

How were decisions reviewed?

The right of review can be exercised by the original information access applicant or by third parties whose information is the subject of the application

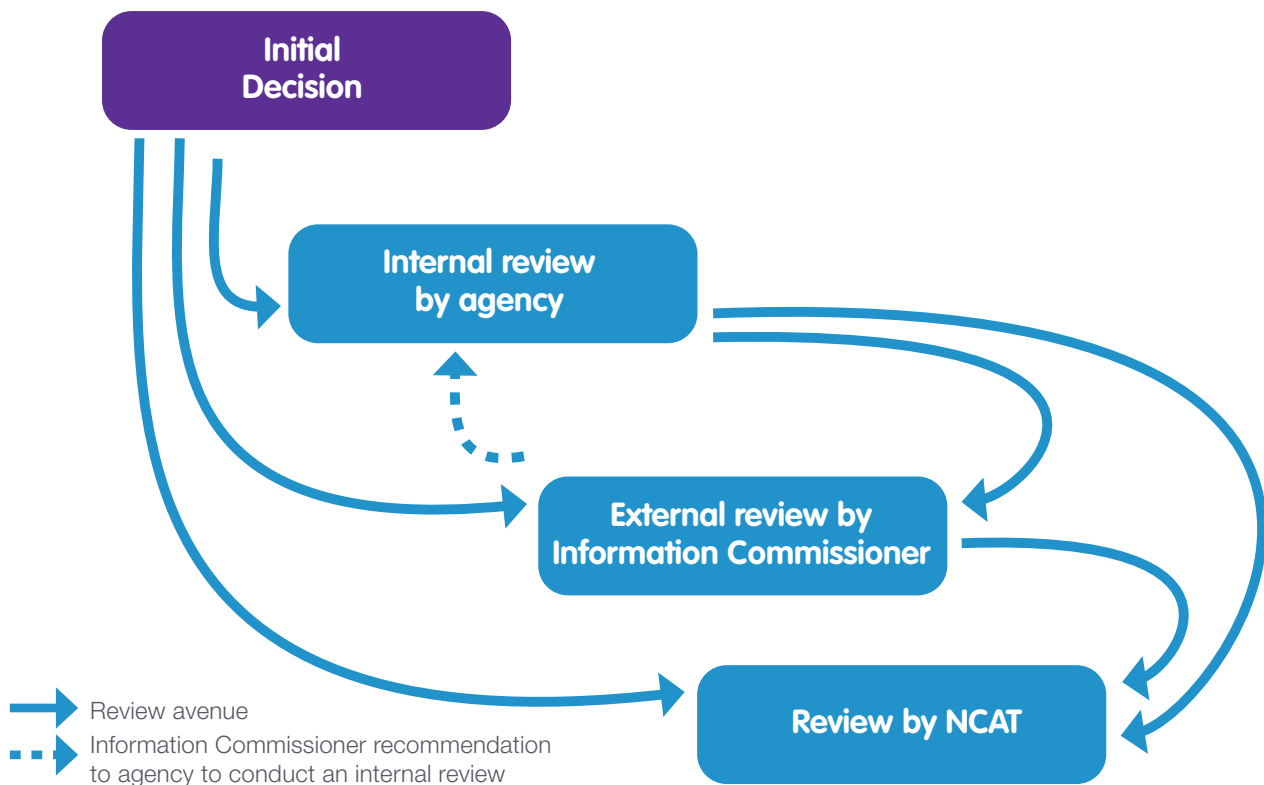
This section reports on the:

- number of reviews as a percentage of the number of relevant applications – a ‘review rate’
- number of reviews by type of review
- composition of reviews by type of review.

The distribution of reviews across all review avenues as reported by agencies is shown in Figure 33. If the most reliable source for each review avenue is used to calculate the total number of reviews, a total of 1,023 reviews were conducted in 2020/21. This is consistent with 1% from the 1,018 reviews conducted in 2019/20.

The distribution of reviews is shown in Figure 34. This is a significantly higher number of reviews than reported by agencies, particularly in respect of external reviews by the Information Commissioner and external reviews by NCAT.

Figure 31 shows the different pathways available for reviews in the GIPA Act



‘How were decisions reviewed?’ is reported and measured by the requirement for agencies to report on the number of applications reviewed under Part 5 of the GIPA Act in Tables G and H of Schedule 2 to the GIPA Regulation.

Figure 32: Agency, IPC and NCAT data on internal and external reviews, 2020/21

Review type	A: Agency reported data for all reviews closed	B: Using agency, IPC and NCAT data on reviews closed
Agency internal review of initial decision	344	344
External review by the Information Commissioner	294	388
Review by NCAT	95	160
Agency internal review/reconsideration following a recommendation by the Information Commissioner	131	131
Total	864	1023

Figure 33: Distribution of reviews by type, as reported by agencies, 2020/21

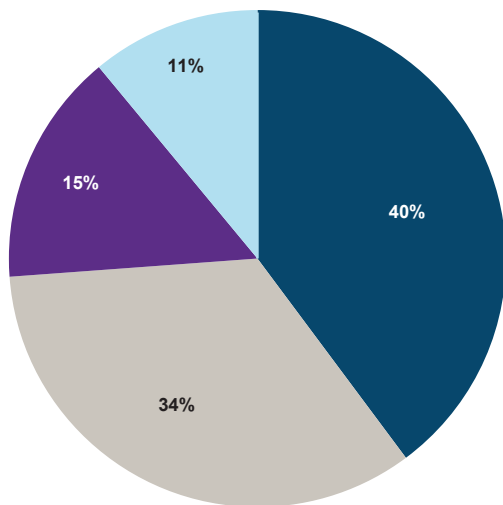
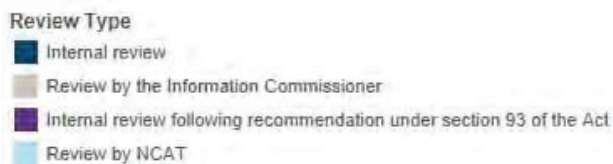
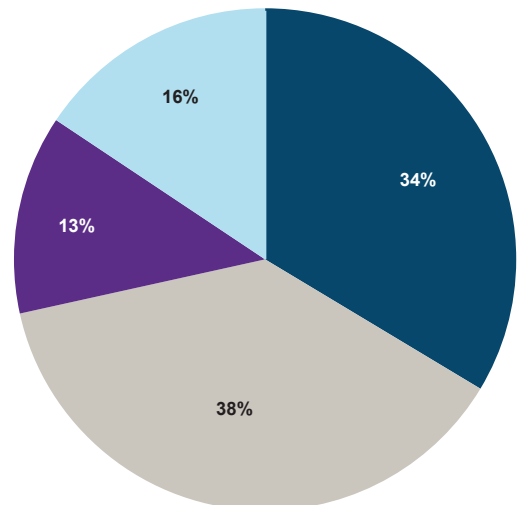


Figure 34: Distribution of reviews by type, using agency, IPC and NCAT data, 2020/21



Source: Agency, IPC and NCAT data. Note this data applies to cases reported as closed in the year.

The completion of reviews during this reporting period that were received in the previous financial year may be a factor contributing to under-reporting of external reviews by the Information Commissioner. The IPC has engaged with agencies across all sectors to improve the reporting of GIPA Act data. Since 2013/14, the under-reporting has declined from 81% to 28% in 2020/21, a further decline from 45% in 2019/20 and 37% in 2018/19, but a small increase on the lowest level of 26% reported in 2016/17.

Using IPC internal data, the number of external reviews conducted by the Information Commissioner were consistent in 2020/21 with 388 reviews, compared with 386 reviews in 2019/20.

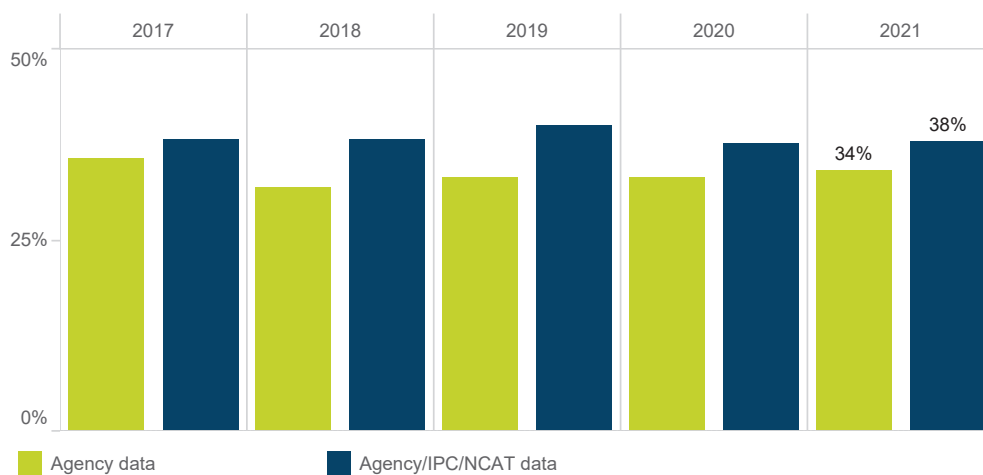
External reviews by the Information Commissioner remain consistent as a proportion of all reviews conducted

Due to ongoing disparity between agency reported data and the IPC data over the past 10 years, only IPC data will now be used for this section of the report.

Using the more reliable IPC data, external reviews by the Information Commissioner accounted for 38% of all reviews conducted, consistent with 38% in 2019/20 (Figure 35).

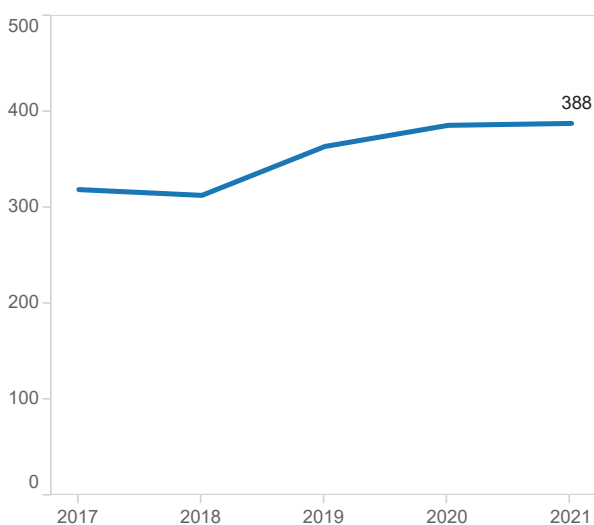
Accordingly, the review pathway most frequently used is external review by the Information Commissioner.

Figure 35: External reviews by the Information Commissioner as a percentage of all reviews, 2016/17 to 2020/21



Source: agency, NCAT and IPC data

Figure 36: Number of external reviews conducted by the Information Commissioner, 2016/17 to 2020/21



Source: IPC data

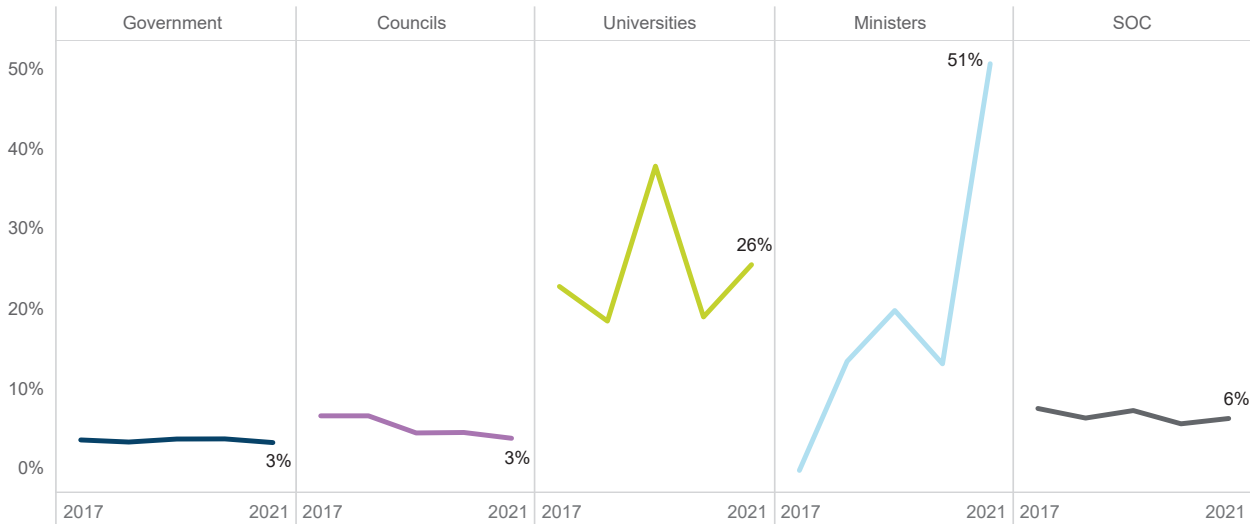
Similarly, the 160 review applications reported by NCAT is significantly higher than the 95 reviews reported by agencies.

For reporting purposes, the remainder of this section only uses data reported by agencies to allow for comparison across review avenues, across sectors and to examine changes over time.

Review rates have remained stable in the Government, Council and State-Owned Corporations sectors

The percentage of applications for review received by the Government sector, as a percentage of all applications to that sector, remained stable at 3% in 2020/21, consistent with 4% in 2019/20, 2018/19 and 2017/18. The Council (3%) and State-Owned Corporations (6%) sectors also remained stable (Figure 37). However, a 1% decline in review rates is noteworthy in the context of such a significant increase in application numbers.

Figure 37: Total number of reviews, as a percentage of all applications received, by sector, 2016/17 to 2020/21



Source: agency data

The percentage of applications for review received by the Minister sector, as a percentage of all applications to that sector, increased significantly to 51% in 2020/21, from 10% in 2019/20. For universities, the percentage moderately increased from 20% in 2019/20, to 26% in 2020/21.

These two sectors received relatively small numbers of applications and are subject to more variability than other sectors. These trends will continue to remain under observation to ensure that an appropriate sector-specific regulatory response is implemented if required.

The majority of applications for review were made by the original applicant for information

In 2020/21, 93% of applications for review were made by the original applicant. This is consistent with levels observed in 2019/20, when 90% of applications for review were made by the original applicant.

The number of applications made by third party objectors was 7% in 2020/21, compared with 10% in 2019/20.

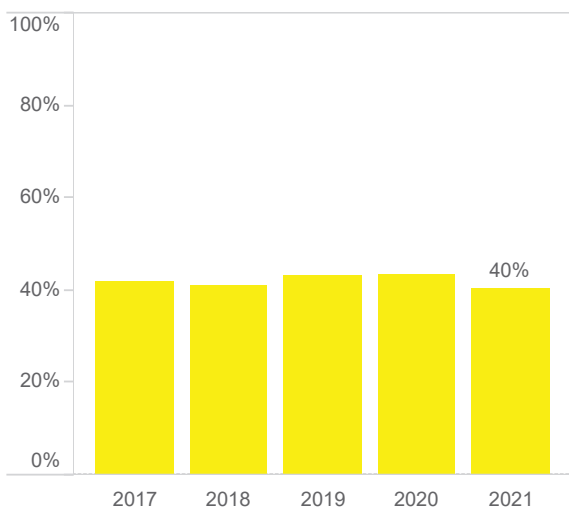
Internal reviews as a percentage of all reviews conducted remained stable

Internal reviews represented 40% of all reviews conducted in 2019/20 (Figure 38), consistent with 44% of all reviews conducted in 2019/20.

Reviews by NCAT remained stable

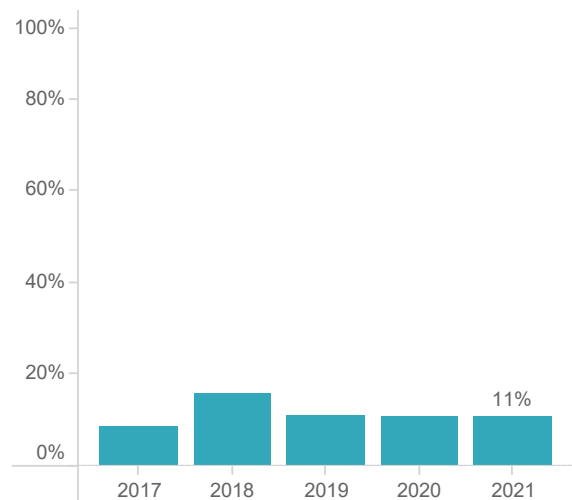
Using data reported by agencies, reviews by NCAT represented 11% of all reviews conducted in 2020/21 (Figure 39). This is consistent with 11% in both 2019/20 and 2018/19.

Figure 38: Internal review as a percentage of all reviews, 2016/17 to 2020/21



Source: agency data

Figure 39: NCAT reviews as a percentage of all reviews, 2016/17 to 2020/21

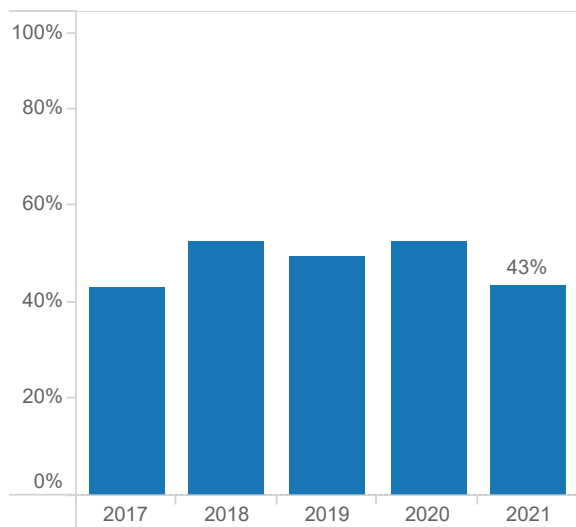


Source: agency data

There has been a change in the balance between decisions upheld and overturned on review

In 2020/21, 43% of all internal and external reviews conducted upheld agencies' decisions. This is a moderate decline from 52% in 2019/20, and 50% in 2018/19 of reviews upheld the agencies' decisions (Figure 40). This year, the decline in the total number of decisions upheld on both internal and external review is noteworthy, given that the percentage of all reviews that upheld the original decision had been relatively stable across the prior six years.

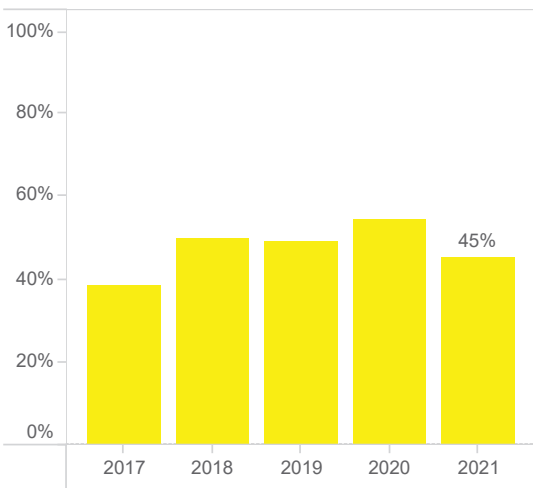
Figure 40: Percentage of all reviews that upheld the original decision, 2016/17 to 2020/21



Internal reviews were closely balanced between upholding and overturning the original decision

In 2020/21, 45% of all internal reviews upheld agencies' decisions, a moderate decline on the 54% reported in 2019/20. This is similar to 49% in 2018/19 (Figure 41).

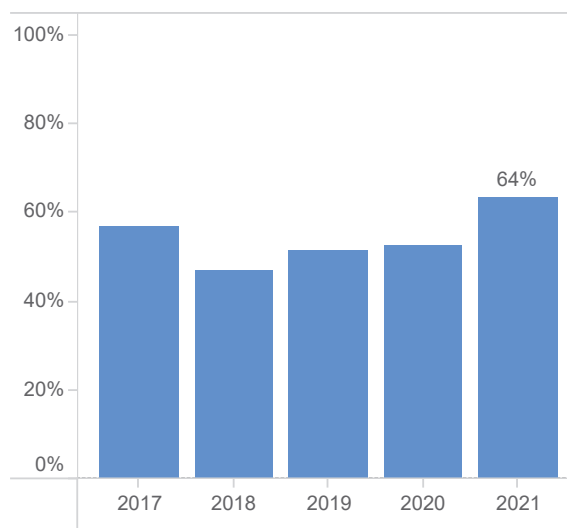
Figure 41: Internal reviews where the decision was upheld as a percentage of all internal reviews, 2016/17 to 2020/21



Reviews by the Information Commissioner were more likely to recommend that agencies reconsider their decision

In 2020/21, agencies reported that 64% of reviews by the Information Commissioner recommended that agencies reconsider their decisions, a moderate increase on the 53% reported in 2019/20 and the 52% reported in 2018/19 (Figure 42).

Figure 42: Reviews by the Information Commissioner where there was a recommendation to reconsider the decision as a percentage of all reviews by the Information Commissioner, 2016/17 to 2020/21

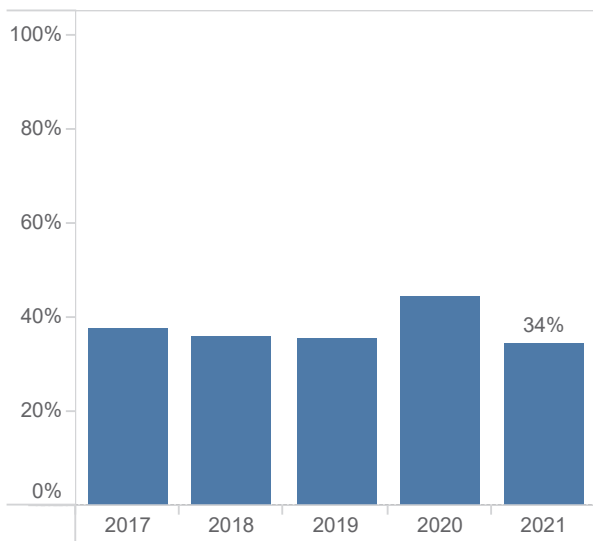


Internal reviews following a section 93 recommendation by the Information Commissioner which upheld the original decision declined

In 2020/21, agencies reported 34% of internal reviews that followed a section 93 GIPA Act recommendation (a recommendation from the Information Commissioner that the agency reconsider its decision) upheld agencies' original decisions. This is a moderate decline on the 44% reported in 2019/20 (Figure 43).

Accordingly in 2020/21, in 66% of internal reviews, agencies modified their decision in response to a recommendation by the Information Commissioner.

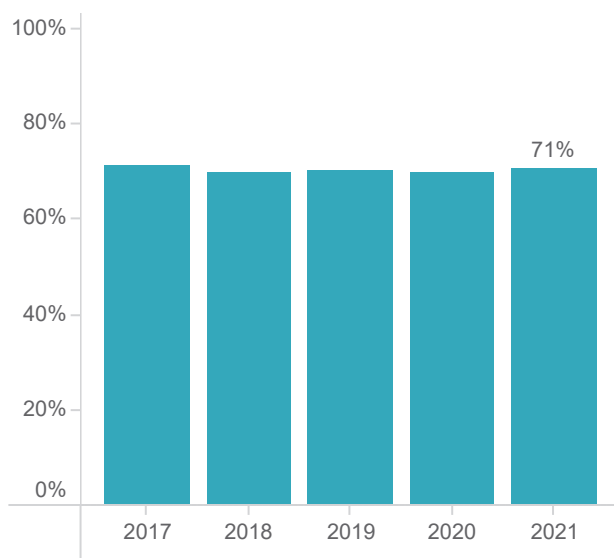
Figure 43: Internal reviews following a section 93 recommendation that upheld agencies' original decisions as a percentage of all internal reviews, 2016/17 to 2020/21



Reviews by NCAT of agency decisions

In 2020/21, agencies reported that 71% of reviews by NCAT upheld agency decisions, consistent with 70% in both 2019/20 and 2018/19 (Figure 44).

Figure 44: Reviews by NCAT where the decision was upheld as a percentage of all reviews by NCAT, 2016/17 to 2020/21



External review by the Information Commissioner of agencies' use of CPOPIADs and OPIADs

The IPC's internal data provides further insight into external reviews by the Information Commissioner in relation to the application of the considerations against disclosure by agencies.

The Information Commissioner conducts external reviews that cover a range of different issues that go to the process for dealing with applications and agencies' decisions to provide or refuse access to information.

The proportion of all reviews conducted by the Information Commissioner relating to CPOPIADs remained consistent with the previous year at 11% in 2020/21.

The proportion of all reviews conducted by the Information Commissioner relating to OPIADs remained relatively stable at 49% in 2020/21, consistent with 49% in 2019/20. Other issues that were the subject of review by the Information Commissioner include:

- personal information
- searches
- effective exercise of agency functions.

Reviews regarding these more administrative or mechanical matters can provide insights into the operational and cultural environment in which access decisions are made within agencies. Accordingly, intelligence gathered through conducting these reviews is collected and analysed to inform the Information Commissioner's forward work program.

CPOPIADs: Legal professional privilege remains the primary CPOPIAD subject of external review by the Information Commissioner

In 2020/21, the top three CPOPIADs that were relied on by agencies that were subject to the Information Commissioner's review were:

- legal professional privilege (51%) a significant increase on the 36% reported in 2019/20
- Cabinet information (30%), an increase from the 25% in 2019/20
- overriding secrecy laws (9%), which displaces complaints handling and investigation as the third most relied upon CPOPIAD 2019/20.

CPOPIADs: There has been significant changes for the top three CPOPIADs in number of external reviews by the Information Commissioner of CPOPIADs that resulted in a recommendation to agencies to reconsider the decision

In 2020/21, 35% of all the CPOPIADs that were the subject of review by the Information Commissioner resulted in a recommendation to agencies to reconsider the decision, compared with 46% in 2019/20, 38% in 2018/19, 45% in 2017/18 and 62% in 2016/17.

Following a review, the Information Commissioner's findings in respect of the top three CPOPIADs were for reviews of the:

- legal professional privilege consideration: 45% resulted in a recommendation to agencies to reconsider the decision, a significant decrease from 85% in 2019/20
- Cabinet information consideration: 23% resulted in a recommendation to agencies to reconsider the decision, a significant increase from 8% in 2019/20
- overriding secrecy laws consideration: 25% resulted in a recommendation to agencies to reconsider the decision. This CPOPIAD was not represented in the top three CPOPIADs in 2019/20.

OPIADs: Responsible and effective government was the main OPIAD subject of external review by the Information Commissioner

The top three OPIADs that were relied on by agencies and subject to the Information Commissioner's review were:

- individual rights, judicial processes and natural justice (40%)
- responsible and effective government (37%)
- business interests of agencies and other persons (18%).

OPIADs: The number of external reviews by the Information Commissioner of OPIADs that resulted in a recommendation to agencies to reconsider overall has increased

In 2020/21, 68% of all the OPIADs that were the subject of review by the Information Commissioner resulted in a recommendation to agencies to reconsider the decision, a moderate increase on the 59% in 2019/20.

Following a review, the Information Commissioner's findings in respect of the top three OPIADs were for reviews of the:

- individual rights, judicial processes and natural justice consideration: 59% resulted in a recommendation to agencies to reconsider the decision, consistent with 59% in 2019/20
- responsible and effective government consideration: 74% resulted in a recommendation to agencies to reconsider the decision, representing a significant increase compared with 59% in 2019/20
- business interests of agencies and other persons consideration: 76% resulted in a recommendation to agencies to reconsider the decision, representing a moderate increase compared with 65% in 2019/20.