

Independent Monitor Annual Report 2019

Introduction

This is the seventh Annual Report of the Independent Monitor (IM) for the Disclosure and Barring Service (DBS). The report covers 2019, January to December.



In the 2018 Annual Report there were no recommendations for change. The Safeguarding Minister wrote to me on 24th September 2019 with her response to my 2018 Annual Report. The Minister's letter was published with the 2018 Annual Report last year.

I make one new recommendation in this Annual Report and have provided an update on all previous recommendations.

Overview of the year

Referrals

In 2019, a total of 4,755 additional information disclosures were made on Enhanced Criminal Records Certificates by the DBS and Access Northern Ireland (ANI) combined. A total of 139 disputed disclosure referrals were made in 2019 to the Independent Monitor. This means that 2.9% of all disclosures made within the year in England and Northern Ireland have been disputed and referred to me for review.

As a comparison, in 2018 a total of 166 dispute cases were referred for review by the Independent Monitor. This shows a reduction in dispute referrals to the IM which continues a decreasing trend observed in recent years.

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 2019, 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 raised from 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 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. Since taking up office in October 2018, I have paid close attention to the speed with which IM disclosure disputes are resolved. This responsibility is shared by the DBS /ANI, police and my own office. I recognise that there are many reasons why rapid case progression might not be possible, and it would never be appropriate to gain speed at the expense of quality. However, striving to resolve disclosure disputes in a timely manner is in everyone's best interests. I am pleased to observe that the vast majority of IM disclosure dispute cases in 2019 were progressed expeditiously.

Previous IM Annual Reports

A table at Appendix B summarises all previous IM recommendations. Outstanding IM recommendations are summarised on page 4. There is one new recommendation in this report.

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, 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 second recommendation in the 2015 Annual Report as follows:

"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

In 2019 there were 18 disputes raised with the Independent Monitor relating to third-party disclosures. This represents 13% of all IM review cases for the year.

It was agreed in March 2019 at the Disclosure Portfolio Group that this recommendation is still relevant. Since that time, the National Police Chiefs' Council Disclosure lead and Home Office representatives advise that they have been discussing current concerns and seeking a more consistent approach to third-party disclosures. I am pleased to learn of positive progress with this recommendation in recent months, however this issue is not yet fully resolved. This recommendation remains current.

New Recommendation - Revision of Statutory Guidance on the Assessment of Credibility

When considering whether or not information should be disclosed on an Enhanced Criminal Records Certificate a key consideration is whether or not the information is sufficiently credible for disclosure purposes.

Following my sampling exercise this year, and in light of recent stated legal cases, I believe that the Statutory Disclosure Guidance (Second edition - August 2015), should be revised in relation to its guidance on the assessment of 'credibility'.

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'.

Engagement

Throughout 2019 I have continued with my visits to police disclosure units and the DBS offices in Liverpool. I continue to engage with as many stakeholders as possible through regular attendance at the police National and Regional Disclosure meetings and the Police Disclosure Portfolio Group.

I meet regularly with policy and operational leads from the Home Office, DBS, ANI, NPCC and police disclosure units to identify any issues or concerns.

Sampling of cases

I have undertaken a sampling exercise of disputes from 2019 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 64 Enhanced Disclosure cases this year, drawn from ten different police forces, including the Police Service of Northern Ireland. I have sampled cases on a thematic basis where possible, focussing on cases that relate to: taxi driving, home-based occupations, third-party disclosures and people suffering mental ill health.

After careful consideration of each case, individual feedback has been provided to the forces concerned. From the cases sampled in 2019, I have developed one new recommendation for change (set out above). Some other learning points were identified through this exercise, but no significant issues raised.

I have provided detailed feedback to the relevant forces and all generic learning from this sampling exercise has been disseminated at a national level through the Police Disclosure Portfolio Group and more locally through the Regional Disclosure Fora.



Independent Monitor’s Secretariat

I am very appreciative of the continuing dedication and hard work of the Independent Monitor’s Secretariat who administer the IM caseload and provide general support for the office of Independent Monitor.

Summary and Conclusion

In total, 139 cases were referred to the Independent Monitor for review in 2019. A full break down of how those IM referral cases were finalised is provided below.

There are two outstanding previous recommendations, and one new recommendation 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 sampling reviews is to ensure compliance with Article 8 of the European Convention of Human Rights (ECHR). Sampling cases also assists the IM in considering the appropriateness of Statutory Guidance and any recommendations that should be made. 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 accuracy 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 2019, the Independent Monitor has received a total of 1,841 referrals. Case papers include the disclosure Certificate provided by the DBS, along with any written representations and supporting documentation submitted by the applicant. 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 IM for review.

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.

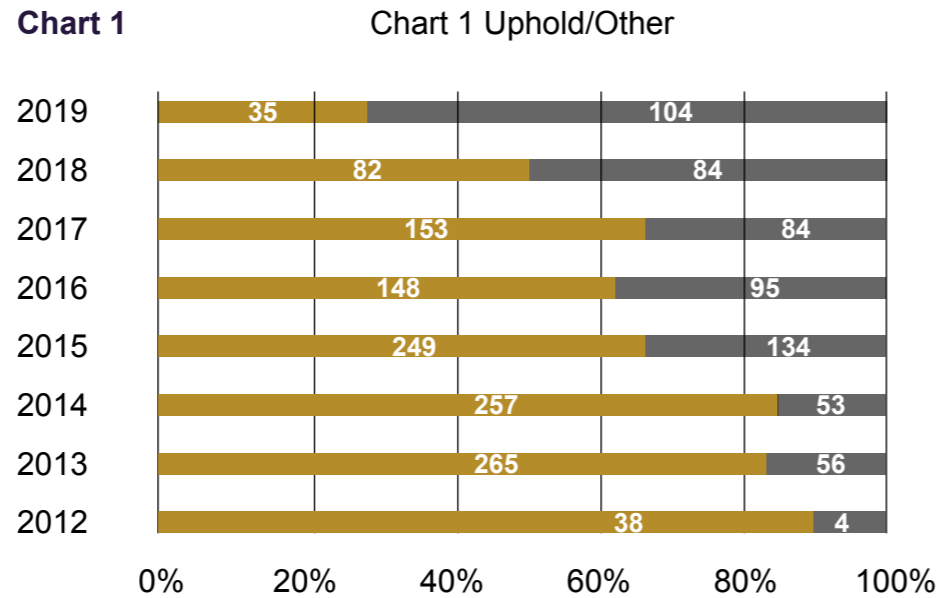
In contrast, as a statutory appointee, the IM's role is to consider referrals from applicants disputing the inclusion of non-conviction information within their enhanced disclosure Certificates issued by the DBS. Such Certificates are required for those who wish to work with children and vulnerable adults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

Independent Monitor Case Referrals: 2019 Summary

The chart below shows the number of referrals received by the Independent Monitor in 2019 and how they were subsequently resolved.

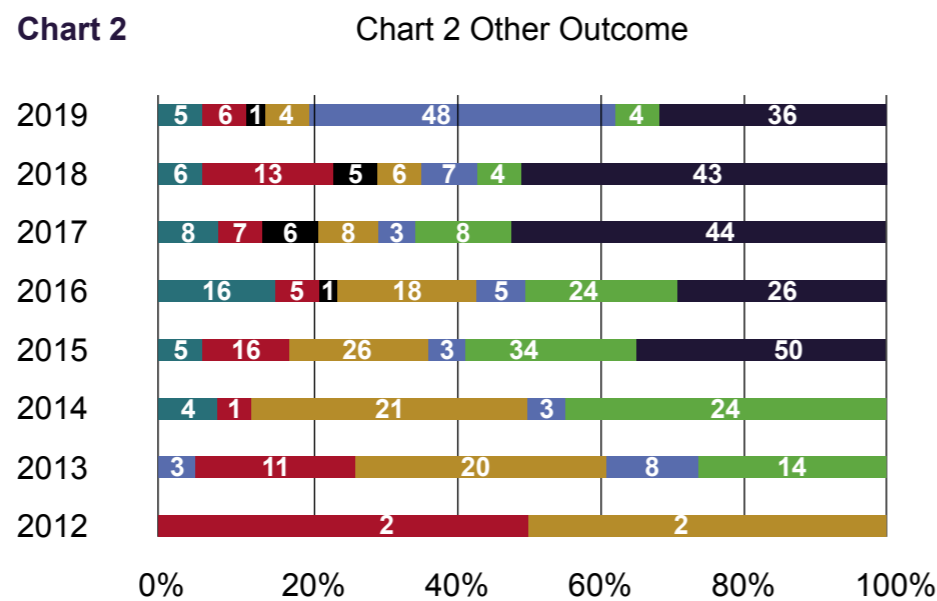
These figures are shown in comparison with previous years. 'Uphold' refers to cases where the police disclosure has been supported by the IM in its entirety.

- Uphold
- Other Outcome



The following chart breaks down the 'other outcome' category above, to show how cases have been finalised.

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



There has been a reduction in the total number of referrals made to the IM in 2019. This reduction in disputes may be indicative of higher quality and consistency of decision making by police forces. However, the complexity of cases that are referred, continues to rise. The previous IM's policy of not reviewing 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, remains in place.

There are some 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'.

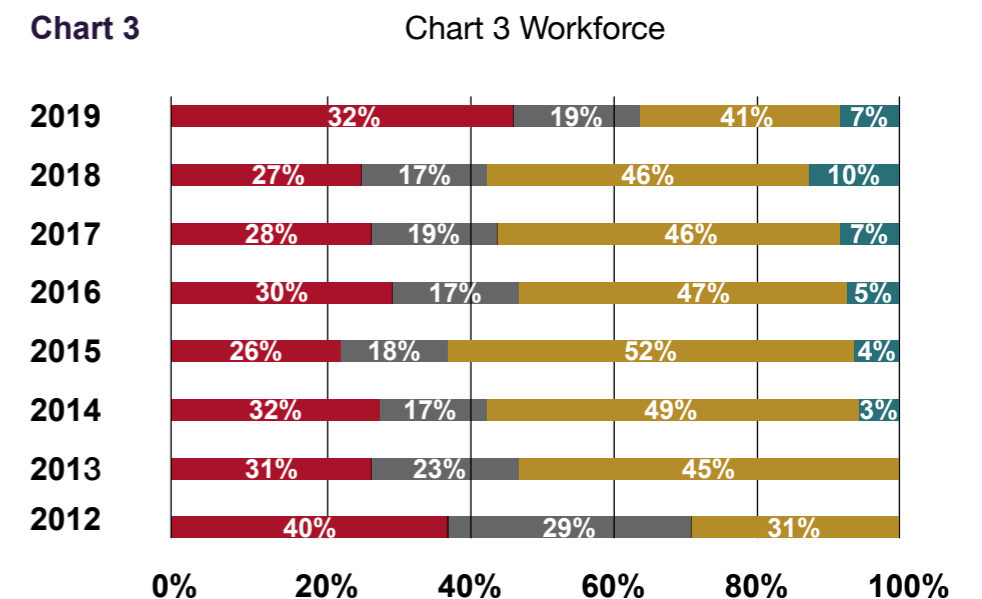
The IM has declined to review a total of 6 dispute cases this year out of a total of 139 referrals. In one case, an application had been made in error for a Certificate relating to a homebased occupation and the applicant was advised to re-apply for a Certificate that matched the prescribed purpose. In the other five cases, the dispute was withdrawn by the applicant; in one case because they had been issued with a new, 'clean' Certificate and in the other four cases because the applicant was content with an amended disclosure as provided by police.

Workforces

The following chart provides a comparison of the relevant workforces for which applicants have applied. The chart shows that the proportion of cases in each workforce remains consistent with previous years. 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.

- Children
- Adults
- Both
- Other

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



Appendix A



Victoria Atkins MP
Minister for Safeguarding

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22 July 2020

Dear Julia,

Thank you for your 2019 Annual Report which will be published 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 a variety of stakeholders, including regional disclosure units and the Disclosure and Barring Service, to develop a consistency of approach.

I note that you have made one new recommendation in this report and that there are two outstanding from previous years. Having considered these, I have set out our response 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 are considering this recommendation and I will ensure they update you with their response within a month of publication of your report.

Time Limit for Disputing Disclosures

As you will be aware, the recommendation to introduce a time limit for disputing disclosure will require amendment to primary legislation. The recommendation will be considered if a suitable opportunity arises to amend the relevant legislation, however I have noted that the process put in place as an interim solution by the previous Independent Monitor is reported to be effective.

Third Party Disclosures

I continue to support the recommendation that there should be a more consistent approach to third party disclosures through more detailed guidance. Discussions between my policy officials and the NPCC lead for disclosure concluded in February, with a confirmation of the HO position provided to the NPCC by the Director of Public Protection. I trust once you hear back from NPCC Lead, this recommendation will be concluded.

I thank you for your important work since taking on the role in October 2018.

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.
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	Ongoing 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.	Ongoing Awaiting further consideration by NPCC Disclosure lead and Home Office.