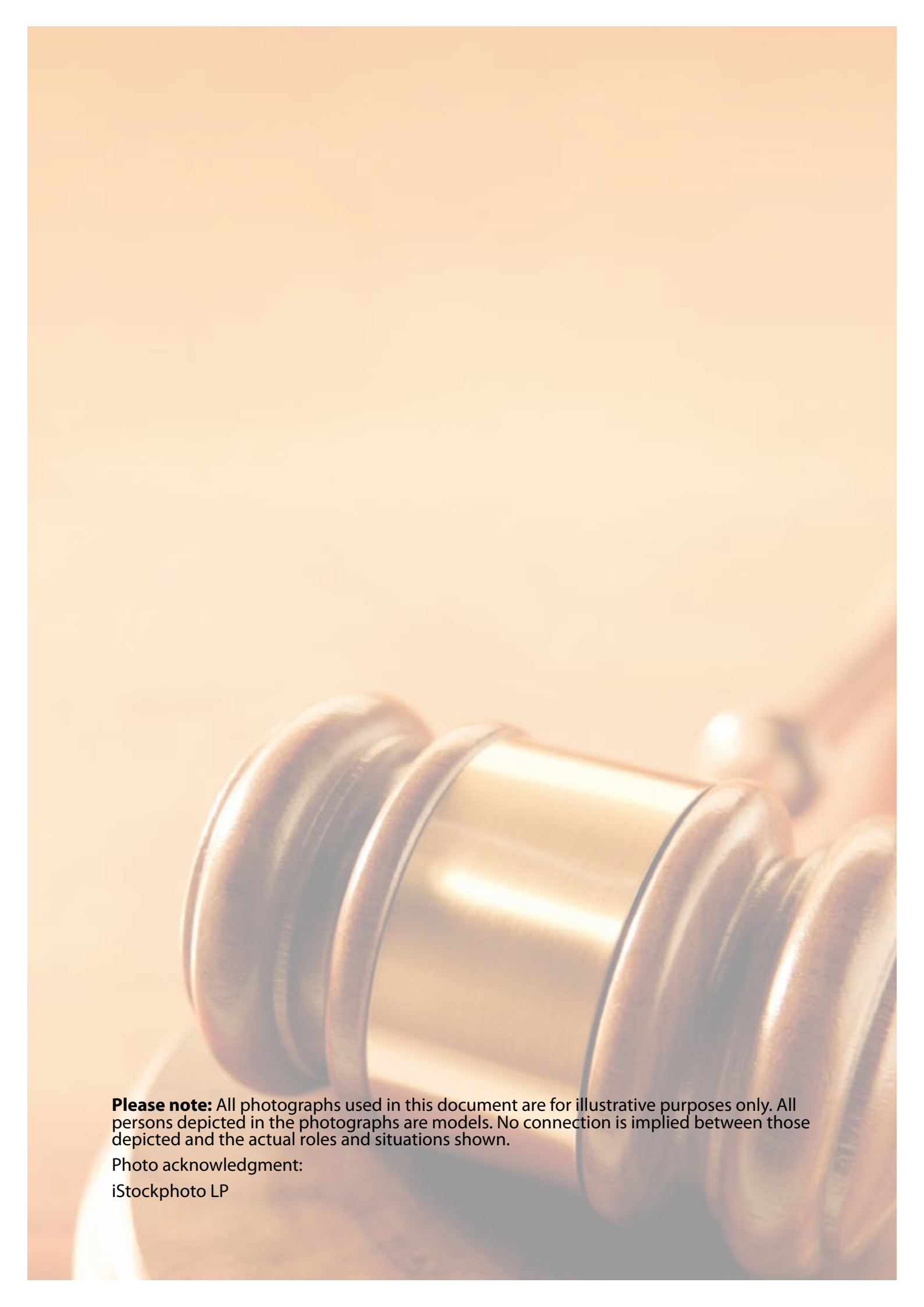
A review of the criminal records regime in England and Wales  
by **Sunita Mason**

Independent Advisor for Criminality Information Management

---

## Report on Phase 1





**Please note:** All photographs used in this document are for illustrative purposes only. All persons depicted in the photographs are models. No connection is implied between those depicted and the actual roles and situations shown.

Photo acknowledgment:

iStockphoto LP

# Contents

<b>Contents</b>	<b>3</b>
<b>Preface</b>	<b>5</b>
<b>Executive Summary</b>	<b>6</b>
<b>Foreword</b>	<b>8</b>
<b>Section 1 Background</b>	<b>11</b>
Criminal Records Checks	12
Levels of checks	13
The Vetting and Barring Scheme and the Independent Safeguarding Authority	14
Review of Punishment, Rehabilitation and Sentencing	14
<b>Section 2 Phase 1</b>	<b>17</b>
Eligibility	18
Portability	19
Updating Criminal Records Disclosures	22
Issuing the Criminal Records Certificate	24
Filtering of Old and Minor Convictions	27
Local Police Information Disclosed on an Enhanced Certificate	30
Relevancy Test	33
Statutory Code of Practice	34
Timeliness of Enhanced Disclosure Checks	35
Additional Information	36
Delivery Structures Supporting Disclosure of Police Information	37
Package of Police Information Recommendations	38
Disputing Information Contained on Criminal Records Certificates	40
False Allegations	42
Inappropriate Requests for Disclosure	43
Regulation	44
Insurance	44
Criminal Conviction Certificates (Basic Checks)	45
<b>Section 3 Guidance</b>	<b>47</b>
<b>Section 4 Conclusion</b>	<b>51</b>
<b>Appendix</b>	<b>53</b>
Annex A Review of the Criminal Records Regime Terms of Reference	54

Annex B Consultations	55
Annex C Written submission to the review	58
Annex D Draft Terms of Reference Independent Advisory Panel for the Disclosure of Criminal Records (IAPDCR)	60
<b>Glossary</b>	<b>61</b>

# Preface



As part of my role as the Government's Independent Advisor for Criminality Information Management, I was asked to carry out a review of the criminal records regime in England and Wales<sup>1</sup>. That regime exists to provide a degree of protection to society. It stores, and potentially informs of, previous misconduct so that the police and other statutory agencies can use information to protect the public. But criminality information<sup>2</sup> isn't just a useful law enforcement resource.

In this report, covering Phase 1 of my review, I will look in detail at how employers can access criminality information to help them take informed decisions on people's suitability to undertake certain roles. This is especially important when considering the access to children and vulnerable adults afforded by particular jobs or voluntary roles. Phase 2 of my review will look at broader issues around how "criminal records" should be defined, managed, used and stored.

In conducting my review I have been struck by a number of common issues within the criminal records regime that go to the heart of the employment checking system and which cause some users real concern about the detrimental effect it can have on their daily business and lives.

This in turn has led to a degree of dissatisfaction with a system that has evolved with the laudable aim of protecting vulnerable people but is now viewed by some as intrusive and an unnecessary bar to employment. There is also concern that some people may be treated as "guilty until proven innocent".

This review addresses these serious issues and recommends a number of common sense actions to rebalance the system - to create a proportionate and efficient criminal records vetting regime whilst still maintaining necessary levels of public protection. In proposing these recommendations I have been mindful of Government priorities to devolve decision-making to a more local level, to reduce bureaucracy<sup>3</sup> and to protect civil liberties.

---

<sup>1</sup> Independent Review of Criminal Records Regime, commissioned by the Home Secretary on 22 October 2010.

<sup>2</sup> Defined by Sir Ian Magee in his Review of Criminality Information [available from [www.nationalarchives.gov.uk](http://www.nationalarchives.gov.uk)] as: any information which is, or may be, relevant to the prevention, investigation, prosecution, or penalising of crime.

<sup>3</sup> Defined in glossary

# Executive Summary

In writing this report I have considered issues around the employment checking elements of the current criminal records regime as it relates to the Criminal Records Bureau (CRB). These common themes have been identified by many of the stakeholders I have consulted.

Their concerns have led me to question whether the current system for criminal records checking has become too onerous for individuals and employers.

I have then considered the balance between public protection and civil liberties in terms of what it is fair and proportionate to disclose. I have also reviewed the use of police information as part of enhanced criminal record disclosures.

My review also looks at the effectiveness of the current arrangements to determine whether there are opportunities to provide an improved level of service in a more timely and efficient manner.

After analysing the problems and giving careful consideration to the stakeholder feedback received, I have identified a number of practical and pragmatic actions which I recommend that the Government undertakes.

To ensure a swift and effective step change in the criminal records regime, the recommendations that require changes to primary legislation should be included in the Government's current legislative programme for 2011/12 and 2012/13. If enacted, these will deliver the fundamental changes that I believe the system needs.

Equally importantly, my recommendations ensure that public protection is maintained whilst individual civil liberties are better defended.

These recommendations are summarised in the list below and are fully cited within the analysis in the body of this report.

*I recommend that eligibility for criminal records checks is scaled back (recommendation 1).*

*I recommend that criminal records checks should be portable (transferable) between jobs and activities (recommendation 2).*

*I recommend that the Criminal Records Bureau (CRB) introduce an online system to allow employers to check if updated information is held on an applicant (recommendation 3).*

*I recommend that a new CRB procedure is developed so that the criminal records certificate is only issued directly to the individual applicant (recommendation 4).*

*I recommend that the Government introduces a filter to remove old and minor conviction information from criminal records checks (recommendation 5).*

*I recommend the introduction of a package of measures to improve the disclosure of police information to employers (recommendation 6).*

*I recommend that the CRB develop an open and transparent representations process and that the disclosure of police information is overseen by an independent expert (recommendation 7).*

*I recommend that where employers knowingly make unlawful criminal records check applications the penalties and sanctions are rigorously enforced (recommendation 8).*

*I recommend that basic level criminal record checks are introduced in England and Wales (recommendation 9).*

*I recommend that comprehensive and easily understood guidance is developed to fully explain the criminal records and employment checking regime (recommendation 10).*

The public protection system is a fundamental part of society's response to the threat posed by a small number of individuals. It is vital that this protection remains in place, yet operates at a level that allows the greatest opportunity for the well-intentioned in society to work with those in need.

I believe that my recommendations will further this aim.

# Foreword

There can be little doubt that society needs to be properly protected from individuals who truly pose a danger. Previous Governments have wrestled with the challenge of introducing safeguards to ensure that vulnerable people are kept safe from harm, whilst attempting to limit the impact of those safeguards on a person's everyday life.

Although the protection of vulnerable people must remain paramount, the release of irrelevant, minor or disputed information should not be allowed to blight an individual's life or career.

It is not my intention to weaken the protection afforded to the more vulnerable members of society in any way. But in today's fast paced, technologically driven world it sometimes appears that this need for balance is being ignored or eroded and inappropriate actions are being taken simply because systems in place mean they can be. Many believe that this has contributed to society as a whole becoming too risk averse.

I also recognise that in certain areas, some safeguards and checks have become unnecessarily bureaucratic.

Thus we need to address some thorny questions. Is it necessary to check every individual who might come into contact with children when, in reality, one would question how any harm might occur? One would not argue that a teacher should have a suitable criminal record check, but does the mother who volunteers to read with the children in class on occasion, and who is always in full view and supervision of the teacher, also require such a check? I am mindful that unnecessary levels of checks can be counter-productive and anecdotal evidence suggests that they may dissuade the very people who would provide a positive influence and benefit to the lives of others from volunteering.

How truly relevant are minor misdemeanours, say the shoplifting of a chocolate bar, committed decades previously, to the character of an individual applying for a volunteer role in a sports club? There must be a method of allowing people to leave their past behind and become productive members of society whilst still recognising that some may continue to pose a real and present danger.

That is why I am privileged to have been commissioned by the Government to undertake a review of the criminal records regime and to have been given the opportunity to make a series of independent recommendations that I trust will maintain public protection whilst recognising the need for fairness and proportionality.

In undertaking this review I have built on a legacy of knowledge and experience gained from previous relevant work. In September 2009 I was appointed as the Independent Advisor for Criminality Information Management<sup>4</sup>. As such, my job is to provide independent advice to Government on how it can best use criminality information to serve and protect the public, whilst respecting the rights of the individual.

---

<sup>4</sup> Details of the announcement can be found at [press.homeoffice.gov.uk](https://press.homeoffice.gov.uk)



This role is wide ranging and touches on important issues about how Government departments and law enforcement agencies share information to safeguard us all. Part of my role is to consider the increasingly heated public debate on the use of personal information held by Government agencies.

Indeed in my first official report, *A Balanced Approach - Safeguarding the public through the fair and proportionate use of accurate criminal record information*<sup>5</sup>, published in March 2010, I made a number of recommendations aimed at returning equilibrium to this process.

Whilst my first review made a number of important recommendations, I have always considered it a starting point for a wider ranging process. I am now able to focus on a much more radical reassessment of the criminal records regime with a view to developing a common-sense approach that is balanced and proportionate yet simple to both understand and use. The terms of reference for this review can be found at Annex A.

I have personally met with over 80 individuals and organisations involved in public protection and the handling of criminality information, both as providers and end-users, and I am grateful for the time and effort these people have made in sharing their thoughts and concerns as part of this process (see Annex B). I am also grateful to those who have shared their views through the criminal records review online survey, and to those who have contributed in writing to me personally or through the criminal records review mailbox (Annex C).

---

<sup>5</sup> Available from: [publicenquiries@homeoffice.gsi.gov.uk](mailto:publicenquiries@homeoffice.gsi.gov.uk)



# Section 1

## Background

The CRB is governed by Part V of the Police Act 1997 which requires it to issue criminal record certificates, sometimes referred to as CRB Disclosures or checks.

My review forms part of a wider programme of work announced by the Government in its document *The Coalition: Our programme for Government*. In particular this review addresses the Government's promise to "review the criminal records regime and scale it back to common sense levels"<sup>6</sup>.

Both phases of my review, as part of a larger process initiated by the Government, will look at the more complex "grey areas" in the system to determine what can be done to ensure fairer, less-complicated criminal records arrangements for protecting the public.

In undertaking this first phase of my review, I looked at whether the criminal records regime strikes the right balance between respecting civil liberties and protecting the public from unacceptable risk of harm. I also looked at ways in which systems can be simplified and made fairer and at the appropriateness of including intelligence information as part of criminal records disclosure.

As a starting point I began with the principle that the criminal justice system in England and Wales provides for suitable punishment for criminal actions whilst recognising that, once the punishment has been served, the ex-offender has the right and opportunity to re-enter society and lead a normal life. Exceptions, such as the sex offenders register, are necessary caveats to that ideal and are accepted by society as needed for the greater good.

Indeed, *The Coalition: Our Programme for Government* states that there is a "...need to restore the rights of individuals in the face of encroaching state power, in keeping with Britain's tradition of freedom and fairness."<sup>7</sup>

I want my recommendations to continue to protect the most vulnerable in society, but also help contribute to an effective system

of rehabilitation and improved life chances for ex-offenders. It is widely recognised that one of the significant factors in reducing reoffending is the ability to find and retain a job.

The Government recently published a Green Paper (*"Breaking the Cycle"*<sup>8</sup>) as part of the consultation process informing its review of punishment, rehabilitation and sentencing. In conducting my review, I have also paid heed to this in terms of how the use of criminal records supports both an effective response to crime and a sensible and balanced approach to rehabilitation.<sup>9</sup>

Furthermore, I have been mindful of the parallel remodelling review of the Vetting and Barring Scheme (VBS) being undertaken by the Government. The review of the Vetting and Barring Scheme and my own review must be considered together as part of a wider reassessment of employment vetting systems. My recommendations aim to be compatible with the Vetting and Barring Scheme review and seek to avoid replication or repetition.

Before I move on to my detailed consideration and recommendations, I believe that it is important that the core terminology I use is fully understood. I therefore set out some of the most common components of the criminal records regime below.

## Criminal Records Checks

For the sake of clarity, any references to employment in my report is intended to apply equally to work or activity that individuals undertake whether it be paid or unpaid (voluntary).

It is generally accepted that an employer

<sup>6</sup> Available from [www.direct.gov.uk](http://www.direct.gov.uk)

<sup>7</sup> Available from [webarchive.nationalarchives.gov.uk](http://webarchive.nationalarchives.gov.uk)

<sup>8</sup> *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders* (Cm 7972; 2010), available for download at [www.official-documents.gov.uk](http://www.official-documents.gov.uk)

<sup>9</sup> As provided by the Rehabilitation of Offenders Act 1974

is reasonably entitled to ask a job applicant about their criminal record. Yet the inevitable tension between public protection and maximising the life chances of those who have criminal records is graphically illustrated by some of the disclosures provided by the CRB.

This is something I considered in my previous report, *A Balanced Approach*, acknowledging that “...whilst there is a clear need for employers to have access to information to ensure that they are recruiting someone who is appropriate and suitable - especially in circumstances where an individual is working with vulnerable groups - there is also a need to balance the type of information needed to make that judgment. Most people would agree that where someone has committed a minor offence a long time ago, they do not deserve to be blighted for life.”

The CRB provides a service which allows organisations to check criminal records, police information and people on the barred lists (held by the Independent Safeguarding Authority (ISA))<sup>10</sup>, which are relevant to the post being applied for - for example where people are seeking to work with children or vulnerable adults. This is the primary purpose of criminal records checks.

The CRB is governed by Part V of the Police Act 1997 which requires it to issue criminal record certificates, sometimes referred to as CRB Disclosures or checks. I shall refer to them as “criminal records checks” in my review. The CRB gives a wide range of organisations access to information via these checks which form part of their safe recruitment practices.

Applications for criminal records checks are made through a network of organisations known as Registered Bodies. Some of these

are larger employers with a significant volume or turnover of staff; others are commercial bodies that exist to process checks.<sup>11</sup>

When a successful application for a criminal records check has been made with the consent of an applicant, a copy of the resulting disclosure certificate is sent simultaneously to the individual applicant and to the Registered Body.

## Levels of checks

The three levels of criminal records checks set out in Part V of the Police Act 1997<sup>12</sup> are:

<b>Basic:</b> Criminal Conviction Certificate	Provides only details of an individual’s ‘unspent convictions’ <sup>13</sup> and is available through Disclosure Scotland and Access Northern Ireland but not currently available via the CRB in England and Wales
<b>Standard:</b> Criminal Record Certificate	Contains details of any convictions, cautions, reprimands or warnings recorded on police central records and includes both ‘spent’ and ‘unspent convictions’
<b>Enhanced:</b> Enhanced Criminal Record Certificate	Contains the same details as a standard check, together with any information held locally by police forces that it is considered might be relevant to the post applied for, and any information from the ISA’s children and adults barred lists if relevant

<sup>11</sup> There are c.4150 bodies registered with the CRB (Source: December 2010, CRB).

<sup>12</sup> Part V of the Police Act 1997 (c.50) available at: [www.statutelaw.gov.uk](http://www.statutelaw.gov.uk)

<sup>13</sup> ‘Spent’ and ‘unspent’ convictions are defined in the Glossary

<sup>10</sup> The Independent Safeguarding Authority is an NDPB sponsored by the Home Office

## The Vetting and Barring Scheme and the Independent Safeguarding Authority

Following the 2004 Bichard Inquiry<sup>14</sup> into the circumstances surrounding the Soham murders, the previous Government sought to introduce stronger employment systems via the Safeguarding Vulnerable Groups Act (SVGA) 2006<sup>15</sup>.

This established a national body, the Independent Safeguarding Authority (ISA), to act as a central, expert decision-maker in relation to whether individuals should be barred from working or volunteering with children or vulnerable adults. The ISA can also remove individuals from the barring list after representation. It also provided for a compulsory registration and monitoring system called the Vetting and Barring Scheme (VBS).

Had implementation of this system not been frozen by the Coalition Government in June 2010, anyone undertaking a certain type of activity on a frequent basis – called regulated activity – would have been required to become registered under the Scheme and to have their criminal records checked.

If an individual had joined the Scheme, unlike a criminal records check which contains only data available at the time of issue, their records would have been proactively monitored. If new information had arisen after the individual's initial registration process it would have been passed to the ISA for consideration. The CRB would have remained crucial to this process as it would have acted as a conduit for access to most of the criminality information flowing to the ISA.

<sup>14</sup> Bichard Inquiry Report 2004: available from [public.enquiries@homeoffice.gsi.gov.uk](mailto:public.enquiries@homeoffice.gsi.gov.uk)

<sup>15</sup> Available from [www.legislation.gov.uk](http://www.legislation.gov.uk)

I understand that the Government's review of the Vetting and Barring Scheme is likely to recommend that it is scaled back significantly. That will involve strengthening the test for barring and reducing the range of roles to which bars will apply. Registration and monitoring are also likely to be removed from the system. I support these changes as a sensible move in the direction of proportionality. I believe it important that barring decisions can be made independently of government.

## Review of Punishment, Rehabilitation and Sentencing

As previously stated, the Government recently published a Green Paper (*Breaking the Cycle*) as part of the consultation process which informs its review of punishment, rehabilitation and sentencing. In conducting my review, I have been very conscious of the links to that agenda in terms of how the use of criminal records supports both an effective response to crime and a sensible and balanced approach to rehabilitation.

Every facet of the criminal justice system, from crime investigation to sentencing, relies to a greater or lesser extent on criminal records information and I would like my recommendations to help ensure that information is available when and where it is needed by the right person or organisation.

While it is generally accepted that an employer should be able to ask a job applicant about their criminal record it is also recognised, and required by law, that this entitlement should be qualified by setting time limits after which there should be no requirement for an individual to disclose specified offences, a so-called rehabilitation process. This qualification is

implemented via provisions set out in the Rehabilitation of Offenders Act (ROA) 1974.

There are some exceptions to this process, so that convictions which are “spent” under the ROA do have to be disclosed in specified circumstances. These are set out in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (hereafter referred to as the “Exceptions Order”)<sup>16</sup> and its numerous subsequent amendments.

Principles of the rehabilitation period as defined by the ROA are set out below:

<b>Sentence</b>	<b>Rehabilitation period<sup>17</sup></b>
A term of imprisonment exceeding 30 months;	Never spent
A term of imprisonment exceeding six months but not exceeding 30 months.	Ten years
A term of imprisonment not exceeding six months.	Seven years
A fine or any other sentence subject to the ROA	Five years

I will examine the link between the ROA<sup>18</sup> and the criminal records regime in more detail in Phase 2 of my review. However it is important that any review of the ROA includes specific consideration of the Exceptions Order as this dictates the scope and range of the criminal record regime.

The Government Green Paper invites comments on the ROA and the implications for disclosure are particularly relevant to my review.



<sup>16</sup> Available from [www.statutelaw.gov.uk](http://www.statutelaw.gov.uk). Rehabilitation of Offenders Act (Exceptions Order) 1975 (SI 1975/1023)

<sup>17</sup> Applies where no further offence is committed and reduced by half where the offender was under 18 at the time of conviction.

<sup>18</sup> Consultations close on 04 March 2011; source: [www.justice.gov.uk](http://www.justice.gov.uk)





# Section 2

## Phase 1

The definition of who is or is not eligible for a check should be revised and made clear by Government.

In carrying out my consultation it became apparent that, whilst criminal records<sup>19</sup> checks are seen as a necessary safeguard, it is the bureaucracy and idiosyncrasies of the criminal records system that cause the most frustration. These are issues such as the definition of who is or is not eligible for a check, why checks cannot be portable (transferable) and how long checks take to complete. The issue of what police information is included on a disclosure is also a common concern along with how an individual can challenge incorrect information.



## Eligibility

The issue of eligibility for checks is one which is often quoted as a problem and it has been all too easy to identify examples of ineligible applications which regularly appear to fly in the face of both common sense and a regard for proportionality. Although such cases tend to make up a small proportion of the total number of checks carried out each year, such

abuses can easily bring the reputation of employment vetting into disrepute. I have included below three examples of requests for enhanced disclosures that illustrate the problem:

**Case 1** – A long standing volunteer who chaired the “Flower Guild” at her local cathedral resigned having been asked to undertake a criminal records check on the basis that she shared toilet facilities that were used by others including children.

**Case 2** – An individual who was asked to provide a one off “talk” to children at a youth club about his adventuring and experience of his own travels refused to apply for a criminal records check and was not allowed to address the group.

**Case 3** – An assistant registrar at a local cemetery was asked by his employer, a local authority, to apply for a criminal records check.

There is no legal basis for any of these checks as the individuals are not engaged in employment or activity covered by the Exceptions Order which exempts a person from relying on the terms of the ROA.

But this is not the only frustration. Indeed, a common theme throughout my review has been the ever-expanding number of occupations that are defined as “exempt” from the ROA and therefore have become subject to the standard or enhanced criminal records checking regime. This is a phenomenon noted by the Government in “Breaking the Cycle” and I note that they intend to take “a fundamental look at the objectives of the ROA, and how it can be reformed”.

I therefore recommend scaling back the eligibility for standard and enhanced certificates. There is a need for enhanced checks for those sectors that work unsupervised or in regular close contact

<sup>19</sup> References to ‘criminal records’ in this report include data on convictions, cautions, warnings and reprimands

with children and vulnerable adults. However, one should ask the question as to whether it is necessary for other sectors such as gambling or licensing to be eligible for enhanced checks. Government should give urgent consideration to whether this is appropriate.

The definition of who is or is not eligible for a check should be revised and made clear by Government. This should be compatible with other legislation and definitions. I hope this will achieve balance and clarity so that, for example, an individual who volunteers to be a Scout leader will undergo an enhanced criminal records check, but his wife who volunteers her assistance on an ad-hoc basis at Scout fundraising events would not be required to do so.

*“Any attempt to reduce the burden for organisations making CRB checks will be welcome.” Association of School and College Leaders*

Another eligibility concern is that criminal records checks are currently conducted on children. In 2009/10 just over 5,000 checks were issued in respect of applicants under the age of 16. There are obvious civil liberty considerations in carrying out checks on children. Common sense dictates that they should not be left unsupervised in a position of authority with other children or vulnerable adults.

*I recommend that children under 16 should not be eligible for criminal records checks. I further recommend that individual eligibility is scaled back to focus tightly on those working unsupervised or in regular close contact with children or vulnerable adults, and those in a much smaller number of specifically prescribed roles (recommendation 1).*

## Portability

Addressing who should be eligible for a criminal records check is only the beginning of a process to improve the current regime. There is also a need for tangible change to the entire criminal records disclosure system to improve functionality without undermining public protection. The first of these changes relates to the portability of a criminal records check.

It has become standard practice that when an application for a criminal records certificate is made the resulting disclosure is not transferred or re-used. It is generally considered valid only for the post applied for at the time the certificate was issued. I have come across numerous cases where this has proved both inconvenient and costly for individuals, employers and voluntary bodies.

This issue has been widely featured in contributions made to the Government’s “Your Freedom” website and the Treasury’s “Spending Challenge” website. Individuals say they often feel frustrated by the existing process and find it overly bureaucratic and unnecessary.

**Example 1:** A registered nurse recently left the NHS and made more than ten applications for local nursing agencies within a three month period. Each agency stated they needed their “own” check.

**Example 2:** A dentist had criminal records certificates to work in four different prisons but was unable to visit a Young Offenders’ Institute where he had 120 patients until he underwent a further check<sup>20</sup>.



Employers are normally required to wait for checks to be completed before filling vacant positions rather than being able to consider a recently undertaken check or make provision for increased supervision<sup>21</sup>. It is anecdotally reported that some people are reluctant to get involved in voluntary work because of the need to repeat the checks that they have already obtained in other positions.

For example, a recently retired doctor (CRB checked through his role as a GP) who wanted to volunteer to make home visits to vulnerable adults was still asked to undergo another check.

There is also a financial burden placed on individuals, employers and voluntary groups through additional administration.

<sup>20</sup> Sourced from an article written by Jonathan Aitken for The Times at [www.insidetime.org](http://www.insidetime.org)

<sup>21</sup> The Department for Education’s safer recruitment guidance is available from: <http://publications.education.gov.uk>

As an individual, I have personally undergone three separate criminal records checks in a 12-month period for work and voluntary positions (with children) even though the disclosures were all made within a short time of each other. If checks were portable, I would only have required one check and then would have been able to use it for the other two roles which also involved working in the children’s sector. This would have allowed me to start volunteering immediately.

## Can criminal records checks become portable?

I firmly believe there should be a way of making criminal records certificates more portable, a proposal which has received overwhelming support from the people with whom I have consulted. I also believe that this view is finding favour within the Government’s own Vetting and Barring Scheme review.

*“We agree that there is a need to work towards the abolition of multiple CRB clearances for individuals and to ensure that the “portability” of a CRB disclosure form becomes the norm – with appropriate safeguards to ensure that these cannot be used fraudulently.”*  
**Ofsted**

It should be noted that approximately half of all volunteers who require criminal records checks also work in sectors covered by enhanced disclosure.<sup>22</sup>

However, whilst a certificate should be portable within the children’s or vulnerable adults’ workforce, I believe that there should

<sup>22</sup> Source: December 2010, CRB

be a requirement for a fresh application of suitability should the individual move from the children to the vulnerable adult sector or vice versa.

This would ensure that a person who may have an improper intent could not obtain an enhanced criminal record disclosure in a different sector such as the gaming industry and then transfer through portability their “clearance” to a role working with, for example, children.

I do not think it would be helpful to limit the scope of the sectors more narrowly than this because if, for example, a nursery school teacher was checked to work with 2-5 year olds she would then be required to obtain a new certificate to work with 6-11 year olds. Such a move would prove costly and would be cumbersome. Too narrow a definition of sectors would lose much of the benefits of making the certificate portable and greatly increase bureaucracy.

*“It is important that the information is transferable across different roles and that the disclosure is not tailored to any specific role or organisation.” Royal Yachting Association*

For example a disclosure issued to a teacher working in a junior school could also be used if they wanted to become a scout leader, senior school governor or children’s swimming coach without the need for any additional paperwork.

Likewise a disclosure issued to a care home supervisor working with vulnerable adults could also be used by the individual if they wanted to become a hospital visitor, work as part of a nursing bank or volunteer as a confidential counsellor.



*“It would be helpful to the health and adult social care sectors if there were to be greater portability of CRB checks in order to reduce costs and minimise delays in recruitment but only if this could be done without compromising public protection” Care Quality Commission*

*I recommend that criminal records checks should be portable between positions within the same employment sector (recommendation 2).*

**Case Study:** Mr A undertakes the following roles.

Current practice is that a fresh application is required for each role.

1. He has sole charge for supervising children at an after school club;
2. He is a trustee for a children’s charity with access to children;
3. He is an assistant sports coach for children;
4. He is a school governor; and
5. He is a chaperone at an elderly care centre where shopping trips are undertaken

If the process of portability that I recommend was introduced, Mr A would require just one check to enable him to work in the first four roles, because they all involve working with children; and may need an additional one to enable him to work in the fifth because it is in a different sector and involves working with vulnerable adults.

I believe that portability within each sector would remove the vast majority of superfluous rechecking of criminal records data, although there may be some occupations or roles (such as foster caring or home-based occupations) where portability will not be appropriate and therefore a fresh certificate will be required.

## Updating Criminal Records Disclosures

To make certificates truly portable, there will need to be a quick and easy process of authentication so that employers can ensure that the certificate has been correctly issued and is the most recent and up-to-date.

## Can criminal records checks be validated and updated more efficiently?

As the current service only provides a snap-shot of the information known about an individual at the time they apply, many employers will ask an individual to get a new certificate rather than rely on a certificate already issued. This leads to many people having to apply repeatedly for disclosure certificates, going through the effort and expense of making a new application and then having to wait for the new certificate to be issued. Given that the vast majority of certificates do not contain any new information, this is a very frustrating and time consuming process for both the applicant and the employer.

I understand that work is currently underway within the Home Office and CRB to introduce a service that is portable. The development of this service would enable individuals and employers to carry out an instant online check which would confirm whether a disclosure certificate



presented by an applicant was up-to-date. I am reassured that a more portable product is being developed and the necessary business changes are being planned and budgeted for.

This would meet the intent of my recommendation and would mean that where there is no change to an individual's record (since the original certificate was issued) there would be no need for a new disclosure application to be made.

*“The duplication of enhanced CRB checks is, in most cases, unnecessary and causes delays in recruitment to clinical posts critical to service delivery.” NHS Employers*

In 2009/10 approximately 4.3 million criminal records checks<sup>23</sup> were carried out by the CRB, of which more than half related to individuals who had previously applied for a CRB criminal records check (since 2002). It is also important to note that

around 95% of re-applications show no new criminal record information.

I envisage a simple online system whereby an employer, with the consent of the applicant, can confirm the details contained on a criminal records certificate. If there has been a change since the certificate was issued, the employer will be prompted to request a new check. If there is no new information it will simply indicate there is no change.

As previously stated, the result of the vast majority of repeated checks will show no change. Only at the point where an online check indicates that there is new information would a fresh disclosure application be required.

This approach changes the emphasis of checking from “check all” to a process where, once an initial criminal records check has been completed, a re-check will be necessary only on those individuals where a “change” has occurred or their role is subject to an enhanced check and they have moved employment sectors.

<sup>23</sup> Actual figure: 4,299,924. Source: CRB, January 2011

*“We believe continuous updates will be a vital element of a responsive, effective and efficient CRB system. They will ensure multiple CRB checks for individuals changing or moving jobs should not be necessary.”*

**English Community Care Association**

Simplifying the process for repeat checks is, with portability, one of the main areas where system change is most requested by individuals and organisations alike.

*I recommend that the Criminal Records Bureau (CRB) introduces an online system to allow employers to check if updated information is held on an applicant (recommendation 3).*



This approach would allow such checks to be conducted as required with ease and meet the need of employers. However, such an approach should not subject the individual to onerous monitoring arrangements. I am acutely aware that many of the objections to the Vetting and Barring Scheme were around continuous monitoring and registration. I do not want to adopt a similar approach.

## Issuing the Criminal Records Certificate

At present when an individual requests a criminal records check via a Registered Body, the CRB undertakes its checking processes and the output (a criminal records certificate) is issued to both the applicant and the Registered Body at the same time.

This process, introduced in 2002, was designed so that parallel disclosure to the applicant and the Registered Body would build in an extra level of security by reducing the ability to tamper with or alter the certificate and would inform the employer that the process had been completed. It was also felt that this would improve the speed with which the employer saw the certificate and so would improve the efficiency of the recruitment process.

However, this process has a number of significant disadvantages. Firstly, it incorrectly assumes the employer can make a decision immediately on receipt of the certificate when, in reality, the disclosure of criminality information forms only a part of a recruitment process (which also includes, for example, taking up references).

Secondly there is no opportunity for the applicant to challenge any of the information contained on the certificate before it is seen by a potential employer.



For example the CRB disclosed an incorrect record on 631 occasions from April to December 2010<sup>24</sup>. Although the number is relatively small, when it does happen, the consequences can be devastating.

Thirdly, where the disclosure includes police information it is probable that this would be the first time that the applicant has seen the content of that information and been able to assess its accuracy and relevance.

Finally, an employer on receipt of a disclosure certificate that contained criminality information may use it as a reason to de-select. Indeed, I have been told that some employers still mistakenly believe that without a “clean” certificate, they cannot offer a job to someone.

In the light of these problems, I have considered alternatives to the current process of disclosing certificates to both the applicant and the employer.

## Is there an alternative to disclosing certificates to both the applicant and employer at the same time?

I have given this issue a great deal of thought and consulted widely and I am of the opinion that this process would be better served by the criminal record certificate being provided only to the applicant. This would build upon my recommendations on portability and online checking, where one certificate could be used in several different roles. The certificate becomes akin to other documents that an individual owns and produces from time to time, like a driving licence, passport or a practising certificate.

This method would allow the applicant to provide the employer with the disclosure when they chose to do so. If an employer was not provided with a certificate then they would not have to employ the



<sup>24</sup> Sourced from CRB December 2010

applicant and the same applies to voluntary positions.

This approach would align the criminal record checking process with the good practice that should be used by employers in relation to seeing and validating an applicant's qualifications and references and verifying their identity and right to work.

**Case Study 1:** An individual applies for employment which requires a criminal record certificate. The individual is offered the position and applies to the CRB in the usual manner. The applicant receives the certificate and chooses to provide this certificate to the employer. The employer can validate the authenticity of the certificate electronically upon receipt.

**Case Study 2:** An individual applies for employment which requires a criminal record certificate. The individual is offered the position and applies to the CRB in the usual manner. The applicant receives the certificate and because it includes incorrect information they choose NOT to provide this certificate to the employer immediately whilst they make representations to the CRB. Once the matter is resolved the applicant can choose to provide the re-issued certificate to the employer. The employer upon receipt of certificate from the applicant can validate its authenticity electronically.

**Case Study 3:** An individual applies for employment which requires a criminal record certificate. The individual is offered the position and applies to the CRB in the usual manner. The applicant receives the certificate. As the certificate includes police information which is correct, the applicant chooses NOT to proceed with the application for the job and informs the employer.

It goes without saying that in order to operate the process safely, sophisticated safeguards would have to be built into the process to ensure it is not possible for an individual to tamper with or use the disclosure inappropriately. However, I believe these concerns can be properly dealt with by the IT solutions Government has in progress for portability and updating.

The advantages to this process include:

- The applicant will have a chance to quickly challenge incorrect information prior to the employer seeing it.
- The applicant will have the opportunity to explain any of the information on the disclosure to the employer and provide background that they may consider important to the consideration of the information that has been disclosed.
- The employer can quickly check the validity and authenticity of the certificate online.
- The disclosure of the criminal record certificate is controlled by the applicant whilst the employer retains their ability to appoint or renew employment.
- The actual certificate may be disclosed by the applicant to the employer at the point of interview or at any time prior to the commencement of their duties. The point of disclosure should be shaped to suit the needs of the employer and the applicant as opposed to a single delivery point as it is currently.
- The employer will not easily be able to unfairly exclude an applicant from potential employment without the applicant's knowledge.

Overall I believe that giving control of the disclosure process to the applicant increases clarity and fairness without increasing the risk to the employer. It also minimises the level of involvement the State has in recruitment decisions and instead gives control back to employers. Put simply, if the applicant decides not to provide the employer with their certificate then the employer can decide not to appoint them.

*I recommend that a new CRB procedure is developed so that the criminal records certificate is issued directly to the individual applicant who will be responsible for its disclosure to potential employers and/or voluntary bodies (recommendation 4).*

I see the use of this method of disclosure sitting hand-in-hand with portability and updating, as well as the filtering of old and minor convictions.

## **Filtering of Old and Minor Convictions**

In my first review, *A Balanced Approach*, I gave extensive consideration to the nature of convictions, cautions, warnings and reprimands that are routinely disclosed on a criminal record certificate. For the purpose of brevity my following references to “conviction information” will include conviction, caution, warning and reprimand information.

There is a reasoned argument that, in many cases, the disclosure of conviction information that is both minor and disproportionate places an unnecessary

burden on the lives of individuals. This is particularly so, where the conviction became spent many years earlier and the individual poses no significant public protection risk to children or vulnerable adults (for example, a shoplifting offence from 27 years ago).

I am therefore keen to ensure that the Government implements an appropriate form of filtering in the CRB process that removes conviction information that is undeniably minor and which cannot be classed as anything other than old. Further to the recommendation in my previous report I have been tasked by Government to set up a panel of experts to look at rules for filtering.

*The Independent Advisory Panel for the Disclosure of Criminal Records was created following my first review and is made up of experts with backgrounds in law, reformation of offenders, child protection, policing, regulation and civil liberties.*

*This panel of experts is considering a mechanism to filter old and minor convictions from being disclosed through criminal record checks. They are currently considering what the rules to govern that mechanism should be and different delivery models are being explored.*

*The panel will be presenting recommendations to the Home Secretary later in 2011<sup>25</sup>.*

I am encouraged that in “Breaking the Cycle” the Government has indicated that they will look at this area and particularly in relation to juvenile convictions.

Of course, to balance the rights of the individual with wider public protection needs, it is necessary to ensure that any filtering of conviction information is both balanced and easily understood by

<sup>25</sup> Terms of Reference for the Independent Advisory Panel for the Disclosure of Criminal Records can be found at Annex D



employers, applicants and the general public and is fully compatible with the ROA.

*I recommend that at the earliest opportunity Government introduces a filter to remove, where appropriate, old and minor conviction information (which includes caution, warning and reprimand information) from criminal records checks (recommendation 5)<sup>26</sup>.*

To ensure ongoing public protection there should always be a significant number of conviction types that **will always be disclosed**. Examples of serious conviction headings and groups that may be included in this category are detailed below:

- Assault and Violence Against the Person
- Affray, Riot and Violent Disorder
- Aggravated Criminal Damage
- Arson
  
- Drink and Drug Driving
- Drug Offences
- Robbery
- Sexual Offences

It is important to state that there are a number of important opinions and views around what constitutes serious. For example possession of a small amount of cannabis may be considered not serious by some but more serious by others where individuals have regular access to controlled drugs. It may also be argued that low level convictions for violence such as common assault may become more important where the individual works with children or vulnerable adults.

Therefore the above should be regarded as illustrative and it will be important for an assessment of each category of conviction to be made by the Advisory Panel. It will also be vital that whatever rules are applied are readily understood by users and applicants of the criminal record service.

What is also important to mention here is that the Advisory Panel are also considering how to ensure that such old and minor conviction information is not ignored if it relates to a pattern of criminal behaviour. So although it is right not to disclose the fact that someone may have one or two old or minor convictions, serious consideration must be given to a record that suggests a pattern of re-offending, no matter how minor.

<sup>26</sup> This supports recommendation 6 in my first report, *A Balanced Approach*

*“Where offences are relatively minor, particularly those where the individual concerned accepted a “caution” or were themselves under the age of 18 at the time of the offence, we would look to see a more measured approach towards decisions on whether the offence should impact on the individual’s fitness to work in a particular area.” Guildford HE*

There is an important link here with the ROA regime. That regime already filters out many convictions for most types of employment applications, but not for the more sensitive posts covered by the CRB arrangements for standard and enhanced checks. Linked to the current review of the ROA, the Government will need to consider how any practical difficulties around filtering can be resolved.

There are some who say that only a criminal conviction should form part of a criminal record for disclosure purposes; this would exclude cautions, warnings and reprimands. Conversely, others would say that all records, however old and minor, should always be disclosed<sup>27</sup>.

I have spoken to many people with convictions, some with records that are decades old. They tell me that having any record at all could result in not even getting to the interview stage for employment.

Indeed, they say they are often sifted out just by having to tick a box stating they had a conviction on an application form. One has to question whether this is fair and proportionate.

<sup>27</sup> Currently, enhanced criminal records checks take into account conviction, caution, warnings and reprimands information

How do we give a second chance to those in that position? We cannot assume that anyone without a “clean” disclosure is dangerous, unsuitable or inappropriate for work. Decisions need to be made in the context of appropriate and relevant conviction information.

There are occasions when those with convictions may seek to turn their life around and volunteer, work with or mentor those with similar problems. However their previous conviction may be a bar to their participation in helping others. This is an issue that has been noted in a current review of anti-knife crime projects<sup>28</sup>.

In Phase 2 of the review I will examine further the link between filtering and the definition of a criminal record and its interaction with the ROA.

In terms of the filtering of records, the impact of offences on victims is also an important consideration. For example, a care worker with an offence for theft (which may be against elderly people in a place of employment) carried out less than three years ago should have the offence(s) disclosed. If that had happened 15 years ago, and there had been no other criminal convictions since then, one has to question if it is truly relevant to disclose it. This is an example of the type of information that I am asking the expert panel to consider.

The above sections relate to conviction information (which occurs as a result of the findings of a court of law ie convictions) or relate to cautions, warnings or reprimands that have been accepted by the individual.

However another key part of the disclosure process is the use of local police information that has not been subject to a finding of guilt or may have been collected without the prior knowledge, agreement or acceptance of an individual. The use

<sup>28</sup> Source: Brooke Kinsella’s review of anti-knife crime projects, January 2011

of police information is a complicated issue. I have considered the use of local information within the criminal record regime within the next section.



## Local Police Information Disclosed on an Enhanced Certificate

“Police intelligence” is any information held by the police that is not conviction information. There are a number of terms commonly used to describe this information including ‘soft intelligence’, ‘local intelligence’ and ‘approved information’.

For the purposes of employment checking it is more accurately described as “police information which a Chief Officer

determines **might be relevant** to the post applied for”. I shall refer to it as “police information” for simplicity.

Part V of the Police Act 1997 places a statutory duty on the Secretary of State (through the CRB) to ask a relevant police force to consider if they have any information that **might be relevant** to the application. There is also a statutory duty on the Chief Officer to comply with such a request and disclose such information.

Regulations introduced in December 2010,<sup>29</sup> together with improvements in automated searching criteria at the CRB, have reduced the number of speculative searches undertaken so that the police are only asked to check applications where it is known that there is some police information or where the applicant is involved in home-based working.

Out of 4.3 million enhanced criminal records checks in 2009 there were approximately 25,000 pieces of intelligence disclosed<sup>30</sup>.

However the test operated by Chief Officers - “might be relevant” - leaves open the possibility that, in some cases, the information disclosed is **not actually** relevant or proportionate.

*Example 1:* In January 2006 the applicant was given a penalty notice for speeding - she was recorded at 37 mph in a 30 mph zone.

During my consultation I was also told about a case where a teacher applied for an enhanced criminal records check in which police information disclosed that he had received a Penalty Notice for Disorder for ‘excessive standing’ at a football match.

<sup>29</sup> The Police Act 1997 (Criminal Records) (Amendment No.2) regulations 2010, available at <http://www.legislation.gov.uk/ukSI/2010/2702/contents/made>

<sup>30</sup> Source: December 2010, CRB



It is important to ensure that all 59 police forces<sup>31</sup> undertake a rigorous process of considering, assessing and determining relevancy of data before any police information is disclosed on an individual certificate.

The use and sharing of “police information” in the employment vetting process is a controversial issue and one that has stimulated a great deal of comment from stakeholders. My terms of reference specifically ask the question whether police information should form part of disclosures.

## Should police information be included on an enhanced criminal record certificate, and if so, can the current

## processes be simplified and made fairer?

In my previous review, *A Balanced Approach*, I stated that the implementation of the Vetting and Barring Scheme would have allowed an independent body to evaluate police information without disclosing it to an employer.

However, the revised approach to the Vetting and Barring Scheme being considered in the Government’s review has required me to reconsider the issue.

I understand that the review will propose an end to registration with the scheme and a reduction in the number of people covered by regulated activity.

Therefore if I propose - and the Government accepts - that police information will no longer be disclosed on a criminal records check, there is a danger that there will be a gap between the two employment vetting schemes. I am concerned that serious relevant information might not be shared or

<sup>31</sup> The 59 police forces are made up of 42 Geographical forces representing England, Wales & Northern Ireland, 9 Scottish forces using a Disclosure Scotland Gateway, 3 forces representing the crown dependencies of Guernsey, Isle of Man and Jersey and 5 non geographical forces (British Transport Police, Military forces, Serious Organised Crime Authority (SOCA), Child Exploitation and Online Protection Centre (CEOP) and HMRC

disclosed and this will lead to a risk to public protection.

Therefore in answer to the question should “police information form part of a criminal records disclosure?” and if so, “can the current processes be simplified and fairer?” - my response is “yes” to both questions.

I believe there are instances where police information is a relevant and necessary part of the set of information which needs to be considered in judging suitability for specific roles.



**Example 1:** A man applied for an enhanced check with a view to working as a tennis coach at a primary school. Although the individual had no convictions, cautions, warnings or reprimands on his record, the police held information locally covering a period of over five years from four separate, reliable sources suggesting that he had assaulted four individual girls between the ages of five and nine.

This information was disclosed as the Chief Officer considered there was a significant risk of the applicant being able to harm those children who would be in his care. The employer was then able to use this information in deciding not to employ the applicant in that role.

**Example 2:** A lady applied for an enhanced criminal records check when she moved

school. Her certificate disclosed that it had been alleged that whilst working as a teacher she had assaulted a 14 year old male pupil in trying to remove him from the classroom when he was being disruptive.

The certificate also stressed that the lady had not been charged or convicted of any offence in relation to this matter which allowed her prospective new employer to make a reasoned judgement as to her suitability.

On the other hand, there are undoubtedly circumstances in which inappropriate and unhelpful disclosures are made.

**Example 3:** A 16 year old required an enhanced criminal records check in order to complete an external work placement as part of her studies. Police information was disclosed that she had been arrested aged 13 on suspicion of assault. She was never identified as the offender and the Crown Prosecution Service advised that no further action would be taken against her. However, the information was still disclosed.

**Example 4:** A manager of a care home was arrested following an allegation against him by a resident. The police conducted a full investigation and closed the matter the following month as no evidence was found. He subsequently lost his job as a manager of another care home when this allegation was disclosed through police information in an enhanced criminal records check.

During my consultations with key stakeholders, the majority confirmed that they were content for police information to form part of a disclosure. However, what became clear from my consultations was that there was a real need for a fair, transparent and independent process to challenge the information disclosed.



I believe that the continued use of police information in relation to those working with children and vulnerable adults is necessary. However a package of amendments to existing processes and policies is required to ensure that such disclosures only occur where they are proportionate and necessary.

Such a package, if implemented, would significantly improve the fairness, consistency and transparency of decisions undertaken by Chief Officers.

## Relevancy Test

Chief Officers, who decide whether to release information on behalf of their police forces, carry out a relevancy test when considering this request. Part V of the Police Act 1997 states that when considering the disclosure of information, a Chief Officer must be satisfied that it **might be relevant**.

It is evident by the cases of inconsistent disclosure of inappropriate police information that the current threshold for relevancy is too low. I believe that this statutory duty needs to be much more specifically defined. Only information that the Chief Officer is satisfied is relevant to the sector applied for, **and** which indicates a significant potential risk to children or vulnerable adults, should be disclosed. A more appropriate test would be for a Chief Officer to **reasonably believe** that the information is relevant.

***Example:** An individual has applied for a post working with adults who have learning disabilities and requires an enhanced criminal records check. The police have information suggesting that he was connected with an act of vandalism at the age of 15 but no charges were ever brought.*

*In this case, it could be that information in relation to vandalism 'might be' relevant to*

*the post applied for and as such disclosed on a criminal records certificate. However, if there was a higher threshold, it is unlikely that a Chief Officer would 'reasonably believe' such information to be relevant for disclosure.*

The test "reasonably believe" should be readily understood by the police as it appears within police legislation to articulate their powers in other areas<sup>32</sup>.



*I recommend that the test used by Chief Officers to make disclosure decisions under s.113B(4) is amended from 'might be relevant' to 'reasonably believes to be relevant' (recommendation 6a)*

<sup>32</sup> For example, Stop and Search Provision within the Police and Criminal Evidence Act (PACE) 1984, which is available from [homeoffice.gov.uk](http://homeoffice.gov.uk)

## Statutory Code of Practice

The system of disclosing police information within the criminal records process needs to strike the right balance between public protection and the rights of the individual.

However, there is also an issue around consistency of information disclosed across police forces and, although I am aware of each Chief Officer's autonomy, I believe a greater level of consistency in decision-making is required.

There is merit in adopting a consistent, structured, risk-based approach to decision making so that a Chief Officer can consider disclosure, or non-disclosure, by using a recognised and standard process.

The police currently refer to the Quality Assurance Framework (QAF) which provides detailed guidance on how they consider which information is relevant to disclose or not<sup>33</sup>.

Such guidance is necessary to ensure consistency in a process that must be fair, transparent and proportionate. However I am aware that there are still wide variations in forces' approaches to disclosure, despite the QAF. I believe it needs to be strengthened by the introduction of a statutory code of practice that all Chief Officers would have to follow. Generating consistency and proportionality across police forces would benefit the disclosure process.

***Example:** A young boy was found by the police playing hide and seek in the grounds of the local hospital. Although no charges were brought against him, his mother was concerned that the police would retain the record of the incident and disclose this via an enhanced criminal records check in the*

*future.*<sup>34</sup>

Considering the above example, if the Quality Assurance Framework was used, this information would never be disclosed as it would not be considered relevant.

*I recommend the development of a statutory code of practice for police to use when deciding what information should be disclosed (recommendation 6b)*

As part of any statutory code I consider it necessary to ensure that Chief Officers follow a consistent approach to the structure and composition of the police information that is disclosed. This approach should include a requirement to justify in every case, the decision to include police information on a certificate, the risk that might be posed, the source of that information (if relevant) and the potential impact of disclosure of the information on the applicant. This process is currently included in QAF guidance in any event.

Having undertaken a justification process, it would be helpful if the police state on the face of the certificate the reason for their decision to disclose.

This approach would assist individuals who may, through the current process, not fully understand the justification as to why particular information has been disclosed. This would also assist the individual in any dispute process which I will consider later in my review.

<sup>33</sup> QAF available from [www.crb.homeoffice.gov.uk](http://www.crb.homeoffice.gov.uk)

<sup>34</sup> Example provided for use by Lynne Featherstone, Parliamentary Under Secretary of State for Criminal Information and Minister for Equality, from one of her constituency surgeries

*I recommend the development and use of a common template to ensure that a consistent level of information is disclosed to the individual with clearly set out reasons for that decision (recommendation 6c)*



## Timeliness of Enhanced Disclosure Checks

A key concern that has been echoed throughout my review is the length of time it takes for enhanced criminal records checks to be completed and in particular the time some police forces take to complete their part of the process.

The problem of delays in the issuing of enhanced criminal records certificates and the severe consequences that this can

have on employment is something that has been repeatedly raised throughout my consultations. For example, head teachers can experience significant problems, :“I have a classroom full of children at the beginning of term and I cannot afford not to have a teacher in post”.

It is not unusual for criminal records checks to take in excess of eight weeks even though the CRB target completion time is under four weeks; indeed some can take 12 to 24 weeks and a few over six months.

*“Delays lead to uncertainty for those waiting for an appointment and mean that employers have to put in place costly “cover” arrangements.”  
University and College Union*

I have considered the fact that there is no set time limit within which the disclosure of police information has to be made once a case has been received by a police force. This issue becomes more pressing where an applicant cannot start work until they have received their criminal records check certificate.

In some employment sectors members of staff are unable to take up positions until they have received a new disclosure certificate. Although the suggested portability arrangements will assist, having to wait is a burden for both employers and employees alike.

Although I want to see a process that runs more efficiently and so reduces the amount of time that people will have to wait for their disclosure certificates, I acknowledge that there are cases where the police may need additional time to consider highly complex issues. However I believe a system with a clearly set timeframe provides clarity to users and a reasonable expectation as to

when a disclosure will be made.

In cases where a decision cannot be made by the police in the allotted time, which I suggest should be 60 days, a certificate should still be issued - but not containing the information still under consideration by the police. Any information later deemed relevant by police would subsequently need to be disclosed to the employer. This will place the onus firmly on the police to ensure that information is disclosed expediently. Otherwise there may be a risk that a clean certificate will allow an individual to gain employment that the late disclosure would have otherwise prevented.

*I recommend a timescale of 60 days for the police to make decisions on whether there is relevant information that should be disclosed on an enhanced disclosure (recommendation 6d);*

## Additional Information

As well as relevant police information being disclosed on the face of a criminal records certificate, statute currently allows a Chief Officer to disclose police information to a Registered Body or employer without inclusion on the applicant's certificate. This is generally information that, if the applicant was aware of it, might place others at risk or jeopardise an ongoing police operation.

*"It is the view of the Scout Association that police intelligence is a useful part of CRB disclosures but should only be disclosed if it can be used by association in discussions with the individual concerned or can be offered to both the organisation and the individual to whom it relates." The Scout Association*

*Example 1: The applicant was suspected of being heavily involved in the supply of drugs during a five year period. The applicant and his associates are still under police investigation.*

I am of the view that the seriousness of this information should be disclosed in a more structured manner and not via the employer as it may compromise a police operation or place the employer in a difficult position.

*Example 2: It had been alleged the applicant had physically and verbally abused his wife on a number of occasions. His wife had been re-housed in a Women's Refuge and was given residence of the children.*

I am of the view there is no reason why this information could not have been disclosed on the face of a certificate if it was deemed relevant. There was no need for this to be disclosed without the applicant's knowledge.

I question whether this arrangement is sufficiently fair and open and whether it complies with human rights obligations.

The number of such cases is small (in 2009/10 there were 291 occurrences out of 4.3 million checks) and the procedure is not used by all forces<sup>35</sup>. I am aware that in making a barring decision, the ISA will not use any information that cannot be disclosed to the applicant. This means there is no consistency in the use of this information.

I recommend the removal of this provision with the onus on the police to use alternative ways to assess, and where appropriate, disclose such information. For example, this could be done under the Multi-Agency Public Protection Arrangements (MAPPA) or by using their common law powers to prevent crime and protect the public. The disclosure test would be higher than it currently is under the Police Act Provisions, but that seems right for such an unusual type of disclosure.

Where there is clear justification to disclose information about an individual to their employer, the police should be doing that in a timely manner and regardless of whether there is a criminal records disclosure application in progress or not. The MAPPA process will often provide a helpful context in which to consider issues of risk and disclosure<sup>36</sup>.

*I recommend that current 'additional information' provisions under s.113B(5) are abolished so that the police use alternative methods to disclose this information outside the criminal records disclosure process (recommendation 6e);*

<sup>35</sup> Source: CRB December 2010

<sup>36</sup> More information on Sarah's Law can be found at [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

This recommended change in emphasis, and the application of a higher threshold, has been welcomed by stakeholders as part of my consultation process. The Association of Chief Police Officers have commented that *"This [approach] will require a high level of justification within forces and will be fully documented."*<sup>37</sup>

## Delivery Structures Supporting Disclosure of Police Information

Legislation currently requires decisions about the relevancy of information for criminal records disclosure to be made locally by Chief Officers in the police force where the information is held.

Section 113B(4) of the Police Act places the obligation on the Chief Officer of **every relevant police force** to make those decisions.

*Example: Local information held by the Metropolitan Police Service can currently only be assessed by the Metropolitan Police Service and only the Chief Officer of the Metropolitan Police Service can determine if that information is relevant and should be disclosed.*

Work is now well advanced to provide centralised access to police intelligence via the Police National Database and all forces should be using the first phase of this system by the middle of 2011. The Police National Database essentially means that all police information held will be visible to all forces rather than only being placed on a local system and visible only to officers in that force.

The introduction of the Police National Database provides a great opportunity to

<sup>37</sup> Sourced from the Association of Chief Police Officers, November 2010

use improved technology and business processes for handling police information to enhance CRB disclosure arrangements.

Effectively, one Chief Officer could access police information from a number of forces via the Police National Database and make the entire set of relevancy decisions on behalf of the service as a whole. Potentially this is a much quicker, efficient and consistent approach and ought to deliver a service of improved quality.

For this to be possible, legislation must be amended to enable **any Chief Officer** to make the relevancy decision and not just **a Chief Officer** from the force where the information is held.



**Example:** Local information held by the Metropolitan Police Service can be assessed and disclosed by any Chief Officer without structural or geographical barriers.

Furthermore consideration should be given to whether the existing delivery model involving 59 Police Forces (determining the relevancy of police information for disclosure purposes) is the most effective and efficient way to provide police information. It might now be possible to take such decisions on a regional or central basis and this might also bring with it benefits of consistency and free up local resources for other purposes.

*I recommend effective use of the development of the Police National Database to centralise criminal records check decision making through the amendment of legislation to allow any Chief Officer to make the relevancy decision in enhanced disclosures, regardless of where the data originated (recommendation 6f).*

## Package of Police Information Recommendations

Taken as a whole, I consider that my recommendations in relation to the disclosure of police information will provide for an improved system that will protect vulnerable groups as well as upholding the civil liberties of those against whom checks are required.

*I recommend the introduction of a package of measures to improve the disclosure of police information to employers.*

*This should be done by making the following changes to Part V of the Police Act 1997, by:*

*Amending the test used by Chief Officers to make disclosure decisions under s.113B(4) from 'might be relevant' to 'reasonably believes to be relevant' (recommendation 6a);*

*Developing a statutory code of practice for police to use when deciding what information should be disclosed (recommendation 6b);*

*I recommend the development and use of a common template to ensure that a consistent level of information is disclosed to the individual with clearly set out reasons for that decision (recommendation 6c);*

*Applying a timescale of 60 days for the police to make decisions on whether there is relevant information that should be disclosed on an enhanced disclosure (recommendation 6d);*

*Abolishing current 'additional information' provisions under s.113B(5) so that the police use*

*alternative methods to disclose this information outside the criminal records disclosure process (recommendation 6e); and*

*Making effective use of the development of the Police National Database to centralise criminal records check decision making through the amendment of legislation to allow any Chief Officer to make the relevancy decision in enhanced disclosures, regardless of where the data originated (recommendation 6f).*

I am of the view that the implementation of the above recommendations within a single package of changes would significantly improve the efficiency, consistency and transparency of the disclosure of sensitive police information.

However I am still convinced that the disclosure of such information remains crucial to the protection of children and vulnerable adults.

# Disputing Information Contained on Criminal Records Certificates

The current CRB process allows the subject of a criminal records certificate to dispute information that is incorrect or inaccurate. This process allows the CRB to correct any error and provide the applicant and Registered Body or employer with a revised disclosure. A dispute or challenge may be raised in the following circumstances:

1. Mis-spelt name or address information
2. Incorrect allocation of conviction/ barring information to the applicant
3. Inaccurate conviction information
4. Incorrect allocation of relevant police information to the applicant
5. Inaccurate or out of context relevant police information

The first three types of disputes are considered and processed by the CRB. The last two types of dispute are administered by the CRB but can only be resolved following consideration by a Chief Officer.

The current CRB process issues certificates to both the applicant and the Registered Body simultaneously. One of the major criticisms is that the applicant does not have any opportunity to consider, review or assess the information contained on a certificate before it is disclosed to the Registered Body.

Stakeholders have told me that once incorrect police information is included in a disclosure it is difficult, if not impossible, to have this removed, altered or corrected.

It is arguable that this approach means Government is not providing a suitable process for disputing information and that potentially incorrect information is disclosed more widely than necessary.

This argument is even more powerful where disclosure of incorrect or inaccurate information is significant enough to have a serious impact on the individual. For example a criminal record certificate with an incorrect conviction for (say) a sexual offence would have a significantly detrimental effect on the individual.

Accepting my recommendation to issue the certificate only to the applicant would allow an alternative approach to rectifying incorrect or inaccurate information. The procedure could move from a dispute process to a representation process focused on resolving the issue with the applicant and thus allowing them to provide the employer with an accurate disclosure certificate.

The applicant would lead the process in this situation with Government (via the CRB) interacting only with them, and not with the employer. This would allow any incorrect or inaccurate disclosure to be resolved without wider exposure unless the applicant decides that an employer or Registered Body can see information that is under review.

A representations process would also allow an individual to challenge whether it is fair to disclose certain information about them.





This may be, for example, where the police information disclosed by a Chief Officer relates to an incident many years ago and the applicant deems that it is not relevant to the position applied for.

## Who is responsible for resolving issues?

The introduction of a representation process that seeks to rectify issues pertaining to the disclosure of incorrect, inaccurate or potentially out of context information must be underpinned by a process to quickly deal with these issues.

It is natural that someone will initially contact the CRB for resolution if they receive a CRB check that they consider to be wrong, inaccurate or out of context.

However, in cases involving police information the CRB refer the case back to the police force who originally made the disclosure decision. If the police are reluctant to alter their records the individual is then unable to resolve the issue. The

information will continue to affect their employment opportunities for life. The only remaining option involves a lengthy and costly court process with no guarantee of success.

I believe that a dedicated representations process should be set up within the CRB to allow for a fair and independent review of the information that is thought to be incorrect, inaccurate or out of context. This would include any relevancy decision on police information.

If the outcome of this process finds in the favour of the applicant, the CRB should have the power to alter the disclosure on the criminal record certificate. In practical terms this means that CRB would need to have direct access to alternative Chief Officers who would be able to consider and amend (where appropriate) within a timeline managed by the CRB.

I believe that Government should also amend the duties of the Independent Monitor (as defined in Part V of the Police

Act<sup>38</sup>) or create a new independent role. This would allow for an independent evaluation of the review of representations made in relation to police information. This would enable Government to consider trends, common practices and issues and make informed decisions on whether changes to the Statutory Guidance are needed.

*I recommend that the CRB develop an open and transparent representations process for individuals to challenge inaccurate or inappropriate disclosures and that the disclosure of police information is overseen by an independent expert (recommendation 7).*

If accepted by the Government, any representations process would need to work within a realistic timeframe. This would ensure that individuals were able to satisfactorily resolve their issues quickly enough to allow them to continue with their initial application for employment. If this is not given priority then most of the benefits of a representations process would be lost.

## False Allegations

One cannot conclude a discussion on dispute resolution without considering the issue of false allegations – especially when individuals are falsely accused of inappropriate behaviour with either children or vulnerable adults.

The consequences of such false allegations can be catastrophic. I have listened to

personal accounts from people who have been placed in this traumatic situation and suffered long and arduous journeys trying to clear their names.

*Example 1: A children's football coach of 10 years was accused of abusing one of the children in the team, however, following an investigation, the police decided not to take any further action. Despite this, information referring to this allegation was disclosed as part of a criminal records certificate.*

*In this case the Chief Officer, after applying suitable tests of relevancy, disclosed this information.*



The above illustrates the practical difficulties faced by the applicant and indeed the Chief Officer as there is often no fail safe mechanism of determining if the accusation was either false or simply unproven.

I hope that my recommendations in relation to a representations process would go some way to addressing these issues and allow them to be resolved as fairly and as quickly as possible.

<sup>38</sup> Role provided under Part V of the Police Act 1997 to monitor and scrutinise the judgements about relevancy made by the police Service, with the power to make recommendations for improvements.

## Inappropriate Requests for Disclosure

During my consultation with stakeholders, including Registered Bodies and employers, the issue of inappropriate and ineligible applications for a criminal record certificate was a constant area of concern.

It is evident that the low threshold of risk applied by certain employers (in relation to both paid and non-paid workers) has resulted in a number of unnecessary, inappropriate or ineligible applications for enhanced disclosures. It is important to understand the nature of an ineligible check as the circumstances around such an application can differ from one employer to another.

The varied approach to when repeat checks are required can result in a number of applications being undertaken that may not be required. This leads to what may be considered “gold plating” where an over cautious approach has resulted in multiple applications for criminal records checks.

As previously stated, the introduction of an updating procedure will reduce the burden on the individual and the employer whilst allowing the employer to validate the certificate without the need to complete a fresh application. In my view this approach will significantly reduce the number of unnecessary applications.

*“The duplication of enhanced CRB checks is, in most cases, unnecessary and causes delays in recruitment to clinical posts critical to service delivery”. NHS Employers*

However the introduction of a service to update disclosure will not directly reduce the number of ineligible applications where the employer applies for a standard

or enhanced disclosure in relation to a position that is not exempted from the ROA.

The duty for deciding whether a particular position can and should be eligible for a criminal record certificate should rest with the employer as they are best placed to ensure that the application of the ROA and associated data protection legislation is adhered to.



It is therefore my view that the Government, through the CRB, should seek to apply stringent compliance measures on employers who routinely or systematically submit applications for ineligible checks.

These compliance measures may be applied to the Registered Body which will be administering the application on behalf of the employer but the accountability should remain with the employer.

In order to improve the Government’s approach to ensuring compliance with the CRB code of practice and conditions of registration I recommend the following:

- Where the CRB reasonably believe that an ineligible application has knowingly been made, the case should be immediately referred to the Information Commissioner’s Office<sup>39</sup> for consideration of whether there has been a contravention of the Data

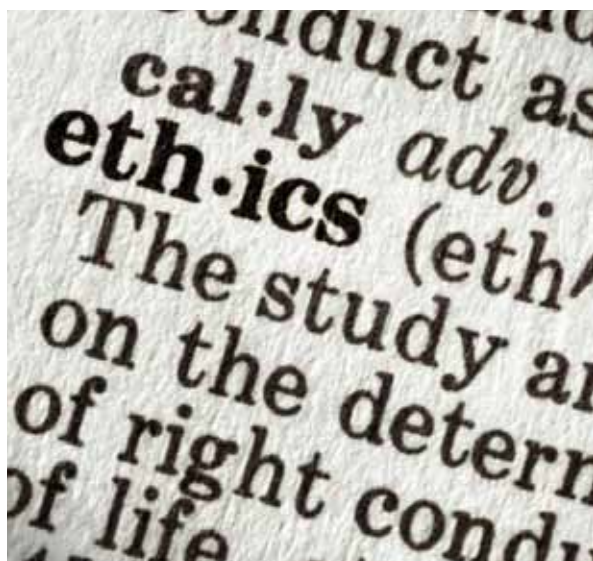
<sup>39</sup> The Information Commissioner enforces the Data Protection Act 1998 & the Freedom of Information Act 2000, and is responsible to Parliament for the conduct of his functions

Protection Act 1998. Notice should also be provided to the Ministry of Justice to consider whether a breach of the ROA has occurred.

- In addition the CRB should set up and fund a web-portal that allows individuals to report any potential or actual incidents where employers are seeking to make ineligible checks.
- Finally the CRB should pro-actively review high-risk employers or associated Registered Bodies to ensure they adhere to their obligations and where appropriate the CRB should take steps to de-register persistent offenders.

Whilst I have no desire to penalise those who make a genuine mistake where an inappropriate application is knowingly submitted, sanctions should be sufficiently robust so as to protect both the applicant's rights and the integrity of the CRB.

*I recommend that where employers knowingly make unlawful criminal records check applications the penalties and sanctions are rigorously enforced (recommendation 8).*



## Regulation

Another issue that I have come across throughout my consultation is that some employers are undertaking checks that are not really required due to perceived pressure placed upon them by regulators.

One reason for this seems to be a lack of clarity around what regulators actually require from those whom they regulate. Culture can also make things worse as there are sometimes commonly held perceptions that a particular regulator requires checks in certain circumstances when in fact they may not.

There are two main issues here, firstly that individuals and employers alike are not well enough informed about the existing rules on eligibility (something I cover in Section 5: Guidance below) and also that regulators themselves need to do more to ensure their requirements are fully understood.

I have consulted with a number of regulators during the course of my review who appear, on the whole, willing to make greater efforts to increase clarity as well as being enthusiastic about inputting into any future development of guidance on employment vetting.

It is crucial that regulators are able to clearly outline what they expect and that those expectations are within the rule of law and are grounded in common sense. At the same time, they should also be able to impose the safeguards they see fit in relation to recruitment and membership of their own bodies and schemes<sup>40</sup>.

## Insurance

I have also been told that some employers feel they are pressurised by insurance companies who refuse to provide insurance cover unless they undertake criminal

<sup>40</sup> Sir Roger Singleton's report "Keeping Our Schools Safe" (paragraphs 4.9 & 4.10) can be found at [www.education.gov.uk](http://www.education.gov.uk)

records checks even though they may not be required. This can put undue burdens on employers to unnecessarily check their staff.

There is also a risk that these sorts of practices can detract from the value of a criminal records check as they become seen as something of a 'tick-box' exercise for assurance and statistical reasons rather than being used for their proper public protection purposes.

However, similarly to my findings on regulators, there often appears to be a level of misconception and a lack of understanding. Again this stems from a lack of clarity regarding which roles are eligible for a particular level of criminal records check.

It is reasonable that insurance companies would want to ensure that those who are required to be checked are indeed checked before they agree to provide cover.

There is currently no central guidance for insurers on criminal records checking. A better understanding regarding eligibility from both the insurers' and employers' perspectives is required.

## What else can be done to improve the employment vetting scheme?

I have listened to the views and ideas of those I consulted with and given consideration to the way employment checking systems operate to see if efficiency can be improved without a detrimental effect on civil liberties.

### **Criminal Conviction Certificates (Basic Checks)**

I believe that one way in which efficiency improvements can be made is through the introduction of the Basic Certificate. This

is not currently available through the CRB in England & Wales, but is offered by both Disclosure Scotland and Access Northern Ireland.

A Basic Certificate is a check which discloses only an individual's unspent convictions. An application for a Basic Certificate would be made directly to the CRB by the applicant. Such a check does not disclose any spent convictions or police intelligence.

Basic Certificates can be used for a wide variety of purposes across a number of employment sectors and for roles that do not involve working with children or vulnerable adults. These include government vetting (such as critical national infrastructure vetting), licensing, housing, commercial contracts, and for both immigration and emigration purposes. They provide a more appropriate and proportionate disclosure for individuals who need evidence for foreign employers that they are of good character or to provide proof that no unspent convictions are held.

Importantly, basic checks can be applied for before an individual has started work and are already portable (transferable) as they are not linked to any particular role or sector. I believe the ability to apply for this check in England and Wales gives a degree of autonomy back to individuals and allows them to be in control of the information that relates to them.

Currently where an employer is not entitled to obtain a Standard or Enhanced certificate they may either ask an individual to self-declare convictions or to present a copy of a police record which has been obtained via a subject access request (which is made to the police). Unless the individual is familiar with the terms of the Rehabilitation of Offenders Act in relation to when a conviction becomes spent, this will lead to the individual disclosing all convictions held

and not just those which are unspent. This can lead to unfairness and discrimination in the work place.

---

**Example:** *An individual applying for a job in a supermarket was asked to prove they had no convictions for fraud or theft by obtaining a subject access report from the police.*

---

The introduction of a Basic check would allow for the commencement of the provisions in the Data Protection Act that make it an offence to require an individual to make a subject access request<sup>41</sup> to the police as a precondition of employment. This process is often referred to as 'enforced subject access'.

What this means is that an employer could only obtain the appropriate level of criminality information relevant to the particular post and this could only be achieved through a criminal records check. An employer would therefore not be able to force an individual to utilise their subject access rights under the Data Protection Act as a means of bypassing the ROA. They would simply be able to apply for a basic check to obtain the necessary information.

The legislation already exists, under section 112 of the Police Act 1997, to allow the CRB to provide Basic checks and therefore I suggest that a feasibility study is conducted to consider the timely introduction of this service.

I believe that the introduction of Basic certificates should be coordinated with any outcomes from the review of the ROA which might alter the period after which a conviction becomes spent. I would also expect the Basic certificate to be updateable and to be fully portable in the same method as I have recommended for Standard and Enhanced certificates.

The introduction of Basic checks creates a more proportionate process, as the employer will only see the information they are entitled to, rather than in some cases, seeing more than is required through a subject access request.

It will also make the rules surrounding eligibility much clearer for individuals and employers alike and reduce applications for information to which an employer is not permitted.

*I recommend that basic level criminal records checks (covering unspent convictions) are introduced by the CRB in England and Wales (recommendation 9).*

---

<sup>41</sup> Defined in Glossary

# Section 3 Guidance

One of the biggest problems that people have with existing guidance is that it is not clear cut and contains too many “grey areas”. In the absence of clarity most people feel obliged to take the most risk adverse route leading to a plethora of checks.

A theme that has come up repeatedly from stakeholders is that it is often difficult to understand the employment vetting process.

People must be able to quickly and easily identify what information is relevant to them without feeling that they are lost in a maze of legislation and uncertainty.

*“We also believe that further improvements could be made by Government explaining more clearly and fully to the general public the limitations of any vetting system.” Ofsted*

Simply put, people need to be better informed about how the criminal records regime works and how it applies to them. One of the most effective ways of achieving this is by delivering root and branch improvement in the guidance that is available to different groups.

One of the biggest problems that people have with existing guidance is that it is not clear cut and contains too many “grey areas”. In the absence of clarity most people feel obliged to take the most risk adverse route leading to a plethora of checks.

## What guidance is needed, who needs it and how do you ensure it is adhered to?

There are some common and reoccurring guidance issues that have been identified throughout my review.

<b>Targeting</b>	Who is the guidance specifically aimed at? The individual making an application, the prospective employer, or the Registered Body?
<b>Availability</b>	It is not always clear where to find the relevant guidance required.
<b>Validity</b>	There are often numerous versions of guidance and it is not always easy to tell which one is current.
<b>Consistency</b>	Guidance is produced via a number of different sources and sometimes they contradict one another.
<b>Clarity</b>	Guidance is often not written clearly or in a way that helps people who are not experts in this area to understand what is expected from them.

I am aware there is often a real lack of understanding of employment vetting systems. This can sometimes lead to a reluctance to volunteer or apply for specific posts.

My consultations have shown that this is particularly pronounced amongst those with criminal convictions, whether old and minor or more recent and serious. A lack of proper effective guidance acts as an effective bar to their ability to even apply for a role.

This severely impacts on an individual’s ability to play a full and active part in society. It leads to a divisive two-tier system and increases social exclusion. If society accepts that those who have done wrong and paid their debt should be afforded a second chance then we must acknowledge the current regime unfairly impinges on this



group. Those who are able to hold down a job are less likely to reoffend.

It seems to me that fundamental work needs to be done to educate and inform people about the process so that employers can make properly informed recruitment decisions that do not unfairly discriminate.

First and foremost, the employment vetting process exists to protect children and vulnerable adults. Employers must be allowed to continue to make informed employment decisions that ensure the continued protection of these groups.

In order to achieve this the guidance will need to be developed collectively by stakeholders with central Government oversight.

*“Better guidance is needed regarding which posts really do require a CRB check.” Ipswich Borough Council*

A common language needs to be developed so employers can understand what is being disclosed and why it is relevant so that they can decide whether or not it is appropriate to employ an individual.

Without proper understanding, it is very easy to ‘play safe’ and simply not employ someone with any kind of information on their disclosure. This can be very unfair and it is important that greater efforts are made to assist employers to understand what is ‘really’ being said. Guidance must be given to allow employers to make common-sense decisions.

*I recommend that comprehensive and easily understood guidance is developed for individuals and employers to fully explain the criminal records and employment checking regime (recommendation 10).*

Due to the plethora of guidance already available across every sector of the criminal records regime, my recommendation should not be seen as a drive to produce extra guidance, but instead to replace that which currently exists with more concise, easily understood and targeted material. Guidance will also need development in relation to the re-modelled Vetting and Barring Scheme and it is essential that these two sets of guidance are compatible. There should be no room for adding to the confusion.

This process should not be limited to just written publications. It should embrace the use of internet technologies (for example webinars and video presentations), workshops and other methods of delivery.



# Section 4

## Conclusion

The public protection system is a fundamental part of society's response to the threat posed by a small number of individuals.

*“Any new system that results in the portability of CRB disclosures must not result in a weakening of the current system” Careers Wales*

My work as the Independent Advisor for Criminality Information Management<sup>42</sup> for both the previous and the current Government has introduced me to a great many learned, dedicated and committed people working in the public, private and voluntary sectors.

It is clear that legislation in the area of criminal records provision has developed from a strong desire to provide adequate protection to the general public – especially the young and vulnerable.

There have been a small number of horrific incidents recently that have prompted further consideration and review of the existing rules and regulations that exist to protect the most vulnerable in society, and I have no doubt that this process will be ongoing.

I would like to take this opportunity to thank the many people who have dedicated their time and talents to considering how best to provide the correct levels of protection and safety. My task is not to undermine their valuable work but rather to add to the continuing process to ensure that, wherever possible, the public are afforded the highest level of protection at the smallest cost to their civil liberties.

I believe that my recommendations will build upon previous work in this area and help develop a sound, proportionate, logical and efficient method of criminal records disclosure.

In my previous report I stated that it would

make both economic and operational sense for a merger of the CRB and ISA functions. This would also provide the public with one unified body to approach and reduce confusion over functions and responsibilities. I still believe that this would be beneficial and look forward to the recommendations from the parallel review of the Vetting and Barring System.

It must be recognised that there are those who will always seek to circumnavigate rules and regulations. No system can ever offer 100% protection and the Government must consider how any change in the use of criminality information will affect levels of public protection. This must be balanced against their desire to implement a degree of “common-sense” and proportionality in its use.

The parallel review of the Vetting and Barring System will form an important part of their considerations.

The public protection system is a fundamental part of society’s response to the threat posed by a small number of individuals. It is vital that this protection remains in place, yet operates at a level that allows the greatest opportunity to work with those in need.

I believe that my recommendations will further this aim.

<sup>42</sup> A role created in September 2009 as part of the (then) Government’s response to the Magee Review of Criminality Information (2006).

# Appendix

To review whether the criminal records regime strikes the right balance between respecting civil liberties and protecting the public and make proposals to scale back the use of systems involving criminal records to common sense levels.

# Annex A

## Review of the Criminal Records Regime Terms of Reference

To review whether the criminal records regime strikes the right balance between respecting civil liberties and protecting the public and make proposals to scale back the use of systems involving criminal records to common sense levels.

The review should include consideration of the following issues:

**In Phase 1:** To be completed in three months and taking account of the parallel review of the Vetting and Barring Scheme and any reconsideration of the Rehabilitation of Offenders Act led by MoJ:

- (i) Could the balance between civil liberties and public protection be improved by scaling back the employment vetting systems which involve the Criminal Records Bureau (CRB)?
- (ii) Where ministers decide such systems are necessary, could they be made more proportionate and less burdensome?
- (iii) Should police intelligence form part of CRB disclosures?

### In Phase 2:

- (iv) How should the content of a “criminal record” be defined?
- (v) Where should criminal records be kept and who should be responsible for managing them?
- (vi) Who should have access to criminal records databases, for what purposes and subject to what controls and checks? To what extent should police

intelligence be disclosed?

- (vii) What capacity should individuals have to access, challenge and correct their own criminal records?
- (viii) Could the administration of criminal records be made more straightforward, efficient and cost-effective?
- (ix) Could guidance and information on the operation of the criminal records regime be improved?
- (x) How effective is the integration of overseas data into the criminal records regime?

# Annex B

## Consultations

<b>Gail Adams</b>	Head of Nursing, UNISON
<b>Danny Afzal</b>	UNLOCK Member
<b>Jonathan Aitken</b>	
<b>Gary Archibald</b>	Department of Justice, Northern Ireland
<b>Andy Aresti</b>	UNLOCK Member
<b>Rachel Atkinson</b>	Youth Justice Policy Unit, Ministry of Justice
<b>Phil Avery</b>	Director, Commonwealth Games Council for Wales and Table Tennis Association of Wales
<b>Chris Badman</b>	Refugee Council
<b>Jonathan Bamford</b>	Head of Strategic Liaison, Information Commissioner's Office
<b>Michael Barnes</b>	Falsely Accused Teachers and Carers
<b>Mervyn Barrett</b>	Head of Resettlement Information, Nacro
<b>Sue Berelowitz</b>	Deputy Children's Commissioner
<b>Lord Bichard</b>	
<b>Douglas Bilton</b>	Council for Healthcare Regulatory Excellence
<b>Crispin Blunt MP</b>	Parliamentary Under-Secretary of State for Prisons, Criminal and Youth Justice
<b>Stephen Boyo</b>	Chief Executive, The Churches' Agency for Safeguarding
<b>Amanda Brown</b>	National Union of Teachers
<b>Jon Brown</b>	Head of Strategy and Development (Sexual Abuse), NSPCC
<b>Harry Cayton</b>	Chief Executive, Council for Healthcare Regulatory Excellence
<b>Tom Clarke</b>	Department of Justice, Northern Ireland
<b>Jenny Clifton</b>	Children's Commissioner's Office
<b>Stephen Cobb QC</b>	Family Law Bar Association
<b>Jan Cosgrove</b>	Fair Play for Children
<b>Andre Carvalho</b>	Head of Volunteering, Samaritans
<b>Louise Casey</b>	Victims' Commissioner
<b>Adrian Child</b>	Director, Catholic Safeguarding Advisory Service
<b>Niall Dickson</b>	Chief Executive, General Medical Council
<b>Kate Edgar</b>	UNLOCK Member
<b>Helen Edwards</b>	Director General, Criminal Justice, Ministry of Justice
<b>Lynne Featherstone MP</b>	Parliamentary Under Secretary of State for Criminal Information and Minister for Equality

<b>Donald Findlater</b>	Director, Lucy Faithfull Foundation
<b>Andrew Flanagan</b>	Chief Executive, NSPCC
<b>John Freeman</b>	Head of Professional Registration, UNISON
<b>Chief Constable Nick Gargan</b>	Chief Executive, National Policing Improvement Agency (NPIA)
<b>Dee Gasson</b>	Principal Officer, Childcare Registration and Enforcement, Ofsted
<b>Richard Gilliland</b>	Chief Executive, Priory Academy
<b>Lord Justice Goldring</b>	Senior Presiding Judge
<b>Toby Hamilton</b>	Youth Justice Policy Unit, Ministry of Justice
<b>Tyson Hepple</b>	Director, Civil Liberties and Public Protection, Home Office
<b>Rt Hon Nick Herbert MP</b>	Minister of State for Police Reform
<b>Rosalind Hooper</b>	Senior Legal Officer, Royal College of Nursing
<b>Jon Hoare</b>	Culture Team, Department for Culture, Media and Sports
<b>Lord Hodgson</b>	Civil Society Red Tape Taskforce
<b>Jonathan Hughes</b>	Sport and Leisure, Department for Culture, Media and Sport
<b>Andy Jeffrey</b>	The Outward Bound Trust
<b>Christopher Kinch QC</b>	Chairman of the Criminal Bar Association
<b>Linda Lee</b>	President of the Law Society
<b>Detective Superintendent Gary Linton</b>	Head, ACPO Criminal Records Office (ACRO)
<b>Steve Long</b>	Chief Executive, Criminal Records Bureau
<b>Tim Loughton MP</b>	Parliamentary Under-Secretary of State for Children and Families
<b>John Lowe</b>	Association for College Management
<b>Sir Ian Magee</b>	
<b>Peter Makeham</b>	Director General, Strategy and International Group, Home Office
<b>Rt Hon Theresa May MP</b>	Home Secretary
<b>Anna Mazzola</b>	Hickman & Rose Solicitors
<b>Margaret Purdasy</b>	Legal Advisers Branch, Home Office
<b>Veronica Monks</b>	Social Care Policy, Department of Health
<b>Graham Morris</b>	Operational Information Services, Metropolitan Police Service
<b>John O'Brien</b>	Safeguarding and Public Protection Unit, Home Office
<b>Chief Constable Sir Hugh Orde, QPM, OBE</b>	President, ACPO
<b>Judge Pearl</b>	Principle Judge, Care Standards
<b>Lynne Phair</b>	Clinical Advisor, Department of Health, Safeguarding Vulnerable Adult Team



<b>Paul Philip</b>	Deputy Chief Executive, General Medical Council
<b>Commander Simon Pountain</b>	Lead on Disclosure, ACPO
<b>Jeanette Pugh</b>	Director, Safeguarding Group, Department for Education
<b>Ian Readhead</b>	Director of Information, ACPO
<b>Graeme Roberts</b>	Cross Remit Safeguarding Team, Ofsted
<b>Sally Robinson</b>	Catholic Safeguarding Advisory Service
<b>Saffron Russell</b>	Citizens Advice Bureau
<b>Mr Justice Ryder</b>	Presiding Judge of the Northern Circuit
<b>Isabella Sankey</b>	Director of Policy, Liberty
<b>Owen Sharp</b>	Deputy Chief Executive, Victim Support
<b>Brigid Simmons OBE</b>	Chair, Sports and Recreation Alliance
<b>Sir Roger Singleton</b>	Chair, Independent Safeguarding Authority
<b>Christopher Stacey</b>	UNLOCK
<b>Linda Stewart</b>	Trades Union Congress (TUC)
<b>Lord Justice Thomas</b>	Deputy Head of Criminal Justice
<b>Mike Thomas</b>	Independent Commission for Youth Crime and Anti-Social Behaviour
<b>Sue Thomas</b>	Citizens Advice Bureau
<b>Joy Tottman</b>	Sports and Recreation Alliance
<b>Sarah Veale</b>	Head of Employment and Equality Rights Department, Trades Union Congress (TUC)
<b>Rodney Warren</b>	Director of the Criminal Law Association
<b>Professor Richard Young</b>	Professor of Law and Policy Research, University of Bristol
<b>Anonymous x 3</b>	UNLOCK members

# Annex C

## Written submission to the review

a:gender  
Abacus Care  
Accreditation UK  
Active Surrey (County Sports Partnership)  
Age UK Milton Keynes  
Anchor  
Anglican Diocese of Portsmouth  
Association for Real Change  
Association of British Insurers  
Association of Managers in Education  
Association of School and College Leaders  
Association of Teachers and Lecturers  
Axiom Healthcare Limited  
Baptist Union of Great Britain  
Bedford Hospital NHS Trust  
The Bradbury Centre  
British and International Federation of Festivals  
British Council  
British Fencing  
Bromley Civic Centre  
Buckinghamshire Safeguarding Children Board  
Cambridge CAMTAD  
Cambridgeshire Constabulary  
Careers Wales Gwent  
Cataphract UK  
Childcare  
The Churches' Agency for Safeguarding  
Church of England and Methodist Church  
Cirencester Good Neighbours  
Citizens Advice Bureau  
Criminal Law Committee  
Cumbria Constabulary  
Devon and Cornwall Constabulary  
Devon County Council  
Driving Standards Agency  
England and Wales Cricket Board  
England Golf Partnership  
English Community Care Association  
Essex County Council  
FACT North Wales  
Family Action  
Festival Housing Group  
The Football Association  
Gambling Commission  
The General Teaching Council for England  
The General Teaching Council for Wales  
Grand Affairs group  
Grwp Gwalia Cyf  
GuildHE  
Haslemere Educational Museum  
Hertfordshire County Council  
Home Helpers Care  
Incorporated Society of Musicians  
Ipswich Borough Council  
Kent Constabulary  
Lancashire Constabulary  
Lincolnshire County Council  
Local Government Regulation

London School of Economics  
Maybridge Community Church  
Mayflower Disclosure Services Ltd  
Metropolitan Police Service  
Nacro, the crime reduction agency  
National Association of Child Contact Centres  
National Association of Private Ambulance Services  
National Skills Academy for Social Care  
NAVCA  
NHS Employers  
Ofsted  
Oughtibridge Primary School  
Pact  
Peterborough City Council  
The Pinder Centre Trust for Hydrotherapy and Physiotherapy  
Prison Governors Association  
Redhill Baptist Church  
Regulation and Quality Improvement Authority (RQIA)  
The Royal College of Surgeons of England  
Royal Yachting Association  
Rugby Football Union  
Saga Magazine  
Salford Civic Centre  
Scarborough Borough Council  
Scout Association  
Scripture Union  
Selby District Vision  
Sheffield City Council  
Sheffield Hallam University  
SimpleCRB  
Sitra  
SkillsActive Outdoor Employers Group  
Social Care Institute for Excellence (SCIE)  
Solihull Youth offending Service  
Southwark Council  
St Agatha's Sparkbrook  
Staffordshire County Council  
Sunderland City Council  
TEDCO Ltd  
Theatrical Management Association  
TMGCRB  
Training and Development Agency for Schools  
The Tutor Pages  
Universities' Council for the Education of Teachers  
University and College Union  
University of Bath  
University of Chester  
University of Huddersfield  
University of Hull  
University of Leeds  
University of Nottingham  
University of Surrey  
University of Westminster  
University of York  
UNLOCK, the National Association of Reformed Offenders  
Voice: the union for education professionals  
Voluntary Action Sheffield  
Voluntary Organisations Disability Group  
Wallesy Music Centre  
Warwickshire Association of Youth Clubs  
Warwickshire County Council  
Welsh Assembly Government  
Young Lives Bradford  
And the 40 x responses from individuals

# Annex D

## Draft Terms of Reference Independent Advisory Panel for the Disclosure of Criminal Records (IAPDCR)

### Purpose

1. The panel has been set up in accordance with the Government Response to Sunita Mason's Independent Review, A Balanced Approach, Safeguarding the public through the fair and proportionate use of accurate criminal record information.
2. The purpose of the panel will be to provide support and expert advice to the Independent Advisor with a view to improving the arrangements for disclosing criminal and allied records, particularly in relation to the filtering of old and minor records.
3. Sunita Mason in her role as the Independent Advisor will advise the Home Secretary and the Justice Secretary on:
  - i. whether filtering arrangements should be applied as part of the process to disclose information relating to convictions, cautions etc ("central records") under the provisions of the Police Act 1997;
  - ii. how such arrangements might be structured to improve the proportionality between civil liberties and the impact on public protection;
  - iii. how such arrangements might operate alongside other existing legislation, especially the Rehabilitation of Offenders Act 1974;
  - iv. whether locally held police intelligence and information should continue to be disclosed and if so, what type and under what circumstances;
  - v. whether a risk-based approach to disclosure could be adopted to provide greater transparency and consistency in decision making; and
  - vi. any further relevant issues which may emerge from the current review of the Criminal Records Regime.

# Glossary

<b>Access NI</b>	AccessNI enables organisations in Northern Ireland to make more informed decisions by providing criminal history information about anyone seeking paid or unpaid work in certain defined areas such as working with children or vulnerable adults <sup>43</sup>
<b>Bureaucracy</b>	Administration characterised by excessive red tape and routine.
<b>Caution</b>	A caution is a formal warning that is given to an adult who has admitted the offence <sup>44</sup>
<b>Chief Officer</b>	A Police Chief Constable
<b>Child</b>	An individual under the age of 18 years old
<b>Conviction</b>	A decision finding an individual guilty of committing a crime made by a judge or jury
<b>Criminality information</b>	Defined by Sir Ian Magee in his Review of Criminality Information <sup>45</sup> as: any information which is, or may be, relevant to the prevention, investigation, prosecution, or penalising of crime
<b>Disclosure Scotland</b>	Disclosure Scotland is a service designed to enhance public safety through providing potential employers and voluntary sector organisations with criminal history information on individuals applying for posts <sup>46</sup>
<b>Exceptions Order</b>	Details when a 'spent conviction' may have to be disclosed due to the nature of the role in question
<b>Penalty Notice of Disorder</b>	Penalty Notices for Disorder (sometimes referred to as 'PNDs') are a simple and swift way for officers to deal with low level anti-social and nuisance behaviour, such as littering, wasting police time, drunk and disorderly. There are now 25 offences that can be dealt with by way of a PND <sup>47</sup>
<b>Police Intelligence</b>	Any information held by the police that is not conviction information.
<b>Police National Database</b>	The Police National Database (sometimes referred to as the 'PND') is a computer system developed by the National Police Improvement Agency (NPIA). The system is currently being rolled out and will allow 12,000 named users to search full data records of all UK forces, covering People, Objects, Locations and Events
<b>Registered Body</b>	An organisation that is registered to access the Disclosure service to check the staff that it recruits directly to eligible posts. Some Registered Bodies may also undertake checks for other organisations that provide eligible positions but which are not themselves directly registered with the CRB. This is referred to as an Umbrella Body <sup>48</sup>

43 Sourced from [www.accessni.gov.uk/home/about-ani/what\\_is\\_ani.htm](http://www.accessni.gov.uk/home/about-ani/what_is_ani.htm)

44 Sourced from [www.askthe.police.uk/content/q562.htm](http://www.askthe.police.uk/content/q562.htm)

45 Available from [www.nationalarchives.gov.uk](http://www.nationalarchives.gov.uk)

46 Sourced from [www.disclosurescotland.co.uk/about/](http://www.disclosurescotland.co.uk/about/)

47 Sourced from [www.askthe.police.uk/content/Q222.htm](http://www.askthe.police.uk/content/Q222.htm)

48 Sourced from [www.crb.homeoffice.gov.uk/about\\_crb/what\\_are\\_registered\\_bodies.aspx](http://www.crb.homeoffice.gov.uk/about_crb/what_are_registered_bodies.aspx)

<p><b>Regulated Activity</b></p>	<ul style="list-style-type: none"> <li>• Activity involving contact with children or vulnerable adults and is of a specified nature (e.g. teaching, training, care, supervision, advice, medical treatment or in certain circumstances transport) on a frequent, intensive and/or overnight basis;</li> <li>• Activity involving contact with children or vulnerable adults in a specified place (e.g. schools, care homes etc), frequently or intensively;</li> <li>• Fostering and childcare;</li> <li>• Certain specified positions of responsibility (e.g. school governor, director of children's services, director of adult social services, trustees of certain charities).</li> </ul> <p>These positions are set out in the Safeguarding Vulnerable Groups Act 2006<sup>49</sup></p>
<p><b>Reprimand</b></p>	<p>A Reprimand is a formal verbal warning given by a police officer to a young person who admits they are guilty of a minor first offence<sup>50</sup></p>
<p><b>Spent Conviction</b></p>	<p>A conviction which, under the terms of Rehabilitation of Offenders Act 1974, can be effectively ignored after a specified amount of time</p>
<p><b>Stakeholder</b></p>	<p>Anyone with an interest in the issue at hand</p>
<p><b>Subject Access Request</b></p>	<p>Subject access is a right under the Data Protection Act that allows an individual to ask a data controller (such as a police force) to provide details of all the information held about them. Where a request is made to a police force this would entail a check of the Police National Computer (PNC) and the information released would be details of 'all' information held on the PNC subject to limited exceptions.</p>
<p><b>Unspent Conviction</b></p>	<p>A conviction is described as 'unspent', if the rehabilitation period associated with it has not yet lapsed</p>

<sup>49</sup> Sourced from [www.crb.homeoffice.gov.uk/faqs/definitions.aspx](http://www.crb.homeoffice.gov.uk/faqs/definitions.aspx)

<sup>50</sup> Sourced from [www.yjb.gov.uk/en-gb/yjs/SentencesOrdersandAgreements/Reprimand/](http://www.yjb.gov.uk/en-gb/yjs/SentencesOrdersandAgreements/Reprimand/)

<p><b>Vulnerable Adult</b></p>	<p>A person who is aged 18 years or older and:</p> <ul style="list-style-type: none"> <li>• These positions are set out in the Safeguarding Vulnerable Groups Act 2006 is living in residential accommodation, such as a care home or a residential special school;</li> <li>• is living in sheltered housing;</li> <li>• is receiving domiciliary care in his or her own home;</li> <li>• is receiving any form of health care;</li> <li>• is detained in a prison, remand centre, young offender institution, secure training centre or attendance centre or under the powers of the Immigration and Asylum Act 1999;</li> <li>• is in contact with probation services;</li> <li>• is receiving a welfare service of a description to be prescribed in regulations;</li> <li>• is receiving a service or participating in an activity which is specifically targeted at people with age-related needs, disabilities or prescribed physical or mental health conditions. (age-related needs includes needs associated with frailty, illness, disability or mental capacity);</li> <li>• is an expectant or nursing mothers living in residential care;</li> <li>• is receiving direct payments from a local authority/HSS body in lieu of social care services;</li> <li>• requires assistance in the conduct of his or her own affairs.<sup>51</sup></li> </ul>
<p><b>Warning</b></p>	<p>An 'informal caution' given orally by a Police Officer</p>

<sup>51</sup> Sourced from [www.crb.homeoffice.gov.uk/faqs/definitions.aspx](http://www.crb.homeoffice.gov.uk/faqs/definitions.aspx)





**HELP**

**ADVICE**

**ASSISTANCE**





