



REVELATION OF CRIMINAL AND MISCONDUCT MATTERS INTERIM STANDARD OPERATING PROCEDURE (SOP) DRAFT

STANDARD OPERATING PROCEDURE			
REFERENCE.	Policy/237/10		
PROTECTIVE MARKING	NOT PROTECTIVELY MARKED		
PORTFOLIO	Deputy Chief Constable's Portfolio (DCC)		
OWNER	Head of Professional Standards (PSD)		
START DATE	September 2010		
REVIEW DATE	September 2012		
THIS POLICY REPLACES:	This is an interim SOP. The full SOP will be published in October.		
VERSION	DATE	REASON FOR AMENDMENT	AMENDED BY
0.2	September 2010		Jo Whiting



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1 INTRODUCTION

- 1.1 This procedure enforces and is subject to the conditions of Policy/237/10.
- 1.2 This procedure applies to England, Wales and Scotland.
- 1.3 This procedure applies to all British Transport Police (BTP) employees.
- 1.4 This procedure covers the revelation and disclosure of criminal and misconduct proceedings and sanctions against BTP employees to the Crown Prosecution Service (CPS) as required under the Criminal Procedures and Investigations Act 1996 (CPIA) and to the Crown Office and Procurator Fiscal Service (COPFS) as required by the ACPOS Disclosure in Criminal Proceedings Manual of Guidance.

2 KNOWLEDGE

2.1 Definitions (in the context of this procedure)

- 2.1.1 **Revelation** – This refers to act of providing the CPS or COPFS with information for them to make a decision as whether it is necessary to disclose it to the defence in a criminal case. BTP is responsible for ensuring this happens.
- 2.1.2 **Disclosure** – This refers to act of providing the defence, in a criminal case, information assessed as relevant by the CPS or COPFS. The CPS or COPFS are responsible for this process.

2.2 What are the requirements under CPIA?

- 2.2.1 The CPIA requires disclosure to the defence of any material that might undermine the prosecution case or assist the defence. This includes criminal and misconduct



sanctions against police employees. Relating this to criminal and misconduct proceedings, this will include:

- Live criminal proceedings (a charge has been made)
- Live misconduct proceedings (the matter has been referred to a Level 1/ Level2 meeting/ hearing)
- Suspension from duty
- Criminal convictions, cautions and Penalty Notices for Disorder
- Substantiated misconduct findings
- Adverse judicial findings
- Any other relevant information appropriate for disclosure

2.3 Who is responsible for revealing this material, and who to?

2.3.1 BTP employees are responsible for revealing their own relevant discipline and conviction records to the CPS or COPFS. In England and Wales this is usually via the CJU or through the case Disclosure Officer, but in Scotland this revelation is made automatically for employees and COPFS maintain a record for the reference. BTP employees must make sure they are aware of their record and what they may need to reveal. They should seek advice if necessary from PSD, the CPS, the COPFS or CJU if they are unsure about what to reveal.

2.4 How will BTP employees know what is relevant to reveal?

2.4.1 Chapter 18 of the Disclosure Manual states that the responsibility to assess whether misconduct findings against BTP employees are relevant for revelation rests with the Professional Standards Department.

2.4.2 Detailed guidance and timescales for revelation of specific sanctions and offences are outlined in Section 4 Procedures, but PSD will provide advice on requirements for revelation, including the exact wording of the revelation in some circumstances. If an



employee is in doubt about what they should be revealing or they are unsure of their discipline/ criminal record they should contact PSD.

2.4.3 All criminal convictions, all cautions and Penalty Notices for Public Disorder are required for revelation to the CPS, whether spent or not.

2.4.4 Employees are reminded that they should not conduct intelligence checks on themselves. Employees are further reminded of the provisions of the Data Protection Act and BTP policy governing the use of intelligence systems.

2.5 What is an adverse judicial finding?

2.5.1 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.'

2.5.2 Adverse judicial findings are reported to PSD by the advocate representing the CPS or Force, or solicitor representing the force, but employees themselves have a duty to report this information. If an employee is acting as a witness outside of their role with BTP, they have a duty to report any adverse judicial findings, but in most cases this will be reported to the Force by officials involved in the proceedings.

2.5.3 A validated adverse judicial finding will cast serious doubt on an employee's integrity. PSD will consult with the Chief Crown Prosecutor, Head of the CPS Complex Case Unit or HQ Director or person nominated by the Chief Crown Prosecutor or HQ Director. Their advice will be in writing and will take account of any representations made by PSD, for example an explanation from the employee concerned that casts doubt on the meaning of the comments.



2.5.4 If it is decided that the comments do amount to an adverse judicial finding then appropriate disciplinary or criminal proceedings will be taken by PSD. The outcome of these proceedings will guide subsequent disclosure requirements.

3 RESPONSIBILITIES

3.1 **All employees** making statements and/ or giving evidence in a criminal trial as part of their role with BTP are responsible for making appropriate disclosure to the CPS as outlined in this procedure and the associated policy. Failure to do so may result in disciplinary proceedings.

3.2 **Line Managers** have a responsibility to ensure that their team members adhere to this SOP and the related policy, and to report to PSD any suspicions they have that their employees are not making adequate revelation to the CPS.

3.3 **All employees** have a duty to report any suspicion they may have that their colleagues are not making adequate revelation to the CPS. They have a duty to abide by BTP policies and the Police Regulations.

3.4 **All employees** have a duty to report to PSD any criminal proceedings or adverse judicial findings against them whilst out of the force area or abroad so that these can be recorded as relevant for disclosure. Failure to do so may result in disciplinary proceedings.

3.5 **PSD** will advise employees on the obligation to reveal information to the CPS, including when their obligation ceases and, in some cases, the wording of the MG6b. PSD will also maintain a record of all BTP employees required to reveal information under this SOP and provide CJUs with an updated list in order to monitor compliance.



- 3.6 **PSD** will provide the COPFS with updated information of relevant criminal and misconduct sanctions for employees based in Scotland.
- 3.7 **CPS and COPFS** have the responsibility to assess revelation for relevancy to the case in hand and make appropriate disclosure to the defence within a reasonable timescale.

4 PROCEDURES – ENGLAND AND WALES

- 4.1 Disclosure of criminal and misconduct proceedings and adverse judicial findings is made to the CPS on an MG6b form which can be found on the PSD intranet page. BTP employees should include enough detail for the CPS to understand whether each proceeding/ finding is relevant to the case in hand. Failure to provide adequate and/ or accurate information on the MG6b may result in disciplinary action.
- 4.2 Although the Disclosure Manual states that revelation should be made when a full file is submitted to the CPS, employees will not know when they make their statement whether a full file will need to be submitted. In order to ensure all relevant information is revealed, employees **must include an MG6b form with any statement they submit** in a case when an offender is charged or reported for summons.

4.2 Misconduct

- 4.2.1 **Live investigations** - There is no requirement to reveal live investigations which have not been referred to formal misconduct proceedings as set out below. If the allegation(s) casts significant doubt of the employee's honesty or integrity as a witness, PSD will give consideration to revealing this to the CJU. In this instance the employee concerned will be notified.
- 4.2.2 **Finalised investigations** - Once an employee has received notice that their conduct has been referred to misconduct proceedings, this is relevant information for revelation and should be recorded on an MG6b form. If this occurs after initial disclosure



documents including an MG6b have been submitted, a further MG6b must be completed and passed to the CPS in line with the continuing duty to disclose. Details on the MG6b should include what the allegations are, dates of incidents if applicable, and also whether the employee is going to accept or challenge the allegations.

4.2.3 There is no obligation to reveal information on investigations that have been finalised as requiring no further action or where the employee concerned is given a Management Action File Note without being referred to a misconduct meeting or hearing.

4.2.4 **Suspension from duty** - If an employee has been suspended from duty, this should be revealed on the MG6b from by the disclosure officer in any cases in which they have submitted a witness statement. It is the responsibility of the employee's line manager to ensure that all relevant cases are updated. The CJU should also be informed for any cases where the employee has the potential be a witness. The CJU will ensure that all relevant case files are updated with this information. If an employee is removed from suspension, again an updated MG6b from should be completed and the CJU notified for all relevant cases.

4.2.5 Where an employee has been suspended from duty pending investigation and no criminal or misconduct charge has been made against them, this must be clearly stated on the MG6b along with the circumstances and allegations. In this situation the disclosure officer should state that the employee will not make a decision as to whether they accept or challenge the allegations until they have received formal documentation of what the charges are.



4.2.6 When an employee is notified that no further action will be taken regarding misconduct charges that have been laid against them they should inform the CJU and submit an updated MG6b form for any current cases they are involved in.

4.2.5 **Finalised Misconduct Proceedings** - If a misconduct investigation or hearing has been concluded the following guidelines apply:

- Not proven - this is not required for revelation
- Management advice is given – to be revealed for the length of the advice, this will be stated on the documentation (this is only relevant for management advice given out of formal misconduct proceedings)
- Written warning given – to be revealed for a period of 12 months
- Final written warning is given – to be revealed for a period of 18 months
- Findings in relation to a breach of honesty and integrity – to be revealed for length of service
- Findings in relation to use of excessive force – PSD will advise the how long this should be revealed for
- Findings in relation to neglect of, or failure to properly complete case preparation or improper handling of witness statements – PSD will advise the how long this should be revealed for
- Any other matter deemed relevant by PSD - PSD will advise the how long this should be revealed for

4.2.6 These guidelines are subject to PSD discretion, employees will be notified in writing if further revelation is required.

4.2.7 PSD will provide employees written directions on the requirement to reveal that particular sanction or finding as soon as practicable after the conclusion of misconduct proceedings.



4.2.8 If they are unsure about their discipline record or about the revelation requirements for a particular matter, employees should contact PSD for advice.

4.3 Criminal

4.3.1 **Live criminal investigations** - When an employee has been charged with a criminal offence this is relevant for revelation and should be recorded on an MG6b form. PSD should be made aware of any criminal proceedings taken against employees and can advise them on the wording of revelation.

4.3.2 If this occurs after initial disclosure documents including an MG6b have been submitted, a further MG6b must be completed and passed to the CPS in line with the continuing duty to disclose.

4.3.3 If the case against an employee is discontinued, they should inform the CJU and submit an updated MG6b form.

4.3.4 **Criminal convictions** - BTP employees must reveal the existence of:

- Criminal convictions for recordable offences, whether spent or otherwise
- Criminal cautions for recordable offences
- Penalty Notices for Disorder

For details of recordable offences please refer to the National Police Records (Recordable Offences) Regulations 2000 and associated amendments.

4.3.5 **Adverse Judicial Findings** - Validated adverse judicial findings are required to be disclosed for the length of the employee's service. If a subsequent investigation into an adverse finding reveals information that casts doubt on the finding this should be reflected in the comments on the MG6b form. Employees will be informed in writing by PSD if this is the case.



4.3.6 **Administration** - The MG6b should be submitted in a sealed envelope marked restricted along with the completed statement. The MG6b form is a confidential form and will not be given to the defence. The CPS will use the information on the form to make a decision as to whether it is relevant to the case in hand and therefore necessary to reveal to the defence following a separate procedure. Revelation on the MG6b does **not** mean automatic disclosure to the defence; this is a decision for the CPS.

4.3.7 If during the lifetime of the case there is a change in the status of an employee's misconduct or criminal information, for example a written warning becomes expired, charges are dropped or the employee is notified of the intention to take them to a misconduct hearing, this must be reported to the CPS. This should be on an updated MG6b form including a clear explanation of why the situation has changed.

4.3.8 If an employee has no findings or convictions against them this should be entered on the **MG6 form** (confidential information) and the form submitted in accordance with force instructions. **Negative returns of MG6b forms are not required.**

5 PROCEDURES – SCOTLAND

5.1 Under existing common law, the Crown has an obligation to disclose (a) all material that forms part of the prosecution case and (b) any other material obtained in the course of the investigation which either materially weakens the prosecution case or materially strengthens the defence case. This includes information which could cast doubt on the integrity, reliability or credibility of any witnesses called to give evidence during criminal proceedings. Any material previous convictions or outstanding charges (PCOC's) of police officers and staff fall within this category along with certain police officer misconduct findings. All categories of misconduct where admitted or proved and



dealt with at Misconduct Proceedings, should be revealed to the Crown for the purposes of potential disclosure.

- 5.2 Procedures for revelation to the Scottish Judicial System vary from those for England and Wales. Employees based in Scotland are advised that all relevant criminal and misconduct sanctions are revealed to the Crown Office and Procurator Fiscal Service (COPFS) by PSD. Revelation of Criminal history or Misconduct for employees based elsewhere but taking part in criminal proceedings in Scotland is carried out by PSD. The Officer in charge of the case must advise PSD of all BTP employees not based in Scotland but who are listed in witnesses in a prosecution report. PSD will reveal to the Crown any Criminal History (normally from the Scottish Criminal History system), (CHS) and all relevant Misconduct.

6 RELATED DOCUMENTS

- 6.1 [Misconduct and Unsatisfactory Performance or Attendance Policy](#)
[CPS Disclosure Manual](#)
[Criminal Procedures & Investigations Act](#)
[Justice Directorate Manual of Guidance](#)
[MG6b](#)
[ACPOS Disclosure in Criminal Proceedings Manual of Guidance](#)

7 MONITORING & COMPLIANCE

- 7.1 PSD will monitor this SOP for compliance and effectiveness.