



Independent Monitor

Annual Report 2021



Introduction



This is the ninth Annual Report of the Independent Monitor (IM) for the Disclosure and Barring Service (DBS). The report covers the period January to December 2021.

Last year, in the 2020 Annual Report, I made no new recommendations for change. The Safeguarding Minister wrote to me on 13th July 2021 with her response to the 2020 Annual Report, and her letter was published within the Annual Report last year.

I make no new recommendations in this 2021 Annual Report and provide an update on all previous recommendations.

Overview of the year

Covid-19 Pandemic

Throughout 2021, the Covid-19 pandemic has continued to have a heavy impact on people's personal and working lives across the country. However, despite these ongoing challenges, my general observation is that the disclosure regime as a whole has continued to show resilience and flexibility in its response to the changeable circumstances of 2021.

Disclosure and Barring Regime Review

In July 2021, HM's Government announced that the Home Office would "commission a review of the disclosure and barring regime in England and Wales to provide assurance on its effectiveness in safeguarding the vulnerable". The Safeguarding Minister subsequently advised Parliament that the review's "focus will be to identify key issues of concern about the current regime; consider current responses to them; assess and advise on risks and opportunities; and make recommendations for improvement".

In February 2022, it was announced that Mr Simon Bailey has been appointed to lead the review, with the aim of reporting to Ministers in the summer of 2022. I have already engaged with Mr Bailey and his team, and naturally will take an ongoing interest in the review's progress, its findings and recommendations in due course to Government.

IM Referrals

In 2021, a total of 4,317 "additional information" disclosures were made on Enhanced Criminal Records Certificates by the DBS and Access Northern Ireland (ANI) combined. A total of 117 disputed disclosure referrals were made in 2021 to the office of Independent Monitor. This means that 2.71% of all disclosures made within the year in England, Wales and Northern Ireland have been disputed and referred to me for review.

As a comparison, in 2020 a total of 87 cases (1.87% of all enhanced disclosures across the three Home Nations) were disputed and referred to me for review.

However, the 2021 statistics must be treated with caution, as they arise from another anomalous year, due to the ongoing effects of the Covid-19 pandemic on national recruitment

patterns and fluctuating demands for Enhanced Criminal Records Certificates.

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 2021, 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 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 consideration.

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 that reached a Court outcome 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. I have continued 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.

This year there has been a noticeable lengthening in the average length of time taken by the police when dealing with stage one of the IM dispute process i.e., when the relevant police force reviews their disclosure decision, before the case is referred to the IM for independent consideration.

In 2020, the average number of working days taken by the police to deal with a disclosure dispute review was 36 days. In 2021, the average time taken by police was 67 days. However, these average performance figures are skewed by a small number of cases. If 11 exceptional cases, which each took more than 200 days to be reviewed, are removed from the overall statistics, the average length of time taken by police at the review stage in 2021 would have been 31.7 working days.

Throughout the year, I have been working with the police and DBS, to understand the reasons why IM disclosure dispute cases have been delayed. The reasons for this are specific to each case concerned. However, one consistent factor throughout 2021 has been the compounded effects of the ongoing Covid-19 pandemic.

In 2022 I will be commencing a new monitoring process, with the support of the DBS and police, which seeks to ensure that future performance in this area is improved.



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 is still supported by all stakeholders. However, as previously reported, 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.

2019 Annual Report

Revision of Statutory Guidance on the Assessment of Credibility

In the 2019 Annual Report I made a recommendation as follows:

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'.

The Home Office published the amended Statutory Disclosure Guidance (Third Edition) in November 2021. Therefore, this recommendation is now complete.

Engagement

Throughout 2021 I have continued to engage with a wide range of stakeholders, through online and face to face meetings (when Covid-19 restrictions permitted). I regularly attend police National and Regional Disclosure meetings and am a member of the Police 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.

Sampling of cases

I have undertaken a sampling exercise of disputes raised during 2021 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 61 cases this year, drawn from across ten different police forces in England and Wales, in addition to the Police Service of Northern Ireland sample cases (as reported above). This year I have sampled cases on a thematic basis where possible, focussing on cases relating to: Mental health, Covid-19 roles and non-home based, third party disclosures i.e., cases when information is disclosed by the police on an applicant's Certificate about someone other than the person who is applying to work with children or vulnerable adults.

After careful consideration of the cases sampled in 2021, several general learning points were identified through this exercise and one slightly more significant concern. I have provided individual feedback to each of the police forces concerned for their consideration. I have shared the generic learning from this sampling exercise at a national level through the Police Disclosure Portfolio Group and more locally through the Regional Disclosure Fora.

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 throughout this unpredictable year.

Summary and Conclusion

Throughout 2021, the disclosure regime continued to be impacted upon by the ongoing Covid-19 pandemic. However, all my statutory functions as the Independent Monitor have been successfully maintained throughout the year.

In total, 117 disclosure dispute cases were referred to the Independent Monitor for review in 2021. A full break down of how those IM referral cases were finalised is provided below.

There are no new recommendations 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 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 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 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 of their dispute, the case is then referred 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 2021, the Independent Monitor has received a total of 2,045 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, along with any written representations and 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 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

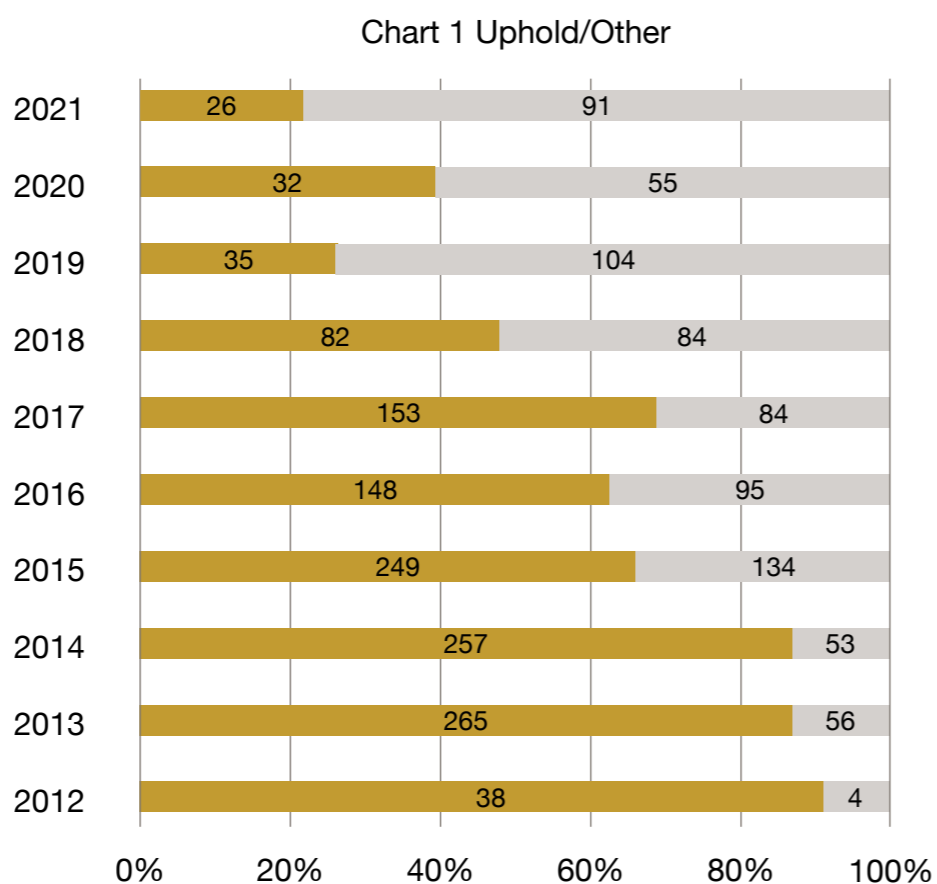
The Independent Monitor does not deal with general customer complaints about the DBS. These are dealt with through the DBS complaints procedure. The IM's role is to consider referrals from applicants disputing the inclusion of non-conviction information within their enhanced disclosure Certificates issued by the DBS. Such Certificates are required for those who wish to work with children and vulnerable adults and in some other specific jobs such as taxi driving.

Independent Monitor Case Referrals: 2021 Summary

The chart below shows the number of referrals received by the Independent Monitor in 2021 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.

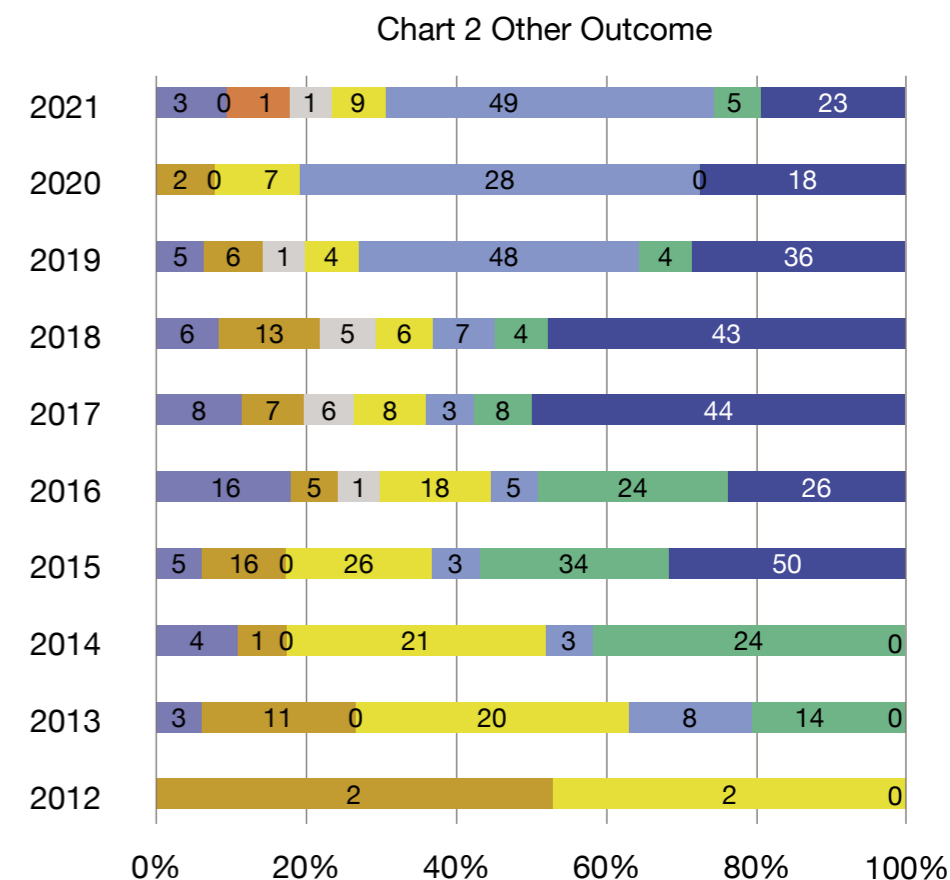
Key:
 Uphold ■
 Other Outcome ■



Key:

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

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 a noticeable increase in the total number of referrals made to the IM in 2021, compared with IM referrals made last year i.e., up by 34%. However, both 2020 and 2021 must be treated as anomalous performance years due to the ongoing impact of the Covid-19 pandemic. Overall, when considering the long-term data, there continues to be a downward trend in the total number of disclosure dispute case referrals made each year to the IM (as shown in Chart 1).

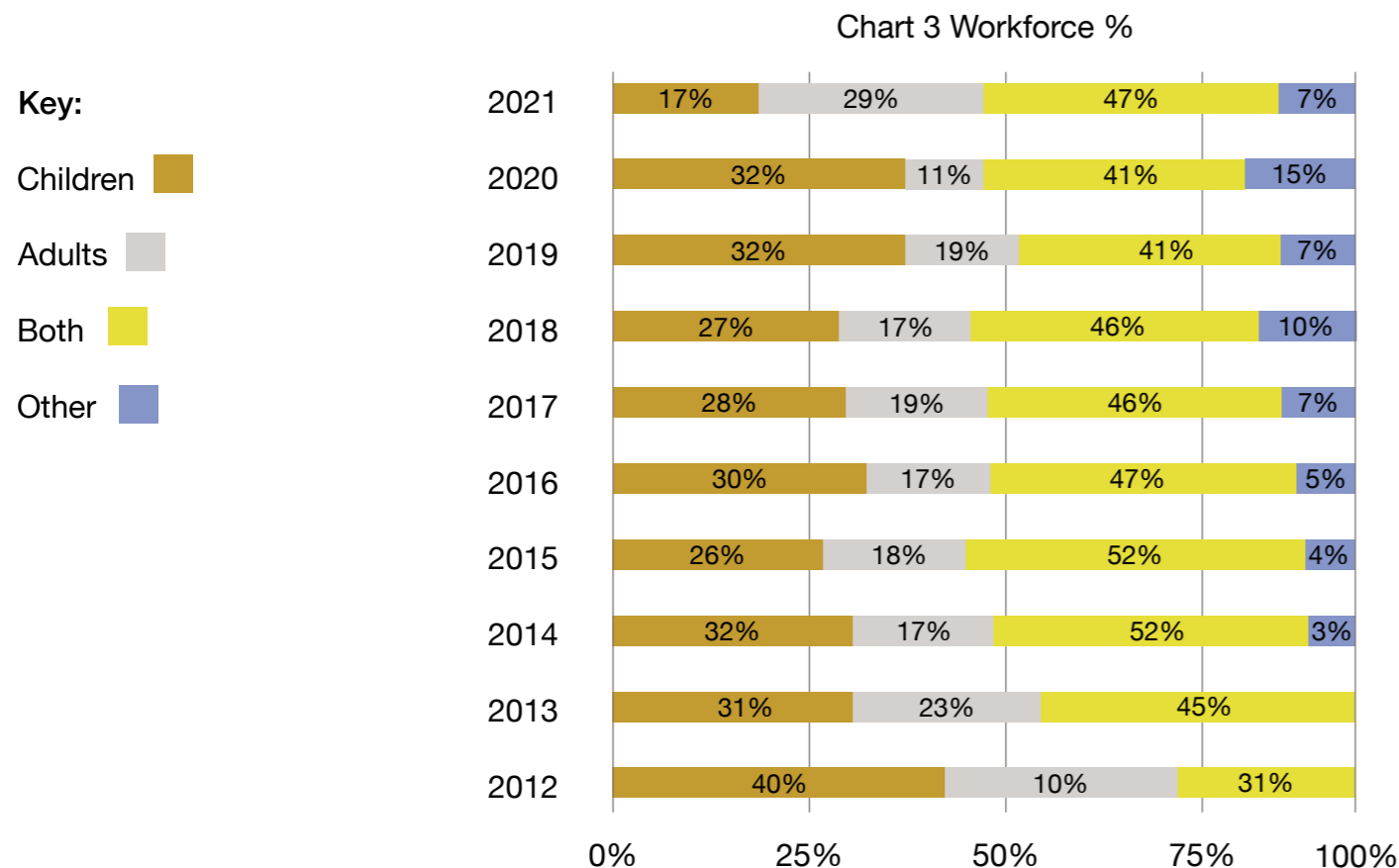
There are some referral cases in which the information disclosed could be clarified through amendment. In such cases, the IM negotiates with the Chief Officer to agree an amended form of words. These cases are categorised above as 'amended by police'. The previous IM's policy remains in place of not reviewing further such cases in which 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. These cases are classified as "Aged" in chart 2.

The IM has declined to review one dispute case this year out

of a total of 117 referrals. In this case, the applicant provided insufficient information to explain the grounds of their dispute and therefore the case could not be progressed. In addition, there were three cases in which the applicants respectively decided that they were content with the disclosure text as amended by police at the review stage and therefore they each withdrew their request for a further independent IM review. These cases are recorded in Chart 2 as 'Withdrawn by applicant'.

Workforces

Chart 3 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 corresponding decrease in 'Child Workforce'. Most disputes (47% of IM dispute case referrals) are from applicants who have applied for both the Child and Adult workforces.



Note: There were no disputes recorded in the 'Other workforce' category in 2012 or 2013 as Taxi Driverd were considered as a part of the Children's workforce during those years.

Appendix A



Sarah Dines MP
Minister for Safeguarding

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Julia Wortley
Independent Monitor for DBS

By email:

2 December 2022

Dear Julia,

Thank you for your 2021 Annual Report which will be published on Gov.uk shortly. Your report provided a helpful overview of your work in 2021 with a variety of stakeholders, including regional disclosure units, different police forces and the Disclosure and Barring Service, to develop a consistent approach in relation to the disclosure of police information on enhanced criminal record certificates.

I notice that you have made no new recommendations in this report and that there is one outstanding which I have commented on below.

Time Limit for Disputing Disclosures

As previously advised, the recommendation to introduce a time limit for disputing disclosure will require an amendment to primary legislation. The recommendation will be considered if a suitable opportunity arises to amend the relevant legislation. In the meantime, I have noted that the interim solution put in place by your predecessor remains effective.

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

Yours sincerely,

Sarah Dines 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 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	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