

**Independent Reviewer
of
Criminal Record
Information**

**Annual Report
2021 - 2022**

Table of Contents

Introduction	Page 3
Overview of the year	Page 3
Stakeholder engagement	Page 8
Update on recommendations	Page 8
Conclusion	Page 9
Appendix A – Background to role of IR	Page 10
Appendix B – Powers of the Independent Reviewer	Page 11

Introduction

I am pleased to present my Annual Report for the period April 2021 to March 2022. This is the third Annual Report produced by me having taken up office on 1st April 2019.

In my last Annual Report I did not make any new recommendations for change but included 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 2020-21 report.

I have no new recommendations in this Annual Report however an update on previous recommendations is included.

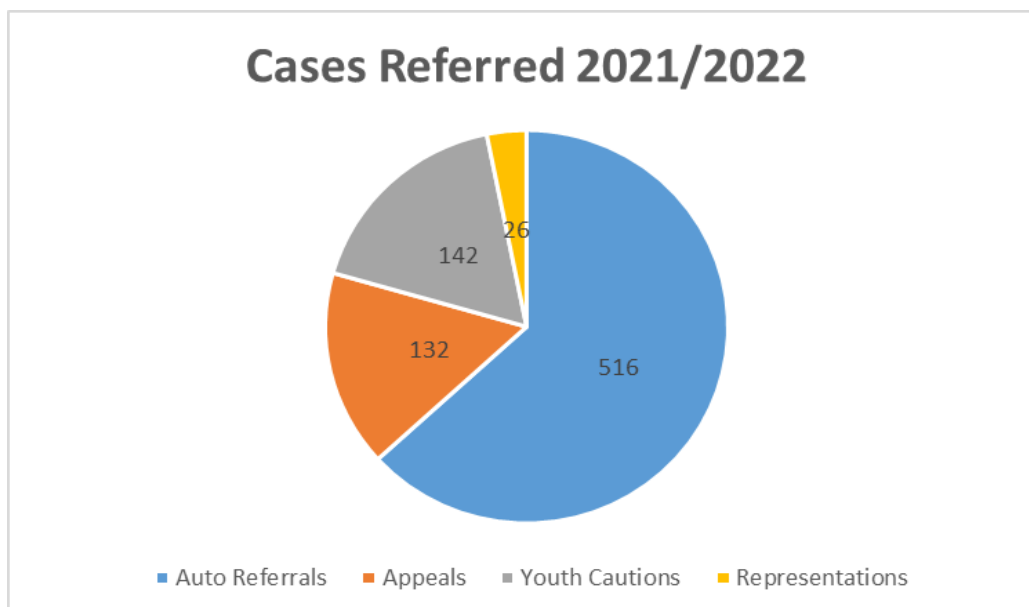
There were no Judicial Reviews involving the Independent Reviewer during this reporting period. A Judicial Review is the final recourse available to anyone who disputes the information disclosed on their Criminal Records Certificate.

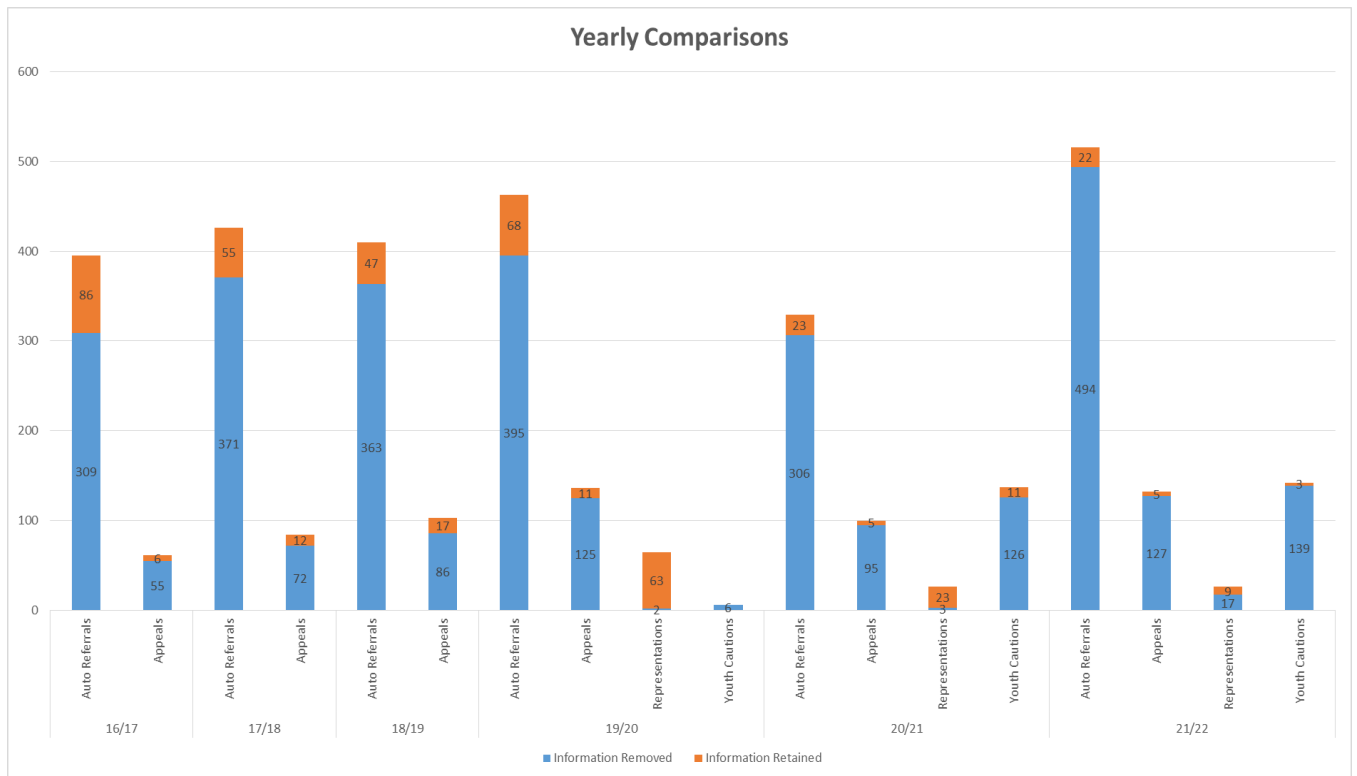
Overview of the year

The total number of cases received by the Independent Reviewer was 790, this represents an increase of 224 (40%) on the previous reporting period. I received representations in 26 of those cases.

This increase in referrals marks the busiest year to date since the introduction of the office of the Independent Reviewer on 1st November 2016. The increase in referrals also continues the general trend observed since 2016.

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.





Auto-Referrals

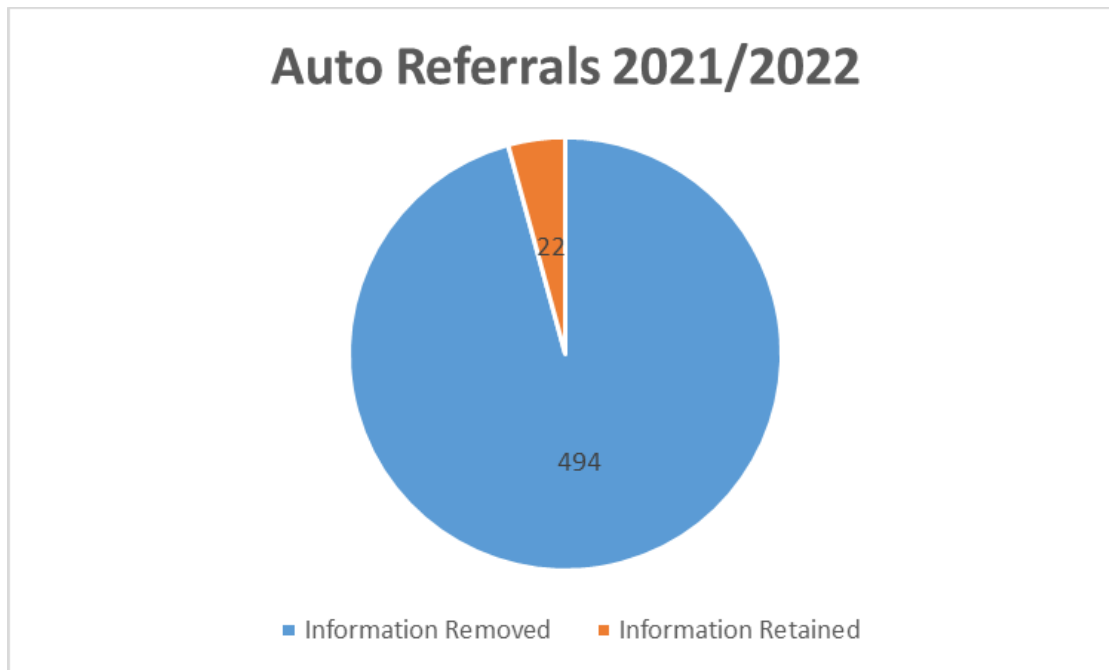
In line with previous years, the majority of the cases reviewed by me in the reporting period were auto-referrals. These cases are automatically referred to me when the information disclosed on the certificate relates only to convictions or disposals awarded when the applicant was aged under 18. A decision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

Over the reporting period I reviewed 516 auto-referrals. Auto-referrals accounted for approximately 65% of my caseload this reporting year. The number of auto-referrals increased by 57% on the previous year.

I removed information in 494 (95%) 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 22 (5%) 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

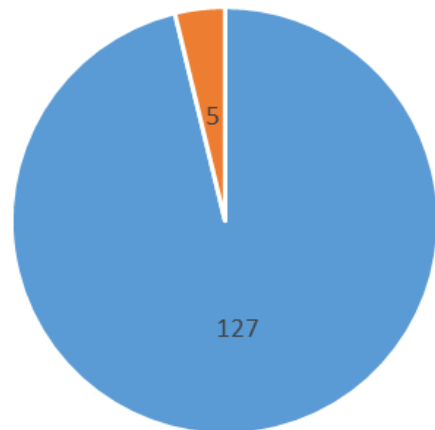
Appeals are referred to me following written applications received from or on behalf of the applicant. Appeals involve the reviewing of convictions or other disposals given to an applicant over the age of 18.

Over the reporting period I received 132 appeals. This is an increase of 32% on the previous reporting period.

I removed information in 127 (96%) of cases. Information was retained in the remaining 5 (4%) 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.

Appeals 2021/2022



■ Information Removed ■ Information Retained

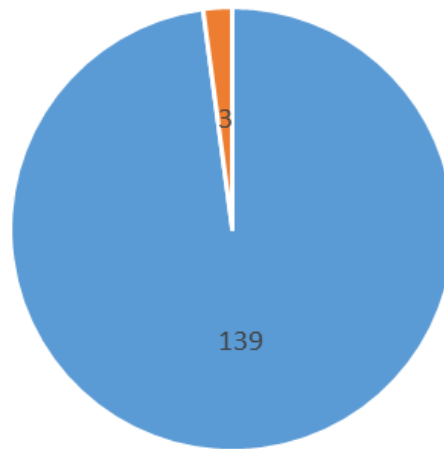
Youth cautions

Prior to 16th 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 142 cases involving youth diversions in the reporting period. I have removed information in 139 of these cases and retained information in the remaining 3 cases. When making decisions on youth diversions I have the benefit of police information on the background to the relevant offences.

In the 3 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.

Youth Cautions 2021/2022



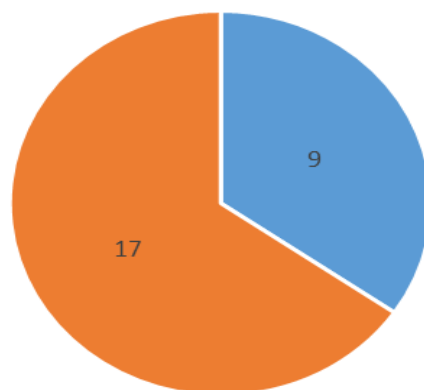
■ Information Removed ■ Information Retained

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 9 cases. In the remaining 17 cases the representations failed to reverse my decision to disclose offences.

Representations 2021/2022



■ Information Removed ■ Information Retained

Stakeholder Engagement

Covid-19 restrictions and the Executive's guidance on working from home has meant that I have been unable to visit the AccessNI offices over the past year. I have however maintained regular contact with AccessNI business managers and staff via email, telephone and teleconferencing. Recently I worked with business managers within AccessNI to undertake a review of the Statutory guidance for the Independent Reviewer of criminal record certificates in Northern Ireland. I also assisted AccessNI in preparing for administrative changes to support the disclosure of statutory aggravators introduced by the Domestic Abuse and Civil Proceedings Act (NI) 2021.

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

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.

Update on recommendations

I have no new recommendations to make in this report but will include 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. It was previously recommended that a review of the list of specified offences should be carried out. I recommended that consideration be given to the removal of minor matters but also that offences such as theft and fraud be included in the list of specified offences. It is offences such as these vulnerable victims are also likely to find themselves targets of in today's society. I understand that work on this recommendation is underway and I offer my assistance to AccessNI in this review.

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 office of the Independent Reviewer is supported by staff from AccessNI and 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

14th June 2022

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.