



# CONVICTIONS, CAUTIONS AND FINANCIAL CRITERIA STANDARD OPERATING PROCEDURE (SOP)

<b>STANDARD OPERATING PROCEDURE (SOP)</b>			
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<b>PORTFOLIO</b>	Deputy Chief Constable		
<b>OWNER</b>	Head of Professional Standards Department (PSD)		
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**CONTENTS**

1 INTRODUCTION.....3

2 KNOWLEDGE.....4

3 RECRUITMENT .....5

    3.1 Recruitment - General ..... 5

4. CRIMINAL CONVICTIONS AND CAUTIONS .....6

    4.1. General..... 6

    4.2 Application ..... 7

    4.3 Non Police Personnel ..... 10

5. FINANCIAL ..... 10

    5.1 Financial Considerations ..... 10

6. Taint ..... 12

    6.1 Taint – General Considerations ..... 12

    6.2 Taint Process..... 13

    6.3 Taint - Scotland ..... 14

APPENDIX A and B - Convictions, Cautions and Financial Criteria SOP.



## **CONVICTIONS, CAUTIONS AND FINANCIAL CRITERIA STANDARD OPERATING PROCEDURE**

### **1 INTRODUCTION**

- 1.1 This procedure enforces and is subject to the conditions of the Vetting Policy (Policy/247/10).
- 1.2 This Standard Operating Procedure (SOP) supports the Recruitment Vetting SOP and associated documents and policies.
- 1.3 This SOP is based on the following principles:
  - The public is entitled to expect that police forces will recruit people who demonstrate the highest standards of professional conduct, honesty and integrity;
  - Those who work for, and with, police forces can be vulnerable to pressure from criminals and others to disclose information;
  - Convictions, cautions and other material information which reflects on personal integrity must be revealed by police officers and others in the evidential chain, in accordance with the Crown Prosecution Service (CPS) Prosecution Team Disclosure Manual, to the CPS on every occasion that they submit a statement of evidence in a criminal case. This information will be used by the CPS to assess the strength of the individual's evidence and, if the case proceeds, it is likely then to be disclosed to the defence and may be used in open court to attack the credibility of the officer. Such an occurrence could undermine the integrity of the evidence, the witness and the force;
  - Police forces should not recruit people with convictions, cautions and judicial or other formal disposals, which may call in to question the integrity of the applicant or the service;
  - Each case must be dealt with on its individual merits.



- Financial checks will be conducted to meet the force's obligations in respect of the prevention of crime and public safety by assessing applicants' financial position, either at the point of entry in to the organisation or as they apply to move into sensitive or 'designated' posts.

1.4 This procedure applies to England, Wales and Scotland.

1.5 This procedure applies to all BTP employees, volunteers, members of other agencies, non police personnel and those acting as our servants or agents.

## **2 KNOWLEDGE**

### **2.1 Terms and Definitions**

2.1.1 In this guidance the term 'caution' includes reprimands, formal warnings and final warnings which must be declared regardless of the date of the 'caution'. Other forms of restorative justice are also included. The term 'convictions' includes 'spent' convictions. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 provides that the Act shall not apply to the police service. Police forces are therefore entitled to ask all prospective applicants for appointment to or direct employment by a police force, or third parties employed for the purposes of, or to assist, a Constable of a police force to reveal spent convictions during the recruitment or vetting process. This does not apply to the spent convictions of applicants' families or associates.

2.1.2 Cases of criminal/anti-social behaviour where the case disposal has been by way of fixed penalty notice(s) should also be taken into consideration. For vetting purposes, fixed penalty notices are to be treated as a caution.

### **2.2 Responsibilities**

2.2.1 The Deputy Chief Constable is responsible for the implementation and integrity of the vetting process and ensuring the allocation of resources and promoting these procedures throughout BTP.

2.2.2 The FVO is responsible for establishing vetting policies, procedures and standards for BTP and implementing processes in line with ACPO National Vetting Policy for the Police Community.

2.2.3 Departmental Heads and Area Commanders are responsible for ensuring that all staff that have responsibility for recruitment (including non police personnel) follow established policies, procedures and standards before allowing anyone access to BTP premises or information. They should report any non compliance with policies and procedures to the FVO.

### **3 RECRUITMENT**

#### **3.1 Recruitment - General**

3.1.1 Before recruiting anyone to work in a police force thorough checks must be undertaken to ascertain whether anything is known to the detriment of the applicant, his/her spouse or partner, close relatives, in-laws, or those residing or associating with the applicant and any self declared or discovered criminal associations, which could heighten vulnerability, bring discredit upon, or otherwise cause embarrassment to the police service.

3.1.2 Checks on National systems, force crime information system, local intelligence, counter terrorism databases, and other relevant non-conviction database systems will be appropriate for the applicant and their spouse or partner, close relatives, in-laws, or those residing or associating with the applicant and any self declared or discovered criminal associations.

3.1.3 Such checks should be conducted promptly to avoid delays in processing the applications and forces have agreed to a reciprocal turn round of such requests within 14 calendar days.

3.1.5 Where appropriate, searches should also be made against Military and Police

Professional Standards databases.

## **4. CRIMINAL CONVICTIONS AND CAUTIONS**

### **4.1. General**

4.1.1 The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 provides that the Act shall not apply to the police service. Police forces are therefore entitled to ask all prospective applicants for appointment to or direct employment by a police force, or third parties employed for the purposes of, or to assist, a Constable of a police force to reveal spent convictions during the recruitment or vetting process. This does not apply to the spent convictions of applicants' families or associates.

4.1.2 The convictions criteria to be applied to recruitment vetting can be found at [Appendix A](#).

4.1.3 In view of the wide range of duties now carried out by police staff the vetting criteria identified at [Appendix A](#), must be applied equally to the recruitment of police officers, police staff and members of the special constabulary.

4.1.4 The criminal convictions and cautions criteria defined by this SOP must be used to assess each application on an individual basis. Eligibility will depend on the nature and circumstances of the offence. It is not possible to set out a full list of convictions that will preclude a person from joining the police service. Each case will be considered on its merits, and if the offence is deemed sufficiently serious a person will be rejected irrespective of age at the time of offending. Force Vetting Unit (FVU) should base their decision on the available information. There is no obligation upon the FVU to reinvestigate the allegation.

4.1.5 There may be circumstances where an individual does not fall within the criteria, but whose suspected involvement in crime, or criminal associations, make an offer of appointment inappropriate.



4.1.6 The requirements Chapter 18 of the CPS Prosecution Team Disclosure Manual must be considered when making decisions on suitability.

4.1.7 All decisions will be clearly documented and must include the rationale behind the decision.

## **4.2 Application**

4.2.1 Applicants must declare if they have ever been investigated, arrested, summonsed, charged, cautioned or convicted for any offence by any UK or non-UK Police Force, Law Enforcement Agency or any other statutory prosecuting authority or agency – this includes, but is not limited to:-

- Traffic offences (including fixed penalty notices excluding parking);
- Receipt of an absolute/conditional discharge or bindover;
- Receipt of a reprimand, warning, final warning or caution or other form of restorative justice as an adult or juvenile;
- Being the subject of an Anti-Social Behaviour Order, Football Spectator Banning Order, Risk of Sexual Harm Order, Harassment Order;
- Being issued with a Penalty Notice for Disorder or other Fixed Penalty Notice (other than for parking).

In addition, the following must also be declared;

- Any involvement with the military authorities on disciplinary matters (whether involving court martial or not);
- Involvement in a criminal investigation as a suspect (whether or not this has led to a prosecution);
- Association with criminals;
- Being subject of Service Confidence Procedure;
- Any other matters which might be relevant.

4.2.2 Applicants must be advised to carefully read the appropriate notes for guidance when completing application forms.



- 4.2.3 Applicants should not be informed that they have been ‘successful pending the satisfactory completion of security checks’. They should be informed that any offer of appointment is made on the satisfactory completion of all medical, reference and vetting procedures.
- 4.2.4 Where an applicant has failed to disclose a conviction, caution or other relevant information as outlined above, his or her application should be rejected at this stage on the grounds of honesty and integrity.
- 4.2.5 Where an individual discloses any outstanding investigation the decision should be deferred until the outcome is known, at which point it will be considered in accordance with this guidance.
- 4.2.6 Serving members of the armed forces who are convicted of any criminal offence by a military tribunal will normally have any such offence recorded on the Police National Computer (PNC). This will include any aspect of a conditional discharge. In certain circumstances, the PNC is not updated. Therefore, it is essential that a military check is undertaken on all applicants who have previously served in the armed forces.
- 4.2.7 Where adverse information relating to a third party is revealed, consideration will be given to what risk this information poses to:
- The organisation
  - The individual
  - The public
- 4.2.8 A third party is any individual whose details have been supplied as part of the vetting process, or about whom information has been uncovered as part of the enquiries undertaken during the vetting process. Examples of third parties include, but are not limited to:
- Parents



- Partners
- Siblings
- Children
- Extended family
- Partners extended family
- Co-habitant
- Business partners
- Known associates

4.2.9 Whilst a definitive list of factors which should be taken into consideration cannot be made, the following factors which may count in support of/against granting clearance

Factors Against Clearance Being Granted:

- Evidence of joint enterprise
- Currency of convictions/cautions of the relative/associate
- Currency of intelligence of relative/associate
- Gravity of offences committed by relative/associate
- Nature of relationship
- Fiduciary of relationship between parties.

Factors in Support of Clearance being Granted

- Evidence of distance between applicant and third party
- Currency of conviction/caution of third party
- Current of intelligence relating to third party
- Gravity of offences committed by third party
- Openness of applicant
- Ignorance of third party's activity

4.2.10. The factors listed above will only be used as a guide as to what kind of information should be taken into consideration. It is stressed that **each case must be decided on its own merits**, taking all relevant information into account.



4.2.11. Where the applicant has omitted the declaring of an individual whose details are required on vetting forms and adverse information is held about that individual, the assumption should be that the details have been deliberately omitted and should ordinarily be treated as an integrity issue in the first instance

4.2.12. A decision that an applicant is 'unsuitable' on the basis of third party' convictions, intelligence material or his/her criminal associations will be taken by the FVO. The results of checks on third parties will not be disclosed to an applicant.

### **4.3 Non Police Personnel**

4.3.1 There are different levels of non-police personnel vetting and the convictions and cautions criteria to be applied will vary according to the level of access to police assets and/or information. The criteria identified at Appendix A should be applied to NPPV Levels 2 and 3, whilst the criteria identified at Appendix B should be applied to NPPV Level 1.

4.3.2 All decisions must be clearly documented and any deviations from the guidance in this SOP should be carefully considered and authorised at the appropriate level

## **5. FINANCIAL**

### **5.1 Financial Considerations**

5.1.1 Financial checks will be conducted to meet the force's obligations in respect of the prevention of crime and public safety by assessing applicants' financial position, either at the point of entry in to the organisation or as they apply to move into sensitive or 'designated' posts.

5.1.2 National Police Improvement Agency (NPIA) Circular 01/2010 states that applicants to the police service should normally be free from undischarged debt or liability and be able to manage existing loans. The emphasis should be on the sensible management of debt.



- 5.1.3 The ACPO National Vetting Policy recommended that the same standards be applied to applicants for police staff roles.
- 5.1.4 Paragraph 4 of Schedule 1 to the Police Regulations 2003 states that a member of a police force shall not wilfully refuse or neglect to discharge any lawful debt. This applies to Police Officers and Members of the Special Constabulary only, not Police Staff.
- 5.1.5 Application and/or vetting forms will include a number of finance related questions and the security vetting process should include a check with a credit reference agency.
- 5.1.6 Applicants who have existing County Court/Sheriff Court Judgements outstanding against them should not be considered.
- 5.1.7 Applicants who have discharged the County Court Judgements/Sheriff Court Judgements should be considered.
- 5.1.8 Applicants who are subject of a current Individual Voluntary Arrangement (IVA)/Trust Deed should not be considered.
- 5.1.9 Applicants who have discharged the IVA/Trust Deed should be considered.
- 5.1.10 Applicants who have been registered bankrupt/subject of sequestration and their bankruptcy/sequestration debts have not been discharged should not be considered.
- 5.1.11 Applicants who have been registered as bankrupt/subject of sequestration and their bankruptcy/sequestration debts have been discharged should not be considered until three years after the discharge of the debt.



5.1.12 For the purposes of police recruitment, former Directors of limited companies which have become insolvent who apply to the police force should be treated as if he/she were bankrupt even though the debts are in the name of the company.

5.1.13 Careful consideration should be given where a credit reference check reveals that applicants have defaulted account(s).

5.1.14 Where debts are declared, the financial vetting check should be made at the start of the recruitment process. Otherwise, it may be conducted post assessment and prior to appointment.

5.1.15 Financial checks are required for NPPV Level 2 and 3 and the above principles should be applied.

## 6. Taint

### 6.1 Taint – General Considerations

6.1.1 The principles of taint are set out in Chapter 18 of the CPS Prosecution Team Disclosure Manual (previously the Joint Operational Instructions – JOPI).

6.1.2 The driver for the implementation of taint is best demonstrated through case law.

- **R v Edwards (1991)** – This case was an appeal against a conviction for armed robbery. The SIO had been the subject of a disciplinary reprimand for forging interview notes in a previous case. This was not disclosed to the defence in the original trial. The appeal was allowed and the conviction quashed.
- **R v Guney (1998)** – This was an appeal against a conviction for possession of drugs and firearms. A number of officers involved in the original arrest & investigation had been investigated under Operation JACKPOT (an internal misconduct investigation). Details of Operation JACKPOT had not been disclosed to the defence in the original trial. Again, the appeal was allowed.



6.1.3 In the above case, the following judicial comment was made:

“Evidence of previous misconduct may help demonstrate that the weight to be attached to the evidence of a witness is limited or derisory”.

## 6.2 Taint Process

6.2.1 When a Police Officer, Special Constable or member of Police Staff is required to give evidence at Court in England and Wales in their official capacity, they are required to complete a form MG6B, disclosing relevant information, such as:

- Details of any criminal convictions/cautions, spent or otherwise and penalty notices;
- Details of any criminal offences for which summons have yet to be issued;
- Details of any criminal proceedings which have not been completed;
- Details of any adverse Judicial Findings or comment in a criminal or civil court that the individual has misled the court;
- Details of Police discipline (including Police Staff)
  - Disciplinary findings of guilt at a misconduct tribunal
  - Relevant formal written warnings and relevant disciplinary cautions
  - Disciplinary proceedings which have not been completed.

6.2.2 Any information disclosed is evaluated by the CPS and may be forwarded to the defence.

6.2.3 It is therefore of the utmost importance that those whose evidence cannot be relied upon in Court are not recruited to police forces.

6.2.4 It should be borne in mind that there are anomalies between taint and National Police Improvement Agency (NPIA) Circular 01/2010.

6.2.5 Under the above circular, it would be possible for a tainted individual to be appointed as a Police Officer.



- 6.2.6 When considering applications for RV clearance the ramifications of historic convictions/cautions for certain offences, such as those involving deception/violence, should be evaluated in light of the requirements of Chapter 18 of the CPS Disclosure Manual i.e. such offences which would always be disclosed to the CPS.
- 6.2.7 The impact of appointing an individual who is tainted cannot be underestimated and can heavily affect the deployment of such an individual on appointment, and in some cases throughout their career. Generally, the impact of taint will lessen as the time since the 'finding' recedes. Thus, when recruiting or appointing a tainted individual, they must be made aware of the impact that such a requirement will have on their career. Particular care must, therefore, be taken when clearing a candidate who will have to disclose matters outlined in paragraph 6.2.1.
- 6.2.8 Further guidance can be obtained from the CPS Prosecution Team Disclosure Manual, Chapter 18.
- 6.3 Taint - Scotland**
- 6.3.1 A joint protocol exists in Scotland between the Scottish Police Service and the Crown Office and Procurator Fiscal Service (COPFS). A service wide agreement sets out business rules for the disclosure to the defence of statements, previous convictions and outstanding charges.
- 6.3.2 In Scotland, previous convictions and outstanding charges are recorded on the Criminal History System (CHS) and a CHS number is allocated to the person who is the subject of such a record.
- 6.3.3 Scottish police forces carry out regular checks and details of all Police Officers in Scotland with CHS numbers are sent to the COPFS and entered on a secure database. Prior to any trial a search of the database is made by COPFS to ascertain if any of the police witnesses are recorded. The decision to disclose convictions or



outstanding previous charges is at the discretion of COPFS and is dependent on a number of matters.

6.3.4 At present the process only applies to police officers.