



Independent
Monitor

Independent Monitor for the Disclosure and Barring Service

Annual Report 2014



Introduction

This is the second annual report of the Independent Monitor and it is my pleasure to present the report for the period January to December 2014.

In April of 2014, following a formal selection process, I was pleased to be appointed to the position of the Independent Monitor for the full term of three years. I welcome the opportunity to be able to continue to take this important role forward over the coming years.

In my first report I presented four 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.

Recommendation One – Mental Health

I am pleased that the recommendation that the guidance on the disclosure of information relating to a person's mental health should be reiterated to police forces has been accepted. The Disclosure and Barring Service (DBS) issued interim advice to forces in relation to this and work and the amended Statutory Guidance was formally issued on 10th August 2015.

Recommendation Two – Home Based Occupations

My recommendation that Home Based workers should not be included in the Update Service has not been fully accepted but I am pleased that the Home Office and the DBS have considered an alternative resolution to this important issue. The DBS has revised both its Update Service Employer Guide and has also revised additional guidance on Home Based Positions. The guidance explains that if an employer wishes to find out whether any new information is available on other individuals living, or employed at, the applicant's home they must request a new DBS check. The update service will only check for updates on the individual for whom the check was carried out and does not provide a check of the home address or any other individuals employed or living at that address.

Recommendation Three – Workforce versus “Position Applied For”

My recommendation to introduce a new product which would give an individual a choice to be considered for a specific role, i.e. the specific position they have applied for, rather than the whole workforce, has not been accepted. I note the government response to this recommendation but this issue has continued to arise over this reporting year and I would encourage the Government to reconsider this matter.

Recommendation Four – Registered Bodies

The recommendation in respect of advising Registered Bodies of their responsibilities has been accepted. The DBS has worked with the National Association for the Care and Resettlement of Offenders (NACRO) and the Chartered Institute of Personnel and Development (CIPD) to develop guidance for employers on how to handle and assess information that appears on a disclosure certificate. The guidance was launched in May 2015 and the DBS website provides a link to the guidance. The DBS has also taken opportunities to publicise the NACRO/CIPD guidance further, for example through the DBS Newsletter which is distributed to Registered Bodies and employers. In addition, the DBS has confirmed that they will make use of further opportunities in the future to refer bodies to the guidance and to re-affirm their roles and responsibilities.”

Overview of the year

The Independent Monitor has responsibility for two areas of work; reviewing a sample of cases to ensure compliance and responding to appeals to determine whether material has been appropriately disclosed. Currently both duties apply to England and Wales and the first duty is also extended to Northern Ireland.

The number of referrals I have received between January and December 2014 has remained steady although I have fully deleted slightly more cases this year compared to last. In addition to the review of disputes from applicants for Enhanced Disclosure Certificates I have reviewed a sample of cases from police forces. These cases are ones which have not been disputed and include cases where no disclosure has been made. I have provided feedback to those forces whose cases I have reviewed. In both of these areas I have not noted any significant areas of concern either with individual police forces or specific disclosure regions and the application of the Quality Assurance Framework remains consistent amongst police forces nationally. Workloads of forces do vary and the turnaround time for disputes is affected by this. I believe that there are efficiencies to be gained within the Disclosure arena and note the efforts of some forces to combine their disclosure teams with neighbouring forces. I welcome the ongoing debate in this area as I am sure that there are ways to improve an already effective service without impacting negatively on applicants or those which the process seeks to protect.

Over the past year I have continued to engage with the DBS and have visited all of the police regional disclosure groups and Northern Ireland to discuss good practice and any areas of concern. In 2014 I accepted an invitation to be an independent member of the National Police Chiefs’ Council Disclosure Portfolio Group. This is the strategic group which meets to develop disclosure policy and I have found it a useful opportunity to brief strategic leaders from across the disclosure field on matters affecting my work. I have visited the DBS Barring team and took the opportunity to discuss the similarities and differences between our respective roles. I continue to meet regularly with representatives from both the DBS and the National Policing lead to discuss policy issues and good practice.

Looking Forward

The Northern Ireland Justice Act commenced on 02 November 2015. Whilst the role of the Independent Monitor currently extends in part to Northern Ireland, the effect of this legislation is to extend the full role of the Independent Monitor to reviewing disclosure disputes made in Northern Ireland in the same way as it does in England and Wales currently, and I look forward to taking on this important role.

Conclusion

This reporting period has been a busy one, I am pleased to report that my Secretariat is now fully staffed and I look forward to the benefits that will bring. I am continuing to work with partners in order to improve the service that my role provides and also to ensure that the rights of the vulnerable and those who seek to work with them, are properly considered at all times.

A handwritten signature in black ink, appearing to read 'Simon Pountain', with a stylized flourish underneath.

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.

Firstly, in accordance with section 119B of the Police Act 1997 (the 1997 Act), the Independent Monitor must review a sample of cases in which police non conviction information is provided on enhanced criminal record certificates under section 113B(4) of the Act. The purpose of the review 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 Police Act 1997, 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 2014, the Secretariat has received a total of 673 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 is the legitimate aim pursued by the disclosure.

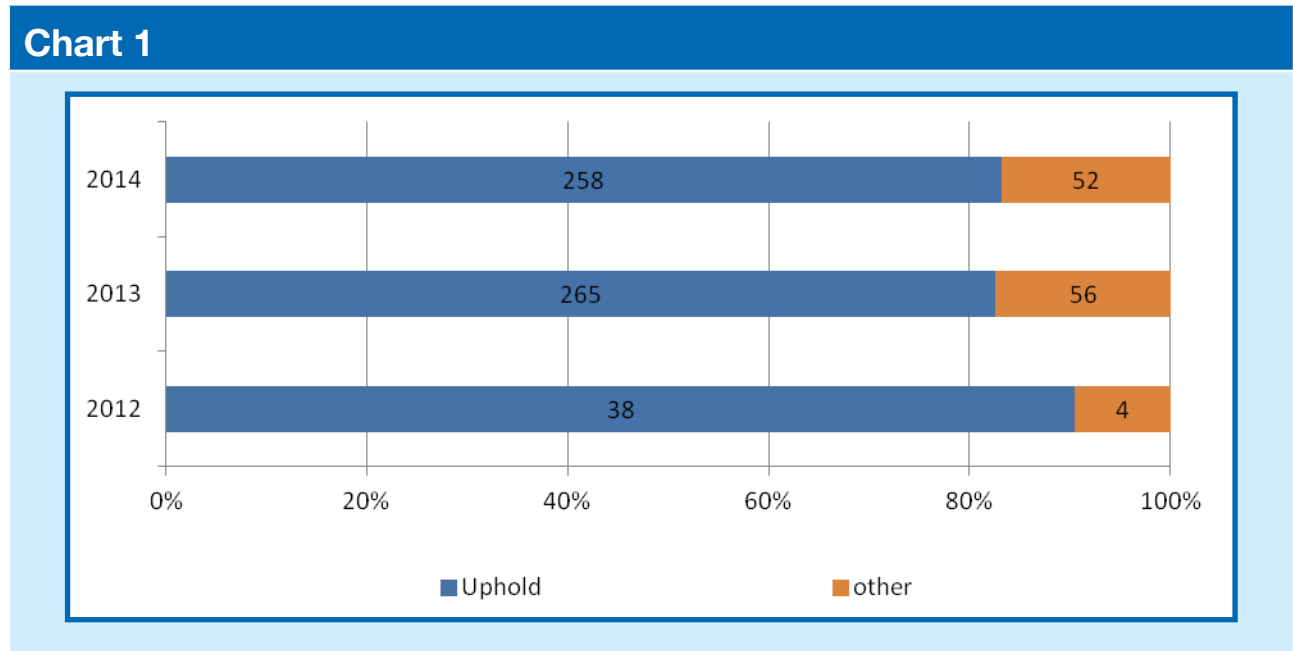
- b. Whether the disclosure is necessary to achieve a legitimate aim; and
- c. Whether the disclosure is proportionate, striking a fair balance between the rights of the applicant and the rights of those whom the disclosure seeks to protect.

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.

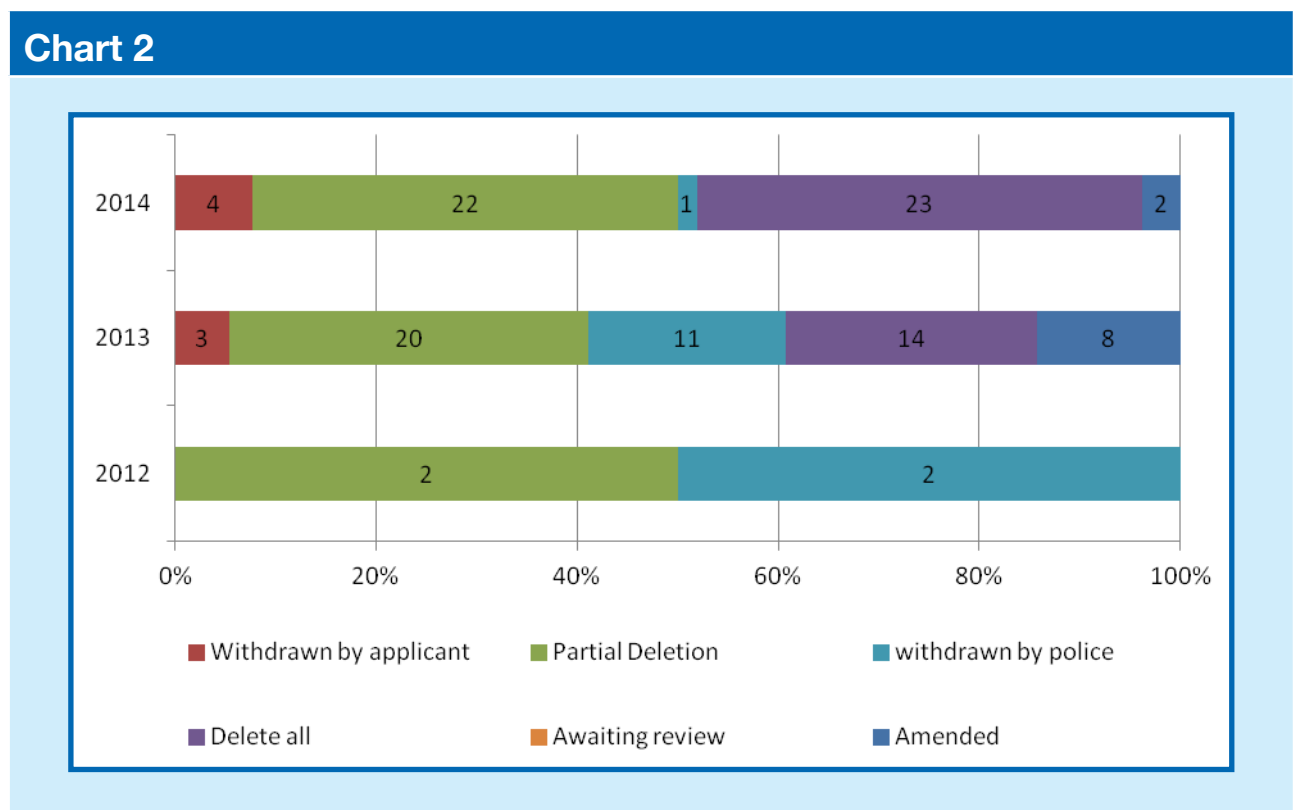
In addition to providing decisions on requests for review of a chief officer disclosure of approved information, the Independent Monitor has also undertaken the required sample exercise under s119B (5) of the 1997 Act. The exercise has consisted of the sampling of police information provided on Enhanced 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.

Independent Monitor Case referrals: 2014 Summary

The chart below shows the outcomes of the referrals received by the Independent Monitor between January and December 2014 compared with the same timeframe in 2013. 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.

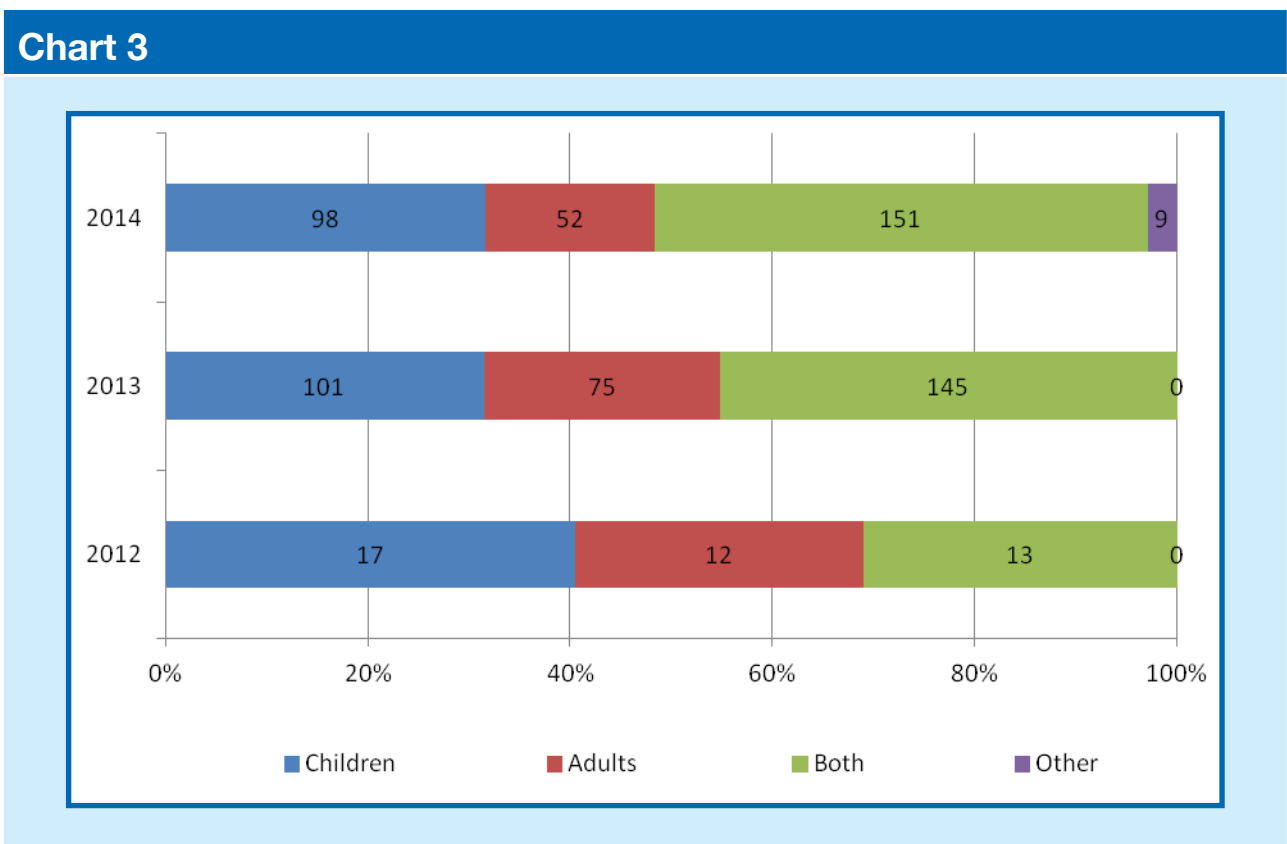


The following chart breaks down the ‘other’ category above to show the way in which the cases have been dealt with.



In general it can be seen that the number of referrals has remained consistent while there has been an increase in the numbers of disclosures which I have fully deleted. The police withdrew fewer cases in 2014 and it is of note that in 2013 the combined number of cases withdrawn (i.e. deleted) by police and those deleted fully by me is almost the same as the same total in 2014. 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 police Chief Officer in order to agree an amended form of words. There are no cases outstanding from previous years.

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



Note that there were no disputes recorded in the ‘Other’ category in 2012 or 2013 as Taxi Drivers were considered as a part of the Children’s workforce during those years.

Recommendations

During 2014 I reviewed over 300 cases. The ongoing work in relation to the recommendations I made last year is encouraging and I am confident that completion of those accepted recommendations will benefit both those who wish to work with the vulnerable as well as the vulnerable themselves. This year I have identified two additional areas where I feel an improvement to the process is necessary. They are as follows;

1. Introduction of a formal timescale for disputing a disclosure

My recommendation is that there should be an introduction of a statutory timescale for the raising of a dispute. Over the past year I have noticed that a significant number of cases have been disputed some considerable period after the disclosure certificate was issued. In some cases this

has been up to five years after the disclosure certificate was issued and in most of these cases the original purpose for which the certificate was requested will have lapsed as the role which was being applied for is unlikely to have been held open for a person over such a protracted period of time.

In these cases, if the applicant wishes to obtain work in, or volunteer for, one of the prescribed purposes requiring an Enhanced Disclosure Certificate (with or without an associated Barred list check) it would be more appropriate for them to apply for a new certificate in order that all of the information currently available to the police could be considered using the current test of relevancy along with the latest statutory guidance and case law, before a decision is made regarding the wording of any proposed disclosure.

It therefore seems reasonable to me that if an applicant is not satisfied with the content of their disclosure certificate, that they should be required to dispute it within a set time period. When an application is made for a particular role it is reasonable to assume that the position would be held open for a successful candidate whilst background checks were made. I believe that it is also reasonable to assume that after a while, an employer would be less likely to hold a vacancy open. I have considered the amount of time that should be allowed for a dispute and would suggest that a post would be unlikely to be held open for longer than six months. The DBS currently encourage applicants to submit a dispute of their disclosure certificate within ninety days but this is not mandated. I believe that this is a reasonable timescale and I would therefore welcome the introduction of a statutory time scale for disputes of three calendar months.

2. Introduction of a formal structure to progress recommendations.

As this is now my second Annual report I am keen that there is a structure developed to ensure that the recommendations from this and my previous report are progressed in a timely fashion. I would see this structure identifying ownership for each recommendation and recording milestones and progress. This will then ensure that the purpose for which the recommendations were made, i.e. the protection of the rights of the vulnerable and those who seek to work with them, are upheld. This progress will then be reported upon in future annual reports.

Appendix A

Recommendations made in previous Annual Report.

Recommendations 2012-13

Mental Health: one of the more frequent types of disclosure which I have deleted is that which documents a person's mental health. There is a clear guidance in the Quality Assurance Framework (QAF) which advises police on the issues to be considered in disclosing mental health matters. I have deleted a number of disclosures which have documented mental illness but have not presented sufficient grounds for disclosure such as criminal behaviour whilst suffering an episode of mental illness. It is my recommendation that the relevant QAF guidance is highlighted to forces in order that they can reduce the number of disputes in this sensitive area.

Home-Based Occupations: I am aware that there are a number of concerns being highlighted by the National Policing lead for disclosure in respect of third party disclosure. One area where I have noted a potential conflict is in the inclusion of a Home-Based Occupation in the update service provided by the DBS.

The majority of disclosures for Home-Based Occupations relate to information about third parties who either live at or are believed to have access to the address where the work will take place. In many cases the applicant has no previous convictions or information and would happily sign up to an update service which would show their clean record in the future.

The issue is that the update service does not provide details of the third parties who have been a part of the initial disclosure. To retain the Home-Based Occupations in the update service does therefore appear to present a safeguarding risk which needs to be addressed.

Workforce versus position applied for: since the introduction of the single portable certificate some people who are intending to work in a single very specific role, are having information disclosed which may be relevant to the wider child or adult workforce but not necessarily to the actual intended role.

I believe that there may be a need for an additional DBS product: a certificate limited to a single role.

There will also be individuals who are acutely aware that information is held on them that is relevant to a specific definable risk (e.g. a person who may have information on their record which would be relevant to a role as a nursery nurse) may wish to apply for a post working in a specific part of the child workforce such as a school crossing patrol worker.

Current workforce-based products do not cater for such situations; the disclosure on these individuals will, in some cases, be far less proportionate than a role-based product.

Police are already in receipt of representations stating that some information is not relevant and/ or proportionate to be disclosed on their certificate, asking that it is not disclosed as they only wish to work in a particular role. Police are unable to oblige them as their considerations must be made upon the Prescribed Purpose (workforce).

Exceptions to this have already been made for roles which fall outside of the child/adult workforce: a taxi driver application for licensing purposes is made for 'Other' workforce and only information relevant to the specific job/role/post is considered. This approach now encompasses all other eligible roles which do not fall under the child/adult workforces.

Registered Bodies: During the past year I have seen a small number of cases where the registered body has indicated, in one form or another, that they would continue to employ an applicant if the information recorded on their certificate were to be removed. In all of these cases the registered body is already aware of the information and in my view is attempting to 'unknow' information which is relevant to be considered for safeguarding purposes. I recommend that clear communication should be made to Registered Bodies to ensure that they are aware of and accept responsibility for, the important part they have to play in the disclosure process.

Appendix B



Home Office

Lord Bates
Lords Minister
2 Marsham Street
London
SW1P 4DF
www.gov.uk/home-office

Simon Pountain
Independent Monitor
Disclosure and Barring Service

February 2015

Thank you for your Annual Report to the Home Secretary which was published in November. This provides a helpful insight into the issues around the disclosure of criminal records information and the role of police.

Thank you for your important work over the last year. I found your recommendations about policy and practice particularly helpful and have given them careful consideration. You made four recommendations, which are set out below with our response.

On mental health, I agree there is an issue about the extent to which detentions under the Mental Health Act are disclosed as approved police information on criminal record certificates. Information about such detentions is subject to the same legal considerations as other information held by the police: it must be disclosed if the chief officer of police considers it relevant to the purpose of the application and that it ought to be disclosed. This is likely to hinge on the circumstances of the detention in individual cases. I am happy to accept your view that the attention of police forces should be drawn to the guidance on this issue set out in the Quality Assurance Framework (QAF) issued by the Disclosure and Barring Service (DBS) and understand that this action has already been taken by the DBS.

As part of the wider review of mental health legislation which the Government is currently undertaking, we will also consider whether the Statutory Disclosure Guidance which we have issued needs to be strengthened in this area.

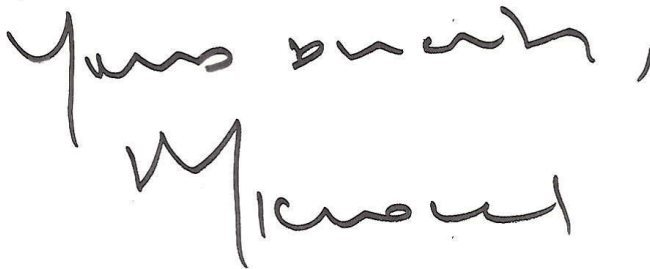
On home based occupations, I cannot agree with your recommendation that persons applying for criminal record certificates should not be able to join the disclosure service. This would prevent any criminal records information about the individual being updated, and remove the benefits of this service from those applicants. I do take your point however that the update service cannot accommodate any changes to information about other members of the household who may have been subject to checks for home based positions. Instead we will take action to advise DBS

registered bodies and employers that, where a previous criminal record certificate has included third party information, it is advisable to seek a fresh certificate.

Your third recommendation was that a new criminal record certificate should be introduced for specific posts. Our policy is that criminal record certificates should be relevant to employers in the sectors in which work is sought. At present, as you know, these are combined into children's or adult workforces, together with a few additional categories. This means that a person seeking work in the children's sector will receive a criminal record certificate setting out relevant information. I think it could well cause confusion to employers and voluntary organisations to move to a position where checks relate only to individual posts. Not only would the certificate have to state that it related only to that post, but employers are registered bodies would need to provide careful descriptions of posts and duties for which a particular certificate were valid. From a safeguarding perspective, it is also difficult to envisage information which may be relevant to one area of work with children but not to another, and such a change would require significant amendments to the statutory framework. We do not therefore propose to adopt this proposal.

Finally, you point to some employers or registered bodies suggesting that posts might be offered to individuals if information were removed from their certificates. Although registered bodies may have a role in advising applicants about the disputes process, this is clearly not acceptable and I agree that DBS should provide advice to registered bodies to make this clear.

I hope you find this helpful.

A handwritten signature in black ink, appearing to read 'Yours truly, Michael'. The signature is written in a cursive, flowing style.

LORD BATES

