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FROM THE DEPUTY GENERAL SECRETARY'S OFFICE

SS/sg

19 March 2009

JBB CIRCULAR NO : 014/2009

To: The Chairman and Secretary
All Branch Boards
Discipline Liaison Officers

Dear Colleagues

REVELATION AND DISCLOSURE OF POLICE MISCONDUCT

As you are aware the Police (Conduct) Regulations 2008 came into force on 1 December 2008 as a result of the work initiated by the 'Review of Police Disciplinary Arrangements' Report, the 'Taylor Report' published in January 2005. One of the outstanding recommendations from that report was;

Recommendation Six

Given that the approach to and the processes for police discipline will radically alter if the key proposals in this report are accepted it is important that the issues of 'taint and disclosure' are re-assessed.

The Police Advisory Board (PAB) Sub Committee has been in discussion with the Crown Prosecution Service (CPS) over the last 3 years in order to ensure that they fully appreciate the change in ethos and culture that the new regulations represent, with the focus on learning, improvement and development. One of our main concerns was the processes within Chapter 18 of the Disclosure Manual (formerly the Joint Operating Procedure (JOPI) between the CPS and ACPO) in relation to time limits for revelation of misconduct findings and adverse judicial findings.

Chapter 18 together with an amended MG6B form have now been re-written and agreed between the CPS and ACPO, taking into consideration all the views of the PAB Sub Committee. This document is being circulated to all Professional Standards Departments (PSD) and will appear on the ACPO Intranet. **It takes effect immediately.**

We are satisfied that these documents are the best that can be achieved and will hopefully assist both our members and the criminal justice system. We believe these changes to be a substantial improvement on the previous system which lacked clarity and consistency.

The new chapter ensures that revelation mirrors the new regulations, with the emphasis on holistic breaches of the Standards of Professional Behaviour, rather than 'pigeon-holing' matters under specific 'labels', such as Honesty & Integrity or Discreditable Conduct etc. This then ensures that the decision on whether or not information is revealable demands more of a valued judgement on a case by case basis.

Although advice on how long a misconduct finding remains revealable should be taken from PSD, in most circumstances, the length of time will be consistent to the length of time a finding remains on an officer's personal file, ie, 12 months or 18 months for written and final written warnings.

With regard to Adverse Judicial Findings (AJF), there is now a 'validation and management' process before a judge's comments are declared an AJF, and this includes representations from the relevant officer. It should be noted that there is still no mechanism for rescinding an AJF, however these matters should be of such seriousness that they will result in criminal and/or misconduct investigations.

Attached to this circular is the new Chapter 18 and MG6B form for your information.

Discussions are still ongoing with the CPS as to officers who have misconduct findings under previous Conduct Regulations to try and ensure consistency with regard to revelation. I will inform you as and when changes occur in relation to this matter.

If you have questions in relation to this circular please don't hesitate to contact either myself or Steve Evans, Secretary, Professional Standards Sub-Committee (steve.evans@polfed.org).

Yours sincerely



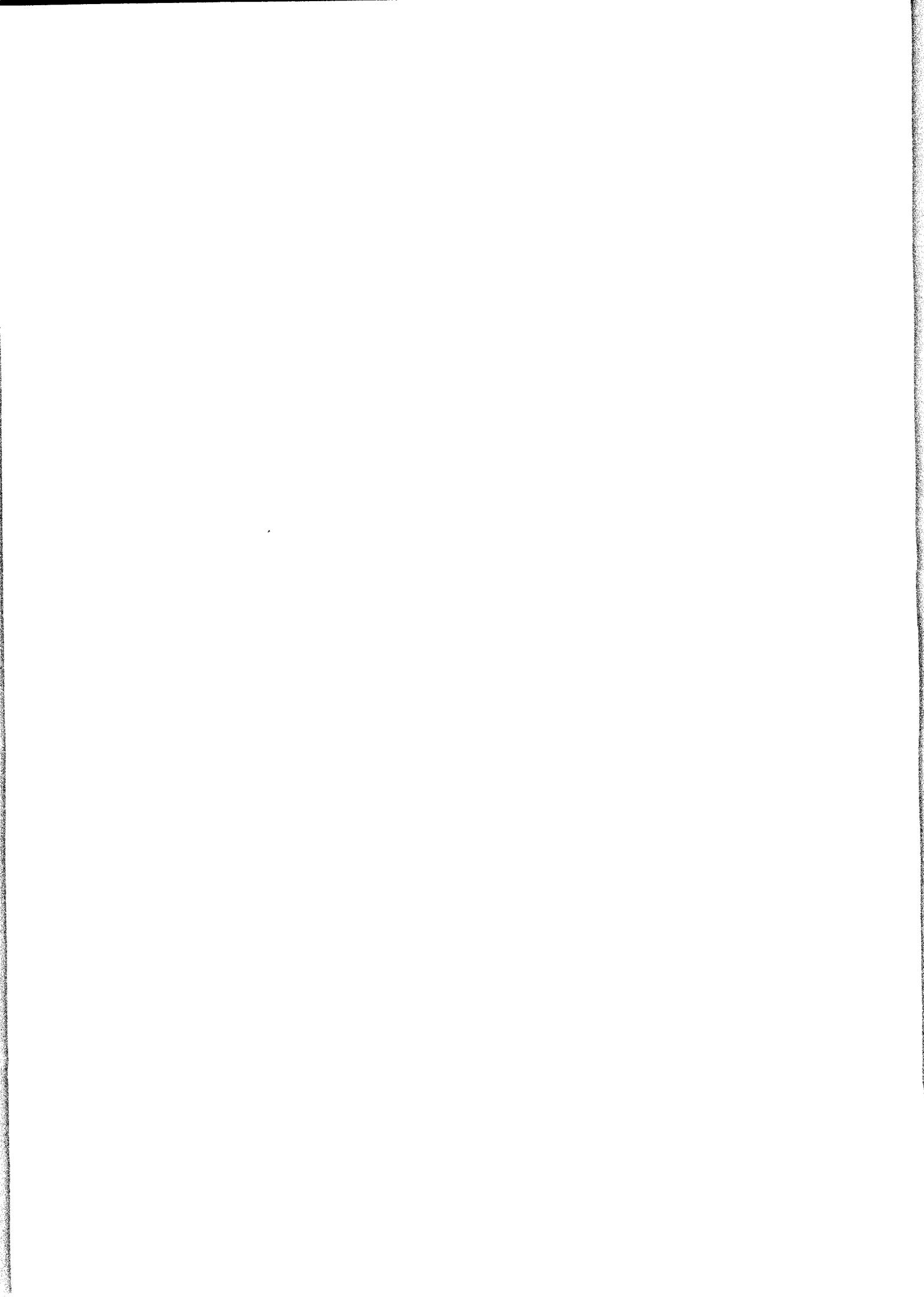
STEPHEN A. SMITH
Deputy General Secretary

EXPLANATORY NOTES

The guidance in the Prosecution Disclosure Manual or the force Professional Standards Department should be consulted if a police officer or member of police staff is in any doubt about how to complete this form.

1. Please print details and give enough detail to allow CPS to make an informed decision about disclosure.
2. Police officers / police staff making a witness statement, whether the statement forms part of the prosecution case or not, should inform the prosecutor of the existence of any criminal convictions or cautions using this form. A copy of the Police National Computer (PNC) printout for that police officer / police staff member must be attached if the offence revealed is a recordable offence. This is for all offences recorded on the PNC whether spent or otherwise, as well as convictions and cautions in Scotland and other foreign countries. Bindovers should be recorded as cautions. Where a police officer / police staff member has been charged or summons (including postal requisitioned) for a criminal offence but the proceedings have not been completed, the prosecutor should be informed using this form.
3. A misconduct outcome is the outcome imposed following misconduct proceedings (such as a written warning or final written warning) and which is recorded on a police officer's/ police staff member's personal file. If a police officer/ police staff member is in any doubt as to whether a misconduct outcome is still 'live' then he or she should consult the force Professional Standards Department (PSD), HR Department or the prosecutor.
4. At the conclusion of misconduct proceedings against them, officers will be advised by PSDs on whether they must in future proceedings where they make statements reveal to CPS by way of this form MG6B certain information relating to those misconduct proceedings (i.e. that the outcome is "relevant"). PSDs will also advise officers on the wording of the MG6B and may also advise on the relevance of the finding to certain types of future proceedings.
5. If misconduct proceedings have commenced (namely that the matter has been referred to a misconduct meeting/hearing), the fact should be reported on this form.
6. Information about officers suspended, but who have not been charged with a criminal offence or had the matter referred to misconduct proceedings, should be revealed to the prosecutor by the Head of Professional Standards Department. This applies to both criminal and misconduct matters.

Where an officer has been notified of allegations made against him/her but is not suspended from duties, he/she is not required to reveal to the CPS the details of the allegations. However, the Head of the Professional Standards Department should consider, in liaison with the CPS unit head whether the interests of justice require the revelation of that information and provide the prosecutor with the information if required.
7. An adverse judicial finding is a finding by a court that a police witness, whether on oath or otherwise, has knowingly misled the court. This may be stated expressly by a court, or may be inferred from the particular circumstances of a court's proceedings. This will include civil as well as criminal hearings. If the police officer / police staff member is subject to an adverse judicial finding, the relevant Professional Standards Department (PSD) should be contacted in order that it can provide guidance on the completion of this form.
8. The prosecutor must be notified immediately of any change in circumstances.
9. The duties to reveal and disclose must be observed scrupulously. Failure to do so may result in wrongful conviction, undeserved acquittal or misconduct proceedings against the prosecutor or police officers. Police officers/police staff members must become familiar with and follow the guidance in chapter 18 of the Disclosure Manual, particularly paragraphs 52 to 66. The ultimate duty and responsibility for revealing criminal convictions, cautions and relevant misconduct findings rests with the individual officer or police staff member.



Chapter 18

REVELATION AND DISCLOSURE OF POLICE MISCONDUCT

Introduction

- 18.1 Details of misconduct and criminal proceedings against police officers who are witnesses might be disclosable under the Criminal Procedure and Investigations Act 1996 (the 1996 Act). In addition there may be exceptional occasions when the interests of justice require that other information is revealed to the prosecutor, and disclosure considered.
- 18.2 A procedure has been agreed between the Association of Chief Police Officers (ACPO) and the Crown Prosecution Service (CPS) about how potentially relevant information should be revealed to the prosecutor. Revelation to the prosecutor does not mean automatic disclosure to the defence.
- 18.3 The guidance in this chapter has been revised to take account of the Police (Conduct) Regulations 2008 (referred to in this chapter as “the new regulations”), which came into force on the 1st December 2008. Misconduct proceedings which were started before this date will continue to be dealt with under the old regime. The new regulations relate only to misconduct matters and do not change an officer’s duty to reveal and disclose criminal convictions and cautions.
- 18.4 Some features of the new regulations should be emphasised. They set a framework which guides and by which standards of professional behaviour are assessed. Behaviour which falls short of the standards may be dealt with in a variety of ways other than misconduct proceedings. Where misconduct proceedings are brought there is no formal “charge” as such but an overall assessment of the officer’s conduct. The standard of proof is the civil standard of the balance of probabilities.
- 18.5 If the proceedings result in a misconduct finding, the outcomes available are limited to management advice (although this is an indication that the matter was capable of being dealt with at a lower level), written warning, final written warning and dismissal. Throughout any proceedings attention is also given to appropriate training for the officer or management support and advice.
- 18.6 Consequently it is no longer possible to decide whether a finding is revealable to the prosecutor (and, if so, for how long) simply by looking at its “label” and the outcome. So deciding whether or not information is revealable now demands more of a value judgment made on a case by case basis.
- 18.7 The guidance in this chapter places the responsibility for that value judgment on Professional Standards Departments (PSDs), although the final responsibility to reveal relevant misconduct findings or criminal convictions/cautions rests with the police officer concerned, who will be aware of the issues in the case in which he or she is a witness. PSDs must seek to

achieve consistency and balance in the exercise of their responsibility to provide advice and guidance to police officers in these matters.

- 18.8 In this guidance, where the context permits, reference to “police officers” includes police staff and special constables who are or may be witnesses. Forces must ensure that the obligation to reveal relevant criminal convictions and cautions applies equally to them.
- 18.9 This chapter gives guidance to Professional Standards Departments (paragraphs 18.12 to 18.51), police officers who are witnesses (paragraphs 18.52 to 18.66), and to prosecutors (paragraphs 18.67 to 18.91).
- 18.10 The guidance has also been revised to clarify and regularise procedures relating to the handling of comments which might amount to an adverse judicial finding.
- 18.11 It is important to remember that the duties to reveal and disclose must be observed scrupulously and that failure to do so may result in wrongful conviction, undeserved acquittal or misconduct proceedings against the prosecutor or police officers.

Guidance to professional standards departments

General

- 18.12 Professional Standards Departments should always be ready to seek the advice of CPS in appropriate cases.
- 18.13 From the outset of any misconduct proceedings PSDs must be alert to the need to reveal to CPS relevant information on individual officers. This chapter gives further guidance, which is not exhaustive, on when this might be necessary.
- 18.14 PSDs, in addition to managing and reviewing their own obligations to reveal, will provide advice to officers on their obligations to reveal. At the conclusion of misconduct proceedings PSDs will assist in determining whether information should be revealed, for how long and the nature of proceedings in which it is revealable. However the ultimate duty and responsibility for revealing criminal convictions, cautions and relevant misconduct findings rests with the individual officer.
- 18.15 The revelation of convictions etc and misconduct findings will be carried out by the individual officer by use of form MG6B, unless of course the officer has been suspended or dismissed.
- 18.16 The duty to reveal will usually be confined to complaints or allegations that result in a criminal conviction/caution and/or relevant misconduct findings of guilt. However, there may be **exceptional** occasions where the interests of justice require PSDs to reveal other relevant material, for instance, when it might affect the credibility of an officer where that credibility is or might be in

issue. Where the Professional Standards Department Chief Officer is aware of such information he or she should seek guidance from the CPS unit head.

- 18.17 PSDs must always be alert to the need to reveal such material and to seek advice if in doubt. They must also respond positively to specific and non-speculative requests from CPS.

Misconduct Findings

- 18.18 Misconduct covers a wide range of behaviour, for example from minor discreditable conduct when off duty to being dishonest or untruthful. Some findings by their nature will be incapable of having an impact on the investigation in a future case and PSDs may confidently advise the officer that an MG6B is irrelevant and not necessary. On the other hand it is impossible to envisage circumstances in which an officer's dismissal from the police service is not revealable.
- 18.19 Within these two extremes there are many varieties of behaviour and varying degrees of relevance to all, or some, future criminal proceedings involving the officer. It must be emphasised that the test to be applied is that of **relevance** under the 1996 Act i.e. that it is capable of having an impact on the case.
- 18.20 It follows that some findings will always be revealable, some will be revealable for a period of time and others will not be revealable. It is impossible to be prescriptive but where the misconduct finding relates to an officer's honesty or integrity this should always be revealed. The misconduct finding may also be revealable in other instances. For example, findings which relate to use of excessive force are likely to be highly relevant in future proceedings where the officer takes part in an arrest and the person arrested alleges assault.
- 18.21 The Police (Conduct) (Amendment) Regulations 2008 provide for misconduct findings to be expunged from an officer's personnel file after specified periods. The period for which a written or final warning remains live is 12 and 18 months respectively. This may be extended in certain circumstances. Although the issue of revelation is one of relevance these periods may in some cases be taken as a guide to the timing of any review as to whether to reveal misconduct findings.
- 18.22 PSDs should advise an officer of the length of time for which a misconduct finding remains revealable. PSDs should consider extending the period by which revelation will be beyond the expiry of the warning in appropriate cases. For example, if the conduct that led to a written warning might bear on the issue of relevance in future cases, the PSD should consider setting an extended period during which revelation should take place and advise the officer accordingly. In such cases review dates should also be set. However, as stated above, the issue is the relevance of the misconduct to the case under investigation and **not** time limits under the regulations for expunging the records which are for employment purposes. PSDs should always be ready to seek CPS advice.

- 18.23 PSDs should therefore consider setting a date on which the continuing need to reveal should be reviewed. It might then be possible, for example, to advise an officer who has undergone appropriate training or an officer whose conduct has given no further cause for concern that revelation is no longer necessary, although where there are continuing concerns about an officer's credibility this should continue to be revealed.
- 18.24 PSDs may also advise an officer that a finding need not be revealed in future proceedings in which an officer is involved where it is not relevant to an issue in the case. For example if an officer has received a written warning because of use of excessive force, PSD may advise that the officer need not reveal this where his or her role in the future proceedings is restricted to exhibit handling or continuity evidence or perhaps is a witness in proceedings other than assault or public order.
- 18.25 Whatever PSDs decide, it is essential that at the conclusion of misconduct proceedings the officer is clear as to the wording of the MG6B, the length of time for which it must be revealed, any review date and whether it is revealable in all or a specified type of future proceedings.
- 18.26 As mentioned in the introduction to this chapter, PSDs must seek to achieve consistency and balance in the exercise of these responsibilities and should seek advice from the CPS where necessary.

Form MG6B

- 18.27 Details of the nature of the finding should be sufficient to enable the CPS to make an informed decision about the relevance of the information to the proceedings in question. There is no need to include this material on the schedule of unused material. If these details are insufficient, the CPS should return the form for resubmission. Revealing information to the CPS does not automatically mean disclosure to the defence. The CPS prosecutor is responsible for considering whether the information satisfies the disclosure test.

Officers under investigation

- 18.28 Information about officers suspended, but who have not been charged with a criminal offence or had the matter referred to misconduct proceedings, should be revealed to the prosecutor by the Head of Professional Standards Department. This applies to both criminal and misconduct matters.
- 18.29 Where an officer has been notified of allegations made against him/her but is not suspended from duties, he/she is not required to reveal to the CPS the details of the allegations. However, the Head of the Professional Standards Department should consider, in liaison with the CPS unit head whether the interests of justice require the revelation of that information and provide the prosecutor with the information if required.

- 18.30 Local arrangements should ensure that all prosecutions in which an affected officer is involved are identified and revealed to the prosecutor.

Revealing Other Information

- 18.31 The guidance in the following paragraphs is not exhaustive but seeks to give examples of situations in which revelation must take place or at least be considered. Each case must, of course, be dealt with on its merits. Revelation in these circumstances via the officer on form MG6B will not always be appropriate and the most suitable means of communication will need to be used.

Service confidence procedure

- 18.32 Service confidence is a procedure that involves a decision, usually by an officer of ACPO rank, to restrict an officer to particular duties because of concerns about his or her integrity. Differing practices exist between the Metropolitan Police and other forces. The Metropolitan Police have a set process to evaluate all information or material against an officer regardless of whether it is deemed to be either sensitive or non-sensitive; other forces limit service confidence purely to sensitive information or material.
- 18.33 A service confidence issue, for instance, might be an officer in a sensitive post whose partner or relative is under investigation for serious matters of misconduct or dishonesty. In those circumstances, once the investigation is complete, the officer in the sensitive position may be given a clean bill of health and will, therefore, have the service confidence around him/her lifted.
- 18.34 Conversely, service confidence may relate to an officer in respect of whom there is sensitive or reliable, but uncorroborated, information of dishonesty or serious misconduct. In such circumstances, the underlying material will normally be revealable in addition to the service confidence procedure. In considering whether revelation needs to be made, the service confidence issue in question needs to be carefully considered: it may be, on the one hand, a transient matter which is likely to be resolved; on the other, it may be a finding that renders an officer unusable in the evidential or supervisory chain.
- 18.35 In the former example (the transient matter), neither revelation nor disclosure would fall to be made after the service confidence issue had been finally resolved (although there would need to be consideration as to whether it should be revealed to the CPS whilst the officer was subject to it, depending, once again, on the issues in current cases in which the officer was involved).
- 18.36 On the second example (the officer who is unusable), revelation and, depending on the issues, disclosure would fall to be made.
- 18.37 This is a difficult area of law and practice, and it is vital that there is close and early liaison between the Professional Standards Department Chief Officer and the CPS unit head.

Adverse information where there is an ongoing investigation

- 18.38 There may be circumstances where reliable adverse information comes to light about a police officer who has provided a statement or formed part of the investigation team, but at the same time, there is an ongoing investigation against him or her. In such cases, the police should reveal details to the CPS as soon as the available information indicates that the adverse information is prima facie true. However, in such circumstances, it will be important to ensure the initial revelation is treated by the CPS in the strictest confidence and that there is always a consistency of approach in relation to that information thereafter. It is important, in these circumstances, that revelation takes place between the police and the CPS unit head.
- 18.39 Once adverse information has been revealed in circumstances of sensitivity, it will be for the CPS unit head to decide, after discussion with the police, what action to take thereafter.
- 18.40 Both CPS and police will need to consider the nature of the information and any updating of it. There will usually be three alternative courses of action:
- disclose the information known about the officer in order that the instant prosecution is not prejudiced. This will usually mean discarding the officer as a witness. Obviously, such disclosure might prejudice the ongoing (covert) investigation into the officer
 - abandon the instant prosecution in order to protect the ongoing covert investigation into the officer
 - delay disclosure, as far as possible without causing unfairness to the accused, to allow the ongoing investigation into the officer to complete its covert phase.

Unit heads should obtain the advice of the CCP/Director of HQ Casework Division where there is any doubt as to the correct course of action.

Credible allegations

- 18.41 Very occasionally, there may be exceptional circumstances in which an allegation is made against an officer by a credible witness (for instance, a resident informant) in circumstances in which a prosecution of that allegation cannot take place because of a lack of corroboration or supporting evidence. In such a case, the issues of revelation and disclosure need to be particularly carefully addressed. It may be that the account of the witness, although not formally adjudicated, is so credible that it should be revealed.
- 18.42 There should be consultation between the CPS unit head and the Head of Professional Standards Department Chief Officer when such occasions arise as to whether the information described should be revealed and then disclosed on its merits.

Adverse judicial findings

- 18.43 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.
- 18.44 It is the duty of any advocate representing the CPS (or force concerned in a civil case or coroners court) to record in full comments which might amount to an adverse judicial finding. A transcript should be requested wherever available. The CPS unit head must ensure that the comments are forwarded to the officer's Professional Standards Department.
- 18.45 In non-criminal proceedings the force solicitor or other lawyer representing the police should be aware of the need to record any comments which might amount to an adverse judicial finding. A transcript should be obtained where available. The comments should then be forwarded to the Professional Standards Department.

The Validation and Management of Adverse Judicial Findings

- 18.46 A validated adverse judicial finding is a serious judgment on the integrity of an officer with consequences for the officer's future deployment and career. The following are the minimum standards which CPS and forces should apply in validating and managing comments which might amount to an adverse judicial finding.
- 18.47 The decision to confirm whether or not the judge's comments amount to an adverse judicial finding is one for either the CCP or head of the CPS Complex Case Unit or HQ Director or a person(s) nominated by the CCP or HQ Director who has the necessary knowledge and expertise of adverse judicial findings. That person must be consulted by the officer's PSD on receipt of reports of comments which might amount to an adverse judicial finding. Any advice or decision given by the CPS to the PSD should be in writing. The lawyer may take into account any representations made by the Head of the Force's PSD (and this may include any representations or explanations made by the relevant officer). If there is any doubt in the meaning of the comments from a court or further clarification would be required to resolve whether they do amount to an adverse judicial finding, then it is unlikely that the comments would amount to an adverse finding.
- 18.48 If the CPS decides that the comments do amount to an adverse judicial finding, forces will need to manage the consequences. These will include consideration of a criminal investigation or misconduct proceedings, the future deployment of the officer, the wording of form MG6B, and any further review of the finding.
- 18.49 There is no mechanism for rescinding an adverse judicial finding, but if a subsequent enquiry is held and it 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.

Change of circumstances

18.50 The obligations on officers to inform the prosecutor of changes in circumstances are referred to in paragraphs 18.63 to 18.66 below. Forces must ensure that there are systems in place to:

- notify the prosecutor on form MG6 of any successful appeal, an acquittal or the conclusion of an investigation
- ensure an MG6B has been submitted to the prosecutor in every case where it is required and
- ensure that the MG6B is correct at the time of trial.

18.51 Where an officer is dismissed as a result of disciplinary action, the Professional Standards Department must notify the prosecutor of the dismissal.

Guidance to police officers who are witnesses

General

18.52 The procedure described here applies where an upgrade trial file of evidence is submitted to the CPS. References to police officers making statements include officers whose statements do not form part of the prosecution case.

Criminal convictions and criminal cautions etc

18.53 Police officers making statements should inform the prosecutor, using form MG6B, of the existence of

- criminal convictions for recordable offences, whether spent or otherwise
- criminal cautions for recordable offences
- penalty notices for disorder for recordable offences.

A recordable offence is defined in regulations made under section 27 Police and Criminal Evidence Act 1984. If in doubt about their obligations, officers should seek advice. Officers should also inform the Disclosure Officer of any convictions or cautions in accordance with paragraph 18.61 below.

Criminal proceedings that have not been completed

18.54 Police officers making statements should inform the prosecutor, using form MG6B, of details of all criminal recordable offences with which they have been charged or reported for summons but in which proceedings have not been completed.

Misconduct matters which have not been completed

18.55 When an officer has been notified of allegations made against him he or she is not required to reveal to the CPS details of the allegations. If misconduct proceedings are commenced police officers making statements should inform the prosecutor using form MG6B, of details of all matters with which they have been charged but where the proceedings have not yet been completed. This only applies to those misconduct proceedings which are capable of having an impact on the particular case in which the officer is a witness.

Misconduct Findings

18.56 At the conclusion of misconduct proceedings against them, officers will be advised by PSDs, as set out above, on whether they must in future proceedings where they make statements reveal to CPS by way of form MG6B certain information relating to those misconduct proceedings. PSDs will also advise officers on:

- the wording of the MG6B; and
- if possible, on the issue of relevance of the finding to certain types of future proceedings.

18.57 As mentioned above, the ultimate duty and responsibility for revealing criminal convictions, cautions and relevant misconduct findings rests with the individual officer.

Adverse judicial findings

18.58 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.

18.59 The procedures for considering whether a judge's comments might amount to an adverse judicial finding and for managing such findings are referred to at paragraphs 18.43 to 18.49 above. PSDs will agree with officers the wording of the Form MG6B by which revelation will take place.

Form MG6B

18.60 Form MG6B should be protectively marked "restricted" and will not be sent to the defence.

18.61 Details of the nature of the criminal offence or criminal or misconduct allegation or outcome should be sufficient to enable the CPS to make an informed decision about the relevance of the information to the proceedings in question. There is no need to include this material on the schedule of unused

material, although if officers have any criminal convictions or cautions they must make the Disclosure Officer aware and a brief reference to the criminal conviction or caution should be made on form MG6C. All criminal convictions or cautions recorded against any police officer witness in the case should always be revealed to the prosecutor. If the details on form MG6B are insufficient, the CPS should return the form for resubmission. Revealing information to the CPS does not automatically mean disclosure to the defence. The CPS prosecutor is responsible for considering whether the information satisfies the disclosure test.

- 18.62 Where there are no findings of guilt or criminal convictions, this fact should be entered on form MG6 (confidential information) and the form completed in accordance with force instructions. Negative returns of form MG6B are not required.

Change of circumstances

- 18.63 The Act imposes a continuing duty on the prosecutor to disclose material that satisfies the disclosure test. Police officers must therefore inform the prosecutor of any changes of circumstances regarding their misconduct and/or criminal records.
- 18.64 Where during the lifetime of a case in which the officer is a witness, he or she is subject to a misconduct outcome or is charged, cautioned or convicted of a criminal recordable offence, advice should be sought from the Professional Standards Department.
- 18.65 The prosecutor should be notified of any change in circumstances that makes the previous notification of a misconduct matter no longer appropriate i.e. a successful appeal. The officer concerned should inform the prosecutor on form MG6.
- 18.66 It is essential that the prosecutor can, so far as it is possible, be confident that the information provided on the MG6B is up to date. The prosecutor should be notified as it arises, of any changes in circumstances that render the information on the MG6B incorrect. This applies to criminal convictions cautions or charges and misconduct outcomes and investigations that have arisen since the original information was submitted.

Guidance to prosecutors

General

- 18.67 Prosecutors must be familiar with the obligations on individual officers and Professional Standards Departments to reveal relevant misconduct findings and be available to advise Professional Standards Departments in cases where the duties of revelation are unclear or sensitive. In particular, prosecutors must be aware of the potential, in any type of case, for the situations referred to in paragraphs 18.43 to 18.49 above to arise and the duty to record comments which might amount to adverse judicial findings. Where material has been

disclosed, prosecutors must also be alert to object to irrelevant or inadmissible lines of questioning.

Confidentiality

- 18.68 Information revealed to the CPS under this procedure should be dealt with in accordance with chapter 24, 'Security of sensitive material schedules'. MG6B forms should normally be treated as **'Restricted.'**

Adverse judicial findings

- 18.69 There is a duty to reveal and disclose adverse judicial findings. 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.**
- 18.70 It is the duty of any advocate representing the CPS (or force concerned in a civil case or coroners court) to record in full comments which might amount to an adverse judicial finding. A transcript should be requested wherever available. The CPS unit head must ensure that the comments are forwarded to the officer's Professional Standards Department.
- 18.71 In non-criminal proceedings the force solicitor or other lawyer representing the police should be aware of the need to record any comments which might amount to an adverse judicial finding. A transcript should be obtained where available. The comments should then be forwarded to the Professional Standards Department.

The Validation and Management of Adverse Judicial Findings

- 18.72 A validated adverse judicial finding is a serious judgment on the integrity of an officer with consequences for the officer's future deployment and career. The following are the minimum standards which CPS and forces should apply in validating and managing comments which might amount to an adverse judicial finding.
- 18.73 The decision to confirm whether or not the judge's comments amount to an adverse judicial finding is one for the CCP or head of the CPS Complex Case Unit or HQ Director or a person(s) nominated by the CCP or HQ Director who has the necessary knowledge and expertise of adverse judicial findings. That person must be consulted by the officer's PSD on receipt of reports of comments which might amount to an adverse judicial finding. Any advice or decision given by the CPS to the PSD should be in writing. The lawyer may take into account any representations made by the Head of the Force's PSD (and this may include any representations or explanations made by the relevant officer). If there is any doubt in the meaning of the comments from a court or further clarification would be required to resolve whether they do amount to an adverse judicial finding, then it is unlikely that the comments would amount to an adverse finding.

18.74 If the CPS lawyer decides that the comments do amount to an adverse judicial finding, forces will need to manage the consequences. These will include consideration of a criminal investigation or instigating misconduct proceedings, the future deployment of the officer, the wording of form MG6B, and any further review of the finding.

18.75 There is no mechanism for the court to rescind an adverse judicial finding. However, if a subsequent enquiry is held and it reveals information that exonerates the officer or casts doubt on the finding, this should be reflected in the wording of the MG6B and this will be a factor to be taken into account by the prosecutor when deciding whether, applying the disclosure test, to disclose the information.

Consultation before disclosure

18.76 The CPS should not disclose to the defence details of pending misconduct matters, or matters such as information short of a misconduct finding, without consulting the Force Professional Standards Department Head or his or her nominee. That consultation should be undertaken by a CPS unit head.

18.77 Where a misconduct investigation is being supervised, managed or independently investigated by the Independent Police Complaints Commission (IPCC), the IPCC supervising member should also be consulted.

Disclosure

18.78 Upon receipt of the form MG6B the prosecutor will consider whether the information supplied is sufficient. If it is not then further information should be requested.

18.79 The prosecutor must first consider whether the information is relevant i.e. whether it has any bearing on the issues in the case. Only if the information is considered relevant will the existence of a misconduct finding need to be considered for disclosure to the defence.

18.80 If the prosecutor forms the view that the misconduct information would not meet the disclosure test taking account of the nature of the officer's evidence and what is known of the defence or likely defence, details of the misconduct finding should not be disclosed but must be kept under review and reconsidered in the light of any defence statement.

18.81 It is irrelevant for these purposes whether or not the officer's statement forms part of the bundle of evidence relied upon by the prosecution or whether it is simply revealed as unused material.

18.82 Disclosure is achieved by providing the defence with the information using the letter PDD 1 (a specimen can be found in Annex C).

18.83 The defence should be advised of those officers who are suspended and whose evidence will be used. The prosecutor should disclose details of other criminal

or misconduct proceedings which have not been completed only in those cases when, and to the extent which, the current law requires.

18.84 If a doubt remains about whether disclosure is required, the prosecutor should disclose.

18.85 The decision to disclose or withhold information must be made or approved by a CPS unit head.

Record of decision

18.86 The decision and details of any consultation between CPS prosecutors, the prosecution advocate and/or the police must be fully recorded on the disclosure record sheet.

Notification of decision to the officer

18.87 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.

Change of circumstances

18.88 Whenever a form MG6 is received notifying the CPS of a successful appeal against a conviction or misconduct finding or outcome, the prosecutor should inform the defence of the fact. The defence should also be informed that the prosecution intend to object to any cross-examination based upon such matters. Forces should ensure that systems are in place to deliver this information accordingly, and that all affected officers are aware of their obligations.

18.89 It is essential that the prosecutor can, so far as possible, be confident that the information provided on the MG6B is up to date. This is particularly the case where the hearing of a trial or appeal is imminent and some time has passed since the MG6B information was received.

18.90 The obligation to reveal new or amended information under these instructions is with the officer concerned, but it is the responsibility of the prosecutor to request that a check is done for the up to date position prior to any hearing or trial when the prosecutor is aware of a particular information or finding against an officer who is or might be involved in the prosecution case.

18.91 The prosecutor should always act quickly in these circumstances.

