

 West Mercia POLICE		POLICY
Security Classification	OFFICIAL	
Disclosable under Freedom of Information Act 2000	Yes	

POLICY TITLE	Common Law Police Disclosures (Pressing Social Need)
REFERENCE NUMBER	WMP022
Version	1.1

POLICY OWNERSHIP	
DIRECTORATE	CHIEF OFFICERS
BUSINESS AREA	AUDIT, RISK & COMPLIANCE

INITIAL IMPLEMENTATION DATE	January 2020
NEXT REVIEW DATE:	December 2025
RISK RATING	LOW
EQUALITY ANALYSIS	LOW

West Mercia Police welcome comments and suggestions from the public and staff about the contents and implementation of this policy.
Please e-mail policiesandprocedures@westmercia.pnn.police.uk

1.0 POLICY OUTLINE

This policy relates to the circumstances in which West Mercia Police use Common Law Powers to disclose police information concerning an individual detained in custody, or voluntary interviewed, when a serious and urgent risk is established. Such a disclosure will contain relevant and proportionate information to allow the third party recipient to determine the extent of any mitigation that may need implementing in respect of the risk the detainee may pose to vulnerable groups, primarily children and/or vulnerable adults and to consider risk mitigation measures in respect of an employment or voluntary role believed to be undertaken by that individual.

Common Law – Where the police are requested to share information with a partner (third-party) and a statutory obligation or power does not exist, a policing purpose should be established as the decision to share is risk based.

2.0 PURPOSE OF POLICY

The aim is to outline 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. Disclosures made under this policy will not result in a charge being made to the recipient(s)

This policy supersedes the guidance contained in Home Office Circular 06/2006 Notifiable Occupations which has been withdrawn.

Aim

The aim of this policy is to clearly define the Force's current approach to dealing with circumstances where a person who has come to notice represents a clear risk to children, vulnerable persons or the wider public in their occupation or voluntary setting by virtue of their alleged offending

Disclosure should be made at the earliest opportunity in order to mitigate risk.

All disclosure considerations are now to be made by the Chief Officer/Delegate who will consider making a proactive disclosure, upon arrest, or voluntary interview, of relevant information to a third party (employer, volunteering organisation, regulatory body and/or licensing authority with which it is evident the detainee is associated).

Links with other policies/strategies:

Authorised Professional Practice (APP - [Information Management 3.1](#))

3.0 IMPLICATIONS of the POLICY

The police have a common law power (see App - MoPI Guidance) to share information with third parties when a policing purpose is established (with each case being considered on its own merits).

- Protecting Life and Property
- Preserving Order
- Preventing Committal of Offences
- Bringing Offenders to Justice
- Any duty arising from common or statute law

The general presumption is that the police should maintain the confidentiality of personal information, but legal opinion supports the disclosure of individuals' sensitive personal information to relevant 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. Disclosure of information should be no more than is required to meet the safeguarding need.

This guidance does not provide for the disclosure of convictions as:-

- It is unlikely that the urgent and pressing requirements will then be fulfilled due to the elapse of time
- 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

3.1 The National Police Chiefs' Council

The National Police Chiefs' Council (NPCC) will maintain a list of Regulators and Licensing Authorities together with contact details of those who are able to demonstrate that they can and do take immediate action on receipt of non-conviction police information.

It is vital that common law based disclosure decisions are processed by the police without unnecessary delay in order that the recipient can respond effectively to the urgent risk identified.

Any decision to disclose police information will need to balance the rights and interests of the individual, subject of the disclosure, against those of the public in general or any specific member or members of the public. This will involve giving consideration to the impact of disclosure on the private life of the individual concerned, also taking into account any adverse impact disclosure might have on the prevention or detection of crime. More generally, any decision to disclose information should have regard to,

- Part V of the Police Act , 1997
- Data Protection Act 2018
- Human Rights Act 1998
- Common Law duty for confidentiality

3.2 The 'pressing social need' threshold

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 'approved information' in accordance with the provisions of Part V of the Police Act 1997 (as amended). This principle was established by the 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 the joint NPCC/DBS agreed 'Quality Assurance Framework' methodology is used in determining what, if any, information will be disclosed.

Representations using the Supreme Court Judgement 26th October 2009, indicated the importance of seeking the subjects' representations regarding any proposed disclosure prior to it being made, in this instance "if the subject appears unaware of the information being considered for disclosure" and/or "if the facts are not clear and in dispute" the use of common law powers of disclosure under this guidance is restricted to where there is an **URGENT Pressing Social Need only. An 'urgent pressing social need' is not defined but will involve the safeguarding or protection from harm of an individual, a group of individuals or society at large, particularly vulnerable adults and children.**

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 at the time they are in police detention in connection with the allegation(s) that is/are the basis of the proposed disclosure. The seeking of such representations **MUST NOT** interfere with the proper investigation of the allegation(s). Representations should therefore only be sought 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.

Consideration should also 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 and/or to the DBS as a discretionary barring referral.

It is recognised that in cases of extreme urgency during the course of an investigation 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 Chief Officer Delegate (CO/D), in all cases this must be progressed to the relevant Chief Inspector. In such cases the Chief Inspector will complete the appropriate paperwork ([Appendix 1](#)) and contact legal services.

3.3 Legal Basis

- Common Law Power

3.3.1 Human Rights Act 1998

Article 8 - Right to respect for private and family life

Adherence to the effective operation of this policy will protect the most vulnerable in society from harm. Non compliance with this policy could lead to vulnerable groups primarily children and/or vulnerable adults being placed at risk of sexual exploitation, financial exploitation, physical, emotional, or psychological harm.

Adherence to this policy will protect officers and police staff in the undertaking of their duties and reduce the risk of successful legal action against West Mercia Police protecting the reputational standing of both police organisations.

4.0 CONSULTATION

<i>Business Lead Consulted</i>	<i>Date Consulted</i>
Elaine Peberdy	December 2022

West Mercia Federation
West Mercia Unison
Superintendent Association
Critical Friends group

5.0 DOCUMENT HISTORY

The history and rationale for change to policy will be recorded using the below chart:

Date	Author / Reviewer	Amendment(s) & Rationale	Date of Approval / Adoption
		Previously approved at JNCC	JNCC 11/12/2018
Jan 2020	Sue Hawkins	Reviewed – No changes reverted to West Mercia policy	January 2020
Nov 2022	Lisa Ignoscia	Review – minor change to procedure 4.2 Section E	December 2022

6.0 PROCEDURE

a) In circumstances of pressing social need, notification will take place as soon as practicable from when a risk is identified regardless of the point at which an investigation or the criminal justice process is at. Ultimately the Custody Sgt or OIC (Voluntary Interview process) will take responsibility for commencement of this process by informing the Civil Disclosure unit.

b) The Civil disclosure team will act in an advisory capacity and as a single point of contact where necessary. Considerations will be made based on:

- Is the information **relevant**?

- What is the **quality** of the information?
- Would a disclosure be **proportionate**?

6.1 Military Personnel

Advice received from the Information Commissioner's Office (ICO) states that there is a requirement to 'blanket disclose' where the individual concerned is Armed Forces Personnel

Positive disclosures for military personnel are made by the Civil Disclosure Unit through the Service Police Crime Bureau

6.2 Police Officers and Police Staff

Guidance from the ICO expects police officers and police staff, from another force to be treated in the same way as any other regulated professionals. Prior to any disclosure being made, an appropriate test should be conducted that considers the relevancy of the offence and the specific position held by the individual. There should be no presumption that a police officer or member of staff should be reported to their professional standards.

Any disclosures made internally within the domain of the Chief Officer as data controller are not subject to this.

6.3 All Managers / Supervisors / Staff

It is the responsibility of all employees to ensure that they possess a basic understanding of the CLPD process and the role they play in helping West Mercia Police to comply with its requirements.

The Civil Disclosure Unit will provide advice and assistance concerning the CLPD process

Please note: A full procedure accompanies this policy and is available on a separate document.

7.0 ASSESSMENT AND ANALYSIS

The Equality Assessment (EA), Health & Safety Assessment (HAS) and Risk Assessment (RA) associated with this document are available on request.

Appendix 1

Disclosure Rationale – Pressing Social Need – Preventing the commission of offences

The police have a common law power to share information with third-parties when policing purpose is established – with each case being considered on its own merits and where a pressing social need can be established. Police may use Common Law powers to disclose information about an individual to a third party where a serious and urgent risk is identified in relation to their access to others by virtue of their employment or voluntary role, these common Law powers supersede Home Office Circular 06/2006

Date Received:		Name of Person for whom Disclosure is being considered:
DM dealing:		
Number	Question	Comments
1	Does the Person in question work in an area of risk, state occupation	
2	What is the offence the Person has come to notice and been arrested for and either ois/custody/crime number (Custody only)	
3	Arrest/charge circumstances	
4	a) Is it reasonable to believe that the offence(s) is relevant to the consideration of risk? b) Record how/why you conclude that it is reasonable to believe that the information is relevant to considerations of risk. that this individual may pose to children, vulnerable adults or both, for this specific disclosure <u>What is the risk, who is at risk, what is the context of the risk?</u>	
5	Record how/why you conclude that it is reasonable to believe that the information might be true and accurate	
6	Record how/why you conclude that it is reasonable to believe that the individual may gain access to relevant vulnerable group(s), through the nature of their role	

7	Have representations been made to the named person as to why the information should not be disclosed, only relevant if person is in custody and only in relation to the disclosure under consideration. OIC to undertake.			
8	Having reviewed the information at boxes 1, 2, 3, 4, 5, 6 and 7 is it proportionate to disclose. Does it meet the Human Rights Act 1998 article 8.1 and 2 Record your rationale stating why this information should be disclosed. A disclosure must not exceed its purpose (DPA) List any documentation for disclosure			
9	Disclosure to be made to someone "ABLE" to take immediate action, name the person to whom the disclosure is to be made, their status in the organisation, and why they are the appropriate person to receive disclosure"			
Box 1	In your judgement will the named individual know that disclosure is being considered and do they agree to information being disclosed	YES	NO	UNSURE
Box 2	Could disclosure of any of the information to the 3 rd party prejudice a police operation or, potentially, cause a crime to be committed?	YES	NO	UNSURE
Box 3	Is OIC aware of disclosure(Number)	YES	NO	UNSURE
DISCLOSURE TEXT - Decision Maker: Name of DM and contact ext no				

Chief Officer Declaration for disclosure of information

In undertaking my statutory obligation as Chief Officer under Part V of the Police Act, I have reviewed this document and am satisfied that the decision rationale is accurate, cogent and sufficiently comprehensive. I reasonably believe the information to be relevant for the purpose described and in my opinion it ought to be disclosed.

I attest to the following:

- ❖ I believe the information to be of sufficient quality to pass the required tests
- ❖ I reasonably believe the information to be relevant to an employer who is considering the risk that this individual may pose, having regard to the specifics of this disclosure
- ❖ I believe that it is reasonable to consider that the individual may have relevant access to children or vulnerable adults through the nature of the individuals role
- ❖ I believe the disclosure is reasonable and proportionate
- ❖ I believe the disclosure to be accurate, balanced and fair
- ❖ The Human Rights of all relevant parties have been duly considered and a record of these considerations has been made

To be completed by Chief Officer/ Chief Officer Delegate	
I authorise/do not authorise* the decision to disclose	Signature:
<i>* (please delete appropriate text)</i>	Date:
1. CO Considerations why disclosure should not be authorised	
2. What further investigation/detail required?	