

**REPORT OF THE REVIEW PANEL**

*Employers' Guidance on Recruiting  
People with Conflict-Related Convictions*

**MARCH 2012**

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The term ex-prisoner which is used throughout this report refers specifically to ex-prisoners with conflict-related convictions. Conflict-related convictions are those arising from the conflict in Northern Ireland pre-dating the Good Friday/Belfast Agreement 1998.

## **Acknowledgements**

We would like to express our gratitude to all the organisations and individuals who have engaged with the Panel in the preparation of this report. The cooperation received was extremely appreciated particularly given the voluntary nature of the Panel's work.

We would like to pay tribute to William Poole who made a very significant contribution in guiding the Panel's work as its first independent Chair prior to stepping down in June 2011. Deirdre Stewart and Colin Jack deserve recognition for their work on the Panel prior to moving on to new roles. The support of Sir Bruce Robinson prior to his retirement was also invaluable.

Professor Peter Shirlow, Fergus Devitt, Brendan Mackin, Alan Mercer

March 2012

## Summary Conclusions

- 1) -Where the Employers' Guidance has been implemented by employers it has functioned well and without difficulty;
- 2) -A range of impediments and legal barriers have prevented the Guidance from working as a voluntary arrangement;
- 3) -Given this, the view of the Review Panel is that the Employers' Guidance should be complemented by legislative change;
- 4) -The Panel recommends removing Section 2(4) of the Fair Employment and Treatment (Northern Ireland) Order 1998/allowing Article 2 (4) to remain but placing a caveat that it would not apply to those conflict-related convictions that pre-date 1998;
- 5) -In the interim and absence of the Guidance being supported by statutory change a review panel should continue to exist as an appeal mechanism for job applicants with conflict-related convictions;
- 6) -The Panel notes the increased cooperation between ex-prisoner groups from across the political divide and recommends that these groups should continue to work together to engage with employers and develop employability and training initiatives to meet employer needs.

## **1. Background – Employers' Guidance on Recruiting People with Conflict-Related Convictions**

In May 2007, prior to the restoration of devolution, the Office of the First Minister and deputy First Minister issued guidance for employers on the recruitment of people with conflict-related convictions. This satisfied a commitment given by the British Government within the St Andrew's Agreement to work with business, trade unions and ex-prisoner groups to produce guidance for employers in the private and public sectors.

The guidance was developed by the Ex-Prisoners Working Group (then co-chaired by Sir George Quigley and Sir Nigel Hamilton), comprising representatives of Government departments, the Irish Congress of Trade Unions, the Confederation of British Industry and a representative group of ex-prisoners.

The voluntary guidance for employers is aimed at reducing barriers to employment and enhancing the reintegration of ex-prisoners with conflict-related convictions. To this end, the guidance effectively advises employers to disregard any conflict-related conviction unless it is materially relevant to the post to be filled. By virtue of this guidance, the responsibility for demonstrating material relevance rests with the employer.

The overarching principle upon which the guidance is based is: 'that any conviction for a conflict-related offence that pre-dates the Good Friday Agreement (April 1998) should not be taken into account unless it is materially relevant to the employment being sought'.

The guidance is designed to assist employers follow best practice in recruiting people with conflict-related convictions. Those are convictions arising directly from the

period of conflict in Northern Ireland pre-dating the Good Friday/Belfast Agreement in 1998. Generally, they are offences listed in the relevant schedules to the various Emergency Provisions (Northern Ireland) Acts pre-April 1998. These are defined further in Appendix 4.

## **2. Purpose of Review Panel/Task**

The Employers' Guidance outlined details on the formation and composition of a tripartite review panel. In its terms of reference (included at Appendix 2) the Panel was tasked with considering individual cases, building up evidence regarding the acceptance and adoption of the Guidance, and producing a progress report on the impact of the Employers' Guidance after an 18 month period.

The Review Panel was formally established in August 2010 with a view to producing its findings after 18 months. In reaching our conclusions/recommendations we are mindful of the time that has elapsed since the Employers' Guidance was issued in May 2007. In addition we acknowledge the delay in setting up the Review Panel which was originally intended to report after a period of 18 months from the Guidance being issued.

As stipulated within the Employers' Guidance, the Review Panel is tripartite in nature comprising one representative from each of the parties involved in putting together the Guidance, as well an independent Chair. The Panel comprises the following:

- Professor Peter Shirlow (Independent Chair);
- Fergus Devitt (Office of the First Minister & deputy First Minister representative);
- Brendan Mackin (Irish Congress of Trade Unions representative); and
- Alan Mercer (Confederation of British Industry representative).

The make up of the Panel has changed since it was originally established in August 2010. However the representative organisations have remained the same. Further detail on these changes is included at Appendix 3.

The Secretariat to the Review Panel was provided by staff from the Equality & - Strategy Directorate within the Office of the First Minister and deputy First Minister. -

The Panel published an interim report in June 2011. This is included at Appendix 8.

### **3. Ex-Prisoners Working Group**

The Ex-Prisoners Working Group was instrumental in the production of the *Employers' Guidance on Recruiting People with Conflict-Related Convictions*. This Working Group was established primarily to consider and address the barriers facing people with conflict-related convictions in accessing employment as well as goods, facilities and services.

The Ex-Prisoners Working Group continues to meet on a quarterly basis under the Chairmanship of the Head of the Civil Service. Organisations represented on the Working Group include ex-prisoner groups, the CBI, trade unions, the Equality Commission and other key organisations with a remit relevant to the main issues addressed by the Group. Staff from within OFMDFM provide the Secretariat to this Working Group.

As per the Review Panel's terms of reference this report is for submission to the Chair of the Ex-Prisoners Working Group. It will be for the Working Group to decide whether and how this report should be disseminated more widely.

## 4. Our approach

In determining an information base upon which to examine the impact of the Employers' Guidance on Recruiting People with Conflict-Related Convictions the following approach was adopted and included:

- Meeting employers, service providers and related regulatory bodies;
- Acting in a lobbying role for the Employers' Guidance in support of the Ex-Prisoners Working Group;
- Considering individual cases from ex-prisoners with regard to related employment issues;
- Examining the outline process which would need to be taken if the guidance was to be put onto a statutory basis; and
- Reporting to the Ex-Prisoners Working Group on the above.

The following outline process was agreed with regard to cases that emerged in relation to employment issues:

- The Secretariat would inform the Panel that a case had been received;
- Individuals would be encouraged in the first instance to fully engage with any appeals process;
- Once this process was completed the Panel would consider the case and what action would be taken. That usually involved contacting the relevant employers and meeting with those ex-prisoners who cited cases in which the Guidance appeared to be ineffective.

## 5. Evidence considered by the Panel

The evidence considered by the Panel included:

- 7 specific cases addressed by Panel with regard to issues brought to the Panel by ex-prisoners;
- Meetings with 17 employers and other bodies in which the Panel was notified of relevant issues impacting upon the Guidance principles. However, given the lack of statutory authority a number of organisations refused to meet or respond to the Panel. 3 of the employers who refused to meet set out their position in correspondence;
- Since April of 2010 an Information & Communication subgroup of the Ex-Prisoners Working Group has been engaged in an ongoing programme of engagement with employers in order to raise awareness of the Employers' Guidance. Information and feedback from this engagement also informed this report;
- 9 meetings and a workshop with ex-prisoners and ex-prisoner groups in order to seek their views and experiences on the impact of the Guidance;
- Analysis of academic and other information relating to ex-prisoner issues;
- Information provided by NIACRO on calls to their employment advice line (over the period 2006-2011) regarding conflict-related convictions.

The Panel also considered other evidence. It was found that under the early release provisions of the Belfast Agreement, some 452 prisoners have been released (197 loyalist, 242 republican and 13 non-aligned) on license. Over the past twelve years around 6 per cent of these prisoners have had their licenses revoked. Among other (non conflict-related) offenders, 48 per cent are usually re-imprisoned within two years. This in itself indicates the variation between the two prisoner types in Northern Ireland with regard to their constitution, role and activity.

Moreover, the Panel is aware of the general lack of knowledge of the continuing barriers faced by people with conflict-related convictions. Aside from employment they can also face significant challenges in relation to insurance, health, ageing issues, poverty and international travel. Within the former prisoner community there is a variable level of knowledge and interpretation of existing legislation. Some prisoners are aware of legal barriers but others are not and only become aware when they apply for work or engage services. Some are of the belief that their convictions are spent and others have generally assumed that applying for work is a worthless exercise due to the Fair Employment and Treatment (Northern Ireland) Order 1998.

In effect there is a diffuse knowledge base among employers, ex-prisoners, and the media. Furthermore there are examples of individual MLAs who believe that the Good Friday/Belfast Agreement granted an amnesty to ex-prisoners and that there were therefore no issues for them. This lack of comprehension among diverse groups, individuals and bodies in part explains why a range of barriers continue to exist for ex-prisoners in society.

## 6. Relevant Statistics and Research

Academics point to significant challenges in terms of determining the number of ex-prisoners here. There are no published official statistics on the number of persons imprisoned for conflict-related offences. An estimate, based on data provided by former prisoner groups, is that approximately 15,000 Republicans, and between 5,000 and 10,000 Loyalists were imprisoned for conflict-related offences. Sir George Quigley (OFMDFM 2007) estimated that there are up to 30,000 people with conflict-related convictions in Northern Ireland. More recently Jamieson, Shirlow and Grounds (2010) estimated that ex-prisoners make up between 13.5% and 30.7% of the Northern Irish male 50-59 years cohort and between 5.4% and 12.2% of the 60-64 years age cohort. Their approach estimated that there could be up to 40,000 persons with conflict-related convictions.

Those with conflict-related convictions have been the subject of a wealth of academic analysis and research over the past decade. A literature review carried out by Professor Bill Rolston in 2011 (Review of Literature on Republican and Loyalist Ex-Prisoners [http://www.ofmdfmi.gov.uk/final\\_literature\\_review.pdf](http://www.ofmdfmi.gov.uk/final_literature_review.pdf)) into the range of research in this area highlighted a number of significant research findings, some of which are included in Appendix 7. The Panel see the following research findings as having particular relevance to this report and the Employers' Guidance generally:

- 40% of republican former prisoners and 30% of loyalists were unemployed; former prisoners tended to find jobs as taxi drivers, doormen, labourers – low-paid and within their own communities (Shirlow 2001);
- Ex-prisoners are four times as likely to be unemployed as others in Northern Ireland; various factors militate against employment: the general economic situation, the refusal of employers to employ, security concerns, restricted access to training and ageism, as well as the statutory rules whereby ex-

prisoners can be legally discriminated against in relation to employment opportunities (Jamieson, Shirlow and Grounds 2010);

- Just over half (54.7%) of respondents to 2010 research (Jamieson, Shirlow, Grounds) reported that they had been refused employment because of their conflict-related conviction.

In sum a body of academic research consistently indicates that many ex-prisoners, despite the promotion of rehabilitation, reintegration and inclusion within the Good Friday/Belfast Agreement, experience labour market exclusion and legislative barriers regarding their inclusion into economic life. Resulting low income may also predict psychological morbidity, the extension of social exclusion, poor life chances and negative impacts upon their families.

## **7. Residual Criminalisation/Fair Employment and Treatment (NI) Order 1998**

The literature review completed by Professor Bill Rolston in 2011 highlighted a number of factors which could be interpreted as representing residual criminalisation for people with conflict-related convictions. The Panel would point to the following extract from his literature review as being of particular relevance to this report:

*'Employment difficulties were part of a package of experience for ex-prisoners which has been termed 'residual criminalisation' (Coiste 1999c; Shirlow and McEvoy 2008; Shirlow et al. 2005). Under the terms of their release, ex-prisoners are released on licence. The GFA did not grant an amnesty. Under the Rehabilitation of Offenders (NI) Order 1978, convictions of more than two and a half years can never be spent. Additionally, under the Fair Employment and Treatment (NI) Order 1998 it is legal to refuse employment to someone whose political opinions 'approve or accept the use of violence for political ends', the effect, although not the intention, of the Fair Employment and Treatment (NI) Order 1998 is that no politically motivated convictions, regardless of length, can ever be spent (McKeever and O'Rawe 2007). Together these legal blockages become part of the overall problems facing former prisoners in terms of accessing employment opportunities and financial services.'*

In effect ex-prisoners with conflict-related convictions do not receive equal treatment with regard to applications for employment given that Section 2(4) of the Fair Employment and Treatment (Northern Ireland) Order 1998 states that;

*'In this Order any reference to a person's political opinion does not include an opinion which consists of or includes approval or acceptance of the use of violence for political ends connected with the affairs of Northern Ireland,*

*including the use of violence for the purpose of putting the public or any section of the public in fear.'*

Evidence shows that ex-prisoners' knowledge of that legislation can lead to a fatalistic attitude in that declaration of a criminal conviction will automatically lead to disbarring. In addition, the issue of convictions being checked has risen in recent years due to employers utilising newly developed mechanisms for detecting convictions. Recent changes brought about in relation to vetting and barring arrangements for work with children and vulnerable adults have also increased the trend for background checks to be required and presented additional difficulties for those with conflict-related convictions.

Although not the original intention, these arrangements have served to exacerbate the difficulties ex-prisoners face in accessing employment. These can also present difficulties for those who may have been in an employment post for some time who may subsequently be required to undergo checks. In particular a need for vetting checks can be a barrier to mobility within an organisation (in relation to moving to posts which require background checks) as well as leading to a reluctance to apply for promotions.

## 8. Case Law - McConkey & Marks v The Simon Community

On 29 December 2006, the Fair Employment Tribunal handed down a decision relating to a long running case involving two individuals with conflict-related convictions. The applicants (Mr McConkey and Mr Marks) in this case had applied for employment with the Simon Community NI as a residential support worker and a night worker. The applicants had committed criminal offences of a paramilitary nature involving violence. They were unsuccessful in being appointed to these posts following the disclosure of their convictions.

The Tribunal accepted that both applicants, at the time they applied for the jobs in question, no longer supported the use of violence for political ends. The Tribunal found that, subject to Article 2 (4) of the Fair Employment and Treatment (NI) Order 1998, the applicants had been discriminated against on the grounds of their political opinion. However, because of Article 2 (4), the Tribunal found that the applicants' claims of political discrimination must fail and their cases were dismissed. Article 2 (4) excludes a political opinion supporting the use of violence for political ends connected with the affairs of Northern Ireland from the general protection against discrimination.

The Tribunal considered that Article 2(4) applied to political opinions held in the past, as well as those held in the present. Despite its findings, the Tribunal did suggest that the case highlighted the need for the legislation to be reviewed in light of more recent political developments.

### *Court of Appeal Judgment*

Mr McConkey and Mr Marks subsequently appealed the decision of the Fair Employment Tribunal to the Court of Appeal in Northern Ireland. The Court of Appeal dismissed their appeals. The Court of Appeal held that the Tribunal had

erred in deciding that the acceptance or approval of violence for political ends in connection with the affairs of Northern Ireland was a political opinion within the meaning of the fair employment legislation. McConkey & Marks appealed the Court of Appeal decision to the House of Lords.

#### *House of Lords Judgment*

The House of Lords in May 2009 subsequently upheld the Court of Appeal decision and dismissed Mr McConkey and Mr Marks appeals. It decided that the Simon Community did not refuse to employ Mr McConkey and Mr Marks because of their former political beliefs, but because of a concern that employing them might pose risks to the vulnerable people they cared for. The House of Lords also commented that “even if the Simon Community did indeed dismiss the appellants because of their former approval of the use of violence for political ends connected with the affairs of Northern Ireland, it was lawful for the Community to do so”.

This case law has considerable implications for people with conflict-related convictions seeking employment and made the effective implementation of the voluntary approach adopted through the Employers' Guidance ever more challenging.

## **9. Key Findings - Impact of Employers' Guidance on Recruiting People with Conflict-Related Convictions**

*The Review Panel has detected positive impacts regarding the Guidance principles. These include:*

- i. - The adoption of the Guidance principles by 5 local councils, a major public sector employer, and a major retailer;
- ii. - We are aware of 8 other employers (from sectors including local government, retail, hospitality, manufacturing) who have confirmed that their current policy and practice fully aligns with the principles of the Employers' Guidance;
- iii. - The endorsement of the Guidance principles by the following: Confederation of British Industry, NI-ICTU, Federation of Small Businesses, Business in the Community, Londonderry Chamber of Commerce, NI Chamber of Commerce;
- iv. - Where the Guidance has been adopted it has worked for employers and applicants without any difficulty;
- v. - Employers stating that they would not bar an ex-prisoner from employment on the basis of a personal opinion;
- vi. - An awareness among employers that some ex-prisoners do not declare their conviction owing to a fear of being excluded or their conviction becoming common knowledge;
- vii. - Evidence that some politicians have taken up cases on behalf of ex-prisoners from across the political spectrum.

*However the Review Panel also found less positive outcomes regarding the Guidance principles:*

- i. - There is a lack of awareness of the Guidance among employers and the adoption of the Guidance principles is low. This, the Review Panel argues, is due in the main to the Guidance not being on a statutory basis;
- ii. - Particular employers indicate that they will not push the implementation of the Guidance within their organisations if it is voluntary;
- iii. - There is a lack of understanding of what constitutes spent/unspent convictions and the impact of the Rehabilitation of Offenders legislation (a brief outline of this is included at Appendix 5);
- iv. - The Panel was informed by ex-prisoners of cases where recruitment agencies had upon their verbal declaration of a conflict-related conviction told them that they did not need to make such a declaration as it was spent. Once placed with an employer the individuals were subsequently dismissed by their then employer for non-declaration. In such cases ex-prisoners claimed that despite stating they had followed the initial advice given to them by recruitment agencies this was not taken into consideration in their subsequent dismissal. Cases such as these highlight the lack of understanding among employers, recruitment agencies and individuals in relation to the relevant legislation;
- v. - The Panel observed that agency workers present a slightly different category for consideration as the involvement of a recruitment agency as an intermediary made it more difficult to clearly determine where decisions are made regarding conviction and employment;
- vi. - Evidence from cases raises concerns regarding the apparent lack of employment rights given to Agency employed staff particularly in relation to dismissal, and a right to a route of appeal with representation. These concerns are not limited to people with conflict-related convictions;
- vii. - The Panel notes the coming into operation of the Agency Workers Regulations on 5 November 2011. These regulations are welcome in giving agency workers

- the same basic employment and working conditions as if they had been recruited directly;
- viii. A lack of evidence regarding how many candidates who did disclose their conviction were subsequently determined to be unsuitable for employment owing to their declaration;
  - ix. Individuals who have been successfully trained to undertake security related positions (e.g. as doormen, security guards) but were then unable to take up employment owing to a refusal of the Security Industry Authority to issue licences as a result of their convictions (this issue is explored further in section 11);
  - x. Non-declaration by ex-prisoners is also an issue of concern. Some ex-prisoners do not declare their convictions for political reasons whereas others do not wish for there to be any public disclosure of what they now view as a period in their life that they wish to remain private. This is compounded by many such persons not having any links with ex-prisoner groups, and therefore not having had the benefit of advice that their convictions remain unspent and need to be declared. This is particularly the case when they were released from prison some time ago;
  - xi. A case where an ex-prisoner did not tick the box regarding convictions but wrote onto the application form that they had a conflict-related conviction. They were not employed as they had 'not' declared their conviction;
  - xii. Ex-prisoner groups also report examples of where family members and relatives who hold no conviction or relationship with paramilitary groups have been disbarred from employment owing simply to a family link – these examples mainly relate to security related positions. There is thus a potential generational impact;
  - xiii. There are reports of difficulties with online recruitment that present an automatic bar when declaring convictions;

- xiv. Some employers have recruitment policies which are set at a national or international level which are not therefore cognisant of the particular circumstances of the conflict in Northern Ireland nor the difference between conflict-related and other convictions;
- xv. Some large scale employers such as the Northern Ireland Civil Service (NICS) have not adopted the Guidance principles. The Panel is of the view that the non-adoption of the Guidance by the NICS has the capacity to undermine any campaign to promote its adoption by employers, and further demonstrates the need for legislative change;
- xvi. The Panel notes the findings of 2010 research (Jamieson, Shirlow, Grounds) which concluded that 'the Guidance issued to employers in Northern Ireland by OFMDFM in 2007 has not been effective in removing the barrier to employment that having a conflict-related conviction poses. Therefore we recommend that consideration should be given to putting the provisions of the voluntary code on to a statutory basis';
- xvii. Through a specific case the Panel became aware of the negative impact that EU Directives can have on the employment of people with conflict-related convictions. This can be the case where EU Directives set prescriptive criteria which do not take account of local circumstances. The particular case in question concerned the setting of a 'good repute' requirement in relation to the issuing of a transport operator licence. This represented a barrier to employment for those with conflict-related convictions (this barrier will be removed in the near future through new regulations). Government departments should be aware of the need to avoid the implementation of any additional barriers when transposing EU Directives into local legislation. At the same time ex-prisoner groups have a role in contributing to any consultations to ensure their views are taken into account in any upcoming legislative changes;

- xviii. - Some of the negative issues highlighted in this report could be aided (and have been in many cases) by ex-prisoner groups. For example they have a role in encouraging their client base to encourage the declaration of convictions when applying for employment. It is however recognised that significant numbers of ex-prisoners are not in contact with ex-prisoner groups;
- xix. - The Panel has been made aware that the issues impacting on those with conflict-related convictions in Northern Ireland also apply to those who have moved away to live in other parts of the UK/Ireland and further afield.

*The Panel noted the following examples of steps employers have taken to implement the Guidance Principles:*

- i. - There are examples of employers who have removed questions about conviction from their application forms (necessary checks are carried out after an individual has been recommended for appointment). These employers report that doing this has had no negative impact on either the length of time taken to recruit or on internal bureaucracy;
- ii. - The Panel has observed that it can be useful for employers to split recruitment responsibilities among several staff so that the same staff do not access all details of an application (e.g. assess initial application, undertake interviewing, assess conviction information). Some large employers already have this practice in place. It is however recognised that this capacity may not be achievable for employers with smaller staff pools.

## 10. Impact of AccessNI

Arguments were presented to the Review Panel through individual cases and from organisations regarding AccessNI which is the criminal history disclosure service introduced in Northern Ireland in April 2008 (a brief overview of the AccessNI disclosure process is included at Appendix 6).

There is evidence that the use of AccessNI checks has been counter to the principles of the Employers' Guidance. There are also other issues in relation to AccessNI which – although not the original intention - can result in negative employment outcomes and experiences for people with conflict-related convictions:

- It was contended that AccessNI checks were used by employers for positions in which convictions were not materially relevant;
- There are evident cost implications of frequent checks which is a particular problem and barrier for those on low incomes or who are unemployed. This can be compounded by examples of some organisations who charge additional administration fees;
- The Panel met with Sunita Mason, the individual appointed to carry out a review of the criminal record disclosure system in Northern Ireland. It notes the publication of the first phase of her review (*A Managed Approach – A Review of the Criminal Records Regime in Northern Ireland*) and in particular welcomes her recommendations that:
  - > where employers knowingly make unlawful criminal record check applications, they are subject to suitable penalties and sanctions;
  - > a system of portable disclosures and updated on-line checking be introduced as quickly as possible in Northern Ireland;
  - > the Department of Justice should bring forward proposals to filter out convictions which are both old and minor and criminal information such as

cautions for disclosure purposes. The Department should consult widely on this to ensure their proposals command appropriate support;

- The Panel would also agree with her view that 'in many instances the use of criminal records checking for employment purposes has gone too far. There are a number of checks that are disproportionate to the roles being applied for' and that 'It is apparent that information on criminal records checks can be used in an inconsistent manner';
- In her phase one report she also helpfully indicated that the Employers' Guidance could be given more prominence and that AccessNI could play a role in this. The Panel understands that AccessNI have subsequently taken steps to assist with raising awareness of the Guidance and this is welcome.

## 11. Impact of the Security Industry Authority

The Security Industry Authority (SIA) represents a body which governs entry to a key profession – the security industry – which has been a popular (and previously accessible) sector of employment for people with conflict-related convictions. The SIA is responsible for regulating the private security industry according to the requirements set out by the Private Security Industry Act 2001, the legislation under which it was established. The SIA assesses the suitability of an applicant to work in the private security industry and grants or refuses a licence, according to criteria. Its remit was extended to Northern Ireland in May 2009.

Since the SIA's inception, issues have arisen on an ongoing basis in relation to people with conflict-related convictions. The Panel has considered these issues in the course of its work:

- The Panel met with the SIA and raised several specific concerns including the treatment of life/determinate/concurrent sentences, remand, and the general feeling among ex-prisoner groups that there is a lack of clarity. While this meeting was useful it would be fair to say that there remains a lack of clarity over certain issues;
- The SIA expressed the view to the Panel that their policy and practice accommodated the spirit of the Good Friday/Belfast Agreement and that their approach had generally been very successful. They evidenced this with the fact that their rejection rate in NI is 2.7%. This compares to the UK rejection rate of 3.7%;
- While the Panel welcomes the SIA's continuing willingness to engage on these issues it is clear that there remain several significant difficulties including:
  - an inconsistency of approach by the SIA in relation to the treatment of different types and lengths of conviction;

- applicants for SIA licences with convictions are invited to provide evidence as mitigation. Character references are one part of this mitigation and these are required to be submitted by someone who is aware of the applicant's offence/s. This can present a difficulty for individuals whose offences may have occurred sometime ago, and who may not have informed their current friends/colleagues of their convictions;
  - the SIA may also require information from applicants' legal representatives. Again this can present practical difficulties in relation to more historic convictions for example when the solicitors involved at the time of the conviction may no longer be in practice;
  - an overall lack of clear guidance over how different convictions will be treated.
- Together these issues, and a range of individual cases, seem to indicate that the SIA can be a barrier to employment for people with conflict-related convictions. This is particularly evident as previous arrangements for working in the security industry (involving local councils, PSNI etc) would seem to have been successful. While the SIA have stated that their practice aligns with the principles of the Employers' Guidance, the experience of individuals would not seem to support this claim;
  - The Panel understands that the Department of Justice will shortly be launching a consultation on future arrangements for the regulation of the private security industry. Ex-prisoner groups should take the opportunity to fully contribute to any consultation on future arrangements.

## **12. Overall assessment of impact of Employers' Guidance**

The Review Panel has developed a sound knowledge of the issues relating to the Guidance principles. There is undoubtedly a significant body of qualitative evidence from ex-prisoners, ex-prisoner groups and other organisations. However, there is no agreed approach regarding how ex-prisoners can gain more access based upon merit into the labour market of Northern Ireland.

To date the Panel has found no firm evidence of employers not wishing to employ ex-prisoners when convictions are not materially relevant. Some employers have adopted the Guidance but others are unaware of it or are not prepared, as with any voluntary guidance, to implement such principles unless on a statutory basis. Ex-prisoners do not hold a precise knowledge of labour market issues and the impact of their convictions. Some are aware that their convictions can be used to exclude them from employment whereas others believe that their convictions are spent or do not accept that their convictions are of a criminal nature. As noted, many ex-prisoners have no contact with ex-prisoner groups and it is very difficult to know what their awareness of the Guidance principles is.

There is generally no incentive, although legally obliged, in declaring a conflict-related conviction due to present legislation and given that so few employers have adopted/are aware of the Guidance principles. Some ex-prisoners do declare but we have no evidence of what the impact of doing so may be as employers do not present records regarding said declarations.

Evidently, there is strong disbarring legislation on the one hand but employers willing to adopt the guidance on the other. Without doubt there is no singular approach to the employment or otherwise of ex-prisoners but strong and enduring evidence of a mixture of approaches among employers and long-term

unemployment among those with conflict-related convictions. There is no evidence or monitoring available to determine if the Guidance principles led to increased employment among ex-prisoners. But as the Review Panel found, there is evidence of those who wish to work but who are misadvised about their convictions and the need to declare, or those who have had negative experiences when applying for work.

With regard to a complex and uneven policy and employment landscape the Review Panel would concur with NIACRO's contention that there is a need for legislative change in relation to the employment of people with conflict-related convictions. NIACRO believe that the voluntary approach is not working and does not work in several areas of employment in which such convictions are not materially relevant. NIACRO found that since the Employers' Guidance was introduced 50% of enquiries to their employment advice line from people with conflict-related convictions have related to disclosure (of conviction) and the Employers' Guidance. An additional 23% of enquiries were related to either AccessNI or the Security Industry Authority. They have also received 38 calls from employers concerning issues related to conflict-related ex-prisoners. In sum, the majority of such calls are related to issues linked to either the Employers' Guidance or the Fair Employment and Treatment (Northern Ireland) Order 1998.

In their meeting with the Panel NIACRO also stated that there were several international examples of how voluntary approaches do not work and also that employers are unlikely to take action unless obligated by legislation. Within the Northern Ireland context Lisa Glennon and Brice Dickson have argued that the inclusion of older people is only achievable via appropriate statutory obligation. Bob Osborne in his review of equality building has linked effectiveness with regard to an evolved statutory setting. At the UK level Dalmeny and Jackson have shown that with regard to food provision in hospitals government guidelines are generally

ineffective in terms of achieving universal nutritional provision. In a wider international context there are a plethora of studies which underline the variation in terms of impact between guidelines and statutory regulation. In assessing the impact of statutory change in the criminal justice system and the inclusion of victims, Barry Ruback and his colleagues found significant positives brought forth by statutory commitment. A similarly positive impact is also to be found with regard to the impact of shifts from guidelines to statutory commitment regarding the wearing of seat belts, inclusion of ethnic minorities in labour markets, equality by gender and sexuality and legal provision for the disabled.

There is also a significant body of work at the international level, notably from the United Nations and World Bank, which pinpoints the importance of DDR (demobilization, disarmament and reintegration) as a strategy in conflict recovery and societal healing. The positive examples of DDR which have led to sustained peace have each aimed for the inclusion of formerly armed combatants within civic society. Within those cases employment/economic wellbeing has been a key frame within which to deliver peace and stability.

Within Northern Ireland 'dissident' groups use examples of the exclusion of ex-prisoners as a means for negative and hostile propaganda. Within such negative discourse the fact that ex-prisoners are disbarred and excluded from civic society aids their capacity to undermine the merits of peace building.

### 13. Conclusions/Recommendations

In determining the conclusions and recommendations of *Recruiting People with Conflict-Related Convictions, Employers' Guidance* it is important to note that the Guidance stated that;

*'...conflict-related convictions of 'politically motivated' former prisoners, or their membership of any organisation, should not generally be taken into account [in accessing employment, facilities, goods or services] provided that the act to which the conviction relates, or the membership, predates the Agreement. Only if the conviction, or membership, is materially relevant to the employment, facility, goods or service applied for, should this general rule not apply.'*  
(OFMDFM 2007, paragraph 2.5)

The Review Panel has detected adoption of those principles and also employers who generally work within the same form of guidance when recruiting ex-prisoners. But there is no strong evidence that across Northern Ireland there has been an acceptance of the Guidance *and* that conflict-related convictions should not bar people with conflict-related convictions unless the conviction was *'manifestly incompatible'* with the job, facility, goods or service in question.

In the cases and information brought to the Review Panel by former prisoners the issue of declaration, or in some cases misadvised non-declaration, has led to non-employment or sacking. In none of these cases was there evidence of the said employee/applicant seeking employment that was *'manifestly incompatible'* with the job gained/applied for. Moreover, due to Fair Employment legislation, ex-prisoners despite the Guidance cannot submit adequate grounds regarding their treatment that can be adequately addressed via legal means. The Panel in effect could only

represent such cases and in so doing promote the Guidance, offer practical advice and address related concerns.

The work of the Review Panel may have been aided by additional resources so that they could determine if employers were rejecting applications from ex-prisoners whose employment would not have been manifestly incompatible. But again, notwithstanding the major financial cost of doing so, the lack of statutory authority to enforce employers to engage with the Panel would have rendered such an approach as largely invalid. What the Panel has found is a very uneven and contradictory policy and employment landscape for ex-prisoners and that present Fair Employment legislation obviates any potential for the Guidance to achieve its intended goals. In addition as we highlight in this report there are a range of other factors such as EU Directives, vetting & barring, and security industry licensing which can result in negative outcomes for people with conflict-related convictions.

As NIACRO stated in their submission to the Panel:

*'The area of conflict related convictions has always been an issue. It was significant when the conflict was in existence. Paradoxically the legislative barriers were not as many. Since the cease fires were declared and the Good Friday Agreement was signed legislative, structural and attitudinal barriers have increased.'*

The Guidance did aim for an atmosphere that would encourage the employment of ex-prisoners but there was no power to engender such commitment. Some employers have promoted an atmosphere which encourages declaration or even have removed the need to declare convictions.

The Employers' Guidance states that:

*'The operation of the guidance will be reviewed after 18 months. If there is evidence that the voluntary arrangement is demonstrably not working it is the view of the Government that the voluntary arrangement should be put on a statutory basis.'*

**On the basis of the information gathered, the view of the Review Panel is that the voluntary arrangement requires legislative change in order to work effectively. Removing the statutory basis for discrimination of people with conflict-related convictions would mean that ex-prisoners should have equality of opportunity to access the labour market unless their conviction is manifestly incompatible with the job, service, facility or goods available.**

That would not involve additional legislation but as noted change to existing Fair Employment legislation. This would not involve any forms of positive discrimination or otherwise as job applicants would have to be appointed on merit. The issue at the heart of such change is that of compatibility, merit and capacity and is not an amnesty or any version of it. That is in the view of the Panel the only feasible way in which to reduce barriers to employment and enhance the reintegration of ex-prisoners and at the same time protect employers who require declaration of any conviction given the nature of the employment offered.

In summary the conclusions of the Panel are:

- 1) Where the Employers' Guidance has been implemented by employers it has functioned well and without difficulty;
- 2) A range of impediments and legal barriers have prevented the Guidance from working as a voluntary arrangement;
- 3) Given this, the view of the Review Panel is that the Employers' Guidance should be complimented by legislative change;
- 4) The Panel recommends removing Section 2(4) of the Fair Employment and Treatment (Northern Ireland) Order 1998/allowing Article 2 (4) to remain but

placing a caveat that it would not apply to those conflict-related convictions that pre-date 1998;

- 5) -In the interim and absence of the Guidance being supported by statutory change a review panel should continue to exist as an appeal mechanism for job applicants with conflict-related convictions;
- 6) -The Panel notes the increased cooperation between ex-prisoner groups from across the political divide and recommends that these groups should continue to work together to engage with employers and develop employability and training initiatives to meet employer needs.

A continuance of the status quo would result in continued anomalies within employment and wider society and allow for the general exclusion of ex-prisoners in relation to employment.

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## **Appendix 1 Employers' Guidance on Recruiting People with Conflict-Related Convictions**

(Available from [www.ofmdfmni.gov.uk/1.05.07\\_ex\\_prisoners\\_final\\_guidance.pdf](http://www.ofmdfmni.gov.uk/1.05.07_ex_prisoners_final_guidance.pdf))

### **1 Introduction**

- 1.1 This guidance is for all employers in the public, private and voluntary sectors. It has been developed by a working group co-chaired by Sir George Quigley and Nigel Hamilton and comprising representatives of Government departments, the Irish Congress of Trades Unions, the Confederation of British Industry and a representative group of ex-prisoners. It fulfils the commitment to the ex-prisoners' constituency in the Good Friday Agreement and also the commitment given more recently by the Government in the St Andrews Agreement.
- 1.2 The group was tasked, over a year ago, with looking at the impediments to ex-prisoners with conflict-related convictions accessing employment, goods, facilities and services. This guidance focuses on recruitment, in regard this particular group of ex prisoners, but is readily transferable to deal with goods, facilities and services. Separate guidance will be developed and promulgated in regard to goods, facilities and services.
- 1.3 The guidance is designed to assist employers follow best practice in recruiting people with conflict-related convictions. Those are convictions arising directly from the most recent period of conflict in Northern Ireland. Generally, they are offences listed in the relevant schedules to the various Emergency Provisions (Northern Ireland) Acts pre-April 1998.
- 1.4 The guidance is not meant to be comprehensive, nor is it meant to deal with every eventuality. The Government recognises that the transposition of the agreed principles underpinning the guidance will be for employing organisations and their human resource professionals.
- 1.5 In summary, the basic principle arising out of the main report by the working group is that any conviction for a conflict-related offence that pre-dates the

Good Friday Agreement (April 1998) should not be taken into account unless it is materially relevant to the employment being sought. Below is a simple, step-by-step guide to be followed by employers in dealing with job applicants who have conflict-related convictions.

## **2 Context**

*"The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, retraining and/or re-skilling, and further education."*

### *The Good Friday Agreement (April 1998)*

- 2.1 Figures estimate that up to 30,000 people have spent time in prison due to the conflict in, or about, Northern Ireland. The vast majority were young men when convicted. The Good Friday Agreement recognised the role of prisoners in the peace process and their influence in wider peace building processes.
- 2.2 Many ex-prisoners, since release, have played active and positive roles in conflict transformation processes within republicanism and loyalism. The importance of these processes has been well documented and evidenced by a number of international studies.
- 2.3 The report of the ex-prisoners' working group provides personal accounts documenting the experience of this group of former prisoners as they have sought to access employment, facilities, goods and services. It reveals systemic, structural and attitudinal barriers in accessing employment in the public and private sectors; and in accessing goods, facilities and services more generally.

2.4 The report argues that there are significant societal and economic imperatives to address positively the reintegration of ex-prisoners with conflict-related convictions.

2.5 The key principle arising from the work of the group is:

*".....that conflict-related convictions of 'politically motivated' ex-prisoners, or their membership of any organisation, should not generally be taken into account [in accessing employment, facilities, goods or services] provided that the act to which the conviction relates, or the membership, predates the Agreement. Only if the conviction, or membership, is materially relevant to the employment, facility, goods or service applied for, should this general rule not apply"*

2.6 In other words, a conviction arising from the conflict should not bar an applicant from obtaining employment, facilities, and goods or services unless that conviction is manifestly incompatible with the job, facility or service in question. The onus of demonstrating incompatibility would, in the view of the group, rest with whoever was alleging it and the seriousness of the offence would not, *per se*, constitute adequate grounds.

2.7 The report goes on to argue that where an applicant is ruled out of consideration at any stage he/she should be given the opportunity to outline his/her perspective before a final decision is taken.

2.8 In addition, the report argues that there should be a right of appeal by such an applicant who is denied on the grounds that a sentence was materially relevant. It is expected that it would only be in very exceptional circumstances that such grounds could be successfully invoked. It was also agreed that for reasons of practicality, any changes would not be retrospective.

2.9 It is worth noting that the (then) Mr Justice Kerr argued in a successful legal case by a former prisoner challenging a decision not to grant a taxi driving licence to the applicant:

*"The Agreement contemplated that mechanisms would be put in place for the accelerated release of prisoners and that those prisoners who benefited from that programme would be reintegrated into the community. It appears to me, therefore, that particular attention should be paid to the fact that a prisoner released under the terms of the Northern Ireland Sentences Act 1998 has been adjudged not to be a danger to the public."*

- 2.10 Whilst this judgement related to those 'risk assessed' and released under the Agreement, the working group view is that this is an important principle on which all conflict-related convictions arising from the most recent period of conflict should be considered.
- 2.11 The guidance is not asking employers or service providers to give preferential treatment to ex-prisoners with conflict-related convictions; that would run counter to fair employment and equality legislation. Rather, the guidance aims to ensure that such a conviction is not taken into account, unless it is materially relevant to the post or service in question.
- 2.12 The guidance is seeking to ensure that an ex-prisoner (with a conflict-related offence) is able, in the case of employment, to compete with other applicants on a level basis, and that the employer should, having regard to paragraph 2.9, make his/her decision on the basis of skills and experience.
- 2.13 The guidance has been agreed by Government, the Irish Congress of Trades Unions and the Confederation of British Industry. While it focuses on employment it should nonetheless be easily transferable to goods, facilities and services.
- 2.14 Finally, this guidance needs to be read in conjunction with existing legislative obligations and any new guidance which may be developed from time to time as a consequence of the introduction of a new system of employment-related criminal record checks. A summary of the legislation is provided in the annex to this guidance.

### **3 The recruitment process**

- 3.1 Whether using online recruitment or more traditional recruitment processes such as advertisement, it is important that the methods of recruitment are applied consistently.
- 3.2 Online recruitment, also known as e-recruitment, is the use of technology to attract candidates and aid the recruitment process. Surveys have shown that online recruitment in both the public and private sectors has grown significantly with greater use being made of email applications in the last three years. The technology can be used to:
- advertise vacancies – on organisations' websites or job sites;
  - deal with the applications – email enquires, emailed application forms/CVs, online completion of application forms;
  - select candidates – online testing.
- 3.3 The public and private sector are increasingly using online recruitment to speed up the recruitment process, reach a wider pool of applicants, streamline administration and reduce recruitment costs.
- 3.4 Whichever format of recruitment is used, the fact that an applicant has a conflict-related criminal record should not play a part until the individual has successfully gone through a selection process. In accordance with best practice, application forms should normally not require a criminal record declaration except where the job is covered by the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979, because, for example, it involves working with the vulnerable. Only after an individual has been recommended for appointment and only where relevant to the specific post should a record check be undertaken.

## 4 Weighing up the risks

- 4.1 The evidence shows that in most instances there is very little risk involved in employing an ex-prisoner. The majority of ex-prisoners in work are competent, reliable employees who pose no risk to their colleagues, clients or the business for whom they work. This also holds true, probably to an even greater extent, for those in Northern Ireland with conflict-related convictions.
- 4.2 It is the case that for many in that category, they would not have been imprisoned had it not been for the onset of the most recent and prolonged period of civil disorder and violence that caused so much damage and hurt and shaped the lives of so many during those 35 years.
- 4.3 It is for this reason that it is always best to consider each applicant on his/her merits. The appropriate approach is to determine whether the person you are interviewing is the best person for the vacancy. If they are, it then becomes a case of determining whether the criminal record is materially relevant or not for that particular post.
- 4.4 This guidance, whilst addressing ex-prisoners with conflict-related convictions, underscores best practice; namely that the main focus of decision making should be on those offences which are materially relevant in terms of the duties the post holder will be expected to undertake.
- 4.5 In line with best practice, employing organisations should ensure that recruitment and employment practices deal fairly and equitably with all candidates, including those who have a conflict-related conviction. For example, they might usefully consider the following extract from "Employing people with criminal records" produced by the Chartered Institute of Personnel and Development.
- 4.6 Objective assessments will:
- focus on a person's abilities, skills, experience and qualifications;
  - consider the nature of the conviction and its relevance to the job in question;

- identify the risks to the organisation's business, customers, clients and employees;
- recognise that having a record does not always mean a lack of skills, qualifications and experience;
- note that high-quality training, leading to qualifications, is available in many prisons.

#### 4.7 Assessing records will:

- always be based in confidentiality and discretion when requesting and handling records;
- encourage applicant honesty by stating that applicants will be considered on merit and ability;
- not include requests for spent conviction records unless the job is exempt under the Rehabilitation of Offenders legislation;
- advise applicants to submit confidential records separately from the usual application form and to a named employee;
- comply with data protection law;
- ensure access to record information is only on a need to know basis.

4.8 In making employment decisions organisations should make objective assessments, adopt an open mind and focus on merit and ability to do the job.

## **5 Considering Conflict-Related Convictions**

5.1 In this section convictions relate to conflict-related ones.

5.2 Only after interview when the successful candidate for employment has been chosen, should the issue of a conviction, be considered.

- 5.3 In the case of the Northern Ireland Civil Service a criminal record check is sought after an individual is recommended for appointment. If it transpires that the individual has a record, a statement of disclosure form is issued for completion by the applicant. This provides the opportunity to put the nature of the offence/conviction in context and provide any supporting material eg, testimonials, references etc.
- 5.4 There are three possible scenarios once a successful candidate has been selected and a record check occurs:
- if the candidate does not possess a conviction, the appointment is made;
  - if the candidate has declared a conviction, but the employer considers that it is not materially relevant to the post, the appointment is made;
  - if the candidate has declared a conviction and the employer considers that it is, or could be, materially relevant, and is manifestly incompatible with the post then the appointment is not immediately offered.
- 5.5 In the third scenario the employer should make contact with the candidate to explain his/her decision. If the candidate accepts the employer's consideration, the employer may move on to the next highest placed candidate.
- 5.6 If after explanation the candidate does not accept the employer's consideration, it is recommended that he/she meet with the employer to discuss the issue. The candidate may bring along a representative and may supply supporting evidence in regard his/her case that the conviction is not materially relevant. The applicant should be given the opportunity to make his/her views known regarding the conviction and its relevance, or otherwise, to the post.
- 5.7 If, after this discussion, the employer continues to consider that the conviction is materially relevant and manifestly incompatible with the post, the candidate may bring the matter to a review panel. The review panel (the modalities of which are set out in section 6) is non statutory. It will receive complaints and concerns

raised by individuals. Such complaints and also evidence of good practice will form the basis of an annual report to the Secretary of State on the operation of this voluntary tripartite arrangement.

## **6 Tripartite Review Panel**

- 6.1 Only if a satisfactory outcome cannot be arrived at through informal discussion between potential employer and candidate should the next step be to refer the matter to a review panel. The panel, which will be non statutory, will comprise representatives of the three parties to this guidance.
- 6.2 It will be serviced by a part-time secretariat and will be tasked with considering individual complaints and also cataloguing evidence of good practice. It will be asked to provide the Secretary of State with a detailed annual report on the operation of the voluntary agreement. The operation of the guidance will be reviewed after 18 months. If there is evidence that the voluntary arrangement is demonstrably not working it is the view of the Government that the voluntary arrangement should be put on a statutory basis.

## **7 Tripartite Endorsement**

- 7.1 It is the agreed view of Government, the CBI in Northern Ireland and the ICTU that this voluntary guidance, which will require detailed working through by employing organisations, represents an important step forward in the reintegration of ex prisoners with conflict-related offences.
- 7.2 The parties to the guidance also acknowledge that in working through this process, the onus of proving material relevance lies with the employer.

Unless the employer can argue convincingly that the conviction is materially relevant and manifestly incompatible with the post, the applicant (who at this stage is, all other things being equal, the preferred candidate for the job) should be offered the post.

7.3 The three parties to this guidance are also of the view that before coming to a decision, the employer should consider carefully the following. Namely that:

- the onus of proof is on the employer to show material relevance;
- the conviction must be manifestly incompatible with the position in question;
- the seriousness of the offence is not in and of itself enough to make a conviction materially relevant; and
- it will only be in very exceptional circumstances that a conviction will be relevant.

7.4 Finally, following the recent Fair Employment Tribunal judgement in *McConkey and Marks v the Simon Community* the Government has initiated, as a matter of urgency, a review of fair employment legislation to consider whether there is a need to amend Article 2 (4) of the Fair Employment and Treatment Order 1998 in the Tribunal words

“.....to reflect those changed circumstances [in light of the Good Friday Agreement] and not least to reflect the terms of the said Agreement with its reference to the introduction of measures to facilitate the reintegration of prisoners into the community in the area of employment”

1 May 2007

## Annex to Employers' Guidance:

### The current legislation

The Rehabilitation of Offenders (Northern Ireland) Order 1978 seeks to ensure that ex-offenders who have not re-offended for a period of time since the date of their conviction are not discriminated against when applying for jobs. The Order enables ex-prisoners to 'wipe the slate clean' of their criminal records at the appropriate time in that they are no longer legally required to disclose to organisations convictions that are 'spent', unless the job they are applying to is covered by the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979. A range of different types of work, occupations, employment and professions are exempted. This includes work that involves access to children, young people and vulnerable people. In such cases organisations are legally entitled to ask applicants for details of convictions, irrespective of whether they are 'spent' or 'unspent' under the Act.

Part V of the Police Act 1997 which is to be enacted in Northern Ireland later in 2007 will allow for the two types of disclosure of criminal records relevant to employers. A Standard Disclosure which applies to posts exempted under the Rehabilitation of Offenders (Northern Ireland) Order 1978 and relates particularly to certain sensitive areas of employment, such as jobs involving regular contact with children and vulnerable adults. The second type, Enhanced Disclosure, applies to posts involving greater contact with children and vulnerable adults. In Northern Ireland this service will be provided by Access Northern Ireland (which will link both to Disclosure Scotland and the Criminal Records Bureau).

The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 is aimed at preventing unsuitable people from working with children and/or vulnerable adults. The Safeguarding Vulnerable Groups Act, which received Royal Assent in November 2006 will extend to Northern Ireland and will introduce a new vetting and barring scheme.

Final 16.03.07

## **Appendix 2 Employers' Guidance Review Panel Terms of Reference and Membership**

### **Background**

In May 2007, the Office of the First Minister and deputy First Minister issued guidance prior to the restoration of devolution for employers on the recruitment of people with conflict-related convictions.

This satisfied a commitment given by the British Government within the St Andrew's Agreement to work with business, trade unions and ex-prisoners groups to produce guidance for employers in the private and public sector.

The guidance was developed by a working group chaired by Sir Nigel Hamilton and comprising Sir George Quigley, representatives of Government departments, the Irish Congress of Trade Unions, the Confederation of British Industry and a representative group of ex-prisoners.

The Guidance is aimed at reducing barriers to employment and enhancing the reintegration of ex-prisoners with conflict-related convictions. To this end, the Guidance effectively encourages employers to set aside any conflict-related convictions unless it is considered to be materially relevant to the post to be filled. By virtue of the guidance, the onus of showing material relevance is placed on the employer.

The Guidance outlines details on the formation and composition of a tripartite review panel, which will be tasked with considering individual complaints in addition to cataloguing evidence of good practice.

### **Role of the Review Panel**

1. The Panel will operate on a non-statutory basis and will receive complaints and concerns raised by individuals, normally through ex-prisoner groups.

2. The Panel will be tasked with considering individual complaints where the potential employer has considered a conflict-related conviction to be materially relevant and therefore manifestly incompatible with the post.
3. The Review Panel will assess individual cases on the basis of the information provided. Depending on the circumstances of the case, it will adopt an advisory or mediation role as appropriate.
4. A matter will only be referred to the Review Panel in situations where a satisfactory outcome has not been reached through informal discussion between potential employer and candidate. The procedure to be followed by the candidate and potential employer if employment is not offered is attached in an edited extract from the Employers' Guidance at Annex A.
5. The Panel will play an important role in building up a sound evidence base of the impact of the Employers' Guidance. This will be with a view to the production of a progress report after 18 months which will be collated by the Secretariat to the Review Panel. It may be appropriate for interim reports to be produced. These progress reports will be for submission to the Chair of the Ex-Prisoners Working Group.
6. In addition, the Panel will be involved in cataloguing evidence of good practice where the Employers' Guidance has been implemented resulting in a positive outcome for both parties. This more positive information will also be reflected within the progress report.
7. The Panel may also, where considered appropriate, consider cases relating to the provision of goods, facilities and services to people with conflict-related convictions.

## **Methodology**

The Panel will:

1. Assess each case on the basis of the information provided;
2. Mediate If considered appropriate in view of the circumstances of the case;
3. Offer advice on the implementation of the Employers' Guidance as appropriate;
4. Catalogue evidence of good practice, where an employer has implemented the Employers' Guidance resulting in a positive impact on ex-prisoners;
5. Collect evidence of cases where the Employers' Guidance has not been implemented, thus negatively impacting on people with conflict-related convictions;
6. Seek formal approval from the parties involved to include details of cases either as evidence of good practice or negative impact within the Progress Report;
7. Consider the effectiveness of the Employers' Guidance in positively impacting on the levels of employment of people with conflict-related convictions;
8. Raise awareness of the Review Panel mechanism and its activities;
9. Consider cases involving Regulatory bodies that control entry to a particular profession and thereby affect the ability of people with conflict-related convictions to pursue a particular career;

## **Membership**

As stipulated within the Employers' Guidance, the Review Panel will be tripartite in nature. In addition to the Chair, it will comprise one representative from each of the parties to the Guidance as outlined below:

- Office of the First Minister and deputy First Minister;
- Confederation of British Industry; and
- The Irish Congress of Trade Unions.

In certain cases, the Review Panel may, if considered appropriate, wish to make arrangements to draw upon the expertise of the Equality Commission for Northern Ireland in an advisory capacity.

## **Modalities**

### **Chair**

The Review Panel will be independently chaired by a representative appointed by the Ex-Prisoners Working Group. Initially this post will be held for a period of 18 months (relating to the first progress reporting period). After this initial period, the Ex-Prisoners Working Group will review the composition of the panel.

### **Meetings**

The Review Panel will meet as necessary but not less than twice a year. Meetings of the Panel will be co-ordinated with meetings of the Ex-Prisoners' Working Group so that any policy issues arising can be considered in a timely way.

All parties must be represented at each meeting of the Review Panel. However, if one panel member is unable to attend a meeting, the Ex-Prisoners Working Group

may appoint a representative to attend on their behalf. Alternatively the Chair may decide to proceed without the attendance of the full panel.

### **Role of Ex-Prisoners' Groups and Employers**

A representative from the appropriate ex-prisoner group may wish to attend Review Panel meetings to support the individual who has brought the case. Employers may also send a representative to Review Panel meetings to support their case.

### **Secretariat**

Staff from OFMDFM will provide secretariat support to the working of the Review Panel. This will involve the following:

- Arranging Review Panel meetings;
- Circulating all relevant papers in advance of each meeting;
- Collating material for progress report;
- Acting as central liaison point between the Panel, individuals and employers seeking consideration of their case.

### **Confidentiality and access to information**

Information considered by the Review Panel will be treated as confidential unless consent has been received from the parties involved. All information produced by the Review Panel may be published or disclosed in accordance with access to information legislation: these are chiefly the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA), and the Environmental Information Regulations 2004 (EIR).

## **Appendix 3 Review Panel Membership**

PROFESSOR PETER SHIRLOW – Independent Chair (Sept 2011-Mar 2012)

WILLIAM POOLE – Independent Chair (Aug 2010-June 2011)

BRENDAN MACKIN – Irish Congress of Trade Unions representative

ALAN MERCER – Confederation of British Industry representative (Aug 2011-Mar 2012)

DEIRDRE STEWART – Confederation of British Industry representative (Aug 2010-June 2011)

FERGUS DEVITT – Office of the First Minister and deputy First Minister representative (Jan 2012-Mar 2012)

COLIN JACK – Office of the First Minister and deputy First Minister representative (Aug 2010-Jan 2012)

The make up of the Panel has changed since it began its work in August 2010. The original independent Chair William Poole stepped down in June 2011. Deirdre Stewart – the CBI's original representative – stepped down in June 2011. Colin Jack – the original OFMDFM representative – stepped down in January 2012. All of these departures were for personal reasons independent of the Panel's work.

### **Remuneration**

None of the Review Panel positions were remunerated. Travel expenses for attending meetings were provided by the Office of the First Minister and deputy First Minister where appropriate.

## **Appendix 4 Definition of a Conflict-Related Conviction**

The Employers' Guidance defines a conflict-related conviction in the following way:

".....convictions arising directly from the most recent period of conflict in Northern Ireland. Generally, they are offences listed in the relevant schedules to the various Emergency Provisions (Northern Ireland) Acts pre-April 1998."

In terms of the relevant legislation under which individuals may have been sentenced, other statutory provisions may include:

1. Civil Authorities (Special Powers) Acts (Northern Ireland) 1922-23;
2. Northern Ireland (Emergency Provisions) Act 1973; or the
3. Offences Against the State Act 1939

People with this type of conviction are the primary focus of the Ex-Prisoners Working Group.

## Appendix 5 Rehabilitation of Offenders (NI) Order 1978 – Overview of when convictions become spent

Sentence	When spent
Fine or community service order	5 years
Term of imprisonment of 6 months or less	7 years
Term of imprisonment of more than 6 months but less than two and a half years	10 years
Term of imprisonment of more than two and a half years	Never spent

### Notes:

- The periods above are reduced when the individual was under 18 at the time of the offence.
- A job applicant does not have to declare a conviction which has become spent, unless applying for a post which is 'excepted' under the legislation.
- **Custodial sentences of more than two and a half years can never become spent. The majority of sentences given to those involved in the conflict would come into this category.**

## **Appendix 6 Overview of AccessNI Disclosures**

(Text from <http://www.dojni.gov.uk/index/accessni/disclosures.htm>)

There are three levels of Disclosure, each representing a different level of check: Basic, Standard and Enhanced.

Basic Disclosure application forms are completed by the Applicant and sent directly to AccessNI. In certain circumstances, an employer may send the completed application form to AccessNI.

Standard and Enhanced Disclosures are completed jointly by the Applicant and (potential) employer before being sent to AccessNI. There is a service charge for each of these.

### **Service charges are as follows:**

- Basic Disclosures (£26).
- Standard Disclosures (£26).
- Enhanced Disclosures (£30).
- Registration of an organisation which includes the equivalent of managing Registered Body details and an Enhanced Check on the Lead Signatory (£150).
- Registration of each Counter-signatory (£10).

### **BASIC DISCLOSURES**

The Basic Disclosure Certificate will show details of all convictions considered to be unspent under the Rehabilitation of Offenders (Northern Ireland) Order 1978, or state that no such convictions were found.

Anyone may apply for a Basic Disclosure by

- completing the Application Form,
- having the PSNI validate their identity; and
- by paying the required fee to AccessNI.

An Applicant may be asked by their employer to apply for a Basic Disclosure as part of the recruitment process.

Applicants may ask AccessNI to send their Disclosure Certificate to their potential employer and this can be done by completing the relevant section on the Disclosure Certificate Application Form.

### **STANDARD DISCLOSURES**

The Standard Disclosure Certificate shows details of spent and unspent convictions only.

It does not show 'soft intelligence' information that a police force(s) may hold on an Applicant and a search is not carried out in respect of the *Disqualified from Working with Childrens' List* or the *Disqualified from Working with Adults' List*.

- Is applied for by a Registered Body where the position is included within the scope of the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979. This legislation has been heavily amended and particular consideration should be given to the Rehabilitation of Offenders (Exceptions) (Amendments)(No2) Order (Northern Ireland) SR 2009 No.30.
- May be needed by Registered Bodies as part of the recruitment process.
- The completed Application Forms are countersigned by the Registered Body and sent to AccessNI once the identity has been verified.

Both the Registered Body and the Applicant receive copies of the Disclosure Certificate.

#### *Who is eligible for a Standard Disclosure?*

If you are unsure if a particular position is covered, consult the legislation set out above. Please note, the Government may amend the Exceptions Order and you should check the site regularly for updates.

Example of Positions eligible for Standard Disclosures:

- Individuals applying for licences for the Security Industry Authority
- Barrister, Solicitor
- Judicial appointments
- Employment in the Northern Ireland Court Service
- Actuary

## **ENHANCED DISCLOSURES**

An Enhanced Disclosure contains all of the information in the Standard Disclosure plus other relevant information held in police records. It also clearly indicates whether the Applicant is on the ISA's Childrens list or Vulnerable Adults list and therefore is barred from working with those groups.

Relevant information in police records can include information about attempted prosecutions that were unsuccessful or behaviour that might be indicative of criminal activity.

Applications for Enhanced Disclosures are made by Applicants and must be countersigned by a Registered Body as part of the recruitment or staff review process.

An Enhanced Disclosure will be issued where the Registered Body makes a statement which states that it is required for both an "exempted and a 'prescribed purpose' under Part V of the Police Act 1997. In the context of AccessNI's services, 'prescribed purpose' relates only to the Enhanced disclosure process.

### *Enhanced Disclosures for those working with the Vulnerable*

Where a job involves working with vulnerable people, the Registered Body must also make clear in the Application that a search against the Lists is required.

#### *Who is eligible for an Enhanced Disclosure?*

Enhanced Disclosures are used mainly for positions that involve contact with children or vulnerable adults.

The type of work will involve regulated activity, as defined in the Safeguarding Vulnerable Groups (NI) Order 2007 or regularly caring for, supervising, training or being in sole charge of young people; or regular contact with residents of care homes or providing services to unwell, infirm or disabled people.

Regulations under Part V of the Police Act 1997 set out or 'proscribe' the positions which are eligible for an Enhanced Disclosure. The most recent piece of legislation is the Police Act 1997 (Criminal Records) (Disclosure) (Amendment No.2) Regulations (Northern Ireland) 2009 - SI 2009 No . 245.

A position which appears in the regulation is said to be a 'prescribed purpose' for an application for an Enhanced Disclosure.

## **Appendix 7 Review of Literature on Republican and Loyalist Ex-Prisoners - Headline findings regarding employment**

(Available from [http://www.ofmdfmi.gov.uk/final\\_literature\\_review.pdf](http://www.ofmdfmi.gov.uk/final_literature_review.pdf))

### ***Employment and unemployment, facts and figures***

*The research indicates that:*

- Many republican ex-prisoners had higher educational qualifications than the rest of the population but experienced an unemployment rate of 53% compared with 10.4% for Catholic men generally (Jamieson and Grounds 2002).
- 62% had experienced unemployment prior to imprisonment and 56% had no experience of full-time employment prior to imprisonment; 14% had been on a training scheme since release; 89% had experienced unemployment since release, 25% for more than ten years; 57% had experienced direct discrimination (Ó hÁdhmaill 2001).
- Restrictions to self-employment included the unwillingness of banks to lend to ex-prisoners (Ó hÁdhmaill 2001).
- For republican former prisoners, unemployment or short-term employment is the norm; the longer someone has spent in prison, the less likely they are to find employment afterwards (Ritchie 1998).
- 40% of republican former prisoners and 30% of loyalists were unemployed; former prisoners tended to find jobs as taxi drivers, doormen, labourers – low-paid and within their own communities (Shirlow 2001).
- Ex-prisoners are four times as likely to be unemployed as others in Northern Ireland; various factors militate against employment: the general economic situation, the refusal of employers to employ, security concerns, restricted access to training and ageism, as well as the statutory rules whereby ex-prisoners can be legally discriminated against in relation to employment opportunities (Jamieson, Shirlow and Grounds 2010).

## **Appendix 8 Review Panel Interim Report July 2011**

### **1 Background**

1.1 The Employers' Guidance on Recruiting People with Conflict-Related Convictions allowed for the establishment of a Review Panel to consider individual complaints and evaluate the impact of the Employers' Guidance. Approval was given to formally establish the Panel in June 2010. Its first meeting was held in August 2010.

1.2 As stipulated within the Employer's Guidance, the Review Panel is tripartite in nature comprising an independent Chair, and one representative from each of the parties involved in putting together the Guidance. The Panel comprises the following:

- William Poole (Independent Chair);
- Colin Jack (Office of the First Minister and deputy First Minister);
- Brendan Mackin (Trade Unions); and
- Deirdre Stewart (CBI).

1.3 The Review Panel, like the Employers' Guidance, is entirely voluntary in nature and therefore does not impinge on the remit of existing mechanisms such as the industrial tribunal system.

### **2 Task and Approach**

2.1 In its terms of reference the Panel has been tasked with producing a progress report on the impact of the Employers' Guidance after an 18 month period, considering individual cases, and building up evidence of good and bad practice.

2.2 The Panel is now approximately half way into this 18 month timescale. It is therefore considered timely to take stock of its work to date and its initial findings.

2.3 In its initial meeting the Panel agreed to take the following general approach to its work:

- meet relevant employers, service providers, regulatory bodies;
- act in a lobbying role for the Employers' Guidance in support of the Working Group;
- consider individual cases;
- examine the outline process which would need to be taken if the guidance was to be put onto a statutory basis; and
- report back to the Working Group on the above.

### 3 Meetings

3.1 The following table details a chronology of the main meetings undertaken to date by the Review Panel:

<b><i>Review Panel meeting</i></b>	3 August 2010
<b>Meetings with Ex-Prisoner Groups</b>	August/September 2010
<b><i>Review Panel Meeting</i></b>	7 October 2010
<b>Strategic Review Workshop</b>	17 November 2010
<b>DVA – Driver Instructor Scheme</b>	30 November 2010
<b><i>Review Panel Meeting</i></b>	25 January 2011
<b>DVA – Transport Operator Licensing</b>	1 February 2011
<b>Security Industry Authority</b>	22 February 2011
<b>DOE – Taxi/Goods Vehicle/Bus Operator Licensing</b>	8 March 2011
<b><i>Review Panel Meeting</i></b>	8 March 2011
<b>Independent Reviewer of Criminal Records Regime</b>	20 April 2011
<b>Asda</b>	5 May 2011
<b><i>Review Panel Meeting</i></b>	18 May 2011
<b>Belfast City Council</b>	20 June 2011
<b>Diamond Recruitment</b>	21 July 2011

(Minutes of these meetings are available on request to the Secretariat)

## **4 Initial Findings**

### **Employers**

#### *Asda*

4.1 The Panel met representatives of Asda to discuss the impact of the incident in their Shore Road store last year, and how best to align the Employers' Guidance with their existing recruitment policy.

4.2 This meeting proved to be quite positive with Asda advising that their current policy and practice meets the general requirements of the Employers' Guidance. They also believe that they already employ a substantial number of people with conflict-related convictions.

4.3 Asda will be following up the Panel meeting by meeting the Equality Commission to further explore the practicalities of implementing the Employers' Guidance.

#### *Belfast City Council*

4.4 The Panel met Belfast City Council (BCC) to discuss how the Employers' Guidance aligned with their recruitment policy.

4.5 Although BCC have not yet formally adopted the Employers' Guidance the Panel concluded that their recruitment process and policy represented best practice which reflected the Employers' Guidance.

4.6 The Panel is of the opinion that BCC's recruitment process could be implemented within any type of organisation, although some amendments may be required to suit smaller organisations.

#### *Other Employers*

4.7 The Panel is encouraged by the adoption of the Employers' Guidance by Derry City Council and the health and social care sector

4.8 The Panel has noted the continuing work of the Ex-Prisoners Working Group, and that of its Information & Communication subgroup in raising awareness among employers of the Employers' Guidance. They particularly welcome the positive feedback which has been received from several councils, and key local employers such as Tesco, Sainsbury's and Iceland.

4.9 The Panel understands that the Information & Communication subgroup is currently preparing a report on its work with employers. Relevant information from this will be fed into the Review Panel's final report.

### **Regulatory Bodies**

#### *Driver & Vehicle Agency – Approved Driver Instructor Scheme*

4.10 In terms of applications to the approved driver instructor scheme, the Driver & Vehicle Agency fully implements the principles of the Employers' Guidance. Any conflict-related convictions which pre-date 1998 will not be taken into account.

4.11 For the purposes of making decisions on applications to the approved driver instructor scheme, the DVA will take into account other materially relevant convictions – e.g. convictions for sexual or drug-related offences.

#### *Case – Transport Operator Licence*

4.12 The Panel received a case which related to an individual who was refused a transport operator licence on the grounds that he did not meet the good repute requirement. The DVA had advised that this refusal was made on the basis of a European Directive. They therefore had no discretionary powers.

4.13 The Panel's initial findings were that this represented a barrier for people with conflict-related convictions. In addition it seemed there was an inconsistency of approach within the DVA as there are no barriers to people with conflict-related convictions when applying for either a taxi driver licence or for registration to the approved driver instructor scheme.

4.14 Following the Panel's engagement with the DVA and DOE as the responsible government department, the legislative bar relating to transport operator licensing will be removed from December of this year. They are able to do this as they have an opportunity to amend the local legislation which transposes the European Directive later in 2011. It seems that the text in the EU Directive relating to 'good repute' actually allows for more flexibility than in current local legislation.

4.15 In addition the Panel's engagement was very timely as it was able to bring some influence to two other policy/regulatory areas (taxi operator licensing & goods vehicle/bus operator licensing). These new regulations/policy amendments will now not contain any absolute bar for ex-prisoners.

#### *Security Industry Authority*

4.16 The Panel met with the Security Industry Authority to raise some of the ongoing issues which have been raised by ex-prisoner groups e.g. the treatment of life/determinate/concurrent sentences, remand, and the general feeling that there is a lack of clear understanding of their policy and procedures.

4.17 In the meeting the SIA expressed the view that their policy and practice accommodated the spirit of the Good Friday Agreement and that their approach had generally been very successful. They evidenced this by the fact that their rejection rate in NI is 2.7%, compared to the UK rejection rate of 3.7%.

4.18 While this meeting was useful it would be fair to say that there remains a lack of clarity over certain issues which will require separate follow up. Since the meeting there has been correspondence between the Panel and the SIA and they have agreed to attend a future meeting of the Ex-Prisoners Working Group.

4.19 The Panel is of the opinion that there is undoubtedly confusion over the SIA's processes and feel that this could be easily resolved through clear and concise written guidance. This would ultimately reduce the ongoing difficulties and discussions that have involved individuals, the ex-prisoner groups, the SIA, Department of Justice, etc. The Panel have expressed this view to the SIA in writing.

## **5 Other issues**

5.1 The Panel have noted a need for accurate statistics and background to support the promulgation of the Employers' Guidance and the activities of the Ex-Prisoners Working Group.

5.2 In its meetings with the ex-prisoner groups the Panel noted a need for strategic consideration to be given to ensuring continuity of funding. The Panel consider that this issue should be addressed by the Working Group.

5.3 The Panel welcomed the recently published research by Dr Pete Shirlow. In particular they noted its finding that the Employers' Guidance was not working and needed to be put on a statutory basis. It was also noted that the ex-prisoner grouping was judged to be predominantly aged 55-65. The Working Group may wish to explore whether there are any links which could be developed with those employers who operate recruitment schemes targeted at the older population.

### *Review of Criminal Records Regime*

5.4 The Panel met with Sunita Mason, the person appointed to carry out an independent review of the criminal records regime in NI. The purpose of this meeting was for the Panel to feed into the review reflecting the local context, and in particular the issue of conflict-related convictions.

5.5 The Panel raised several issues at this meeting:

- can the principles of the Guidance to Employers on recruiting people with conflict-related convictions be applied to filtering locally in terms of 'wiping out' those convictions that aren't materially relevant? This would bring consistency given that the Guidance has already been endorsed by Government;
- filtering 'old and minor' conviction information would not necessarily cover conflict-related convictions;
- can the Guidance to Employers on recruiting people with conflict-related convictions be referred to in criminal record check documentation and can Access NI provide any supplementary information to employers to help inform their decisions?;
- any guidance that is developed needs to be specific; and
- disclosure of 'soft intelligence' is an issue for ex-prisoners, in particular they would like to have a right of reply.

5.6 The Ex-Prisoner groups were advised of an online survey which was available for them to directly feed in their own views.

## **6 Future Work/Outstanding Cases**

6.1 Cases have been received relating to Royal Mail and Diamond Recruitment/FG Wilson. A meeting with Diamond Recruitment has been held and meetings with the other organisations concerned have been sought.

6.2 The Panel has written to Marks & Spencer to seek a meeting. This is to follow up on ongoing issues that have been raised in relation to their recruitment policy.

6.3 The Panel will shortly be seeking to hold a workshop with representatives of the ex-prisoner groups. The purpose of this workshop will be to discuss the expectations of the ex-prisoner groups in relation to what the final Panel report should contain, and also allow the Panel to outline further information which they require in order to produce a balanced final assessment.

6.4 The Panel would strongly encourage the ex-prisoner groups to submit any and all relevant information, whether they relate to specific cases or general employment issues. The final report can only reflect the information that has been received.

## **7 Timeline**

7.1 It is expected that the Panel's final report will be available in February 2012.