

# **Independent Reviewer of Criminal Record Information**

**Annual Report  
2022 - 2023**

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## **Introduction**

I am pleased to present my Annual Report for the period April 2022 to March 2023. This is the fourth Annual Report produced by me having taken up office on 1<sup>st</sup> April 2019.

In my last Annual Report I did not make any new recommendations for change but I provided an update on two recommendations from previous reports that had yet to be fully implemented. The Minister of Justice responded to me and her letter was published with the 2021-2022 report.

I have no new recommendations to make in this Annual Report but will provide an update on previous recommendations.

There were no Judicial Reviews involving the Independent Reviewer during this reporting period. A Judicial Review is the final recourse available to anyone who disputes the information disclosed on their Criminal Records Certificate.

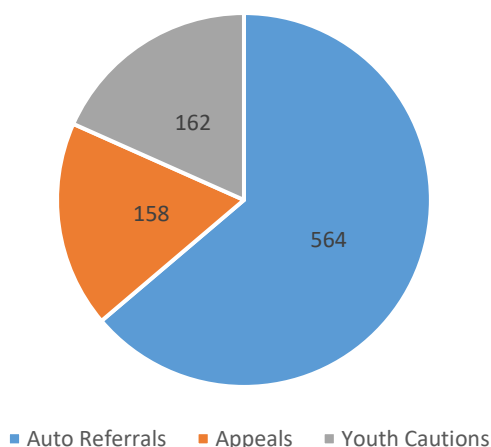
## **Overview of the year**

The total number of cases received by the Independent Reviewer was 884, this represents an increase of 94(11.9%) on the previous reporting period. I received representations in 26 of those cases.

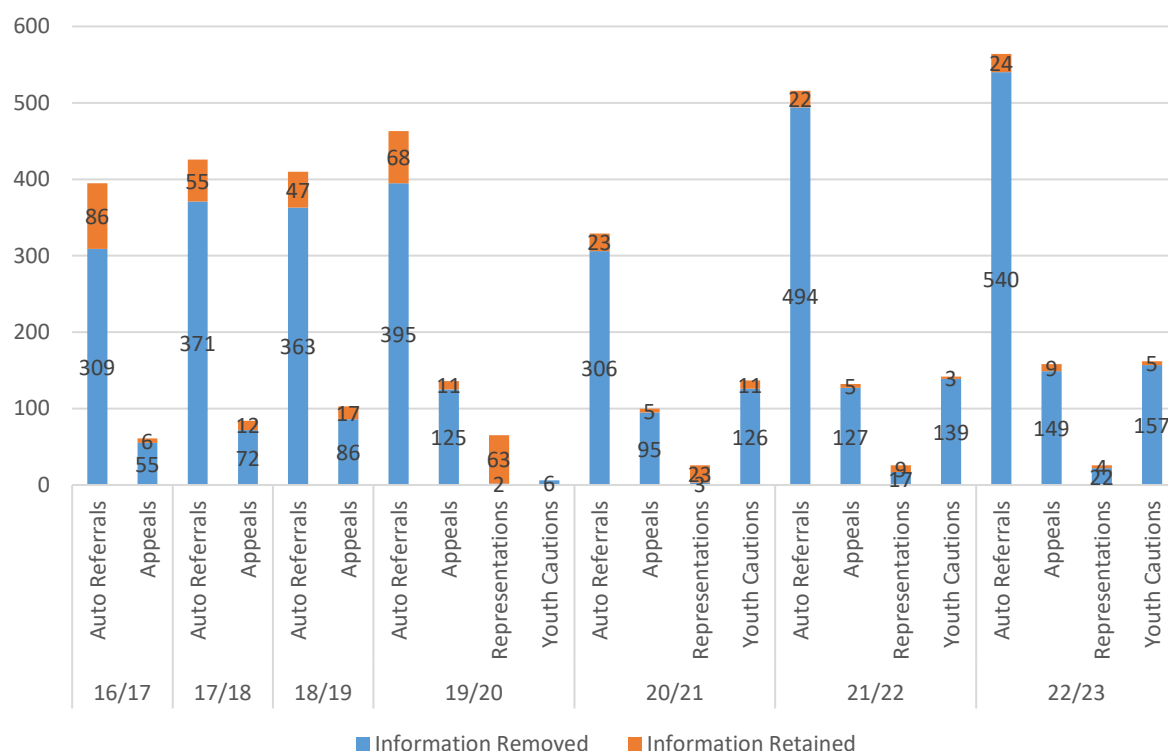
This increase in referrals again marks the busiest year to date since the introduction of the office of the Independent Reviewer on 1<sup>st</sup> November 2016. The increase in referrals continues the general trend observed since 2016, discounting the year 2020-2021 when the Covid-19 pandemic was having a significant impact on the labour market.

A breakdown of cases referred by type and yearly comparisons can be seen in the charts below. I have included information on each of the referral types in the paragraphs that follow.

## Cases Referred 2022/2023



## Yearly Comparisons



### Auto-Referrals

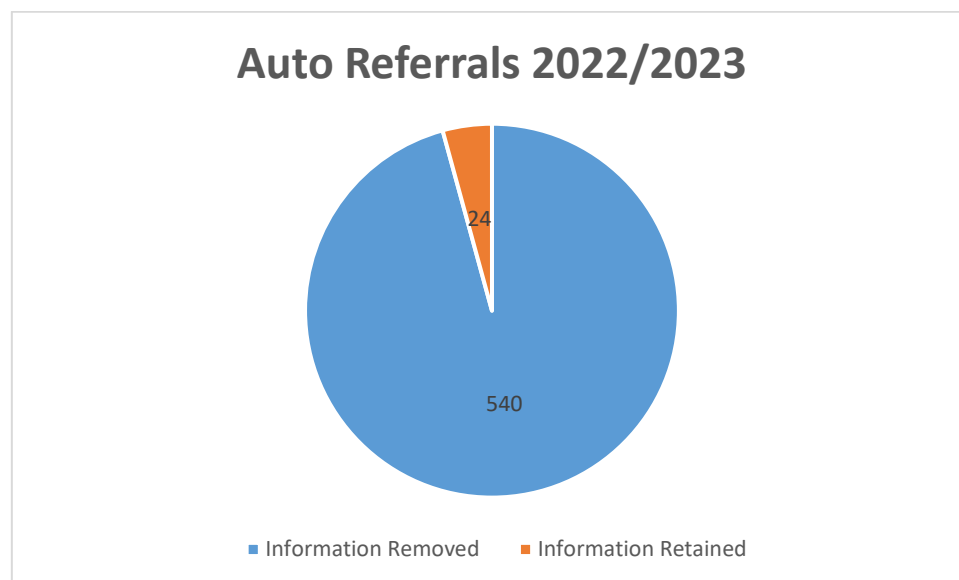
In line with previous years, the majority of the cases reviewed by me in the reporting period were auto-referrals. These cases are automatically referred to me when the information disclosed on the certificate relates only to convictions or disposals

awarded when the applicant was aged under 18. A decision is made by me whether to disclose information prior to any certificate being issued.

Over the reporting period I reviewed 564 auto-referrals. Auto-referrals accounted for approximately 64% of my caseload this reporting year. The number of auto-referrals increased by 9.3% on the previous year.

I removed information in 540 (95.7%) of auto-referral 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 24 (4.3%) 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 which had happened recently. In the 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.



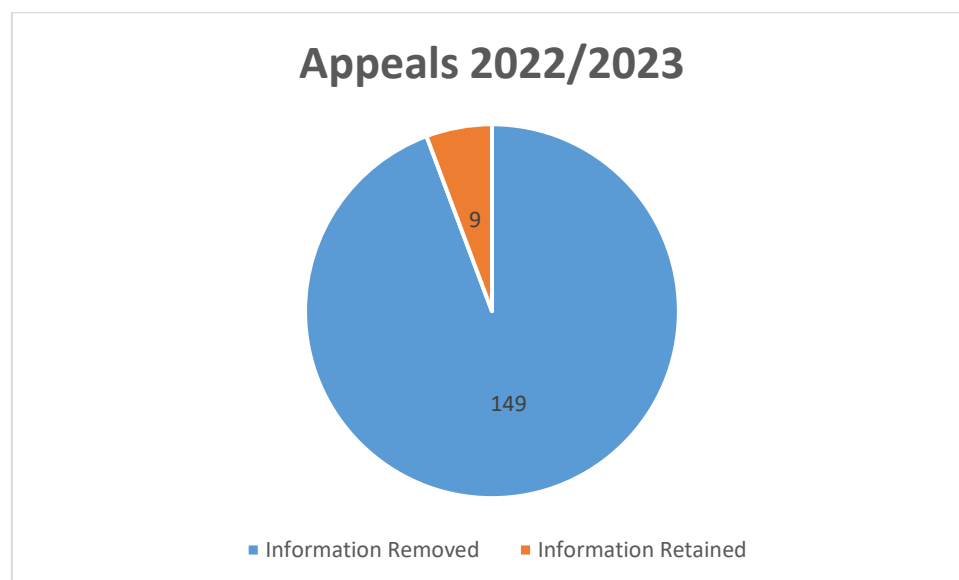
## Appeals

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 158 appeals. This is an increase of 19.7% on the previous reporting period.

I removed information in 149 (94.3%) of cases. Information was retained in the remaining 9 (5.7%) of cases.

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



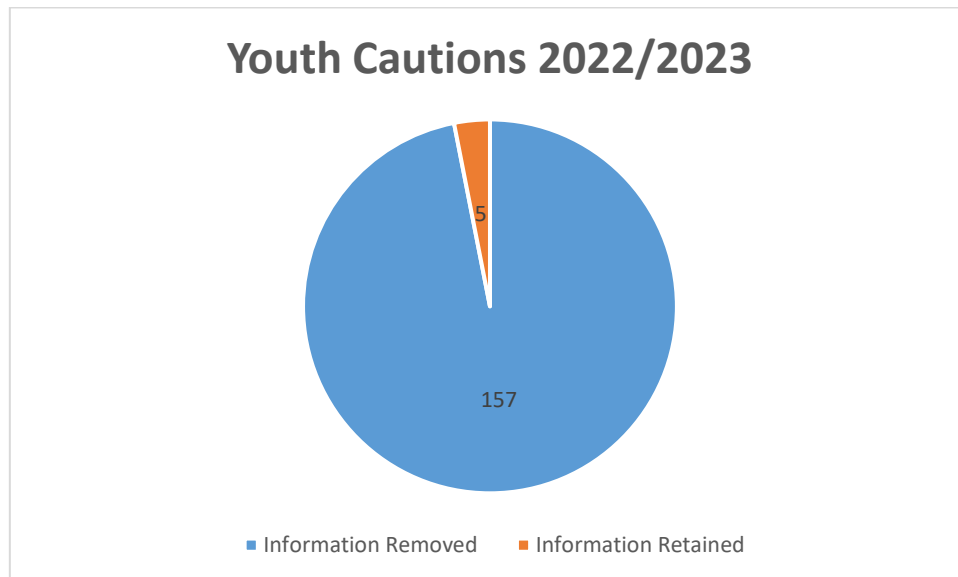
## Youth cautions

Prior to 16<sup>th</sup> March 2020 AccessNI 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 reviewed 162 cases involving youth diversions in the reporting period. I have removed information in 157 of these cases and retained information in the remaining

5 cases. When making decisions on youth diversions I have the benefit of police information on the background to the relevant offences.

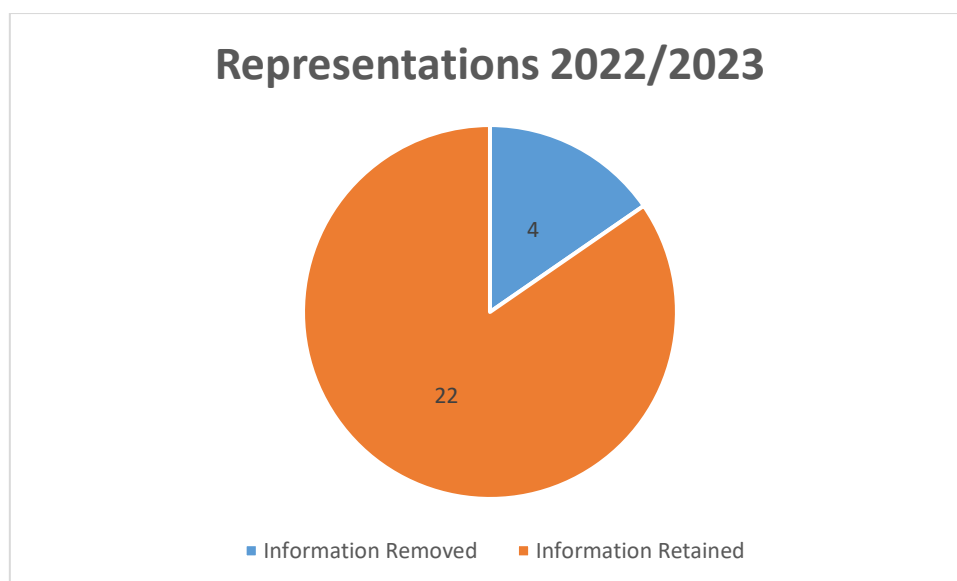
In the 5 cases I retained information it was my determination that the incidents were of a nature so grave that disclosure was required in order to ensure that the safeguarding of children and vulnerable groups was protected.



## **Representations**

In cases where I have retained information applicants are invited to make representations seeking a review of a disclosure.

In the reporting year I received representations from 26 applicants where I had initially retained information on the certificate. Representations were successful in 4 cases. In the remaining 22 cases the representations failed to reverse my decision to disclose offences.



## Stakeholder Engagement

Over the reporting year I have visited AccessNI offices a number of times. I have also maintained regular contact with AccessNI business managers and staff via email, telephone and teleconferencing. I have been working closely with AccessNI on a review of the list of specified offences and will provide more information on this work as part of my recommendations.

On 24<sup>th</sup> April I met with Julia Wortley, the Independent Monitor for the Disclosure and Barring Service at Knockview Buildings. This was a very constructive meeting where we discussed our respective roles, developments in disclosure and the impact of my decisions on police information disclosed on criminal record certificates.

Over the reporting year I have continued to maintain productive relationships with the Chief Officer Delegate and the Police Disclosure Unit within PSNI to promote the standards of information provided to AccessNI.

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

## Recommendations

I have no new recommendation to make in this report and will provide an update on two recommendations from previous reports that have yet to be fully implemented:



1. I previously recommended that legislative provision be given to the new filtering rules for youth diversions which have been in place since 16th March 2020. I understand that a legislative provision has been drafted and will be put before the Assembly upon their return. In the interim I will continue to review the disclosure of youth diversions for specified offences on enhanced criminal record certificates where the applicant had reoffended after attaining the age of 18. This will ensure that Northern Ireland continues 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].
2. In my Annual Report dated 2019-2020 I recommended that a review of the list of specified offences should be carried out. I also recommended that consideration be given to the removal of minor matters and that offences such as theft and fraud be included in the list of specified offences.

Over the past 6 months I have been working closely with AccessNI to ensure that the AccessNI operational list of specified offences dated 15<sup>th</sup> February 2023 and published on nidirect.gov.uk is complete and accurate, taking into account any new criminal offences that have been created recently and added as 'relevant matters' to section 113A(6D) of the Police Act 1997. If the operational list is not accurate and up to date this creates significant risks namely:

- The possibility of relevant criminal history remaining undetected, leading to risks that an individual in a particular employment or role is unsuitable and, where relevant, that vulnerable children and adults will not be protected or safeguarded; or
- The risk of inappropriate disclosures which risks unfairly prejudicing an individual's right to rehabilitation.

Through this exercise I have experienced first-hand how difficult the current legislation at section 113A(6D) is to navigate both in terms of AccessNI maintaining the operational list; and for individuals applying for a criminal record certificate and answering questions put by a prospective employer before a certificate is issued where there is discrepancy between the answers provided to the employer and the contents of the criminal record certificate.

I have raised a number of specific concerns directly with AccessNI in relation to the sustainability of section 113A(6D) as part of my review and we have scoped potential solutions. I understand that this review is ongoing and I am supportive of the emerging proposals

## **Conclusion**

AccessNI provide an invaluable service to the people of Northern Ireland. They have reported their busiest operational year to date and have risen to the challenge while continuing to work with high standards of care and professionalism. I commend them for their hard work over the past year.

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

It has been my pleasure to carry out the role of Independent Reviewer and I look forward to the coming year.

Caroline Conway

Independent Reviewer of Criminal Record Certificates

27 June 2023

## **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.