



## **AccessNI Guidance Document**

# **Understanding Criminal History Information on Disclosure Certificates**

December 2019

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## GLOSSARY OF TERMINOLOGY

### General

AccessNI	Criminal history disclosure service in NI
ACRO	Association of Chief Police Officers Criminal Record Office
DBS	Disclosure and Barring Service
DoJ	Department of Justice (NI)
EU	European Union
NCD	Non court disposal (eg Informed Warning – see below)
PSNI	Police Service of Northern Ireland

### Criminal History Information

Conviction	This is the result of an offence tried at court and where the individual was determined guilty.
<ul style="list-style-type: none"><li>Spent Conviction</li></ul>	A conviction that has reached a set period as defined by the Rehabilitation of Offenders (NI) Order 1978, and is no longer required to be declared to an employer (subject to exemptions). Spent convictions must be declared where a person is seeking to work with children or vulnerable adults and is eligible for an enhanced AccessNI check.
<ul style="list-style-type: none"><li>Unspent Conviction</li></ul>	A conviction that has not yet reached the set period as defined in the Rehabilitation of Offenders (NI) Order 1978.
Caution	A formal warning about future conduct given by a senior police officer, at the direction of the Public Prosecution Service usually in a police station, after a person has committed an offence. Used as an alternative to a charge and possible prosecution where it is not considered to be in the public interest to institute criminal proceedings. An individual MUST admit the offence before a caution can be given. A caution remains on the criminal record for 6 years for adults and 2 years for under 18s.
Informed Warning	Delivered by police, at the direction of the Public Prosecution Service, as an alternative to taking an offender to court. An informed warning stays on the criminal record for 12 months.
Youth Conference Plan	Administered by Youth Justice Agency, this is a plan for the young person who offended aimed at preventing further offending and make amends to the victim.
Unsuccessful Prosecution	Information about a police investigation that resulted in no prosecution or the applicant is found “not guilty” by a court.
3 <sup>rd</sup> Party Information	[For home based roles only] - Information held by police about a 3 <sup>rd</sup> party and considered relevant for disclosure.
Explanatory Information	Information provided by police to explain the context for a conviction or non-court disposal.
DBS Lists	[For England, Wales and NI] – lists of individuals barred from working with children and vulnerable adults.
Scottish Govt Lists	[Scotland only] – lists of individuals barred from working with children and vulnerable adults.

## 1. PURPOSE

1.1 The purpose of this guidance document is to clarify the type of information that can be displayed on AccessNI disclosure certificates and to assist organisations / employers to interpret the information in order that they might make informed recruitment decisions.

## 2. TYPES OF CHECK

2.1 AccessNI provides 3 levels of check, namely:-

- Basic
- Standard
- Enhanced (with or without barred lists check)

2.2 The level of disclosure check requested determines the types of criminal history searches undertaken by AccessNI when considering what information should be included on the disclosure certificate. The following table summarises the information that is considered for inclusion for each level of check:-

	Basic	Standard	Enhanced (no barred list)	Enhanced (barred list)
Unspent Convictions	✓	✓	✓	✓
Spent Convictions	✗	✓	✓	✓
Cautions	✗	✓	✓	✓
Informed Warnings	✗	✓	✓	✓
Youth Conference Plans	✗	✓	✓	✓
Arrests & Charges	✗	✗	✓	✓
Unsuccessful Prosecutions	✗	✗	✓	✓
3 <sup>rd</sup> Party Information	✗	✗	✓	✓
Explanatory Information	✗	✗	✓	✓
DBS Children and/or adults lists	✗	✗	✗	✓
Scottish Govt Lists	✗	✗	✗	✓

### 3. DISCLOSURE CERTIFICATE

3.1 An AccessNI Enhanced disclosure certificate, issued with no criminal history to disclose, will look like the following sample.

OFFICIAL – SENSITIVE [PERSONAL]

**Title Forename(s) Surname**  
Address Line 1  
Address Line 2  
Address Line 3  
Post Code



**ACCESS  
NORTHERN  
IRELAND**

[www.nidirect.gov.uk/accessni](http://www.nidirect.gov.uk/accessni)

AccessNI  
PO Box 1085  
Belfast  
BT5 9BD

t: 0300 200 7888  
e: [ani@accessni.gov.uk](mailto:ani@accessni.gov.uk)

Date of Issue: XX October 2018

**ENHANCED DISCLOSURE CERTIFICATE**  
AccessNI No. 2000XXXXXX

<p><b>Applicant Name &amp; Address:</b> Title Forename(s) Surname, Address Line 1, Address Line 2, Address Line 3, Post Code DOB: DD/MM/YYYY</p>	<p><b>Registered Body Name &amp; Address:</b> Name of Registered Body, Address Line 1, Address Line 2, Post Code</p> <p><b>Details of Position:</b> Details of position for which check is being requested (field not displayed for Basic checks)</p>
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**CONVICTIONS**  
No information found

**NON-COURT DISPOSALS**  
No information found

**POLICE INFORMATION**  
No information found

**BARRED LIST INFORMATION**  
No information found

DISCLOSURE ENDS

3.2 Criminal history information, in relation to the applicant, that could be included within each of the four headings on the certificate is categorised as follows<sup>1</sup>:-

<b>CONVICTIONS</b>
- Spent Convictions - Unspent Convictions
<b>NON-COURT DISPOSALS</b>
- Cautions (Adults / Youth) - Informed Warnings - Restorative Caution - Diversionary Youth Conference
<b>POLICE INFORMATION</b>
- Arrests and Charges - Unsuccessful Prosecutions - 3 <sup>rd</sup> Party Information - Explanatory Information
<b>BARRED LIST INFORMATION</b>
- DSB Children and/or Adults Lists - Scottish Government Lists

<sup>1</sup> Point of Note: For Basic checks, only CONVICTIONS are shown on the certificate. For Standard checks, only CONVICTIONS and NON-COURT DISPOSALS are shown.

3.3 Disclosure certificates can run to a number of pages; when viewing a certificate, employers and voluntary groups should ensure that the page numbering (bottom right-hand-side of certificate) is complete and sequential. AccessNI is unable to provide further information about the background of any aspect of an individual's criminal record. Offences are recorded on the certificate in the exact manner they are displayed in the criminal record database.

#### 4. INFORMATION DISCLOSED AND HOW THIS SHOULD BE TREATED

##### CONVICTIONS

4.1 The certificate will list the convictions found on the applicant's criminal record that can be disclosed. A conviction results from a prosecution where an individual is found guilty of an offence in court. The format on the disclosure certificate will list the **date and location of the court, the offence** for which the applicant was charged and **the disposal** as ordered by the court, examples include:-

<p><b>02/05/1989 AT LONDONDERRY MAGISTRATES</b> <b>OBSTRUCTING POLICE</b> - CONDITIONAL DISCHARGE 12 MTHS</p>
<p><b>11/10/1990 AT DOWNPATRICK MAGISTRATES</b> <b>TAKING PART IN UNLAWFUL PUBLIC PROCESSION</b> - CONDITIONAL DISCHARGE 2 YRS</p>
<p><b>12/10/1989 AT LAGANSIDE MAGISTRATES</b> <b>FRAUD BY FALSE REPRESENTATION</b> - IMPRISONMENT 3 MTHS</p>
<p><b>21/10/1989 AT JERSEY MAG</b> <b>FOREIGN LEG/THEFT - SHOPLIFTING</b> - FINE 100.00 <b>ASSAULT ON POLICE</b> - COMMUNITY SERVICE ORDER 180 HRS</p>

4.2 Convictions are listed in sequential order, with the earliest court hearing first. It is common for an individual to have more than one offence listed for a single court hearing – in such circumstances, the court may direct separate disposals (see the final example above).

4.3 When reviewing information disclosed in this Category, employers and voluntary organisations should consider:-

- The **Offence** - and how relevant is it to the nature of duties that are required for the position for which the appointment is being undertaken.
- The **History** of offences – in particular the repetitive nature of similar offences and how 'aged' the offences are relative to current day. Consideration should also be given to the age of the individual at the time the offence was committed.

- The **Disposal** – these can come in many formats, for example a discharge, a fine, a disqualification or a period imprisonment. The nature of the disposal could help determine the degree of seriousness of the offence.
- **Appeals Pending** – sometimes this is noted alongside the conviction. You may wish to consider the need to delay your recruitment decision pending the outcome of an appeal.

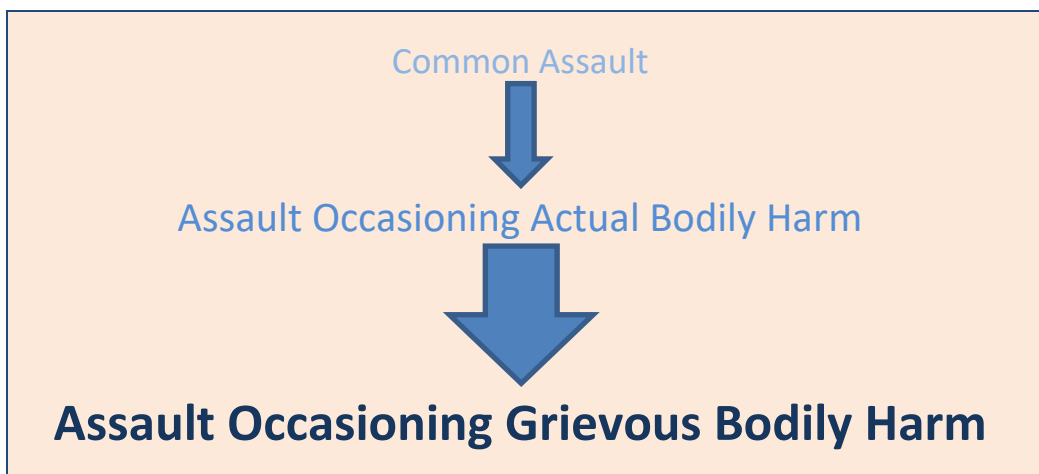
4.4 Employers may find it useful to work through the checklist at **Annex A** to this document in terms of considering information on certificates.

4.5 Employers are obliged under the AccessNI Code of Practice to have a policy on the recruitment of ex-offenders. A sample policy is available on the nidirect website, [Sample policy on recruitment of ex-offenders](#). This policy emphasises the need to promote equality of opportunity for everyone, including individuals with criminal records. The Code of Practice also requires organisations registered with AccessNI, or those who use the services of an Umbrella body to obtain disclosure certificates to assess the suitability of potential employees, not to withdraw an offer of employment on the basis of information in an AccessNI criminal record check without first discussing the contents of that check with the applicant and providing appropriate reasons for the withdrawal of that offer.

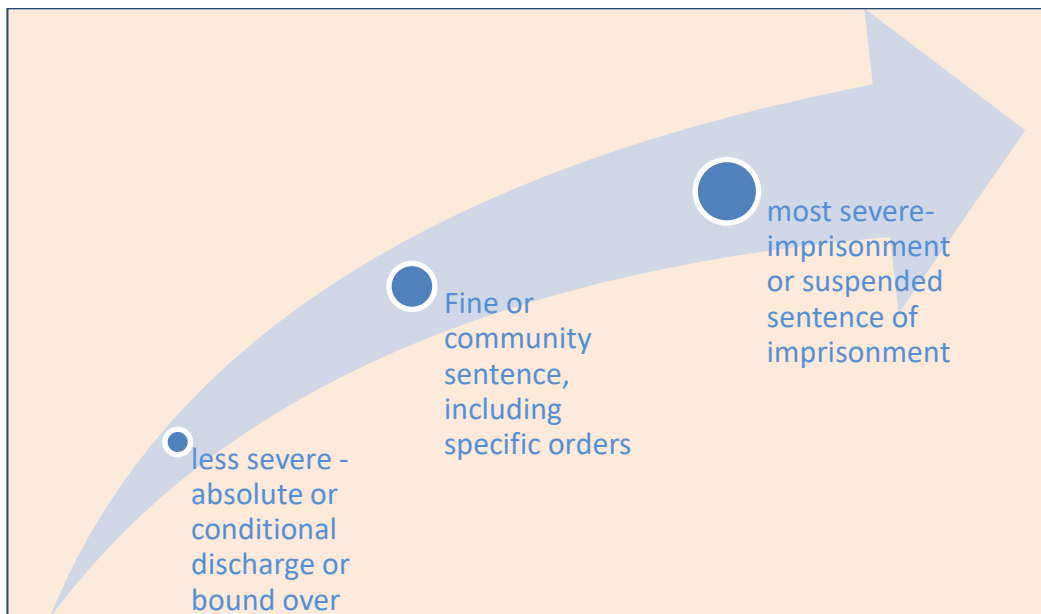
4.6 The **description of offences** can sometimes mislead. For example, **a conviction for Indecent Behaviour** does not necessarily mean a sexual crime has been committed against another person. Here, consideration should be given to the nature of the disposal; if the court imposed a £25 fine, this might suggest the offence was on the lower level, for example, urinating in a public place. In a similar vein **a conviction for aggravated assault against a female or a boy under 14** does not automatically mean:-

- This was an assault against a child; or
- The assault was specifically significant because it is described as “aggravated”.

4.7 The **description** of an offence that an individual is charged with can be an indication of the seriousness (or severity) associated with the offence by the arresting / charging authority. For example:-



4.8 The **disposal** set against any offence may also be an indicator of the seriousness (or severity) with which the court has treated an offence.



4.9 If in doubt, you should first of all ask the applicant to clarify the nature of the offence [see section 8]. You should also consider the need to obtain legal advice in order to clarify any persisting doubts / uncertainties.

4.10 AccessNI operates a Filtering scheme which, in defined circumstances, considers the appropriateness in disclosing old and minor convictions. The scheme requires that certain 'specified' offences will always be disclosed – details of specified offences are available at the following link:-

[List of Specified Offences](#)

### NON-COURT DISPOSALS (NCDs)

4.11 Also known as diversionary disposals, these are a means of handling an offence which does not, as the name suggests, require a person to appear in court. They are used to deal with minor offending, and to help 'divert' people away from the formal criminal justice system. They can only be used in cases where a person admits that they have offended, and where the offence is at the lesser end of the scale of criminal activity.

4.12 Although a non-court disposal is not a conviction, the details of the offence form part of the person's criminal history and can be disclosed on Standard and Enhanced checks, or to the court by the police.

4.13 The format on the disclosure certificate will detail the **nature of the diversion**, the **date** of the diversion, **name of diverting authority** (eg Police Service) and **the offence**. Examples include:-



**NI Caution – Youth ON 14/09/2009 AT PSNI POLICE SERVICE  
POSSESSING OFFENSIVE WEAPON IN PUBLIC PLACE**

**NI Caution – Adult ON 23/04/2016 AT PSNI POLICE SERVICE  
POSSESSING CLASS A CONTROLLED DRUG  
INDECENT BEHAVIOUR**

4.14 There are five types of NCD disclosed on AccessNI checks:-

#### **Adults**

- Cautions
- Informed warnings

#### **Children**

- Cautions
- Informed warnings
- Youth conference plans

4.15 Informed warnings are regarded as less serious outcomes than a caution, while a youth conference plan would be regarded as the equivalent of a caution.

4.16 The suggested approach to be adopted in deciding upon the relevance of Non-Court Disposal information for the purposes of a recruitment decision should be as per the approach set in in paras 4.3 to 4.5.

### **POLICE INFORMATION**

4.17 Part V of the Police Act 1997 allows police forces to consider any non-conviction information that they hold about an applicant and decide whether it should be disclosed in the interests of wider public safety. In considering this information, police forces operate in accordance with a Quality Assurance Framework (QAF) which ensures consistency in approach and that only relevant information is disclosed on a certificate. In all instances, police forces will give due consideration to the rights of the applicant. A chief officer must also give regard to statutory guidance published by the Department of Justice as to the exercise of their functions under this part of the legislation. This guidance is available on the DoJ website at [Statutory Disclosure Guidance for Chief Officers](#).

4.18 This 'non-conviction' police information can be classified into three categories, namely:-

- (A) Clarification or further information about convictions or NCDs;
- (B) Relevant information about applicants; or
- (C) Relevant information about an individual other than the applicant (3<sup>rd</sup> party)

4.19 Police, in the vast majority of cases, before including information on a disclosure certificate will have contacted the individual and asked them if they wish to make representations in relation to the information they propose to disclose. In this way, the information contained in a certificate should not be a shock, or unknown, to the applicant. The applicant can then determine if they wish to continue with the job application and share the certificate with the employer, or withdraw from the employment process.

#### **(A) Clarifications regarding Conviction Information / NCDs**

In this instance, the police force has considered it appropriate to disclose explanatory information to provide some context in regard to a conviction / NCD. This has been done with the aim of assisting employers understand the background nature of an offence and help inform the recruitment decision making process.

The following are examples of how a police force might present such clarifications on a disclosure certificate:-

##### **Example 1**

*“... the applicant received a conviction on [Date] for Indecent Behaviour. This relates to the applicant urinating in a public place on [Date]. The [Name of Force] consider that this information ought to be disclosed as it explains the circumstances behind the applicant’s conviction for indecent behaviour. After careful consideration the [Name of Force] reasonably believes that this information ought to be disclosed as it is important that [Name of Employer] can take it into consideration when deciding if [Name of Applicant] meets the criteria of being a suitable person for a position of [Name of Position Applied For].”*

##### **Example 2**

*“... the applicant has a conviction for Aggravated Assault on a Female or boy under 14 Years on [Date]. This relates to the assault on a 25 year old female on [Date]. The [Name of Force] considers that this information ought to be disclosed as it explains the circumstances behind the applicant’s conviction. After careful consideration the [Name of Force] believes that this information ought to be disclosed as it is important that [Name of Employer] can take it into consideration when deciding if [Name of Applicant] meets the criteria of being a suitable person for a position of [Name of Position Applied For].”*

In example 1 above, police are clarifying that the conviction for indecent behaviour related to urination in a public place, while in example 2, the police are clarifying that the victim of the assault was not a child.

#### **(B) Relevant Information about Applicants**

This category encompasses a much wider range of police information that may not be referenced elsewhere within the Convictions or NCDs on the disclosure certificate. Indeed it is not unusual for there to be no information disclosed within the Convictions / NCDs, but for a police force to include information within this specific category.

The type of information that might be disclosed here can be broadly set out in six 'clusters', as follows:-

**(i) Information in relation to on-going investigations**

In certain circumstances police might disclose details of on-going or live investigations where it is considered proportionate to do so in the interests of wider public safety.

**Example 3**

*"... the applicant is currently under police investigation for the following offences [nature of offence] Police have recommended prosecution and are awaiting a direction from the [Name of Prosecution Service]. After careful consideration the [Name of Force] reasonably believes that this information ought to be disclosed as it is important that the [employer's name] can take it into consideration when deciding if [Name of applicant] meets the criteria of being a suitable person for a [specific position or job]. The interference with the human rights of those concerned has been considered and it has been determined that, in this instance, disclosure is proportionate and necessary."*

**(ii) Criminal conviction information about EU offences**

For applicants working in Regulated Activity with children AccessNI currently seeks criminal record information from the home authorities of 12 EU countries. These requests are submitted through the offices of the Association of Chief Police Officers Criminal Records Office (ACRO). An example of what an ACRO disclosure might look like is set out below:-

**Example 4**

*"ACRO holds the following information which is believed to be relevant to the application of [Name and DoB of applicant], for the [name of position]. The information held by ACRO is the response to a request for previous convictions submitted to [Name of EU country] which returned one conviction. The conviction [dated] was handed down by the [name of court] for the offence of [nature of offence]. The individual received [nature of disposal]."*

In all instances where an ACRO disclosure is made, ACRO will include the following text within the body of the disclosed information:-

*"This decision takes into consideration Article 8 of the Human Rights Act for the individual and the fact that this disclosure may lead to the individual not gaining employment and it affecting their right to a private and family life, and Article 2 of the Human Rights Act for the children whose right to life should be protected in family life. The decision also takes into consideration the disclosure of the offence relating to [Nature of Offence] will be a breach of Article 9(1) EU Framework Decision as the information is being used for purposes other than what it was requested for and could render the UK subject to infraction proceedings by the EU Commission. The risk to the children outweighs the risk of infraction. The interference with the human rights of those concerned has been considered and it has been determined that, in this instance, disclosure is proportionate and necessary."*

### **(iii) Information from An Garda Síochána about offences in the Republic of Ireland**

If an applicant seeking an Enhanced check currently resides in the Republic of Ireland, or has lived there in the previous 5 years, PSNI will ask An Garda Síochána to determine whether they have any relevant information, for example, convictions in the Republic of Ireland. PSNI will share such information with AccessNI for inclusion on the disclosure certificate. The following is an example of the type of information that might be disclosed in this way:-

#### **Example 5**

*“... The information for consideration relates to the following convictions held with An Garda Síochána [Court date and name]: [Offence(s)] and [disposal(s)]. The Police Service of Northern Ireland believes that this might be relevant to an employer’s risk and suitability assessment when considering the application for the [Name of position]. After careful consideration, the Police Service of Northern Ireland believes that this information ought to be disclosed as it might help the Registered Body make a decision as to the applicant’s suitability for the role applied for.”*

Queries with regards to the accuracy of information should be raised with the owners of the information. In the above example, any challenge on accuracy would need to be raised with An Garda Síochána. A dispute should be raised with AccessNI in the first instance.

### **(iv) Information about police investigations that resulted in no prosecution or the applicant is found “not guilty” by a court**

Current case law enables police to disclose such information, subject to the application of the statutory test at paragraph 4.17 above. Like other clusters in this category, the information can be very sensitive and likely to evoke strong reactions from effected parties. In essence this cluster can take one of two distinct themes:-

- Prosecution Service directs ‘No Prosecution’, perhaps because of lack of compelling evidence;
- The court is not persuaded by the Prosecution arguments and finds the individual not guilty.

An example of this might be:-

#### **Example 6**

*“... the applicant made admission on [Date] to [description of offending behaviour]. However taking account of [a description of the mitigating circumstances] the Public Prosecution Service directed No Prosecution. The [Name of Force] considers this information ought to be disclosed as it may help the registered body make a decision as to the applicant’s suitability for the role applied for. After careful consideration the [Name of force] reasonably believes that this information ought to be disclosed as it is important that [Name of*

*Employer] can take it into consideration when deciding if [Name of applicant] meets the criteria of being a suitable person for a [Name of position]. The interference with the human rights of those concerned has been considered and it is determined that, in this instance, the disclosure is proportionate and necessary.”*

Employers must consider for themselves the value of such information. They must take into account that either:-

- the charge laid against an applicant was not proved beyond a reasonable doubt in court or,
- the Prosecution Service considered there was no reasonable prospect of securing a successful conviction,
- the Prosecution Service believed it was not in the public interest to proceed with a prosecution; and
- the police have carefully considered all the information available and have assessed it is such that an employer needs to be made aware of it. In doing so the relevant police officer is likely to have reviewed the evidence including reading statements and transcripts or listening to audio of suspect interviews in order to determine that information should be disclosed.

Employers should not infer that a disclosure of this type would not have been made by the police unless they have formed a view of the likely guilt of an applicant. Nor does it suggest, nor is it meant to suggest, that the police dispute the finding of the court or the decision of the Prosecution Service.

**(v) Information about previous investigations where the applicant was regarded as a suspect**

As suggested, this applies in instances where police consider it appropriate to disclose information that has been received / gathered during the course of investigations. This can cover a wide ambit of information and could be disclosed in circumstances where the applicant may not know themselves that police retain the information – please see Section 6 below on Representations. An example of what this type of information might look like is set out below:-

**Example 7**

*“The information held by police is that between [date] and [date] the applicant has been linked as a suspect to four incidents involving [nature of suspected offending]. After careful consideration the [Name of force] concludes that this information is relevant and ought to be disclosed to an employer, in this instance, because it will help the Registered Body make an informed decision as regards the applicant’s suitability. The interference with the human rights of those concerned has been considered and it is determined that, in this instance, the disclosure is proportionate and necessary.”*

**(vi) Further clarification information about the applicant’s offences, that may be negative**

Section (A) at paragraph 4.19, is about providing some context to convictions where the wording of offence might suggest something more serious than was actually the case, for example Indecent Behaviour. This contrasts with disclosure within this cluster which could be described as taking an opposite approach, whereby the explanatory information provided by police places a context on the offence specifically relevant in terms of the position for which the disclosure certificate is being sought.

#### **Example 8**

*“... the applicant has [nature of disposal] in respect of [nature of offence]. These offences relate to the applicant [the specific circumstances of the offence]. After careful consideration the [Name of force] reasonably believes that this information ought to be disclosed as it is important that [Name of employer] can take it into consideration when deciding if [Name of applicant] meets the criteria of being a suitable person for a [Name of position]. The interference with the human rights of those concerned has been considered and it is determined that, in this instance, the disclosure is proportionate and necessary.”*

#### **(C) 3<sup>rd</sup> Party Information**

If, when applying for an Enhanced check, the applicant indicates that the work will be taking place in their own house, this is known as a ‘Home Based Occupation’, examples include childminding, adoption and fostering. All such cases will be referred to PSNI, who will review information they hold about other known persons who either live at that address or regularly visit that address, and will consider if that information is relevant and ought to be disclosed on the applicant’s certificate.

Police will disclose such information in the interests of wider public safety. The type of 3<sup>rd</sup> party information can be varied; some examples are set out below:-

#### **Example 9**

*“The Police Service of Northern Ireland holds no relevant information concerning [Name and DoB of applicant]. However we do hold information concerning [Name and DoB of 3<sup>rd</sup> party] which may be relevant as they appear to be a direct relative of the applicant and appear to be currently residing at the applicant’s home. The information held by police is that between [date] and [date] [Name of 3<sup>rd</sup> party] has been linked as a suspect involved in numerous domestic incidents reported to police. Some of these incidents involved [nature of offence(s)] which resulted in [nature of disposal(s)]. After careful consideration, we conclude that this information is relevant and ought to be disclosed to the Registered Body to enable them to make an informed decision. The interference with the human rights of those concerned has been considered and it is determined that, in this instance, the disclosure is proportionate and necessary.”*

Another example of this might be:-

#### **Example 10**

*“... however we do hold information about [Name and DoB of 3<sup>rd</sup> party] which is believed to be relevant to the application as they appear to be related to the applicant and may have access to their address. The information held by police is*

*that [Name of 3<sup>rd</sup> Party] has [multiple] convictions which include [nature of offences]. [Name of 3<sup>rd</sup> Party] is currently under police investigation, after admitting during interview on [date] to [details of offence]....”*

## BARRED LIST INFORMATION

4.20 The Disclosure and Barring Service retains lists of individuals (for England, Wales and Northern Ireland) who have been barred from working with children and / or vulnerable adults; the Scottish Government holds similar list for such individuals in that jurisdiction.

4.21 For applications for an Enhanced check, for individuals working in Regulated Activity with children and / or vulnerable adults, AccessNI will conduct a search of these barred lists and, if appropriate, include the relevant details pertaining to the applicant on their disclosure certificate. The following are examples of how barred list information will be presented on a disclosure certificate:-

### Example 11

#### **Children’s Barred List**

*This person is barred from engaging in regulated activity in relation to Children under paragraph 2 of schedule 3 of the Safeguarding Vulnerable Groups Act 2006 (SVGA)*

#### **Adults’ Barred List**

*This person is barred from engaging in regulated activity in relation to Vulnerable Adults’ under the Safeguarding Vulnerable Groups Act 2006 (SVGA)*

4.22 Depending upon the nature of the position the applicant is applying for, it might be that information in relation to the Children’s List or Adults’ List is disclosed. If the Registered Body is made aware of the above information in relation to an application, they must not proceed with the appointment into a position of Regulated Activity with the group from which they are barred. The Registered Body would be committing an offence if they chose to proceed in such circumstances, and would be liable to a police investigation.

4.23 Registered Bodies will wish to note that in circumstances such as above, AccessNI will contact the Signatory as soon as we become aware that this applicant is on a barred list; this is a safeguarding measure designed to reduce the risk that the employer might start the applicant prior to the AccessNI check being completed.

4.24 In addition, AccessNI will refer the matter to PSNI as it is an offence for someone to apply to work in Regulated Activity with children and / or vulnerable adults if they are knowingly barred from doing so.

## 5. CONFLICTED RELATED CONVICTIONS

5.1 The Executive Office for the Northern Ireland Government has published guidance for employers on recruiting people with conflict related convictions. This guidance can be viewed on The Executive Office's website at the following link:-

[Employers' guidance recruiting people conflict-related convictions](#)

## 6. REPRESENTATIONS

6.1 As set out in paragraph 4.19 above, it is important to note that in instances where the police are considering disclosing non-conviction information it is likely that they will have engaged directly with the applicant as part of the process and prior to taking the final decision on whether to disclose information, or not. This aspect of the process is called 'Representations' and provides the applicant with an opportunity to comment before the information is formally disclosed.

6.2 Registered Bodies should note that the fact that the police force is engaging directly with the applicant is not evident on the on-line Case Tracking tool; case tracking will only indicate that the case is with a 3<sup>rd</sup> Party (normally a police force). If it appears to you (as the prospective employer) that the case has been with a 3<sup>rd</sup> Party for an inordinate amount of time, you may wish to enquire of the applicant if they know of any reason for the delay (remember : the applicant will also have access to the same information as you on the case tracking tool).

## 7. APPEALS

7.1 Depending upon the nature of the information disclosed, a number of appeal mechanisms have been built into the wider AccessNI disclosure service, namely:-

- Issues in relation to the applicant's personal details on the certificate (ie name, address, Dob) should be queried with AccessNI via our email account at [ani@accessni.gov.uk](mailto:ani@accessni.gov.uk). Please note that as over 99% of applicants now complete applications on-line, and these are checked by Registered and Responsible Bodies, any issues with the accuracy of applications will lie with the applicant. AccessNI is unlikely to issue a new certificate where information provided by an applicant and countersigned by a registered person is incorrect and is reflected on their certificate. In such instances, a fresh application may be required and (where appropriate) an additional fee incurred.
- Issues in relation to the content of criminal history information should be raised using the [AccessNI certificate dispute form](#). Where the information relates to convictions that are spent or NCDs, and it is believed the information shouldn't be disclosed or isn't relevant to the position applied for the dispute will be referred to AccessNI's [Independent Reviewer](#).

7.2 Disputes must be raised within 90 days from the date of the certificate.

7.3 Disputes in relation to police information must also be raised on AccessNI's dispute form. Such disputes will be referred to PSNI for review. If the applicant does not agree with the PSNI's decision the dispute will automatically be forwarded to the [Independent Monitor](#).



## 8. CRIMINAL HISTORY ASSESSMENT

8.1 In order to assist organisations with decision making when considering information on a certificate, AccessNI has developed a Criminality History Assessment Tool. The tool is designed to ensure that some level of context is applied to the analysis of criminality information, with due regard to the position applied for and:-

- Relevancy                    }
  - Proportionality            }
  - Seriousness                 }
  - Currency                     }
- of the criminal history information disclosed

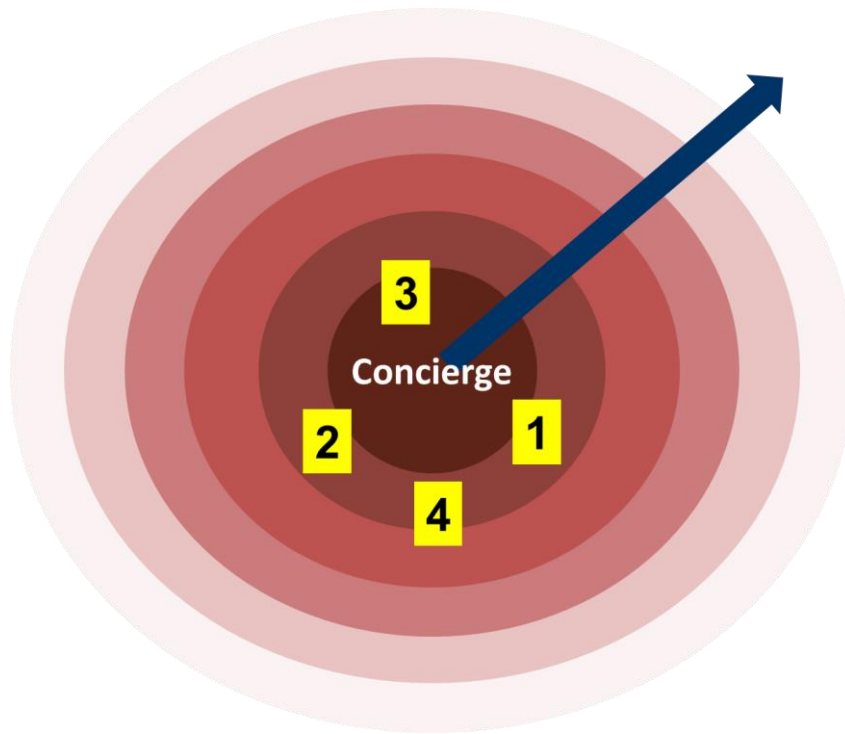
8.2 The tool is designed to map convictions onto a chart, at the centre of which is the ‘position applied for’ – in so doing the tool creates a pictorial view of how relevant convictions are for the specific job / role. The rationale is that the closer the convictions cluster to the centre of the chart, the more relevant they are considered to be for the position, and the less the likelihood that the individual is suitable for the post. Similarly, if convictions are not considered relevant for the position, they are mapped further from the centre of the chart.

8.3 The tool considers each conviction in turn, and allows for these to be re-positioned in light of further mitigating or aggravating information.

8.4 For example if an individual, who has applied for a job as a Hotel Concierge, has the following convictions:-

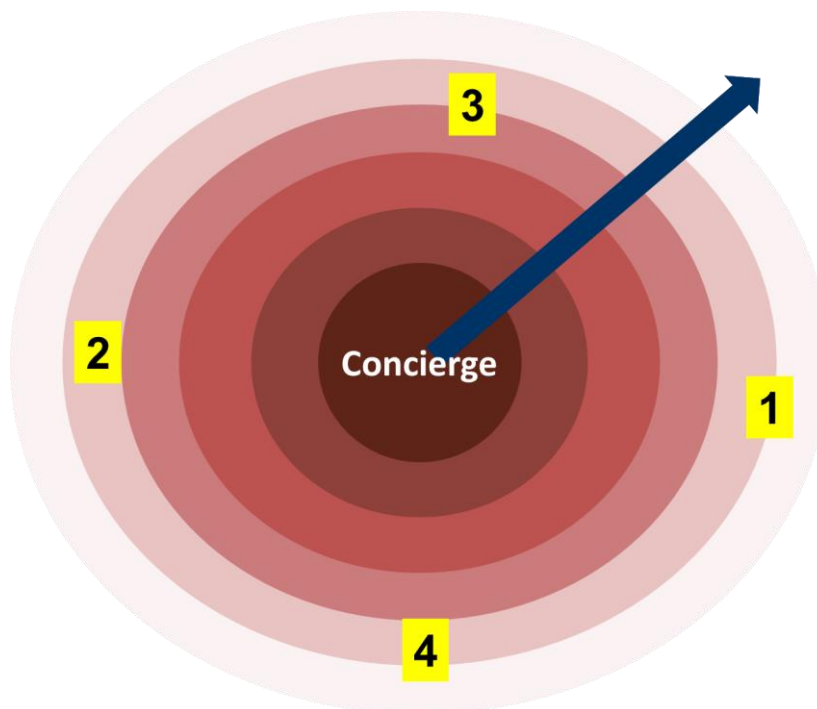
Court	Date	Court	Offence	Disposal
1	08/09/2012	Laganside Magistrates	Assault (domestic)	Community Order 60 hours unpaid work to be completed in 3 months
2	13/01/2013	Downpatrick Magistrates	Possession of Class B drug (Cannabis)	Fined £350
3	24/04/2015	Belfast Crown Court	Assault Occasioning Actual Bodily Hard	3 Months imprisonment : suspended 2 years
4	18/09/2016	Lisburn Magistrates	Driving while under the influence	Fined £300

8.5 For this position, the conviction might map onto the Assessment Tool as follows:-



8.6 In the above instance, it might be unlikely that the applicant would be offered the job.

8.7 However, following discussion with the applicant (in accordance with the AccessNI Code of Practice), it might become clear that there were extenuating circumstances in relation to the convictions, perhaps due to early lifestyle choices at the time. The applicant may now present as a 'reformed' character who is trying to make a life change. Should the employer be sufficiently convinced they might decide to re-map the convictions as follows:-



8.8 Such a change might lead the employer to feel more confident in progressing the recruitment to the next stage, in the knowledge that a risk assessment of the convictions has been appropriately undertaken and fully informed suitability decision reached on that basis.

8.9 This Criminal History Assessment Tool is available at the following link:-

[Criminal History Assessment Tool](#)

## 9. CONCLUSION

9.1 This document has been produced to give employers / voluntary organisations an insight into the type of criminal history information that might be included on a disclosure certificate, and to provide advice on the factors that employers might wish consider as part of their wider recruitment decision making process.

9.2 It is not possible to cover all potential eventualities that might be disclosed on a disclosure certificate in this single document. There are a vast number of offences and types of police information; if employers are uncertain about the content on a disclosure certificate they should consider seeking legal advice before taking a recruitment decision.

## ANNEX A – CONSIDERATION OF INFORMATION DISCLOSED

Employers may find it useful to use this checklist in terms of considering an applicant's suitability for employment measured against information disclosed on their AccessNI certificate.

### 1. Would you consider the information disclosed to reasonably be relevant to the work the applicant is seeking to do?

How relevant is the information to the work?

- Could any previous offence have an impact on the applicant undertaking the work?
- Do you consider knowing about this offence(s) undermines the safeguarding of vulnerable groups?

How serious is the information?

- Does the information relate to a conviction in a court, or a police caution, etc?
- Was the outcome less serious, for example a caution or discharge, or was the applicant fined, subject to an order or given a period of imprisonment?

How current is the information?

- How old is the offence(s) and what age was the applicant at the time of offending? If a long time ago, or the applicant was very young, is it reasonable to believe it is still relevant for the work?

### 2. If you decided not to employ a person as a result of the information on their certificate would this be a proportionate response?

Protection of vulnerable groups

- Would a decision not to employ improve or enhance the safeguarding of children or vulnerable adults?
- Is it possible to employ the applicant and monitor their performance/behaviour?

What is the impact on the individual?

- Would a decision not to employ have an entirely detrimental and disproportionate impact on the applicant?

What is the impact on the employer?

- Would you be denying employment to someone who could safely contribute successfully to your organisation?
- Might you be leaving your organisation open to legal action if your decision was disproportionate?

### 3. Have I given the applicant an opportunity to provide their side of the story about the background to the offences or information on their certificate?

### 4. Have I correctly applied my policy on the recruitment of ex-offenders to this case?