Commission secures changes to Council policy on foreign conviction checks for licence applicants

Towards the end of 2018, we raised concerns with Moray Council about the lawfulness of their policy requiring licence applicants who were either born out with the UK or born in the UK but lived in another country for six months or more to provide an Overseas Criminal Record Check. We were concerned that the policy may be indirectly discriminatory on grounds of race in breach of the Equality Act 2010 and that there did not appear to have been an equality impact assessment of the policy, as required by the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012.

In our view, the application of the policy put certain racial groups at a potential disadvantage, and there were a range of other less discriminatory ways for the Council to ensure compliance with licensing laws. In response the Council reviewed the policy, carried out an equality impact assessment and they have amended the policy so it no longer puts some racial groups at a potential disadvantage.

The changes to the policy mean that it now only applies to applicants who have been out of the UK for 12 months or more within the 10 years prior to the application process. It also now allows applicants who are having difficulty obtaining foreign certificates to explain the reasons why and they may be allowed to produce alternative evidence. This includes situations where someone has been granted refugee status and will have already undergone UK Border Agency checks, where an applicant would have been below the age of criminal responsibility when they lived abroad, or where what is deemed as criminal in another country is not unlawful in the UK.