



Criminal and or Misconduct Records of Officers and Staff – Disclosure to the CPS (MG6B)

Policy

Former Officer Misconduct Policy

Procedure

1. Introduction

1.1 This procedure sets out the local arrangements for revelation of criminal and misconduct outcomes to the Crown Prosecution Service (CPS) by police officers and police staff, including special constables. This procedure may extend to volunteers and contractors involved in submitting witness statements because of their police role. It details the information which officers and any staff are required to reveal to the prosecutor and provides guidance on what information may need to be revealed.

2. Statement

2.2 The overriding aim is to ensure fairness to the accused in criminal trials, and to reduce the likelihood of appeals.

1). What is 'revelation'?

- 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 the 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.

'Relevant' means capable of having an impact on the case concerned.

- This guidance applies to all police officers and police staff who are likely to submit witness statements in their police role, for example, but not exclusively, detention officers, police photographers, scenes of crime officers, investigating officers and PCSOs.

2). Who should complete the MG6B form?

Police officers and police staff are individually responsible for revealing relevant misconduct and criminal outcomes to the CPS (via the Central Prosecutions Unit) using the MG6B document. On the Surrey & Sussex SharePoint the CJ Hub Guidance –'Disclosure – The MG6B' provides information on how an individual submits the MG6B to the CPS provided by PSD. PSD currently complete the template so as to ensure consistency and accuracy of content across the organisation.

3). When should the MG6B form be submitted to CPS?

The requirement to submit a MG6B is a personal one and applies in all cases where a witness statement is submitted in a file for first hearing in Not Guilty Anticipated Plea (NGAP) Magistrates court cases or in upgraded files for cases sent to the Crown Court as outlined in the national Transforming Summary Justice (TSJ) initiative, which went live in Surrey on 1st May 2015.

See CPS Disclosure Manual, Chapter 18: Revelation and Disclosure of Police Misconduct

4). Which findings must be recorded on a MG6B?

The CPS Disclosure Manual defines the following matters as disclosable:

- Relevant Misconduct Finding
- Adverse Judicial Finding
- Criminal convictions for recordable offences, whether spent or otherwise
- Criminal cautions for recordable offences. This includes 'juvenile cautions' or reprimands.
- Penalty notices for recordable offences

The findings will be disclosed on an MG6B by the individual concerned. Additional guidance is available from PSD. The above categories are supplemented by the following information:

4.1. Misconduct findings

The final decision on whether information relating to the misconduct of police officers and staff should be revealed to the prosecutor sits with PSD. Some misconduct findings will always be disclosable (for example those relating to honesty and integrity). PSD will direct officers and staff as to which findings must be disclosed by providing them with a relevant MG6B. PSD will complete the MG6B and send this to the subject individual. Guidance on disclosure of the finding and length of time applicable will be directed by PSD at the conclusion of proceedings and they will set a review date, if appropriate.

Where misconduct findings are deemed disclosable for a period of time which has expired, they must nevertheless, be revealed if and when disclosure of 'spent' misconduct findings are specifically requested by the prosecutor. Also, if further findings affect relevance in respect of issues that the prosecution raises, the findings must be revealed to the prosecutor e.g. an excessive force 'spent' finding may become relevant again if the officer received a further finding of excessive force.

Individuals are **not** required to routinely reveal the following categories:

- Complaints that have resulted in a service recovery outcome (Complaint only);
- All complaint matters that have been dealt with otherwise than by investigation (Complaint only).
- Internal misconduct or complaint matters resulting in lessons learnt operational advice now termed Practice requiring Improvement (PRI).
- Complaints or misconduct matters that are deemed unsubstantiated/not proved.

If an officer is in any doubt as to whether such categories may be relevant in a particular case, they must contact PSD for advice.

4.2. Officers and staff under internal investigation

PSD will notify the CPS and Prosecutions and Witness Care managers of officers and staff (in posts likely to have a bearing on the evidential chain) who are suspended from duty.

Officers and staff under internal investigation are in most cases not required to disclose that fact to the CPS until the point in the investigation where written notice has been served requiring attendance at a misconduct meeting or hearing. (PSD again will supply this to the officer /member of staff).

There may however be occasions where, in the interests of justice, information about an ongoing investigation should be revealed and this will be decided by PSD in consultation with the CPS, for example, when it might affect the credibility of a police witness or when the alleged conduct under investigation relates to a breach of the professional standards of honesty and integrity.

4.3. Adverse Findings Procedure

Officers and staff subject to the Adverse Findings Procedure will be notified by PSD if details should be revealed on form MG6B.

4.4. Adverse judicial findings

An adverse judicial finding is a finding by a court, whether expressly stated or by clear inference that a police witness has knowingly, whether on oath or otherwise, misled the court. This includes civil cases where, for example, answers from a civil jury may constitute an adverse judicial finding.

Should it be determined that an adverse judicial finding has been made in respect of a police witness, the officer/police staff member will attend a management meeting at PSD to determine whether any restriction on duties will be necessary (see Adverse Findings and Management Meetings SOP for detail).

4.5. Criminal matters

Police officers and staff must reveal to the prosecutor, on form MG6B, the existence of:

- Criminal convictions for recordable offences, whether spent or otherwise.
- Criminal cautions for recordable offences.
- Penalty notices for recordable offences.

A 'recordable offence' is defined under The National Police Records (Recordable Offences) Regulations 2000. This also includes juvenile convictions/cautions as the Rehabilitation of Offenders Act does not apply to police officers within this process. Notices issued under the Penalty Notices for Disorder Scheme are also included.

4.6. Criminal proceedings which have not been concluded

The prosecutor must be informed, on form MG6B, of details of all criminal recordable offences with which an officer/police staff member have been charged or reported for summons.

5. 'Relevancy'

- 5.1 The MG6B procedure is in place to ensure that we as a force are complying with our obligations under the [Criminal Procedure and Investigations Act 1996 \(CPIA\)](#) to disclose to the Crown Prosecution Service (CPS) any criminal or misconduct record held that may be relevant to on-going criminal proceedings in which an officer or staff member is a witness. The requirement to disclose relevant information means that 'relevant' is assessed, case by case. It is not possible to decide whether a finding is disclosable to the prosecutor by looking at the type of finding and if required, and PSD, in conjunction with the CPS, can give guidance on this.
- 5.2 Some findings will always be disclosable, for example where they relate to honesty or integrity. Others might not; for example, a finding relating to the use of excessive force may have no bearing on a witness whose role is restricted to exhibit handling.

6. What information should be included on the MG6B form?

- 6.1 Where required, PSD will provide a completed MG6B form with guidance to police officers and members of staff. This should not then be altered.
- 6.2 In practice, a senior officer, ~~or~~ adjudicating officer, or panel chair will issue a lawful order or requirement to the individual, informing them that they will now be required to reveal the sanction imposed and the circumstances leading to it. Failure to disclose could be considered as a separate misconduct matter.
- 6.3 This will be communicated to PSD who will create a template MG6B and forward it to the individual. The Central Prosecutions Unit manager will be informed by PSD to ensure compliance.
- 6.4 Individuals must not conduct searches of PNC, Niche or other databases themselves in order to check whether officer or staff witnesses have revealable convictions or misconduct findings.
- 6.5 When a file is submitted for first hearing in Not Guilty Anticipated Plea (NGAP) Magistrates court cases, or a file is upgraded for Crown Court cases, officers and staff who have submitted an MG11 will need to submit their completed MG6B form.
- Officers/Member of staff to password protect MG6B and email
 - Officer/Member of staff to send password

7. Responsibilities of PSD:

- 7.1 PSD will maintain a database of all members of Surrey Police to whom this procedure applies, i.e. of those persons who are obliged to make revelation as described in the procedure.
- 7.2 The database will be maintained to ensure it is accurate, up to date and kept in a confidential fashion.
- 7.2 Following any proceedings where a serving police officer or member of staff is found guilty of a criminal offence or given any formal sanction following the disciplinary process, the PSD will serve notice that will inform the individual, amongst other things, whether the sanction should be revealed in accordance with this procedure.

8. Responsibilities of the Head of PSD:

- 8.1 Where a police officer or member of support staff is dismissed or is required to resign as a result of disciplinary proceedings or resigns during the course of a criminal or disciplinary enquiry, the Head of PSD will inform their Division Commander/Department Head and the Surrey CPS District Crown Prosecutor.
- 8.2 Similar considerations will be made by the Head of PSD when an officer or member of staff is suspended from duty or is the subject of an ongoing criminal/misconduct investigation, or intelligence, and the circumstances might warrant disclosure to the CPS.
- 8.3 PSD will also notify the College of Policing of any cases where an officer is dismissed or leaves the organisation during the Gross Misconduct investigation process.

9. Responsibility of Officer in the Case (OIC) Preparing a File (OIC)

- 9.1 The responsibility for revealing previous convictions, cautions etc. is that of the individual officer or member of staff who supplies the statement. Should the OIC become aware that a form MG6B has not been submitted as required by the procedure then they should inform PSD by contacting the PSD liaison officer if appointed or PSD management.
- 9.2 When requests for upgrade files are received by OIC's they should email all police witnesses advising them of this and request that if any of them have relevant MG6B's these should be submitted to the CPS.

10. Responsibility of the Central Prosecutions Unit (CPU)

- 10.1 The Central Prosecutions Unit will ensure that regular dip checks following upgrade file requests will be conducted against officers and police staff witnesses on the list of those subject to this procedure. The CPU will not have access to the detail of why an **individual** is required to submit a MG6B form. If this procedure applies, a request will be made to the officer directly to supply form MG6B if one has not already been provided. The CPU will not route this request via the OIC.
- 10.2 Non-compliance on the part of an officer/police staff witness will be reported by CPU back to PSD Investigations/management.

11. Responsibility of the Crown Prosecution Service (CPS)

- 11.1 The CPS will not disclose details to the defence without prior consultation with the Head of PSD (or deputy), and also the Independent Office for Police Conduct (IOPC) where the case has been investigated independently by or is being investigated under the direction of the IOPC.
- 11.2 On the date of trial, or earlier, if possible, the prosecutor or caseworker in court will inform the relevant officers/staff witnesses whether the information provided by them on a MG6B has been disclosed or withheld.