

A Balanced Approach – Independent Review by Sunita Mason

UNLOCK Member Briefing, March 2010



Background

On the 1st March 2010, Sunita Mason (who was appointed in September 2009 by the Home Secretary as the Government's Independent Advisor on Sharing Criminality Information) reported the findings of her review on the retention and disclosure of criminal record information held by the police on the Police National Computer, carried out at the request of the Home Secretary, Alan Johnson. The review was published on the 18th March 2010 together with the Government's response which accepts the principles behind all of the recommendations that she made.

This document attempts to summarise some of the review's key findings though not all of its recommendations are mentioned here.

The full review, the government response, the statement made in the House of Commons, UNLOCK's Submission and UNLOCK's Member Submissions can all be found on UNLOCK's website at www.unlock.org.uk/staticpage.aspx?pid=76.

Summary

Overall, Sunita recognises the need to avoid stigmatising people seeking to follow their chosen occupation. Whilst proper checks must remain in place to ensure public protection, individuals must be able to move on from their past and contribute to society. She believes that most people would agree that where someone has committed a minor offence a long time ago, they do not deserve to have their lives forever blighted.

This represents a significant step towards taking a more sophisticated approach towards information that is 'relevant', rather than simply disclosing all conviction information that is held on the PNC.

Some of the key recommendations

Recommendation - *There should be no requirement for deletion of criminal records from the Police National Computer, other than deletion of records at age 100.*

Sunita worked from the basis of the Court of Appeal's judgment on 15th October 2009, in which the argument made by the Information Commission (that old/minor conviction information should be deleted from the PNC) was rejected, and that retention until 100 was lawful on data protection grounds.

Recommendation - *Information provided from the Police National Computer in relation to employment checks should be filtered, using specified business rules, so that employers are not given each and every piece of criminal record information. This would mean that certain old and minor records are never disclosed by the Criminal Records Bureau to the employer, which on balance is a more proportionate approach.*

The report queries whether the current list in the Exceptions Order [to the Rehabilitation of Offenders Act 1974] reflects the true spirit and purpose of the original legislation which was to make a balanced risk assessment between the rights of the individual and protection of the public.

Sunita believes that the current CRB system acts purely as a collation and disclosure bureau that sends out all criminal records from the PNC without any consideration of the nature of information and further, that this unsophisticated approach means that information may be disclosed that is unfair and/or embarrassing to the person. She also highlights how it could also have more serious repercussions for the individual; for example they may be refused a job or an opportunity to work for a voluntary organisation.

She is also of the opinion that under the current system, it is unfair to place the onus on the employer to interpret all of the information presented to them on a CRB check, recognising that PNC details can be complex and that employers do not always have the resources and training to fully weigh up and understand what is being presented to them. She also recognises how evidence suggests that employers do not always handle and interpret the information correctly and fairly. In her view a more suitable system, considered against a proportionality criterion, could prevent some of these issues surfacing in the future. The vital factor is that the information given to employers is relevant at the time of disclosure.

In specifying business rules, Sunita details some examples of criteria that could be used for a filtering process, but goes on to make the following recommendation.

Recommendation - *A number of interested parties to be brought together as an expert panel to advise Government on the filtering rules that should be applied to any new legislative arrangements.*

Sunita feels that to put in practice her recommendation above, a group of interested parties should be brought together quite quickly to identify the rules that should be applied to filtering. As there used to be a system applied between PNC and CRB which reduced access to certain types of information, she is confident that it is possible to instigate a new process which applies some defined rules.

Recommendation - *Section 4(4) of the Rehabilitation of Offenders Act 1974 to be examined and changed as a priority so that my previous recommendations can be fully implemented.*

Sunita believes that the ROA requires changing as section 4(4) allows employers to ask an employee about spent convictions under the Exceptions Order. This means that even if the CRB did not disclose old or minor offences, a person can still be obliged to do so if asked. Therefore without changing section 4(4) there would be a loophole in the filtering process. This was one of the problems presented by the 'step down' process.

Recommendation - *Government to review the Rehabilitation of Offenders Act 1974 at the earliest opportunity to ensure it remains an effective part of the disclosure process.*

Throughout her consultations with both the Government and third sector agencies, Sunita found that reform of the ROA was persistently raised and argued to be an outdated piece of legislation that is no longer fit for purpose. In her examination of the ROA she found it was clear that, as it was drafted in 1974 before the existence of the CRB and now the ISA, it could not have envisaged the current difficulties that individuals face when having to disclose spent convictions. She highlights how the Government was aware of the challenges posed by the ROA as an official review was chaired by the Home Office in 2002. She also mentions that a recent Private Members Bill was introduced in the House of Lords in December 2009 which is seeking to take forward the principles from the 2002 review.

Recommendation - *Government will give further consideration to the issue of soft intelligence disclosure because I believe a more balanced approach can be taken on this complex issue.*

Sunita felt that soft intelligence should never be disclosed to an employer via the CRB disclosure process. This would effectively remove the distinction between standard and enhanced CRB disclosures and put an end to the practice of unsubstantiated soft intelligence being declared to potential employers.

Recommendation - *Government will review the dual operation of the two separate agencies operating within the employment vetting landscape. Process integration could be considered at some stage in the future, after the ISA has become fully established. This could offer cost-savings and reductions in bureaucracy.*

This recommendation highlights the need to integrate the ISA and the CRB so that vetting arrangements would apply more logically and reduce the amount of unnecessary duplication. Sunita does not go into detail as to how she thinks this could be achieved.

Recommendation - *Guidance for employers on how to interpret disclosure material to be developed and made more accessible. If my recommendation on filtering old and minor criminal records is adopted then it seems sensible to develop and launch any guidance simultaneously.*

Recommendation - *Clear guidance for individuals, to foster greater public understanding, to be issued.*

Sunita recognises that employers and individuals carry a substantial responsibility within the disclosure process. She feels that an employer needs to interpret and assess any information they receive via a disclosure in a fair and transparent way and that an individual needs to understand what they are legitimately required to disclose and have confidence in the process.

She highlights how some review consultees had raised concerns about the lack of clear information available on how the various systems and processes now work. They had also highlighted that without this knowledge the rights and responsibilities of the employers, individuals and organisations are unclear. She feels that this should be addressed.

Further, it is recommended that individuals should also have clearly signposted and accessible information in respect of holding information, obtaining information and disclosing information.

Conclusion

This review identifies some of the key issues that UNLOCK has been lobbying about for some time. To what extent this is a result of UNLOCK's influence, in terms of making contact with Sunita via Alan Johnson, attending a third-sector roundtable with Sunita in February 2009, and making a set of formal recommendations accompanied with a number of UNLOCK Member Submissions, is unknown.

However, the key recommendations described above clearly identify this review as potentially being a pivotal point in reforming the disclosure process so that it works in a much fairer way.

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