



Independent
Monitor

Independent Monitor

Annual Report 2018



Introduction

This is the sixth Annual Report of the Independent Monitor (IM) for the Disclosure and Barring Service. The report covers January - December 2018. My predecessor, Simon Pountain was Independent Monitor from January – September 2018 and I was appointed to the position on 1st October 2018.

I would like to express my deep appreciation to Simon Pountain who was appointed to the role of Independent Monitor in 2012 as defined under the Protection of Freedoms Act 2012 (and corresponding amendments to the Police Act 1997). Simon provided dedicated and diligent public service throughout his six years in office.

In the 2017 Annual Report my predecessor did not make any recommendations for change. The Home Secretary wrote to the Independent Monitor on 17th September 2018 with his response to previous recommendations and a copy of that letter was added to the 2017 Annual Report.

There are no new recommendations in the 2018 Annual Report and an update on previous recommendations is included.

Overview of the year

Referrals.

The total number of disputed disclosure cases received in 2018 by the Independent Monitor was 166, in comparison with a total of 237 referrals received in 2017. This shows a noticeable reduction in dispute referrals to the IM which continues a 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. There were no referrals to the IM from the Police Service of Northern Ireland in 2018.

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, but no significant concerns raised. Detailed feedback from this 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.

Recommendations from Previous IM Annual Reports

A table at Appendix A summarises all previous IM recommendations.

Outstanding recommendations are 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

I endorse this recommendation and note that it is still supported by 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 recommendation in the 2015 Annual Report as follows:

‘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 has caused delays in obtaining transcripts which have been referred to by applicants in their representations.’

The Home Secretary commented on this recommendation in his letter dated 17th September 2018:

“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 the 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.”

Progress Report

Further research has identified that some court transcript agencies were misinterpreting legal and procedural guidance in relation to police access to court transcripts. Guidance has been re-issued to the transcript agencies and it is anticipated that this should resolve the matter.

The IM made a second 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 Home Secretary commented on this recommendation on 17th September 2018:

“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.”

Progress Report

In 2018 there were 30 disputes raised with the Independent Monitor relating to third-party disclosure. This represents 18% of all IM review cases for the year. As the new Independent Monitor, I have discussed this recommendation with the DBS, Home Office, police service representatives and other stakeholders and find agreement that this recommendation is still relevant. The National Police Chiefs’ Council Disclosure lead and Home Office representatives are in discussion regarding current concerns and seeking a more consistent approach to third-party disclosures.

Engagement

Since appointment as IM in October 2018 I have visited several police disclosure units and the DBS offices in Liverpool and Darlington, which deal with disclosure and barring casework respectively. 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 2018 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.

In his 2017 Annual Report my predecessor stated that it was his intention in 2018 to consider dip sampling cases on a thematic or occupation basis. I have followed this suggestion, including in the sample cases that relate to: taxi driving, third-party disclosures and people suffering from mental ill health.

I sampled a total of fifty Enhanced Disclosure cases. These cases were provided by five different police forces, including the Police Service of Northern Ireland.

After careful consideration of each case, individual feedback has been provided to the forces concerned. From the cases sampled in 2018, there were a few learning points identified for best practice, but no significant issues. All relevant generic learning drawn from this sampling exercise I have disseminated at a national level through the Police Disclosure Portfolio Group and more locally through the Regional Disclosure Fora.

Recommendations

I have no new recommendations to make this year.

Independent Monitor’s Secretariat

I am very appreciative of the 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

I was appointed as the new Independent Monitor in October 2018.

A total of 166 cases were referred to the Independent Monitor for review in 2018. A full break down of how these cases were finalised is provided.

There are no new recommendations in this report.

A handwritten signature in blue ink that reads "Julia Wortley". The signature is written in a cursive style with a long horizontal stroke at the bottom.

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 compliance with Home Office Statutory Guidance on disclosure and Article 8 of the European Convention of Human Rights (ECHR).

Under section 117A of the 1997 Act the Independent Monitor has a 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 members of 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 unsatisfied 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 role now acts as an additional layer of review before a person may resort to Judicial Review.

Since its creation in September 2012 to the end of December 2018, the Independent Monitor has received a total of 1,702 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 Independent Monitor for review.

When reviewing an appeal, 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.

In addition to providing decisions on requests for review of a Chief Officer's disclosure of approved information, the Independent Monitor undertakes a sampling and review exercise of disclosure cases in accordance with section 119B (5) of the 1997 Act. Following these 'dip sampling' reviews, the Independent Monitor provides feedback to forces to ensure quality and compliance with Statutory Guidance.

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.

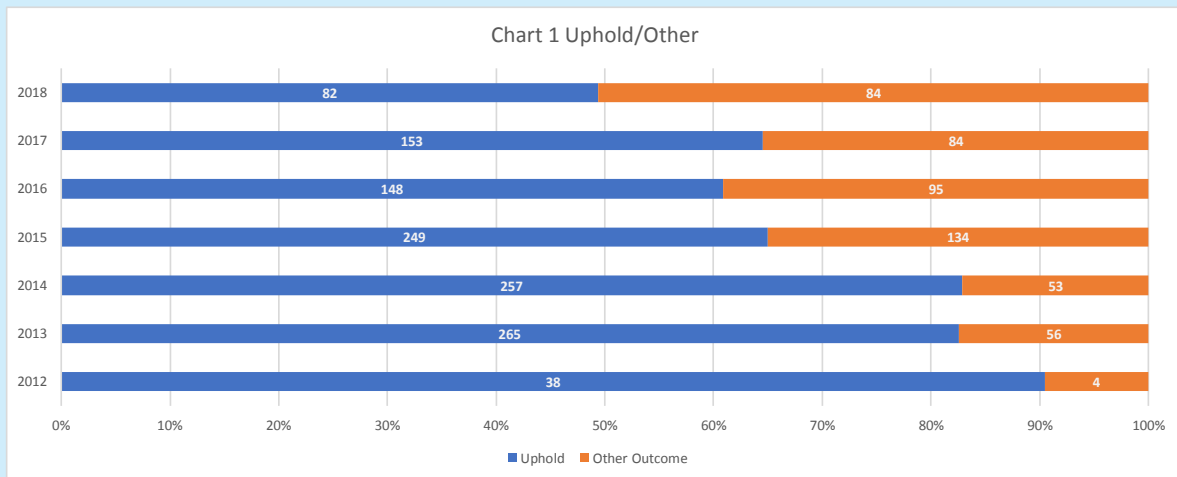
As a statutory appointee, the IM's role is to consider appeals from applicants disputing the inclusion of non-conviction information within their enhanced disclosure Certificates issued by the DBS. Such Certificates are required for those who wish to work with children and vulnerable adults and in some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

Independent Monitor Case referrals: 2018 Summary

The chart below shows the number of referrals received in 2018 and how they were resolved by the Independent Monitor. 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.

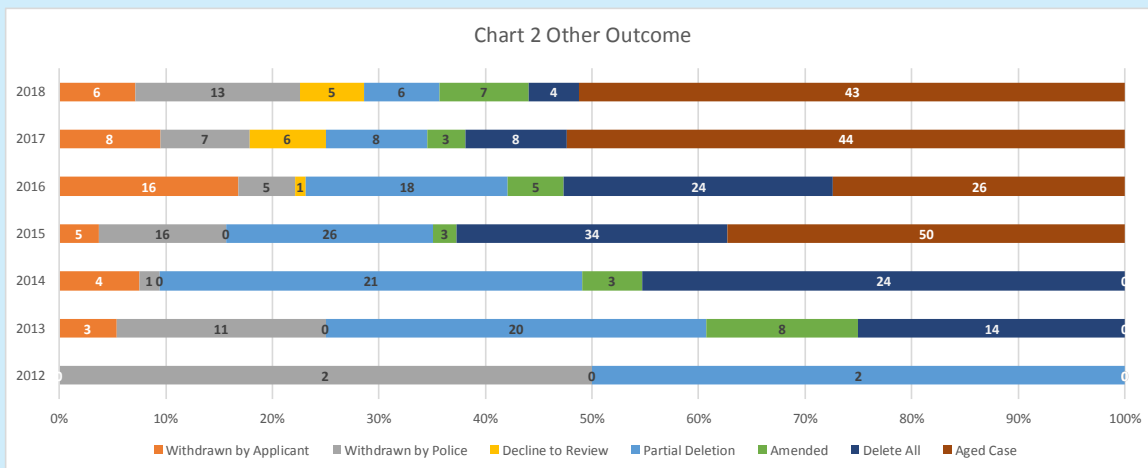
Chart 1



Note 1. Finalised figures have been updated from last year’s report as a small number of 2015 and 2017 cases were still outstanding when the 2017 Annual Report was published.

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

Chart 2



There has been a noticeable reduction in the total number of referrals made to the IM in 2018. This reduction in disputes may be indicative of higher quality and consistency of decision making by police forces.

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 5 cases this year out of a total of 166 disputes. In one of these cases, the purpose for which the original disclosure had been met, the applicant was applying for subsequent employment and this required a new Certificate. In another, the applicant was suspended from working by their own professional regulatory body. One applicant withdrew their job application and in the last two cases each applicant had been issued with a subsequent Certificate and a review was no longer necessary.

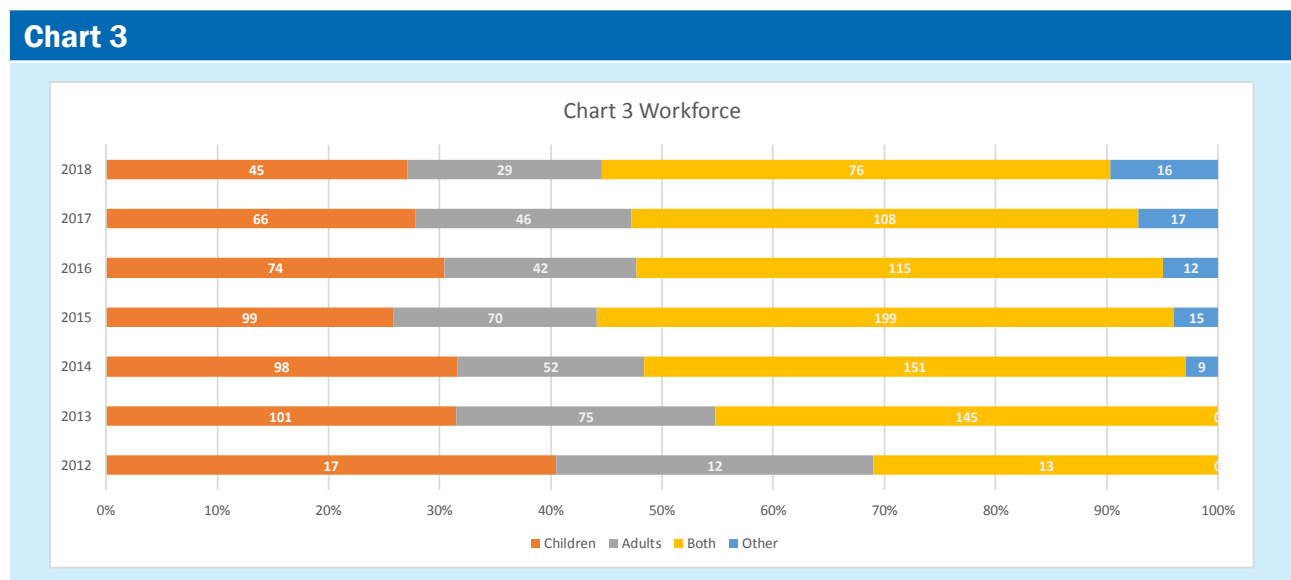
Early in 2018 several cases were returned to their originating police forces by the IM for reconsideration, following the outcome of two judicial reviews, namely: *SD v Chief Constable of North Yorkshire* [2017] EWCA Civ 1838 and *LG v The Independent Monitor* [2017] EWHC 3327.

All 2017 cases and 2018 cases have now been reviewed and concluded by the IM.

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.



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. Government Response to 2017 Annual report.



Victoria Atkins MP
Minister for Safeguarding and
Vulnerability
Minister for Women

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

Julia Wortley
Independent Monitor
c/o Home Office Sponsorship Unit
2 Marsham Street
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Sent by email

24 September 2019

Dear Julia,

Thank you for your 2018 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 not made any new recommendations in this report but have reiterated those previously made by you in earlier years. Having considered these, I have set out our response below.

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. 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.

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

Yours sincerely,

A handwritten signature in blue ink that reads "Victoria Atkins". The signature is written in a cursive style with a large initial 'V' and a long, sweeping underline.

Victoria Atkins MP

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