

## **Review of court orders made in sexual offence cases: 1997 to 2011**

### **Purpose**

1. This report sets out the findings of a review of court orders in sexual offence cases dealt with by the Crown Court and Magistrates' Courts in Northern Ireland between 1997 and 31<sup>st</sup> March 2011.

### **Background**

2. The Northern Ireland Courts and Tribunals Service has undertaken a comprehensive review of all court orders in sexual offence cases.
3. Sexual offence cases are of their nature complex and require the Court to apply a range of different statutory provisions and sentencing options, including –
  - Sexual Offences Prevention Orders (SOPOs);
  - notification requirements under the Sexual Offences Act 2003 (commonly referred to as the 'Sex Offender Register');
  - disqualification orders under the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 disqualifying a person from working with children; and
  - prison licensing requirements under Article 26 of the Criminal Justice (NI) Order 1996.
4. The Courts and Tribunals Service (NICTS) has carried out a review of all cases heard in the criminal courts in Northern Ireland between 1997 and 31<sup>st</sup> March 2011 in which orders in the above categories were engaged.

## **Summary of findings**

5. NICTS reviewed a total of 372 SOPOs and established that 350 of these orders (94.1%) fully and accurately reflect the order made by the court. The remaining 22 orders (5.9%) had discrepancies either in relation to the duration of the order or the wording of the prohibitions imposed by the court. Amended orders have been approved by the judiciary and have been served on defendants. The findings of this audit were set out in the CJINI Inspection report on the Donagh case.
  
6. NICTS reviewed a total of 1,953 notification requirement cases and established that in 217 of these cases (11%), the requirements in the court record were inconsistent with the relevant legislation. In most cases the error related to the duration for which a defendant would be subject to the notification requirements. These errors have now been corrected and amended notification documentation has been forwarded to the police. *(See paragraphs 11 to 19 of this report)*
  
7. NICTS reviewed 484 Crown Court cases where the Court should have considered whether or not to make a disqualification order disqualifying a defendant from working with children. In 278 of these cases (57%) the Court has neither made a disqualification order nor given reasons for not making the order, and these have been referred back to the judiciary for further consideration. *(See paragraphs 20 to 24 of this report)*
  
8. NICTS identified 5 cases where a Court, when sentencing a sex offender to imprisonment or detention, gave a direction that he should be subject to release on licence but this was not accurately reflected in the court record. Amended orders have now been provided to the prison authorities in these cases. *(See paragraphs 25 to 28 of this report)*
  
9. This review, and the earlier SOPO audit, has highlighted weaknesses in relation both to sentencing and administrative arrangements. We have liaised with the Office of the Lord Chief Justice throughout this review and a

programme of action has been put in place in relation to sentencing to underpin the accuracy of court orders in sexual offence cases. This has included more robust checking mechanisms, revised guidance and training programmes and enhancements to the NICTS IT system. (See *paragraph 32 of this report*)

10. The remaining sections of this report provide more detail in relation to the review and subsequent remedial action.

### **Notification requirements (Sex Offender Register)**

11. Where a defendant is convicted of a specified sexual offence, he may become subject to the notification requirements of the Sexual Offences Act 2003, commonly referred to as the Sex Offender Register. Prior to May 2004, the notification requirement regime was governed by the Sex Offenders Act 1997.
12. A person who is made subject to the notification requirements is required by law to –
  - notify the police within 3 days of the date of court (or release from custody) of his name, any other name used, date of birth and home address and may be required to allow himself to be fingerprinted and photographed;
  - notify the police of any change to his name or home address within 14 days of the change; and
  - notify the police of any other address where he will be staying for 14 days or longer.
13. Many of the specified sexual offences are subject to a ‘threshold’ which must be met before the notification requirements apply. These thresholds may relate to the age of the victim, the age of the defendant on the date of the offence, the imposition of a specific type of sentence or minimum duration, or a combination of any or all of these factors. In relation to a number of offences, the threshold under the 2003 Act differs from that which would have applied under the 1997 Act.

14. The duration for which a defendant will be subject to the notification requirements is set out in the Act and is determined by the nature of the sentence imposed on him for the offence. Where the defendant is under 18 on the date of conviction/sentence some of the prescribed periods are reduced by half.
15. The notification requirements apply as a matter of law - they are not an order of the court. Nonetheless, best practice would be for the judiciary to inform the defendant that the requirements will apply to him and to specify their duration.
16. NICTS reviewed a total of 1,953 sex offence cases from 1997 to 2011 to determine if the notification requirements had been correctly applied and if the correct duration had been specified.
  - In 1295 Crown Court cases we identified 131 cases (10.1%) where the court record was inconsistent with the relevant legislation;
  - In 658 Magistrates' Courts cases we identified 86 cases (13.1%) where the court record was inconsistent with the relevant legislation.

(A more detailed breakdown of these findings is set out at **Annex A**).

17. In 159 of these cases (8%) the duration recorded is inconsistent with the statutory requirement. In all these cases, the correct duration has been discussed and agreed with the sentencing Judge (or, in his/her absence, with the Presiding Judge) and amended notification documentation has been issued to the police for service on the defendant.
18. In 20 of these cases (1%) a defendant had been incorrectly made subject to the notification requirements and, with the agreement of the relevant Judge, we have written to these defendants to advise them of the error. In a number of these cases the defendant will remain on the Sex Offender Register by virtue of a different conviction within the United Kingdom or because he is subject to a Sexual Offences Prevention Order (SOPO).

19. In 38 of these cases (2%) there is no record whether the notification requirements were applied to a relevant defendant. Where the correct notification period has not elapsed, the required notification documentation has been issued to the police for service on the defendant. Where the period has elapsed we have, in any event, written to the defendant to advise him of the amendment to the court record.

### **Disqualification from working with children**

20. A disqualification order is an order designed to protect children where the Court considers it likely that an offender will commit further crimes against children. A disqualification order prevents the offender from working with children or applying for jobs which involve working with children.

21. Where a defendant, aged 18 or over at the time of the offence, is –
- convicted by the Crown Court of an offence listed in Schedule 1 to the Protection of Children and Vulnerable Adults (NI) Order 2003; and
  - is sentenced to imprisonment/detention of 12 months or more (whether or not it is suspended), or made subject to a Hospital Order or Guardianship Order,

there is a presumption that the Court will make a disqualification order. Where a Judge decides not to make such an order, he must give reasons.

22. Where a defendant was under the age of 18 when he committed the offence, the court must also be satisfied that he will commit further offences against a child before it makes a disqualification order.

23. NICTS has reviewed 484 relevant Crown Court cases and has found –
- In 23 cases (5%) the Court made a disqualification order but this was not correctly recorded. In 12 cases the prohibition was given effect

- In 8 cases (2%) the Court gave reasons for not making a disqualification order but these reasons were not recorded; and
- In 278 cases (57%) the Court did not make a disqualification order and did not give reasons for this decision.

(A more detailed breakdown of these findings is set out at **Annex B**).

24. As there is an element of judicial discretion in these cases, it cannot be assumed that disqualification orders should be made in all, or indeed any, of these cases. We have referred all of these cases back to the trial Judge (or, in his/her absence, the Judge assigned to the County Court Division) asking them to review the case and –
- If they consider that a disqualification order should not be made, to provide reasons which will be noted on the court record; or
  - If they consider that a disqualification order should be made, or wish to hear representations as to whether such an order should be made, to arrange to have the matter listed.

### **Release on licence**

25. Under Article 26 of the Criminal Justice (NI) Order 1996, a Court sentencing a defendant convicted of a sexual offence to a period of imprisonment may direct that on his release he shall be subject to licence.
26. This means that instead of being entitled to 50% remission on his sentence an offender will, at the appropriate point, be released on licence. Where the defendant breaches any of the licence conditions, he may be returned to prison to serve the unexpired portion of the original sentence. (*Recent*

*sentencing reforms have partially abolished remission and introduced a general licence regime.)*

27. We have identified 5 cases where the Court made a direction under Article 26 that the offender should be released on licence but where that order was not recorded.
28. In three of these cases the defendants are still in custody and the correct documentation has now been provided to the Prison Service. In one case the defendant has been released from prison and has been deported. In the final case the defendant died while in prison.

### **Public Protection**

29. In undertaking this review NICTS has been particularly concerned to ensure that no public protection issues have arisen as a result of sentencing errors in the cases under review.
30. In particular, in any case where an error has resulted in a defendant not being placed on the Sex Offender Register or being removed from it prematurely, we have worked with PSNI to determine if the defendant has re-offended. In all but one case we have been able to ascertain that the defendants either have not come to police attention or not in relation to sex offences. In one case a defendant reoffended during the period he should have been subject to notification requirements. However, although the notification period had incorrectly expired the offender had continued to report to police as if he were still required to do so.
31. In relation to the disqualification order cases, on confirmation that a disqualification order is to be made we will immediately engage with AccessNI to determine whether or not individuals have secured or applied to work with children.

### **Remedial Action**

32. Action has already been taken to correct the errors identified in individual cases. However, the NICTS and the Office of the Lord Chief Justice have also introduced a range of initiatives to address any systemic issues highlighted by this review.

- The Lord Chief Justice has agreed that court orders in all novel or complex cases will be verified by the trial Judge before issue.
- The Lord Chief Justice has taken a number of initiatives to improve sentencing procedures in sexual offence cases. The Judicial Studies Board for Northern Ireland is organising judicial training on sentencing in sexual offence cases and a sentencer's checklist is being developed to assist Judges sentencing in sexual offence cases.
- NICTS has strengthened its procedures for preparing, checking and issuing court orders. Under these new procedures all court orders will be independently checked with reference to the best available independent data. In Crown Court cases this data will include the case records on the ICOS (Integrated Court Operations System) IT system, the manual case records, digital audio recording and written judgment where available. In Magistrates' Court cases court orders will be independently checked with reference to ICOS and all other available records.
- NICTS has established a team comprising experienced operational and audit officials to carry out regular independent audits of court orders.
- NICTS has delivered a comprehensive training course to Court Clerks dealing with the full range of sentencing in sexual offence cases.
- NICTS has introduced a number of enhancements to the ICOS Court IT system to ensure that relevant offences are clearly flagged with information on relevant sentencing thresholds.

## **Conclusion**

33. NICTS has completed a comprehensive review of court orders in sexual offence cases. Where necessary, remedial action has been taken in conjunction with the Lord Chief Justice's Office.

## **NI Courts and Tribunals Service**

June 2011

Sex Offender Notification Requirements Review(i) Crown Court

Period	Cases reviewed	Notification Requirements – too long	Notification Requirements – too short	Notification requirements – Entered in error	Notification requirements – Omitted	Error rate
1/1/11 to 31/3/11	25	0	1	1	0	8.0%
1/1/10 to 31/12/10	98	1	2	0	3	6.1%
1/1/09 to 31/12/09	104	1	4	0	1	5.7%
1/1/08 to 31/12/08	128	5	2	0	2	7.0%
1/1/07 to 31/12/07	103	5	3	0	1	8.7%
1/1/06 to 31/12/06	112	5	5	0	2	10.7%
1/1/05 to 31/12/05	86	4	5	1	2	13.9%
1/1/04 to 31/12/04	122	7	6	0	0	10.6%
1/1/03 to 31/12/03	81	4	8	1	0	16.0%
1/1/02 to 31/12/02	72	3	3	1	1	11.1%
1/1/01 to 31/12/01	76	6	4	1	1	15.8%
1/1/00 to 31/12/00	88	2	4	2	1	10.2%
1/1/99 to 31/12/99	84	5	2	0	0	8.3%
1/1/98 to 31/12/98	83	6	4	0	1	13.3%
1/9/97 to 31/12/97	33	0	1	0	1	6.1%
<b>TOTAL</b>	<b>1295</b>	<b>54</b>	<b>54</b>	<b>7</b>	<b>16</b>	<b>10.1%</b>

(ii) Magistrates' Courts

Period	Cases reviewed	Notification Requirements - too long	Notification Requirements - too short	Notification requirements - Entered in error	Notification requirements - Omitted	Error rate
1/1/11 to 31/3/11	13	0	0	0	0	0%
1/1/10 to 31/12/10	41	2	1	2	0	12.2%
1/1/09 to 31/12/09	52	1	2	1	0	7.7%
1/1/08 to 31/12/08	57	2	3	3	0	14.0%
1/1/07 to 31/12/07	49	1	3	0	0	8.2%
1/1/06 to 31/12/06	42	1	4	1	1	16.6%
1/1/05 to 31/12/05	45	0	2	1	7	22.2%
1/1/04 to 31/12/04	55	1	3	3	4	20.0%
1/1/03 to 31/12/03	42	0	5	1	3	21.4%
1/1/02 to 31/12/02	44	1	4	0	0	11.4%
1/1/01 to 31/12/01	55	0	3	0	2	9.1%
1/1/00 to 31/12/00	52	1	5	0	3	17.3%
1/1/99 to 31/12/99	48	3	0	0	1	8.3%
1/1/98 to 31/12/98	41	0	2	0	1	7.3%
1/9/97 to 31/12/97	22	0	1	1	0	9.1%
<b>TOTAL</b>	<b>658</b>	<b>13</b>	<b>38</b>	<b>13</b>	<b>22</b>	<b>13.1%</b>

**POCVA Disqualification from Working with Children Review**

*DQO – An order disqualifying the defendant from working with children*

*DQNO – A record of reasons specified by the judge for not making a disqualification order*

Period	Cases where DQO/DQNO made	DQO/DQNO made but not recorded	Cases where no reference made to DQO/DQNO
1/1/11 to 31/3/11	11	0	9
1/1/10 to 31/12/10	37	2	28
1/1/09 to 31/12/09	39	4	63
1/1/08 to 31/12/08	43	13	35
1/1/07 to 31/12/07	30	7	46
1/1/06 to 31/12/06	12	2	50
1/4/05 to 31/12/05	3	3	47
	<b>175 (36%)</b>	<b>31 (7%)</b>	<b>278 (57%)</b>