

National Policing Guidance

Road Policing

Policy when dealing with disclosure of information held by the police to third parties in road traffic collisions.

1. Introduction

1.1 National practice dealing with requests for police/CPS disclosure of information in relation to road traffic collisions (RTC's) to civil litigators has varied across the country. This inconsistency of approach frequently leads to delays in respect of relevant and important information being released to those involved in civil claims which in turn severely impacts upon victims of road traffic collisions.

1.2 To address these problems, this policy has been written in consultation and agreement with the Crown Prosecution Service and mirrors policy provided to CPS lawyers in respect of the disclosing of information to third parties in road traffic collisions.

1.3 The third party is usually the civil litigant (solicitor) acting on behalf of a victim. However, in cases where a victim acts alone it may be the victim him or herself.

1.4 The need for a joint agreement and clarification between the Police service and the CPS has arisen because substantial delays in information being made available can result in civil cases being frustrated which in turn can lead to victims facing severe financial hardship and/or it prevents vital rehabilitation. This is especially prevalent whilst police enquiries are lengthy or prosecution of a case is pending.

1.5 It is important to understand, that any civil claim may well run in parallel with the criminal prosecution and that the information to be used in the criminal case may well be of relevance to the civil claim.

1.6 It is to be remembered that the proof of civil liability is not the same as the proof required in criminal proceedings.

1.7 This policy is designed to ensure that the balance is in favour of timely disclosure thereby offering assistance where it can be provided to help victims.

1.8 Substantial delays in information being made available can result in civil cases being frustrated. This can have devastating consequences to victims and their families. The lack of adequate financial compensation to victims, arising from possible litigation can prevent vital rehabilitation and/ or financial ruin.

Each case is different; therefore the extent of disclosure will vary. This National guidance agreed by the NPCC is intended to provide as much reference information as possible to ensure as far as

possible, police officers and police support staff dealing with disclosure requests make the right decisions for the right reasons. The following narrative is aligned to policy provided to the CPS.

2. Disclosure in Road Traffic Collisions (RTCs)

General comments:

2.1 Guidance has been given to Chief Police Officers by the Home Office about how to deal with requests for information in road collisions or similar incidents. In addition, during the course of his judgment in *Marcel & Others v the Commissioner of Police of the Metropolis* (1991) 1 All ER 845, Dillon LJ specifically approved the current practice of the police in supplying information and witness statements to interested parties where there is a possibility of civil litigation after a road collision, in particular, the supply of names and addresses of parties involved in the collision whom an injured person could well otherwise have difficulty tracing. **It is expected that the police will inform any witnesses that their statement may be used in any possible criminal or civil procedure.**

2.2 The remedies that can be sought through civil litigation have profound importance to the wellbeing of victims and their families. It is therefore important that civil litigators are provided with the information that they require in order to allow them to assess the merits of the civil claim, issue court proceedings and seek interim payments of final damages, as soon as possible. The ability to obtain interim payments is important in:

- Providing early financial assistance where, for example, a collision has resulted in death or serious injury to the family breadwinner. (The victims commissioner has taken a keen interest in the financial plight of families who are the victims of road traffic collisions).
- Enabling injured people to pay for rehabilitation and or therapy in order to aid their recovery.
- Balancing the rehabilitation needs and financial difficulties of a person injured in an RTC or, where there is a fatality, the needs of the deceased's dependants, whilst maintaining the viability and integrity of a potential criminal prosecution. (not mutually exclusive).

3. Procedure in respect of RTCs where an Inquest and or a Criminal Prosecution is envisaged or pending.

3.1 The police will deal with requests for disclosure of information by those conducting civil litigation. With the safeguards set out below, such requests for disclosure should generally be actioned as soon as possible.

3.2 In cases that are contested the police must ensure that they have the agreement of the CPS to disclose any documents.

3.3 In cases where a lead collision investigator has overall charge of the case, that officer should be the liaison and contact point between the police and CPS in respect of disclosure.

3.4 The police will be responsible for forwarding the document (s) to the civil litigator. If there is any dispute between the CPS and the police then the matter may be referred to more senior representatives in both organisations to resolve. The way forward should be agreed by an officer of

at least inspector rank or staff equivalent decision maker in the police service and a level D CPS lawyer who are not linked to the case.

3.5 The information to be disclosed normally consists of the date and time of the collision; names and addresses of those involved; description and ownership of vehicles involved; the names of insurers in cases involving personal injury; copies of certain statements; name of defendant in any forthcoming criminal proceedings and the date and place of hearing. However each case is unique and will be considered on a case by case basis.

3.6 Both the police and the CPS may be requested to disclose further material to those conducting civil proceedings, which would include a level of information in excess of the limited information anticipated by the original policy. This may include the witness statements and the analytical report produced by the collision investigator in a collision case involving injury or death. In which case the following should be considered.

4. Disclosure of material on the police file to civil litigators.

4.1 In all cases, the police collision report, the forensic collision investigators report together with accompanying photographs, plans, CCTV footage and note book entries of reporting officers should be disclosed upon request. These may be edited before disclosure if necessary.

4.2 In the majority of cases the police witness statements should also be disclosed **providing permission has been given from the witness to disclose their statement**. Bearing in mind the importance of the civil claim to the injured person and or dependants of the deceased, the police should encourage witnesses to assist in the civil claim where possible.

4.3 In rare cases it is accepted that disclosure of the police witness statements may prejudice the criminal prosecution. In those cases, the police and the CPS must consider whether the police statement(s) can be disclosed or whether conditions need to be attached to disclosure (such as the timing of such disclosure). Whilst doing so, the reviewing CPS lawyer must give consideration as to how any such conditions may affect the prosecutions obligations in respect of "unused material". Regard should also be had to the fact that if the civil litigator breaches imposed conditions they may face disciplinary proceedings by their professional body.

4.4 If, after considering whether appropriate conditions can be attached to disclosure of police statements, the conclusion is that there is no workable solution and that significant risks would still remain, the police/CPS can refuse to disclose all or some of the police statements in the case. Again, it is repeated that this should only apply in rare circumstances.

4.5 Where such decisions are made then it would be appropriate for the decision and reasoning to be formally recorded upon the case file.

5. Time frames

Please note; the following time frames are considered aspirational and best practice. If the time frames are unachievable for legitimate reasons i.e. when the request is made by a third party, then the matters should be brought to a conclusion as soon as is practicable.

5.1 Basic disclosure of information (i.e. the date and time of the collision; names and addresses of those involved; description and ownership of vehicles involved; the names of insurers in cases involving personal injury; copies of certain statements; name of defendant in any forthcoming criminal proceedings and the date and place of hearing) should be dealt with a degree of urgency and no later than 4 weeks after the collision incident.

5.2 Requests for disclosure of other documents (i.e. the Police Collision Report, the Forensic Collision Investigators Report together with accompanying photographs, plans, CCTV footage and note book entries of reporting officers) should be dealt with within 4 months and no later than 6 months of the collision/incident.

5.3 Requests for disclosure of police witness statements should be dealt with within 6 months and no later than 9 months of the collision/incident.

5.4 If witness statements are held back due to substantial concern that disclosure may prejudice the criminal trial, those statements should be released to the civil litigator requesting disclosure within 4 weeks of the verdict being returned. Delays should not take place for sentencing or appeal. The outcome of any criminal proceedings should also be disclosed to interested parties immediately on request.

It is to be noted that criminal proceedings do not include those cases which are decided to be suitable for disposal by way of education under the provisions of the National Driver Offender Retraining Scheme (NDORS). It is only at the point when an NDORS course is not completed or is withdrawn that criminal proceedings may be pending.

In those cases where an NDORS course has been completed, it is appropriate to advise that no criminal proceedings will take place, and make no reference to any diversion to an NDORS course. However, this does not preclude the police forwarding any relevant information to civil litigators as detailed above. The responsibility to consider disclosure is for the Police unless the matter becomes contested due to the lack of compliance.

6. RTCs where no prosecution is envisaged

6.1 If no prosecution is envisaged, or the RTC has been one for which the police have kept responsibility, the police should have regard to the comments made above and ensure that complete disclosure is made as quickly as possible so as to minimise financial hardship and health issues. The responsibility lies with the police to consider and disclose. However, the guidance above needs to be applied for consistency.

6.2 In particular, basic information should be disclosed as a priority and no later than 4 weeks after the collision incident. Bearing in mind Coroners rules regarding disclosure should there be an Inquest.

6.3 The police collision report, the forensic collision investigators report together with accompanying photographs, plans, CCTV footage and note book entries of reporting officers and police witness statements should be disclosed preferably within 4 months and no later than 6 months of the collision incident.

7. General Provisions

7.1 In all cases where disclosure is made (before or after the criminal prosecution), every effort should be made to ensure that the police collision report, the forensic collision investigators report together with accompanying photographs, plans, CCTV footage and note book entries of reporting officers and or police witness's statements are disclosed together, not on a piecemeal basis.

7.2 The managing investigating officer should ensure that all documents are included in the disclosure process or, if documents are to be withheld that there are valid reasons for doing so e.g. witness statements as mentioned above. A written report should be attached to the case file in any case where disclosure is not supported or provided.

7.3 Information should be supplied on request to persons bona fide engaged in or contemplating civil proceedings, or their solicitors, and also insurance companies, trade unions or friendly societies acting on behalf of a potential party to a civil claim.

7.4 Where there has been a loss of life or life changing injury there is an expectation that chief officers will grant an interview with reporting officers prior to the commencement/issue of civil proceedings (it should be noted that police evidence helps the civil litigators to assess the merits of a case). Local policy should apply in relation to the conduct of any such interview.

7.5 Reports by medical practitioners should not be disclosed, but the name and address of a practitioner who has examined a party should be supplied.

7.6 Reports by police vehicle examiners contain information of importance to civil proceedings and copies should normally be provided.

7.7 Copies of reports by forensic scientists should be supplied.