

# Independent Monitor Annual Report 2022



Independent  
Monitor

# Introduction



This is the tenth Annual Report of the Independent Monitor (IM) for the Disclosure and Barring Service (DBS). The report covers the period January to December 2022.

**I make no new recommendations in the 2022 Annual Report and provide an update on all previous recommendations. The Safeguarding Minister wrote to me on 2nd December 2022 with her response to the 2021 IM Annual Report. The Minister's letter was published with last year's Annual Report.**

## Overview of the year

2022 has been another unpredictable and demanding year for the disclosure regime. The DBS report that applications for enhanced criminal record checks referred to the police increased by nearly 11% this year. Similarly, AccessNI report that 2022 was their 'busiest year ever', including a 10% increase in demand for enhanced checks. It appears that multiple factors, including changing recruitment patterns across the UK, and new initiatives such as the "Homes for Ukraine" scheme (launched in March 2022), have contributed to this unprecedented rise in disclosure unit workloads over the last 12 months. My observation is that the DBS, police service and disclosure regime as a whole have responded positively to these unprecedented operational pressures, demonstrating resilience and flexibility in a changeable working environment.

### 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". In February 2022, Mr Simon Bailey, was appointed to lead the Review. The Review report was published on 18<sup>th</sup> April 2023<sup>1</sup>.

### IM Referrals

In 2022, a total of 5,073 "additional information" disclosures were made on Enhanced Criminal Records Certificates by the DBS and Access Northern Ireland (ANI) combined. A total of 129 disputed disclosure cases were referred to the office of Independent Monitor in 2022. This means that 2.54% 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 2021, a total of 117 cases (i.e., 2.71% of all enhanced disclosures across the three Home Nations) were disputed and referred to me for independent 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. In 2022, there were no disputes referred 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 decided respectively to disclose, or not to disclose information. A few learning points were 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.

<sup>1</sup> [Independent Review of the Disclosure and Barring Regime - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/108422/independent-review-of-the-disclosure-and-barring-regime-2022.pdf)

### Sampling of Disclosure Cases

As required under section 119B of the Police Act 1997, I have also undertaken a wider dip sampling exercise of disclosure decisions taken by police during 2022.

I sampled a total of 50 disclosure decisions, from five different police forces in England and Wales, in addition to the 11 Police Service of Northern Ireland sample cases (as reported above). This year, I sampled cases focussing on mental health and Covid-19 roles, plus a group of randomly selected cases.

After careful consideration of each case, relevant learning points were identified through this exercise, but no significant concerns. 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 at a national level through the National Disclosure Forum and more locally through the Regional Disclosure Fora. For example, I made some observations this year on the disclosure of information regarding matters that are subject to ongoing investigation.

### 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.

No Judicial Reviews involving the Independent Monitor have 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 improvement in the average length of time taken by the police in England and Wales when dealing with stage one of an IM dispute i.e., when the relevant police force reviews their disclosure decision, before the case is referred to the IM for independent consideration. In September 2022, with the support of the DBS and police, I introduced a new process to enable more informed and timely monitoring of disclosure dispute handling at each stage of the process. Although this new system was only in place for the last three months of the reporting year, I believe that this development has directly contributed to the improved timeliness of IM disclosure dispute handling.

In 2022, the average number of working days taken by the police to complete this first stage of the process was 43 days. This is a significant improvement compared with 2021, when the average time taken per case by police at the dispute review stage was 67 days. However, these average performance figures are skewed by a small number of cases. If 6 exceptional disputes, which each took more than 200 days, are excluded from the 2022 statistics, the average time taken by the police at the review stage would have been 25.4 working days.



# Recommendations from Previous IM Annual Reports

The table at Appendix B summarises all previous IM recommendations. Progress on any outstanding recommendations is recorded here.



## 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.

## Engagement

Throughout 2022 I have continued to engage with a wide range of stakeholders, through online and face to face meetings. 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.

## 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 delivered throughout the year.

In total, 129 disclosure dispute cases were referred to the Independent Monitor for review in 2022. 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 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.

## The IM Disclosure Dispute Process and IM Secretariat

**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 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 2022, the Independent Monitor has received a total of 2,174 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' 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: 2022 Summary

Chart 1 below shows the number of referrals received by the Independent Monitor in 2022 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 1 Uphold/Other

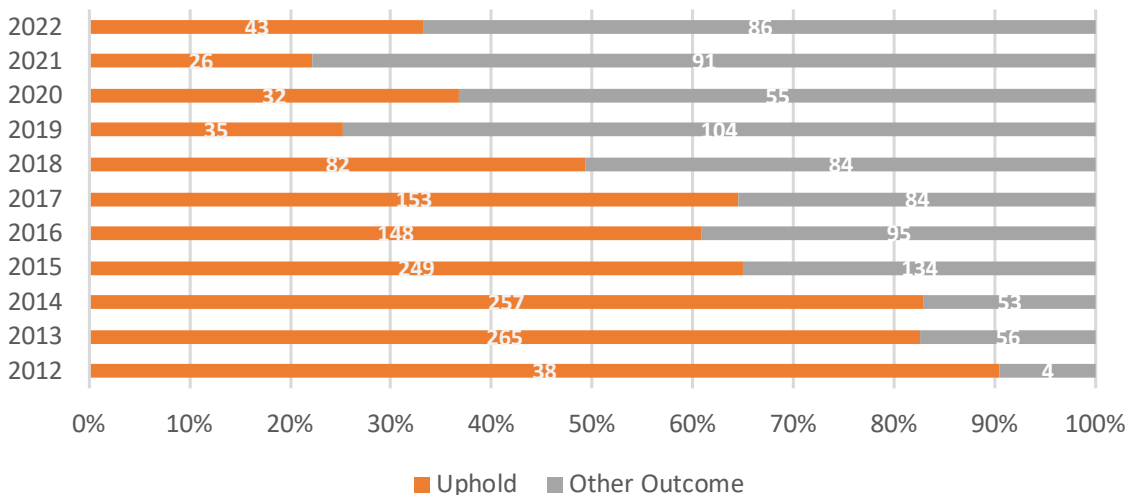
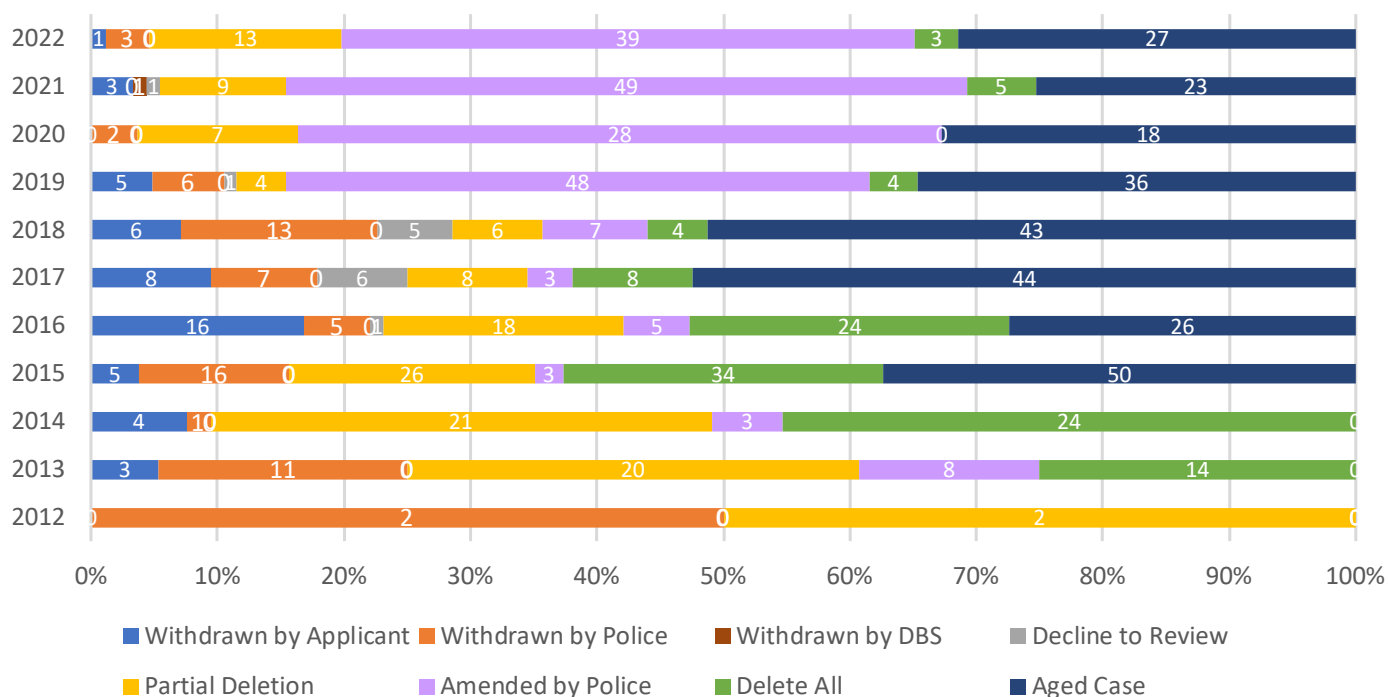




Chart 2 breaks down the 'other outcome' category (in Chart 1 above), to show in more detail how cases in which the disclosure was not 'upheld' were finalised.

### Chart 2 Other Outcome



There has been a slight increase in the total number of referrals made to the IM this year i.e., up by 12 cases. However, the percentage of disputed disclosures being referred to the IM has reduced slightly. In 2021, 2.71% of all disclosures made across England, Wales and Northern Ireland were disputed and subsequently referred to the IM for independent review. However, in 2022 this figure dropped to 2.54% 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 2022.

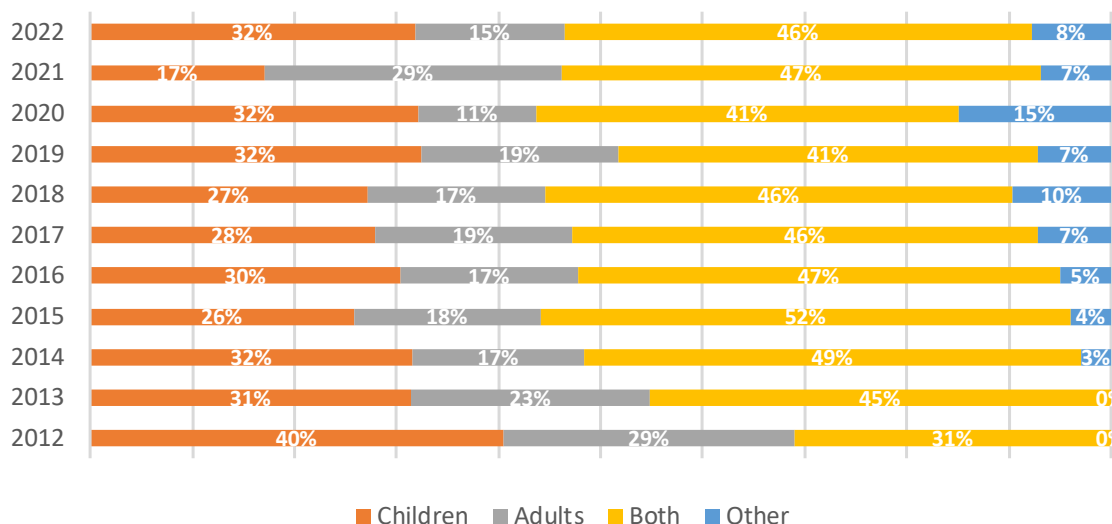
There was one case this year in which the applicant decided that he/she was content with the disclosure text as amended by police and subsequently withdrew their request for an independent IM review. This case is recorded in Chart 2 as 'Withdrawn by applicant'. In three other cases, the police force concerned decided to delete the disputed disclosure text after it had been referred for an IM review. These cases are shown on Chart 2 as 'Withdrawn 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 recorded in Chart 2 as "aged cases" and constitute 31% of all "other outcomes" in 2022.

## 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 a decrease in the percentage of 'Adult Workforce' applications and a corresponding increase in 'Child Workforce'. Most disputes (46% of IM dispute case referrals) are from applicants who have applied for both the Child and Adult workforce(s).

Chart 3 Workforce %



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:



Sarah Dines MP  
Minister for Safeguarding

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Julia Wortley  
Independent Monitor for DBS

By email: [julia.wortley@homeoffice.gov.uk](mailto:julia.wortley@homeoffice.gov.uk)

13 July 2023

Dear Julia,

Thank you for your Annual Report 2022 which will be published on Gov.uk shortly. Your report provided a helpful overview of your work in 2022 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 provided a progress update on an outstanding recommendation which I have commented on below.

Time Limit for Disputing Disclosures

As you know, the recommendation to introduce a time limit for disputing disclosure of information on an Enhanced Criminal Records Certificate 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 the interim solution put in place by your predecessor continues to remain effective.

I thank you for your continued work since taking on the role.

Yours sincerely,

A handwritten signature in blue ink that reads "Sarah Dines".

**Sarah Dines MP**  
**Minister for Safeguarding**

## Appendix B: Table of previous recommendations

Recommendation	Year made	Status	Current position
Mental Health	2013	Accepted	<b>Complete</b> Amended Statutory guidance for mental health cases was issued in August 2015.
Home Based Occupations	2013	Partially Accepted	<b>Complete</b> 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	<b>Complete</b> 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	<b>Ongoing</b> Requires primary legislation to progress.
Formal process to review recommendations	2014	Accepted	<b>Complete</b> Meeting structure in place.
Police Disclosure Units to have access to Court Transcripts	2015	Accepted	<b>Complete</b> Policy and guidance re-issued to court transcript providers.
Development of guidance on Third Party Disclosures	2015	Accepted and awaits further development.	<b>Complete</b> NPCC and Home Office have resolved the key issues.
Revision of the Statutory Disclosure Guidance	2019	Accepted	<b>Complete</b> Revised Statutory Disclosure Guidance published in November 2021