Independent Reviewer of Criminal Record Information

Annual Report

2018-2019

Contents

Introduction	**Page 3**
Cases reviewed	**Page 3**
Auto Referrals	**Page 4**
Appeals	**Page 4**
Comparisons with previous years	**Page 5**
Recommendations	**Page 5**
Conclusions	**Page 6**
Appendix A –	
Background to establishment and	
powers of Independent Reviewer	**Page 7/8**
Appendix B –	
Recommendations from 2016 – 2017	
& 2017-2018 Annual Reports	**Page 9**

Introduction

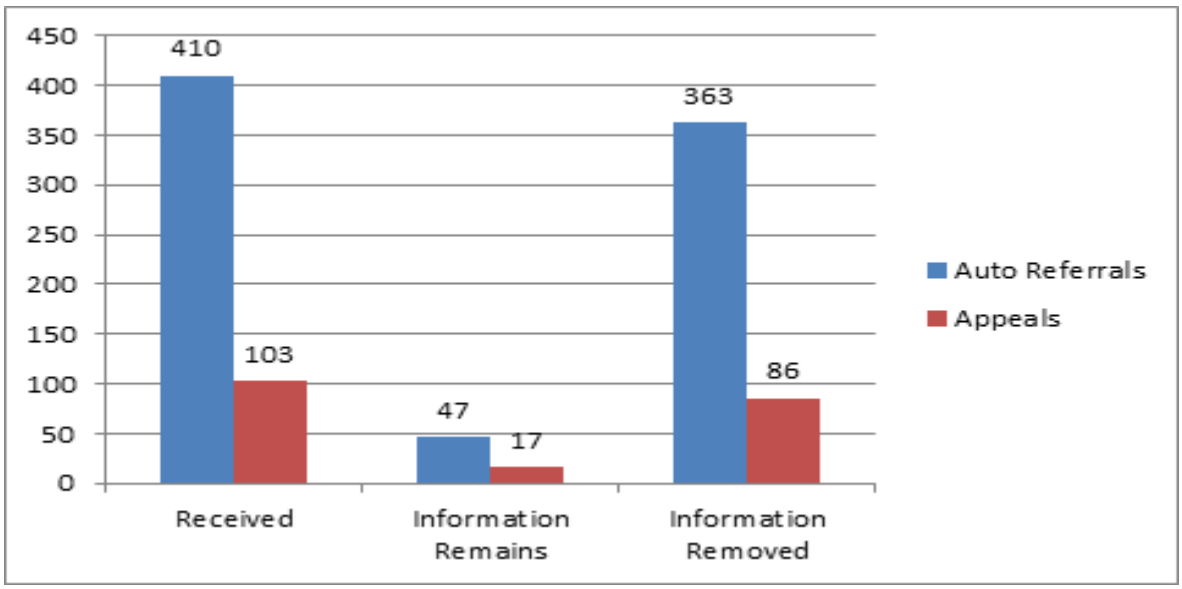
The position of Independent Reviewer of criminal record information (the Independent Reviewer) was established through the Justice Act (Northern Ireland) 2015.

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 the circumstances in which a review of criminal record information provided on a Standard or Enhanced AccessNI certificate can take place.

I was appointed as the Independent Reviewer on 1 November 2015 and began to consider cases from 1 March 2016. Having been involved in the setting up of the Independent Reviewer role and carrying out the role for the last three years I am now handing the position over to a new Reviewer. This is therefore my third and final annual report which covers my work from 1 April 2018 until 31 March 2019. Section 2(8) of Schedule 8A enabled me to hold the position as Independent Reviewer and as Independent Monitor of police information under section 119B of Part V of the Police Act 1997. I carried out the role of Independent Monitor from November 2015 until September 2018.

Cases reviewed.

During this reporting period I have reviewed a total of 513 cases. The majority of these have been automatic referrals as shown in the figure below.



As can be seen by the chart above, I have deleted the information in a significant percentage of cases in both categories of referrals.

Auto Referrals.

This is by far the largest category of referrals I received over the last year. In many cases the information I have removed has related to minor offences which were committed a number of years ago, and where the applicant has not offended in the interim period. In those cases I have felt that the information is no longer relevant to the specific role applied for and may have also considered that the presence of the information is likely to have a disproportionate impact on the person who is seeking to work with the vulnerable.

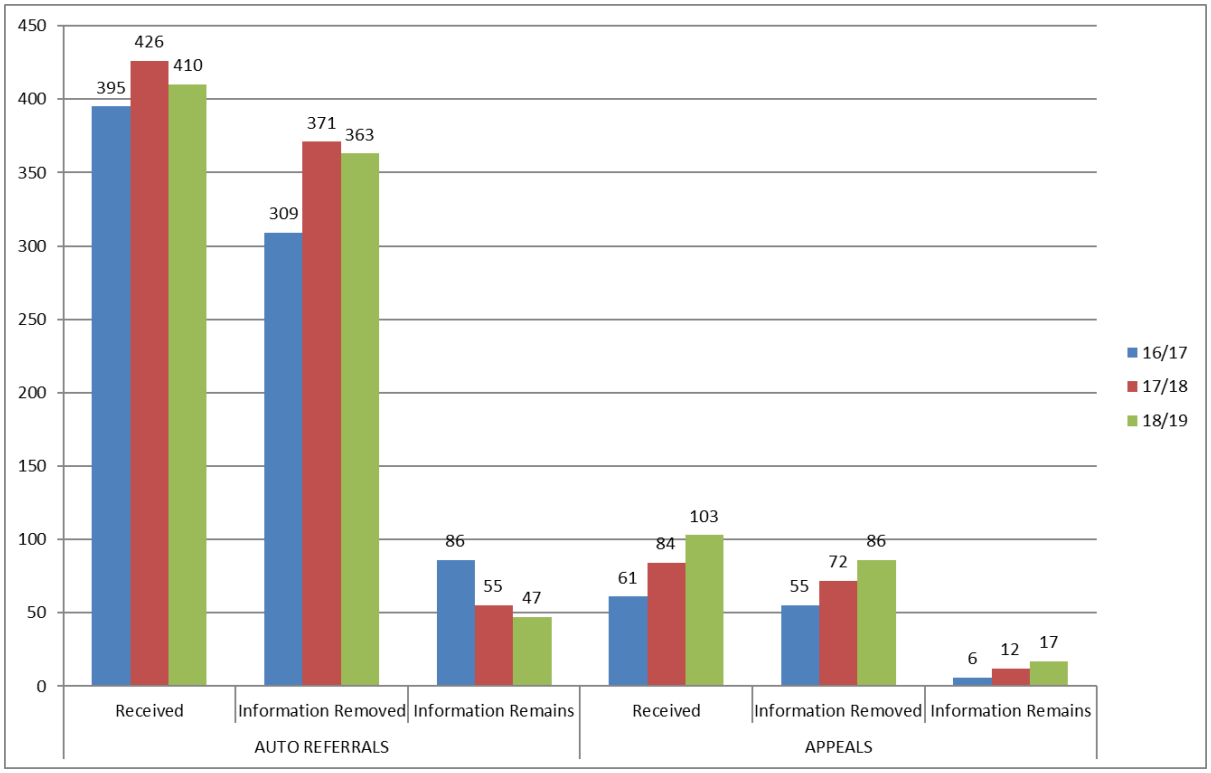
Where I have retained the information, I have considered the gravity of the offence, its currency and the impact of the disclosure on the applicant or of non-disclosure on the vulnerable people the process is designed to protect.

Appeals.

The majority of appeals have come from people who have received cautions or convictions for very minor offences many years previously. In general, they are appealing due to the likely impact on their chances of gaining the role applied for and in many cases using the same criteria as for Auto Referrals; I have deleted the reference on the certificate.

Comparisons with previous years.

As three years have now passed since the introduction of the Independent Reviewer role it is worth comparing the figures for that period in graphical form.



The numbers of Auto Referrals have remained similar over the last three years. The number of cases where I have removed information has remained similar for the last two years as has the occasions where I have retained information.

The number of Appeals received has increased each year over this period which I believe can be expected due to people becoming more aware of the ability to appeal. I would therefore expect this number to increase again over the coming year.

Recommendations.

I have no recommendations to make in this report.

Conclusion

During this reporting period the Supreme Court issued their judgement in a judicial review which is likely to impact on the disclosure of criminal record information in England, Wales and Northern Ireland. *(In the matter of an application by Lorraine Gallagher for Judicial Review (Northern Ireland) R (on the application of P, G and W) (Respondents) v Secretary of State for the Home Department and another (Appellants) R (on the application of P) (Appellant) v Secretary of State for the Home Department and others (Respondents))*.

Following the judgement in these cases the Department of Justice will be considering what impact the case will have on the disclosure process in Northern Ireland and I would welcome the opportunity for the independent Reviewer to be involved in that work.

The office of the Independent Reviewer is supported by staff from Access Northern Ireland. I would like to record my thanks to these staff who have supported me in my role which has allowed me to carry out the role in a timely manner. I would also like to thank the Police Service of Northern Ireland, Probation Board for Northern Ireland and the Youth Justice Agency who have responded to requests for information promptly.

I have relished the challenge that this role has given me and for the opportunity to provide a service to vulnerable people in Northern Ireland and also those who wish to work with them.

I wish the new Independent Reviewer well in the role.

Simon Pountain

Independent Reviewer.

Appendix A – Background to the establishment and powers of the Independent Reviewer

Background

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.

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 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 Independent Reviewer for review before it is issued.

Under sections 5(4) and 6(4) of the Schedule the Independent Reviewer 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 that determination.

Under section 7 of the Schedule, the Independent Reviewer 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 they reasonably require in connection with the exercise of their functions.

Finally, the Independent Reviewer 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 they are 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.

Appendix B. Recommendations from 2017-18 Annual Report.

Recommendations:

Last year I made no recommendations although in my annual report 2016/17 I made three.

2016/17 Recommendation 1: Was to publish Statutory Guidance to allow people in receipt of certificates, to understand the process which I followed in order to reach my conclusion. I am happy to say that this guidance was published on 4 July 2017. **Complete.**

2016/17 Recommendation 2 and 3: I welcomed the opportunity to be involved in the review of the filtering scheme.

During my time as the Independent Reviewer I reviewed almost 1500 cases and have noticed some areas where I believe the current system is unwieldy. An example of this is the automatic disclosure of Juvenile Informed Warnings. These are the lowest level of formal outcome and are generally used for a person's first offence which is considered a low-level matter. I do feel that there would be value in considering the non-disclosure of informed warnings in all but the most recent cases and reiterate my offer of being involved in any future review of the filtering scheme.