Independent Reviewer of Criminal Record Information

Annual Report 2023 - 2024

Table of Contents

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

Introduction

I am pleased to present my Annual Report for the period April 2023 to March 2024. This is the fifth Annual Report produced by me having taken up office on 1st April 2019.

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

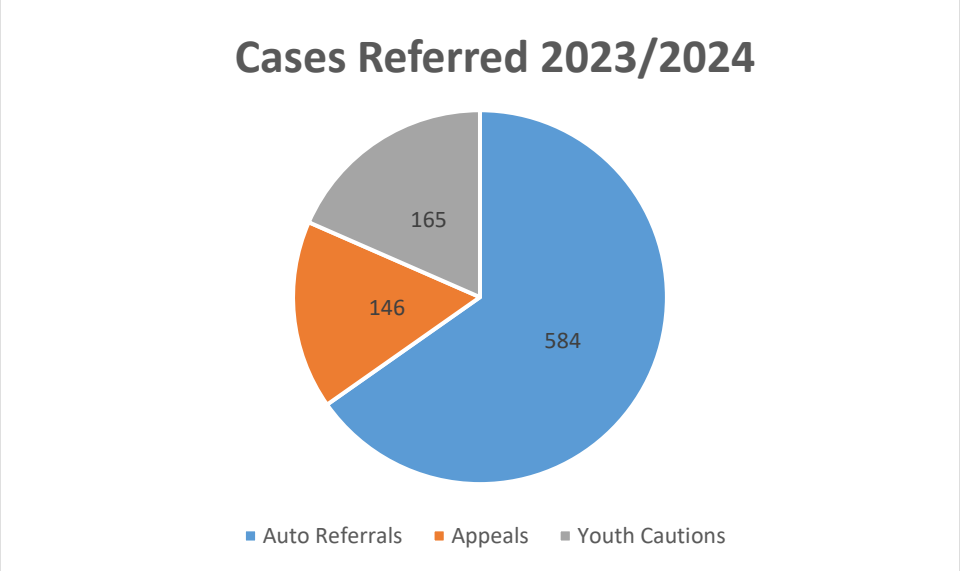
There were no Judicial Reviews involving the Independent Reviewer during this reporting period. A Judicial Review is the final recourse available to anyone who disputes the information disclosed on their Criminal Records Certificate.

Overview of the year

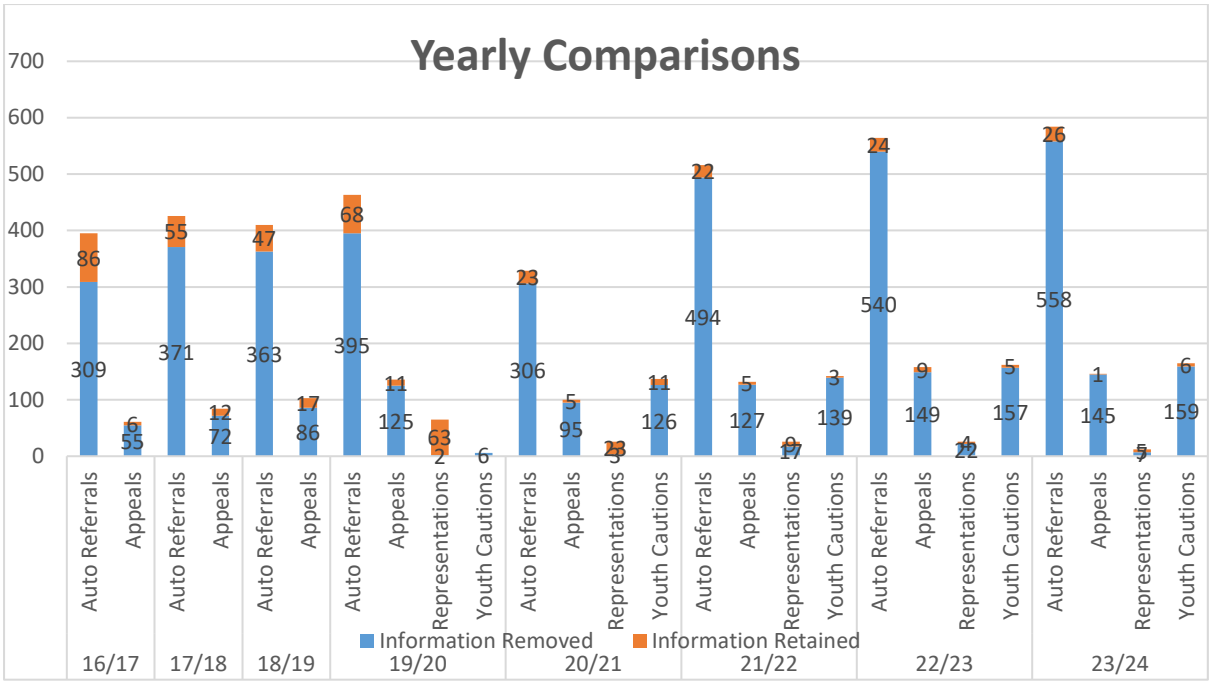
The total number of cases received by the Independent Reviewer was **895**, this represents an increase of **11** cases **(1.2%)** on the previous reporting period. I received representations in **12** of the cases that I have reviewed.

This increase in numbers marks the busiest year to date since the introduction of this office on 1st November 2016.[1]

A breakdown of cases, referred by type and yearly comparisons, has been provided in the charts below. I have also provided an explanation of each of the referral types in the paragraphs that follow.



[1] The increase in referrals continues the general upward trend observed since 2016, discounting the year 2020-2021 when the Covid-19 pandemic was having a significant impact on the labour market.



Auto-Referrals

In line with previous years, this is the largest category of referrals I received over the last year. Auto-referrals are cases that are automatically referred to me, when the information disclosed on the certificate relates only to convictions and/or diversionary disposals awarded when the applicant was aged under 18. In these cases, my decision as to whether convictions and/or diversionary disposals should be disclosed, is made prior to any certificate being issued to the applicant.

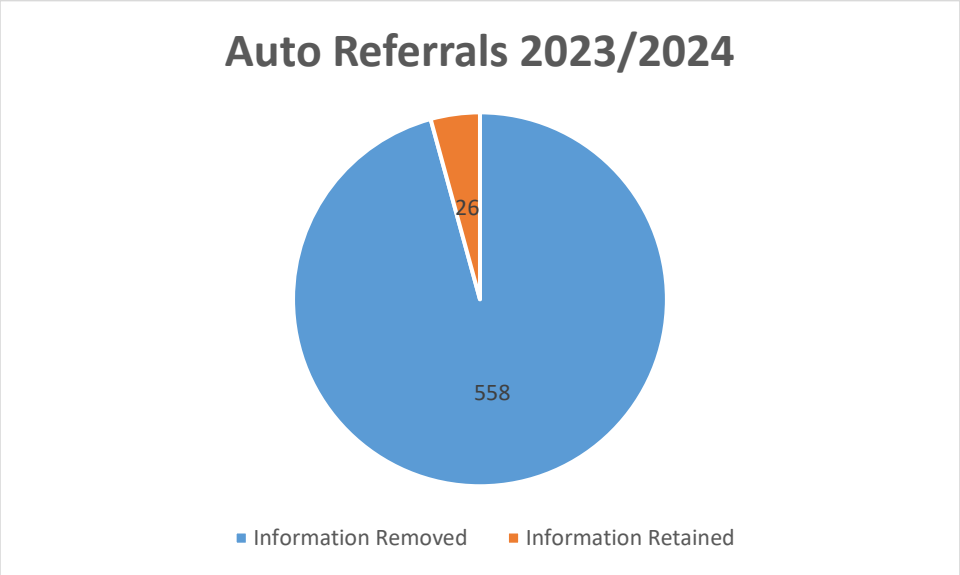
Over the reporting period I reviewed **584** auto-referrals. These accounted for approximately **65.3%** of my overall caseload. The number of auto-referrals increased by **3.5%** on the previous year.

I removed information in **558 (95.5%)** of auto-referral cases. The majority of these cases related to minor offences which were committed a number of years ago and where the applicant had not reoffended in the interim period. In these cases, I felt that the offences were no longer relevant to the specific role that the applicant was seeking to undertake. I was also of the view that disclosure of these offences would not be proportionate, having fully considered all of the issues as set out in principle 3 of the Statutory guidance for the Independent Reviewer of criminal record certificates in Northern Ireland.[2]

I retained information on the certificates in the remaining **26 (4.5%)** of these cases. The decision to retain this information was made after careful consideration of the seriousness of the offence, the age of the offence and an assessment of the potential impact of disclosure on the applicant. The majority of these cases involved

[2] Statutory Guidance for the Independent Reviewer - March 2022.pdf (justice-ni.gov.uk)

offending which had happened recently. In the small number of cases that involved older offending, I was satisfied that the nature of these incidents was so grave that disclosure was required in order to ensure that the safeguarding of children and vulnerable groups was protected.



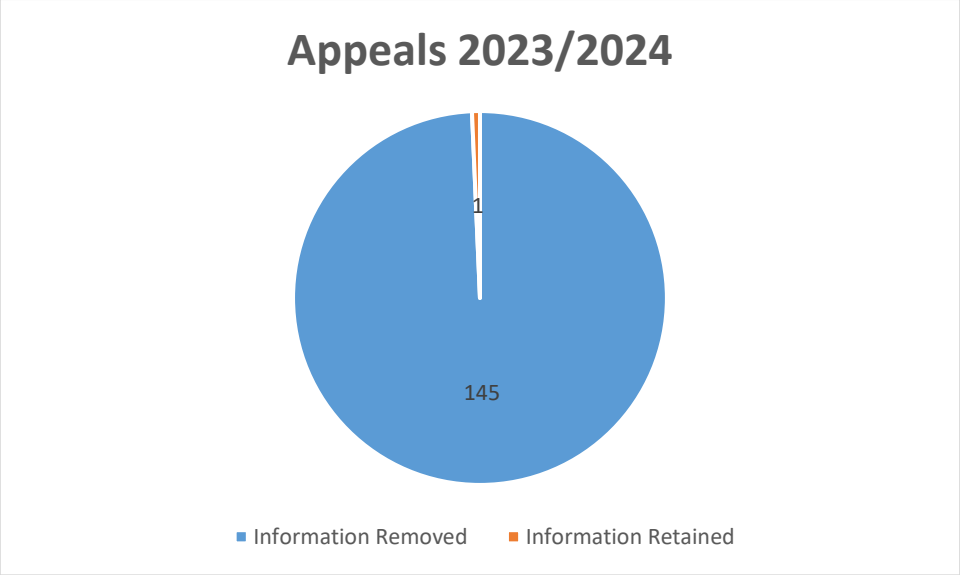
Appeals

Appeals involve the reviewing of convictions and/or other diversionary disposals, given to an applicant who was over the age of 18 at the time the offences were committed. Appeals are referred to me following written applications received from or on behalf of the applicant. In these cases, I apply the same criteria on disclosure as for auto-referrals.

Over the reporting period I received **146** appeals. This is a decrease of **7.6%** on the previous reporting period. The majority of appeals came from applicants who had very old convictions or diversions on certificates. Generally, the applicant is appealing due to the likely impact of disclosure on their chances of gaining employment.

I removed information in **145 (99.3%)** of cases. Information was retained in the remaining **1** case **(0.7%)**.

In the cases where I have removed the information, 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.



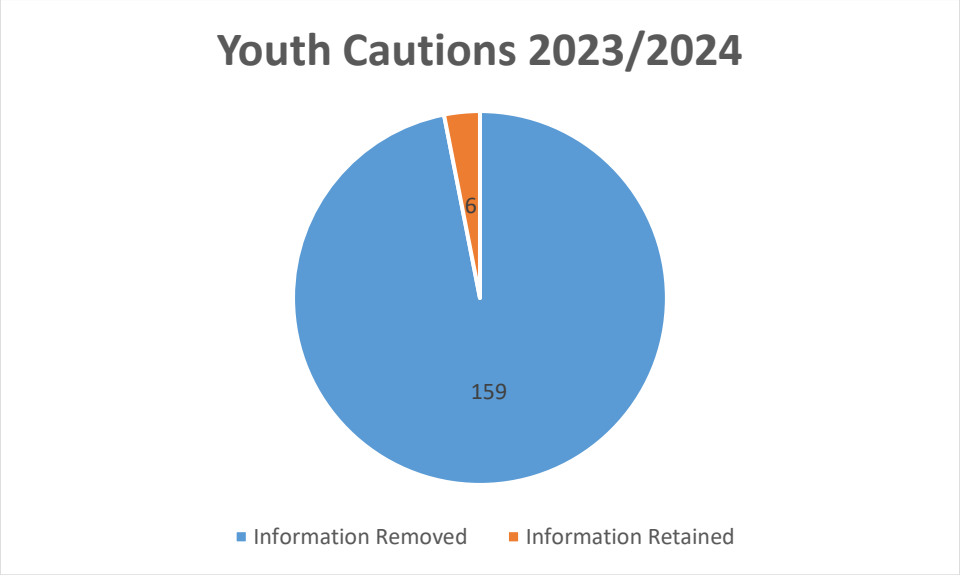
Youth cautions

Prior to 16th March 2020, AccessNI automatically 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 **165** cases involving youth diversions in the reporting period. I have removed information in **159** of these cases and retained information in the remaining **6** cases. When making decisions on youth diversions I have the benefit of police information on the background to the relevant offences.

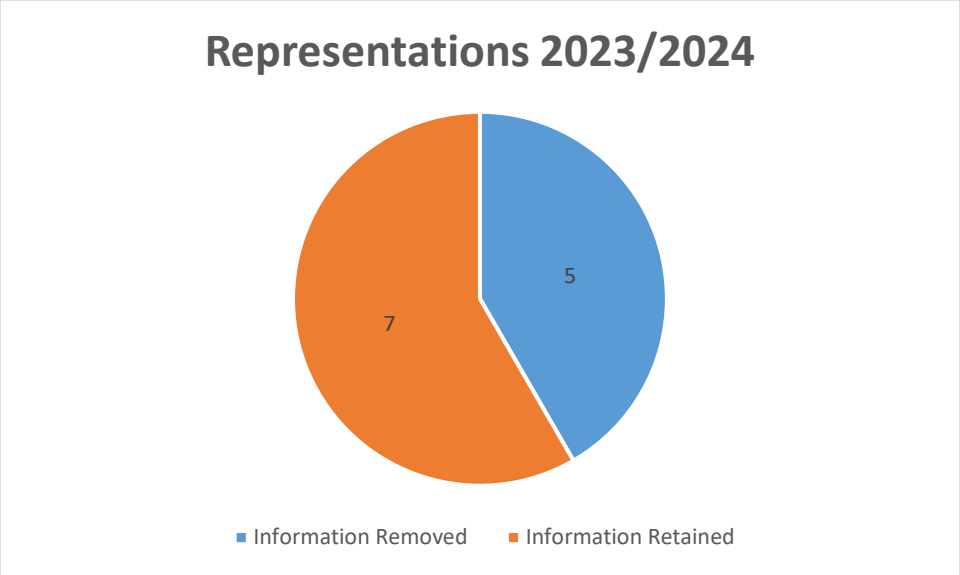
In the **6** cases I retained information it was my determination that the incidents were of a nature so grave that disclosure was required in order to ensure that the safeguarding of children and vulnerable groups was protected.



Representations

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

In the reporting year I received representations from **12** applicants where I had initially retained information on the certificate. Representations were successful in **5** cases. In the remaining **7** cases the representations failed to reverse my decision to disclose offences.



Stakeholder Engagement

In February 2024 I was delighted to be invited to speak at the joint AccessNI and Protective Disclosure Unit (PDU) stakeholder event at Newforge. Here I had the opportunity to meet staff and stakeholders in person and to deliver a presentation on the role and remit of the Independent Reviewer.

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 continued to maintain productive relationships with the Chief Officer Delegate and the Protective 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. I acknowledge the work of the Department in progressing earlier recommendations and taking forward a consultation on proposals to update and reform the AccessNI List of Specified Offences.

I am grateful to the Minister for her support to implement all proposals within the consultation in upcoming mandates.[3]

Conclusion

AccessNI provide an invaluable service to the people of Northern Ireland. Once again, 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.

[3] List of specified offences consultation Summary Report - December 2023 (justice-ni.gov.uk)

Caroline Conway

Independent Reviewer of Criminal Record Certificates

30 May 2024

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.