

Common Law Police Disclosures (CLPD) – Provisions to supersede the Notifiable Occupations Scheme (NOS)

Introduction

1. The CLPD provisions extend to police forces in England and Wales. The Police Service of Northern Ireland has voluntarily adopted the CLPD provisions and separate arrangements exist within Scotland.
2. The CLPD provisions relate to the circumstances in which the police use common law powers to disclose police information regarding an individual in order to enable a third party to consider risk mitigation measures in respect of an employment or voluntary role believed to be undertaken by that individual. It supersedes Home Office Circular 06/2006 (the NOS) which has been withdrawn.
3. Under the authority of the Police Act 1997 and the Safeguarding Vulnerable Groups Act 2006, the work of the Disclosure and Barring Service (DBS) is central to supporting a robust safeguarding environment in relation to sensitive employment and voluntary positions. The barring function seeks to prevent the most high risk individuals from working in specified roles with the vulnerable. For all others whom do not feature on the DBS “barred lists” the decision as to whether to appoint an individual is a matter for the employer. A criminal record certificate provides information that allows an employer to make a risk based recruitment decision taking into account the sector (primarily child and/or adult) in which post operates. The DBS Update Service allows an employer to identify whether new information has arisen about a subscribing individual since the latest certificate was issued.
4. The general presumption is that the police should maintain the confidentiality of personal information. The police do however possess a common law power to share personal sensitive information with third parties where a “pressing social need” can be established. A pressing social need might be the safeguarding, or protection from harm, of an individual, a group of individuals, or society at large.
5. This note outlines the narrow scope for the police to use their professional judgement to make common law based disclosures in circumstances where they consider this to be necessary to support public protection. This complements but remains separate from the statutory DBS arrangements.

Disclosure consideration

6. Chief Officers are requested to consider disclosing relevant information to a third party when, in the course of an investigation or other policing activity, a significant risk is identified which there is an urgent pressing social need to address.
7. The primary trigger for consideration of the need to make such a disclosure will be the arrest (or voluntary interview as a suspect) of an individual for an alleged recordable offence; or if no consideration had been made at that stage, upon the subject being charged with a recordable offence.

The CPLD provisions do not provide for the proactive disclosure of convictions as:-

- It is unlikely that the urgent pressing social need requirement will then be fulfilled due to the elapse of time, and
 - Employers and regulators can be made aware of convictions via the statutory disclosure route provided by Part V of the Police Act 1997 and use of the DBS Update Service.
8. The third party recipient of the disclosure will usually be an employer or other body for which the individual works, including in a voluntary capacity.
 9. The Home Office review of the NOS identified that a significant number of the regulatory bodies and licensing authorities in receipt of NOS notifications were either unwilling or unable to act on non-conviction information. However, there may be circumstances where it is appropriate to contact a regulatory body or licensing authority. For example, where the employer cannot be contacted or where the individual's profession can be established, but not where they work. It will then be a matter for the recipient to act on the information in accordance with their own statutory or procedural obligations.
 10. NPCC maintains a list of regulatory bodies and licensing authorities (together with contact details) that have been able to demonstrate that they possess powers (such as the imposition of an interim prohibition order) to implement immediate mitigation of the potential risk that the subject of the disclosure poses.
 11. Disclosure to an employer or volunteer organisation does not preclude simultaneous disclosure to a regulatory body or licensing authority where appropriate. Reliance cannot be placed on the employer (etc.) subsequently informing the regulator (etc.). The purpose of making a disclosure is to allow the recipient to mitigate risk – the regulator (etc.) may possess wider powers to implement such mitigation (such as the ability to impose an interim prohibition order or suspend a licence etc).
 12. It is vital that common law based disclosure decisions are considered by the police without unnecessary delay in order that the recipient can respond effectively to the risk that is evident from the information disclosed.
 13. Any decision to disclose police information must balance the rights and interests of the individual who is the subject of the disclosure against those of the public in general or any specific member or members of the public. That will involve giving consideration to the impact of disclosure on the private life of the individual concerned. Decisions should also take account of any adverse impact disclosure might have on the prevention or detection of crime.
 14. Specifically, any decision to disclose sensitive personal information should have regard to the Data Protection Act 1998, the Human Rights Act 1998 and the Rehabilitation of Offenders Act 1974. The "pressing social need" threshold for making a disclosure under common law powers is considered to be the same as that required for the disclosure of chief officer "approved information" in accordance with the provisions of Part V of the Police Act 1997 (as amended). This principle was established by the UK Supreme Court ruling in *R (on the application of L) (FC) (Appellant) v Commissioner of Police of the Metropolis (2009)*. It is therefore

recommended that chief officers apply the joint NPCC and DBS agreed “Quality Assurance Framework” methodology in determining what, if any, information will be disclosed.

15. Judicial precedent within the Police Act 1997 disclosure arena has highlighted the importance of seeking the subject’s representations regarding any proposed disclosure prior to it being made. The use of common law powers of disclosure under these provisions is restricted to where there is an URGENT pressing social need only. As such the very raison d’être of making the disclosure could be thwarted by any delay. It is therefore recommended that representations should only be sought from the disclosure subject where practicable, such as at the time the subject is being interviewed as a suspect in connection with the allegation(s) that is/are the basis of the proposed disclosure.
16. The seeking of such representations MUST NOT interfere with the proper investigation of the allegation(s). Representations should only be sought, if at all, after the initial investigative processes in accordance with the Police and Criminal Evidence Act 1984 have been concluded, and never as part of the evidential interview.
17. The only exception to the requirement to apply the tests of relevance and proportionality prior to disclosure is with regard to the arrest of warranted armed services personnel (both full time and reserves) in respect of whom there is a presumption to disclose all arrests to the Service Police Crime Bureau.
18. Consideration should be given to what action a recipient might take in relation to the relevant information. Information should be provided to recipients setting out requirements in terms of its sensitive handling and use, as well as highlighting any potential responsibility to consider forwarding the information to a relevant regulatory body, licensing authority and/or to the DBS as a discretionary barring referral.

Implementation

19. It is a matter for each chief officer to determine how the CLPD provisions should be implemented according to specific local circumstances.
20. The chief officer may wish to delegate decision making in respect of common law police disclosures. In order to ensure consistency, best practice and a full audit trail of the disclosures and their rationale, any such delegation should be to a single point of contact within the force with suitable expertise and experience in the disclosure of police information to external parties.
Given the link to disclosures made under the authority of Part V of the Police Act 1997 it is recommended that such delegation be to the “Chief Officer Delegate” (COD) nominated to undertake those statutory disclosures.
21. Sources which may inform a referral to the chief officer or COD include:
 - Investigating officers who have identified risks arising from the nature of the information and their knowledge of any roles performed by the individual concerned
 - Local police records (including custody, intelligence etc.).

However it is recommended that onerous responsibilities are not placed upon investigating officers or custody staff. IT systems should be utilised to identify potential disclosure subjects where possible.

22. It is recognised that in cases of extreme urgency it may be necessary for a police officer, or a member of police staff, to disclose information on their own initiative and without referring the matter to the chief officer or COD. In such cases the disclosure and the justification for it should be reported to the chief officer or COD as soon as practicable.
23. The CLPD provisions were endorsed by Chief Constables' Council on 19th March 2014 and take effect from 2nd March 2015, following the withdrawal by the Home Secretary of HOC 6/2006 – the Notifiable Occupations Scheme.