



This Procedure links into the Policy for Annex A Joint Operating Procedure with the Crown Prosecution Service.

PD 081 – Procedure in Respect of Annex A Joint Operating Procedure with the Crown Prosecution Service

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SECTION 1 TITLE

Procedure in respect of Annex A Joint Operating Procedure with the Crown Prosecution Service

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1. INTRODUCTION

- 1.1 The Criminal Procedure and Investigations Act 1996 (CPIA) and the code of practice issued under it were designed to ensure there was a fair system for the disclosure of unused material which assists the defence in the timely preparation of its case and enables the court to focus on all the relevant issues in the trial.

- 1.2 The ACPO and CPS Joint Operational Instruction (JOPI) is an agreed protocol to ensure that the Police and CPS met the requirements of CPIA in relation to disclosure issues.
- 1.3 One area of particular difficulty has been the revelation from police to CPS not only of details of criminal and disciplinary proceedings against officers but of other relevant material such as ongoing investigations or adverse comments made by courts about officers. A number of stated cases and appeals have made this legal obligation clearer and in order to enable the service to avoid ongoing risks of compromise to investigations and prosecutions it has become clear that these legal requirements must be met.
- 1.4 JOPI has recently been reviewed and the specific needs as it relates to the revelation and disclosure of the details of criminal and misconduct proceedings against Police officers and other relevant information have been pulled together into a specific annex of JOPI, Annex A. This annex will form the basis of how the Police service as a whole and CPS will meet their legal requirements in this area of disclosure.
- 1.5 Compliance with this Procedure is not optional. Nottinghamshire Police has a legal obligation to comply with the requirements of Annex A.
- 1.6 Failure to follow the Procedure could lead not only to unfairness to the accused in a court case but also to failed or compromised prosecutions, and convictions that are vulnerable to appeal.
- 1.7 In this Procedure 'revelation' means the process by which material is passed from the Police to the CPS. 'Disclosure' takes place when the CPS consider that any such material might undermine the prosecution case or assist the defence and copies it to the defence or allows the defence to inspect it.
- 1.8 Revelation of material to CPS does NOT necessarily mean it will be disclosed to the defence and disclosure to the defence does NOT necessarily mean the material can be used in court.
- 1.9 The obligation to reveal relevant criminal or misconduct issues does not just refer to Police officers but also to all Police staff who may submit witness statements in prosecutions. Hence this Procedure is equally applicable to Police staff and Police Officers. Those groups of police staff who are likely to submit statements are shown at Appendix A but as the functions of police staff develop more categories may be involved. If you submit a statement this Procedure may be relevant to you.
- 1.10 The Procedure will be effective from the date it is published to the Force.
- 1.11 **The responsibility of revealing details of criminal and misconduct proceedings will be a personal one.** Those officers and police staff to whom the Procedure applies must reveal the relevant details to the officer preparing the prosecution file at the time their witness statement is submitted. This includes statements which do not form part of the prosecution case (re

JOPI para 4). Failure to do so could constitute a breach of the code of conduct for Police Officers and a breach of contract for police staff.

- 1.12 If an individual is ever in doubt about their obligation to reveal information as described by this Procedure they should seek advice from HQ(PSU) or from the relevant Criminal Justice Unit Manager within HQ(CJ).
- 1.13 Responsibility for monitoring the effectiveness of these procedures will be that of HQ(CJ), (see section 5).
Responsibility for revealing other related and relevant issues to CPS will fall to the Head of HQ(PSU). (See section 3).

2. REVELATION OF MATERIAL TO CPS BY POLICE OFFICERS

- 2.1 The following details must be revealed by any member of Nottinghamshire Police submitting a statement that is to form part of a full prosecution file:-

Criminal convictions and criminal cautions.

(See 2.5A)

Criminal proceedings which have not been completed.

(See 2.5A)

Disciplinary findings of guilt at a misconduct tribunal.

(See 2.5B)

Disciplinary proceedings which have not been completed.

(See 2.5B)

Adverse judicial findings.

(See 2.5C)

Any RELEVANT formal written warnings and RELEVANT

(See 2.5D)

Disciplinary cautions.

- 2.2 Revelation should be made by the individual completing a form MG6B. This form should be submitted to the officer preparing the full file at the same time as the statement. The officer preparing the file will submit the MG6B to CPS and where appropriate form MG16 (list of previous convictions) and MG17 (list of cautions).
- 2.3 The MG6B should contain sufficient detail to enable CPS to determine the relevance, or otherwise of the material to the case in question. If details are insufficient CPS will return the form for resubmission.
- 2.4 Form MG6B will not be sent to the defence and it should be emphasised that revelation of the details on MG6B to CPS does not necessarily mean that they will be disclosed to the defence. This also means that this material should not be referred to on the MG6C.
- 2.5 **Explanation of Terms**

A) **Criminal Convictions and Criminal Cautions:-**

Details

of the existence of all criminal convictions or cautions for recordable offences must be revealed, whether spent or otherwise.

Details of all recordable criminal offences with which an individual has been charged or reported for summons but in which proceedings have not been completed must be revealed.

B) **Disciplinary Findings of Guilt at a Misconduct Tribunal:-**

Details of **ALL** proven breaches of the Codes of Conduct recorded against an individual **MUST** be revealed. The only exceptions are:-

- Breaches that have been expunged in accordance with Police Regulations. (Those members of staff with finding of guilt will be informed at the time of the finding of the relevant expunction dates.)
- Breaches specifically in relation to charges arising out of neglecting health, appearance or entering licensed premises.

Details of all disciplinary matters which a member of staff has been notified under Reg. 14 of the Police (Conduct) Regulations are to be heard by a disciplinary hearing but which are not yet complete, **MUST** also be revealed. In layman's terms, this means that when a member of staff is formally charged with disciplinary charges as opposed to issued with a Regulation 9 Notice the details of the offences charged **MUST** be revealed. HQ(PSU) will advise on this at the time of the charging and assist in compiling the updated MG6B.

(Service of a notice under Regulation 9 of Police (Conduct) Regulations that an allegation has been made against an individual does not need to be revealed.

Following any hearing where a breach of the Codes of Conduct is proven against a member of staff, the individual will be issued with an updated complete MG6B by HQ(PSU). This will inform the member of staff of matters to be revealed to CPS when completing a statement for inclusion in a full file of evidence. The member of staff's disciplinary record will contain a copy and contain written evidence as to why it is revealable and for how long. Any review dates will be included, whether and for how long the details shall be revealed in accordance with this procedure.

C) **Adverse Judicial Findings :-**

An adverse judicial finding is a finding by a court, either expressly or by inevitable inference, that a police witness has knowingly, whether on oath or otherwise, misled the court. Such a finding is usually

expressed by the magistrate or Judge hearing the case making comment in open court. If an adverse finding is made against an officer or member of police staff in either a criminal OR civil court then the CPS or lawyer representing Nottinghamshire Police in the court will take as full a note as possible of the judicial findings, if possible obtain a transcript and inform the Head of HQ(PSU) of the details of the findings.

The Head of HQ(PSU) will then develop an agreed MG6B with the individual and will make sure that the individual knows about his or her responsibilities to reveal it. That individual will then subsequently reveal it on each occasion he/she submits a statement to a full prosecution file as described in 2.2.

If a subsequent enquiry exonerates the officer or casts doubt on the finding, this should be reflected in an amendment to the wording of the MG6B as agreed between the individual and HQ (PSU).

D) RELEVANT formal written warnings and RELEVANT Disciplinary cautions :-

A complaint or allegation may result in a member of staff being given a formal written warning or, after a misconduct hearing, being given a caution. **RELEVANT formal written warnings and RELEVANT misconduct cautions** received during the **12 months preceding** the date the defendant is summonsed or charged will always be revealed to CPS.

Because of the relatively 'minor' nature of breaches which can result in cautions or written warnings, they are unlikely to have an impact on future criminal proceedings in which the officer is a witness. However any breach in relation to 'Honesty and Integrity' which is disposed of in this fashion may be relevant and may need to be revealed.

It is also possible, but unlikely, that a formal written warning or caution is administered for a discipline offence the circumstance of which has direct relevance to a case in which the member of staff has submitted a statement. E.g. the individual is warned about irregularities in handling exhibits and in a forthcoming trial the integrity of an exhibit is questioned. In such a case the warning should be revealed. (This is a difficult area and any member of staff who is not sure about revelation should seek guidance from the Head of HQ(PSU) or another senior member of the Unit)

3. RESPONSIBILITIES OF PROFESSIONAL STANDARDS UNIT

- 3.1 The Professional Standards Unit (HQ(PSU)), should ensure that they are familiar with the requirements of this procedure and available to give advice to any member of staff where necessary.

- 3.2 The Complaints Administration Bureau (CAB) within HQ(PSU) will maintain a record of all members of Nottinghamshire Police to whom this procedure applies i.e. Of those persons who are obliged to make revelation as described in the procedure. The record will be maintained to ensure it is accurate, up to date and kept in a confidential fashion. It will be used to help ensure that Nottinghamshire Police is meeting it's obligations as set out in the Criminal Procedure and Investigations Act 1996 and JOPI Annex A. Disclosure of this record will be no wider than is necessary to fulfill this purpose,
- 3.3 Following any proceedings where a serving Police Officer is found guilty of a criminal or disciplinary offence, or a serving member of police staff is found guilty of a criminal offence or given a final written warning following the disciplinary process, HQ(PSU) will serve a notice that will inform the individual, amongst other things, whether and for how long the details shall be revealed in accordance with this procedure.
- 3.4 Where an officer or member of police staff is dismissed or required to resign as a result of disciplinary proceedings OR resigns during the course of a criminal or disciplinary enquiry, the Head of HQ(PSU) will inform the Senior Branch Prosecutor of the area where the individual served and their Divisional/Department Commander who will ensure the relevant CPS is informed for all cases in which the individual is involved.
- 3.5 When the Head of HQ(PSU) is informed that an adverse judicial finding has been made against a member of Nottinghamshire Police he/she will arrange for an MG6B to be prepared which has a suitable form of words describing the finding. The individual will subsequently reveal that finding as described in sections 2 and 3. HQ(PSU) will retain a copy of the document.

3.6 Exceptional Circumstances

Paragraph 2.1 describes the circumstances when members of Nottinghamshire Police are required to personally reveal information to CPS when making a statement. However there may be **exceptional circumstances** where the interests of justice require relevant material in circumstances outside those in 2.1 to be revealed. Such material would usually be that which affects the credibility of a member of staff where that credibility is or might be an issue at court. Each case should be treated on its own merits and where the Head of HQ(PSU) is aware of such information he/she should seek guidance from the CPS Unit Head. This is a difficult area of both law and practice and early liaison between Police and CPS is essential.

The following examples are not exhaustive but give examples of situations where revelation should take place or be considered:

- 3.7 Where a member of Nottinghamshire Police has been suspended pending a criminal or disciplinary enquiry the Head of HQ(PSU) will reveal information about the case to CPS whether charges have been brought or not. This will be effected by memo to the CPS Unit Head where the individual

serves AND sending a copy to the individual's Divisional/Departmental Commander who will ensure the relevant CPS is informed for all cases in which the individual is involved.

- 3.8 The Nottinghamshire Police Service Confidence Procedure is a newly adopted process where a decision may be made to restrict a member of staff to certain duties, or change his/her posting because of concerns about their integrity based on sensitive information/material. The process is administered by the Head of HQ(PSU). Should an individual be subject of the procedure then the Head of HQ(PSU) will make revelation to the relevant CPS Unit Head.
- 3.9 Police Officers are not required to reveal when they have been served with a notice under Regulation 9 that an allegation has been made against them. However Supt. HQ(PSU) should consider with the whether the interests of justice require revelation of that information and provide it to the CPS if required.
- 3.10 There may be occasions when, during an **ongoing** covert investigation into a member of staff reliable adverse information comes to light about him/her that falls to be revealed in accordance with 3.6. At the stage when it is believed that the adverse information is prima facie true the Senior Investigating Officer should inform the Head of HQ(PSU) who will reveal details to the CPS Head of Unit in the strictest confidence. Having revealed such information CPS will decide how to proceed with relevant prosecutions involving the staff member after discussion with the Police. This will usually be one of three options:-
- A) Disclose the information, which may mean not using the individual as a witness and potentially compromising the investigation of him/her.
 - B) Abandoning the prosecution allowing completion of the investigation.
 - C) Delaying disclosure without causing unfairness to the accused to allow completion of the covert stage of the investigation.
- 3.11 Very rarely there may be occasions when an allegation is made against a member of staff by a credible witness (e.g. A resident informant) in circumstances where a prosecution of the allegation cannot take place because of a lack of corroboration or supporting evidence. It may be that the account is so credible that it should be revealed. The officer holding this information must inform the Head of HQ(PSU) who will meet with the CPS Head of Unit to discuss whether the information should be revealed and disclosed on its merits. It is essential that there is very close and early liaison between the Head Of HQ (PSU) and the CPS Head of Unit.
- 3.12 In Where issues of taint arise which cast doubt on previous investigations in which an individual has been involved, The Head of HQ(PSU) will decide, in

liaison with the CPS Head of Unit, whether and upon what parameters a review of those investigations will be conducted.

4. RESPONSIBILITIES OF PERSONNEL DEPARTMENT

4.1 If a member of police staff who is likely to submit a statement, see para 1.9, either:-

- Is subject of a final written warning
- Is suspended pending investigation of a criminal or misconduct matter
- Is required to resign following misconduct proceedings or
- Resigns during a criminal or misconduct investigation

The Head of HQ (Human Resources) will notify the Head of HQ(PSU) of the circumstances to enable the Head of HQ(PSU) to update records, serve notices and make revelation where necessary as described in paras 3.2 to 3.4. This responsibility extends to notification of any successful appeal, acquittal or conclusion of an investigation. Updates should be completed as early as possible and with due regard to trial dates.in order that the CPS can be confident that information on the MG6B is up to date.

5. RESPONSIBILITIES OF HQ(CJ) DEPARTMENT

5.1 HQ(CJ) will have ownership of this policy and procedure. The procedure will be reviewed at least once every two years from its date of first publication. Review may be earlier if necessitated by changes in legislation, guidance or relevant experience.

5.2 The procedure will be published to the Force on Weekly Orders. The Policy Statement and procedural document will be available on the Force Intranet

5.3 HQ(CJ) will be responsible for monitoring the application of this procedure to ensure that it is being consistently adhered to. The monitoring will take the form of the dip sampling of relevant prosecution files submitted by Divisions and Departments from across the Force. Monitoring will be an ongoing process the results of which will be shared with the Head of HQ(PSU) for his/her information.

6. RESPONSIBILITIES OF FORCE SOLICITOR

6.1 The Force Solicitor must ensure that if an adverse judicial finding is made in any Civil Court concerning a Nottinghamshire Police member of staff then that finding is recorded in full and a transcript requested where available. The finding will then be passed to the Head of HQ(PSU) for recording and action as described at 3.5

6.2 It is important that any advocate representing Nottinghamshire Police in a civil court clarifies the status of any adverse comments made by the court about the evidence given by a member of the Force. The advocate must confirm whether the court intends its comments to be treated as an adverse finding that would be disclosable in future cases or not.

7. RESPONSIBILITIES OF DIVISIONAL/DEPARTMENTAL COMMANDERS

- 7.1 If a Police Officer is subject of a formal written warning administered by Divisional or Departmental Command then details of the warning must be sent to the Head of HQ(PSU) for recording.

8. RESPONSIBILITY OF OFFICER PREPARING FILE

- 8.1 The responsibility for revealing previous convictions, cautions etc is that of the individual member of staff who supplies the statement. The officer in the case is not now required to check for previous convictions of Nottinghamshire Police personnel. Should the officer in the case become aware that a Form MG6B or report form in the case of Police staff has not been submitted as required by this procedure then he/she should inform the Head of HQ(PSU).

9. HUMAN RIGHTS CONSIDERATIONS

- 9.1 Application of this procedure has the potential to engage Articles 3 and 8 of the European Convention on Human Rights. E.g Prohibition of degrading treatment and right to respect for private and family life. Such an interference must have a legitimate aim/s which in this case are:-

1. The prevention of disorder and crime
2. The protection of the rights and freedom of others.

- 9.2 Where there is a potential interference with an individual's rights there must always be sufficient reason and the interference must be justified, proportionate and least intrusive. Application of this procedure is justified by the clear requirements of CPIA 1996 and JOPI Annex A to disclose relevant material which provide the legal basis for the interference. Proportionate means that the action taken in pursuit of the procedure must be proportionate to its aims. In this case the procedure seeks to ensure that Nottinghamshire Police complies with the disclosure requirements of the legislation and the described revelation methods are proportionate to achieving that aim. It is also relevant that revelation to CPS does not automatically mean disclosure to the defence and/or use in court. Proportionality will also be addressed in the decision as to whether material revealed in accordance with the procedure is actually disclosed.

- 9.3 The courts have demonstrated that ensuring defendants have the right to a fair trial, Article 6 ECHR, is of paramount importance and this procedure reflects that.

SECTION 4 LEGISLATIVE COMPLIANCE STATEMENT

This document has been drafted to comply with the general and specific duties in the Race Relations (Amendment) Act 2000, Data Protection Act, Freedom of Information Act, European Convention of Human Rights and other legislation relevant to the area of policing.

Appendix A

Police staff likely to submit statements

Crime scene examiner

Forensic Collision Investigator

Enquiry Clerk

Plan Drawer

Photographer

Fingerprint officer

Communications officer

Traffic warden

Police and community support officer

Intelligence analyst

Detention officer

Speed Enforcement Officer

The list is not definitive and as the roles performed by police staff extend, more will be added.

Remember, ANY member of police staff that submits a statement to form part of a full prosecution file must follow the provisions of this procedure.