

Independent Monitor Annual Report 2023



Independent
Monitor

Introduction



This is the eleventh Annual Report of the Independent Monitor (IM) for the Disclosure and Barring regime. This report covers January to December 2023.

There are no new recommendations in the 2023 Annual Report. A full progress report on all previous IM recommendations is provided below. The former Safeguarding Minister wrote to me on 13th July 2023 with her response to my 2022 Annual Report. The Minister's letter was published with last year's Report.

Overview of the year

This year has seen another increase in demand across the disclosure regime in England, Wales and Northern Ireland, continuing after last year's rise in demand. The Disclosure and Barring Service (DBS) report that in 2023 they had a 6.95% increase in the number of Enhanced Criminal Records Certificates issued with 'additional information' disclosed. While AccessNI (ANI) report a 5.71% increase in demand for Enhanced Certificates this year. My observation is that the disclosure regime as a whole continues to respond well to these year on year rises in operational demands.

IM Referrals

In 2023, a total of 5,081 "additional information" disclosures were made on Enhanced Criminal Records Certificates issued by the DBS. AccessNI made 316 Enhanced Certificate disclosures, making a grand total of 5,397 positive disclosure decisions.

The DBS referred 148 disclosure dispute cases to the office of Independent Monitor in 2023, while AccessNI referred one dispute for an independent review. This means that 149 dispute cases, or 2.76% of all disclosures made within the year in England, Wales and Northern Ireland were disputed last year and referred to my office for an IM review. As a comparison, in 2022 a total of 129 cases (i.e., 2.54%) of all enhanced disclosures made across the three Home Nations were disputed and subsequently referred for my review.

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. As stated above, one dispute case was referred by AccessNI for my independent review this year.

As part of my statutory duties, I have also reviewed a sample of ten randomly selected disclosure cases from Northern Ireland this year. There were a few learning points identified through this exercise, but no significant concerns. Detailed feedback from this sampling exercise has been provided to the Police Service of Northern Ireland for their consideration.

Sampling of Disclosure Cases in England and Wales

As required under section 119B of the Police Act 1997, I have also undertaken a dip sampling exercise of disclosure decisions taken by police forces across England and Wales in 2023.

I sampled a total of fifty randomly selected disclosure decisions this year, drawn from five different police forces across England and Wales. This is in addition to the sample of cases from the Police Service of Northern Ireland referred to above.

After careful consideration of each case, relevant learning points were identified through this exercise, but no significant concerns were identified. I have provided individual feedback to each of the police forces concerned, for their consideration. I have also shared all generic learning from this sampling exercise through the National Disclosure Forum and more locally through the Regional Disclosure Fora.

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 have been no Judicial Reviews involving the Independent Monitor this year.

Timeliness of IM Disclosure Dispute Handling

The Statutory Disclosure Guidance states that disclosure decisions should be made in a timely manner. I continue to pay close attention to the speed with which IM disclosure disputes are resolved. This responsibility is shared at different stages between the DBS /ANI, the police and my own office.

I am pleased to report that there has been further improvement in the timeliness of IM dispute handling this year. This builds on improvements already made in the previous two years. In 2023, the average number of working days taken by the police to complete their review at the first stage of the dispute process was 22.5 days. In 2022 the average time taken was 43 days and in 2021 the average was 67 days.

Revised Home Office Statutory Disclosure Guidance

Throughout 2023 the Home Office undertook a consultation exercise with key stakeholders, including myself, regarding the Statutory Disclosure Guidance. Following this consultation and revision exercise, the Fourth Edition of the Home Office Statutory Disclosure Guidance was published on 14th February 2024¹.



¹ <https://www.gov.uk/government/publications/statutory-disclosure-guidance>

Recommendations from Previous IM Annual Reports

The table at Appendix B summarises all previous IM recommendations.



Progress on any outstanding recommendations is summarised below:

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 was originally made by my predecessor nearly ten years ago. However, to achieve a formal change to the dispute process such as this would require a change to primary legislation and no opportunity has arisen in the past decade to amend the relevant legislation through an Act of Parliament.

After several years with no progress to report regarding this recommendation, the revised Statutory Disclosure Guidance (published in February 2024) now provides information regarding the handling of 'out-of-time disputes' in England and Wales. The revised Statutory Guidance reminds applicants that 'any dispute about the disclosure of information contained in an Enhanced Criminal Records Certificate should be raised with the DBS within three months of the date of issue of the certificate'. Although a change to the relevant primary legislation would still be beneficial, the new addition to the Statutory Guidance on the subject of 'out-of-time disputes' is a welcome development.

In summary, this recommendation is still relevant and supported by all key stakeholders. However, recognising that it has not been possible to enact this recommendation to date, I do not believe it is appropriate to keep it open indefinitely. Therefore, I have closed this recommendation as 'partially complete' with the publication of the 2024 Statutory Disclosure Guidance. If an opportunity should arise in the future to change the relevant primary legislation pertaining to out-of-time disputes, I am confident that the Independent Monitor would be fully engaged in considering any new proposed legislative change.

Engagement

Throughout 2023 I have continued to engage with a wide range of stakeholders, through online and face to face meetings. For example, in May 2023 I had the pleasure of visiting AccessNI, and the Police Service of Northern Ireland Disclosure Unit. I also regularly attend police National and Regional meetings and am a member of the NPCC 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.

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, hard work and flexibility of the Independent Monitor's Secretariat this year.

Summary and Conclusion

All my statutory functions as the Independent Monitor have been successfully fulfilled throughout the year.

In 2023 a total of 149 disclosure dispute cases were referred to the office of Independent Monitor for my independent review. This is the highest number of referrals received by my office in a calendar year since 2019. However, the proportion of IM case referrals is still less than 3% of all disclosures made. A full break down of how the IM dispute cases for 2023 were finalised is provided below.

There are no new recommendations in this Annual Report and all previous IM Recommendations have now been closed.



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 four statutory duties.



One of the IM's four statutory duties is to publish an Annual Report, another is to make relevant recommendations to the Secretary of State. The other two IM functions relate directly 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 an Enhanced Criminal Records Certificate is either not relevant to the workforce for which they are applying, 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 relevance and/or proportionality of the disclosure, the first stage of the IM review process is undertaken, at the request of the IM, by the relevant disclosing police force. If the applicant is dissatisfied with the outcome of the police review, the case is then referred to the IM for an independent review of their disclosure dispute.

Operation of the Secretariat and function of the Independent Monitor

The Protection of Freedoms Act 2012 introduced the Independent Monitor's responsibility to review enhanced disclosure disputes.

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 or 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 2023, the Independent Monitor has received a total of 2,323 case 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, relevant police material, and any written representations or 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' and/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 does not deal with general customer complaints about the DBS. These are dealt with through the DBS complaints procedure. The IM's role is to consider referrals from applicants disputing the inclusion of 'additional 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 specific jobs such as taxi driving.

**Independent
Monitor Case
Referrals:
2023 Summary**

The chart below shows the number of referrals received by the Independent Monitor in 2023 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 and unamended.

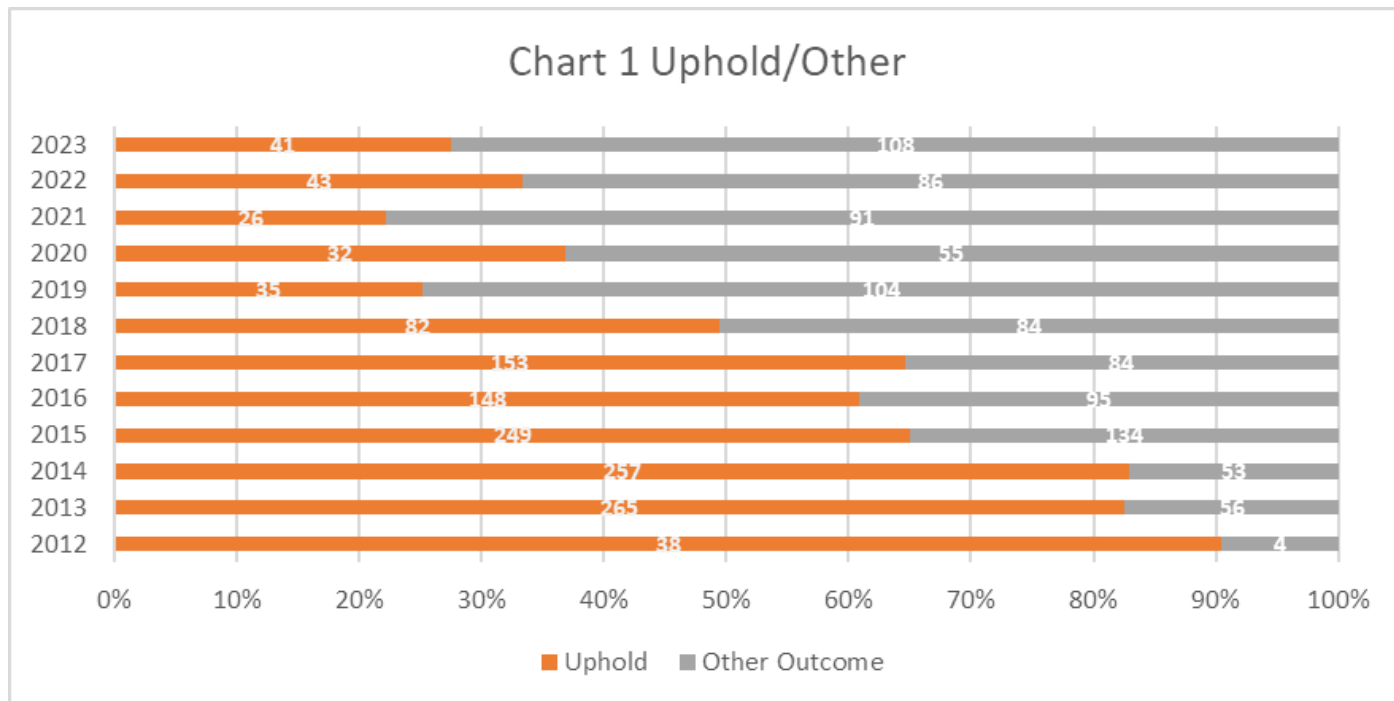
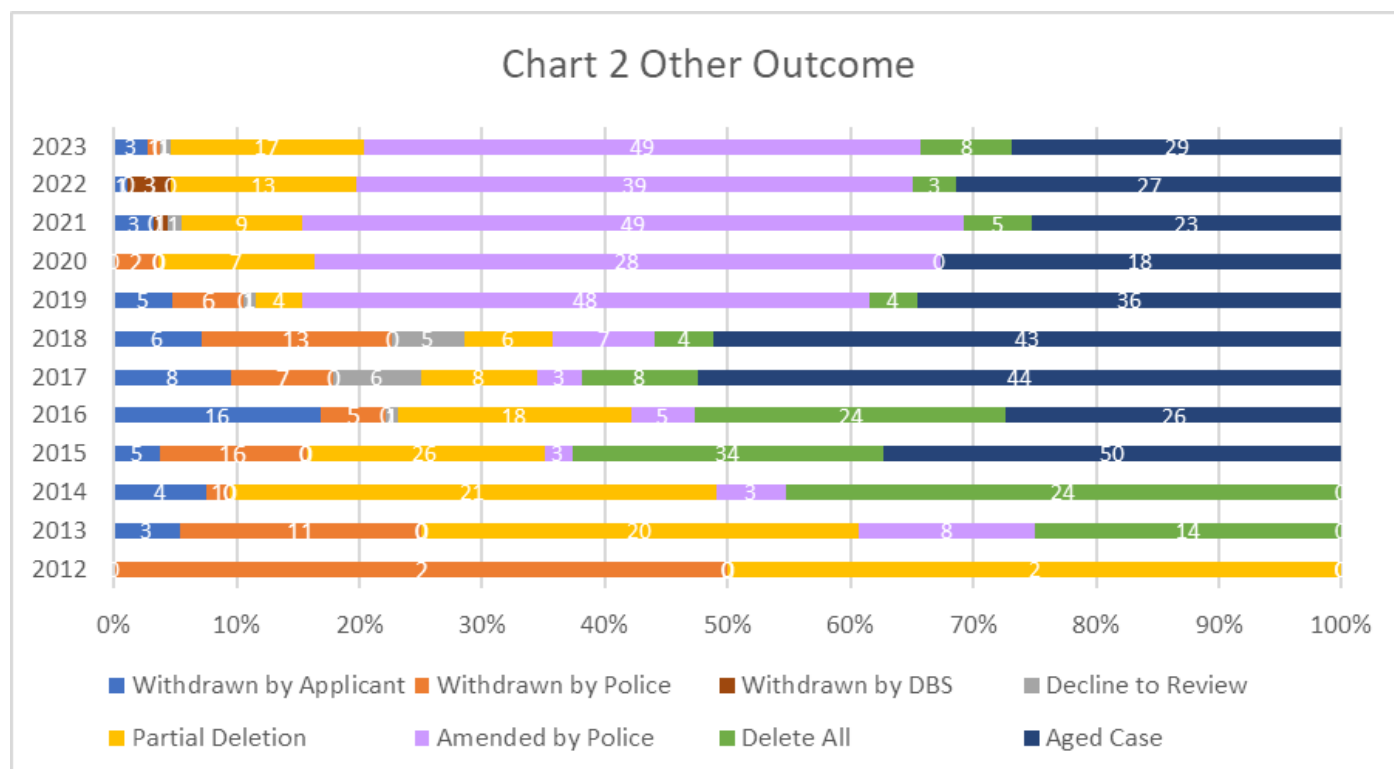


Chart 2 breaks down the 'other outcome' category (in Chart 1 above), to show in more detail how cases in which the disclosure was not 'upheld' were finalised.



There has been another increase in the total number of referrals made to the IM this year. This is the highest number of dispute cases referred for an IM review since 2019. However, the percentage of disputed disclosures being referred to the IM has only marginally increased. In 2022, 2.54% of all disclosures made across England, Wales and Northern Ireland were disputed and subsequently referred to the IM for independent review. However, in 2023 this percentage rose slightly to 2.76% of all disclosures made.

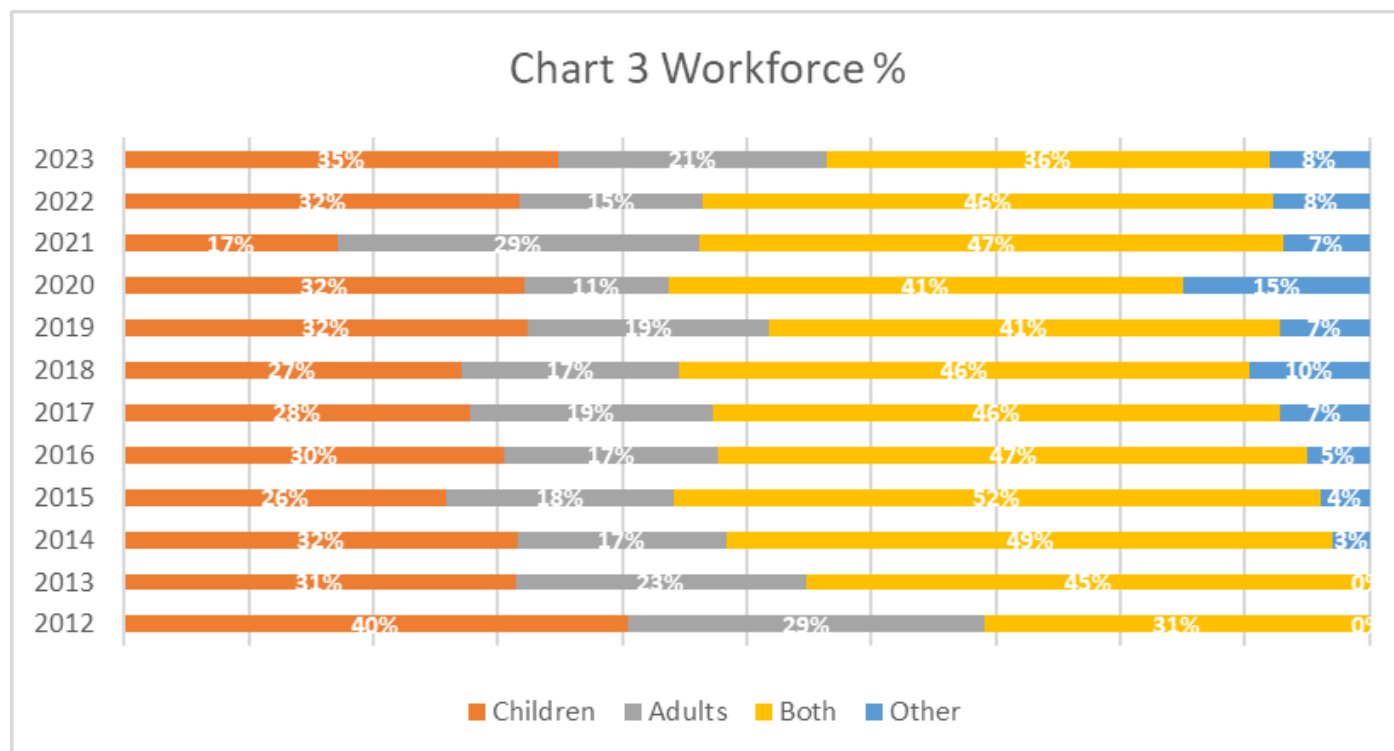
With some disputes, the information disclosed could be clarified through amendment. In such cases, the disclosure text is amended by the police during the dispute review process. These cases are categorised in Chart 2 as 'amended by police' and constitute 45% of all 'other outcomes' in 2023.

There were three cases this year in which the applicant decided that they were content with the disclosure text as amended by police and subsequently withdrew their request for an independent IM review. These cases are recorded in Chart 2 as 'Withdrawn by applicant'. The police withdrew the disclosure upon review in one case.

The previous IM's procedure remains in place of not reviewing 'out-of-time' disputes when they are raised more than three months after the Certificate was issued and in which the 'prescribed purpose' no longer exists, or it is reasonable to believe that this is the case. These out-of-time dispute cases are recorded in Chart 2 as "aged cases" and constitute 27% of all "other outcomes" in 2023.

Workforces

Chart 3 (below) provides a comparison of the relevant workforces for which applicants have applied. Chart 3 shows that the proportion of cases in each Workforce remains generally consistent with previous years, but with an increase in the percentage of 'Adult Workforce' and 'Child Workforce' applications, with a corresponding decrease in the Child & Adult Workforce(s). However, most disputes (36% of IM case referrals) are still from applicants who have applied for both the Child and Adult workforce(s).



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

Jess Phillips MP
Minister for Safeguarding and
Violence against Women & Girls

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

Julia Wortley
Independent Monitor

By Email Only:

22 October 2024

Dear Julia,

Thank you for your 2023 Annual Report which will be published on Gov.uk shortly. Your report provided a helpful overview of your work in 2023 with a variety of stakeholders, including regional disclosure units, police forces and the Disclosure and Barring Service.

I note you have made no new recommendations in this report and have closed the last outstanding recommendation from previous annual reports as 'partially complete'.

Yours sincerely,

Jess Phillips MP
Minister for Safeguarding and Violence Against Women & Girls

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 this 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. Closed as 'Partially Complete' in 2024 with publication of the Fourth Edition Statutory Disclosure Guidance.	Partially Complete New Primary Legislation is required to fulfil this recommendation.
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	Complete NPCC and Home Office have resolved the key issues.
Revision of the Statutory Disclosure Guidance	2019	Accepted	Complete Revised Statutory Disclosure Guidance published in November 2021.