

02110 PROCEDURE - CRIMINAL AND MISCONDUCT OUTCOMES IN RELATION TO POLICE OFFICERS, SPECIAL CONSTABLES AND POLICE STAFF – REVELATION/DISCLOSURE IN CRIMINAL PROCEEDINGS

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ECHR Potential Equality Impact Assessment: Low

1. About This Procedure

- 1.1. The Disclosure Manual, produced by the police and CPS, provides instructions on how to meet the requirements of the Criminal Procedure & Investigations Act (CPIA) 1996. Chapter 18 of the guidance sets out the procedure in relation to the revelation and disclosure of police misconduct.
- 1.2. This procedure is based upon Chapter 18 of the Disclosure Manual which details the procedure in relation to police officers and special constables who are witnesses, and details the action required by Professional Standards Departments and prosecutors. Whilst the Disclosure Manual does not deal with revelation and disclosure of misconduct by police staff, the obligation to reveal relevant misconduct applies equally to police staff who are witnesses or potential witnesses, and the force procedure reflects this.
- 1.3. The force procedure applies to all police officers, special constables, and police staff who are likely to submit witness statements in their police role, for example detention officers, police photographers, vehicle examiners and PCSOs.
- 1.4. The procedure sets out the local arrangements for revelation of criminal and misconduct outcomes. It details the information which police officers, special constables, and police staff are required to reveal to the prosecutor in all cases, and provides guidance on information which may require to be revealed.
- 1.5. Revelation is the process by which relevant material is described by, or passed from police to prosecutor. Revealing information to the prosecutor does not necessarily mean it will be disclosed to the defence. Disclosure will take place when the prosecutor considers that any such material might undermine the prosecution case, or assist the defence. Whether or not the defence can then use the material in court will depend on the rules of admissibility.

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2. Risk Assessment/Health & Safety Considerations

- 2.1. Failure to comply with this procedure is likely to result in unfairness to the accused, and convictions that are vulnerable to appeal.

3. Procedure

- 3.1. **Police Officers who are witnesses:** Where a full file of evidence is submitted to the CPS, police officers will be required to reveal information within the following categories, using form MG6B. This includes police officers making statements which do not form part of the prosecution case.

- 3.1.1. Disciplinary findings of guilt at a misconduct hearing. These must be revealed, except for:
- a) Disciplinary sanctions which have been expunged in accordance with Police (Conduct) Regulations 1999 i.e. Caution 12 months; fine or reprimand 3 years free from sanction other than a caution; any other sanction 5 years free from sanction other than a caution;
 - b) Disciplinary findings in respect of charges arising out of neglect of health, improper dress or untidiness or entering licensed premises.

Nevertheless, police officers should reveal details of these excepted matters when requested by the prosecutor.

- 3.1.2. Formal written warnings that have been administered no earlier than 12 months prior to the defendant being charged or reported for summons must be revealed to the CPS.

- 3.1.3. N.B. Whilst the guidance states that formal written warnings and cautions are not required to be routinely revealed unless they are relevant, the force procedure requires all current formal written warnings and disciplinary cautions to be revealed to CPS using form MG6B, it will be for the prosecutor to then consider whether the material is relevant to a particular case.

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- 3.1.4. Disclosure of formal written warnings or cautions to the defence will only take place if relevant to the case, and only after consultation between the CPS Unit Head and the Head of Professional Standards Department (or deputy).
- 3.1.5. **Adverse judicial findings:** There is a duty to reveal and disclose adverse judicial findings per R v Erkin Guney (1998) 2 Cr. App R 242. An adverse judicial finding is a finding by a court, expressly or by inevitable inference that a police witness has knowingly, whether on oath or otherwise, misled the court. This includes in civil cases, for instance, answers from a civil jury.
- 3.1.6. There is no mechanism for rescinding an adverse judicial finding, but if a subsequent enquiry reveals information that exonerates the officer or casts doubt on the finding, this should be reflected in the wording of the MG6B and the prosecutor will decide whether to disclose the information.
- 3.1.7. **Disciplinary proceedings which have not been completed:** If disciplinary proceedings are commenced but not completed then police officers making statements should inform the prosecutor of details of all matters with which they have been charged. This does not apply to the excepted disciplinary matters referred to at 3.1.11 below.
- 3.1.8. Criminal convictions for recordable offences, whether spent or otherwise, criminal cautions for recordable offences, and penalty notices for disorder for recordable offences must be revealed.
- 3.1.9. **Criminal proceedings which have not been completed:** Police officers making statements should inform the prosecutor of details of all criminal offences with which they have been charged, or reported for summons, but in which proceedings have not been completed.
- 3.1.10. 02102 Procedure - Service Confidence in Cases of Source Sensitive Information. Officers subject to service confidence procedure will be notified by PSD if

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details should be revealed on form MG6B. The detail provided on MG6B should be as notified to the officer by Professional Standards Department.

3.1.11. Police officers and special constables are not required to routinely reveal the following categories:

- a) Complaints that have resulted in a local resolution;
- b) Internal misconduct or complaints resulting in management or operational advice;
- c) Complaints or misconduct that is deemed unsubstantiated;
- d) Complaints or allegations that have been notified to an officer in accordance with Regulation 9 of the Police (Conduct Regulations 2004), where a suspension has not been imposed, where investigation is ongoing and misconduct proceedings have not been commenced.

3.1.12. However, there may be exceptional occasions where the interests of justice require relevant material relating to categories in 3.1.11 to be revealed, for instance, when it might affect the credibility of an officer where that credibility is or might be in issue. If an officer is in any doubt as to whether such categories may be relevant in a particular case, they must contact the Professional Standards Department for advice.

3.2. Members of police staff who are required to submit a witness statement as part of their police role are required to reveal the following categories using form MG6B:

- a) Criminal convictions for recordable offences also applies to spent convictions;
- b) Cautions for criminal recordable offences;
- c) Criminal proceedings which have not been completed;
- d) Disciplinary findings of guilt;
- e) Disciplinary proceedings which have not been completed;
- f) Service Confidence Procedure. Police staff subject to service confidence procedure should reveal this fact, the detail to be provided will be as notified to the police staff employee by Professional Standards Department.

3.3 Notification to CPS

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- 3.3.1 Notification of details to CPS will be by submission of MG6B.
- 3.3.2 The details to be included on the MG6B should be sufficient to enable the CPS to make an informed decision about the relevance of the information to the proceedings in question. CPS will not send form MG6B to the defence. There is no need to include this material on the schedule of unused material.
- 3.3.3 Professional Standards Department Administration will provide the CJU supervisor for each area with a regularly updated list of officers, and members of police staff, who are subject to this procedure.
- 3.3.4 When a full file is prepared, the CJU will notify the officer, or member of police staff, of the requirement to submit form MG6B, together with MG16/MG17 if applicable.
- 3.3.5 The forms should be submitted to by the officer/police staff to CJU in a sealed envelope marked 'Confidential - for the attention of the CPS Prosecutor', clearly marked with the officer or police staff name, and case name if known.

3.4 Change of circumstances.

- 3.4.1 Where during the lifetime of a case there is a change in circumstances of an officer/police staff member in relation to misconduct/disciplinary or criminal outcomes (including where an outcome becomes expunged), such change must be notified to CPS by the relevant CJU.
- 3.4.2 A police officer/police staff member who becomes subject of this procedure, having received a disciplinary finding of guilt, or is charged, cautioned or convicted of a criminal offence, must notify Professional Standards Department.

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- 3.4.3 PSD Administration will then provide guidance to the officer/police staff member on preparation and wording of the form MG6B.
- 3.4.4 At this initial stage, PSD Administration will endeavour to identify any outstanding cases in which the officer is a witness, and notify the relevant CJU by e-mail. The CJU will be responsible for notifying CPS. (This will rely on information on outstanding cases being provided to PSD by the officer, subject to future CMS upgrade when Professional Standards Department Administration will be able to search officer details as a witness).
- 3.4.5 Thereafter, the officer/police staff member will be required to submit an MG6B in accordance with 3.2.4.
- 3.4.6 Similarly, any change of circumstances that makes a previous notification of a disciplinary matter no longer appropriate, i.e. a successful appeal, should be submitted by the officer/police staff on form MG6B to the Professional Standards Department for identification of live cases. The person will be then removed from the list maintained within PSD.

4 Roles And Responsibilities

- 4.3 Individual police officers, special constables and police staff are responsible for revealing relevant misconduct/disciplinary and criminal outcomes under this procedure.
- 4.4 **Professional Standards Department will:**
 - 4.4.1 Provide advice to staff on their obligation to reveal information under the procedure;
 - 4.4.2 Upon notification by officer/police staff member, or having become aware by other means, that the person is subject of the local procedure in relation to Chapter 18 of the Disclosure Manual

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endeavour to identify live cases and notify the relevant CJU;

4.4.3 Consult with CPS regarding compliance with the Disclosure Manual guidance.

4.4.4 Maintain a record of all members of Hampshire Constabulary required to routinely reveal information;

4.4.5 Regularly provide CJU supervisors with an updated list of police officers, special constables and police staff (names only) subject to the procedure;

4.4.6 Maintain a record of police officer and special constable disciplinary history for the purpose of meeting the obligations under CPIA including expunged findings of guilt. (Details of expunged findings of guilt will be retained on the Centurion database, separately to the personal record of service required to be kept under Regulation 15 Police Regulations 2003);

4.4.7 Notify officers and special constables when the expunge date arrives and their obligation to routinely reveal has ceased;

4.4.8 Notify the CPS of details of officers subject to suspension;

4.4.9 On receipt of notification by CPS or the Force Solicitor of an adverse judicial finding will agree the detail to be included by the officer on MG6B for revelation to the prosecutor in any future criminal case.

4.5 Head of Professional Standards Department (or deputy):

4.5.1 In cases where the Head of Professional Standards Department becomes aware that material not required to be routinely revealed may be relevant, guidance will be sought from the CPS Unit Head or Special Casework Lawyer;

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- 4.5.2 When an officer becomes subject of 02102 Procedure - Service Confidence in Cases of Source Sensitive Information, the Head of Professional Standards Department will decide whether this information is to be routinely revealed by the officer, in accordance with the guidance provided by the Disclosure Manual;
- 4.5.3 The Head of Professional Standards Department (or deputy) will consult with the CPS Unit Head or Special Casework Lawyer regarding adverse information which comes to notice during an ongoing investigation, and also in relation to allegations made by credible witnesses which are not proceeded with, as detailed within the Disclosure Manual.
- 4.6 The Crown Prosecution Service will not disclose details to the defence without prior consultation with the Head of Professional Standards Department (or deputy), and the Independent Police Complaints Commission where the case is being supervised or managed. On the date of trial, or earlier if possible, the prosecutor or caseworker in court will inform the relevant officer(s) whether the information has been disclosed or withheld.
- 4.7 The Criminal Justice Unit supervisor will ensure that when a full file is prepared, a check is made of police officer and police staff witnesses against the list of those subject to this procedure. If this procedure applies, a request will be made to the officer to supply form MG6B, and MG16/MG17 if it applies, in a sealed envelope marked 'Confidential – for the attention of the CPS Prosecutor'. The envelope should then be placed in the case file behind the MG6 (confidential information).
- 4.8 Where there are no findings of guilt, or criminal convictions recorded against any police officer or police staff witness in the case, then this fact should be entered on form MG6.

5 Administration

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- 5.3 The administration process for notification and submission of MG6B under this procedure is as detailed within section 3 above.
- 5.4 The procedure will be placed within force policy and procedures under Professional Standards.

6 Monitoring /Evaluation

- 6.3 Head of Professional Standards will monitor implementation of the procedure.

7 Review

- 7.3 Annual review.

8 Other Linked Procedures, Policies And Information Sources

- 8.3 Criminal Procedure & Investigations Act (CPIA) 1996
- 8.4 Disclosure Manual
- 8.5 Police Regulations 2003
- 8.6 Police (Conduct) Regulations 2004
- 8.7 02102 Procedure - Service Confidence in Cases of Source Sensitive Information

Origin: Professional Standards