



Independent Monitor

Annual Report 2020



Introduction

This is the eighth Annual Report of the Independent Monitor (IM) for the Disclosure and Barring Service (DBS). The report covers the period January to December 2020.



In the 2019 Annual Report I made one new recommendation for change. The Safeguarding Minister wrote to me on 22nd July 2020 with her response to the 2019 Annual Report and her letter was published with the 2019 Annual Report last year.

I make no new recommendations in this Annual Report and provide an update on all previous recommendations.

Overview of the Year

Covid-19 Pandemic

The Covid-19 pandemic has clearly been dominant throughout 2020, having an unprecedented impact on every aspect of people's personal and working lives.

My Secretariat and I moved to 'remote working' in early March 2020, rapidly adapting our working practices to ensure that all IM duties were successfully sustained without interruption throughout the year. Naturally, in these extraordinary circumstances, police force disclosure units, the DBS, the Home Office and many other stakeholders have all encountered challenges at different times throughout this reporting period. However, my observation is that the disclosure regime's overall response has been highly diligent and professional to the exceptional circumstances of 2020.

Referrals

In 2020, a total of 4,650 additional information disclosures were made on Enhanced Criminal Records Certificates by the DBS and Access Northern Ireland (ANI) combined. A total of 87 disputed disclosure referrals were made in 2020 to the Independent Monitor. This means that 1.87% of all disclosures made within the year in England, Wales and Northern Ireland have been disputed and referred to me for review.

As a comparison, in 2019 a total of 139 (or 2.9% percent) of enhanced disclosures were referred to the Independent Monitor for review. However, 2020 must be treated as an anomalous year due to the unprecedented effects of the Covid-19 pandemic on national recruitment patterns and fluctuating demands for Enhanced Criminal Records Certificates. In summary, it would be inappropriate at this stage to attempt to draw any firm conclusions from the 2020 statistical data when comparing these figures with those of any preceding year.

Northern Ireland

The Justice Act (Northern Ireland) 2015 extended the role of the Independent Monitor to include the review of disclosure disputes made in Northern Ireland. In 2020, there were no referrals to the IM for review relating to disclosures made by the Police Service of Northern Ireland.

As part of the IM role I have reviewed a sample of this year's cases from Northern Ireland in which the police have decided either to disclose or not to disclose information. There were some points of learning identified through this exercise, but no significant concerns. Detailed feedback from this sampling exercise has been provided to the Police Service of Northern Ireland.

Judicial Reviews

A Judicial Review is the final recourse available to anyone who disputes the information disclosed by police on their Enhanced Criminal Records Certificate.

There were no Judicial Reviews involving the Independent Monitor that reached a Court outcome during this reporting period.

Timeliness of IM Disclosure Dispute Handling

The Statutory Disclosure Guidance states that disclosure decisions should be made in a timely manner. I have continued to pay close attention to the speed with which IM disclosure disputes are resolved. This responsibility is shared by the DBS /ANI, the police and my own office. Due to the wide-ranging impact of the pandemic throughout 2020 it should be noted that the challenges on all those involved in progressing such cases have been unprecedented this year. However, despite the many challenges, I am pleased to observe that the vast majority of IM disclosure dispute cases in 2020 were still dealt with in a timely manner.

Recommendations from Previous IM Annual Reports

The table at Appendix B summarises all previous IM recommendations. Progress on any outstanding recommendations is summarised here:

2014 Annual Report:

The IM made a recommendation in the 2014 Annual Report: 'For the introduction of a formal timescale (of three months) for an applicant to dispute the disclosure of information on an Enhanced Criminal Records Certificate.'

Progress Report

This recommendation is still supported by all stakeholders. However, as previously reported, to achieve a formal change to the dispute process such as this would require a change to primary legislation. Consequently, this recommendation cannot be progressed until a suitable opportunity arises to amend the relevant legislation through an Act of Parliament.

In the meantime, as reported in previous Annual Reports, my predecessor introduced a structured process to deal with this type of case. This process is said to have reduced demand on police disclosure units.

However, it is still recognised that a long-term solution, supported by legislation would be beneficial. This recommendation remains current.

2015 Annual Report:

The IM made a recommendation in the 2015 Annual Report: 'That a formal discussion is held between stakeholders within the DBS, Home Office and police, in order to develop a more consistent approach to third party disclosures through the development of more detailed guidance'.

The Minister for Safeguarding commented on this recommendation on 24th September 2019:

"I continue to support the recommendation that there should be a more consistent approach to third party disclosures through more detailed guidance. I can assure you that my policy officials are considering this issue with the NPCC lead for disclosure and DBS colleagues and will keep you updated on these discussions".

Progress Report

On 19th November 2020 Chief Constable Nick Adderley, representing the National Police Chiefs' Council for disclosure matters, wrote to me confirming that in liaison with representatives of the Home Office, the relevant matters underlying this recommendation have now been successfully resolved. This recommendation has therefore been closed as 'complete'.

Out of interest, in 2020 there were eight disputes raised with the Independent Monitor relating to third-party disclosure. This represents 9.2% of all IM review cases for the year. In comparison, this is a drop by some four percentage points since 2019, when 13% of all IM disclosure cases related to third party disclosures.



2019 Annual Report:

Last year I made a new recommendation as follows:

Recommendation

'The Home Office, working with the police, DBS and other stakeholders, should undertake a revision of the Statutory Disclosure Guidance with particular reference to the assessment of the information's credibility'.

The Minister for Safeguarding responded to me regarding this recommendation on 22nd July 2020 as follows: "I have noted your recommendation that the Home Office, working with the police, DBS and other stakeholders should undertake a revision of the Statutory Disclosure Guidance. My policy officials are considering this recommendation and I will ensure they update you with their response within a month of publication of your report."

The Home Office have already commenced work on revising the relevant document and it is anticipated that the newly amended Statutory Disclosure Guidance will be published in the summer of 2021.

Engagement

Throughout 2020 I have continued to engage with a wide range of stakeholders, including attending the first annual DBS Conference and visiting police disclosure units and the DBS offices in Liverpool when movement across the country was permitted under Covid-19 guidelines. Since March 2020, the majority of stakeholder meetings have

been successfully maintained through 'online' communication. I continue to engage with as many stakeholders as possible through regular participation in police National and Regional Disclosure meetings and the Police Disclosure Portfolio Group. I talk regularly with policy and operational leads from the Home Office, DBS, ANI, NPCC and police disclosure units to identify any ongoing issues or concerns.

Sampling of cases

I have undertaken a sampling exercise of disputes raised during 2020 as is required under section 119B of the Police Act 1997. The sample includes cases in which the police decided to disclose and others in which they decided not to disclose information.

I sampled a total of 60 cases this year, drawn from six different police forces, including the Police Service of Northern Ireland (as reported above). This year I have sampled cases on a thematic basis where possible, focussing on cases that relate to: Covid-19 roles, home-based occupations (e.g. child minding and fostering) and people suffering from mental ill health.

After careful consideration of the cases sampled in 2020, some learning points were identified through this exercise, but no significant issues raised. I have provided individual feedback to each of the police forces concerned and shared the generic learning

from this sampling exercise at a national level through the Police Disclosure Portfolio Group and more locally through the Regional Disclosure Fora.

Independent Monitor's Secretariat

The IM Secretariat administer the IM caseload and provide general support for the office of Independent Monitor. I am very appreciative of the continuing dedication and hard work of the Independent Monitor's Secretariat throughout this particularly challenging year.

Summary and Conclusion

This year was dominated by the unprecedented impact of the Covid-19 pandemic. However, all the work in the office of Independent Monitor has successfully been sustained throughout the year.

In total, 87 cases were referred to the Independent Monitor for review in 2020. However, due to the impact of the pandemic, caution must be exercised when comparing 2020 with any previous years. A full break down of how those IM referral cases were finalised is provided below.

There are no new recommendations contained in this Annual Report.



**Julia Wortley,
Independent Monitor**

Powers under which the Independent Monitor operates

The Independent Monitor is appointed by the Secretary of State under section 119B of the Police Act 1997 and has two statutory duties relating to the disclosure of information on a person's Enhanced Criminal Records Certificate.



In accordance with section 119B of the Police Act 1997 the Independent Monitor must review a sample of cases in which police non-conviction information is included, or not included, on Enhanced Criminal Record Certificates under section 113B (4) of the Act. The purpose of these reviews is to ensure adherence to Home Office Statutory Guidance on disclosure and compliance with Article 8 of the European Convention of Human Rights (ECHR). Following these 'dip sampling' reviews, the Independent Monitor provides feedback to the relevant police forces.

Under section 117A of the 1997 Act the Independent Monitor has another role to consider those cases within which a person believes that the information disclosed by police within a Disclosure and Barring Service Enhanced Criminal Records Certificate is either not relevant to the workforce they are applying for, or that it ought not be disclosed.

When a request for an enhanced Certificate is made, the applicant's details are referred to any police force which may hold information about the applicant. This enables the force to check their records for any information which they reasonably believe to be relevant to the prescribed purpose for which the Certificate is sought and to consider if it ought to be disclosed. Following a decision by police to disclose information if an applicant wishes to dispute the disclosure, they may first request a review by the relevant police force. If still dissatisfied with the outcome, the applicant may then apply to the IM for an independent review of their case.

Operation of the Secretariat and function of the Independent Monitor

The Independent Monitor's responsibility to review referrals in which an applicant disputes information disclosed by police forces was introduced by the Protection of Freedoms Act 2012 (PoFA). A small Secretariat to support the Independent Monitor to perform this function was set up in October 2012 and currently has an establishment of two full time staff.

Prior to October 2012 and the changes introduced in PoFA, anyone who was dissatisfied with the relevance of the information that appeared on their enhanced Certificate only had recourse to appeal to the Chief Constable of the relevant police force. If the applicant was dissatisfied with the outcome of this, or the wording of the text, then their only option was to request a Judicial Review of the disclosure decision. Such action would be costly to the applicant and to the DBS in both time and resource. The Independent Monitor's role now acts as an additional layer of review before a person may resort to Judicial Review.

Since September 2012 to the end of December 2020, the Independent Monitor has received a total of 1,928 referrals.

Once a case is received, the IM Secretariat will ask the police for information relating to the case and the applicant for any additional representations they wish to make. On receipt of any further representations, the case is put to the Independent Monitor for review. Case papers include the disclosure Certificate provided by the DBS, along with any written representations and supporting documentation submitted by the applicant.

When reviewing a dispute, the IM follows the Statutory Guidance and considers:

- 1) Whether the information provided is accurate
- 2) Whether the information provided is relevant to the prescribed purpose for which the certificate has been obtained (since 2012 this is generally for work within the 'child or adult workforces' rather than for a specific role); and
- 3) Whether the information ought to be disclosed, including;



- a) What is the legitimate aim of the disclosure
- b) Whether the disclosure is necessary to achieve that legitimate aim; and
- c) Whether the disclosure is proportionate, striking a fair balance between the rights of the applicant and the rights of those whom the disclosure seeks to protect.

All criteria are considered equally, there is no weighting. Once the IM has made a decision, the Secretariat will write to the applicant, the DBS and the relevant police Chief Officer informing them of the Independent Monitor's decision.

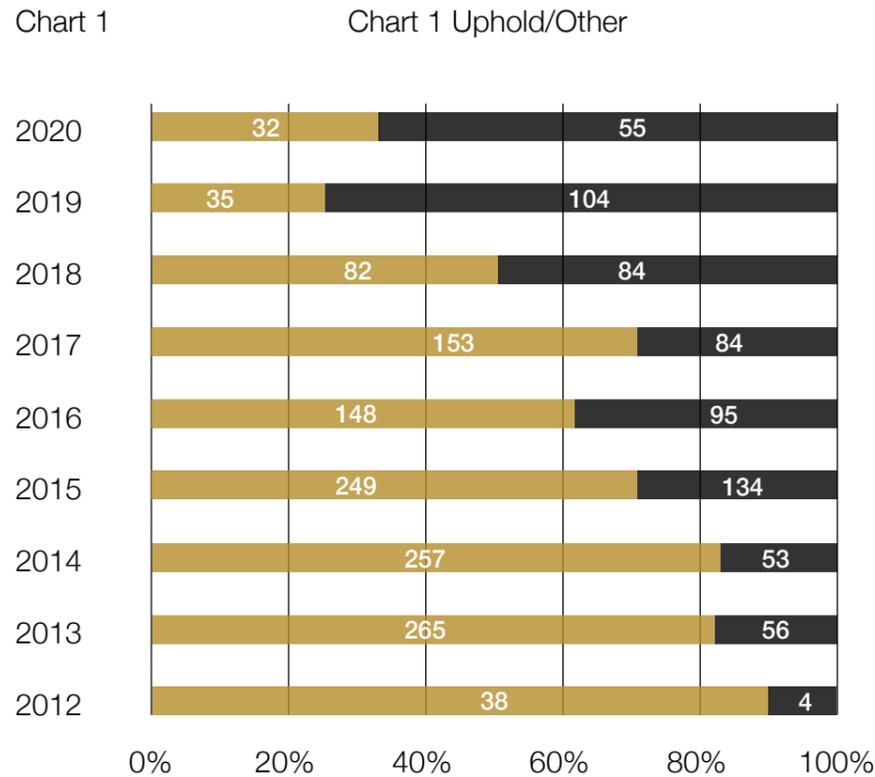
Clarification

The Independent Monitor's role differs from that of the Independent Complaints Reviewer (ICR) for the DBS. The ICR reviews complaints about the DBS and offers constructive advice about the way in which the DBS deals with customers and how the DBS handles complaints.

In contrast, as a statutory appointee, the IM's role is to consider referrals from applicants disputing the inclusion of non-conviction information within their enhanced disclosure Certificates issued by the DBS. Such Certificates are required for those who wish to work with children and vulnerable adults and in some other specified jobs such as taxi driving.

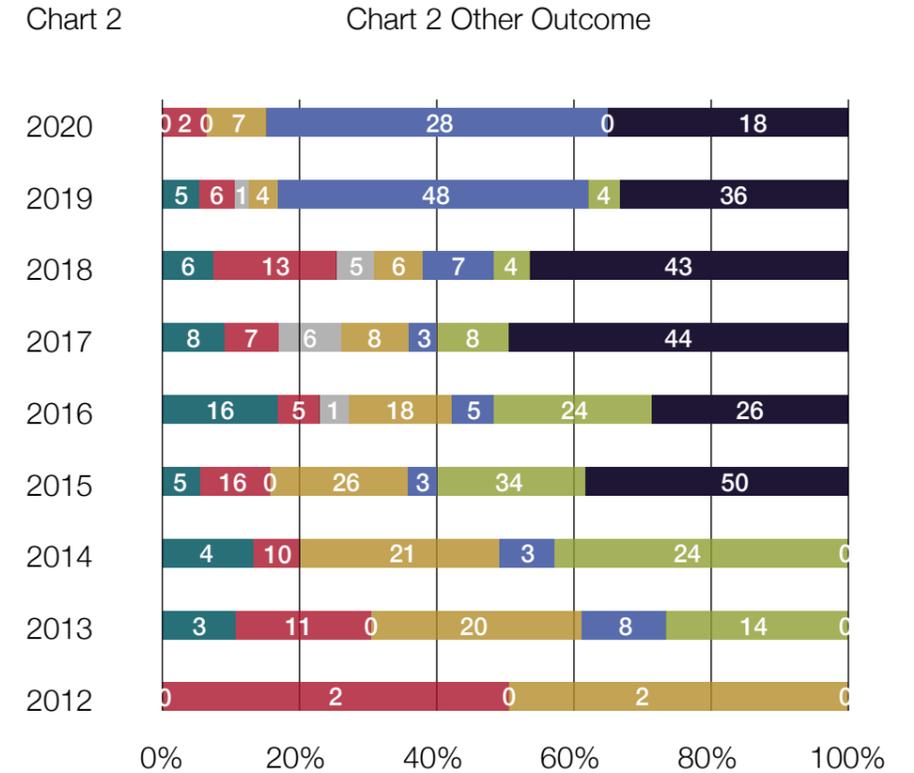
Independent Monitor Case Referrals: 2020 Summary

The chart below shows the number of referrals received by the Independent Monitor in 2020 and how they were subsequently resolved. These figures are shown in comparison with previous years. 'Uphold' refers to cases where the police disclosure has been supported by the IM in its entirety.



- Uphold
- Other Outcome

The following chart breaks down the 'other outcome' category above, to show how cases in which the disclosure was not 'upheld' were finalised.



- Withdrawn by Applicant
- Withdrawn by Police
- Decline to Review
- Partial Deletion
- Amended by Police
- Delete All
- Aged Case

There has been a noticeable reduction in the total number of referrals made to the IM in 2020. This continues a downward trend in the number of IM referrals made over recent years. However, as explained above, due to the Covid-19 pandemic, 2020 must be treated with caution statistically, as an anomalous year.

The previous IM's policy remains in place of not reviewing further cases where the dispute is raised after a significantly long time since the disclosure was made and in which the prescribed purpose no longer exists, or it is reasonable to believe that this is the case.

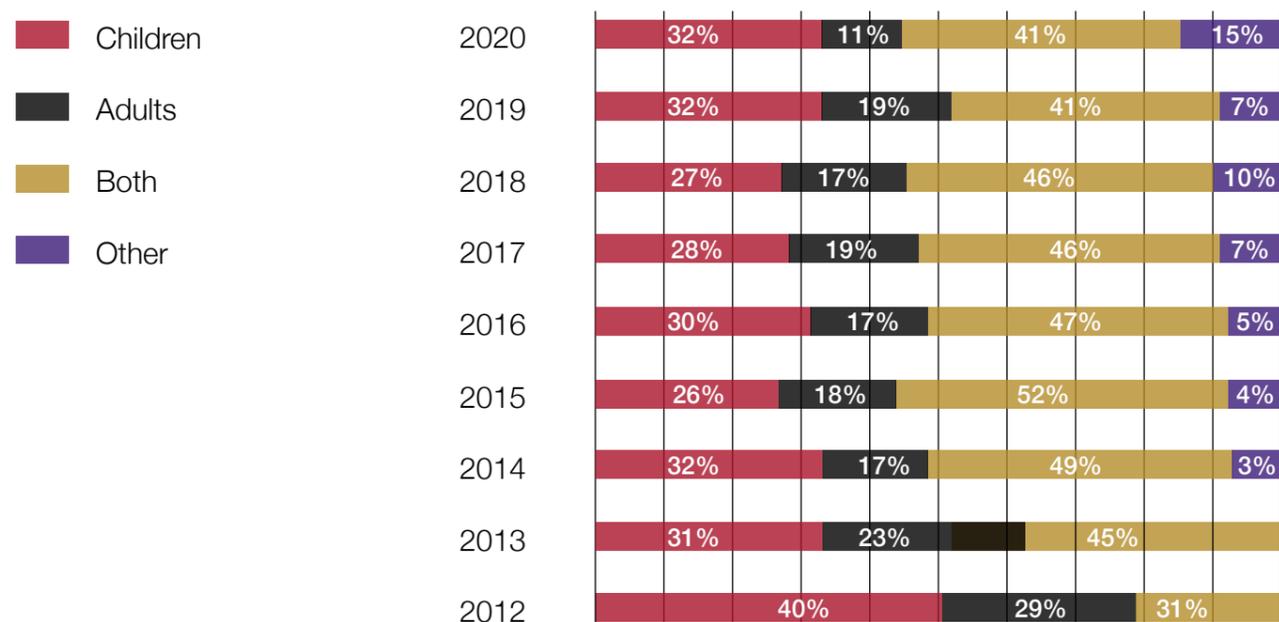
There are some referral cases in which the information disclosed could be clarified through amendment. In such cases, the IM negotiates with the Chief Officer to agree an amended form of words. These cases are categorised above as 'amended by police'.

The IM has declined to review two dispute cases this year out of a total of 87 referrals. In both these cases the police decided, after review, to withdraw the disclosure text and are recorded above as 'withdrawn by police'.

Workforce

The following chart provides a comparison of the relevant workforce for which applicants have applied. The chart shows that the proportion of cases in each workforce remains generally consistent with previous years, but with a slight increase in the percentage of 'Other' and decrease in 'Adult'. Most disputes are from applicants who have applied for both the Child and Adult workforces. It remains that in these cases more information may be considered by police, due to the portability of the certificate.

Chart 3 Chart 3 Workforce %



Note: There were no disputes recorded in the 'Other workforce' category in 2012 or 2013 as Taxi Drivers were considered as a part of the Children's workforce during those years.

Appendix A



Home Office

Victoria Atkins MP
Minister for Safeguarding

2 Marsham Street
London SW1P 4DF
www.gov.uk/home-office

Julia Wortley
Independent Monitor for the Disclosure and
Barring Service

13th July 2021

Dear Julia,

Thank you for your 2020 Annual Report which will be published on Gov.uk shortly. Your report provided a helpful overview of your work in 2020 with a variety of stakeholders, including regional disclosure units, different police forces and the Disclosure and Barring Service, to develop a consistency of approach and into the disclosure of police information on enhanced criminal record certificates.

I notice that you have made no new recommendations in this report and that there are two outstanding from previous years which I have commented on below.

Revision of Statutory Guidance on the Assessment of Credibility

I have noted your recommendation that the Home Office, working with the police, DBS, and other stakeholders, should undertake a revision of the Statutory Disclosure Guidance. My policy officials have been working with you on this and will be submitting the revised version for my approval shortly. I understand that the team has been keeping you informed of progress.

Time Limit for Disputing Disclosures

As previously advised, the recommendation to introduce a time limit for disputing disclosure will require an amendment to primary legislation. The recommendation will be considered if a suitable opportunity arises to amend the relevant legislation. In the meantime, I have noted that the interim solution put in place by your predecessor remains effective.

Thank you very much for your work as the Independent Monitor since taking on the role in October 2018 and I look forward to your future work now that you have been re-appointed until September 2024.

Victoria Atkins MP
Minister for Safeguarding

Appendix B: Table of previous recommendations

Recommendation	Year Made	Status	Current Position
Mental Health	2013	Accepted	Complete Amended Statutory guidance for mental health cases was issued in August 2015
Home Based Occupations	2013	Partially Accepted	Complete DBS amended the applicant and 'RB' guidance in 2015 and promoted in DBS News
Workforce v Position Applied for	2013	Not Accepted	Issue raised again in 2014 Annual Report with previous response reiterated
Registered Bodies	2013	Accepted	Complete DBS worked with NACRO and CIPD to develop guidance for employers on how to assess and handle information on a disclosure certificate
Statutory Time Limit for Disputes	2014	Accepted and awaits further development	Ongoing Requires primary legislation to progress
Formal Process to Review Recommendations	2014	Accepted	Complete Meeting structure in place
Police Disclosure Units to have access to Court Transcripts	2015	Accepted	Complete Policy and guidance re-issued to court transcript providers
Development of guidance on Third Party Disclosures	2015	Accepted and awaits further development	Complete NPCC and Home Office have resolved the key issues.
Revision of the Statutory Disclosure Guidance	2019	Accepted	Ongoing Amended Statutory Guidance to be published in 2021