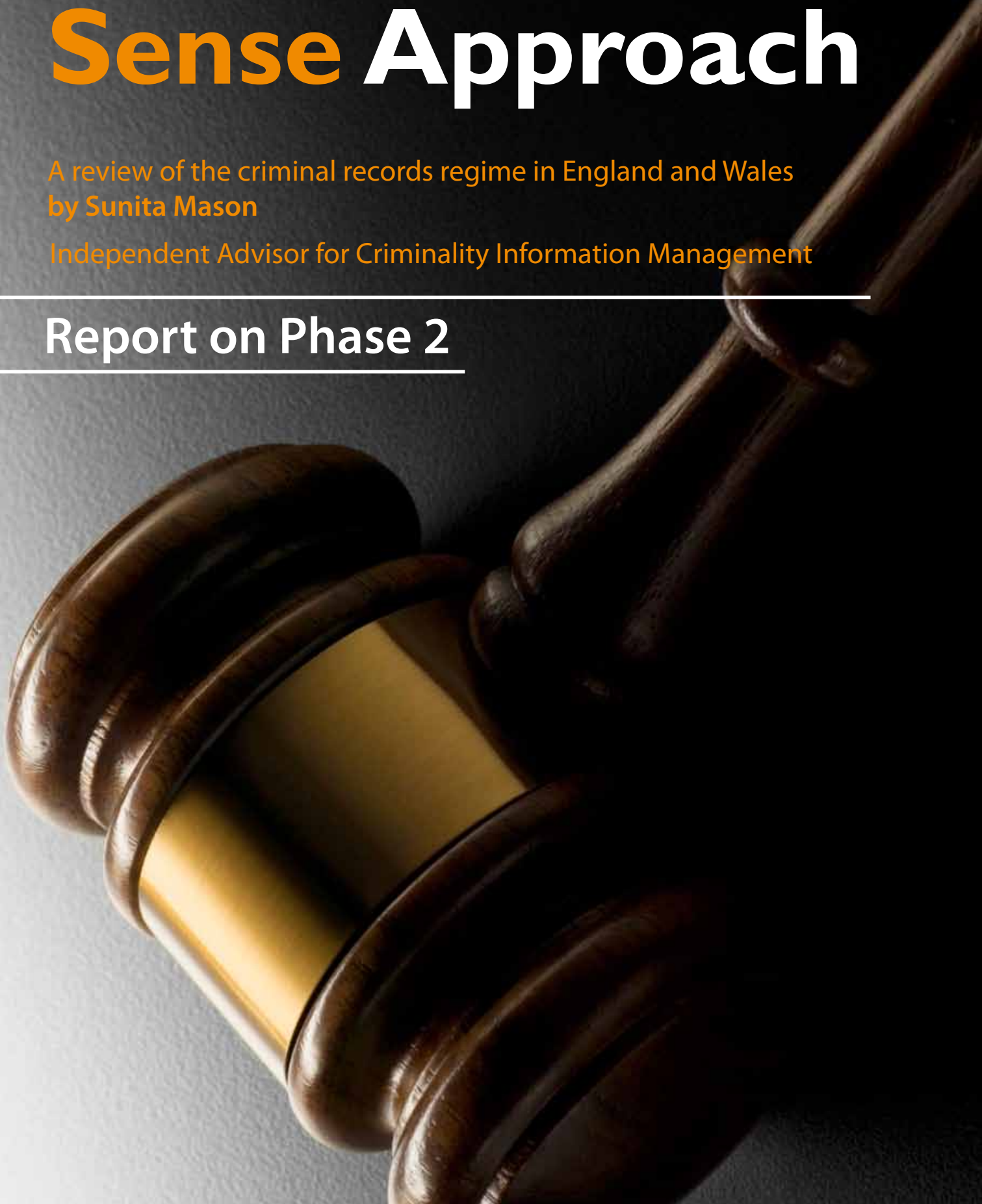


A Common Sense Approach

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

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Report on Phase 2





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Preface



I am pleased to present the findings of phase 2 of my review of the criminal records regime in England and Wales, completing the work commissioned by the Home Secretary¹ last autumn. My report on phase 1 of the review was published on 11 February 2011².

In conducting this review, I have sought to focus on the fundamental, strategic issues agreed in the terms of reference (see Annex A), which are at the very heart of the operation and effectiveness of our criminality information management and public protection arrangements.

Central to my thinking has been the Government's direction that we should ensure that the right balance is struck between the effectiveness of the arrangements for protecting the public and their impact on civil liberties, as well as reducing the bureaucracy involved. In simple terms, Ministers have said that the criminal records regime must be brought back to common sense levels and I have therefore applied that principle throughout my review.

In conducting this review, I am most grateful for the able support of Home Office officials and the informed and considered advice that was offered to me as I undertook my consultations.

I met around 80 stakeholders during phase 1 of the review and I have now re-visited a number of them to discuss the broader issues covered by this second phase. I have consulted a wide range of further individuals and organisations and my support team also undertook additional interviews. This has, collectively, provided valuable input from a wide spectrum of stakeholders with considerable knowledge in the area and I have carefully reviewed all of this information in drawing together my report and final recommendations.

The Government's desire to bring forward improvements and developments at the earliest opportunity has meant that the timescale for completing this review has been relatively short given the complexity of the subject matter. Consequently, some recommendations highlight areas where I suggest further work needs to be undertaken rather than making specific proposals. I hope that this will at least serve to stimulate additional thinking in these areas.

Taken as a whole, I believe that my recommendations provide the first step in preparing a blueprint for a broad strategic framework going forward, as well as suggesting some immediate improvements to criminality information management.

Finally, I wish to thank my phase two review team with special thanks to John Woodcock, David Cheesman and Sebastian Beine.

A handwritten signature in black ink that reads "Sunita Mason". The signature is written in a cursive style with a decorative flourish underneath.

Sunita Mason, Independent Advisor

¹ Independent Review of Criminal Records Regime; written Statement to Parliament made by the Home Secretary on 22 October 2010

² *A Common Sense Approach – A review of the criminal records regime in England & Wales – Report on Phase 1*; published 11 February 2011 by Home Office

Executive Summary

Every society needs a set of systems for recording and using information that relates to breaches of the law committed in its jurisdiction. Such criminality information is required both to underpin the criminal justice process and to protect the public. However, these systems must strike an appropriate balance between effectiveness, bureaucracy and impact on the lives and prospects of those to whom the records relate. In terms of basic principles, they must be fair, proportionate, efficient and clear.

Whilst the maintenance of effective and robust public protection arrangements is paramount, as the terms of reference for this review indicate, our systems need to balance this with respecting civil liberties and should be pitched at common sense levels. However, in compiling this report, I am acutely aware that the terms of reference cover a wide, complex and multi-layered landscape that needs very careful consideration and offers little in the way of quick fixes.

Unlike phase 1, where I was addressing specific issues that had definable answers, the recommendations in this report will mainly set out broad, strategic aims and objectives in response to some of the fundamental problems that I have identified in relation to the current arrangements. My aspirations for a long-term goal are set out in the full text of my report.

I have endeavoured to be both practical and pragmatic. However, these phase 2 recommendations will not, in themselves, resolve all of the issues which have arisen from what I consider to have been the somewhat organic, unstructured evolution of the criminal records regime up until now.

Major changes to the processes and requirements for the national recording of convictions followed the introduction of the Police National Computer (PNC). However, subsequent advances in technology have not always been used to maximum effect or in a consistent and joined-up manner and the devolution of responsibility for criminal records to the Scottish Government and the Northern Ireland Assembly brings additional complexity. I hope that my recommendations will signpost the way to a more structured, proportionate and effective set of systems and processes.

I have summarised my recommendations briefly below and they are then more fully set out, with accompanying analysis and commentary, in the body of the report.

Section 1: Definition & Recording

Recommendation 1 provides a broad, working definition of a 'criminal record', suggesting that such records should relate to proven breaches of the criminal law, involve the establishment or admission of guilt and be recorded at national level. Linked to the last of these criteria, Recommendation 2 asks the Government to take a fresh look at the rules for national recording.

Section 2: Management

Recommendation 3 recognises that the only practical option is to continue to keep criminal records on the PNC for the foreseeable future, but recommendation 4 encourages the Government to make a start now on considering options for the longer term. Recommendation 5 highlights a long-

standing issue about linking up criminal records systems in Northern Ireland with the rest of the UK. Recommendation 6 suggests a more integrated approach to the handling and disclosure of records.

Section 3: Access Arrangements

Recommendation 7 stresses the need to consolidate and strengthen the existing arrangements for providing access to criminal records via the PNC. Recommendation 8 endorses the current process for individuals to be able to request their own criminal records so that they can challenge and correct them as necessary, but emphasises that these systems should be better publicised and easier to access.

Section 4: Guidance

Recommendation 9 focuses on the importance of ensuring that there is clear and comprehensive guidance on all aspects of the criminal records regime, including definition, retention, access and disclosure. Such guidance should be readily available to the individual to whom the records relate and to those organisations that need to use the records.

Section 5: International Criminal Records

Recommendation 10 suggests reviewing and updating the cross- Government strategy for improving the exchange of criminal records at international level and ensuring that this work is adequately resourced. In particular, it suggests the strategy might consider greater exchange of fingerprints

along with conviction records, ensuring more notifications of British citizens who are convicted abroad, doing more to prevent the entry of foreign nationals who have committed serious offences abroad, extending Criminal Records Bureau (CRB) checks to foreign nationals' countries of nationality, a coherent policy for informing foreign Governments of their citizens' offending behaviour here and considering whether standard disclosure certificates could be issued to UK residents who have applied for certain posts abroad, such as working with children. Finally, I pose the question as to whether there is a desire to use international criminal record information in the wider context of child protection and safeguarding, for example in the family courts.



Section 1

Definition & Recording

*How should the content of a “criminal record”
be defined?*

Section 1: Definition & Recording

How should the content of a 'criminal record' be defined?

In turning to broader issues across the criminal records regime in phase 2, I believe the key challenge continues to be striking a proportionate balance between the practical need to maintain and use criminal records and the degree of intrusion into civil liberties that it involves. To better understand how the current regime has arisen it might be helpful to set out a little of the background.

History of criminal records



Historically, a criminal record has always been linked to other information relating to an offender. Thus, the Habitual Criminals Act 1869 and the Prevention of Crimes Act 1871 are the starting point for the framework of the national retention of criminal records. Section 6 of the 1871 Act required the Commissioner of Police of the Metropolis to keep records, on behalf of the Home Secretary, of all persons convicted of criminal offences in England.

The outcome was a requirement for all police forces and prisons to submit records to the Metropolitan Police so as to create "for the better supervision of criminals a register of all persons convicted of crime..."³ The resulting register was divided into two, a List of Names and Convictions and a Register of Distinctive Marks.

³ Habitual Criminals Act 1869

In 1913, the Metropolitan Police created a national Criminal Records Office (CRO) which built a 'Crime Index' made up of several different files (i.e. a 'Method' index, a 'Names' index, a 'Wanted' index, and so on). All records were paper based and, interestingly, 'non-convictions' were weeded (i.e. removed) for first time offenders or stamped as 'not to be cited' for repeat offenders.

The next sixty years saw the criminal record management regime work largely on a regional basis, reflecting the nature of policing at that time, and the larger number of local forces than exist now. By 1977, the number of core police forces in England & Wales had reduced to 43 and a computerised Criminal Names index was introduced on the new PNC. This was simply a record of people who had convictions and so a PNC check by a police officer that found a match still required a telephone call to the Scotland Yard CRO to reveal the relevant details.

The move towards a more centralised approach continued and, by 1984, saw the introduction of central inputting of arrest and conviction details on to the PNC by police staff based at Croydon⁴. By 1995 all police forces were directly inputting their own arrest details onto the PNC and then updating this initial record with the case disposal details passed back to them by the courts.

As the system evolved, the police determined which records should be reported nationally. These so-called 'reportable offences'⁵ in time became defined in legislation as 'recordable offences'⁶. The resulting principle of recordability means that, currently, many criminal offences which are deemed 'non-recordable' do not appear on the PNC at all. This is a complex and important issue that I will deal with specifically at page 16 of this report.

In addition to the records held on the PNC, the National Policing Improvement Agency

⁴ National Identification Bureau, Croydon

⁵ Historically, offences deemed reportable to the National Identification Service, Metropolitan Police

⁶ Police and Criminal Evidence Act 1984; section 27(4) & National Police Records (Recordable Offences) Regulations 2000.

(NPIA) manages a microfiche archive of all criminal convictions recorded before full computerisation in 1995. This includes details of records dating back to the early part of the 20th century.



Justification for keeping criminal records

Looking at the current landscape, I believe there are three main reasons why the keeping of criminal records is necessary:

To support policing and public protection arrangements: The police use criminal records in investigating, detecting and preventing crime and in handling suspects. These records also support the work of other organisations involved in public protection, for example informing risk management and supervision arrangements applied by the prison and probation services under the multi-agency public protection arrangements (MAPPA). MAPPA are the arrangements to manage the risk posed by the most serious sexual and violent offenders (i.e. designated offenders) provided for originally by the Criminal Justice and Court Services Act 2000 and currently under the provisions of sections 325-7 of the Criminal Justice Act 2003.

To inform the work of the courts and the broader criminal justice system: Criminal records are essential to, and feature throughout, the criminal justice process, for example in considering whether or not to grant bail, in making a bad character application or in deciding the appropriate sentence.

To provide information about suitability for employment or voluntary roles: It is generally considered reasonable for an employer to ask a job applicant about their criminal record. This is a key part of the information which is taken into account during recruitment processes, including those linked to the role of the CRB as set out in Part V of the Police Act 1997.

In my phase 1 report, I looked in detail at the disclosure of criminality information by the CRB and how improvements could be made to their processes to ensure that employers can access this in a balanced and proportionate way to help them take informed decisions on a person's suitability to undertake a particular role. I do not propose to revisit this topic specifically in this report, especially as the recommendations arising from phase 1 are still being considered by Ministers. However, I am pleased to see that they were influential in framing some of the clauses brought forward by the Government in the Protection of Freedoms Bill, which is currently before Parliament.

Types of criminality information

Phase 2 looks far wider than the operation of the CRB and focuses on fundamental elements such as the definition of 'criminal record' and what it should contain. In addressing such issues, I am aware that our society keeps a very broad range of information wholly or partly for the purposes of dealing with crime. This complexity was reflected in the definition provided by Sir Ian Magee in his 'Review of Criminality Information'⁷, where he stated:

“...I define information on criminality as any information which is, or may be, relevant to the prevention, detection, investigation, prosecution or penalising of crime.” - Sir Ian Magee; 2008

The full set of records required for these purposes includes, for example, convictions

⁷ Review of Criminality Information; Sir Ian Magee 2008; Home Office; www.homeoffice.gov.uk



and other penalties, procedural records such as arrests and acquittals, 'intelligence' information held by the police and biometric information such as fingerprints and DNA profiles. These are predominately held by the police service on the PNC and allied databases.

National Police Systems	
Police National Computer (PNC)	Linked names (inc. convictions), vehicles, property and drivers databases
Police National Database (PND)	National access by the police to all locally stored police information
IDENT1	National fingerprint database, linked to PNC
NDNAD	National DNA database
NFLMS	National firearms database
ViSOR	Dangerous Persons Database
NABIS	National Ballistics Intelligence Service

Defining a 'criminal record'

The existing criminal records arrangements are complex and I believe that there is a need for much clearer and more transparent guidance that is readily available and accessible to all. Every citizen is entitled to know what their criminal record consists of, who holds it, how to access it and how to challenge it if they believe it is incorrect. My view is that we need to reach an agreed definition of the content of a 'criminal record' as this will be a central aspect of developing such guidance.

During my consultations with stakeholders and in the responses to an online survey, strong support has emerged for this from a wide range of organisations including the Association of Chief Police Officers (ACPO).

"We support the recommendation for an agreed definition of a 'criminal record' whole-heartedly, providing this is linked to fingerprint records, where available." - **ACPO**

"A 'criminal record' should only reflect formal court disposals (convictions) where the full criminal justice processes have been applied." - **Liberty**

"...there should be a distinction between an individual's arrest history and findings of guilt by a court" - **Metropolitan Police Service**

I do not believe there has previously been a single agreed definition of a 'criminal record' because of the evolutionary way in which the regime has developed. However, we are now at a point where the complex and often competing demands placed upon such information require there to be greater clarity. In suggesting a working definition, I am conscious of the need to separate criminal records from the broader mass of criminality information, which is rightly held by the police. I consulted specifically on this point with all those contributing to the second phase of the review and, having considered their inputs, have formed the view that criminal records should have all three of the following distinguishing features:

Criterion i) A 'criminal record' should record disposals related to breaking the criminal law.

A person admitting or being found guilty of a criminal offence is, in most cases, given some form of disposal under the criminal justice system – that is to say some form of recorded intervention or punishment intended as a redress for their act or omission. Criminal records should only cover disposals imposed for breaches of the criminal law (not for breaches of the civil law).

There are a range of disposals available to the courts, including:

- A discharge
- A fine
- A community sentence
- A custodial sentence (including mandatory and discretionary sentences, suspended sentences and extended sentences whether served in prison or detention)
- An ancillary order (e.g. compensation order etc.)

The police also have a number of disposals available to them such as:

- cautions
- reprimands
- warnings

Convictions, cautions, reprimands and warnings all fall under this criterion and so should be included in the criminal record. However, other disposals, such as Penalty Notices for Disorder (PNDs), restorative justice and community resolutions can also be used for criminal matters but as they do not involve a formal admission of guilt in the same way as cautions they should not form part of the criminal record (see criterion ii below).

Citizens should also be reassured that none of the other information which is recorded as a consequence of their engagement with

the criminal justice system, such as arrest or bail details or other intelligence or biometric data held about them, constitutes part of their criminal record. Put simply, you do not have a criminal record because you have been arrested and your fingerprints or DNA have been taken, or just because the police hold some information about your activities.

Having said that, it is clearly essential for certain personal information to be associated with an individual's criminal record to enable it to be used effectively and linked to the right person. Name and date of birth are the most obvious, but fingerprints are also critical as the main biometric identifier that can be used to prove that a criminal record relates to a particular person. It is essential that, whenever possible, a criminal record is linked to the associated fingerprints, putting the question of identity beyond doubt. I do not see any of this information (or other personal information such as DNA profiles and photographs) as part of a criminal record. Rather, it forms part of the critical supporting information that enables a criminal record to be used effectively.



Criterion ii) 'Criminal records' should involve the establishment, or formal admission, of guilt.

A key distinction between a 'criminal record' and the mass of other criminality information held by the police and other organisations involved in the criminal justice process should

be the establishment of guilt. This could be either through the criminal court process or some other structured process that involves the formal admission of guilt. For example, cautions, reprimands and warnings all involve the subject admitting their guilt, but they are administered by the police rather than by a court.

Some do not think that cautions, reprimands and warnings pass a sufficiently high threshold to generate a criminal record, because even though guilt is admitted, it does not involve a court process. For example, an academic consulted for this review took the view that as the consequences were not always clearly understood by the individual, there remained a risk of 'criminalising' an ever wider section of society by including cautions, reprimands and warnings in the criminal record and, therefore, making them eligible for disclosure. Other views from consultees are reflected in the quotes below:

"...in our view, all formal disposals should be part of a 'criminal record' as it is essential for future CPS decisions about future prosecutions." - **Crown Prosecution Service**

"A person's 'criminal record' should include all cautions." - **National Offender Management Service**

Having considered all these views, I believe that it would be wrong to exclude from the definition disposals which arise from a clear and formal admission of guilt relating to a criminal offence. I do believe, however, that clear and consistent information needs to be given to individuals upon accepting such a disposal. The police need to make the individual aware that it will form part of their criminal record and that it will be disclosed in certain circumstances for employment vetting.

As part of the review, I was told by many individuals that this was never explained to them at the time and that they were surprised when, sometimes years later, an old caution appeared on a criminal record check. However, we cannot go back and undo the past and too much vital public protection information would be lost if these disposals were not included in the future. It is a risk that cannot be mitigated if something terrible were to happen from the loss of this information. I therefore recommend that cautions, reprimands and warnings are included in the definition.

Case 1 - a caution



An individual is caught on CCTV stealing an item worth £200 from a shop. He makes a clear and reliable admission of guilt, on the record, to police officers and is over 18 years of age. It is his first offence. In this case police may, with the informed consent of the individual, consider a caution to be the appropriate disposal.

This would form part of the individual's criminal record.

Case 2 - a Penalty Notice for Disorder (PND)



The police apprehend an individual acting in a drunk and disorderly manner in the town centre. They take her back to the police station and, once she has sobered up and although she denies that she was causing any trouble, they issue her with a PND.

This would not form part of the individual's criminal record.

Criterion iii): 'Criminal records' should form part of a police central record at national level.

Another key distinction is whether or not the record is held centrally by the police, for practical purposes on the PNC (or allied microfiche archive). If a record is not considered important enough to be kept on this national police system I do not believe we can reasonably consider it to be part of the 'criminal record'.

Furthermore, records held centrally by Government Agencies do not all need to form part of the 'criminal record', for example non-recordable motoring offences, such as speeding, held by the DVLA. I suggest a distinction can be drawn between an individual's broader 'criminal history' and their 'criminal record' which is the subset of this history (covering convictions, cautions, reprimands and warnings) retained at national level by the police.

The police will also need to keep records of some other disposals relating to criminal matters (e.g. PNDs, restorative justice and community resolutions) to monitor appropriate use as a disposal and ensure escalation of response where appropriate. However, even where such disposals are held on the PNC, they do not fall within my definition of a criminal record as they do not involve a formal admission of guilt.

Existing arrangements

In practice, it is the information on central police records (i.e. the PNC and associated microfiche records) about convictions, cautions, reprimands and warnings that is the main source of records for operational policing in England & Wales. It is also essential for the interlinked needs of the prosecution process and the courts and for the employment vetting systems involving the disclosure service.

Other elements of an individual's criminal history and broader criminality information may be used for any of these purposes when

there is a specific justification for doing so, but this does not form part of the core criminal record.

"We would take the view that 'no further action' (NFA) cases and arrest details should not be part of somebody's criminal record." - HM Inspectorate of Constabulary

A proposed working definition

I believe that we can define a 'criminal record' based on the principles I have set out above and the practicalities of current arrangements for holding that information.

I recommend that an individual's 'criminal record' should be defined as all their convictions, cautions, reprimands and warnings which are recorded in central police records (recommendation 1).

At this stage, I do not believe it would be possible for my suggested definition to be specifically enshrined in law, as it may not work for all purposes. While it is important to have a firm definition for general use and which everyone can use as a reference point, it may be necessary to use or acknowledge different definitions for particular legal purposes. For example, this definition would not fit in with Scotland where criminal records are recorded differently. It has not been possible to conduct the necessary consultation and research to fully resolve this issue within the timescale for this review. From my perspective a firm baseline, but with some scope for flexibility, is the best we can achieve at the moment. In the long-term a UK-wide definition would be more practical as we seek to make further links with EU countries and the rest of the world.

This is an area that warrants further work, and if Government can achieve a single definition that is sufficient for all purposes and which can be enshrined in law, so much the better.

The Information Commissioner's Office has emphasised that establishing the details of a

criminal record in law (and allocating the accompanying responsibilities for keeping the record) would provide a clear legal basis for the processing of such information and assist with ensuring data protection and human rights obligations are met. In the meantime, I hope my working definition could form a key element of the guidance I refer to later in recommendation 9 of this report.

Police information records



Having suggested a definition of 'criminal record', I think a clear distinction should be drawn between such records and the rest of the criminality information (procedural, intelligence, biometric etc) held by the police. To assist in referring to the information that does not form part of the criminal record, I will use the term 'police information records' in the rest of this report.

The concept of 'recordable' offences

For the central record to be fully effective, it must include all the offences that are considered relevant to public protection. In deciding what is relevant, further thought needs to be given to whether the current distinction between recordable and non-recordable offences is pitched appropriately and consequently whether all convictions and cautions necessary for public protection are on the central record.

I am conscious that, broadly, only recordable offences are included on the PNC. These are offences that are imprisonable, plus a sub-set of non-imprisonable offences that have been designated as recordable under regulations (i.e. statutory instruments under policing legislation). This additional set of specified offences has grown over time and is now substantial. There are also occasions when a non-recordable offence is recorded on the PNC, for example when it is associated with a conviction for a recordable offence, such as being convicted of driving without insurance at the same time as being convicted of drink driving.

In the table below, I have set out some examples of offences which are not recordable because they cannot result in imprisonment and they have not been designated as recordable, so a conviction would not be part of someone's criminal record.

Non –Recordable Offence (non-imprisonable)
Careless driving (section 3 Road Traffic Act 1988)
Driving without insurance (section 143 Road Traffic Act 1988)
Reproducing British currency notes (section 18 Forgery and Counterfeiting Act 1981)

The following table highlights examples of offences that are not imprisonable but have been specified as recordable under regulation, so a conviction would be part of someone's criminal record.

Examples of offences specified recordable under regulation (non-imprisonable)
Making a false statement in connection with an application for a sex establishment licence (paragraph 21 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982)
Failure to co-operate with a preliminary (roadside) test (section 6 of the Road Traffic Act 1988)
Taking a pedal cycle without consent (section 12 of the Theft Act 1968)
Falsely claiming a professional qualification (section 44 of the Nursing and Midwifery Order 2001)

Some non-recordable offences, such as driving without insurance, relate to matters which might reasonably be viewed as serious and many believe there is a strong argument for these being accessible via central records, as they might be relevant to decisions around public protection.

I am aware that approximately half of all court convictions in England and Wales are for non-recordable offences,⁸ and it would simply not be practical or proportionate to record everything on the PNC. Police powers to take fingerprints and DNA are also unavailable in such cases because Section 61 of the Police the Criminal Evidence Act 1984 states that police have the power to take samples on arrest only for a recordable offence. This is an important point when many in the police believe a record without a biometric cross-reference is of limited use.

By way of illustration the table below shows the number of non-recordable offences against recordable ones from 2002-2009.



Volumes of criminal offence convictions⁹

	2002	2003	2004	2005	2006	2007	2008	2009
Non-recordable offences	659,614	726,939	803,045	738,602	664,602	639,631	595,987	588,965
Recordable offences	761,671	764,271	745,454	745,822	756,799	776,273	767,231	818,491
Total Convictions	1,421,285	1,491,210	1,548,499	1,484,424	1,421,401	1,415,904	1,363,218	1,407,456
Percentage of Offenders found guilty for non-recordable offences	46.4%	48.7%	51.9%	49.8%	46.8%	45.2%	43.7%	41.8%

Reconsidering the threshold for recordability

At the moment breach of the Data Protection Act¹⁰ is a non-recordable offence. Therefore, someone who has stolen personal data and sold this for profit would not have a criminal record and it would not be automatically disclosed in employment checks. This is one example of an anomaly that I believe should be rectified.

I would therefore urge Ministers to commission an urgent re-examination of the operation of the recordability regime. Whilst I believe that the basic principle of recordability should be

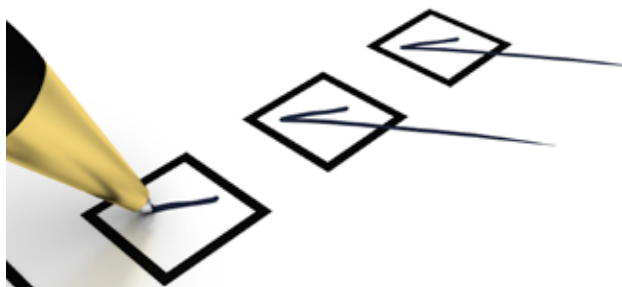
⁸ Source: Figure overall for period 2002-2009; Statistics Analytical Services; Ministry of Justice

⁹ The figures in the table relate to defendants for whom these offences were the principal offences for which they were dealt with. Data extracted from central administrative data (Courts Service/ Police Service); excludes convictions data from Cardiff Magistrates' Court for April, July, and August 2008.

¹⁰ Data Protection Act 1998; Section 55.

maintained, a fresh look at which crimes should form part of a criminal record, and which do not need to, would be welcomed by many of those I consulted with.

Such a review would require close consultation with the relevant departmental interests, law enforcement agencies and organisations such as the Sentencing Guidelines Council. In particular, I question the basic threshold being set at whether or not an offence is imprisonable. This does not take account of the needs of public protection organisations, who require access to all relevant conviction and caution data, not just those where a custodial penalty is available. The current system also creates anomalies, not least because a minor penalty for an imprisonable offence would be recorded on the PNC while a large fine for an offence that is not imprisonable would not.



I am also concerned about the system for adding to the growing list of offences that are treated as recordable even when they are not imprisonable. This is done under regulations and the process does not appear to be governed by any set criteria. It is hard to see any consistent justification for why the list contains the offences it does, a concern raised by some in the police service. I know that the Ministry of Justice have recently put in a gateway process for deciding whether to allow the creation of a new criminal offence and I recommend that Home Office Ministers should introduce a similar gateway, with identified criteria, for deciding whether new offences should be recordable or not. These criteria could also be used to review the existing lists of recordable and non-recordable offences.

A review of this area should also take into account the issue of whether all necessary conviction data arising from non-police agencies' prosecutions is recorded on the PNC. Many of these prosecutions will be for non-recordable offences, so would not be uploaded under the current arrangements, even if they might actually be relevant to public protection decision-making. However,



some convictions for non-recordable offences, such as causing unnecessary suffering to animals¹¹ (prosecuted by RSPCA), which may be an important factor in determining a person's suitability to take up a role with children or vulnerable adults should, in my view, be recorded centrally in order that they can be disclosed.

In conclusion, I see that the outcome of such a review exercise would be a more complete set of central records to support public protection arrangements, which strikes the right balance in terms of the proportionality of the nature and breadth of the information held.

I recommend that the Government conduct an immediate review of which offences are recorded in national police records. (recommendation 2).

Offences committed in other jurisdictions

It has also been impressed upon me that the central record, as held on PNC, should include court convictions from other UK jurisdictions and from abroad in a consistent way. The rationale for this is simply that we must ensure that the central record is a complete and accurate record of the information that

¹¹ Animal Welfare Act 2006, Section 4 (1) and (2)

the police and public protection organisations need to safeguard the public and inform their decisions. I deal with these issues more fully later in this report.

The Rehabilitation of Offenders Act 1974

Defining and recording criminal records has an obvious link to the Rehabilitation of Offenders Act 1974 (ROA) which provides for certain convictions to become 'spent' after defined periods of time. In particular, this means that they do not need to be disclosed to employers unless the post concerned is 'excepted' from the Act.¹² The ROA is currently being looked at afresh by the Ministry of Justice as part of the Government's review of sentencing and I understand that the scope for reform is still being considered.

In phase 1 of this review, I recommended that the Government should introduce a filter to remove old and minor conviction information from criminal record disclosure certificates relating to employment in excepted occupations including those working closely with children or vulnerable adults. For such roles, certificates currently include all convictions, cautions, reprimands and warnings. In my view that is disproportionate, as the disclosure is often not relevant, and counter to the interests of re-integrating ex-offenders into society so that they can lead positive and law-abiding lives.

Enabling such a filtering system would require changes to the ROA regime and I hope that the Government will keep this in mind as part of its ongoing consideration of this area.

I chair an Expert Panel¹³ that is continuing to examine potential arrangements for filtering. Some of the key principles we are focusing on are that filtering rules should be simple, easily intelligible, based on both the age and content of the disposal,

implemented on a cautious basis initially, take subsequent offences into consideration and be constructed so as to give special consideration to disposals received when the subject was less than 18 years of age.

¹² Rehabilitation of Offenders Act 1974 [Exceptions] Order 1975; SI 1023

¹³ The Independent Advisory Panel on the Disclosure of Criminal Records includes members from ICO, ACPO, NACRO, NPIA, NSPCC, CRB, Liberty, UNLOCK and the Lucy Faithfull Foundation, as well as individuals who offer their own personal expertise.



Section 2

Management

Where should criminal records be kept and who should be responsible for managing them?



Section 2: Management

Where should criminal records be kept and who should be responsible for managing them?

Having considered why it is important to define a criminal record, the next question is who should store and manage them.

The role and functions of the PNC

It is essential that the public has confidence in the arrangements for the storage and management of such important records of facts about individual citizens.

The PNC is at the heart of the criminal records and police information records systems and is critical to the work of many agencies such as the Courts, the Crown Prosecution Service, the Ministry of Justice, the Probation Service, CRB and Social Services, to name but a few.

“It is important to remember that the Police National Computer is primarily an operational tool, supporting frontline police officers on our streets.” - Home Office

The PNC’s data is readily available round the clock and, for all practical purposes, instantly to police officers and those organisations with direct access. It is shared across the police service and is deemed secure and reliable, even when accommodating major changes. Nonetheless, some police consultees have questioned the practicalities of adding ever more categories of data to the PNC, even if the technical capacity is there. So, given the PNC’s pivotal role in supporting policing and public protection, there may be a risk of using it to record too much detail and putting ‘too many eggs in one basket’.

Data quality of PNC records

As with any major database there are inevitably questions about some aspects of its data quality and the speed with which data, such as court convictions and bail or probation breaches, is uploaded to the system. As Lord Bichard commented in his Report¹⁴, data quality on the PNC is critical. At that stage, he called for the following action:

“The new Code of Practice, made under the Police Reform Act 2002, dealing with the quality and timeliness of PNC data input, should be implemented as soon as possible.”

“The quality and timeliness of PNC data input should be routinely inspected as part of the Police Performance Assessment Framework (PPAF) and the Baseline Assessments, which are being developed by HMIC.”

- Lord Bichard; 2004

In response to the report, I am aware that much work was instigated by the police service, HM Inspectorate of Constabulary and key partner agencies such as HM Courts & Tribunal Service (HMCTS) to ensure these recommendations were realised. As the figures below indicate, a great deal of positive progress has been made. Nonetheless, I believe there must be continued scrutiny of, and no sense of complacency around, the quality and timeliness of PNC data.

The national target agreed between the police and HMCTS is to record 75% of magistrates’ courts’ resulting on PNC within 10 calendar days¹⁵. I understand that in February 2011, 91.6% of all magistrates’ courts resulting data was uploaded within this target. A

¹⁴ The Bichard Inquiry, 2004 Home Office; www.homeoffice.gov.uk

¹⁵ As set out in the statutory Code of Practice for Police National Computer; 01 January 2005

Crown Court Resulting Improvement Project has led to cross-agency agreement on a range of measures to improve the timeliness and accuracy of the Crown Court's resulting. For February 2011, 81.6% of all Crown Court results were sent to the police within 3 working days and 90.6% within 6 days¹⁶. This improvement is a significant achievement and such levels of timeliness clearly need to be maintained.

Is the PNC the only place to store records?

"... we would argue that ... an independent body charged with this responsibility would be preferable." - Information Commissioner's Office

Given that conviction records are initiated by the courts, some consultees in this review have suggested that the courts, or even the Ministry of Justice, should be the custodian of the national register in future. In principle, and looking to the longer term, this idea may have merit. I note, for example, that such records are kept in France by the *Cassière Judiciere* (the equivalent of our Justice Department) and this is also the position in almost all European jurisdictions.

I have taken particular note of the arrangements currently in place in Northern Ireland for the management of criminal records as I have been conducting a similar review to this for Ministers there. Essentially, all criminal history management is encompassed within Northern Ireland's Causeway System.

"The Causeway system processes all criminal record data in Northern Ireland but does not own it. Ownership remains with Northern Ireland Criminal Justice Organisations, including the Police and Courts' and Tribunal Service, that update the Northern Ireland Criminal Record Database through the Causeway Data Sharing Mechanism." -Department of Justice, Northern Ireland



I cover Causeway in detail in my separate review of arrangements in Northern Ireland, which I also undertook earlier this year. The report of part one of this review, entitled "A Managed Approach", was published by the Department of Justice, Northern Ireland¹⁷ on 12 August 2011. But the point to draw out here is that Causeway records a wider range of information than the PNC, including information from non-police prosecuting authorities. Whilst I recognise that there are some clear merits to the Causeway system, it may nonetheless be difficult to apply similar arrangements in England and Wales. That is because there is a much more complex landscape in England and Wales and significantly more data to manage.



I have already indicated that I do not think it is right to upload the majority of non-recordable offences onto the PNC and HMCTS does not maintain

a national database of criminal convictions (the Court Register keeps records by day and court, not by case or individual). Creating a national register including all HMCTS records would, in effect, require the development of a new database from the ground up.

¹⁷ A Managed Approach – <http://www.dojni.gov.uk/index/publications/publication-categories/pubs-policing-community-safety/review-of-the-criminal-records-regime-in-northern-ireland.htm>

This would come with all the attendant costs and risks, including engineering harmonious links with the police systems that already exist around PNC. In reality, this would be an extremely large and expensive exercise, for little gain in the short term. Also, in an adversarial system such as ours, the courts should not be seen to possess crucial evidence – that is a key reason why this information is held and presented by the prosecution.



Consequently, I do not think the solution is simply to leave all conviction records with HMCTS, develop new, shared ownership arrangements or embark on any immediate re-engineering of the current arrangements around PNC.

Clearly, the police need round the clock access to such data and rushing to implement alternative arrangements would almost certainly generate just as many problems as it sought to resolve, even if it was affordable. Furthermore, the current levels of operation and integration we already have between HMCTS and the police service, which have been hard won in some areas, would be diminished. Any moves to alter the current arrangements significantly would also have to take into account the challenging landscape of IT provision that exists across the various agencies. Each of the core agencies (i.e. police forces, the CPS, magistrates courts, the Crown Court, etc) operate their own IT systems and although cross-boundary, operational interfaces are in place. I believe it would be too ambitious to assume these could be radically altered or developed without great effort and expense.

Nonetheless, in the wake of the Government's

response to the Magee Review, I am aware there are various initiatives working towards a more integrated landscape. The police service, for example, is working on its Information Systems Improvement Strategy (ISIS) programme to enhance systems integration. However, much of this work is still at a strategic level, while PNC is the existing, operational hub of a wide range of systems.

"We believe the current system for recording conviction data should not be changed, as it works well for Prosecutors receiving information." - Crown Prosecution Service



Having considered the various arguments put forward, it is my view that moving criminal records data off the PNC to a separate database or system would be disruptive, expensive and unjustifiable in the short term. The data in question (i.e. the PNC Names database) amounts to approximately 10 million¹⁸ records and I note that annual PNC usage is now in the region of 175 million transactions¹⁹ per year. To replace this infrastructure and operational capacity would clearly be very expensive. Consequently, I believe that the costs, risks to operational continuity and the resulting burden on all concerned would be too great. I do not think that moving to alternative arrangements is necessary while the PNC apparatus remains fit for purpose.

¹⁸ 10,111,433 records at 01 January 2011/ National Policing Improvement Agency

¹⁹ 174,022,748 transactions in the 12 months ending April 2009/ NPIA

I recommend that the Police National Computer should continue to be the central repository for criminal records for the foreseeable future (recommendation 3).

Options for the longer term

In the short-term, the PNC is one of the key systems that will be managed by the new police-led ICT Company announced by the Home Secretary in her speech to ACPO's summer conference. Looking further ahead, some consultees have suggested that the PNC be retained as the central repository but be expanded to become, in effect, a Criminality Information Database with responsibility for its management extending to include other organisations such as HMCTS and HM Prison Service. It already includes a range of information provided by non-police agencies.

As IT infrastructure and service contracts become due for renewal, this is one of the options that could be considered in the longer term. Shared ownership and management responsibilities, if properly structured and facilitated, could help to address some central issues such as the timely and effective transmission of criminal records data between key organisations.

This forward-looking work should seek to build further on the themes of improved sharing and integration identified by Sir Ian Magee. Some have gone as far as to argue that an independent body should be given the responsibility for maintaining criminal records, with role-based access for those with legitimate needs to use them. I am wary of suggesting the addition of a new and potentially complex system to the existing landscape, but this is another option that warrants further consideration.

Linked to recommendation 3, I recommend that the Government should begin work immediately on developing and analysing alternative options for sharing and managing criminal records in the longer term (recommendation 4).

Strengthening the criminal records database

If the PNC is to be the place for holding the criminal record, clearly the completeness, accuracy and timeliness of the data it stores are paramount. My consultations indicate that stakeholders broadly regard it as fit for purpose.

Microfiche records



The PNC includes an entry for all individuals whose records are included in the NPIA microfiche archive. Nonetheless, for approximately 1 million²⁰ microfiche records, uploading or 'back record conversion' of that criminal history to the PNC has not taken place. As the PNC includes a flag to indicate the existence of the record, and a scanned copy of the microfiche record can be made available to police forces on request, this is more of an administrative burden than an operational gap. However, there is still a residual risk. I understand that in a sample analysis of records 'back record converted' over a 5 week period in 2007, of the 3,401 files processed, 221 contained sexual offences, 1,394 contained violent offences and 232 were for theft. As the PNC flag will show only that a record exists, rather than the nature of the conviction, I believe there remains an on-going risk of incomplete information for public protection decision-makers, particularly as older people are being encouraged to volunteer and the age range of the individuals whose records will not have been converted is between 40 and 100 years.

Ideally, the PNC should be fully updated, thus removing the requirement for this

²⁰ 1,094,000 records at July 2010

archive. However, this is a question for the police service to consider, taking into account all the operational, public protection and resource implications to determine how best to manage the records held on microfiche. In the current financial climate, existing arrangements to back record convert microfiche records on a 'come to notice' basis seem to me a pragmatic way of managing the archive. However, in these cases police forces should make sure that when they request a microfiche record they do update the PNC in a timely manner with the data. The NPIA inform me that this does not always happen and so some records will consequently be requested multiple times. I am aware that ACPO is currently undertaking a review of the microfiche records with the NPIA and looking at the business process adopted by forces. Furthermore, as the police continue to delete records of people who have reached 100 years of age, more and more of these flags will be removed over time.



Non-Police Prosecuting Agencies' (NPPAs) records

As I touched on earlier in this report, a significant number of prosecutions are brought by NPPAs, such as the Environment Agency, the Probation Service and the Office of Rail Regulation and I am conscious, from feedback received during my consultations, that convictions for recordable offences flowing from these prosecutions are not always routinely and swiftly recorded on the PNC.

Whilst this may be because the offence is non-recordable, it is also the case that the police may simply not have been told of the impending prosecution by the lead agency and so have not created a PNC record which can be updated when the court result arises.

For example, officials in the health sector cited the failure to record all convictions from the Health and Safety Executive as a problem, as these were often relevant to care standards issues.

In my view this is a public protection gap that needs to be closed. It is not just the criminal justice system or employment vetting agencies that require criminal record disclosure, for example the family courts require this when dealing with children cases. Any information that can better assist decision-making is relevant and ought to be disclosed.

“...all non-police prosecuting agency convictions should be captured within a person’s criminal record, to underpin safeguarding decisions concerning vulnerable adults.” - Department of Health

Robust and effective arrangements must be put in place to ensure that all recordable convictions arising from NPPAs are entered on the PNC.

This might be taken forward in conjunction with the review of the concept of recordability that I have already recommended. This would ensure that all NPPA offences relevant to public protection were indeed recordable.

Scotland’s and Northern Ireland’s criminal records

The central record should include court convictions from other UK jurisdictions to be effective.

There is already a substantial degree of integration of Scottish criminal records onto the PNC with data relating to offences that are recordable in England and Wales being uploaded. I recommend that this process be maintained and that these arrangements are routinely audited and reviewed by HM Inspectorate of Constabulary.

I understand that there is still no routine updating of all recordable offences committed in Northern Ireland to the PNC. A system is in place for a substantial set of the most serious offences from Northern Ireland



to be manually recorded on the PNC but there is delay in this process which is a public protection risk. Sir Ian Magee raised this issue in his report three years ago and it was also highlighted in a recent HMIC report.

I now understand that the NPIA and PSNI have recently been able to agree on a technical solution to this problem. This would also include the uploading of fingerprints from Northern Ireland onto the IDENT1 database which is essential to ensure accuracy and identity.

Given the gap between the PNC and PSNI records, I urge that this risk is mitigated swiftly and that funding is made available to deliver this agreed solution as soon as possible.

In the meantime, if the link cannot be established before the Olympics in 2012 I suggest that the manual updating of criminal records is up-scaled so that as much information is available before then as is possible.

I recommend that Ministers and their Northern Ireland counterparts should reach agreement urgently on how to fund delivery of the PSNI –PNC criminal records and fingerprint connection (recommendation 5).

Storing police information records

Building on my recommendation to retain the PNC as the core of the criminal records system, I also support the continued storage of police information records on PNC and connected systems, but subject to clear rules around disclosure.

Should criminal records ever be deleted?

Conviction records

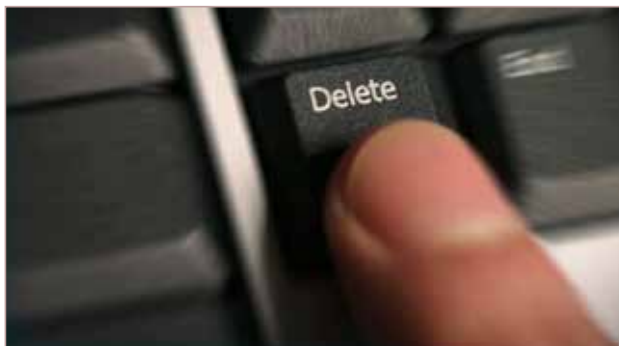
I have given close attention to the Court of Appeal judgment handed down in October 2009 in the '5 Chief Constables' case²¹. This arose from an Information Tribunal test case brought by the Information Commissioner on behalf of five individuals and concerned the retention of four conviction records (for the offences of theft, attempted theft and obtaining property by deception) and one record of a reprimand (for the offence of common assault). Collectively, these records were judged by the Commissioner as relating to offences that might be viewed as old and/or minor. The Information Commissioner took these cases up as breaches of the 3rd and 5th Data Protection Principles²². He argued that the data was irrelevant and excessive and being held longer than necessary for the purpose.

This was contrary to the police view that criminal records are critical for core policing purposes and for other areas of the criminal justice system, such as providing full antecedent history to a criminal court. In its judgment the Court of Appeal re-affirmed the police's right to retain conviction data, giving a clear view that the police should determine what information is kept and for how long that is necessary. In his judgment, Lord Justice Waller said:

²¹ [2009]; EWCA Civ 1079.

²² Data Protection Act 1998.

“...If the police say rationally and reasonably that convictions, however old and minor, have a value in the work they do, that should, in effect, be the end of the matter”. - Lord Justice Waller; 2009



In light of that judgment, ACPO policy is to retain conviction data on the PNC for 100 years from the date of the subject's birth. I support this, subject to the police service ensuring that records are indeed deleted at that point, as I recommended in my first report, "A Balanced Approach"²³. The police and the courts are the primary users of criminal records and they are in a good position to make sound decisions about the relevance of the conviction information made available to them. I certainly think there would be serious difficulties if any arrangements for deletion of criminal records worked to deny the courts and criminal justice system information that they might reasonably need for sentencing, probation and parole purposes. However, the police should continue to ensure that access to conviction data is carefully controlled and clear information is made available to the public about what information is kept, how long it is held and for what purposes.

As I have emphasised in the first part of this report, the most acute issues for civil liberties are around disclosure rather than retention. However, some organisations, such as Liberty, are not so comfortable with the concept of retention for such a long period. Whilst they accept the operational need to keep information about serious

offences, particularly sexual offences, they are concerned about retaining all convictions and other disposals indefinitely, particularly those arising from minor offences. They believe this raises fundamental questions of proportionality.



There is an interesting contrast that must be highlighted here, between non-recordable offences normally not going on the PNC at all, and offences that pass the 'recordability test' being kept on PNC for 100 years regardless of seriousness. For example, a record of conviction for carrying a pointed article in a public place will be retained (as a recordable offence), whereas details of a conviction for careless driving²⁴ will not. It is also worth acknowledging the previous arrangements the police adopted for weeding records after 'clear' periods without further offending. I understand these 'weeding rules' were no longer applied in the wake of the Bichard Inquiry.

“We would support a return to the use of the police's weeding rules, as retention for 100 years seem an arbitrary position for all material.” - National Policing Improvement Agency

Certainly some of those I have consulted have argued that a more proportionate system would be to delete some categories of convictions from the PNC after defined periods or restrict police user access to certain information, with use limited to specific activities such as investigating serious offences or producing antecedents for court.

²³ A Balanced Approach; Independent Review by Sunita Mason; March 2010; www.homeoffice.gov.uk

²⁴ Road Traffic Act 1988

However, bearing in mind the judgment in the 5 Chief Constables case, my view remains that, provided that disclosure remains properly controlled, a straightforward process of retention on the PNC is preferable. I also agree with the police that even old and minor convictions may form part of a 'big picture' that can be crucial to police decisions in specific cases. There has been no research to consider the effect of deletion of criminal records on the ability to provide public protection information.

Records of 'out-of-court' disposals - cautions, reprimands and warnings

Although one of the disposals referred to in the 5 Chief Constables case was a reprimand, I acknowledge there are greater concerns regarding cautions, reprimands and warnings being retained to the 100 year point as a matter of routine. These disposals are intended to deal with offences towards the lower end of seriousness, allow a case to be dealt with without drawing the recipient into a court process and should leave the door open to a straightforward process of rehabilitation.

I am conscious that at various stages in the past the policy has been that these disposals should not be part of someone's criminal record. Some members of the judiciary, in particular, remain concerned that they give rise to the possibility of justice being dispensed 'behind closed doors' and they take the view that, as the administration of these outcomes is inconsistent, the appropriate place for them is within broader police information records rather than as part of the formal criminal record.

Having considered all the arguments, my firm view is that cautions, reprimands and warnings should form part of an individual's criminal record as I believe public protection could be undermined if this does not occur. As such, I believe that they should be subject to the same retention arrangements as convictions.

Disclosure is, once again, the key mechanism to achieving proportionality and an example of this is the filtering I have advocated for criminal records checks that are conducted by the CRB.

"There is concern about the (over) use of out of court disposals. We believe someone's criminal record should be based solely upon their court convictions, with the seriousness also being a deciding factor in whether it is included." - Liberty

However, I take seriously the concerns expressed by the judiciary and this suggests to me that the operation of all out-of-court disposals should be reviewed and the supporting guidance re-affirmed, so that procedures and consistency of application can be improved in the future. I am pleased to note that the Ministry of Justice already has this work underway.

Police information records



There are already specific review and deletion regimes applying to some categories of police information records. For example, the Government is currently amending, through the Protection of Freedoms Bill, the legislation covering the retention of DNA and fingerprints.

The Government's proposals will allow for the permanent retention of DNA profiles and fingerprints where they relate to someone who has been convicted of a recordable offence but will prohibit retention of biometrics for individuals arrested but not convicted of a minor offence. They will also allow retention of biometrics for up to 3 years,

with scope to extend by a further 2 years on application to court, for those arrested for but not convicted of a serious offence. However, those under 18 convicted of a first minor offence will have their DNA and fingerprints removed 5 years after completion of any custodial sentence but they will be subject to indefinite retention after a second conviction.

A statutory Code of Practice (MOPI) was issued in 2005²⁵, governing the principles for the management of police information, including its review, retention and deletion. All Chief Officers are bound to 'have regard to' this Code and it is supported by comprehensive guidance that was issued by ACPO in 2006 and revised in 2010²⁶.

It is important to note that the information held on PNC is specifically exempted from the MOPI regime, as set out in section 7.1 of the MOPI Guidance document²⁷. One would question whether this blanket exemption is justified or proportionate.

As stated above, I strongly support the extended retention of the information I consider to fall within the criminal record. I do not think the same principle should automatically apply to what might be described as 'procedural' information held on the PNC (such as arrest records in cases which do not give rise to a criminal record). If someone is arrested but there is no further action, is it fair that the record of arrest is held for 100 years? If they are further apprehended and a check of the PNC reveals that they were once arrested will they be treated differently? Would any individual think it is fair or proportionate? I for one would not and the circumstances in which such procedural records are retained have been called into question by a Supreme Court²⁸ judgement earlier this year.

I do not want to create unnecessary administrative burdens on the police at a time when cuts are making operational policing

increasingly challenging. However, more work is needed to ensure that the procedural information generated in such cases and which is currently held on the PNC, is subject to effective arrangements for review, and where appropriate, deletion.

Could the administration of criminal records be made more straightforward, efficient and cost-effective?

The current landscape

It is important to ensure that the criminal records regime is as effective and streamlined as possible and imposes the lightest possible touch on law-abiding citizens. Improved administration could help to save resources and free-up time for police personnel and others involved in the handling of criminal records.

"The landscape around criminal records has become fragmented, with key players not working in unison." - National Policing Improvement Agency

The current organisational landscape is complex and there is certainly scope to deliver these functions more effectively and efficiently and to reduce duplication of effort.

"The Magee Review highlighted the complexity of the current system. I note he supported simplification and also felt this would be welcomed by the public." - Professor Thomas, Leeds Metropolitan University

In practical terms, much of the basic storage and processing of criminal and allied records should continue to be based around the PNC, as I have recommended. I note that the delivery and implementation of the Police National Database (PND) is making good progress and I expect this to be playing an increasingly significant role. It will significantly improve the ability of the police service to manage and share its local intelligence and other operational information at a national level. This is not a new database of police information, so does not require the collection of any new

²⁵ Under section [39] of the Police Act 1996; www.homeoffice.gov.uk

²⁶ ACPO MOPI Guidance; 2006 & 2010; www.npia.gov.uk

²⁷ ACPO MOPI Guidance (2nd Edition) 2010; Sec 7.1, p.81; paragraph 6

²⁸ GC&C v. Commissioner of Police of the Metropolis [2011] UKSC21

information; instead it holds copies of existing local information and intelligence about offenders and suspects currently held locally by police forces in the UK. All forces are now connected to PND and it is expected to be fully operational across the UK by March 2012.



“The administration of the criminal record should adhere more closely to the principles of being straightforward, timely and cost-effective.” - Department of Health

These key elements of the national infrastructure are currently looked after by the NPIA and, as the Government has announced the phasing out of that organisation, they will need to find a new home. In my view that provides an opportunity to rationalise the whole administrative landscape relevant to the management of criminal records.

A range of important tasks are also carried out by the ACPO Criminal Records Office (ACRO). These include the processing of subject access requests, aspects of the back record conversion work to upload microfiche records onto the PNC and the provision of ‘police certificates’ for those individuals requiring criminal conviction information for overseas visa purposes.

ACRO also hosts the UK Central Authority for the Exchange of Criminal Records, which deals with exchange across Europe and its role extends to a broader set of work around handling criminal records at the international level. Importantly, and something that needs to be borne in mind in looking at this landscape, many of these functions (such as inputting PNC records and carrying out risk assessments) rely on ACRO’s ability to exercise policing powers which derive from their position attached to Hampshire Constabulary.

The main organisational structure for the disclosure of criminal records in England and Wales is the CRB, with its focus on disclosure for employment vetting purposes and links to the role of the ISA.

The police also continue to deal with a number of disclosure systems themselves, for example the disclosure of criminal records and other information for the purposes of family court proceedings involving the Children and Families Court Advisory and Support Service (Cafcass).

Improving the administration of criminal records

The complexity of the existing criminal records landscape is one of the most consistent criticisms I have heard during my consultation. I do think there is some scope for simplification, but there are real strengths in the current arrangements and I do not want to sacrifice those by proposing change for its own sake.

Dealing first with disclosure, in “A Balanced Approach” I recommended that the Government should review the need to have both the CRB and the ISA operating within the employment vetting landscape. The Government has now decided to amalgamate the work of these two organisations into one Disclosure and Barring Service (DBS). I strongly support this as it will deliver more efficient and simpler arrangements which are easier for those using the relevant services to understand and engage with.

Over time, there may be scope for the DBS to gradually take over as the customer-facing aspect of a range of disclosure functions which are currently handled by police bodies. This would simplify the landscape for those seeking criminal records information in a variety of contexts. For example, it might involve the DBS becoming the customer interface for relevant subject access requests under the DPA and for requests for information to satisfy visa requirements. They might also be able to carry out Government’s

own function of checking its civil servants much quicker and certainly more cost effectively.

However, there are some constraints on this direction of travel. It will be important not to divert the new Disclosure and Barring Service (DBS) from its primary role of delivering the safeguarding functions inherited from the previous organisations. Also, as the role of the DBS as a non-departmental public body will be enshrined in law, there will need to be specific legal provision for any new functions it takes on. Finally, the various disclosure-related processes that the DBS will or might in the future be involved with depend to a greater or lesser extent on partnership with the police to provide access to information held on the PNC and/or other systems. In practice, the police will retain a key role in disclosure processes and there will be a continuing need for the centralised police input to some of these processes which is currently provided by ACPO's Criminal Records Office (ACRO).



The legal responsibility for the information held on PNC lies with individual chief officers who are 'data controllers in common' under the DPA. The NPIA acts as a processor providing infrastructure and is also deemed to be a data controller by the Information Commissioner's Office. In her speech to ACPO's summer conference, the Home Secretary announced that, by spring 2012, she expects the police service to have established a police-led information and communications technology (ICT) company, which will

in future manage all police ICT services, including the PNC. I think this development offers the potential to further consider the integration of the relevant functions currently sitting within the NPIA with some of the more operational input to the management of criminal and other records which is currently provided by police forces and ACRO.

A new model for the administration of criminal records would be likely to take a number of years to fully implement as it would need a phased transition and transfer of skills as well as changes to the relevant legislation. In moving forward there would need to be a well set out transition plan that considered the costs and benefits of the changes and in which organisation tasks could best be delivered. It would also need careful consideration of the impact on the staff involved and their future roles.

I recommend that the Government and the police service should move towards a more integrated approach to the administration of criminal records. I further recommend that the scope to expand the role of the DBS over time to provide the customer-facing aspects of a range of disclosure services should be explored. (recommendation 6).

Section 3

Access Arrangements

Who should have access to criminal records databases, for what purposes and subject to what controls and checks?



Section 3: Access Arrangements

Who should have access to criminal records databases, for what purposes and subject to what controls and checks?

It is important to ensure that access to, and use of, criminal records is no greater than justified by the reasonable requirements of public protection and the criminal justice process. The public needs to have confidence that such access is properly regulated. It is also vital that those who do have access to criminal records understand how to interpret the data and to use it to make sensible judgments.

“Access to police information should be strictly limited. It should be role-based, as at present, based on need and ideally provided via a single agency.” - Information Commissioner’s Office

Access to criminal records effectively means access to this data via the PNC, where it is held. For the purposes of this report, the concept of access includes direct access to criminal records by being allowed to use the PNC, and indirect access where there is an arrangement to disclose or make available criminal records information held on the PNC. In some cases, access flows from legislative frameworks, such as Part V of the Police Act 1997, which allows for the provision of records to CRB for disclosure purposes, or from

fundamental police roles such as informing the prosecution and court sentencing process.

“Access, particularly statutory access, needs to be prescribed, managed and audited carefully. Some information currently on a statutory footing has run into problems when it needed to be shared with other organisations, because the access provisions were insufficiently understood by those others.” - Department of Business, Innovation and Skills

Another circumstance where the police may disclose information stems from their common law powers in situations where a pressing need is identified.

“There needs to be independent oversight of the management of criminal records. The key issue is who has access to that information, rather than the technical question of where it is stored.” - Ministry Of Justice

Beyond the core uses, access to the central record is limited to specific, agreed users. Currently, access is controlled by the police service’s own gateway body (the PNC/ databases Information Access Panel or PIAP) which is chaired by ACPO and has representation from the Police Service, HM Inspectorate of Constabulary and the Home Office. All non-police bodies accessing the PNC should be doing so on the basis of fully documented supply agreements, which have to be agreed by PIAP in response to a suitable business case being submitted by the applicant.

“Current access arrangements need to be reviewed as there are some anomalies. For example, although the CPS are content with the current arrangements regarding the PNC, in practice they do not have access to information that some police contractors do.” - **Crown Prosecution Service**

If, as I recommend, criminal records do continue to be owned by the police, it follows that they should remain in the lead on the access arrangements. In my view, PIAP is an effective and suitable gateway to the PNC and it should continue in its current role.

“PIAP arrangements seem largely sound.” - **Disclosure Scotland**

However, I believe further consideration could be given to its membership, which needs to be sufficiently broad to reflect legitimate interests across government and the importance to the public at large of who has access to criminal records data.

Access to criminal records should only be granted where it is necessary for public protection or criminal justice purposes, recognising that these will sometimes reflect legal or international obligations. Those requesting access should be able to demonstrate and document why they need it and that should be done via a business case, in an agreed format, submitted to PIAP. Once an application is successful, a comprehensive supply agreement should be developed between the parties so that it is absolutely clear what levels of access are permitted and in what circumstances and for how long. The contents of such agreements should take account of the relevant information sharing guidelines issued by the Information Commissioner and MOPI guidelines on information sharing.

Access to the PNC can be either direct or indirect. In all cases, the body concerned will be able to seek (or can be restricted to) defined categories of information from the police, but those with indirect access will not have any capacity to interrogate the system themselves. Access arrangements would be

covered by the supply agreement, but I think it is very important that all indirect access is also covered by robust, formal agreements.

“MOJ has experienced problems arranging for NOMS contractors who manage defendants and offenders in the community (i.e. following a tagging order made by a court) to have access to public protection risk data. This has meant the contractor has faced difficulty assessing risk to their staff when installing equipment, for example, sending a female employee to tag an offender with previous serious sexual offences.” - **HM Courts Service**

Access should be agreed at national level. Examples of organisations with national access include the Crown Prosecution Service and the Royal Mail (for investigatory/prosecution purposes). I am conscious that many agreements exist at police force or more local levels which enable varying degrees of access to criminal records and other PNC data. This complex landscape needs to be rationalised so that there is a clear national perspective on who has access to criminal records and for what purposes. In my view, access should never be granted for purely commercial reasons and such requests should be automatically barred.

“Access to Causeway data (Northern Ireland) is strictly controlled and applicants must be approved through a formal process to access information.” - **Causeway Northern Ireland**

As I recommended in my earlier report, once access has been granted, it is vital to have effective auditing arrangements to check it is being used appropriately and in line with the agreed conditions. HMIC has strong expertise in this area and their audit role should be extended to cover all PNC users, with the users agreeing to meet the cost of the audit.

My research suggests that the existing arrangements under the auspices of PIAP already go a long way to addressing the requirements set out above. However, whilst PIAP’s list of those with PNC access is very long, I do not know that it is fully comprehensive. For example, despite police

support, I am aware that the Probation Service does not, generally, have direct access to the PNC, which would also enable them to upload their prosecution/ conviction data more efficiently. We must also be confident that all of those bodies currently granted access fully meet the key criterion of essential need. I understand access can be time limited and subject to whatever restrictions are deemed appropriate by PIAP, but if access is to be maintained in borderline cases, it should be very strictly time-limited and/ or subject to specific, clear restrictions.

While PIAP agrees access to the PNC, the system itself is operated by the NPIA. There is a comprehensive charging regime for use of the PNC, which covers police forces as well as the wider range of other uses. This is based on being cost neutral, which enables the maintenance of PNC services. However, it is important that charges are applied consistently and equitably across all users and that charges are set out clearly in the relevant supply agreements.

In terms of access therefore I make the following recommendations to strengthen the current systems:

I recommend that:

(i) Access to criminal records via the Police National Computer should only be granted where it is necessary for public protection or criminal justice purposes.

(ii) All such access should be agreed by the Police Information Access Panel (PIAP), based on appropriate business cases and supply agreements.

(iii) All existing supply arrangements should be reviewed within the next 12 months to check they conform with the standards set by PIAP (recommendation 7).



To what extent should police intelligence be disclosed?

When considering 'police intelligence' we must be clear what we are referring to. Strictly speaking, intelligence is information which has been processed through the National Intelligence Model (NIM) to evaluate the reliability of its source and content and the degree to which it should be disseminated. In practice the term intelligence is often used much more loosely to describe a set of factual and more speculative information held by the police.

For the purposes of this review, we have defined two broad categories of information:

- 1) *criminal records (convictions, cautions, reprimands and warnings) held on the PNC, and*
- 2) *police information records, such as, for example, arrest information, information relating to investigations, information about other disposals such as PNDs, restorative justice and community resolutions, risk assessments covering suspects or detained persons, and information provided by the public or another agency.*

It is this second broad category which I am thinking of as police intelligence for the purposes of this review.



The disclosure of this type of information by the CRB for employment vetting purposes was dealt with in phase 1 of my review²⁹. Outside this environment, I think that any disclosure of police intelligence beyond other police forces needs to be very carefully considered and controlled. Various types of intelligence material are already shared with a range of other agencies – for example, with the Prison Service and the Probation Service and with a wider range of partners in the MAPPA and law enforcement environments. Although I am aware of improvements in this area, such as better information sharing between the police and prison service, generally speaking it appears that arrangements for sharing local intelligence records is less structured than access to criminal records and other police information held on the PNC.

As with criminal records, I think that the basic principle should be that access to police intelligence should only be granted where it is necessary for public protection or criminal justice purposes. A key consideration in this area is the development of the PND, which brings together local police intelligence and access to which is strictly confined to UK police forces and a small number of core law enforcement organisations.

However, any potential extension to other users would need to be very carefully considered. There needs to be national governance of relevant access arrangements to police intelligence, particularly in relation to the PND, similar to those that PIAP uses to enforce access to the PNC. Broadly speaking, my advice and recommendations around access to criminal records could be considered to be equally relevant to the arrangements for access to intelligence. For example, any non-police access to intelligence via PND should be based on appropriate business cases and supply agreements. The arrangements need to be proportionate, structured and consistent. Indeed my own view is that the criteria should be even more stringent than for access to the PNC as I

cannot personally envisage a situation where it would be satisfactory to allow anyone outside the policing system to have access to police intelligence.

What capacity should individuals have to access, challenge and correct their own criminal records?

“An individual’s rights to access are enshrined in our Data Protection legislation.” - Information Commissioner’s Office

Providing an effective capacity for individuals to access and challenge the information the police hold about them helps to ensure that the retention of specific data as part of criminal or other records is justified. It provides citizens with confidence that the records kept about them are correct and proportionate. All consultees agreed this was a fundamental right and the current Data Protection Act 1998 framework should be maintained.



The provisions for ‘subject access’ under the DPA give individuals who are the subject of personal data a general right of access to the data which relates to them. It is the appropriate route for someone to access their own criminal record and other information held about them by the police if they wish to check its content and accuracy. Applications are made either to ACRO or the applicant’s local police force, with the applicant

²⁹ A Common Sense Approach, report on Phase 1 at Section 2, pages 30-33

indicating whether they want information held on PNC or information held on local force systems. For most forces applications for information held on the PNC are processed centrally by ACRO. However, if the applicant requests any intelligence information held locally, this will be dealt with by the local force.

Subject access requests must be responded to within a maximum of 40 days and my consultations suggest that the police system appears to work well. The processes for querying the contents of records and seeking amendments are well defined, but police forces and ACPO could perhaps do more to make them more widely known and understood by the general public.

If individuals need access to their own records to give to a third party this can be done by applying for a basic certificate under Part V of the Police Act 1997 or, if a disclosure is needed for overseas immigration purposes, they can apply to ACRO for a 'police certificate'.

The overall position is to some degree compromised by the fact that the facility for basic disclosures has not yet been introduced by the CRB for England and Wales, although I recommended that it should be in my first phase report. In the meantime, of course, anyone can make an application to Disclosure Scotland or Access Northern Ireland, both of which do provide basic checks.

A basic check reveals an individual's convictions which are not spent under the provisions of the ROA and is the obvious route for individuals to obtain information for the purposes of applying for routine types of employment not covered by the CRB's standard or enhanced disclosure regimes.

The absence of a basic check in England and Wales may currently encourage employers to press job applicants to make a subject access request. It also prevents the commencement of the provision in the DPA which prohibits such 'enforced subject access'.³⁰ Linked with

my earlier recommendation that the CRB begin to issue basic certificates, I believe this provision should be commenced as soon as possible, a view which is shared by a number of those I have consulted.

I recommend that the systems for individuals to access, challenge and correct their own criminal records should be maintained and better publicised (recommendation 8).

³⁰ s.56, Data Protection Act 1998

Section 4

Guidance

Could guidance and information on the operation of the criminal records regime be improved?



Section 4: Guidance

Could guidance and information on the operation of the criminal records regime be improved?

My consultation has indeed indicated that guidance and information needs to be improved, so ensuring that the criminal records regime is more accessible and intelligible to those who use it or are affected by it. In particular, improving citizens' understanding of the implications of receiving a criminal record and of what they can do if they believe information is being retained inappropriately will greatly assist the Government's civil liberties agenda.

I previously considered issues around guidance in relation to employment checking in my phase 1 report. However, in returning to this topic in this wider context, I think there are two main areas of action required to achieve these improvements.

First, there needs to be a clear set of up to date information about the workings of the criminal records regime which interested parties can access whenever they need to.

Second, there needs to be a clear and effective set of arrangements to proactively provide information to those affected by the criminal records regime at key points in their interaction with the criminal justice system. That information should also, where necessary, set out any differences between the arrangements applying within the various UK jurisdictions.

Any initiatives in this area must take account of Ministers' general desire to reduce the volume of guidance issued by central government, with the emphasis on quality and precision.

A bank of information

Looking at the first area, the 'customers' or users for this information fall into several categories, as follows:

The police and other practitioners

They need information about how criminal records are managed and their roles in the process. What should be recorded, where and for how long? Who should be allowed access? What information should be provided to

those who are the actual or potential subjects of criminal records?

There are already huge amounts of information in this area provided by the NPIA, Home Office, MoJ, ACRO and individual forces amongst others. There is a real risk of information overload, particularly as some of the content is duplicative and out of date. It would be enormously helpful to organise all the relevant information in one place, keep it up to date and offer practitioners a one stop shop. Realistically, that would never displace the need for specific organisations to provide advice directly to their own people, but it would provide a joined-up point of reference for practitioners across the board.

Those about whom information is or may be recorded

They need information about where and for how long records are kept, who can have access to this information, for what purposes and how they can get sight of what is held about them, as well as how to challenge and amend it.

“Guidance on the criminal record should be improved. I believe the public is not always clear about the significance of criminal records and there is a concern that the retention and disclosure of such information could effectively become a further punishment for the individual” - Professor Thomas, Leeds Metropolitan University

Once again, information is available from many sources for example police forces, the Information Commissioner’s Office, Citizens’ Advice Bureaux, etc. This is a healthy diversity, but the information is not always consistent and the quality of the material provided varies considerably. A definitive and really authoritative common source would offer major benefits.

Employers and employees

There is a particular issue about providing helpful information for employers and employees, and those seeking jobs, about



the workings of the criminal records and disclosure regimes as they apply to the employment and volunteering processes, such as what will and won’t be disclosed and the decision making processes behind that, the scope for applicants to challenge disclosures and the impact of the ROA.

Very helpful guidance is already available from the CRB and other bodies such as the ISA, NACRO, the Apex Trust, UNLOCK and the Chartered Institute of Personnel and Development. Some of this includes an emphasis on dealing with applications from those who have a criminal record and avoiding any unwarranted discrimination against them. Without prejudice to this existing advice, there would still be benefits in integrating it into a wider bank of information about the whole set of criminal records issues.

The general public

The handling of criminal records is a legitimate matter of public concern. Any citizen should have straightforward access to clear information about what these records consist of, how they are handled and how they might impinge on their lives. This is as much an issue for victims of crime as for those who commit them.

I think there could be strong value in placing the responsibility for developing and maintaining a consolidated set of information about the workings of the criminal records regime with the Home Office, as it is the organisation with the broadest oversight of this complex territory. Access may need to be provided down a number of electronic routes but, for those elements which need to be publicly available, the DirectGov website would seem to provide a very good solution.

Providing information proactively

“Operational Police Officers are not always sufficiently clear about the administration and retention of cautions and warnings, citing a lack of clear guidance. There is a clear role for a single, central owner to provide a source of clear and timely guidance.” - Essex Police

Citizens should always be given clear and timely information about the implications of receiving a criminal record. For example, they should be told how and where it will be retained, for how long, how it can be used, with whom it can be shared and so on. Ideally this information should be provided to them on receiving a disposal from the court, but it does not appear that this happens at the moment. Court procedures need to be reviewed to determine what arrangements would be most practical and effective.

It is particularly important that people receive clear, accurate and consistent information in circumstances where they are offered some discretion about whether or not to accept a specific disposal. For example, one of the conditions for the police to administer a caution is that the subject must admit their guilt. In considering whether to accept a caution, the person concerned should have a full understanding of the implications. These include that the caution will appear on their criminal record and that, in turn, it could affect their employment prospects in some areas of work where there is contact with children or vulnerable adults. Concerns have been expressed throughout my consultations about the accuracy, timeliness and consistency of the information the police provide in the context of delivering cautions and other out of court disposals.

Existing guidance on simple and conditional cautions and reprimands and warnings is clear that the consequence of the disposal must be properly explained to the offender before it is administered, including that it will form part of their criminal record.

Guidance on PNDs is clear that the police should provide recipients with additional information on disclosure and explain that PNDs given for recordable offences will be recorded on the PNC.

The Ministry of Justice Green Paper, Breaking the Cycle³¹ set out the intention to produce a clearer national framework for dealing with offending out of court which promotes the professional discretion of police officers while ensuring that out-of-court disposals are used appropriately, proportionately and effectively. This national framework will provide an opportunity to reinforce further the need for the police to explain to an offender the consequences of receiving an out-of-court sanction and give the offender the opportunity to consider this.

I recommend that the comprehensive and easily understood guidance which I advocated in my phase 1 report should extend to broader aspects of the criminal records system, such as definition, retention and access (recommendation 9).

³¹ MoJ Green Paper; <http://www.justice.gov.uk/downloads/consultations/green-paper-evidence-a.pdf>

Section 5

International Criminal Records

How effective is the integration of overseas data into the criminal records regime?



Section 5: International Criminal Records

How effective is the integration of overseas data into the criminal records regime?

In a world with far more global travel, both for work and pleasure, and with the less scrupulous taking advantage of these new opportunities to continue their offending behaviour across borders, it is clearly important that an individual's criminal record should include court convictions from other jurisdictions where possible.

I dealt with offences committed within Scotland and Northern Ireland earlier in this report and now, in this section, I turn to those committed abroad.

In doing so, I aim to first set out the current situation in relation to international criminal record exchange in a digestible format. It is a difficult and complex area and so I hope this section will be useful in informing those reading this report as to what is currently available. I will also provide my views on areas where I think improvements can be made and set out a number of questions and challenges for Government in relation to these.

To ensure that we have all the information necessary to protect the public, I firmly believe that there needs to be a co-ordinated and strategic approach to extending overseas criminal record exchange. The approach should cover the following areas:

- offences committed by British citizens abroad and how they should be recorded and used within the UK;
- what access the UK has to criminal records of those foreign nationals present in the UK and how we can use that information for public protection;
- what information we should share with other countries about the offences committed by their nationals whilst in the UK;
- what information we should provide to other countries about the offending history of our own nationals; and
- how this growing area of work should be funded.

In looking at this area it is worth remembering that Ministers will need to work closely with and consult their colleagues in Scotland and Northern Ireland to ensure that the strategy also works for, and takes account of the needs of, the different criminal records regimes in those jurisdictions.

How effective is the integration of overseas data into the criminal records regime?

Background

In contrast to domestic convictions, those from overseas are less readily available to the courts, the police and the disclosure agencies. This means that public protection agencies, including the police, may not have a full understanding of the offending history of those individuals that they come into contact with and the dangers that they pose. For

example, a policeman might take a different approach to an individual whose car he has stopped if he knew that person had previous convictions for violence in his home country.

Courts may also lack information on a foreign national's previous record to inform their sentencing decisions, so a domestic burglar with two similar previous overseas convictions might be sentenced as a first time offender rather than receiving the mandatory minimum sentence. This can mean that individuals who have offended overseas, and about whom little is known, may be treated more favourably within the criminal justice process than they should be.

Such a lack of information also means that the CRB may issue certificates that, in effect, only include a portion of an individual's offending history or issue a clean certificate when in fact the individual has convictions overseas. Despite the CRB's caveat that overseas records have not been checked, this can give employers a false impression of an individual if they have been resident overseas. It also means that those who have been convicted of minor offences in the UK in the past are potentially disadvantaged in employment situations compared to some individuals who may have more serious convictions for offences committed abroad which are not disclosed.

Example 1

An employer in the elderly care sector decides to appoint an applicant for the role of male nurse who has recently arrived from abroad and presents a blank CRB certificate in preference to another applicant whose certificate discloses a conviction for shoplifting ten years previously when the individual was 16. The employer would be unaware that the preferred applicant has recently been released from prison for a string of violent offences in his own country unless they were able to make effective checks of their own abroad.

Finally, the family courts may not be aware of previous offending by the adult parties when making decisions in children cases where criminal offences have been committed abroad.

Considerable progress has been made within the EU in recent years with a number of agreements relating to the sharing of criminality information. However, my understanding is that the ability to obtain criminal conviction data from overseas remains patchy. Gaps remain even within the EU, pending full compliance with new legislation, but the position outside the EU is much less positive.

Progress is slow given other countries' data protection constraints, the variable state of their criminal records systems, the human rights issues and data protection concerns involved in exchanging conviction information across international boundaries. Nonetheless, I am aware a considerable amount of work is underway to improve international exchange, and I believe that it is important to ensure that this is approached in a joined up and strategic way.

Offences committed by British citizens abroad

Within the European Union

In the summer of 2006 the UK implemented the EU Council Decision on the exchange of information extracted from the criminal record³², one of the effects of which requires other Member States to tell the UK of the conviction of a British citizen by their courts (notifications).

This has significantly improved the availability of conviction data from European countries. The UK has set up a Central Authority for the Exchange of Criminal Records (UKCA-ECR) within ACRO, which co-ordinates all exchanges of criminal record information to and from the European Union.

³² Council Decision 2005/876/JHA on the exchange of information extracted from the criminal record <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:322:0033:0037:EN:PDF>

These measures will be further strengthened in April 2012 when a new EU Framework Decision replaces the original Council Decision³³. A separate Framework Decision³⁴ coming into force at the same time will replace the current, somewhat piecemeal, exchange with a standardised, secure computerised system known as the European Criminal Records Information System (ECRIS).

When the UKCA-ECR receives a notification in relation to the conviction abroad of a British citizen it places that data on the PNC (and, if relevant, also passes that data to Scotland and Northern Ireland for inputting on CHS or Causeway) so that it can be used by the police, courts and other public protection agencies. Consequently, these convictions can also be disclosed on certificates issued by the CRB and its Scottish and Northern Irish counterparts.

I endorse the current policy, which is that all overseas offences which would have been recordable if they had been committed in the UK are recorded on the PNC. It should definitely not extend to recording on the PNC convictions abroad for behaviour which would not constitute a criminal offence if it had been committed in the UK. One such example is the well-publicised offence of holocaust denial.

As a result there is now a clearer picture of the offending record of UK nationals in most of the EU. Since the UKCA has been set up around 20,000 notifications have been received. As well as inputting these records on the PNC, ACPO's Criminal Records Office (ACRO) have also been able to identify nearly 450 British citizens who have been convicted of serious violent or sexual offences in the EU. Only 37 of these individuals were already known to UK law enforcement and 276 had committed offences against children.

³³ 2009/315/JHA; Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:093:0023:0032:EN:PDF>

³⁴ 2009/316/JHA; Council Decision 2009/316/JHA on the establishment of the European Criminal records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:093:0033:0048:EN:PDF>



Where the UK location is known for these offenders, the information is passed to the public protection unit of the relevant police force, but where the offender's location is unknown or the person remains abroad ACRO maintain ownership of the case until the person returns to the UK or an address becomes known. By working jointly with UK Border Agency (UKBA) and police forces this allows those who commit sex offences abroad to be identified, located and included in the sex offenders register.

The UKCA-ECR have also developed good working relationships with overseas colleagues, encouraging fingerprint exchange alongside criminal record exchange (which I will return to later) and research on offence equivalence.

The UK is now connected to France, Germany and Spain through the National Judicial Register (NJR) pilot and will shortly connect with further countries. Although still in its infancy in the UK, this initiative is already making significant savings to translation costs and is significantly increasing the volumes of notifications we receive.

Data quality

Ensuring data quality is a point of concern especially where records are to be recorded on the PNC. Almost all convictions received from EU countries consist of name, date of birth and selected other alpha-numeric information such as passport number, parents' names or place of birth.

Fingerprints are very rarely received and consequently it is not possible to be completely sure that foreign records are linked to those already in existence on the PNC, although by matching a number of different sets of alpha-numeric information it is sometimes possible to make links. I am aware this is already causing some problems with mistaken identity. To address this, the UKCA-ECR is taking forward work on biometrics, in particular the link between convictions and fingerprints, and trying to resolve this by promoting the future exchange of fingerprints.

This is not always easy, especially with countries which do not routinely fingerprint those convicted of offences or which do not link their justice system (the conviction) and their policing system (the fingerprint). Work has already shown that some people are providing false identities on arrest in the UK, as they know that providing their correct identity will lead to previous convictions being obtained from their country of nationality.



Example 2

Her Majesty's Revenue and Customs used fingerprints to prove that a Lithuanian man presenting himself to UK officials in one identity was in fact known by a different identity in his home country. This revealed that he had previous convictions and was also wanted by the Lithuanian authorities as he had avoided serving a prison sentence there. In addition, it appeared that the documents produced in the false identity had in fact been reported lost by the genuine owner.

Example 3

The ability to obtain and verify through fingerprint exchange previous convictions of a Romanian national, which were used as bad character evidence, played a significant role in his conviction for the rape of a prostitute and a vulnerable female adult. The judge noted his previous convictions in his sentencing remarks and reflected his previous offending in setting the sentence - an indeterminate one with a recommendation that he serve at least 11 years.



Successes such as the examples above, preventing criminals from easily avoiding their past and presenting a risk to society are slowly convincing foreign authorities of the importance of identity confirmation when exchanging criminal record data. Nevertheless, it seems that a number of countries are not yet taking on board the vital importance of this linkage.

I recommend that further work is undertaken to ensure the transfer of fingerprint records with criminal records as often as possible (particularly with EU Countries) (recommendation 10 (i)).

Rest of the world

The UK is, on occasion, notified of offences committed by British citizens outside the EU. This information either comes through Interpol or is reported by British consular staff overseas. Where such data is made available it is placed on the PNC by ACRO and again is available for use in the same way as a conviction for an offence committed here.

The UK has a good record of notifying other states of their nationals' offending behaviour here in the UK and more effort is required to ensure that other countries provide the same information to us about British citizens overseas. I note that the UK has signed a MoU with Albania which mirrors the EU Framework Decision. More such bilateral agreements would be helpful to ensure effective notifications, as would an agreement that we are notified when our citizens who have committed serious offences are being deported back to the UK.

I recommend that further work is undertaken to ensure greater levels of notification of criminal offences committed by British citizens outside the EU (recommendation 10 (ii)).

Offences committed by foreign nationals outside the UK

Criminal proceedings

The current EU Council Decision for criminal record exchange allows the UK to ask other Member States about the previous criminal record of their citizens who are being prosecuted here (requests). The new Framework Decision coming into force in April 2012 will make responding to requests mandatory, whereas at present such responses are voluntary. This is a significant

change and will assist in the receipt and exchange of criminality information.

It is increasingly possible to obtain the conviction history of EU nationals being prosecuted in the UK, although there is still a significant gap between the numbers of EU nationals convicted here (c. 35,000 in 2010) and the number on whom the UK law enforcement agencies have sought previous convictions (about 5,500 in 2010). The statistics speak for themselves and suggest that the system is too complex and time-consuming for those seeking the information or simply that police officers are not aware of the ability to make such checks.

When arrest data is analysed less than 15% of those EU nationals arrested in the UK have their foreign records checked yet this data could be used by the police, the CPS and the courts to inform any stage of the criminal justice process such as bail, charging, evidence of bad character applications and sentencing. The information can also be used by the National Offender Management Service (NOMS) to undertake risk assessments as part of their role in carrying out the sentence of the courts.

It is clear that we should be making such checks routinely when EU nationals are arrested and charged. Even minor offending in the UK might lead to the disclosure of much more serious offending overseas. ACRO can find numerous examples where their investigations of overseas records have led to dangerous criminals being apprehended in the UK and they are making effective connections with UKBA so that such individuals can be considered for deportation before they go on to commit more serious offences here.

However, the current funding scenario for the UKCA-ECR does not lend itself to allowing for this greater expansion. Over the last three years the function has been funded by the Government and ACPO (paying 70% and 30% respectively). It is not currently clear how the unit will be funded in future years and the Home Office has not made clear what



resources they will make available. The unit's successes in the last few years are more a tribute to the hard work and pragmatism of the individuals most closely involved in this work rather than as a result of the allocation of proper resources.

Against this background, and anticipating higher volumes of requests and notifications from abroad following the introduction of electronic exchange, it is very hard to push police forces to make greater use of the UKCA-ECR when the funding model will not support such an increase in volumes. However, not to address this issue is a potentially huge public protection risk.

The European Commission has recently published a feasibility study on an 'index of third country nationals', which would enable Member States to ascertain whether a non-EU national has been convicted in another EU country. This work is still at an early stage, and there are considerable hurdles to overcome especially in relation to proving identity.

I note that the UK is working diligently to connect to the second generation of the Schengen Information System (SISII) when it is made available by the European Commission. This will provide real-time information about individuals who are wanted or subject to European arrest warrants. This information will be made available to UKBA through the e-Borders programme and provides a method

of preventing entry to such individuals should they present themselves at our borders.

However, I believe that more should be done to prevent individuals who have committed serious offences abroad from being able to travel to the UK. EU citizens present particular difficulties as the Freedom of Movement Directive limits the circumstances in which we can deny an EU national entry. However, I feel more must be done to facilitate the exchange of conviction and risk information to help identify those individuals who present a significant risk. The UK already exchanges information about travelling sex offenders and football hooligans and we should ensure that such processes are used consistently and effectively.

Outside the EU our own immigration and visa processes might prevent those who present a risk from coming here. Whilst visa applicants are asked whether they have committed criminal offences, this self-declaration is not generally checked and the UK does not ask for certificates of good conduct, unlike a number of other countries. Those coming here to work in positions that require enhanced disclosure certificates are not required to produce police certificates to Government prior to entry or taking up the post (although the employer may request the information). I am sure that more could be done to conduct checks prior to arrival in the UK.

I recommend that further work be conducted to look at whether more can be done to prevent the entry of foreign nationals who have committed serious offences abroad and who present a serious risk to public protection (recommendation 10 (iii)).

Employment vetting

In relation to employment vetting, there has been limited progress in obtaining overseas convictions for disclosure purposes (something that was covered in the Bichard Inquiry report³⁵). The EU Council Decision allows a Member State who receives a request from an individual for their criminal convictions to also ask the Member State of nationality for the previous criminal history. This route has not been used by the UK and might prove useful where an individual has applied for a disclosure certificate. This has the potential to allow a CRB certificate to include both domestic and EU convictions and I suggest that this is considered further, along with any domestic legislative changes that might be needed. Some EU countries have also indicated that they might be willing to exchange information in relation to those applying to work with children.

I am heartened to see that there does appear to be genuine progress across the EU recently in exchanging information to check those working with children. In particular I note that the new Child Sexual Exploitation Directive³⁶ includes provision for exchanging information about those barred from working with children as a result of conviction for certain child sexual exploitation offences. This marks a step in the right direction, which the UK should seek to expand into other areas where possible.

The current inability to obtain overseas convictions for disclosure certificates means that the information offered to employers and

voluntary organisations is not as complete as it could be. The current guidance remains that employers should seek and take up references from all applicants who have lived abroad and that the individual be requested to provide a conviction certificate directly from their country of nationality. I note that the Home Office has conducted work to provide more information for employers and individuals about how this can take place and I hope that this information can be placed on an easily accessible central website as soon as possible.

Significant progress has been made in relation to negotiations with Australia for an exchange of information between the CRB and its counterpart, Crimtrak, in relation to employment vetting. Government should consider whether the CRB should seek to offer checks in relation to other countries where that is possible, where there are adequate safeguards in place and where such exchange brings benefits over the existing arrangements.

It should be noted that criminal record information passed to the UK is primarily for criminal proceedings but it can be exchanged for other purposes where the law in both countries allows this.

I am therefore keen for Government to explore opportunities for using it for wider public protection purposes.

The new Framework Decision coming into force in April 2012 does allow information to be used for different purposes without requesting this, if it is to prevent a clear and present threat to public security. I suggest that the UK seek to make as much use as it can of that provision in serious cases to assist in protecting the public where there is a real risk of harm.

³⁵ Bichard Inquiry 2004 – Recommendation 30

³⁶ Directive on combating the sexual abuse, sexual exploitation of children and child pornography, replacing Framework Decision 2004/68/JHA



I recommend that further thought should be given to seeking agreements to allow the CRB to obtain criminal records from a person's country of nationality where the applicant and employer request this as part of the CRB disclosure process and where adequate safeguards can be put in place ([recommendation 10 \(iv\)](#)).

Offences committed by foreign nationals in the UK

The Council Decision already requires the UK to tell other EU Member States of the conviction of their nationals within our jurisdiction. This process is in place in the UKCA-ECR and is working effectively with up to 35,000 notifications being made to other Member States each year. Measures have also been taken in recent years to ensure the inclusion of all offences committed in Northern Ireland and offences committed in Scotland which are recorded on CHS but not recorded on the PNC.

Information is routinely shared with countries outside the EU through Interpol channels to notify other countries of serious offences (those resulting in a prison term of 12 months or more) unless there are human rights reasons for not doing so.

I note that there is now better sharing of information in place between NOMS and UKBA so that those who are sent to prison for serious offences are considered for deportation in a timely manner.

However, it should also be noted that information may be shared with some countries but withheld from others where there are human rights grounds for doing so. For example, a disclosure where homosexuality is an offence in the individual's home country and so which might place them at real risk of harm or discrimination in the future.

The situation is compounded when deportation at the end of sentence is being considered. UKBA is coming under increasing pressure from foreign governments to disclose criminal records information about foreign national prisoners (FNPs) being deported at the end of their sentence, but is resisting doing so even though the police are often willing to release that information and, in many cases, may have already done so at the point of conviction.

There is clearly a need in this area to ensure that there is a single cross-agency view as to what should and should not be disclosed and there is a consistency across all agencies. However, I recognise there is a difficult balancing act between the competing priorities of public protection and human rights. We must ensure that we give foreign governments information where it is proportionate and necessary for public protection but do what we can to limit the ability of FNPs to lodge sometimes spurious human rights claims as a result which frustrate UKBA's ability to remove them at the end of their sentence.

I recommend that a coherent and consistent cross-government policy should be developed setting out the circumstances in which foreign governments should be told about the convictions of their nationals and that all UK agencies should adhere to it (recommendation 10 (v)).

Notification of British citizen's criminal records to other countries

Employment checks

The current arrangements for standard and enhanced disclosure certificates only apply when the position being applied for is in the United Kingdom, the Channel Islands or the Isle of Man or the employment contract is with a body in the UK. In other words, if there is no firm connection to the UK then a disclosure cannot be issued. This means that a British citizen applying for a job working with children abroad often has to take one of two routes to provide their previous convictions. The first is to apply to Disclosure Scotland or Access Northern Ireland for a basic certificate. The second is to seek all information held on the person by the police through a subject access request under the Data Protection Act.

I do not believe that the basic certificate route provides a satisfactory level of disclosure for



such sensitive positions especially as changes to the ROA might mean that quite serious offences become spent earlier than at present. If we think that an individual should have to provide all previous convictions for a job in the UK then there is a strong case for saying that they should have to do the same for a similar job abroad.

However, there is a need to ensure some balance as it would not be right for UK residents to be put at a disadvantage compared with other job applicants simply because we retain information about old and minor offences much longer than many other countries. Once again a filtering approach such as the one I have recommended might assist here. What is ultimately important is that all relevant information that might show that there was a real risk to public protection ought to be provided when people are working with children and vulnerable adults.

I do not believe that relying on a subject access request is suitable, as any such request will contain all the information held on an individual, as opposed to just their criminal convictions. This is clearly disproportionate and not something we would allow if the employment was in the UK. I note that the Child Exploitation and On-Line Protection Agency (CEOP) and ACRO have taken the initiative and started a pilot service through which they seek to provide a suitable certificate to persons who are intending to work as teachers in British schools abroad.

However, whilst I understand this pragmatic effort to try to plug a gap in protection arrangements, I believe that such checks should more properly be put on a statutory basis and channelled through the CRB. I recommend that further thought should be given as to whether a standard disclosure certificate could be issued even when the job being applied for is abroad.

It would not be proportionate however to provide an enhanced certificate in such cases as I do not believe it appropriate to pass intelligence information abroad as part of the

employment vetting process. There are not the same safeguards in place abroad as we have in relation to UK Registered Bodies nor are we able to enforce the guidance in relation to the use of such information.

Even with a standard certificate, there will need to be careful consideration as to what safeguards need to be in place if such information is to be exchanged. The level of safeguards in place in relation to the EU Framework Decision on criminal records exchange would provide some starting point for this.

Whilst a priority for this arrangement ought to be those seeking to work with children abroad, it could apply to any post that would be 'excepted' from the ROA if the post applied for had been in the UK. Information could also be provided from the barred lists where the post would have amounted to regulated activity if it were in the UK.

I recommend that further thought should be given to allowing British residents to obtain a standard CRB certificate when applying for a post abroad that would be excepted from the ROA if it was in the UK, and to a check of the barred list being made where it would have amounted to regulated activity (recommendation 10 (vi)).

Immigration checks

Many countries require individuals who are seeking a visa for certain purposes to provide evidence that they do not have criminal convictions that would cause their application to be refused. For UK residents the solution is to make a subject access request to the police or to apply to ACRO for a police certificate if they are applying for a visa to a country that uses that service.

Once again I believe that a subject access request is disproportionate in these circumstances and I recognise that the police certificate is provided by ACRO in an effort to remove some of the more minor information

that would otherwise be disclosed. However, I take note that many I consulted said that such a product confused the public. There is a strong view, supported by the ICO, that such checks should more closely align to the disclosure service regime of basic and standard checks.

I believe that Government should make a more proactive decision about what information should be disclosed in such cases, bearing in mind the information that the UKBA uses to make visa decisions in relation to those who seek to come to the UK. They should also consider whether disclosures for this purpose should be put on a statutory footing in the future and where they are best delivered in the new landscape. However, one important lesson from the ACRO experience of issuing police certificates, and which might apply to disclosure certificates more generally, is that there is important police intelligence that can be gathered from such applications and which can, and should, be fed back to the police to act upon.

Sexual and violent offenders

Any strategy for international criminality information exchange should look at what information should be shared about those British residents who have committed serious sexual and violent offences and who may seek to travel abroad to continue their offending behaviour without being detected. I have already indicated that the UK leads the way on this. However, such arrangements will by necessity have to be done on a case by case basis using policing powers and I believe that there is more that can be done to ensure that the approach across the UK is consistent.

I believe that it is right to take action to notify other countries about the travel arrangements of registered sex offenders if there are good grounds to believe this will help to prevent further crime taking place. However, I am aware some forces make much more use of this power than others and the balance probably lies somewhere in the middle. I am convinced though that this is an area



where UK good practice has the potential to influence policy in other countries, particularly within the EU, and which might lead to agreements in the future.

International Criminal Record Checks and the Family Courts

As well as the uses already described above, another area where significant child protection risks could be mitigated is the area of Family Court proceedings.

At the moment in public and private law cases Cafcass or the Local Authority obtains relevant safeguarding information for the court in relation to the adult parties in a case. This information is very similar to the type of information produced for an enhanced criminal record certificate and includes both spent and unspent convictions as well as any relevant police information. Cafcass obtain this information from the police.

However, as is more frequently occurring, one or both of the parties to a case may not be a UK national, or may have spent some time living abroad. Therefore any criminal records checks will not currently show any conviction information from their country of nationality or previous residence.

There can be real benefits when information is shared effectively across national boundaries in such cases. For example in a case under the Hague Convention, a father caring for his children in England was found to have a conviction in Spain for an offence against one of the children for inappropriate and excessive physical chastisement. This enabled the court to make the right safeguarding decisions in relation to the children.

Conversely, failure to obtain such information can cause fundamental problems. For example in a case where Polish national children were smuggled to England, no information about the previous convictions of those who brought them here or the parents who were under investigation by social services in Poland could be obtained. This caused a significant delay in determining their future. Without full knowledge of an individual's criminal background in a different country sound safeguarding decisions can be very difficult to make.

I believe that Government should seek to establish agreements to obtain this information and find the resources to allow this to happen. It is right that if a country agrees to pass criminal information for use in the family court this should be a bilateral process and the UK should be prepared to provide similar information back to those countries.

Within the EU it would make sense to explore with other Member States whether they would allow a request to be made for this purpose through the UKCA-ECR. Also for those public law cases where the police are already investigating allegations against one of the parties, I believe that the police should be seeking the records from that party's country of nationality through the UKCA-ECR as such investigations fall under the definition of criminal proceedings. The police would then be in a position to determine whether any offences disclosed are relevant and should be passed to the family court. It would be helpful if the Home Office guidance could be amended to reflect this.



I appreciate this is a longer term challenge but I am firmly of the opinion that the current arrangements we have through ACRO and UKCA-ECR should be extended and financed to allow Cafcass to obtain this information when deemed necessary for all cases involving parties who have spent significant periods abroad.

The Future for International Criminal Record Sharing

The case for doing more is compelling. Almost daily there are cases in the press relating to overseas offenders and more must therefore be done to ensure the public are adequately protected. For example, less than 15% of those EU nationals arrested in the UK have their national records checked. Just one of the recent press stories I have come across concerned a Polish national convicted of manslaughter after he bound and gagged an elderly burglary victim and left her to die of hypothermia. The offender had twice been arrested for burglary in previous weeks but had given them a false name and so they were unable to identify that he was the subject of a European arrest warrant.

If we are anxious to obtain criminality information from other countries then we must also be willing to provide similar information to them, both about their citizens' offending behaviour here and our own nationals whom we consider might pose a public protection threat abroad.

Agencies are often confused as to what information they can share with other governments in relation to individual cases and the legislative constraints on them are often confusing and inconsistent. This is beginning to cause problems for some agencies, such as UKBA, who are increasingly under pressure from their counterparts abroad to provide conviction information about foreign national prisoners who are being deported at the end of a custodial sentence in the UK. They do not own the information that is requested and there are often human rights concerns about disclosing it.

Following Sir Ian Magee's 'Review of Criminality Information' a cross Government strategy for international exchange was agreed. Despite the best efforts of those working in this area progress has been slow and in some cases has stalled completely. Although the situation is much better than prior to Magee's Review, there is a danger that the task of progression is fragmenting again.

In my view much of this is down to a lack of resource (both people and money) and a lack of clear leadership and direction setting out what the Government's current priorities are. There is no visible champion for this work at Ministerial or senior official level and insufficient funding to properly meet current commitments, let alone expand the work.

Priority needs to be given to funding the current system for international criminal records exchange. For example, UKCA-ECR activities cannot be fully expanded to deal with all EU nationals arrested in the UK without further resource and other agencies such as UKBA and Cafcass are not resourced to obtain overseas information. Where information is obtained it must be shared with other public protection agencies in the interest of public protection rather than being treated as a commercial commodity for which they can be charged. Alternative and innovative methods for funding overseas exchange will consequently need to be considered.

I recommend ensuring that existing and developing initiatives in this area are adequately resourced (recommendation 10 (vii)).

In the light of the work that has already been completed and the issues that have been flagged up by the various agencies involved, I think that the Government would benefit from commissioning a refresh of the international strategy that was produced following the Magee Review.

This should focus effort and resources on those areas that are highest priority for Ministers and also those most likely to make progress (bearing in mind recent experience of trying to take this agenda forward). I have highlighted a number of areas in this chapter that have been flagged up to me during consultation and which I feel are worthy of further consideration in defining a strategy for the future. Government will need to consider how it can more clearly articulate its international strategy, co-ordinate the effort across departments and agencies, and drive forward delivery of that agenda with the resources it has.

To summarise the package of recommendations in this area:

I recommend that Ministers commission further work to refresh the cross-Government strategy for improving the international exchange of criminal records (recommendation 10).

This should include consideration of the following elements:

i) ensuring the transfer of fingerprint records with criminal records as often as possible (particularly with EU Countries);

ii) ensuring greater levels of notification of criminal offences committed by British citizens outside the EU;

iii) looking at whether more can be done to prevent the entry of foreign nationals who have committed serious offences abroad and who present a serious risk to public protection;

iv) seeking agreements to allow the CRB to obtain criminal records from a person's country of nationality where the applicant and employer request this as part of the CRB disclosure process and where adequate safeguards can be put in place;

v) developing a coherent and consistent cross-government policy setting out the circumstances in which foreign governments should be told about the convictions of their nationals and ensuring that all UK agencies adhere to it.

vi) allowing British residents to obtain a standard CRB certificate when applying for a post abroad that would be excepted from the ROA if it was in the UK, and providing for a check of the barred list to be made where it would have amounted to regulated activity; and

vii) ensuring that existing and developing initiatives in this area are adequately resourced (recommendation 10).

Section 6

Conclusions

Section 6: Conclusions

In carrying out this review, it has been brought home to me just how complex the set of systems that underpin the criminal records regime are. These systems have evolved over a long period of time and in response to changing practical demands, technical environments and political imperatives. This historical legacy cannot be reformed at a stroke, but I am convinced that improvements must focus on the basic principles of fairness, proportionality, efficiency and clarity. Above all they must seek to protect the public.

It is vital that more is done to demystify this whole area. That is why I recommend a clear working definition of a criminal record and improved guidance and information for all those interacting with the criminal records regime.

In considering issues of public protection it became apparent that what appears on a criminal record is not an exhaustive or complete list and that relevant information is not included because of the principle of recordability and non-recordability. Conversely, of all those offences that appear on a criminal record, many are neither relevant nor proportionate. If the Government takes up my recommendation of reviewing this area thoroughly then I hope many anomalies currently present can be corrected.

Proportionality needs to inform a fresh look at exactly what records are kept and for how long. Efficiency suggests to me that many of the existing systems should be retained and improved, rather than radically transformed, but the issue of retention of procedural information on the PNC is one which I believe is very pressing to reconsider.

Ensuring fairness and proportionality is crucial for the systems and controls around accessing criminal records. Such records may often need to be kept for extended periods to support public protection and inform the

work of the police and the criminal justice system. However, there must be strict and well enforced arrangements around who can have access and for what purposes.

Based on current developments, there needs to be further movement towards a clearer and more distinct set of responsibilities for managing and disclosing criminal records. This is a key aspiration which would simplify the position for both the public and the agencies that utilise the information.

The police will always play a core role, not least because of their holding and providing of police intelligence where and whenever necessary. However now is not the time to demand costly and consuming national databases. We need to be pragmatic and make the best use of the resources we already have at our disposal. With the correct policies and a forward thinking approach, much useful and practical work can be undertaken now that can improve the landscape.

The importance of effective international exchange of criminal records will continue to grow and I believe this is one of the most significant areas which the Government, the police service and the other relevant agencies will need to focus on as we move forward. There are key aspects of our own domestic systems (such as the effective use of fingerprints and the increasingly balanced approach to employment vetting) which we should champion at international level. It is however an ever-growing gulf in public protection and I urge a cohesive and concerted strategy from Government in this area. With the impending Olympics in 2012 and moving forward, this and the link between Northern Ireland and the rest of the world must be a considered as priorities for Government.

I am very pleased to see that the work in phase one of my review is already helping to drive positive changes to the current disclosure regime. I am conscious that phase two is more about developing a programme

for broader strategic improvement than creating a detailed and rigid plan. However, if the Government is prepared to accept my recommendations I am confident that with input from all the informed and committed people I have consulted, that programme can be achieved.

Annex A

Terms of Reference

Appendix: 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

- (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

Summary of Recommendations

Annex B – Summary of Recommendations

Section 1: Definition & Recording

I recommend that an individual's 'criminal record' should be defined as all their convictions, cautions, reprimands or warnings which are recorded in central police records (**recommendation 1**).

I recommend that the Government conduct an immediate review of which offences are recorded in national police records. (**recommendation 2**).

Section 2: Management

I recommend that the Police National Computer should continue to be the central repository for criminal records for the foreseeable future (**recommendation 3**).

Linked to recommendation 3, I recommend that the Government should begin work immediately on developing and analysing alternative options for sharing and managing criminal records in the longer term (**recommendation 4**).

I recommend that Ministers and their Northern Ireland counterparts should reach agreement urgently on how to fund delivery of the PSNI –PNC criminal records and fingerprint connection (**recommendation 5**).

I recommend that the Government and the police service should move towards a more integrated approach to the administration of criminal records. I further recommend that the scope to expand the role of the DBS over time to provide the customer-facing aspects of a range of disclosure services should be explored. (**recommendation 6**).

Section 3: Access Arrangements

I recommend that:

(i) Access to criminal records via the Police National Computer should only be granted where it is necessary for public protection or criminal justice purposes.

(ii) All such access should be agreed by the Police Information Access Panel (PIAP), based on appropriate business cases and supply agreements.

(iii) All existing supply arrangements should be reviewed within the next 12 months to check they conform to the standards set by PIAP (**recommendation 7**).

I recommend that the systems for individuals to access, challenge and correct their own criminal records should be maintained and better publicised (**recommendation 8**).

Section 4: Guidance

I recommend that the comprehensive and easily understood guidance which I advocated in my phase 1 report should extend to broader aspects of the criminal records system, such as definition, retention and access (**recommendation 9**).

Section 5: International Criminal Records

I recommend that Ministers commission further work to review and update the cross-Government strategy for improving the international exchange of criminal records. This should include consideration of the following elements:

(i) ensuring the transfer of fingerprint records with criminal records as often as possible (particularly with EU Countries);

(ii) ensuring greater levels of notification of criminal offences committed by British citizens outside the EU;

(iii) looking at whether more can be done to prevent the entry of foreign nationals who have committed serious offences abroad and who present a serious risk to public protection;

(iv) seeking agreements to allow the CRB to obtain criminal records from a person's country of nationality where the applicant and employer request this as part of the CRB disclosure process and where adequate safeguards can be put in place;

(v) developing a coherent and consistent cross-government policy setting out the circumstances in which foreign governments should be told about the convictions of their nationals and ensuring that all UK agencies adhere to it.

(vi) allowing British residents to obtain a standard CRB certificate when applying for a post abroad that would be excepted from the ROA if it was in the UK, and to a check of the barred list where it would have amounted to regulated activity; and

(vii) ensuring that existing and developing initiatives in this area are adequately resourced (**recommendation 10**).

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Annex C

Consultees & Contributors

Annex C – Consultees & Contributors

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Lord Justice Goldring	Senior Presiding Judge
Mr Justice Ryder	Presiding Judge of the Northern Circuit
Susan Ferguson	Scottish Government, Criminal Justice Department
Raymond McIntyre	Scottish Police Services Authority, Operations Mgr, Criminal Justice
Gordon McManus	Scottish Police Services Authority, Criminal Justice
Dougal McClelland	Serious Organised Crime Agency
Richard Quinn	UKBA, Head, Criminality and Detention Group
Christopher Stacey	UNLOCK, Head of Projects & Services
Dafydd Huw Davies	Welsh Assembly Government

Annex D

Glossary

Annex D: Glossary

Access NI	Access NI 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 ¹
ACPO	ACPO Association of Chief Police Officers – the national policy body for the police service led by chief police officers
ACRO	ACPO's Criminal Records Office, also designated as the UK Central Authority (UK-ECR)
CAFCASS	Children and Family Court Advisory and Support Service
Caution	A caution is a formal disposal that is given to an adult who has admitted the offence ² but does not require them to appear before the Courts
Chief Officer	A Chief Constable of a Local Police Force
Child	Legally, an individual under the age of 18 years old
Conviction	A decision finding an individual guilty of committing a crime, made in a criminal court by a judge or Magistrate (sometimes involving a jury).
Civil orders	An order available for issue by the courts and law enforcement agencies, as a disposal in certain circumstances.
CPS	Crown Prosecution Service, responsible for prosecuting people in England and Wales charged with a criminal offence
CRB	1) Criminal Records Bureau, a Home Office Executive Agency that provides employers with a disclosure of relevant information about an individual's criminal history, to assist employers in vetting decisions. 2) Criminal Records Bureau, a term used by some police forces to describe their management of the criminal records checking processes
Criminal history	The totality of an individual's convictions and disposals relating to criminal offences.
Criminality information	Defined by Sir Ian Magee in his Review of Criminality Information ³ as: any information which is, or may be, relevant to the prevention, investigation, prosecution, or penalising of crime
DAF	Disclosure Application Form – a standard form issued by the CRB to Registered Bodies to enable the request of relevant police information on a specific individual.
Disclosure Scotland	Disclosure Scotland is an organisation based in Scotland, providing a service designed to enhance public safety through providing potential employers and voluntary sector organisations with criminal history information on individuals applying for posts ⁴

1 Sourced from www.accessni.gov.uk/home/about-ani/what_is_ani.htm

2 Sourced from www.askthe.police.uk/content/q562.htm

3 Available from www.nationalarchives.gov.uk

4 Sourced from www.disclosurescotland.co.uk/about/

Exceptions Order	Regulation sitting beneath the Rehabilitation of Offenders Act which details when a 'spent conviction' may be disclosed due to the nature of the role in question, as listed in the Order.
Penalty Notice of Disorder	Penalty Notices for Disorder (sometimes referred to as 'PNDs') are a simple and swift way for police 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 ⁵ but there is no formal admission of guilt in their issue.
Police information records	Any information, including intelligence held by the police on their local systems, that is not conviction information held on a central record.
Police National Database	The Police National Database (referred to as the 'PND') is a new capability which enables the police service to manage and share its local intelligence and other operational information, nationally. This is not a new database of police information with any new information; instead it will hold copies of existing local information and intelligence about offenders and suspects currently held locally by police forces in the UK. All UK forces are connected to PND and it will be fully operational by 2012.
Registered Body	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 ⁶
Regulated Activity <i>This definition will be changed under the proposals in the Protection Of Freedoms Bill.</i>	<p>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;</p> <p>Activity involving contact with children or vulnerable adults in a specified place (e.g. schools, care homes etc), frequently or intensively;</p> <p>Fostering and childcare;</p> <p>Certain specified positions of responsibility (e.g. school governor, director of children's services, director of adult social services, trustees of certain charities).</p> <p>These positions are set out in the Safeguarding Vulnerable Groups Act 2006⁷</p>
Regulation	Statutory instrument (secondary legislation) setting out the details of provision under powers established in primary legislation.
Reprimand	A formal verbal warning given by a police officer to a young person who admits they are guilty of a minor first offence ⁸

5 Sourced from www.askthe.police.uk/content/Q222.htm

6 Sourced from www.crb.homeoffice.gov.uk/about_crb/what_are_registered_bodies.aspx

7 Sourced from www.crb.homeoffice.gov.uk/faqs/definitions.aspx

8 Sourced from www.yjb.gov.uk/en-gb/yjs/SentencesOrdersandAgreements/Reprimand/

Spent Conviction	A conviction which, under the terms of Rehabilitation of Offenders Act 1974, can be effectively ignored after a specified amount of time, subject to the requirements of the Exceptions Order (as above).
Stakeholder	An organisation or agency with a key operational or policy interest in the issue at hand
Subject Access Request	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.
Unspent Conviction	A conviction is described as 'unspent', if the rehabilitation period associated with it has not yet lapsed, subject to the requirements of the Exceptions Order (as above).
Vulnerable Adult <i>This definition will be changed under the proposals in the Protection Of Freedoms Bill.</i>	<p>A person who is aged 18 years or older and:</p> <ul style="list-style-type: none"> • is living in residential accommodation, such as a care home or a residential special school; • is living in sheltered housing; • is receiving domiciliary care in his or her own home; • is receiving any form of health care; • 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; • is in contact with probation services; • is receiving a welfare service of a description to be prescribed in regulations; • 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); • is an expectant or nursing mothers living in residential care; • is receiving direct payments from a local authority/ HSS body in lieu of social care services; • requires assistance in the conduct of his or her own affairs⁹.

⁹ Sourced from www.crb.homeoffice.gov.uk/faqs/definitions.aspx

<p>Warning (Final Warning)</p>	<p>A Final Warning is a formal verbal warning given by a police officer to a young person who admits their guilt for a first or second offence. Unlike a Reprimand, however, the young person is also assessed to determine the causes of their offending behaviour and a programme of activities is identified to address them.</p>
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