



Independent  
Monitor

# **Independent Monitor for the Disclosure and Barring Service**

Annual Report 2012-13



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## Introduction

It gives me great pleasure to present this, the first, annual report of the Independent Monitor.

I see the role of the Independent Monitor as a particularly important one. In considering cases it is vitally important to balance the rights of the individual whose livelihood is most likely going to be affected by the disclosure of additional information, against the rights of those who are amongst the most vulnerable in our society. This work has been the focus of my role, and in a number of cases I have overturned the decisions of Chief Constables where it has been appropriate to do so.

A significant part of the role to date has been the development of relationships with stakeholders. During the past year I have had the pleasure, as the interim Independent Monitor, of visiting the Disclosure and Barring Service (DBS) in Liverpool to meet staff at all levels involved in the disclosure and dispute process. I have visited each of the Police disclosure regions; speaking to police force disclosure unit representatives about the role of the Independent Monitor and my early findings and have regular dialogue with the relevant National Policing leads.

Part of the remit of the Independent Monitor extends to Northern Ireland and I have visited the Police Service of Northern Ireland and Access Northern Ireland in order to discuss how my role can interact with theirs. I have also visited Police Scotland and Disclosure Scotland to brief on the role of the Independent Monitor.

The report which follows is intended to show the numbers of cases received and considered during the year and also to identify any areas where I feel that improvement can be made.

It is my intention not to reserve areas for improvement for my annual report and I have been in regular dialogue with stakeholders in order to develop consistency of approach across forces. Two of the issues that I have considered throughout the year have been;

**The Relevancy test:** this changed in September 2012 and a minority of forces were applying the incorrect test to their disclosure texts. Much of this was due to a templating issue on the forms that were being used which has now been addressed and I am pleased to have noted that the frequency of this issue has reduced considerably.

**Subjectivity:** following the review of criminality information by Mrs Sunita Mason a recommendation was made for forces to include more information in their text as to the reasons for that disclosure. I have noticed that on a few occasions this new text has included elements of subjectivity which has often been the sole cause for an applicant to dispute their record. I have made efforts to ensure that forces are mindful of this issue and again the incidence of it has reduced.

Other issues which I believe are worthy of further consideration are shown in my recommendations later in this report.

## **Conclusion**

This is a developing role and the process for the review of cases by the Independent Monitor has evolved during the last year.

This has been the first full year of the Independent Monitor role and a year in which it was unclear as to the number of referrals which would be made. The numbers of cases received has exceeded expectations and I would like to take the opportunity to highlight the professionalism and support from significant partners such as the Disclosure and Barring Service, Access Northern Ireland, Disclosure Scotland, local police forces and the national Police leads in ensuring that I am able to carry out the responsibilities of my role in good time with the requisite information.

I believe that we have now created a solid foundation for the Independent Monitor role to build for the future and to ensure that the rights of the vulnerable and those who wish to work with them are properly considered.

We will continue to seek to develop and share good practice amongst those charged with this important business and I look forward to being able to report further on those next year.

A handwritten signature in black ink, appearing to be 'Sunita Mason', written in a cursive style.

## **Powers under which the Independent Monitor operates**

The Independent Monitor role is appointed by the Secretary of State under section 119B of the Police Act 1997.

The Independent Monitor has responsibility for two areas of work. Currently duties apply to England and Wales and in part to Northern Ireland. Firstly, in accordance with section 119B of the Police Act 1997, the Independent Monitor must review a sample of cases in which police information is provided on enhanced criminal record certificates under section 113B(4) of the Act. The purpose of the review is to ensure compliance with Home Office statutory guidance on disclosure and Article 8 of the European Convention of Human Rights (ECHR).

Secondly, under section 117A of the Police Act 1997, the Independent Monitor now has a role in reviewing, and deciding upon whether the correct “approved” information has been provided in a Disclosure and Barring Service enhanced criminal record certificate, taking into account

the statutory test set out in the Act. Disclosure and Barring Service enhanced criminal record certificates are primarily required for those who wish to work with children or vulnerable adults.

When a request for an Enhanced certificate is made, an individual’s details are referred to any police force which may hold information about the individual. This enables them to check against their records for any “approved” information which they reasonably believe to be relevant to the workforce for which the certificate is sought and consider ought to be disclosed.

## **Operation of the Secretariat and function of the Independent Monitor**

The Independent Monitors role in the reviewing of “approved” information referrals was included by the Protection of Freedoms Act (POFA) 2012. A Secretariat to support the Independent Monitor to perform this function was set up in October 2012 and currently consists of one full time and one part-time member of staff.

Since its creation the Secretariat has received 362 referrals to the end of December 2013. Case papers consist of the disclosure certificate provided by the DBS together with any dispute documents about the disclosure information that the applicant may have raised with the Disclosure and Barring Service previously. Once a case is received, the Secretariat will ask both the applicant and the relevant police force for their representations and any background information that they may feel is relevant to the referral. Upon receipt of representations the referral case is put to the Independent Monitor for review, at this stage the Independent Monitor will consider if the correct relevancy test has been applied to police information and whether there is sufficient information to be able to make a decision or if further representations or information may be required.

In making a decision on the inclusion of information on a certificate, and following statutory guidance, the Independent Monitor gives consideration to;

- whether the information provided is accurate;
- whether the information provided is relevant to the role/ workforce applied for;
- ought the information to be disclosed;
- what is the legitimate aim pursued by the disclosure under Article 8 of ECHR is;
- whether the disclosure is necessary to achieve a legitimate aim; and

- whether the disclosure is proportionate, striking a fair balance between the rights of the applicant and the rights of those whom the disclosure seeks to protect.

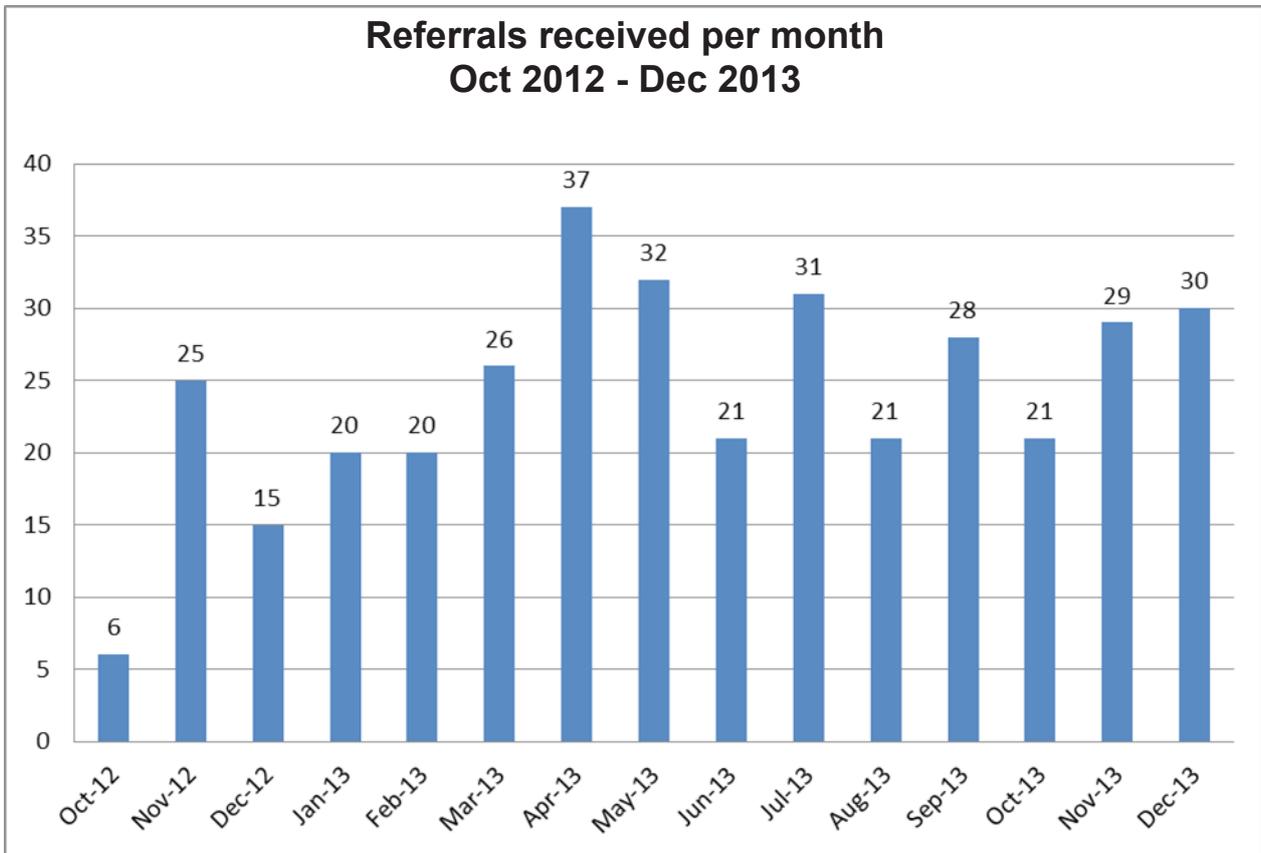
Once a decision has been made the Secretariat will write to the applicant, the Disclosure and Barring Service and relevant police forces informing them of the decision.

Prior to October 2012 and the changes introduced in POFA, an individual who was dissatisfied with information that appeared on their enhanced certificate only had recourse to appeal to the Chief Constable of the relevant force to change or remove the information. If the applicant was unsatisfied with the outcome of the Chief Constable appeal process then their final legal option was the request of a Judicial Review of the disclosure decision, which were costly to the applicant and to the Disclosure and Barring Service in both time and resource.

In addition to providing decisions on case referrals the Independent Monitor has also undertaken two substantial sample exercises under his powers provided in the Police Act. Both exercises have consisted of the sampling of police information provided on enhanced certificates for a number of forces. Following these reviews the Independent Monitor has provided feedback to forces to ensure quality and compliance with Article 8 obligations (ECHR).

## Statistical analysis of Independent Monitor case referrals

The following pages provide graphical analysis of the Independent Monitor case load and referral statistics from the inception of the Secretariat to the end of December 2013.

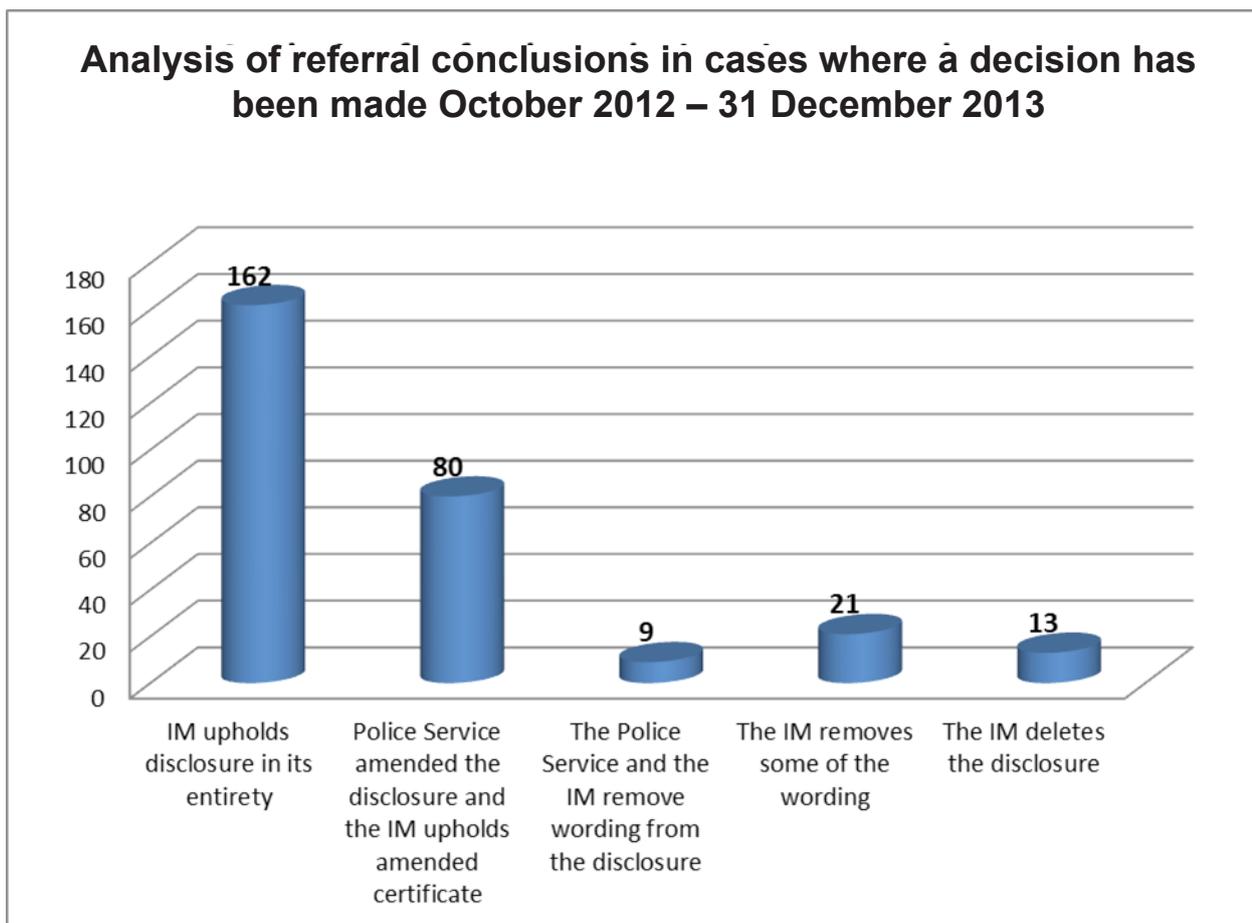


### Cases received from 1 Oct 12 to 31 Dec 13

Average no cases p/m	
24.1	
Total number of cases	362

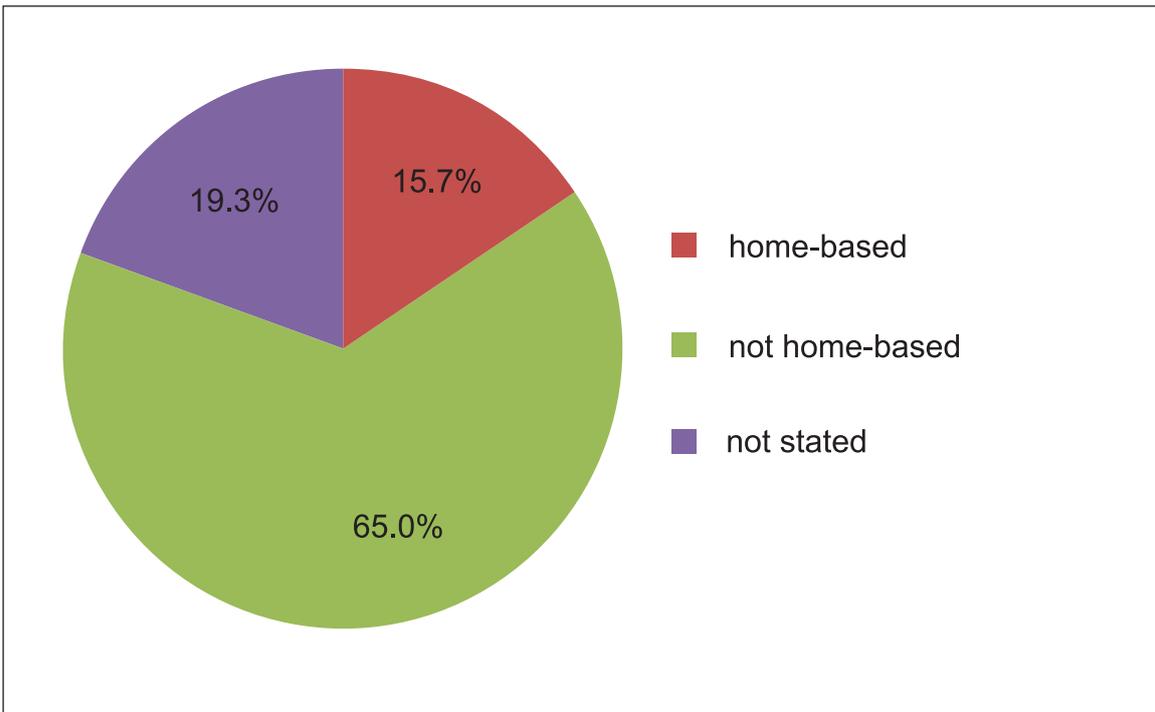
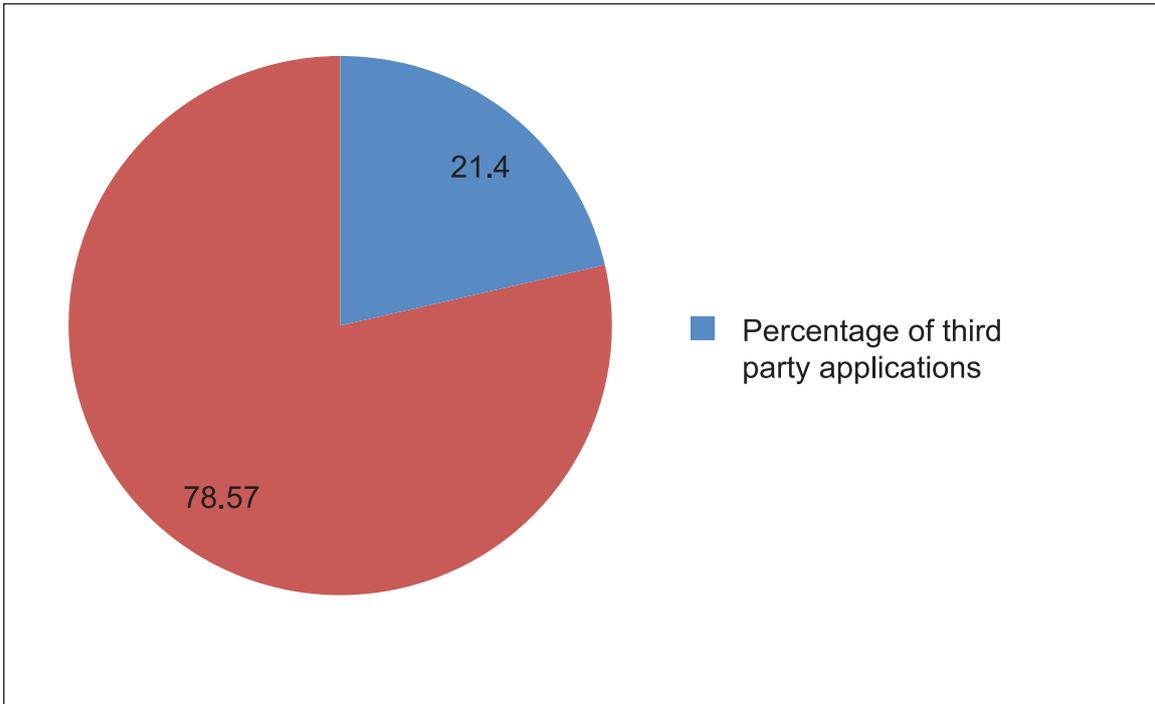
There has been an increase in the number of referrals received since the creation of the Secretariat. The average monthly referral rate for the first five months was just over 17 cases per month and this has increased to 26 cases per month for the five months to December 2013.

## Analysis of referral conclusions in cases where a decision has been made October 2012 – 31 December 2013



The above graph provides a break-down of the Independent Monitor's decisions on referrals made. The Independent Monitor process provides relevant police forces with an additional opportunity to consider their disclosure and ensure that they have complied with statutory guidance and relevant case law.

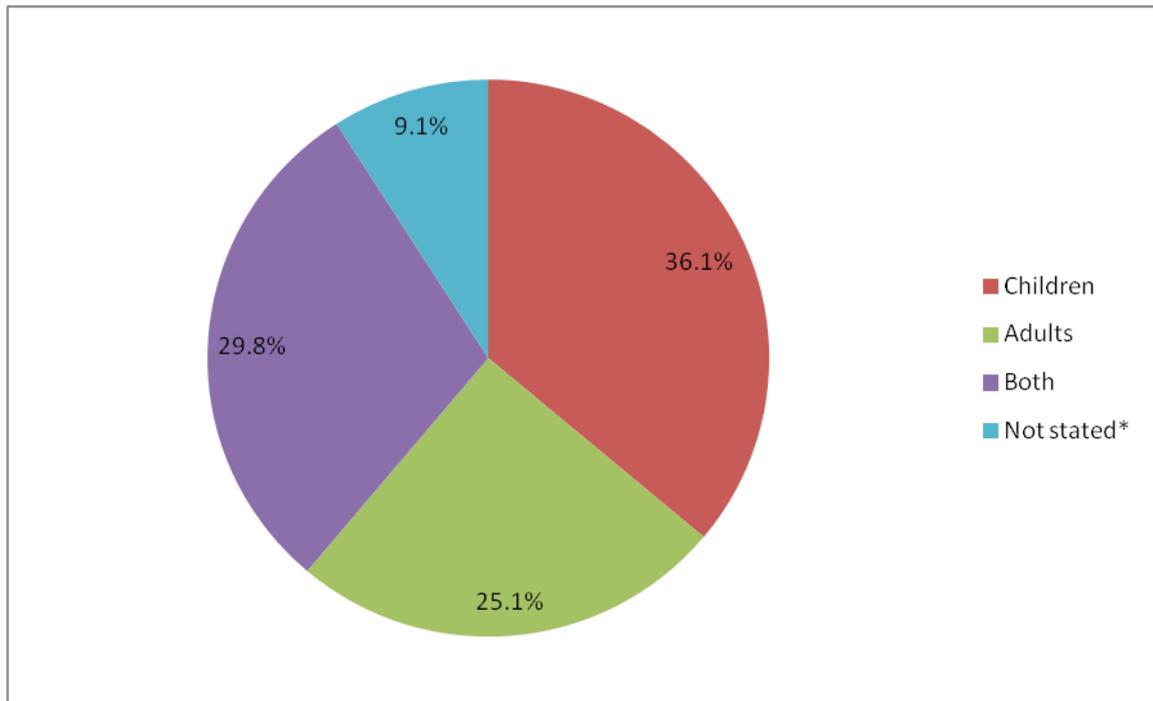
**Analysis of referrals providing a break-down of applications home-based applications and third party disclosures from 1 October 2012 to 31 December 2013**



The above charts provide percentages of referrals made for third party applicants. These are where the disclosed information does not relate to the applicant but may refer to a relative or individual well known to the applicant who may be considered to have the potential for considerable contact with the applicant and those for whom they are caring.

The home-based graph provides percentages of referrals where an applicant will be working with vulnerable groups or have contact with them in their role in their home environment. Most common home-based applications are those of foster carers, home tutors and carers

## Sector based working: referrals by sector groups from 1 October 2012 to 31 December 2013



The above chart provides percentages of referral cases by workforce sectors applied for, either working with Children, Vulnerable adults or potentially both.

\* Includes other workforces – taxi drivers, gaming and other special licensing roles.

## Recommendations

Having now reviewed over 300 cases I have been able to identify a number of areas in which I feel improvements could be made. Some of these issues have been addressed through the year although others require more detailed consideration. These are:

**Mental Health:** one of the more frequent types of disclosure which I have deleted is that which documents a person's mental health. There is a clear guidance in the Quality Assurance Framework (QAF) which advises police on the issues to be considered in disclosing mental health matters. I have deleted a number of disclosures which have documented mental illness but have not presented sufficient grounds for disclosure such as criminal behaviour whilst suffering an episode of mental illness. It is my recommendation that the relevant QAF guidance is highlighted to forces in order that they can reduce the number of disputes in this sensitive area.

**Home-Based Occupations:** I am aware that there are a number of concerns being highlighted by the National Policing lead for disclosure in respect of third party disclosure. One area where I have noted a potential conflict is in the inclusion of a Home-Based Occupation in the update service provided by the DBS.

The majority of disclosures for Home-Based Occupations relate to information about third parties who either live at or are believed to have access to the address where the work will take place. In many cases the applicant has no previous convictions or information and would happily sign up to an update service which would show their clean record in the future.

The issue is that the update service does not provide details of the third parties who have been a part of the initial disclosure. To retain the Home-Based Occupations in the update service does therefore appear to present a safeguarding risk which needs to be addressed.

**Workforce versus position applied for:** since the introduction of the single portable certificate some people who are intending to work in a single very specific role, are having information disclosed which may be relevant to the wider child or adult workforce but not necessarily to the actual intended role.

I believe that there may be a need for an additional DBS product: a certificate limited to a single role.

There will also be individuals who are acutely aware that information is held on them that is relevant to a specific definable risk (e.g. a person who may have information on their record which would be relevant to a role as a nursery nurse) may wish to apply for a post working in a specific part of the child workforce such as a school crossing patrol worker.

Current workforce-based products do not cater for such situations; the disclosure on these individuals will – in some cases – be far less proportionate than a role-based product.

Police are already in receipt of representations stating that some information is not relevant and/or proportionate to be disclosed on their certificate, asking that it is not disclosed as they only wish to work in a particular role. Police are unable to oblige them as their considerations must be made upon the Prescribed Purpose (workforce).

Exceptions to this have already been made for roles which fall outside of the child/adult workforce: a taxi driver application for licensing purposes is made for 'Other' workforce and only information relevant to the specific job/role/post is considered. This approach now encompasses all other eligible roles which do not fall under the child/adult workforces.

**Registered Bodies.** During the past year I have seen a small number of cases where the registered body has indicated, in one form or another, that they would continue to employ an applicant if the information recorded on their certificate were to be removed. In all of these cases the registered body is already aware of the information and in my view is attempting to 'unknow' information which is relevant to be considered for safeguarding purposes. I recommend that clear communication should be made to Registered Bodies to ensure that they are aware of and accept responsibility for, the important part they have to play in the disclosure process.

