



Independent  
Monitor

# Independent Monitor

Annual Report 2016





## Introduction

This is the fourth annual report of the Independent Monitor and it is my pleasure to present the report for the period January to December 2016.

In my last report I presented two recommendations (attached at appendix A) which I had identified could make improvements to the disclosure process. I have received a response from the Government (attached at Appendix B) and have shown an update on each of my recommendations below (also attached at Appendix C).

## Overview of the year

### Referrals.

The number of referrals I have received between January and December 2016 has fallen significantly over those received in 2015. The total number of cases received dropped from 383 in 2015 to 243 in this reporting year, a reduction of over 36%.

In my last report I spoke about the changes made to the way in which police articulated the perceived risk an individual was believed to pose, on the disclosure certificate. These changes were introduced and I believe that the reduction in the number of cases referred to me can be partially attributed to this change.

### Northern Ireland

The Northern Ireland Justice Act commenced on 2nd November 2015 and had the effect of extending the full role of the Independent Monitor to reviewing disclosure disputes made in Northern Ireland in the same way as it currently does in England and Wales. The numbers of referrals from Northern Ireland has remained low over this reporting period with only two cases being referred to me for review. I will continue to monitor the number of cases from Northern Ireland over the coming year and will report on any issues arising out of them in my next report.

### Judicial Reviews.

There have been two cases in the reporting year where applicants have challenged my decision

by requesting a Judicial Review. This is the final recourse available to an individual who disputes the information disclosed by police on their Enhanced Criminal Record Certificate. In both of these (LK v Independent Monitor and MS v Independent Monitor) my decision was not upheld and I was invited to retake my decision. In one of those cases as a result of reviewing the court judgement and additional representations made by the applicant, my re-review resulted in me deleting the disclosure. In the other, upon re-review, I decided to uphold my initial decision and retain the disclosure, a decision which has not been subject to further challenge. I acknowledge and support the right of the individual to challenge my decisions, which they can do through the Judicial Review process. As in previous years, decisions of the court have enabled me to refine subsequent decision making.

### **Previous Recommendations.**

In my 2015 Annual Report I made two recommendations.

My first was that the police should be added to the list of agencies able to access transcripts of court cases without having to seek the permission of the trial judge. This issue has caused a number of time delays over the past year and I am convinced that in many cases the dispute process could be greatly speeded up if this recommendation were to be accepted.

My second recommendation related to the inconsistent approach to disclosures relating to third parties, i.e. individuals who may live, or otherwise be associated, with an applicant.

I have now received a formal response to those recommendations from the Secretary of State and this is attached at Appendix B. I will consider the details of this response in my next report.

### **Engagement**

Over the past year I have continued with my attendance at the Police National and Regional Disclosure Forums, as well as the Police Disclosure Portfolio Group meetings. I have visited the Disclosure and Barring Service (DBS) in Liverpool and Access Northern Ireland in Belfast. I continue to meet regularly with operational leads from the DBS, ANI and the police in order to identify issues of concern. My approach is to deal with such issues as they arise throughout the year rather than using my annual report as the only vehicle to flag concerns and identify areas for improvement.

### **Sampling of cases.**

Through the year I have also undertaken a sampling exercise of cases as is required under section 119B of the Police Act 1997. This year I reviewed forty eight cases from eight police forces and provided feedback to each on my findings. As a result of these reviews I did not identify any specific trends which need to be addressed nationally.

### **Conclusion**

Whilst the volume of cases received during this reporting period has been lower than in previous years there have been a number of complex issues which have arisen and have meant that the role has been just as busy as in previous years.

My secretariat continues to provide excellent support to my role and have managed the complex cases very well. I have no specific recommendations to make this year and over the coming year I will continue to work with partners and look forward to seeing the benefits of the recommendations which have been accepted from previous reports.



**Simon Pountain**

## **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.

Firstly, in accordance with section 119B of the Police Act 1997 (1997 Act), 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 compliance with Home Office Statutory Guidance on disclosure and Article 8 of the European Convention of Human Rights (ECHR).

Secondly, when a request for an Enhanced Certificate is made, an individual's details are referred to any police force which may hold information about the individual. This enables the force to check against their records for any information which they reasonably believe to be relevant to the prescribed purpose for which the certificate is sought and then consider if it ought to be disclosed. If an applicant is not satisfied with the information being disclosed they may apply to the Independent Monitor for a review. Under section 117A of the 1997 Act, the Independent Monitor has a role in reviewing those cases where a person feels that the information disclosed by police within a Disclosure and Barring Service Enhanced Criminal Record Certificate is either not relevant to the workforce they are applying for, or that it ought not to be disclosed.

## **Operation of the Secretariat and function of the Independent Monitor**

The Independent Monitor's role in the reviewing of referrals about information disclosed by police forces was introduced by the Protection of Freedoms Act (PoFA) 2012. A Secretariat to support the Independent Monitor to perform this function was set up in October 2012 and now consists of two full time members of staff.

Prior to October 2012 and the changes introduced in PoFA, an individual who was dissatisfied with information that appeared on their enhanced certificate only had recourse to appeal to the Chief Constable of the relevant force in relation to the accuracy of the text. If the applicant was unsatisfied with the outcome of this or the overall wording of the text then their only option was to request a Judicial Review of the disclosure decision, which would be costly to the applicant and to the DBS in both time and resource. The Independent Monitor role now acts as an additional layer of review before a person has to resort to Judicial Review.

Since its creation in September 2012 to the end of December 2016, the Secretariat has received a total of 1299 referrals from individuals who are concerned about information disclosed on their disclosure certificates. Case papers consist of the disclosure certificate provided by the DBS together with any dispute documents about the disclosure information that the applicant may have raised with the DBS previously. Once a case is received, the Secretariat will ask the police for information relating to the case and the applicant for any additional representations they may wish to make. Upon receipt of representations the referral case is put to the Independent Monitor for review.

In making a decision on the inclusion of information on a certificate, and following statutory guidance, the Independent Monitor gives consideration to:

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 (following policy changes in 2012 this is now generally for work within the child or adult workforces rather than specific to a particular role); and

3. Whether the information ought to be disclosed, including;
  - a. What the legitimate aim of the disclosure is;
  - 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 a decision has been made the Secretariat will write to the applicant, the DBS and the relevant police chief officer informing them of the Independent Monitor's decision.

In addition to providing decisions on requests for review of a chief officer disclosure of approved information, the Independent Monitor has also undertaken the required sample exercise under s119B (5) of the 1997 Act. The exercise has consisted of the sampling of police information provided on Enhanced Certificates for a number of forces. Following these reviews the Independent Monitor has provided feedback to forces to ensure quality and compliance with Statutory Guidance.

## **Clarification**

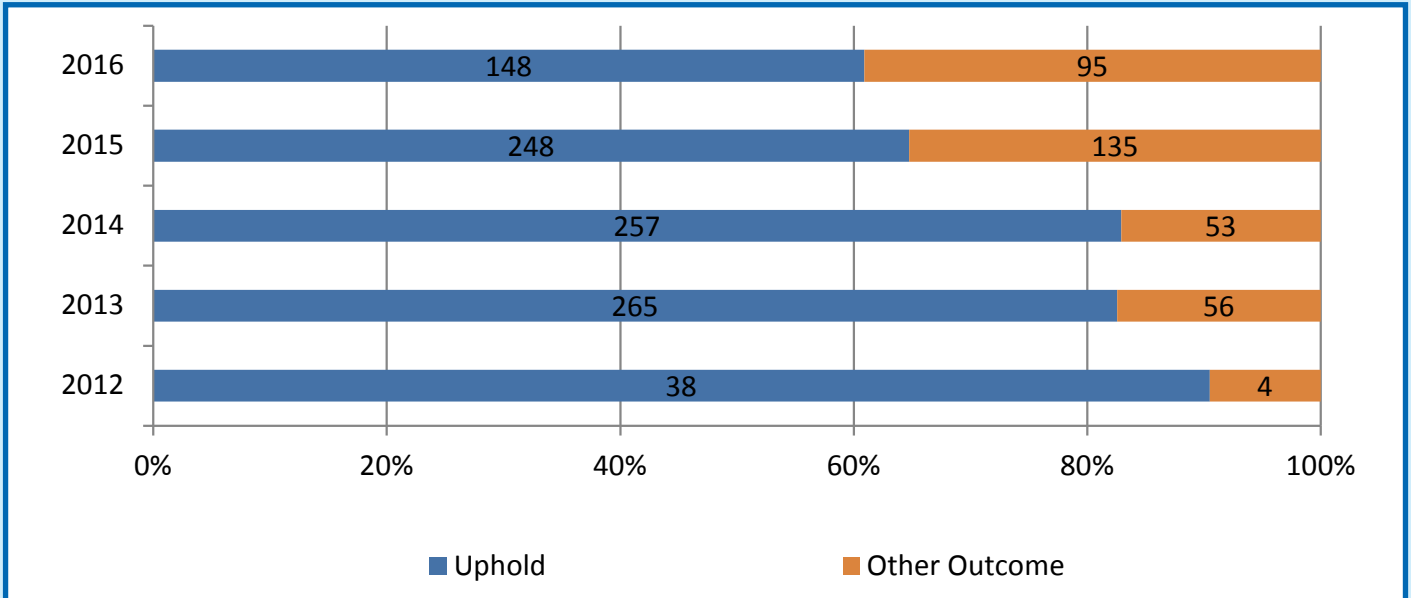
My role is different from the Independent Complaints Reviewer (ICR) for the DBS. As a statutory appointee, my role is to consider appeals from applicants disputing the inclusion of non-conviction information within their enhanced disclosure certificates issued by the DBS. Such certificates are required for those who wish to work with children and vulnerable adults and in some other specified areas such as taxi driving.

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.

## Independent Monitor Case referrals: 2016 Summary

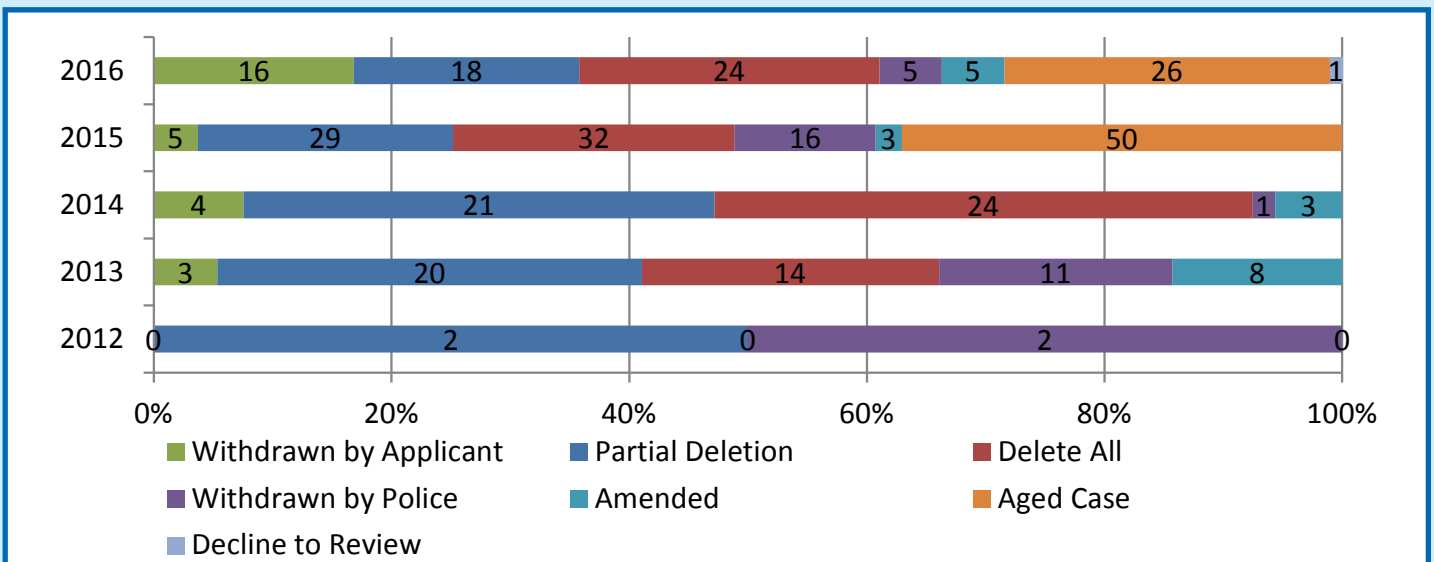
The chart below shows the outcomes of the referrals received by the Independent Monitor in 2016 compared with the previous years. It also shows the same information for the period between September and December 2012 following the introduction of the Independent Monitor role. ‘Uphold’ refers to those cases where I have supported the police disclosure in its entirety.

**Chart 1**



The following chart breaks down the ‘other outcome’ category above to show the way in which the cases have been dealt with.

**Chart 2**



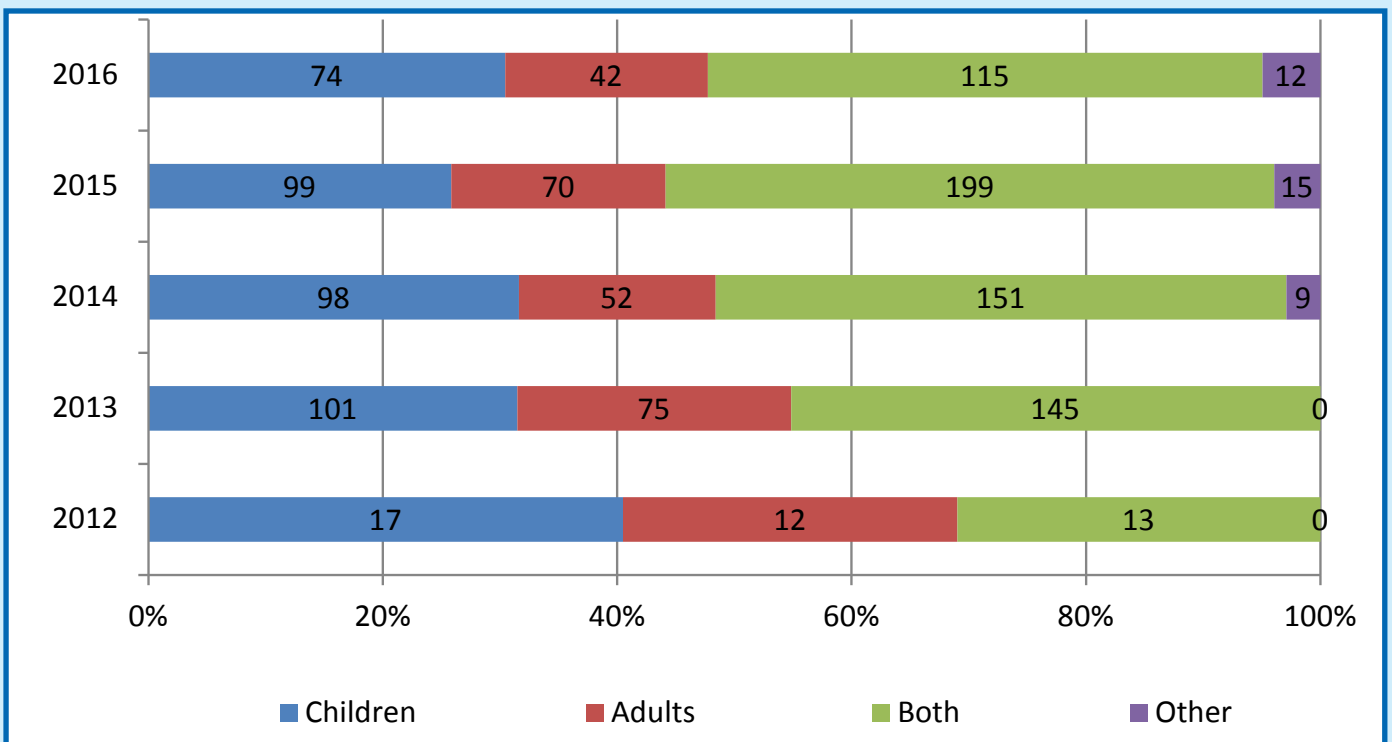
In general it can be seen that the total number of referrals has decreased considerably on the numbers from last year. The main difference in the last year has been the number of cases I have considered to be aged and where the original purpose for which the certificate was requested no longer exists, and have not reviewed further (26 cases). As explained earlier in this report these are cases where, due to the length of time from the issue of the certificate and the initiation of the dispute, it is reasonable to believe that the purpose for which the certificate was requested, no longer exists. The development of this new category demonstrates how my role is evolving and continuing to make the best from my position of oversight. There is also a category shown in the chart above for amended cases. Occasionally there are cases where I feel that a disclosure requires some amendment rather than having text deleted. This may be where a deletion would leave the text grammatically incorrect or where I believe the disclosure is worded subjectively. In these cases I will negotiate with the Chief Officer in order to agree an amended form of words. There is one case shown for 2016 which I declined to review. This was a case where the dispute was current but the purpose for which the certificate was requested, no longer existed and the applicant had already been issued with a new certificate for a new role. There are no new dispute cases outstanding from previous years.

### Workforces applied for.

The following chart shows a comparison of the workforces for which applications for review have been received.

It can be seen from the chart that the proportion of cases in each workforce remains fairly consistent with previous years and I have not detected any shift in the workforces where information is being disputed. The majority of disputes are from applicants who have applied for both the Children’s and Adult’s workforces. It remains the case that in these cases more information is considered by police due to the wider portability of the certificate and it is therefore often the case that individuals are concerned that the information being disclosed is not relevant to the specific role applied for.

**Chart 3**



Note that 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: Recommendations made in 2015 Annual Report.**

1. That for the purposes of Disclosure, the police are added to the list of those agencies that are able to obtain court transcripts without seeking prior approval of the trial judge.
2. 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.

## Appendix B: Government Response to 2016 Annual report.



Home Office

Home Secretary

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Simon Pountain, Independent Monitor for the DBS  
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7 February 2018

Dear Simon,

Thank you for your 2016 Annual Report which I intend to publish on gov.uk shortly. Your report provided a helpful insight into the disclosure of police information on enhanced criminal record certificates (ECRCs) and your work with regional disclosure forums to develop a consistency of approach. This is exactly the sort of good practice I want to see being developed more.

In your report you provided further commentary on the two recommendations made in your 2015 report. I have given careful consideration to these and have set out our response below.

### **Recommendations from the 2015 Annual Report**

Your first recommendation is that for the purposes of disclosure, the police are added to the list of those agencies that are able to obtain court transcripts without seeking the prior approval of the trial judge. I support this recommendation. As you know, policy for HM Courts and Tribunals Service rests with the Ministry of Justice. I have asked officials to liaise with Nick Adderley NPCC Disclosure lead to consider whether this is something that would be of benefit to police disclosure and, if so, ask the NPCC to write to the Secretary of State for Justice to make the case.

Your second recommendation is that there should be a more consistent approach to third party disclosures through the development of more detailed guidance. Again, I support this recommendation. I understand you meet regularly with the Disclosure and Barring Service and the Disclosure lead in the National Police Chiefs Council and it would therefore seem that you are best placed to discuss and agree a more consistent approach that could be reflected in guidance.

**Outstanding recommendation from the 2014 Annual Report**

I am aware that your second recommendation to introduce a time limit for disputing a disclosure remains outstanding as it requires an amendment to primary legislation. Since publishing your 2014 Annual Report, I understand the need to seek a legislative slot to introduce a time limit for disputing disclosure cases has lessened because you are employing a new process that should reduce these applications significantly. I appreciate your willingness to seek a non-legislative solution to this issue and would be grateful if you could keep this issue under review and inform me of any significant issues.

I am grateful for your important work over this period.

A handwritten signature in black ink, appearing to read "John Rudd". The signature is written in a cursive style with a blue dot at the end of the final stroke.

## Appendix C: Table of previous recommendations.

Recommendation	Year made	status	Current position
Mental Health	2013	Accepted	The statutory guidance has now been amended in respect of Mental Health cases and was issued in August 2015.
Home Based Occupations	2013	Partially Accepted	DBS amended the applicant and RB guidance in 2015 and promoted this in DBS News.
Workforce v Position Applied for	2013	Not Accepted	Issue raised again in 2014 Annual Report. This resulted in the previous response being reiterated.
Registered Bodies	2013	Accepted	DBS worked with NACRO and CIPD to develop guidance for employers on how to handle and assess information that appears on a disclosure certificate.
Statutory Time limit for disputes	2014	Accepted and awaits further development.	
Formal process to review recommendations	2014	Accepted.	Meeting structure in place.
Police Disclosure Units to have access to Court Transcripts	2015	Accepted and awaits further development.	
Development of guidance on Third Party Disclosures	2015	Accepted and awaits further development.	