

DURHAM CONSTABULARY



Altogether Better Policing

Evidence in Civil Cases or External Disciplinary Proceedings Policy

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1.0 EVIDENCE IN CIVIL CASES OR EXTERNAL DISCIPLINARY PROCEEDINGS POLICY

2.0 PURPOSE AND SCOPE

2.1 This policy deals with any police officer or member of police staff who is involved in proceedings to which the Constabulary is not a party. It deals in turn with the following circumstances:-

- Interviews for the purpose of giving statements.
- Attendance before a variety of Courts, Tribunals and other hearings.
- Disclosure of police documents with regard to care proceedings.

2.2 Throughout the operation of this policy Durham Constabulary will seek to take the least intrusive action which fits within the working policy criteria and will act fairly and proportionally to achieve the proposed purpose.

2.3 Durham Constabulary will operate within the policing principles as defined by the College of Policing Code of Ethics and in support of this our policies will seek to promote Accountability, Fairness, Honesty, Integrity, Leadership, Objectivity, Openness, Respect and Selflessness

3.0 THE LEGAL BASIS AND LEGITIMATE AIMS

3.1 The legal basis for this policy comes from the Police Act 1996/Police Regulations.

4.0 POLICY STATEMENT

4.1 Parties to civil proceedings, or their legal representatives, will be permitted to interview police officers and police staff in connection with accidents and other civil matters. This is to allow proofs of evidence to be taken from those members of staff who may be called to civil proceedings or statutory tribunals when police proceedings are not contemplated or are finalised

5.0 GUIDANCE

5.1 General

- 5.1.1 Direct approaches to police officers or police staff in respect of requests for force information for the purposes of civil court proceedings outside the CPS process, will not be permitted and should be forwarded to the Information Rights and Disclosure Unit within Professional Standards and Legal Services Department. All such requests will be considered within the remit of Section 35 of the Data Protection Act 1998 and ACPO Paying the Bill 2.
- 5.1.2 If after a Section 35 disclosure, an interview is subsequently needed this will be remitted to the officer in charge of the case.
- 5.1.3 Arrangements will be made by the Force to recover reasonable costs for the disclosure of such force information.

5.2 Interviews

- 5.2.1 Members of staff asked to grant interviews or supply proofs of evidence in any case in which it is suspected that the information sought may be used for the purpose of litigation, must not comply without authority. They should refer the application to the Head of Command /Department and report the circumstances in which the request has been made and the nature of the evidence which they could give. Police Officers and Police Staff are reminded that they are not obliged to provide a statement, however, it may assist the progress of a case to do so therefore negating the probability of being subpoenaed to attend court.
- 5.2.2 The Head of Command /Department who is responsible for the Police Officer or Police Staff will, arrange the interview, the venue and date of which should be mutually convenient to the solicitors concerned and the member of staff's supervision. If the incident is outside the Police Officer's or Police Staff's duty area the relevant Head of Command /Department will be notified of the incident. If a case file is involved it should, where necessary, be obtained from the Crown Prosecution Service and be forwarded to the member of staff's supervision, with an accompanying memorandum detailing the arrangements made.
- 5.2.3 At the conclusion of the interview, the file will be returned to the office of origin, with a report, detailing any expenses incurred, to enable the Head of Command /Department concerned to recover the amount due.

5.2.4 An officer of the rank of Inspector or above may take charge of the interview and they will:-

- a) Ensure the member of staff being interviewed confines their remarks to facts within their knowledge.
- b) Prevent any expression of opinion by the member of staff.
- c) Ensure there is no discussion of any previous court proceedings relating to the incident.
- d) Prevent the disclosure of any convictions, and
- e) On completion of the interview, point out that a member of staff will not attend civil proceedings or a tribunal to give evidence unless they have been served with subpoena or witness summons which should be accompanied by conduct money.

5.2.5 When questions are asked relative to any written statements which have been taken, particulars of statements may be supplied, i.e. answers to questions relative to the occurrence may be given subject to the condition that such statements were made spontaneously at the time of the occurrence by any of the parties to the action or by their servants in cases where vehicles were driven, or in charge of such servants, at the time of the occurrence with the limitation that such statements shall have been made in the presence of the other party. Statements taken away from the scene of the occurrence, e.g. in an ambulance or hospital, will only be disclosed in court at the Judge's discretion.

5.2.6 Position of vehicles should not be indicated etc., except on plans drawn to scale.

5.2.7 Where a sketch of a scene has been made by a member of staff there is no objection to a solicitor taking a copy of it; the fact that the sketch is not strictly accurate or drawn to scale will distinguish it from 'a plan furnished by the police'.

5.2.8 There is no objection to an interviewer being supplied with copies of plans drawn to scale and with copies of photographs prepared by the police if they are available. In such cases, however, the solicitor should be told to make application for them to the Head of Command /Department.

5.2.9 If a solicitor wishes to take a Proof of Evidence from a member of staff prior to them being called as a witness to a civil action, they must first produce a Certificate that appearance has been entered in the action, or if it is a County Court case, that a Notice of Defence has been delivered, or, in either case, on service of a subpoena.

5.2.10 Before making a statement, members of staff should refresh their memory from any notes which they may have, or in the case of police officers in their pocket

book regarding the incident. If the solicitor or their representative who interviews members of staff requests the notes to be read, this may be done but under no circumstances should the book or notes be handed to the solicitor or their representative for inspection.

- a) At the conclusion of the interview no draft statements will be signed.
- b) The solicitor will be asked to furnish the relevant Command/Department where the Police Officer or Police Staff is located, with three copies of the statement they have taken at the interview, before the hearing of any civil action. This statement will be checked by the member of staff interviewed, and the Inspector who was present during interview amended where necessary and signed. One copy will be retained by the member of staff and the other two returned to the Command/Department, for onward transmission to the interviewer.

5.2.11 An appropriate fee may be charged for each person interviewed. This fee being payable before, or at the time of the interview; and a receipt will be forwarded to the Command/Department administrative function. In addition, any expenses properly incurred by the officer in attending the place of interview will be claimed.

5.3 **Attendance At Civil Proceedings Or Tribunals**

5.3.1 Whenever a member of staff is served with a subpoena to attend a Civil Court, they must report the facts immediately to their Head of Command /Department, and enclose any conduct money or expenses received.

- a) The Head of Command /Department in whose area an accident occurred will arrange for the service of any subpoena issued in connection with an accident.
- b) The subpoena together with the relevant accident file will, where necessary be obtained from the Crown Prosecutor, and forwarded to the relevant supervision with an accompanying memorandum. At the conclusion of the hearing the file will be returned to its office of origin with an accompanying report detailing any expenses incurred to enable the Police Officer's or Police Staff's Head of Command /Department concerned to recover the amount due.

5.3.2 In cases where subpoenas are received from more than one solicitor, the first one should be accepted and other solicitors informed that a subpoena has already been served on the member of staff and they will be at the court. If the other solicitor insists on their subpoena being served, then it may be accepted and the conduct money claimed.

- 5.3.3 When attending court on subpoena, all relevant documents must be taken including Accident Report Form, Official Pocket Book for police officers, and any signed statements.
- 5.3.4 Police officers' note books may be shown to Counsel in the corridors of the court, if so required, before the hearing. If a police officer's note book is produced to Counsel within the precincts of the court, any expression of the officer's own opinion recorded in the note book should be effectively covered over. In the County Court, a police officer's note book may similarly be shown to a solicitor in cases where Counsel is not instructed.
- 5.3.5 Members of staff must not communicate any opinion they may have formed to the parties in a case which may come before a court or tribunal and when giving evidence in civil actions, must not answer questions as to matters of opinion, save under the express direction of the Judge.
- 5.3.6 The receipt of a subpoena to produce documents should be reported to the Head of Command /Department. The terms of the subpoena must be complied with and the documents named therein taken to court. Production of such documents is, however, subject to the following rules:-
- a) Statements made by private persons - (whether parties or independent witnesses) will, when called for, be produced, but the member of staff should inform the court that they are confidential and that they have been directed to hand them to the Judge for their perusal and decision as to whether they should be put in evidence.
 - b) Reports submitted by police officers to senior officers are not only confidential but privileged and if included in a subpoena, an immediate report must be made to the Head of Command /Department who will decide whether such privilege is to be insisted upon.
- 5.3.7 Whenever a member of staff has attended a Civil Court or Tribunal they will submit a report, together with any conduct monies received, to their Command/Department Admin. who will forward this to Support Services Command - Accounts with form Finance 102, stating the actual time engaged. Subsistence and travelling expenses (at public transport fares) necessarily incurred will be reclaimed through Command/Department contingent accounts and a copy of the claim submitted with the report.

5.4 Attendance At Criminal Injuries Compensation Board

- 5.4.1 Members of staff who attend Criminal Injuries Compensation Board Tribunals as witnesses will submit a report through their Head of Command /Department to Support Services Command - Finance setting out the date and time of leaving and returning to their place of work and whether the time spent was during normal duty,

part on-duty and part off-duty or rest day. Details will also be given of any travelling, refreshment or subsistence expenses incurred. No claim will be made from the board at the time of attendance, and no expenses proffered should be accepted.

- 5.4.2 Overtime claim forms and account of expenses forms, where applicable, will continue to be submitted for payment in the normal way.

5.5 Attendance At Care Proceedings

- 5.5.1 Care proceedings conducted by the County Council have been judicially defined as being neither criminal nor civil but as non-adversarial.
- 5.5.2 Members of staff will be made available to attend care proceedings in Magistrates' Courts and Crown Courts following a request in writing, without the need for a subpoena or conduct money.

5.6 Disclosure Of Information to Parties in Care Proceedings – Family Law

- 5.6.1 It is in the interest of the child(ren) involved in care proceedings that the police co-operate fully with other agencies. This includes the disclosure of material gathered in a criminal investigation to those acting in the care proceedings.
- 5.6.2 All requests for disclosure should be made via email or in writing for the attention of the Information Rights and Disclosure, Peterlee Police Office, St. Aidan's Way, Peterlee, County Durham SR8 1QR and will be on a Durham Constabulary application form or an Annex D form from the National protocol. Durham Constabulary seek to recover some costs for disclosure in Family Court proceedings.
- 5.6.3 If there is a current Police investigation going on which has or has not gone to CPS, contact should be made with the OIC as to what, if any, information regarding that incident can be disclosed.
- 5.6.4 With the authority of the OIC any Police statements, witness statements, statements of experts, medical statements after being redacted can be disclosed.
- 5.6.5 If the other agencies request contact with any witness, authority should be asked from that witness to give the agencies their contact details.
- 5.6.6 P.A.C.E. interviews with suspects - Interview discs, photographs will be supplied if requested and not detrimental to the investigation.

5.6.7 ABE of children's evidence - Copies of the ABE interview will be supplied if requested and not detrimental to the investigation.

5.6.8 The general rule is that Durham Constabulary will follow the locally agreed protocol – Durham and Teesside Third Party Protocol 2013 – a Protocol for Disclosure of Information in Cases of alleged Child Abuse and linked Criminal and Care Proceedings

5.7 Attendance At Disciplinary Hearings Of Other Public Authorities

5.7.1 Officers and members of police staff may occasionally be requested by other public bodies to give evidence before a Disciplinary Hearing convened by that Authority.

5.7.2 Subject to a formal written request to the Head of Command /Department, consideration will be given to attendance of the witnesses required. Unless there are exceptional circumstances, which in the view of the Commander require witness expenses to be levied upon the Authority concerned, attendance will be free of charge.

5.7.3 In each case, the Head of Command/Department will request the Authority's representatives to consult with the police witnesses well in advance of the Disciplinary Hearing in order to assist them in terms of their evidence.

6.0 SPECIFIC INSTRUCTIONS

6.1 Police Officers/And Police Staff Attending Court In Any Other Capacity

6.1.1 A member of staff involved in any Court proceedings in a private capacity must submit a report to the Deputy Chief Constable as soon as they are aware that they are, or may, be required to appear in Court. The report must give details of the case and specify the capacity in which they will attend e.g. defendant or witness, etc.

6.1.2 Any member of staff who may be required to attend court under this capacity should first seek the advice of the Force Solicitor.

7.0 **APPEALS PROCEDURE**

If an individual wishes to appeal against any decision made in connection with this policy, they should write to or email, the Chief Constable at the below address within 14 days of receiving a decision. The appeal will be considered and consultation will take place with appropriate individuals to establish all facts before a decision with regard to the appeal is made. A response to the appeal will be provided in writing within 10 working days of receipt of the appeal. Should this period not be achievable the individual will be notified in writing when a decision will be communicated.

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