

**ASSOCIATION OF CHIEF POLICE OFFICERS OF ENGLAND,
WALES AND NORTHERN IRELAND**

MEDIA ADVISORY GROUP

GUIDANCE NOTES

1. INTRODUCTION

1. Background

- 1.1 These guidance notes have been drawn up by the Media Advisory Group (MAG) of the Association of Chief Police Officers, following consultation with representative media bodies. They replace the series of notes issued in December 2000.
- 1.2 The notes aim to encourage consistency of practice by police forces but are issued only for their guidance. It is a matter for individual chief constables, in conjunction with their media advisers, to decide whether, and how, the notes should be implemented. The Media Advisory Group would indeed expect that if chief constables decide to implement the guidance they will adapt them in the light of local circumstances and following such consultation with the media in their area as they felt necessary.

2. Underlying Principles and Objectives

- 2.1 As a publicly accountable body, the Police Service is committed to openness and accessibility. It believes in the greatest possible flow of information to the media. These principles underpin a relationship which in different ways is important both to the police and to the press and broadcasters. Police forces look to the media as a channel through which communities may be informed about many aspects of police work and on occasion through which the public's co-operation sought, for example, in the investigation of crime. For the media, police matters feature prominently in news bulletins, documentaries and features and in fictionalised drama.
- 2.2 The roles of the Police Service and the media will not however always coincide. In a free society that is only right and proper. But when differences do arise it is in everyone's interests that they are resolved speedily and with the least misunderstanding. These notes aim therefore to provide a clear working framework to maintain the smoothest possible day-to-day relationship between police and all sections of the media, keeping problems to a minimum and resolving them when they do occur.

3. The Legal Context

- 3.1 Although each section of the notes deals with a particular subject and may be considered discretely, together they form a cohesive set which reflects the general aims. The guidance contained in them stands on a common foundation of law and practice. Common and statute law have historically

provided for the disclosure of information to the press but have also limited its extent, especially about individual persons. Policies of openness and transparency have to be reconciled with the individual's right to privacy: for example, except under exceptional circumstances the identity of a person should not be disclosed when under investigation or after arrest and prior to being charged (see Note number 2). They also have to be balanced between the police's need to maintain its ability to enforce the law and the rights to the freedom of expression and the dissemination of information through the media in the public interest. The media's rights and responsibilities in these respects are set out in law, supplemented by its own Codes of Practice.

- 3.2 The following paragraphs set out the main legal provisions which apply to all the notes and define some terms, such as 'policing purposes' and 'public interest' which are also applied throughout the notes. The notes take into account common and statute law. They reflect recent legislation affecting the release of information into the public domain, including the Data Protection Act 1998, Human Rights Act 1998 and the Freedom of Information Act 2000, which comes fully into effect in January 2005.

4. Common Law

- 4.1 The common law duty of confidence, of acting within powers for a lawful purpose and the duty not to breach legitimate expectation, must all be discharged by the police. Where, in discharge of a power or responsibility, the police receive information which is then disclosed for some other purpose, a breach of confidence may occur unless an exception to an obligation can be relied upon. Compliance with a statutory obligation would be such an exception as would a broader over-riding public interest, such as the prevention and detection of crime.
- 4.2 The duty to act within given powers is well understood by the Police Service. Processing and disclosure of information can only be undertaken when permitted by powers in the context of the particular activity. The duty not to breach legitimate expectation arises where the individual has a legitimate expectation that they, or the information concerning them, will be treated in a particular way. It may well be unlawful for a public body to act inconsistently with that expectation.

5. Data Protection Act

- 5.1 The Data Protection Act includes structured manual files as well as electronic records. The Act contains eight Data Protection Principles which include sensitive personal data, with explicit conditions attached to their processing. The Act also provides for a number of exemptions, including ones relating to the prevention and detection of crime and the apprehension or prosecution of offenders.
- 5.2 Consideration as to whether or not data should be released to a third party, including the media, about individuals who come into contact with the police, should be made on a case by case basis, which must be documented. The public interest and exemption for the special purpose of journalism, among

other considerations, may outweigh the rights of the individual to confidentiality in determining the release of information.

- 5.3 Material featuring an unknown person is not considered 'personal data'. Once the identity becomes known, the material immediately becomes 'personal data' and is subject to the Act.

6. Policing Purposes

- 6.1 Data obtained and processed under the Data Protection Act must be for a specified and lawful purpose, which is registered by the data controller with the Information Commissioner. In the case of the police this is for a 'policing purpose', which is defined as: 'the prevention and detection of crime, apprehension and prosecution of offenders, protection of life and property, maintenance of law and order, and rendering assistance to the public in accordance with force policies and procedures'. To this should be added 'reducing the unwarranted fear of crime.' This definition is used throughout these notes for the guidance of forces when determining the balance between protecting a person's right to privacy and acting to achieve a 'policing purpose'.

7. Human Rights Act

- 7.1 The Act incorporates the 1950 European Convention for Human Rights into UK domestic law and places considerations of an individual's rights at the heart of law enforcement. The Act requires that each police officer and member of the civilian support staff as a 'Public Authority' must act in a way which is at all times consistent with the ECHR.
- 7.2 The Act directly affect issues surrounding the release of information by police to the media. These include Article 3, which provides protection against inhuman and degrading treatment; Article 6, which establishes the right to a fair trial; Article 8, which concerns the right to respect for private and family life; and Article 10, concerning the right to the freedom of expression. The principles of proportionality, legality and necessity must all be considered in making decisions where questions of human rights are involved.

8. Public Interest

- 8.1 There is no one definition of the public interest. The Code of Practice adopted by the UK newspaper and periodical industry and ratified by the **Press Complaints Commission**, defines the public interest as:
- detecting or exposing crime or a serious misdemeanour;
 - protecting public health or safety;
 - preventing the public from being misled by some statement or action of an individual or organisation.
- 8.2 The Code, which is supported by the Society of Editors, also states that "there is a public interest in the freedom of expression itself. The Commission will

have regard to the extent to which material has or is about to become available to the public." Nine of the Code's sixteen provisions can be over-ridden if it can be demonstrated to be in the public interest. These include those relating to intrusion into an individual's private life, harassment, the rights of children, the use of listening devices, entry into hospitals, the reporting of crime, misrepresentation and subterfuge and payment for articles. In cases involving children an 'exceptional' public interest must be demonstrated.

- 8.3 In its Fairness and Privacy Code of 1998 the **Broadcasting Standards Commission** said that "the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one..... An infringement of privacy has to be justified by an overriding public interest in the disclosure of information." Its Code broadly follows the PCC-ratified definition:

- revealing or detecting crime or disreputable behaviour;
- protecting public health or safety;
- exposing misleading claims made by individuals or organisations;
- disclosing significant incompetence in public office.

It also states that "the means of obtaining the information must be proportionate to the matter under investigation." The BSC's code has statutory authority and all broadcasters are obliged to reflect it in their own codes and guidelines.

9. Status of the Guidelines

- 9.1 The notes are issued for the guidance of chief constables in the interests of good practice. ACPO has no authority to enforce their implementation nor any responsibility for the manner in which they are applied. It is entirely a matter for individual chief constables, in conjunction with their media advisers, to decide whether they wish to implement the guidance. They are free to adapt the notes or extract such notes or parts or notes as they see fit in the light of their local circumstances. They may also wish to consult the media in their force area or region before deciding whether to implement all or any part of the notes.
- 9.2 The ACPO Media Advisory Group will from time to time review the notes and revise them as necessary. It will consult within the Police Service and with national media organisations and representative bodies on any substantive revision to any or all of the notes.

**ASSOCIATION OF CHIEF POLICE OFFICERS OF ENGLAND,
WALES AND NORTHERN IRELAND**

MEDIA ADVISORY GROUP

GUIDANCE NOTES

2. INDIVIDUALS UNDER POLICE INVESTIGATION

1. Introduction

- 1.1 Generally people under investigation should not be named but they can and will, with certain exceptions, be identified once they have been charged. This approach balances the principle of open justice with the rights of the individual to privacy, a fair trial and damage to the reputation of individual if no charge is made against them.
- 1.2 Where the media have the name of an individual, or a company, and seek confirmation that they are the subject of police investigation that name may be confirmed. (see also Section 8 of the Note concerning company investigations and Guidance Note 7 on the Naming of Victims and Witnesses, paragraph 2.8).

2. Arrests

- 2.1 People who are under arrest should not be named for the reason stated in the Introductory section of these notes (paragraph 3.1). General details - a 27 year old Brighton man, for example - may be given, provided they do not identify the suspect. If a suspect is subsequently (a) released without charge; or, (b) bailed to reappear at a police station; or, (c) cautioned, this fact can be released to the media, but the person should remain unidentified. The underlying concern is to avoid damage to the reputation of an individual where no proceedings are to be taken against them. Failure to do that may result in civil proceedings for any damage caused.
- 2.2 When someone has been charged and kept in custody for court, their name, age, and occupation, along with details of the charge and forthcoming court appearance may normally be given. Their address may also be given, unless there are legal or operational implications in providing it.
- 2.3 When someone is charged and bailed to court at a later date, the same details may be made available as above. However additional care is required when there is a possibility that a case may be discontinued before the court appearance. If this happens, and a defendant's details have already been released, the fact of the discontinuance must be released to the media as soon as practicable. Every effort should be made, through guidance and training, to make police officers aware of the need to inform their media advisers in such cases and to promote good practice. Because of these practical problems some forces have taken the view that they will only

release details of the person charged when a court appearance is imminent or certain. Others do not release names until the court appearance.

- 2.4 The principal exceptions to this are juveniles, who must not be named, and cases involving victims of sexual offences, where the person charged must not be named if there is any danger that by doing so a (surviving) victim is identified. On other occasions, there may be operational reasons why the officer in the case wishes to withhold the name of the person charged until the court appearance.

3. Cautions

- 3.1 The name of someone cautioned for an offence should not be confirmed. However, it is possible to confirm that "a man" or "a woman" has been cautioned for a certain offence. If there is unlikely to have been more than one such incident, this response may in effect give the media the confirmation they are seeking. The point at issue is the extent to which the facts of the case are confirmed.
- 3.2 Any confirmation of facts should only be in general terms, such as: "An elderly woman was cautioned for shoplifting in a Preston shop."

4. Breath Tests

- 4.1 On the basis of the advice in paragraph 2.1, the name of someone who has been tested should not be confirmed. Neither should the result of any breath test be given, because this is part of the investigative process prior to charge.
- 4.2 We should not discuss individuals who may or may not have been stopped and tested unless or until there is a charge. If the media have a witness to the incident, we may confirm that it took place without confirming the identity.

5. Speeding and Fixed Penalty Offences

- 5.1 If an offender is dealt with by way of a fixed penalty, questions arise whether there should be no publicity, as with a caution, or whether the police are entitled to name (or confirm the name of) the offender.
- 5.2 If the fixed penalty is contested in the magistrates court, the name will appear publicly on a court list. It may be argued, however, that this is very different from a police press officer volunteering a name to a third party in response to a media enquiry.
- 5.3 We should not routinely volunteer or confirm a name in cases dealt with by way of fixed penalty. However, we should be prepared to review specific cases against a number of criteria. These might include the level of media interest, a judgement on whether a refusal to confirm remains tenable and the views of the individual concerned. We should also consider "the public interest" because, in uncontested cases, there is no judge or magistrate to take such a view.

- 5.4 If a member of the public complains directly to the media about police action in relation to a fixed penalty notice, we may take this as consenting to publicity and are thereby justified in making a response which confirms the identity.

6. Offences Arising From Road Collisions Or Other Incidents

- 6.1 It may be that a party to a road crash or some other incident has already been identified to the media. How then do we adhere to similar principles if that person is subsequently the subject of enquiries which may lead to prosecution?
- 6.2 Where names are released in connection with road crashes or other incidents, we should not discuss whether the individual is being reported or investigated until they are charged (or until a final decision is made that no action is being taken).
- 6.3 With a hit-and-run crash, where the name of an offending driver is not known, the principle applies with opposite effect. When the driver is found and arrested, the fact may be given but no identity until charge.

7. Police Attendance At Specific Addresses

- 7.1 The physical presence of numbers of police in response to any call - especially if they are supported by use of a helicopter - may attract media attention. Press officers are used to dealing with such enquiries on their merits, inviting publicity for searches, arrests and good police work but deflecting others which are operationally sensitive or security-related.
- 7.2 While it is unrealistic to lay down policy for every eventuality, the main consideration is, once again, that in handling such enquiries we should not identify individuals as being the subject of police attention until or unless they have been charged with an offence. We should therefore respond by reference to general locations rather than specific addresses.
- 7.3 Provided the incident is based on a call from a member of the public (rather than a pre-planned operation, where other considerations apply), we may confirm in general terms that police were called to a disturbance, incident, or report of a crime, for instance. In doing so we can identify the village, locality or even an urban street, but not the house number or house name or indeed the street name if it is a tiny cul-de-sac. Care needs to be taken where houses are easily identifiable (for example, a large house in a small village).

8. Company Investigations

- 8.1 The Serious Fraud Office (SFO) has a flexible media policy, and many of the cases it deals with are in the public domain.
- 8.2 At force level, confirmation that a police investigation has begun may be withheld for a number of reasons, such as:
- share price (or general commercial) sensitivity;

- the danger of the subject being alerted, or documents being shredded, for example;
- the possibility that the allegation/complaint may be malicious or mischievous and/or totally without foundation.

- 8.3 At a later stage in an investigation, prior to charges, other factors may come into play. Media publicity may be helpful in bringing forward further evidence and witnesses or in alerting the public to malpractice.
- 8.4 There are sound reasons for a flexible policy in this area. If the investigating officer is anxious to avoid publicity at the time a serious media inquiry is made, a refusal to comment leaves the field open to harmful speculation. It may be preferable to negotiate with a journalist acting alone by seeking to delay publication, possibly in return for co-operation later.
- 8.5 In this specialised area, forces should rely on the professional expertise of investigators, in consultation with their force media advisors, to consider each media inquiry relating to company investigations on its merits.
- 8.6 Forces should, wherever possible, decline to discuss questions relating to named individuals within a company - have they been or will they be questioned by police? This is in line with SFO policy and accords with the principle that individuals should only be identified once they are charged.
- 8.7 If a force is asked by the media about an investigation which is already with the SFO, the caller should not be referred automatically to the SFO as this, in itself, virtually provides the required confirmation. The media inquiry should be noted and consultation should take place before any response is given.

9. Refusal To Comment

- 9.1 To offer "No Comment" surrenders the opportunity to influence media coverage. However, there may be very rare occasions when this is felt to be the only possible course of action. One such example may be where a public figure is the victim of a libel and where confirmation that police are investigating a complaint might give the media grounds for using the victim's name.
- 9.2 "Not prepared to discuss" may be the only appropriate response in the most exceptional cases. It should be regarded very much as a last resort. Indeed a principal purpose of these guidelines is to offer acceptable alternatives to such a course of action.

10. Publishing Personal Details on Police Web Sites

- 10.1 The rules which apply to issuing details in a press release are applicable to publishing the details of individuals on police force web sites. When the details of people charged with an offence are issued through a press release it is entirely reasonable to publish the details on a force web site
- 10.2 It is however unreasonable to leave details on a web site for a long period. Any placing of personal details of a charged person on a force website

(assuming they are not juveniles or naming would lead to identification of juveniles or alleged rape victims) should be for no longer than seven days after charge, and even within that time should be amended or removed if charges are added or altered, or if court restrictions on naming persons are imposed.

- 10.3 Personal details of persons convicted on force websites should be for no longer than 12 months after conviction (again, assuming they are not juveniles, naming would not lead to identification of rape victims, or there are no outstanding court-imposed reporting restrictions). Should there be a change in circumstances, such as an appeal being lodged or further charges or allegations made against any of the people mentioned, entries on the force web site should be suitably weeded to avoid any contempt issues.
- 10.4 However these constraints do not prevent relevant personal data remaining available to legitimate media enquiry, or for further releases, and do not prevent other non-personal data remaining available or being placed on websites.

**ASSOCIATION OF CHIEF POLICE OFFICERS OF ENGLAND,
WALES AND NORTHERN IRELAND**

MEDIA ADVISORY GROUP

GUIDANCE NOTES

3. PRE-VERDICT MEDIA BRIEFINGS IN CRIMINAL CASES

1. Introduction

- 1.1 There continues to be an absence of external advice for the police in this area. A report published in 1997, *Lawyers' Comments To The Media*, by the Lord Chancellor's Advisory Committee on Legal Education and Conduct, concluded:

'There is no effective external guidance to the police on comments, or supply of information, to the media about criminal cases. Home Office guidance to the police has been allowed in effect to lapse. We do not accept the Home Office's current view that no guidance on this subject could be detailed enough to be useful.'

- 1.2 The following advice is therefore designed to be used for briefing which may take place either pre-trial or during a trial. While it is based on the MAG guidance issued in 1995 and current good practice within police forces, the continued lack of formal endorsement for it from agencies outside the police service needs to be borne in mind.
- 1.3 Whilst media briefing pre-conviction may be desirable for the reasons given below, the over-riding principle is that nothing should be done to prejudice the forthcoming trial.

2. Media Briefing: Criteria and Timing

- 2.1 Among the criteria in deciding whether to hold such a media briefing, the following should be considered:-
- Does the case provide an opportunity to highlight good police work and reassure the public about the excellence of policing?
 - Does the case provide an opportunity to show an innovative technique, new technology (without, of course, providing information which may aid criminals or jeopardise future police operations) or inter-agency co-operation at work in detecting the crime and, alongside the Crown Prosecution Service (CPS), bringing the case to trial?
 - Can the case act as a deterrent to future offenders or provide an opportunity to offer crime prevention advice?

- Is the level of media interest so great that controlled briefing is considered desirable in order to divert media attention from witnesses, reduce the fear of crime, minimise distress to victims and/or their families, to aid accuracy of reporting and add context, or to minimise potential damage from ill-informed media speculation?
 - Could briefing form part of a wider media strategy to encourage openness and to counter anticipated criticism of the police post-trial or in the event of acquittal?
- 2.2 Since the earlier MAG guidance was issued pressure has grown for briefings earlier than the maximum of two weeks before a trial then recommended.

3. Pre-Trial and Pre-Verdict Briefing

- 3.1 Regardless of whether any formal pre-trial or pre-verdict briefing is being considered, certain items and background information can safely be offered to the media before a trial begins. Such information can assist accurate and balanced reporting of the trial without compromising justice.
- 3.2 This category of information will already have been disclosed to the defence and, indeed, may already have been rehearsed in a public arena (albeit usually with reporting restrictions in place) at the committal stage.
- 3.3 It may be sufficient to prepare pre-trial briefing material for journalists inquiring about the case on a one-to-one basis, or more generally. In any such contacts it must be made absolutely clear that the information is being supplied to assist their background inquiries and no information which may prejudice forthcoming proceedings must be published or broadcast until the end of the trial.
- 3.4 Such information might normally include:
- name, age, occupation and address of the defendant;
 - similar details of victim(s) where appropriate, and general background on any company or organisation involved;
 - any blood/legal relationship between victim(s) and defendant(s);
 - details of charges and any brief explanation of their context;
 - the date of the trial and expected duration;
 - number of witnesses from whom evidence may be heard;
 - the scope of the investigation, such as the number of statements taken, the volume of evidence prepared or the number of exhibits;
 - a list of key locations relevant to the trial and a brief explanation of their significance, provided they are not in dispute and will not cause prejudice to the trial;

- details of the officer who led the investigation, the numbers who worked on the case and any particular expertise or specialisms employed;
 - information about any photographs to be released at the end of the trial, or any exhibits or facilities to be made available at that time.
- 3.5 There should be no discussion with the media pre-verdict of the relative weight or value of elements of the prosecution case.
- 3.6 Where a face-to-face group briefing is held, the following points are considered good practice:-
- the CPS should be closely consulted and involved as appropriate throughout the media briefing process and advice should be sought in all instances where filming of police work is likely to have an impact on a current or future operation;
 - a record should be kept of all journalists attending the briefing. They should be reminded at the outset of their obligations under the Contempt of Court Act and any other relevant legislation and, if considered necessary, be asked to sign a document to say they understand. The indemnity agreement (see Note Number 10) could be altered accordingly;
 - the information given by the police should be recorded;
 - care should be taken to ensure that information given to the media is confined to that which either has already been, or is intended to be, placed before the court;
 - careful consideration should be given to how to deal with those areas of the prosecution case which may at a later stage be ruled inadmissible. Journalists should be warned of the possibility that *anything* mentioned during pre-trial briefing could be ruled out at a later stage;
 - there should be no speculation about events or individuals which may prove detrimental to the prosecution case (for example, that a witness is being treated for a medical condition, which could be seized upon by the defence as a sign of unreliability);
 - consideration should be given to asking media representatives to sign a form of indemnity requiring them not to broadcast or publish information given before any or all of the defendants are convicted, unless the material is introduced as evidence at trial;
 - media representatives should be advised that any notes or recordings taken may have to be disclosed to the defence.
- 3.7 The type of information outlined above may be given by the Senior Investigating Officer or agreed police spokesperson as 'soft' interviews to be held "in the can" for radio and TV, but there must be clear agreement in

advance about when and whether such interviews may be broadcast (e.g. "for use only after a conviction").

- 3.8 Facilities may also be provided on a similar basis for factual interviews with arresting officers, family liaison officers, local police commanders, etc, at the discretion of the SIO in consultation with his/her media advisors. Where officers give interviews in this way about particular aspects of a case, care should be taken to ensure that their comments are confined to their specialist areas.
- 3.9 In-depth interviews by police officers should be deferred at least until the jury has retired, and more likely post-verdict.

4. Media compliance

- 4.1 Successful pre-trial briefing can only take place on the basis of trust and professional mutual understanding of the respective roles of the police and media in the criminal justice process. It is virtually impossible to guarantee media compliance on any other basis. Where such trust and mutual understanding is absent, it is inevitable that Senior Investigating Officers and their media advisors will err on the side of extreme caution.

**ASSOCIATION OF CHIEF POLICE OFFICERS OF ENGLAND,
WALES AND NORTHERN IRELAND**

MEDIA ADVISORY GROUP

GUIDANCE NOTES

4. RELEASING DETAILS OF 'OLD' CASES

1 Introduction

- 1.1 The guidelines relate to the release of information in mainly serious cases, usually murder, which are re-examined by the media, often many years after the offence took place.
- 1.2 Although the impetus may be different, many of the considerations relating to liaison with victims and/or relatives and witnesses, also apply to investigations revived by the Police following a 'cold case review'.
- 1.3 There is widespread recognition that a careful balance needs to be struck between the rights to privacy of victims, relatives and witnesses and the Police policy of openness with the public.
- 1.4 The intention of issuing advice on this subject is to minimise the potential for distress to victims or surviving relatives, offenders or offenders' relatives when details of cases are published and/or broadcast through the media.

2. Reconstructions Of 'Old Cases' At The Request Of Programme Makers or Feature Writers

- 2.1 It is in this area that dilemmas may occur, since such programmes or features focus on completed cases or undetected cases which are no longer being actively investigated. While forces may be prepared to commit resources to media coverage of incidents which are still 'live' and where appeals to the public for information may be relevant, there may not be the same impetus to co-operate with reconstructions of 'old' cases where there is not the same tangible return for investment.
- 2.2 Whether or not resources should be committed to assisting the media in these circumstances will be a matter of individual Chief Constables' judgement. The following points are among those which should be considered:
 - are there present day considerations that make resurrecting the case useful and beneficial to the service?
 - what effect will the programme/feature have on the victims or the surviving relatives of the victim or the surviving relatives of the perpetrator of the crime?
 - will the programme/feature enhance the reputation of the Force and therefore the Police Service generally?

- will it allay or contribute to the fear of crime?
- did the case represent the introduction of a new investigative technique?
- did it involve a particularly outstanding piece of police work (for instance the use of science and technology in an innovative way or the linking of seemingly unconnected pieces of information)?
- was it a crime which is relatively unusual but which caused considerable public concern?
- is there an overwhelming need to publish or broadcast in the public interest?
- did the case attract considerable media interest? (The fact that it did should not mean automatic agreement).
- are the officers involved now retired? Are there others who could speak with authority about the case on behalf of the Force?
- will the opportunity costs involved in research and reconstruction outweigh any potential benefits to the Force?
- is there the potential to compromise future operations/investigations by revealing operational techniques to criminals?
- are there issues of disclosure to be considered?
- is the case potentially the subject of a review by the Criminal Cases Review Commission?
- What are the likely consequences of non co-operation?
- Is the safety of witnesses or informants likely to be jeopardised?
- Does the media organisation to which information is to be released comply with its own professional Codes of Practice?

2.3 All reasons for decisions must be proportionate, lawful, necessary and justifiable and fair and be documented to ensure accountability.

3. **Definition Of An 'Old Case'**

3.1 It is not always possible to define precisely when a case becomes 'old'. It is suggested that it is:

- a) any case where a trial has taken place, resulting in conviction or acquittal. Particular care will be needed when dealing with the latter. Consideration must also be given to the likelihood of an appeal or review by the Criminal Cases Review Commission.

- b) any unsolved case which is no longer the subject of a major investigation, but where the file remains open pending further information and/or evidence.

4 Authority Levels

- 4.1 In general, all such media requests should be directed to the force media/public relations manager.
- 4.2 The decision on whether to comply with the request should be taken in consultation with the head of CID and the relevant Chief Officer
- 4.3 There may be a need to involve the case senior investigating officer (SIO) in the decision-making process. This may pose practical problems if the SIO has since retired. Any requests to a retired officer in these circumstances should be carefully considered by the head of CID serving at the time of the media request and should take into account the fact that police policies and practices may have changed in the intervening period.
- 4.4 In cases of difficulty or internal conflict, the final decision on whether to comply with a media request for information about an 'old' case should rest with the relevant Chief Officer. Forces may consider taking legal advice.

5 Obtaining Permission From Victims or Surviving Relatives

- 5.1 Prior to any police co-operation with the media request, every reasonable effort must be made to contact the victim and/or any close surviving relatives of the victim. The nature of the request and its implications must be explained to the family.
- 5.2 Subject to paragraph 5.5 (below), the permission of the family (invariably from a close relative) must be given in writing before any agreement is made to assist with the media request. ('Close' relative means the most senior and responsible kith and/or kin. If a child is the only surviving relative, an appropriate and responsible adult should be involved in the decision). This helps to avoid unwanted or unauthorised intrusion into people's privacy.
- 5.3 Care should be taken not to seek permission from close relatives or other relatives who have participated in the making of the programme, until discussions lead to the clear impression that the programme will be broadcast or the article published. This is aimed at preventing any undue alarm or anxiety being caused to victims or their relatives.
- 5.4 Having complied with the guidelines at 5.1 and 5.2, the Police should absolve themselves of responsibility for contacting other relatives, friends, neighbours, offenders' relatives or other parties involved. It should be explained that practical difficulties mean the responsibility for informing other interested parties must rest with the relevant kith or kin.
- 5.5 It is the responsibility of the broadcaster or writer to keep the victim or the relevant kith and/or kin of the victim informed of matters relating to

broadcast or publication of material, such as the date and time, and a guide to its likely contents.

- 5.6 In the event of conflict between the wishes of relatives and the Police, it is the Police who should act as final arbiters. In reality, it is unlikely that the Police would oppose the wishes of the family, but there may be operational reasons why officers would wish to obtain publicity, particularly in unsolved cases. The wider public interest may also be a consideration.

6 What Should Be Released?

- 6.1 Case files should *not* be given to the media. Press Officers and CID officers should use their discretion where necessary, but the general principle is that as full a briefing as possible should be given to the researcher.
- 6.2 Photographs and any audio/visual material of an explicit and potentially distressing nature must not be released unless consent is obtained. (Police photographs released at the time of the original investigation and/or post court verdict should be guarded by a copyright notice on the photograph stating that it may not be reproduced without permission).
- 6.3 Careful consideration must be given to the release of items with potential evidential value.
- 6.4 Information must not be given that would impinge on an individual's right to a fair trial.

7. Co-operation with Writers and Programme Makers

- 7.1 While neither editors nor broadcasters will relinquish editorial control, forces may wish to seek agreement to allow them to view and comment on the material on matters of factual accuracy prior to publication.
- 7.2 Wherever practical, forces which have co-operated should be provided with a copy of any material prior to publication or broadcast.
- 7.3 Forces must determine how producers will handle any fresh evidence which comes to light as a result of their researches and whether it should be handed to the police. Issues concerning the continuity of evidence should be outlined to the producers.

8. Metropolitan Police Service

- 8.1 Procedures in the Metropolitan Police Service (MPS) differ slightly from other forces, as it is subject to the Public Records Act 1958. Files are reviewed 30 years after the last action on them.
- 8.2 All registered files may go through a two-stage review from the date of the file creation. The first stage is between five and 10 years after the file creation when some of them are then destroyed. If the file is deemed worthy,

It can be retained either for administrative use or for historical purposes. It is revised again when it is 25 years old.

- 8.3 When the 'opening' of a file (ie release of information to the public through the media) would cause distress, files can be 'closed' for 40-100 years. Sensitive files may be retained for longer. Decisions are made on a case-by-case basis.
- 8.4 Media requests for police records on cases under 30 years old are usually refused. If release is being considered, the views of the Director of Public Affairs and an officer of ACPO rank are sought before access is permitted.
- 8.5 The same rules apply to MPS papers in cases which MPS officers are invited to investigate outside the Metropolitan Police District boundary. This can lead to conflict with forces not constrained by the Public Records Act and would require early consultation between the MPS and the force(s) involved.

9 Broadcasting Standards Commission

- 9.1 When considering requests, the Commission's 1998 Code of Guidance on matters relating to crime reconstruction is worth noting:

"Reconstructing a crime, sometimes with fresh details of which the victims and their families are unaware, can disturb not only those directly affected but also others in similar situations. The people involved should be informed, wherever appropriate. Where co-operation is withheld, especially in drama documentary programmes, justification for the programme should have some over-riding public interest, such as the illumination of public policy or the disclosure of significant new facts and be considered at the most senior level within the broadcasting organisation.

"It is important not to over emphasise the dramatic aspects of reconstructed crime by the insensitive use, for instance, of slow motion, music or other special dramatic effects. The weapons used should not be discussed in unnecessary detail."

10 Conclusion

- 10.1 Ultimately it is a matter for individual forces to decide whether to comply with a media request and each case must be considered on its merits. Some cases may seem only to have an entertainment value, with little or no apparent benefit to the force in terms of solving a crime or advancing the public interest.
- 10.2 However, an element of self-promotion by the force, particularly in terms of investigation techniques or noteworthy police work can help boost public confidence in the service.
- 10.3 It should also be remembered that, in some cases, the media may well possess sufficient information to proceed without direct police co-operation. It

would obviously be in the best interest of both the victims and/or their families and the Police that the information used by journalists is accurate and obtained from reliable, official sources.

**ASSOCIATION OF CHIEF POLICE OFFICERS OF ENGLAND,
WALES AND NORTHERN IRELAND**

MEDIA ADVISORY GROUP

GUIDANCE NOTES

5. INFORMATION ABOUT SEX OFFENDERS*

1. Introduction

- 1.1 Public and media interest in the whereabouts and activities of sex offenders has remained high since the introduction of the Sex Offenders Act 1997 and its requirement for offenders to register with local police. The management of the disclosure of information about sex offenders is a complex process, involving many individuals and agencies who each share a responsibility to protect the public.
- 1.2 The disclosure of information about specific individuals does not on its own necessarily reduce the risk to the public and, indeed, in some cases inappropriate and irresponsible disclosure could actually increase the risk. The disclosure of information must therefore be part of an established system and protocol which must be integrated into a risk assessment and management system.
- 1.3 Any decision to disclose information about specific individuals to third parties, which includes the media, will always need to be justified carefully on both legal and moral grounds and should be taken only as part of a carefully managed process. The general presumption is that information should not be disclosed, not least because of the potentially serious effect on the ability of an offender to live a normal life, the risk of violence to others and the risk that disclosure might drive the offender underground.
- 1.4 The judgment in the appeal in the case of North Wales Police, the Home Secretary and the National Association for the Care and Resettlement of Offenders ex parte AB and CD, confirmed that the police can disclose information about specific sex offenders to third parties where they consider them a risk to children or others.
- 1.5 The effect of disclosure on victims, and innocent members of an offender's family, must also be taken into account.
- 1.6 The contents of this note have been considered and endorsed by ACPO Crime Committee.

** Dangerous Offenders: Forces may utilise the practical elements of this guidance when considering whether to warn audiences about other offenders who are deemed to pose a danger to the public.*

2. Legal Considerations

- 2.1 In addition to the requirements of the Data Protection Act, Human Rights Act and common law, the following are of specific relevance in this area:
- *Sex Offenders Act 1997*: The Sex Offenders Act has enabled the police to identify, locate, monitor and assess the risks posed by all offenders who are required to register.
 - *The Children Act 1989*: This Act created a legal framework for the care, protection and upbringing of children and gives powers to local authorities, police, relevant voluntary agencies and the courts to act in the best interests of the welfare of children who may be at risk.
 - *Crime and Disorder Act 1998*: The Crime and Disorder Act 1998 gives police the authority to apply for civil orders restricting the behaviour of sex offenders whose behaviour give officers cause for concern. Such orders may restrict offenders from visiting locations such as playgrounds, schools and surrounding areas. Orders may be sought against anyone with a conviction for a sex offence, not just individuals required to register under the Sex Offenders Act. The hearings are held before magistrates and are therefore in the public arena.
 - *Criminal Justice and Court Services Act 2000*: Multi Agency Public Protection Panels, set up in every police force/probation area as a consequence of the Act, ensure there are systems in place in each area to deal with known dangerous offenders, including sex offenders. The police work with other relevant agencies through the panels and hold pre-release risk assessment meetings to evaluate the risk and to make action plans on the release of particular offenders. They publish annual reports of their work.
 - *Rehabilitation of Offenders Act 1974*: After varying periods of time specified in the Act, ex-offenders become rehabilitated and their convictions spent (sentences over 2½ years are never spent). The Act seeks to restrict the disclosure of details of spent convictions and there are civil and criminal sanctions against the unlawful dissemination of spent convictions. A malicious reference to a spent conviction can give rise to an action for damages and it is a criminal offence to disclose a spent conviction from criminal records other than in the official course of duties.
- 2.2 *Defamation*: where a damaging and untrue statement is made about a person, that person may be entitled to take legal action under the law of defamation for appropriate remedies, including damages. The accuracy of information about a potential offender must be verified before it is shared with a third party. Where information is communicated in good faith and order to discharge a duty, or in the public interest, there may be a defence of qualified privilege which is a defence for defamation. However, the disclosure must not be an unreasonable use of privileged information and the statement must not be made maliciously or recklessly.

3. Active Release of Information about Sex Offenders: Recommended Procedures

- 3.1 Police information about any offender should not be disclosed unless identified as necessary by the risk management process in accordance with Home Office guidelines.
- 3.2 Disclosure to third parties should be an exception to a general policy of confidentiality.
- 3.3 Disclosure decisions must be justifiable and defensible in court.
- 3.4 Each case must be carefully considered on its particular facts and must be part of an overall strategy for managing the risk posed by an offender.
- 3.5 Where practicable, those about whom the disclosure is being considered should have an opportunity to challenge the information on which the decision is based. Wherever possible, this should be done as part of the assessment of the accuracy and currency of the risk assessment.
- 3.6 Whenever possible, consultation with other relevant agencies should be sought prior to disclosure.
- 3.7 When disclosure does take place it should generally be to an identified individual(s) directly affected by the risk of harm or with responsibility for the protection of others, such as head teachers.
- 3.8 The amount of information disclosed must be limited to that necessary to ensure the safety of the individual(s) at risk.
- 3.9 Third parties should be given guidance on what action to take having received the information.
- 3.10 In high profile cases, a police Press Officer should be party to risk management conferences or briefed immediately afterwards.
- 3.11 The decision to make a public warning about a sex offender should be made by an officer of ACPO rank or by an officer acting under his/her delegated authority.
- 3.12 Where the media is used to warn the public about an offender, forces should consider doing this by means of a news conference. An audio/video or written record should be kept.
- 3.13 Forces may consider inviting relevant agencies to take part in publicity.

4. Responding to General Media Enquiries about Sex Offenders

- 4.1 Stories about sex offenders continue to be high on the agenda for many news outlets.

- 4.2 Forces are advised to agree procedures with local editors for handling general media enquiries about sex offenders (see suggested protocol at Appendix A). This should promote more balanced reporting and may prevent alarmist stories appearing when risk management strategies are already in place to protect the public.
- 4.3 Forces are encouraged to publicise the work of MAPPPs, especially arrangements for risk assessment and offender management to broaden the understanding of an emotional issue and illustrate the depth of work carried out to protect the public.
- 4.4 In response to specific enquiries from reporters, the police service, together with any relevant agency (eg probation, housing, social services), should share and supply guidance about the individual, including general information about any risk management strategies, rather than take a conservative line and refuse to comment.
- 4.5 Where the media may have only part of a story or an inaccurate story it is in the public interest to provide a comprehensive response to improve the accuracy of reporting and prevent unnecessary public alarm.
- 4.6 Nothing should be revealed which might jeopardise the effectiveness of future police operations, for example, how sex offenders who use the Internet are tracked.
- 4.7 Reminders about any agreed protocols should be sent to editors every six months. Regular update meetings may be held with editors to discuss progress and problems.
- 4.8 Forces may wish to invite editors to sign a formal declaration that they will abide by a local protocol.

5. National/international operations to trace suspected sex offenders

- 5.1 National operations such as Operation Ore (where intelligence from US law enforcement agencies about internet usage was passed to UK national police agencies then to individual forces) will be supported by co-ordinated guidance from the lead force or agency (eg National Crime Squad).
- 5.2 While the release of local information may assist with public reassurance it must always be borne in mind that these operations will be long term and that is paramount to secure evidence and secure the prosecution of the offenders. Forces are reminded that the over-arching goal is always to identify suspects and protect children.
- 5.3 Forces may consider it advantageous to provide local media with a briefing ahead of any major operation in order to inform the public about how they plan to handle the operation in their area, followed by details of arrests, charges, court dates and other information, at the conclusion of the operation.

- 5.4 In certain circumstances (for example, when coverage might prompt suspects to destroy evidence) it may be appropriate to offer the briefing on a confidential basis so that the media are aware of the risks of injudicious coverage. For instance, they could be requested to report cases which come to their notice but asked to refrain from linking them with a specific operation until all arrests are completed. However any relevant lead agency as indicated in 5.1 above, must be consulted before this, or the action suggested in the previous paragraph, is carried out.
- 5.5 Where neighbouring forces adopt a similar investigative approach, a joint approach to the media is suggested.

6. Court Cases

- 6.1 Because offenders may have lived with their victims, forces may wish to take whatever steps are necessary to protect the identity of victims and their home addresses when a case comes to court. This may require liaison with the Crown Prosecution Service. While it is the responsibility of the media to ensure that any reporting restrictions imposed by the court are complied with, it would assist them if police are able to inform the media of any such restrictions of which they are aware.

7. Suggested Protocol

- 7.1 A Suggested Protocol between forces and the media is set out at Appendix A to this note.

8. Commonly Asked Questions

- 8.1 Questions and Answers are contained at Appendix B to this note.

Appendix A: Suggested Protocol for a joint media, police and probation framework:

The police and probation services in the (force name) area share the media's fundamental belief in public accountability and public safety:

Managing sex offenders in the community is not new and the police, through Multi Agency Public Protection Panels, devise risk management strategies for every known high risk offender, with the protection of the public as the overriding factor.

Under the Sex Offenders Act 1997 the police have powers to inform communities of any convicted sex offender deemed to pose a risk high enough to warrant public exposure. However, in many cases, for the protection of the public and especially children, the police and probation service assess that individuals should retain anonymity.

While we share the media's interest in community safety, we believe that publicity may increase the risk to the public, heighten the threat of the offender disappearing, and raise the chance of vigilante action. In order to minimise such risks, the following guidance is proposed:

In the interests of public accountability and safety the police and probation services agree:

- All media enquiries will receive a response and, wherever possible, questions will be answered.
- Where this is not possible for safety or similar reasons, or within the given time constraints, this may be clearly stated in a confidential briefing with the Editor, or their deputy.
- Such enquiries will be handled by the senior Media Relations Officer in each organisation.
- Police, probation, health and housing authorities continue to share information relating to individuals assessed to present a risk by holding regular public protection meetings and taking agreed action.
- Public protection meetings will continue to notify key organisations e.g. Education Departments, where appropriate when individuals are believed to present a particular risk.

In the interests of public accountability and safety the media agree:

- A reporter with sensitive information involving sex offenders should routinely be required to consult with a nominated senior member of editorial staff before publishing or broadcasting the information.
- Sensitive information about an individual will not be published or broadcast without consultation with police or probation over its accuracy and whether disclosure would threaten supervision or public order.

- Any case involving sex offences against a child will be considered in terms of its impact on victims and families.
- In some instances the media will consider delaying publication or broadcast to ensure that publicity doesn't jeopardise existing security arrangements.
- If a photograph or the address of an offender is obtained, the media will consider, in the interests of public protection, whether they need to use this information in any story.

The application of the protocol will be reviewed at regular intervals or at the request of the force/media after its application. Reporting staff should be appraised of the protocol and reminded of it on a regular basis

Appendix B: Commonly Asked Questions

Q. How many people are on the Sex Offenders Register? How many sex offenders live in a particular area?

A. Annual reports published by Multi Agency Public Protection Panels include figures for the number of people on the register in each police/probation area. The reports also detail dangerous offenders who pose a risk of serious harm to the public and offenders who have been convicted of a violent or sexual offence and were sentenced to 12 months or more imprisonment.

The reports inform the public about the nature of risk posed by a small number of offenders in our communities and how statutory agencies are joining with others in minimising the possibility of them re-offending.

Q. Why don't the police identify all people on the Sex Offenders Register.

A. The Sex Offenders Act 1997 and the Data Protection Act 1998 only allow the disclosure of information about an individual where

* failure to disclose would be likely to prejudice the prevention or detection of a crime or

* disclosure is urgently needed to prevent injury or damage to the health of any person.

The purpose of the register is to enable the police to monitor the whereabouts of offenders and carry out risk assessments, where appropriate, in relation to convicted sex offenders.

General notification can cause a number of problems that decrease rather than increase public safety. Recent cases have illustrated the potential for vigilante action, panic and unwarranted violence. A case of mistaken identity could have devastating consequences.

An offender who is forced out of a community could disappear, severing contact with the police and probation services. Without monitoring or supervision, no stable address and no clue to his behaviour, the likelihood of reoffending is far greater than with someone closely monitored by the authorities.

Q. Why are the police protecting sex offenders in this way?

A. The priority of the police service is to protect the public and any arrangements concerning sex offenders are always done with this in mind. In cases where we believe that it is in the public interest to name or identify an individual who could pose a serious risk to the community, we might, in consultation with the relevant authorities, issue details to appropriate audiences.

Q. How do the police keep track of sex offenders?

A. Registered sex offenders are required to report to their local police station within three days of being convicted, or on release from prison, to provide details of their address and to allow police to take an up-to-date photograph. Subsequently offenders have to re-register annually and any change of address has to be notified

to police within 3 days. Anyone convicted of a sex offence abroad must register if they come to the UK.

Q What monitoring is there of sex offenders?

A. Multi Agency Public Protection Panels, set up in every police force/probation area as a consequence of the Section 67(4) Criminal Justice and Court Services Act 2000, ensure there are systems in place in each area to deal with known dangerous offenders, including sex offenders. The police work with other agencies, including prison and probation services, local authorities, health authorities and youth offending teams, through the panels and hold pre-release risk assessment meetings to evaluate the risk and to make action plans on the release of particular offenders.

Police monitor the whereabouts of offenders for the duration of their registration period with a frequency determined by their level of assessed risk. Where offenders are being supervised by probation, this police monitoring is done in conjunction with them. The arrangements may include their living in a probation service hostel or attending a treatment programme.

By working in partnership and drawing up protocols between the various agencies, police are able to monitor these offenders effectively. Although no guarantees can be made about an offender's future actions, the public is far better protected where he/she is in stable accommodation, in contact with the probation services and complying with any conditions that may apply.

Q. What else can be done to protect the public?

A. The Crime and Disorder Act 1998 gives the police power to apply to the courts for Sex Offender Orders against offenders who appear to pose a **serious** risk, whether or not they are registered under the Sex Offenders Act. The orders impose restrictions on the offender's behaviour such as requiring them to keep away from certain schools or areas. Once an order is made the offender must comply with the requirements of the Sex Offenders Act 1997, ie register name and address. The court also has powers to impose lengthy periods of post-release supervision for sexual and violent offenders, which in the case of sexual offences can last up to 10 years.

Q. Why does the police service not support a Sarah's Law which would inform parents if a sex offender moved into their area?

A. The police service and government do not support this type of disclosure. It is agreed by all agencies that granting such 'controlled access' is likely to hinder rather than help measures to protect children.

The public identification of alleged offenders following the death of Sarah Payne in Sussex showed the potential this had for vigilante action and for undermining the monitoring of offenders in the community, thereby reducing public protection. Individuals who were mistaken for sex offenders and their families were subjected to assault and harassment. In one case, a paediatrician's home was attacked as this word was confused with paedophile.

Sex offenders who had been subject to monitoring left their addresses and went into hiding for fear of their safety with the result that their whereabouts were no longer known to the police.

Q. *MAPPP annual reports detail the people you know about. How many more offenders are out there?*

A. That's impossible to say. We can never eliminate the risks posed by dangerous offenders, but we can do a huge amount to minimise them and protect our communities. That's why multi agency working arrangements exist.

Q. *What can parents do to protect their children?*

A. While teaching the 'stranger/danger' message is important, experience shows that very few children are targeted by strangers and that most abuse takes place within the family or by someone known to the child. Parents should not over-react but it is sensible to know where their children are, who they are with and agree a time when they will be home. Parents should also listen to their children if they raise any concerns about the way anyone is behaving towards them.

Q. *What charges are likely if someone accesses indecent images of children on the internet?*

A. There are currently three offences which may be committed (a fourth, 'grooming' is proposed):

1) Possession of indecent photographs of children

Relevant where someone holds images in any format (such as computer files, photographs, videos, DVDs, disks etc) but also includes where indecent images of children have been viewed on the internet and a record has been held in the computer's temporary internet files.

2) Making indecent images of children

The action of downloading material onto a computer constitutes 'making' an image as well as small or large scale reproduction of such images in the form of photographs, videos, DVDs, disks etc.

3) Distribution of indecent images of children

Circulation, by whatever means, of indecent images of children, for example via email, sharing of files, in magazines, newsletters, videos, DVDs, disks etc.

Q. *Is it illegal to possess adult pornography or view indecent images of adults on the internet?*

A. No.

**ASSOCIATION OF CHIEF POLICE OFFICERS OF ENGLAND,
WALES AND NORTHERN IRELAND**

MEDIA ADVISORY GROUP

GUIDANCE NOTES

6. DEATHS IN POLICE CARE OR CUSTODY

1. Introduction

- 1.1 The Home Office definition of a death in the care or custody of the police covers those who die while detained by police, while in the hands of police or as a result of the actions of a police officer in the execution of his or her duty. Each year there are about 50 such deaths. Causes of death include deliberate self-harm, the effects of alcohol, drug related problems, suicides or prior medical conditions. Within this definition, a death in police care or custody can also include cases where a person or persons are trying to avoid being arrested, in police vehicle pursuit, for instance, or have been stopped and searched or questioned by the police and deaths arising from a siege or firearms operation.
- 1.2 Although not all deaths in police care or custody will be controversial and only a few cases attract significant media interest, critical coverage of even one high profile case has wider implications for public confidence in the police service generally. There will be particular sensitivities around those that result, for example, from a violent struggle or those involving members of minority ethnic groups. Some cases result in police officers facing disciplinary action and in others facing criminal charges.
- 1.3 As the circumstances can vary greatly, each case should therefore be dealt with individually. It is on that basis that the following advice has been prepared.

2. The Release of Information following a Death in Police Care or Custody

- 2.1 Following a death an initial statement, drawn up by the Force Media Advisor and authorised by an officer of ACPO rank, should be made available to media, to include:
- (a) confirmation that a death has occurred;
 - (b) the details of the deceased, subject to next of kin having been informed;
 - (c) confirmation of the cause of death, subject to the agreement of the Coroner, PCA and the investigating officer;
 - (d) confirmation that the matter has been referred to the Police Complaints Authority (PCA);
 - (e) the name of the investigating officer, once appointed;

- (f) confirmation whether an officer(s) has been transferred or suspended;
- (g) details of any charges in connection with the investigation;
- (h) if appropriate, details of any police prisoner procedures.

2.2 As many facts as possible within the constraints of the investigation should be released but no assertions of responsibility for the death should be made or accepted. Normally, nor should the names of any police officers or civilian custody staff who have been suspended be released.

3. Key Communications Issues

3.1 There are likely to be a number of points following a death in custody when media interest is at a peak. These might include: (a) when initial news of the death reaches the public; (b) when the cause of death is announced; (c) during the coroner's inquest; and, (d) on publication of the PCA's findings. Additional factors would be criminal/civil proceedings or a public inquiry.

3.2 At each stage police should address the range of issues which might be highlighted and the possible effects in the community. Forces should endeavour to explain quickly, factually and as openly as possible what has happened, what they are doing and what will happen as a result and, if applicable, other bodies from which people can get further information. The effect on confidence in the police in local communities should be taken into account and necessary steps taken to maintain that support and co-operation. Possible rumours or allegations of a police 'cover-up', which might lead to tensions in the community, should be dealt with swiftly and fully. The setting up of an independent inquiry and its nature should also be fully explained. Consideration should also be given to providing information, where relevant, on, for example, the role of custody staff, how cells are designed to prevent such cases, or the professionalism and level of care provided by police officers and other staff. Internal force communications issues should be addressed and officers closely involved in the case should be aware of what has been said publicly.

3.3 Throughout, the various parties who have a close interest in events following a death in custody need to be taken fully into account in the dissemination of information. These will vary according to the circumstances of each case but might include:

- (a) next of kin and members of the deceased's family;
- (b) Police Complaints Authority;
- (c) Coroner's Office;
- (d) Police Authority;
- (e) Community and religious leaders and representatives (if appropriate);
- (f) Police officers and support staff and their staff associations;
- (g) Lay visitors;
- (h) Home Office;
- (i) Consular Staff (if a foreign national is involved).

**ASSOCIATION OF CHIEF POLICE OFFICERS OF ENGLAND,
WALES AND NORTHERN IRELAND**

MEDIA ADVISORY GROUP

GUIDANCE NOTES

**7. THE NAMING OF VICTIMS OR WITNESSES OF CRIME,
ROAD COLLISIONS AND OTHER INCIDENTS**

1. Introduction

- 1.1 The main purpose of this note is to clarify the procedure concerning the identification of Individuals in accordance with the principles of a free flow of information between the Police Service and the media. All forces try to achieve a balance between their policies of openness in giving full and accurate information to the media, and their responsibilities for victim care together with legitimate rights to personal privacy underpinned by the Data Protection and Human Rights Acts. These, together with the common law, have been taken fully into account in preparing this note.

2 Application of the Data Protection Act : Recommended Procedures

- 2.1 The view of the Media Advisory Group is that the wishes of the victim, witnesses or next of kin, where necessary, must be sought at the earliest possible stage before deciding how to publicise a crime, road collision, or any other incident, in accordance with the Data Protection Act. The correctness of this position was confirmed by the Data Protection Commissioner who in her first Annual Report to Parliament in 2000 stated "we welcome the fact that the victim's consent to such a disclosure will normally be sought, and believe that the guidance strikes the proper balance between the right of individuals to privacy and the right of the media to report on events which may be of interest and concern to the public".
- 2.2 In relation to juveniles, it should be noted that age is immaterial because, within the terms of the Data Protection Act 1998, everyone has the same rights. However, it is always advisable to seek the cooperation of a parent, guardian or other responsible adult in such circumstances.
- 2.3 When a victim or any other person who has provided their personal details to police states that their details should not be released to the media, this should be honoured unless police feel on a case by case basis there is an exceptional reason why such details must be given. The maintenance of good relations with the media, whilst important, is not itself sufficient reason.
- 2.4 Except in certain circumstances, such as those described in paragraph 2.7 below, a victim, witness or next of kin is entitled not to have their personal details released without their permission. They are not however entitled to request that police release no information of the incident whatsoever,

provided that the information the police do release does not lead to their identification.

- 2.5 Where victims, witnesses or next of kin have agreed to the release of their personal details but where such a release may make them vulnerable to further crime (such as an elderly person living alone), a judgement may be made not to release those details. In such cases, the reasons for the decision should be explained to journalists to encourage them to follow suit should they find out the name from another source.
- 2.6 The Data Protection Act does not apply to deceased persons, as their names will become a matter of public record. Victims may therefore be named once positive identification has taken place and immediate relatives informed. It may be helpful to explain the reasons for any delay to the media to gain their support in withholding publication if they learn the identity from another source.
- 2.7 The Data Protection Act allows for information to be released without the permission of the individual or individuals concerned in certain circumstances. Police fully recognise these provisions, which include the disclosure of personal details in the public interest, but the decision to release information on such grounds can only be made in light of each case. Particular circumstances in which details might be released without the consent of the person(s) concerned would include those following a major incident involving multiple victims: In such an event in order to minimise public alarm and distress, the release of casualties' identities prior to formal authority having been obtained would be a legitimate policing purpose and thus satisfy the Data Protection Act.
- 2.8 There will be frequent occasions when media come to police seeking further details about information they have received from other sources. Even if authority has not been given, a judgement will have to be made on the course of action to take. If a person's identity is already in the public domain it will often provide an opportunity present accurate information, either by confirming known facts or by countering inaccuracy and speculation. The principles outlined in Guidance Note Number 2 (Individuals under Investigation) should be followed.
- 2.9 Any active, or imminently active, legal proceedings should be borne in mind when considering the release of names of those injured. For example, when victims have been injured while in a suspected stolen vehicle, their medical condition may have prevented an immediate arrest and proceedings are not, therefore, technically active. Normally, if an early arrest is deemed likely, the identity of such a victim should be withheld until he or she is charged, even if consent has been given, in line with the guidelines on 'Individuals under Investigation'. When juveniles are charged their identities will not be released. If no criminal proceedings against individuals are instigated, their identities and other details could then be revealed as indicated above.

3. Recommended Question to Victims and Witnesses

- 3.1 It is important when dealing with all victims, witnesses or next of kin that police staff should ask a balanced question to establish consent, recorded in accordance with force procedure, as is the current practice for victims of crime. In many cases they are likely to agree, as the experience in dealing with victims of crime is that they very often have no objection to their details being passed to the media.
- 3.2 The Police Service should be supportive of a free flow of information to the media. This guidance is not intended to obstruct that, but to ensure that police forces adhere to the law and that individuals' rights are respected. It is recommended that the consent of victims and witnesses is sought in the first instance and, therefore, they should be asked the question: "We often find it helpful in our enquiries to pass on someone's details to the media. Do you object if we do that in your case?"
- 3.3 The practical constraints of obtaining details from a victim shortly after an crime or accident should also be borne in mind, if, for example, they have been injured or are in a state of shock.

DRAFT

**ASSOCIATION OF CHIEF POLICE OFFICERS OF ENGLAND,
WALES AND NORTHERN IRELAND**

MEDIA ADVISORY GROUP

GUIDANCE NOTES

8. PHOTOGRAPHS OF NAMED PEOPLE

1. Introduction

- 1.1 This guidance relates specifically to photographs of a named person being issued by the police. Three areas are covered:
- a) Releasing a 'wanted' photograph. This would only happen in exceptional circumstances where officers feel that the named suspect may be a danger to the public.
 - b) Showing a photograph of a convicted person to a restricted audience. This is done for the purpose of crime prevention and detection.
 - c) Releasing a photograph of a defendant to the media during/after court cases.
- 1.2 Photographs of named people that are in police possession are classed as data and their release is restricted by law. The balance between protecting a person's right to privacy and acting legitimately to achieve 'policing purposes' (as defined in the Introduction) should be considered before releasing photographs. Article 8 of the Human Rights Act gives everyone the right to respect for his or her private and family life, home and correspondence, and publication of photographs could constitute a breach of this. The article does however allow the publication in accordance with law and as is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of public health or morals or for the protection of the rights and freedoms of others. However, the Act requires that action taken under it is proportionate, and this is a particular consideration in respect of the nature of publication (for example the geographical reach and longevity of publication).
- 1.3 In all instances the images would be in police possession and the particular photographs would not be readily available from any other source.
- 1.4 The police powers to take photographs are outlined in Identification Code D, section 4, of the Police and Criminal Evidence Act, 1984 (PACE). They are obtained when a person is reported for summons or charged with an offence. The grounds for taking the photograph must be recorded and if the defendant is subsequently found *not guilty*, the photographs must be destroyed. The defendant has a right to witness this being done if they so wish, and must be informed of this at the time the photograph is taken.

- 1.5 If found guilty, the convicted person's photographs will be kept as a record of identification.

2. Releasing a 'Wanted' photograph

- 2.1 It is recommended that this is done only in exceptional circumstances. The photograph could be either a police photograph held on file following a successful conviction or obtained by officers from another source.
- 2.2 The major consideration is whether the need to warn the public about a dangerous person outweighs the possibility of jeopardising any subsequent court hearing. Particular consideration should be given to the potential importance of identification evidence in the prosecution of the offender and the potential to undermine this, and consultation with legal staff and the CPS should be sought before any decision is made.
- 2.3 The Attorney General has said that the police have the right to warn the public through the media that an individual is dangerous and "the press has nothing to fear from publishing, in reasoned terms anything that may assist in the apprehension of a wanted person." Broadcasters are aware that the Courts can impose severe punishments on those found guilty of contempt of court. Police forces may therefore wish to consider providing background briefings to media which could prove very helpful in the preparation of a report that accurately informs the public of a particular circumstance.
- 2.4 Practice is emerging among forces to publish photographs of wanted persons beyond those who pose a serious risk to the public, and may be considered where it is necessary to protect the life and physical well-being of the subject or of those with whom he or she may come into contact or to detect or prevent serious crime or disorder. In these cases it is necessary under the Human Rights Act to determine that publication is proportionate to the risk and/or that other more conventional methods have been exhausted.
- 2.5 As the suspect has now been identified in the public domain, in these exceptional circumstances forces should consider whether they will continue to publicly name an apprehended suspect before charge - particularly if this is in conflict with normal force procedure. If they are released without charge the media must be informed as soon as possible.
- 2.6 Authorisation to release a photograph should come from an officer of senior rank as judged appropriate by the individual force, in consultation with legal services, media services and the CPS.
- 2.7 Releasing a photograph of a named suspect would give the person the opportunity to come forward and eliminate themselves from further enquiries, especially if they are not aware that they are wanted for questioning.

3. Showing photographs of convicted people to a restricted audience

- 3.1 Police officers may wish to release photographs of **convicted** people to a restricted audience, such as shop owners, in an effort to prevent and detect

crime. A legal precedent was set by HELLEWELL v. CHIEF CONSTABLE OF DERBYSHIRE where the judge concluded:

'that the police, in disclosing the plaintiff's photograph, had acted entirely in good faith for the prevention or detection of crime and had distributed it only to persons who had reasonable need to make use of it; and that, accordingly, since the Chief Constable was bound to succeed in establishing a public interest defence if the matter went to trial, the claim would be struck out.'

3.2 The following criteria were considered to be key to this case:

a) There was material from which the police could conclude that the plaintiff had caused trouble in shops.

b) The dissemination of the photograph by the police was limited to shop keepers in the "shop watch" scheme and

c) The police had implicitly acted in good faith for the prevention or detection of crime, and did so to a limited and specific extent by distributing the plaintiff's photograph only to those who had reasonable need to make use of it.

3.3 It is clear that the police are not free to make whatever use they will of such photographs, however, in this case officers were seen to be making reasonable use of the photographs for Policing Purposes (as defined in the Introduction).

3.4 The photograph could be of the person officers want to arrest, a suspected accomplice or anyone else. The key is that the picture is released in order to achieve one or more of the criteria of Policing Purposes (as defined in the Introduction) and that no more than reasonable use of the picture is made i.e.:

a) The police must be seen to act in good faith

b) The offender must have been convicted of at least one like offence

c) The release of the picture is limited to those who can have reasonable need to make use of it.

3.5 The above stated principles must be undertaken before the Force can be seen to be acting lawfully.

3.6 The use of such photographs is not confined solely to cases of shop theft and may be utilised for example with auto crime in controlled car parks and in the prevention of football disorder.

3.7 Considerations when issuing photographs to a restricted audience:

a) Photographs of convicted people held by the Force, will not be given out to or allowed to be copied by any outside agency. To do so may result in a

breach of the Police and Criminal Evidence Act in subsequent identification procedures.

b) Before showing photographs, consideration must be given to whether or not the photograph would be of substantial assistance to the person(s) who are being shown them.

c) A suspect's M.O. should not form part of the criteria for deciding to show the photograph, there must be reasonable grounds for suspecting that the individual(s) is actively committing a further or like offence for which they have been convicted.

d) The number of photographs on display should be kept to a minimum, thus improving the chance of a successful identification by other agencies when carrying out their work.

e) Under no circumstances should the police attempt to exclude anybody from premises by use of the photographs or other such means. That is the responsibility of the owners of the premises.

3.8 A suggested proforma for recording the release of photographs to a restricted audience is attached as appendix A.

4. Releasing a photograph of a defendant during or after a court case

4.1 The criminal justice process is open to the public. Apart from certain restrictions, people convicted of an offence will be identified to the public, often through the media. This identification will incorporate their name, age and place of residence. The media may also print a photograph of the convicted person.

4.2 There are certain restrictions placed upon the media with regard to taking photographs. The Press Complaints Commission Code of Practice "prohibits the use of long lens photography to take pictures of people in **private places** without their consent". Where private places are defined as "public or private property where there is a reasonable expectation of privacy". It is illegal to take photographs within the precincts of a court without leave. Often these two areas represent the only places where a defendant will be seen publicly during the course of a criminal trial.

4.3 News editors suggest that they go to every reasonable length to obtain a photograph of the defendant from another source, and the police are only ever approached when all other avenues have been exhausted. It is under these circumstances that the media will approach the police for a defendant's photograph.

4.4 The media have argued that it is in the public interest to publish photographs of convicted people as part of an open and accountable criminal justice system. The police service have not disagreed, however use of *police held* photographs has been restricted, in order to avoid devaluing their use as a means of broadening coverage of important cases and preventing forces from becoming photographic bureaux.

- 4.5 The criteria for releasing photographs to the media during or after court cases are as follows:

Police photographs of defendants may be issued if they involve either public interest (as defined in the Introduction) or a serious arrestable offence. A serious arrestable offence means:

a) Certain offences which are always serious, such as murder, manslaughter, rape, kidnapping, certain other sexual offences and various Firearms Act offences.

b) Any other arrestable offence if its commission has led, or is intended, or likely to lead to certain serious consequences, as defined in section 116 of the 1984 Act. The serious consequences are:

i) serious harm to the security of the state or public order;

ii) serious interference with the administration of justice or the investigation of offences;

iii) the death of any person;

iv) serious injury to any person;

v) substantial financial gain to any person;

vi) serious financial loss to any person.

c) In addition, serious crime is defined in the Regulation of Investigatory Powers Act 2000 as any offence for which a person of 21 or over may be reasonably expect imprisonment of three years or more on first conviction.

- 4.6 The local context must be taken into account when considering the criteria of 'seriousness' or 'significant public interest'. Senior officers may wish to consider this before making a decision on release.

- 4.7 **Authorisation** to release a photograph of a defendant during or after a court case may only be given by a senior officer as judged by the force, the Head of CID, SIO or a delegated officer. It is recommended that the force media services department are also consulted.

- 4.8 Any photographs issued must be produced without prisoner reference numbers.

- 4.9 It is the responsibility of each force to ensure the media are absolutely clear that any photograph released must only be used at the conclusion of a specified trial, **and a written agreement should be entered into to this effect**. Under no circumstances will the police accept responsibility if the photograph appears in the media for any other purpose.

- 4.10 Releasing photographs of a defendant during a court case (under embargo):

a) In general, it is advisable to wait until conviction before releasing a photograph. However, in some cases (such as high profile cases involving pre-verdict briefings), it may be considered that issuing a photograph under publication embargo during a trial may more easily promote the objectives of a policing purpose.

b) Forces issuing defendant's photographs under embargo, should ensure a written agreement be signed to the effect that the photograph will not be published without a 'guilty' verdict, and will be returned to the force if a 'not guilty' verdict is delivered.

c) A suggested proforma is attached as appendix B.

Appendix A: Proforma for recording the release of photographs

RECORD OF PERSON SHOWN PHOTOGRAPHS

REASON FOR VIEWING PHOTOGRAPHS:

.....
.....

DATE SHOWN:.....

NAME:.....

SIGNATURE:.....

ADDRESS / COMPANY DETAILS:

.....
.....

FORMAT OF PHOTOGRAPHS SHOWN:

OFFENDER NAME / DATE PHOTOGRAPHED

- 1. /
- 2. /
- 3. /
- 4. /
- 5. /
- 6. /
- 7. /
- 8. /
- 9. /
- 10. /
- 11. /

This form is be retained as it may be required under the rules of disclosure

Appendix B: Prisoner Photographs

I, as an employee of, agree that I have been supplied with a copy/copies of photograph(s) by Nottinghamshire Police of for the following criminal trial
.....
.....

I accept the following conditions:

1. That the photograph(s) will not be distributed, reproduced, or published in any form of media, electronic or otherwise, until after a guilty verdict has been delivered by a judge in the above criminal trial of the above named individual(s).
2. That the photograph(s) will not be distributed, reproduced, or published in any form of media, electronic or otherwise, at any time if a not-guilty verdict has been delivered in the above criminal trial of the above named individual(s)
3. Under no circumstances will the police accept liability if the photograph(s) of the above named individual(s) are distributed, reproduced, or published in any form of media, electronic or otherwise, other than in the above named criminal trial.
4. That the photograph(s) will be returned to Nottinghamshire Police should a not-guilty verdict be returned, under the terms of section 2.

Signed.....

Time & Date.....

Company.....

DRAFT

**ASSOCIATION OF CHIEF POLICE OFFICERS OF ENGLAND,
WALES AND NORTHERN IRELAND**

MEDIA ADVISORY GROUP

GUIDANCE NOTES

9. POLICE-HELD VIDEO FOOTAGE

1. Introduction

1.1 The development of police-led CCTV systems and video usage has grown throughout the last decade. The ACPO Media Advisory Group initiated guidance in 1995 after an upsurge in the range and number of requests from programme makers, both at home and abroad. The purpose of these revised guidelines is to clarify principles surrounding the release of police held video footage (or stills from footage), whether from CCTV systems, vehicles, aircraft or other sources. All guidance and advice in this document applies equally to the release to the media of photographic stills from video footage.

2. Legal Considerations

- 2.1 Forces should check whether their CCTV and other image capturing systems are, or ought to be, registered with the Data Protection Commissioner in accordance with the requirements of the Data Protection Act 1998. The Commission's code of practice issued in July 2000 which provides guidance on good practice for users of CCTV in public places should also be taken into account.
- 2.2 Material which features individuals whose identity is unknown to the police is not currently regarded as 'personal data' under the Act. Once individuals are identified, the material becomes 'personal data' and is subject to the provisions of the Act regarding disclosure. Where there is intended to be some non-obvious use of data about any person - such as disclosure to the media - they should be appraised from the outset.

3. Objectives of Releasing Footage

- 3.1 Forces should be satisfied that material is only released to the media to fulfil a *policing purpose*. At least one of the following criteria should be satisfied:
- (i) an appeal for witnesses or attempt to identify suspects;
 - (ii) where police believe that the footage is likely to offer road safety and/or general crime prevention advice;
 - (iii) where police believe the material is likely to provide reassurance to the public (eg. police action taken against criminals, motorists etc);

- (iv) when access to the material may dispel rumour or speculation which is threatening public disorder;
- (v) an illustration of good police work which may have resulted in the arrest of suspects and the detection of crime;
- (vi) to demonstrate accountability within policing
- (vii) it is deemed to be in the public interest.

3.2 Care should be taken to ensure that any footage released to the media does not jeopardise existing or future legal proceedings. Where appeals are made prior to a trial to find certain individuals captured on camera, nothing should be said which implies they are guilty of any offence. In appropriate circumstances, advice should be sought from the Crown Prosecution Service and/or Police Complaints Authority.

4. Authority Levels

- 4.1 Video material should only be released on the authority of an officer of ACPO rank or by an officer acting under his/her delegated authority.
- 4.2 All releases of material should be carried out in consultation with the force's Press Office or equivalent.

5. News Clips

- 5.1 This includes one-off items given to broadcast or print media to illustrate an incident which police feel would benefit from prompt publicity. Appropriate police advice to accompany any such clips, by way of a statement or an interview to camera, should be considered.

6. Television Documentaries

- 6.1 Television documentaries can be divided into those which look at specific issues and request police video footage to illustrate particular points, and those which use police material for its own value in order to make programmes consisting almost exclusively of police-held clips (eg. Police, Camera, Action!)
- 6.2 Release of material in all cases involving documentaries with a nationwide perspective remains a matter for individual forces. However, early contact with the ACPO Press Office so that informed advice and guidance can be obtained from the relevant ACPO Committee and circulated to forces, is strongly advised. Forces, in turn, should encourage producers of national documentaries to contact the ACPO Press Office to ensure that there is an awareness and overview of a project at the appropriate level and on behalf of the police service. The ACPO Press Office will make arrangements for relevant police officer and press officer expertise to be involved in the preparation of any national programme.

- 6.3 Forces are advised to enter into license agreements to clarify exactly what the material has been released for and in what context it will be shown (see 12). Documentary makers planning to edit material should be required to seek advice from the supplier about the suitability of broadcasting the finished clip. It is important to be aware that programme makers may be associated with spin off video releases (see 7 below) and specific exclusion or inclusion of this should be made within any licence agreement.

7. Commercial Videos

- 7.1 Legal, ethical and moral considerations must be taken into account when contemplating the release of footage for use in commercial videos sold for profit in the high street.
- 7.2 Disclosure of personal data must be compatible with the purpose for which it was originally obtained, *in this case policing*, in order to avoid a breach of the Data Protection Act.
- 7.3 Forces must consider whether it is in the best interests of the police service as a whole to be associated with ventures which allow third parties to profit from another person's stupidity or misfortune, particularly in the case of traffic footage.
- 7.4 The fact that such videos are for profit may well add to the temptation to glamorise and/or sensationalise incidents in order to boost sales.
- 7.5 Forces should not co-operate with companies where commercial profit appears, in the opinion of the police, to override that of public service.

8. Public Information, Inter-Agency and Inter-Force Videos

- 8.1 This does not affect the ability of the service to produce non-profit making public information videos or those involving co-operation with charitable or other organisations such as RoSPA, BRAKE, etc.
- 8.2 In such circumstances consideration should be given to co-opting police expertise onto the production team and such projects should be co-ordinated through the Media Advisory Group in conjunction with the relevant ACPO committee.
- 8.3 In the case of videos produced by forces on a regional basis, the costs and resources involved should be shared among the participants.
- 8.4 Non-profit-making public information, inter-agency and inter-force videos should not be subject of the same restrictive policy as commercial profit-making projects, but Data Protection and Human Rights legislation still applies.

9. Other Productions

- 9.1 The police service should not participate in promotional videos which involve vehicle manufacturers or any other form of potential product endorsement.

10. Copyright

- 10.1 Copyright on police-held footage is relatively clear in some areas but in others, such as CCTV, this is not necessarily the case.
- 10.2 If the material is obtained from police-managed video equipment, such as roadside or motorway cameras, it can generally be assumed that copyright rests with the relevant police force.
- 10.3 The same principle applies with air support footage. In the case of jointly managed police aircraft, shared by two or more forces, it is recommended that the force in overall control of any featured incident should retain copyright over footage, subject to consultation with neighbouring forces involved in any joint air-support management arrangements.
- 10.4 CCTV is more difficult where cameras are privately owned or operated by local authorities. It could be argued that when police seize film which is potentially evidence, then a right exists as part of the investigation process to release the material to the media *for a policing purpose*, ie. as a means of detecting and/or preventing crime. This principle has long been applied in cases of armed robbery at banks and building societies.
- 10.5 The 'right to release to the media' should not be confused with copyright issues. Forces should check locally with the owners/operators of CCTV schemes/equipment before making any assumptions that copyright rests with the police.

11. Licence Agreements and Acknowledgements

- 11.1 Licence agreements which cover the use of any material released to the media and detail terms and conditions of use, rules on copying and archiving clips etc, should be issued for every release. *(A suitable agreement, offering a range of conditions which may be tailored to individual circumstances, is attached.)*
- 11.2 Signed licences should be retained at a central point (Press Offices are recommended) to provide a log in the event of queries or complaints.
- 11.3 The media should be provided with a written description of the material to explain its operational and legal context. Legal responsibility for publication/broadcast of the material rests with the media outlet.
- 11.4 Broadcasters should provide an acknowledgement, by way of caption, voice over within the programme or in the end-credits, to suppliers of material.

12. Identification of Victims or Suspects

- 12.1 Care should always be taken to ensure that any victims or other innocent parties featured in released material are aware of its potential use and, where possible, efforts should be made to seek their permission. In the absence of permission, or where requested, the identity of victims, witnesses and innocent bystanders must be disguised, preferably before release. When dealing with victims and relatives, it is important that any repeat broadcasts of documentaries are notified.
- 12.2 It may be appropriate to disguise the identity of police employees featured in released material.
- 12.3 Suspects should be similarly protected where their identification may jeopardise legal proceedings. Obviously this does not apply where police are seeking to identify a suspect through the release of video material.

13. Charging the Media for Material

- 13.1 Charging the media for police held video material is a matter for individual chief constables to decide.
- 13.2 The makers of programmes such as Police, Camera, Action! have devised scales of payment for such material (ie, so much per minute or clip). Producers of routine local or national news programmes will not as a rule offer payment for one-off clips for immediate use.
- 13.3 Forces should at least obtain reimbursement for outlay in terms of materials used, postage, staff time, etc, especially where the material is not immediately to hand.
- 13.4 Donations to charitable causes by broadcasters in lieu of payment to a police force should be at the discretion of the producer.
- 13.5 Forces may consider accepting goods or services in lieu of payment, however in either case the transaction must be recorded and declared for VAT purposes.

LICENSER: (Name of force)
LICENSEE:
MATERIAL:
FOR INCLUSION IN:
LICENCE PERIOD:
(No repeats)

In consideration of the undertaking herein*:

- 1 The Licensee agrees to pay or re-imburse the Licensor for any research, dubbing, tape transport costs and fees incurred in making the material available.
- 2 The Licensee agrees to material being used for the specific purpose for which the Licence has been granted.
- 3 The Licensee agrees that it will not use the footage in promotional material, printed materials or video cover designs or for post-transmission comment and review without permission. The footage must not be re-used without specific permission.
- 4 The Licensee agrees that copyright for police-owned material remains with the police force, which also controls all rights in and for the material.
- 5 The Licensee must have or will obtain any and all individual authorisations, consents and clearances necessary for the use of material. In the absence of permissions, all identities must be disguised. The Licensor cannot be held responsible for any claim made in respect of the material whatsoever.
- 6 The Licensee agrees to identify the source of this material either by caption, voice over or end credit.
- 7 In appropriate circumstances, the Licensee will give permission to the Licensor to view the programme before broadcast, and provide one VHS copy of the completed programme to the Licensor after transmission, distribution or printing.
- 8 Other conditions.....

*delete conditions as appropriate

I agree and confirm the above for and on behalf of the Licensee

Signed.....
Print Name..... Date.....

Position.....

I agree and confirm the above and on behalf of the Licensor, (name of force)

Signed.....

Print Name.....

Date.....

Position.....

**ASSOCIATION OF CHIEF POLICE OFFICERS OF ENGLAND,
WALES AND NORTHERN IRELAND**

MEDIA ADVISORY GROUP

GUIDANCE NOTES

**10. AGREEMENTS WITH NEWS AND PROGRAMME MAKERS
FOR TAKING MEDIA ON POLICE OPERATIONS**

1. Introduction

- 1.1 There has been an enormous increase in recent years in the number of requests to forces to accompany police officers on operations for television news, documentaries or series about policing. Such programmes can help give the public real insights into police work and assist in the prevention and detection of crime.
- 1.2 Forces should however be clear about the reasons for working with production companies on these projects, which may be time-consuming in the making and unpredictable in the outcome. There are also important legal issues surrounding the presence of media on operations. It is therefore of paramount importance to set out a clear framework at the outset of such projects so that all parties are clear about their respective roles and their legal obligations.

2. Basic Principles of Co-operation

- 2.1 Initially, forces should assess any request for co-operation against the following criteria. The proposed news programme/documentary should:
- (a) address matters which are in the public interest;
 - (b) enhance the public's understanding of police work and provide some re-assurance to the public that police are acting to address matters of public concern;
 - (c) help in the prevention or detection of crime.
- 2.2 At an early stage forces should also assess what degree of support and resources it would be appropriate to devote to the making of a news programme/documentary. This should involve an appreciation of the status of the programme and/or production company, the status of the proposed project and the nature of the likely audience.

3. Attendance of Media on Police Operations

- 3.1 In reaching any agreement to co-operate, and in particular where it involves taking media on police operations, forces should further consider whether such action would:

- (a) interfere with an individual's rights to a fair trial under the Human Rights Act;
- (b) interfere with an individual's rights to privacy under the Human Rights Act (which may be affected by entering private property without permission, taking film or photographs on private property without permission and broadcasting or publishing any such material);
- (c) cause unjustifiable distress or harassment to those being investigated;
- (d) prejudice the innocent;
- (e) cause distress to innocent members of the public; or
- (f) jeopardise future police operations.

3.2 The reasons why it was felt the attendance of the media was justified should be recorded.

4. Written Agreements

- 4.1 Forces should agree to co-operate with programme makers or agree to the attendance of media on an operation only after a written agreement has been reached and broadcasters have signed an indemnity agreement. The attached Indemnity Agreement (Annex A) and accompanying Note to Media Representatives outlining their obligations (Annex B), are recommended as the basis of any agreement.
- 4.2 These agreements have been drawn up following lengthy discussions with broadcasters.
- 4.3 Forces may however wish to amend these draft agreements for each request to accompany operations in the light of local circumstances. Any agreement should be scrutinised by individual force insurers to establish that they are content with the proposals and forms of indemnity.

5. Additional Considerations

- 5.1 Broadcasters should be reminded that all film footage taken during the course of the project is subject to the rules of disclosure, including footage not broadcast and that, in the event of a prosecution, that footage may be required for the purposes of disclosure.
- 5.2 Local Crown Prosecution Service (CPS) advice should be sought in all instances where filming of police work is likely to have an impact upon a current or future prosecution. In such cases media presence on an operations should always be disclosed to the CPS.

- 5.3 While accepting that editorial control of the news programme/documentary rests clearly with the programme maker, forces may wish to take steps to ensure that broadcast footage does not include material which may:
- be factually inaccurate
 - identify covert techniques
 - jeopardise or prejudice pending or current court proceedings
 - identify any persons whose safety may be jeopardised by identification e.g. covert police officers, witnesses etc.
- 5.4 Before accompanying police, media should normally be allowed to attend relevant briefings to give them a better understanding of the operation.
- 5.5 Members of the media accompanying police will be expected to sign the relevant Indemnity Agreement and receive a copy of the Note to Media Representatives, referred to above.
- 5.6 Where appropriate, the accompanying guidance note on the release of police-held video footage should be taken into account.
- 5.7 Any request by media to police officers or support staff to sign Contributors' Release Forms following filming of police operations should be referred to the force press office for guidance.

Appendix A: Media Indemnity Agreement

Agreement between the Chief Constable of [FORCE NAME] ('The Chief Constable') and the [NAME] Police Authority ('The Police Authority') of the first part and the undersigned of the second part.

In consideration of my use of [FORCE NAME] premises, vehicles, river craft, helicopters or other property ('[FORCE NAME] property') and/or in consideration of my being allowed to accompany [FORCE NAME] Police officers or civil staff on operational and/or non-operational duties on/between (date(s))

I.....

duly authorised to sign for and on behalf of

.....
hereby agree as follows:

- 1) To indemnify the Chief Constable and/or the Police Authority and/or their constables, officers, servants and/or agents against any expense, liability, loss, claim, proceedings, damages or costs arising from my said use of [FORCE NAME] property, save that I shall not be responsible for any expenses, losses, claims, proceedings, damages or costs attributed to events outside my control and not caused by my negligent acts or omission or the negligent acts or omissions of my staff.
- 2) To compensate the Police Authority in respect of any loss of and/or damage to [FORCE NAME] property caused or occasioned by my wrongful or negligent act or omission.
- 3) To indemnify the Chief Constable and/or the Police Authority and/or their constables, officers, servants and/or agents against any expense, liability, loss, claim, proceedings, damages or costs arising by statute (particularly the European Convention on Human Rights), common law and/or tort in relation to a third party caused or occasioned by my wrongful or negligent act or omission in connection with entry of my media representative at:

.....on

.....on

.....on

upon premises known as and situated at

.....on

.....on

.....on

whereat it shall, for the avoidance of doubt, be my sole responsibility to

obtain the consent of the occupier before entry of myself, photographer or film crew upon said premises.

[FORCE LOGO]
continued over

4) That I shall not, whether by myself, my servants, agents or any of the media representatives ask any Police constable or other member of police staff to obtain on my behalf the consent referred to in paragraph 3 herein nor shall I, whether by myself, my servants, agents or any of the media representatives ask any Police constable or other member of police staff for any variation to this Indemnity Agreement unless the same be in writing and signed by the parties to this indemnity agreement.

Signed

Date 20

Name:

Position:

Organisation:

Contact Telephone Number:

Appendix B: Note to Media Representative(s)

You are reminded that under European Convention on Human Rights:

- that entering private property without permission could interfere with a person's rights;
- that taking film or photographs on private property without permission could interfere with a person's rights;
- that the broadcasting or publishing of any material, photographs or film of an individual, their family and private life, their home or correspondence could interfere with a person's rights.

You are reminded that no material, photographs or film must be published or broadcast that would interfere with an individual's rights, particularly the right to a fair trial.

Lawful entry on to private premises by media representative/s cannot be authorised by [FORCE NAME].

Entry on to private premises is a matter between media representative/s and the adult householder, owner or lawful keyholder and not the [FORCE NAME]. Police will not seek permission on behalf of the media.

If police visit private property whilst media representative/s are with them it is the responsibility of the media representative/s to seek permission from the owner to enter the property before doing so. If permission is not obtained for any reason or is refused by the owner then the media representative/s must not enter. Consent should be in a form which is capable of proof, i.e. in writing, filmed or taped verbal comment.

Media representative/s should be mindful of trespass. If they are asked by the adult householder, owner or lawful keyholder to leave private premises, they should do so immediately.

[FORCE NAME] reserves the right to request a media representative/s to leave premises; for example, where preservation of a scene of crime is necessary, or where Police officers believe consent to enter was not obtained or consent has been withdrawn, or for any other reason at the discretion of the senior officer present.

[FORCE NAME] cannot confer the rights to media representative/s to film, record or interview scenes or individuals.

Media representative/s are reminded that any material created or obtained by them, including their written notes, photographs, sound, film or other recordings may become subject to the laws relating to disclosure. Newsgatherers/Production Teams need to be aware of these laws; for example, the possibility of an Application under Schedule 1 to the Police and Criminal Evidence Act 1984 for a Judge's Order that material be disclosed to Police.

I acknowledge that I have received and read a copy of the [FORCE NAME] 'Notes to Media Representatives'.

Signed

Date 20.....

**ASSOCIATION OF CHIEF POLICE OFFICERS OF ENGLAND,
WALES AND NORTHERN IRELAND**

MEDIA ADVISORY GROUP

GUIDANCE NOTES

**NO 11: RACIST INCIDENTS AND RACIALLY MOTIVATED
OR AGGRAVATED OFFENCES**

1. Introduction

- 1.1 In a West Yorkshire trial involving an assault of an Asian student, the judges made reference to the Police's early description of the offence as a racist incident, using the definition¹ set out by Lord Macpherson in his re[port on the Stephen Lawrence case. They questioned the advisability of this action, which had led to the case being widely reported as a 'racist attack' and a 'racially motivated attack' and the suspects by implication being labelled as racist.
- 1.2 In the end, the absence of any evidence of racial motivation meant that the defendants were not charged with racially aggravated offences². The defence sought to have the proceedings set aside on the grounds that no fair trial was possible, in part because of the adverse publicity about 'an unprovoked racist attack'. This challenge failed.
- 1.3 However, the case has highlighted the difficulties faced by police officers and police press officers when publicising offences that are racist (using the Macpherson definition) but may not prove to be racially motivated or racially aggravated offences.

2. Issues

- 2.1 The police service has been criticised in the past for its failures in dealing with racist incidents, including failing to acknowledge that an incident is racist. It is important, notwithstanding the comments of judges in the West Yorkshire trial that incidents that can be defined as racist, using the Macpherson definition, continue to be publicly acknowledged as such. This is in line with the principles of openness and offers reassurance to people with minority ethnic backgrounds.

¹ The Macpherson definition of a racist incident is: "any incident which is perceived to be racist by the victim or any other person."

² Under the Crime and Disorder Act 1998, an offence is racially aggravated if:

- At the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a racial group;

The offence is motivated (wholly or partly) by hostility towards members of a racial group based on their membership of that group

- 2.2 However, care should be taken to ensure that offences are not described as 'racially motivated' or 'racially aggravated' where there is no evidence to directly support this. When answering questions from the media about motivation, for example, it is important to make clear the distinction between a 'racist' and a 'racially motivated' incident. The first relies on perception, the second on actual evidence; one is subjective the other is objective. So, describing an incident as 'racist' does not necessarily mean it is 'racially motivated' or that the offender would be charged with a 'racially aggravated' offence.
- 2.3 A parallel can be drawn with the use of the word 'murder' in homicide investigations. This is widely used by both the police service and the media to describe an offence which might ultimately lead to a charge, not of murder, but of manslaughter.
- 2.4 It continues to be entirely appropriate to refer to a 'racist' incident but to ensure that it is not described as 'racially motivated' or 'racially aggravated' unless there is compelling evidence of this. It may also be sensible to offer an explanation to the media of what these terms actually mean.

3. Questions And Answers

3.1 In dealing with media queries, the following questions and answers may be useful, but are clearly dependent on individual circumstances and can be amended accordingly:

Is this incident being dealt with as racist?

- A. Yes. There's a perception by the victim/witness/police that this was racist and we have recorded it and are treating it in that way. This is in accordance with recommendations made by the Macpherson Report into the death of Stephen Lawrence.

Q. Is this a racially motivated/racially aggravated incident?

- A. It isn't clear - this will form part of our investigation but until we find the person responsible it's difficult to say what motivated them. We are treating this as a racist incident because the victim/witness/police believes that to be the case and that is how we have recorded it. This is in accordance with recommendations made in the Macpherson Report.