

# **Independent Reviewer of Criminal Record Information**

**Annual Report  
2019 - 2020**

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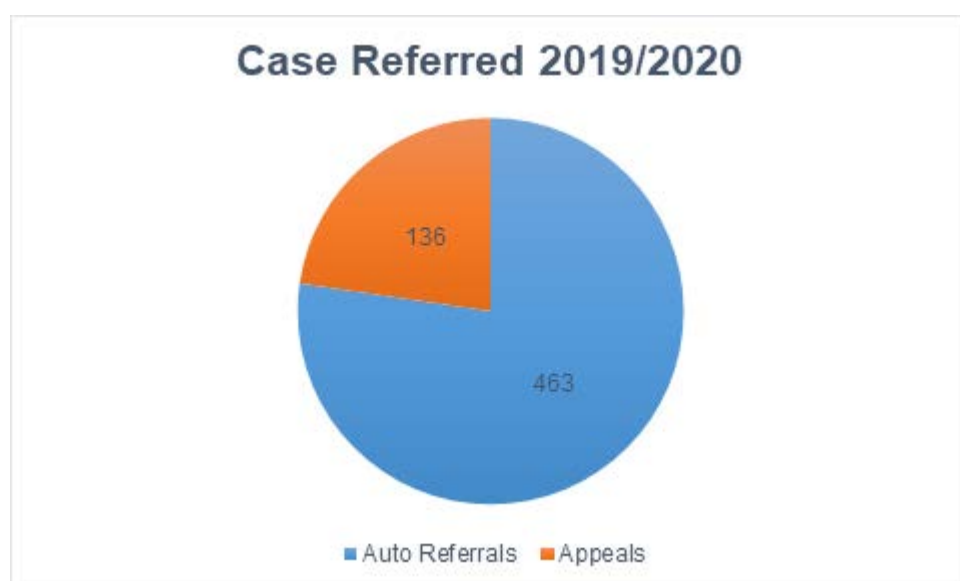
## Introduction

This is the fourth annual report of the Independent Reviewer for the period 1<sup>st</sup> April 2019 to 31<sup>st</sup> March 2020. It is the first report produced by me having taken up office on 1<sup>st</sup> April 2019. I would like to express my appreciation to my predecessor Simon Poutain who provided a dedicated and diligent public service throughout his time in office.

This reporting year has seen the return of the Assembly and I welcome the opportunity to work closely with the Minister and AccessNI to progress the recommendations made by Mr Poutain in previous annual reports.

## Cases reviewed

The reporting period runs from 1<sup>st</sup> April 2019 to 31<sup>st</sup> March 2020. During this period I reviewed a total of 599 cases. This is an increase of approximately 17% on the last reporting period.



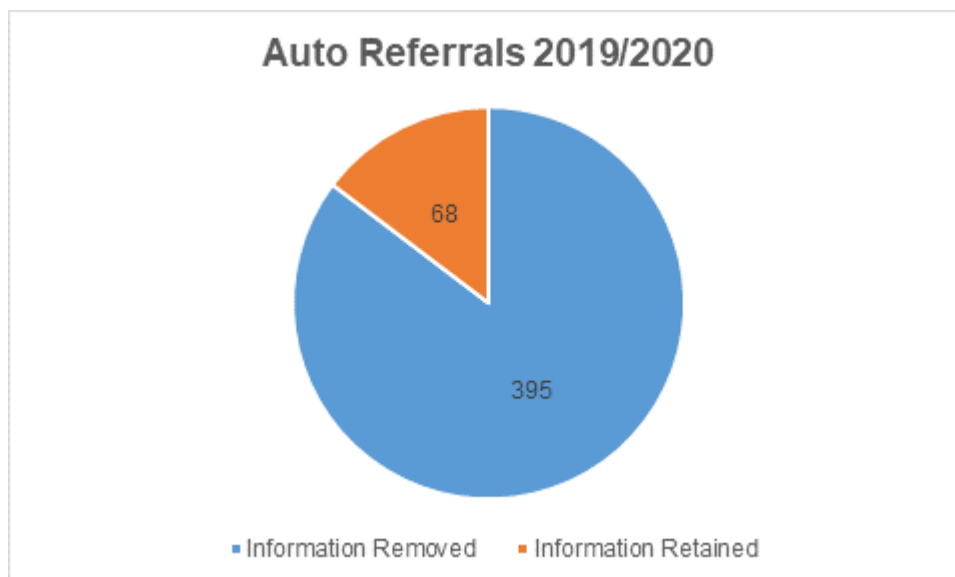
## Auto-Referrals

The majority of the cases reviewed by me in the reporting period have been auto-referrals. These cases are automatically referred to me when the information disclosed on the certificate relates only to convictions or disposals awarded when the applicant was aged under 18. A decision is made whether to disclose information prior to any certificate being issued.

Over the reporting period I reviewed 463 auto-referrals. This accounted for over 75% of my caseload. The number of auto-referrals has increased 13% on the previous reporting year.

I removed information in 395 (85%) of these cases. These cases related mainly to minor offences which had been committed a number of years ago with no further offending behaviour. In these cases I was of the view that the offences were no longer relevant in terms of seriousness, age or the specific role that the applicant was seeking to undertake. I was satisfied that disclosure of these offences on the certificate would not be proportionate having considered the issues as are set out in principle 3 of the Statutory guidance for the Independent Reviewer of criminal record certificates in Northern Ireland.

I retained information on the certificates in the remaining 68 (15%) of these cases. The decision to retain information was made after careful consideration of the seriousness of the offence, the age of the offence and a diligent assessment of the potential impact of disclosure. The majority of these cases involved offending that had happened recently. A small number of these cases did however involve historic offending. In these cases the nature of the incident was so grave that disclosure was required in order to ensure that the safeguarding of children and vulnerable groups was protected.



## Appeals

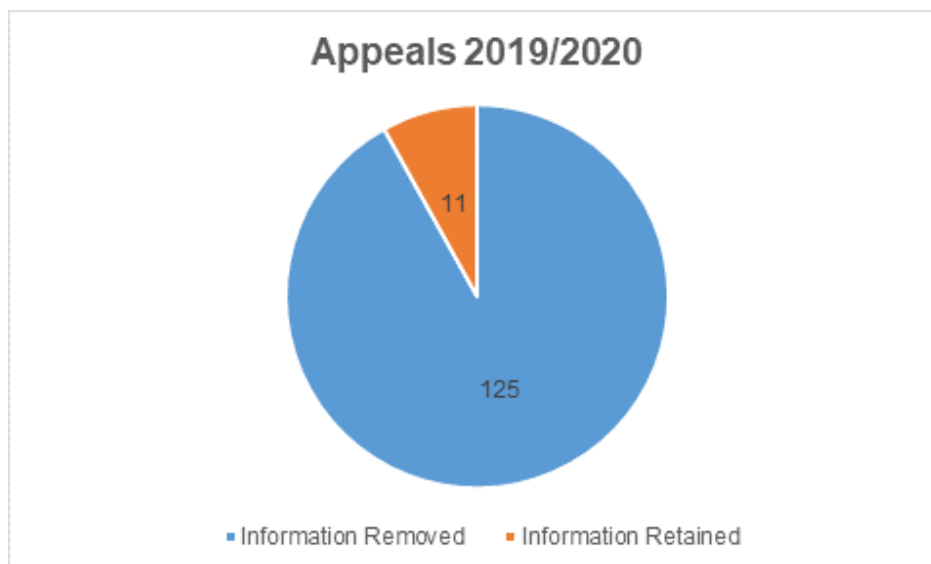
Appeals are referred to me following written applications received from or on behalf of the applicant. Appeals involve the reviewing of convictions or other disposals given to an applicant over the age of 18.

Over the reporting period I received 136 appeals. This is a 32% increase on the previous reporting period.

I removed information in 125 (92%) of cases. Information was retained in the remaining 11 (8%) of cases.

The decision to retain or remove information was considered against an assessment of the criteria as I have outlined above for auto-referrals. Careful consideration was also given to representations made by or on behalf of the applicant.

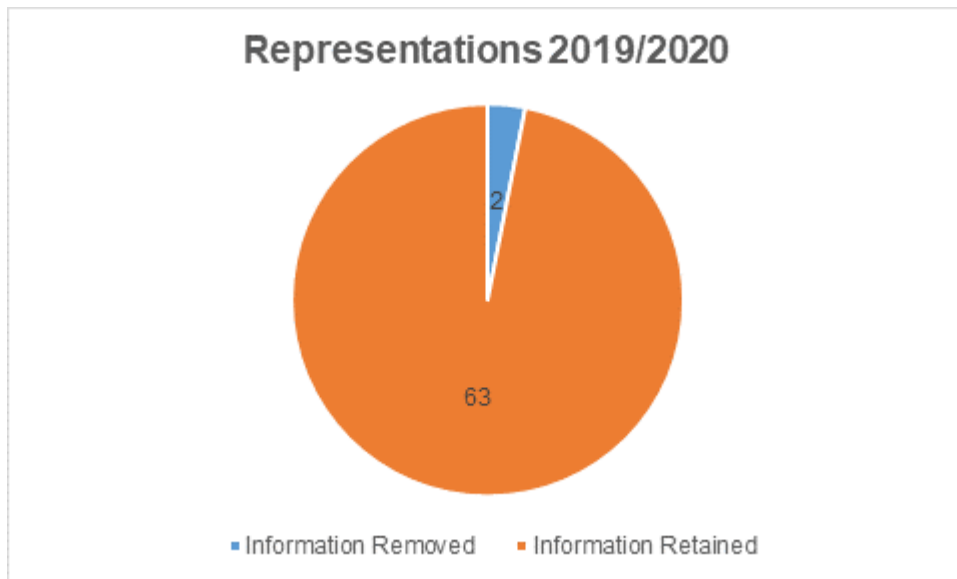
The majority of appeals came from applicants who had very old or minor convictions or diversions on certificates. In these cases I decided that the potential effect of disclosure of these convictions or diversions on the certificate was not proportionate.



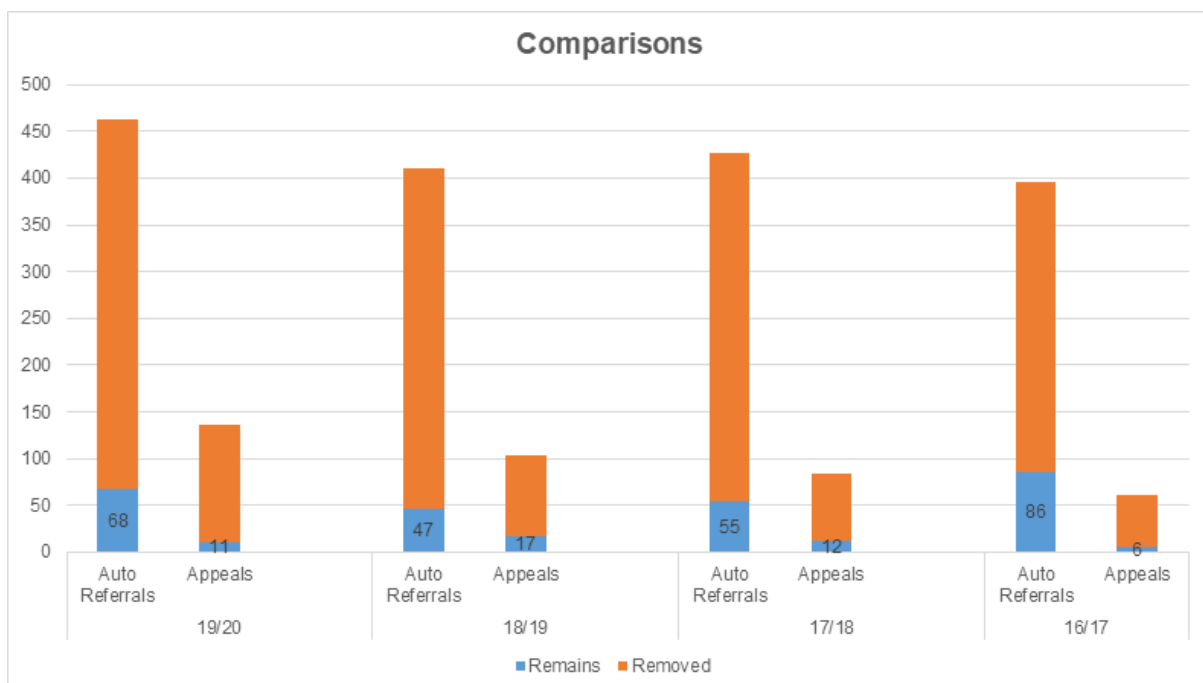
## Representations

In auto-referral cases applicants are invited to make representations seeking a review of a disclosure. This is done prior to the certificate being issued.

In the reporting year I received representations in 65 cases where I had retained information on the certificate. The representations were successful in 2 cases. In the remaining 63 cases the representations failed to reverse the disclosure.



## Year on year comparisons



## **Stakeholder Engagement**

During this reporting period I have visited the offices of Access NI on a number of occasions. I have also met with representatives from PSNI based at Police Headquarters who deal with my requests for information. The meeting with PSNI proved very useful in understanding the processes and criteria they use in the disclosure of police information.

Over the past year I have received prompt responses to all my requests for information from stakeholders. I would like to express my gratitude to PSNI, Probation Service and Youth Justice Agency for their assistance and support throughout the year.

## **Effects of the 2019 Supreme Court ruling on criminal record disclosures**

Judgement was delivered in the case of R (on the application of P,G and W)(Respondents) v Secretary of State for the Home Department and another (Appellants) [2019] UKSC3 in January 2019. The Supreme Court found that 'filtering rules' governing when previous offences have to be disclosed on enhanced criminal record checks were a disproportionate interference with an individual's Article 8 rights in two key areas:

- The court found that the multiple conviction rule (which allows disclosure to be made even when there is a single incident involving more than one offence which leads to more than one conviction) was unlikely to be justified.
- The court found that the disclosure regime in respect of youth reprimands and warnings was disproportionate.

In compliance with the Supreme Court ruling new filtering rules have been adopted by AccessNI. From 16<sup>th</sup> March 2020 I have undertaken to review the disclosure of all youth reprimands, warnings, cautions and diversionary youth conference disposals in all cases. This now includes cases which do not fall into the criteria for automatic referral.

Since 16<sup>th</sup> March 2020 I have received six of these cases. I removed the diversions in all 6 cases. These new filtering rules have the potential to significantly increase the volume of cases referred to me each reporting period.

## **Recommendations**

I have two recommendations to make in this report. My recommendations echo previous recommendations that have yet to be implemented.

1. Legislative provision should be given to the new filtering rules which have been in place since 16<sup>th</sup> March 2020. This will ensure some compliance with the Supreme Court ruling from January 2019. I consider a blanket non-disclosure of informed warnings or other diversionary disposals to be risky when assessed against the potential to undermine the safeguarding or protection of children and vulnerable adults.

In the current reporting period a small number of very serious cases involving sexual offences have been referred to me. In these cases applicants have received diversionary disposals for offences such as 'inciting a child under 13 to engage in sexual activity' and 'engaging in sexual activity with a child under 13'. Diversions in these cases were disclosed as I was could not be satisfied that the safeguarding or protection of children and vulnerable adults would not be undermined. A removal of these diversionary disposals at filtering stage would have resulted in situations where employers are not in possession of this information when deciding whether the applicant was a suitable candidate for roles in positions of trust working with children in an unsupervised capacity.

2. A review of the list of specified offences should be carried out. Consideration should be given to the removal of minor matters as per previous recommendations. I also recommend that consideration be given to extending the list to include offences such as theft and fraud. It is important to the list of specified offences includes the types of offences which vulnerable victims are more likely to find themselves targets of in today's society.

## **Conclusion**

AccessNI provide an invaluable service to the people of Northern Ireland. The year on year comparisons in relation to appeal cases demonstrate the increase in public awareness of the important service they provide.

The office of the Independent Reviewer is supported by staff from AccessNI and I would like to extend my gratitude to all the staff there who support me and enable me to carry out my role efficiently and effectively.

I look forward to my year ahead and the opportunity to provide a first class service to the people of Northern Ireland.



## **Appendix A**

### **Background to the establishment and powers of the Independent Reviewer**

On 14 April 2014, as a result of recommendations made by Mrs Sunita Mason in her 2011 report on the criminal record disclosure scheme in Northern Ireland (A Managed Approach), a scheme to filter old and minor convictions from Standard and Enhanced AccessNI certificates was introduced. This scheme was almost identical to that established for the Home Office incorporating the same conditions, timescales and requirements.

Later in 2014, the Minister of Justice, David Ford MLA agreed to introduce provisions to give effect to other recommendations in Mrs Mason's report into a Justice Act for Northern Ireland. This would, in relation to criminal record disclosure, replicate similar provisions set out in the Protection of Freedoms Act 2012 in England and Wales. At the same time, he agreed with specific legal advice received, to include in this Act provisions to enable individuals, in certain circumstances to be able to seek a review of their case where a conviction or disposal had not been filtered from their certificate. The Minister agreed reviews should be undertaken by a person appointed by but independent from, the Department of Justice, to be known as the Independent Reviewer.

In taking this approach, the Minister believed there should be scope for a review mechanism. This would allow for a review of the circumstances of individual offences that would normally have been disclosed to ensure that such disclosure was relevant and proportionate set against the aims of the disclosure regime which is to protect vulnerable groups and the public from the risk of harm.

The position of Independent Reviewer of criminal record information (the Independent Reviewer) was established through the Justice Act (Northern Ireland) 2015.

Section 41 of this Act provides for the inclusion of a Schedule 8A under section 117B of Part V of the Police Act 1997. This Schedule sets out the duties and obligations of the Independent Reviewer and in particular the circumstances in which a review of criminal record information provided on a Standard or Enhanced AccessNI certificate can take place.

## **Appendix B**

### **Powers of the Independent Reviewer**

Under Section 4(1) of Schedule 8A of Part V of the Police Act 1997 (the Schedule), I can, at the request of the applicant, review any spent convictions or other disposals included in a Standard or Enhanced certificate issued by AccessNI.

Under Section 6(1) of the Schedule, where AccessNI proposes to issue a Standard or Enhanced certificate with details of spent convictions or other disposals and all of this information relates to a time when the person was under 18 years of age, AccessNI must automatically refer this certificate to me for review before it is issued.

Under sections 5(4) and 6(4) of the Schedule I can determine that details of spent convictions or other offences should be removed from the certificates and sections 5(5) and 6(5) requires the Department to amend the certificate in line with my determination.

Under section 7 of the Schedule, I can ask the Chief Constable of the PSNI, the Department of Justice's Youth Justice Agency or the Probation Board for Northern Ireland for any information that I reasonably require in connection with the exercise of my functions.

Finally, I have an over-arching statutory duty under section 5(5) and 6(7) of the Schedule not to remove any details of spent convictions or other disposals unless I am satisfied that the removal of those details would not undermine the safeguarding or protection of children and vulnerable adults or pose a risk of harm to the public.