

# **Independent Reviewer of Criminal Record Information**

**Annual Report  
2020 - 2021**

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## Introduction

This is the sixth annual report of the Independent Reviewer (IR) for AccessNI (ANI) and the second produced by me having taken up office on 1<sup>st</sup> April 2019. This annual report presents data for the period from 1<sup>st</sup> April 2019 to 31<sup>st</sup> March 2020.

This year has been heavily impacted by Covid-19 with ANI experiencing more than a 22% reduction in the number of applications for enhanced certificates. Applications from faith and sporting organisations providing services to vulnerable groups saw a notable reduction. The number of referrals to the IR has however only reduced by 6% overall following a change in processes at the end of the last reporting period.

In March 2020 the Minister of Justice gave administrative approval for the review of the disclosure of youth reprimands, warnings, cautions and diversionary disposals in **all** cases, including those cases which did not fit the criteria for automatic referral where the applicant had convictions or diversions disclosed on a certificate and committed when the applicant was 18 or over.

This administrative approval was given in order to comply with the ruling of the Supreme Court in 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. This ruling held 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 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 disclosure regime in respect of youth reprimands and warnings was disproportionate.

At the time of writing this report I understand that legislation to remove the multiple conviction rule is soon to be debated before the NI Assembly. I further understand that a clause has been added to the Justice (Miscellaneous Provisions) Bill 2021 to extend the powers of the IR to deal with **all** under 18 non-court disposals in line with the current administrative approval.

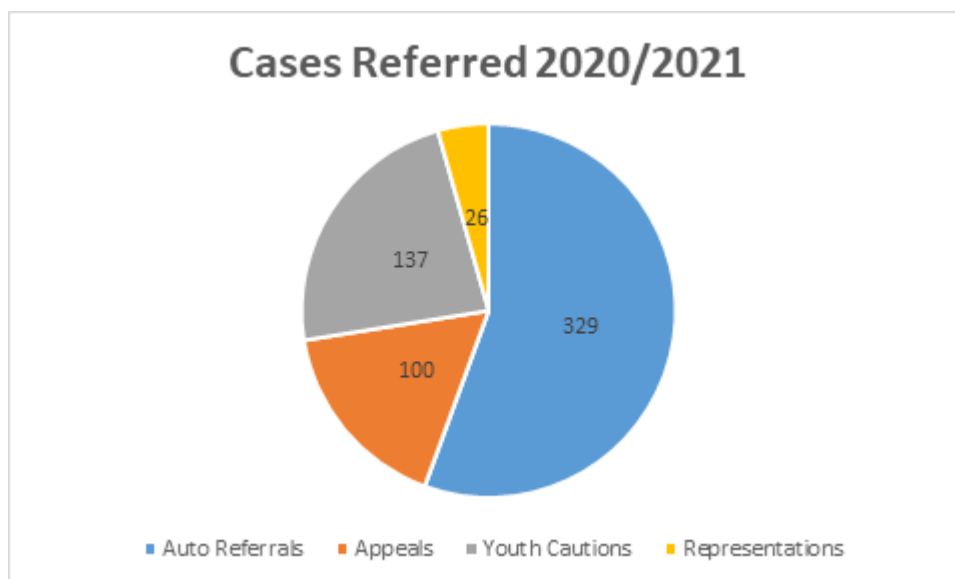
Over the past year I have worked closely with ANI and PSNI to streamline processes between both organisations for the early disclosure of police 'MO' information to the Independent Reviewer. On foot of my recommendations ANI now immediately seek 'MO' information from police in cases which involve an injury to the person, sexual offences or cases where it is considered that the victim may be a child. This process ensures that convictions or diversions relevant by virtue of the age of the victim are properly flagged at the earliest stage to the Independent Reviewer. This new process will reduce delay in the provision of information to the IR and increase the speed within which the disclosure process is completed.

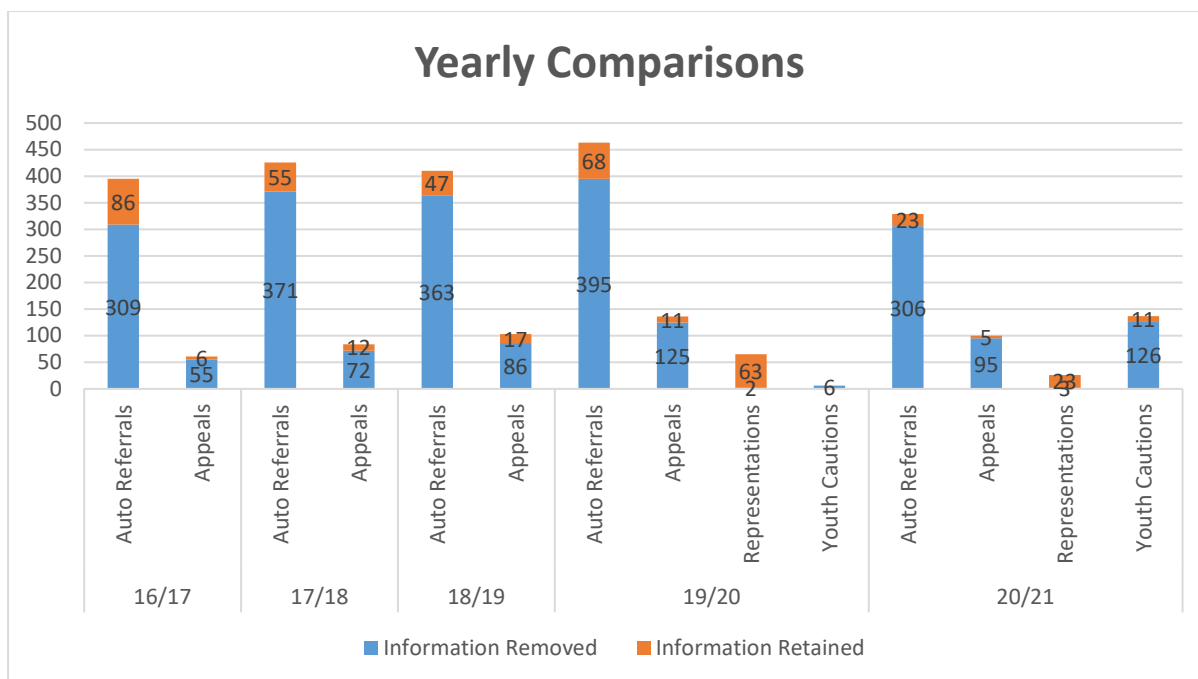
During the reporting period I also worked with ANI to make minor amendments to the IR Auto-Referral and Review forms previously set out in the 2017 statutory guidance for the Independent Reviewer of criminal record certificates in Northern Ireland. These minor amendments provide clarity around the disclosure decision making rationale. Copies of the new forms are appended at **Appendix A**.

### Cases referred

During the reporting period I reviewed a total of 566 referrals and 26 representations. These figures represent a decrease of 33 cases (6%) on the last reporting period.

The breakdown of referred cases by type and yearly comparisons are depicted as follows:





## Auto-Referrals

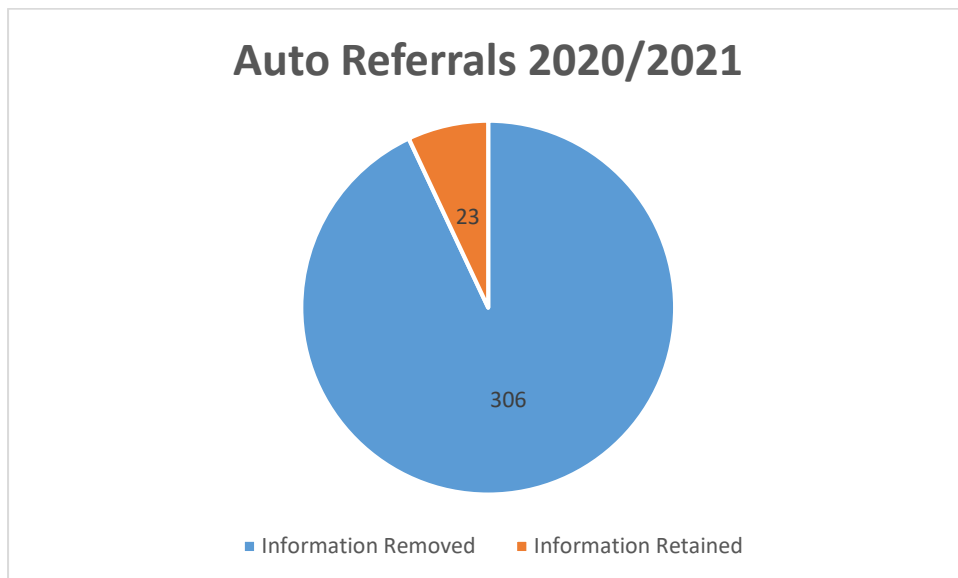
As is commonly the case, the majority of the cases reviewed by me in the reporting period were auto-referrals. These cases are automatically referred to me when the information disclosed on the certificate relates only to convictions or disposals awarded when the applicant was aged under 18. A decision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

Over the reporting period I reviewed 329 auto-referrals. This equates to approximately 58% of my total caseload. The number of auto-referrals dropped by 40% on the previous year.

I removed information in 306 (94%) of these cases. The majority of these cases related 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 23 (6%) of these cases. The decision to retain information in these referrals 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. In the very small number of cases

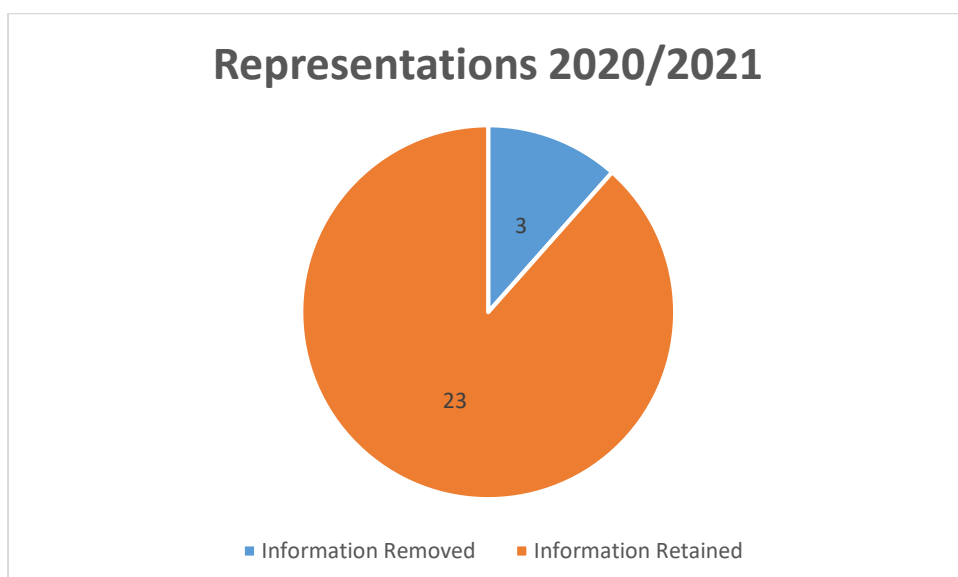
that involved older offending, I was satisfied that the nature of these incidents were so grave that disclosure was required in order to ensure that the safeguarding of children and vulnerable groups was protected.



## 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 from 26 applicants in cases where I had initially retained information on the certificate. Representations were successful in 3 cases. In the remaining 23 cases the representations failed to reverse the disclosure.



## Appeals

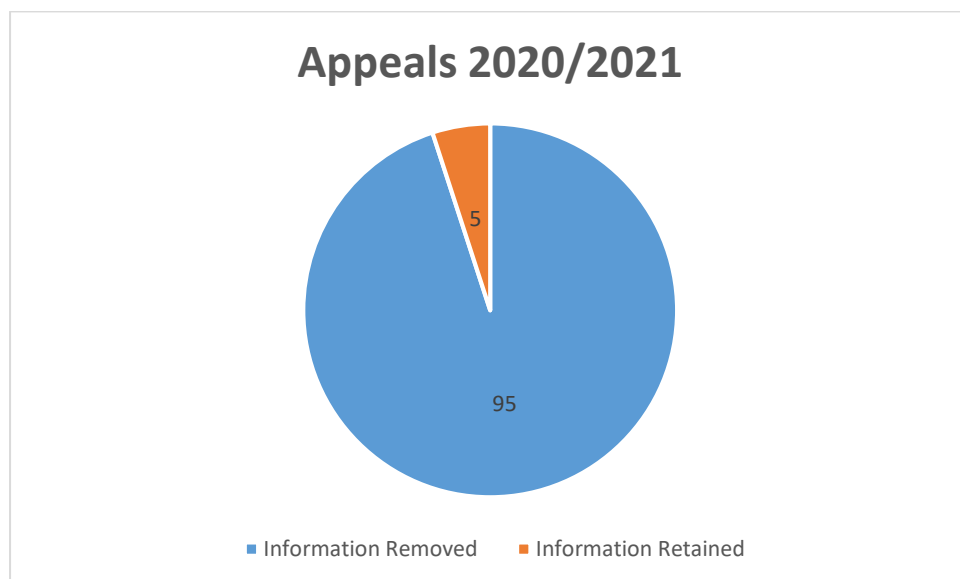
Appeals are referred to me following written applications received from or on behalf of the applicant. Appeals involve the reviewing of convictions or other disposals given to an applicant over the age of 18.

Over the reporting period I received 100 appeals. This is a decrease of 36% on the previous reporting period.

I removed information in 95 (95%) of cases. Information was retained in the remaining 5 (5%) 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.

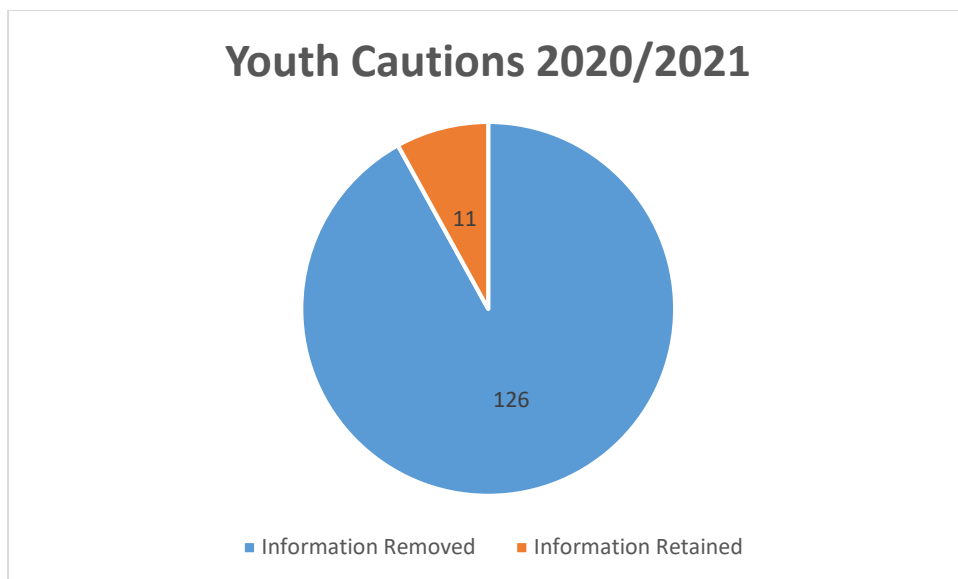


## Youth cautions

Prior to 16<sup>th</sup> March 2020 ANI disclosed youth diversions for specified offences on enhanced criminal record certificates where the applicant had reoffended after attaining the age of 18. Since this date I have undertaken to review youth diversions in order to comply in principle with the ruling of the Supreme Court in R (on the application of P, G and W) (Respondents) v Secretary of State for the Home Department and another (Appellants) [2019].

I have reviewed 137 cases involving youth diversions in the last reporting period. I have removed information in 126 of these cases and retained information in the remaining 11 cases. When making my decisions on youth diversions I have the benefit of police information on the background to the relevant offences.

In the small number of cases I retained information, it was my determination that the incidents were of a nature so grave that disclosure was required in order to ensure that the safeguarding of children and vulnerable groups was protected.



### **Stakeholder Engagement**

Covid-19 restrictions have meant that I have been unable to visit the offices of ANI over the past year. I have however maintained regular contact with ANI staff and business managers via email, telephone and teleconferencing.

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



## **Recommendations**

I have no new recommendations to make in this report but include two recommendations from previous reports that have yet to be fully implemented:

1. I understand that draft legislation is being debated which will give legislative provision to the new filtering rules which have been in place since 16<sup>th</sup> March 2020. I would welcome the introduction of this legislation which will ensure some compliance with the Supreme Court ruling from January 2019. I maintain that a blanket non-disclosure of informed warnings or other diversionary disposals would be risky when assessed against the potential to undermine the safeguarding or protection of children and vulnerable adults.

Since the introduction of the new rules in March 2020 a 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'. I disclosed diversions in these cases 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**

ANI have continued to provide an invaluable service to the people of Northern Ireland during the pandemic.

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

I look forward to another year ahead and the opportunity to continue to provide a first class service to the people of Northern Ireland with the support of ANI.

Caroline Conway

Independent Reviewer of Criminal Record Certificates

3<sup>rd</sup> June 2021

## **Appendix A**

## **Appendix B**

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

Following recommendations by Sunita Mason in the 2011 report entitled 'A Managed Approach: A Review of the Criminal Records Regime in Northern Ireland' a scheme to disclose information on cautions, informed warnings and details of diversionary youth conferences on Enhanced Disclosure Certificates in Northern Ireland was introduced by AccessNI in April 2014. A scheme to filter old and minor convictions from Standard and Enhanced AccessNI Disclosure Certificates was also introduced to Northern Ireland at this time.

A further recommendation by Ms Mason was the 'establishment of an independent representations process to deal with cases where individuals wish to dispute police information or criminal conviction information disclosed'. Following legal advice the Minister of Justice agreed that reviews should be undertaken by a person appointed by but independent from, the Department of Justice, to be known as the Independent Reviewer.

This independent review process 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 C**

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

Under Section 4(1) of Schedule 8A of Part V of the Police Act 1997 (the Schedule), the Independent Reviewer (hereinafter referred to as the IR) 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 the IR for review before it is issued.

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

Under section 7 of the Schedule, the IR 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 the IR reasonably requires in connection with the exercise of IR functions.

The IR has 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 the IR is 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.