

Obtaining Criminal Records, Disciplinary Records and Adverse Judicial Findings

Open Government status

Open

Target audience

All staff involved in prosecution work

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Summary

This Operational Guidance (OG) explains the legal basis for obtaining Police National Computer (PNC) checks for witnesses and defendants in HSE cases, how line managers can obtain details of any disciplinary information for HSE staff witnesses and how to handle and ensure the security of the information.

The guidance does not apply in Scotland where any necessary PNC and disciplinary checks are carried out by the Procurator Fiscal.

Introduction

HSE is required to carry out PNC checks on various categories of individuals at different times, for the following reasons:

- a) because the credibility of prosecution witnesses could be undermined by a previous conviction, and affect the approval decision;
- b) post-approval PNC checks are required on defence and other witnesses, including in certain cases HSE staff, to determine whether they meet the Criminal Procedure and Investigations Act 1996 (CPIA) disclosure test;

c) the checks may be required by courts.

This OG gives instructions about what checks should be done on various categories of witness. It does not provide guidance on whether the information obtained is disclosable. Disclosure in criminal proceedings is covered in detail in the Enforcement Guide.

(<http://intranet.hse.int/legal/enforcement-guide-ew/pretrial/after-intro.htm>)

The main legislative provision is CPIA which requires retention, scheduling and disclosure of relevant unused material relating to investigations and prosecutions. This guidance should be applied, in conjunction with that in the Enforcement Guide: Defendant's Antecedents.

(<http://intranet.hse.int/legal/enforcement-guide-ew/pretrial/witness-defendant.htm>).

And key requirements of the CPIA to all prosecutions.

(<http://intranet.hse.int/legal/enforcement-guide-ew/pretrial/after-intro.htm>)

[Appendix 1](#) describes HSE's PNC administration system.

Action

Requesting PNC checks

The person requesting the check must be an inspector even when a HSE solicitor or solicitor agent is used. The request form can now be completed electronically using the form: Application to Obtain Criminal Check from the Police National Computer in the PNC folder on forms desktop and there is no longer a requirement to submit hard copy requests. This can be done by a Litigation Officer (LO) and **should include the date of birth for individuals**. The reason for this requirement is that a search of the PNC will return details of every individual listed on the PNC with the same name as is being searched. A date of birth is the only reliable way HSE has of narrowing down the results. If you are unable to provide a date of birth, but able to provide an approximate age, then it is occasionally possible to search against approximate age and in these circumstances, you should set this out in the form.

If challenged by a court when HSE is unable to obtain accurate search results, prosecutors should explain that we were unable to obtain the relevant date of birth and that we cannot perform speculative searches of the PNC without sufficient information to identify the individual. If this issue does arise prosecutors can contact LAO from court and request an immediate check if the defendant provides their date of birth to the court.

The request must be authorised by an inspector of Band 2 grade or above, but is usually the inspector's line manager. If an LO has completed the form then it is the inspector's responsibility to ensure it complies with this guidance, the checks are necessary and requested at the appropriate time.

The completed electronic form will automatically be submitted to the PNC Access Account.

Timing of Checks for Different Categories of Witness

Checks to be done prior to case approval

Key Prosecution Witnesses

Prosecution witnesses are witnesses on whom the Prosecution will seek to rely.

- A “key prosecution witness” is someone without whose evidence the prosecution is unlikely to succeed – e.g. when the personal testimony of a witness or witnesses is essential in order to prove the offence and no corroboration of this evidence is possible from another source. If a key witness’ credibility is undermined by a previous conviction, it could affect the decision to approve the case for prosecution.

Inspectors should therefore identify any key witnesses, request PNC checks and include any relevant convictions in their investigation report as a potential line of defence and weakness in the prosecution case and provide this information to their approval officer.

If you have any questions about the status of a witness then contact LAO

Some convictions will not meet the test for disclosure to the Defence as not all convictions e.g. drink driving or speeding, affect a person’s credibility. For guidance on making decisions about disclosure, you should refer to the disclosure sections of the Enforcement Guide.

Checks to be done after approval

All Defendants irrespective of plea entered or indicated

The inspector should use the check request form to obtain a search of the PNC database. If a search produces a trace of the person checked, the record supplied will contain all previous convictions, including those that are “spent”. If a check bears no results, the operator will say so in their email response to the inspector; there will not be a print. Checks should not be requested in order to provide “background information” on potential defendants during an investigation.

You should also carry out a further check on COIN for any previous enforcement action.

For information on the disclosure and admissibility of a Defendant’s previous convictions you should refer to the “Defendant’s Antecedents” section of the Enforcement Guide.

Checks to be done when the Defendant has entered a Not Guilty plea or formally indicated that they intend to plead Not Guilty.

Prosecution witnesses who are not Key Witnesses

There is no need for any checks on witnesses who are not “key” witnesses until a Not Guilty Plea is entered or indicated. At this point it will still be necessary to undertake the checks set out below for all witnesses as the information may meet the test for disclosure under the CPIA. These ‘non-key witness’ checks do not need to be undertaken until after the case has been approved for prosecution as they are unlikely to alter the approval decision.

All HSE employees who are witnesses, including the Lead Inspector and SG must be provided with a copy of form: HSE Staff Disciplinary Record for Criminal Investigations, which can be found in the PNC folder on HSE’s Forms Desktop. Where there are any legal or disciplinary matters to be disclosed the completed form must be returned to the investigating inspector’s line manager. In the case of criminal convictions or cautions only recordable offences need to be disclosed. These are mainly offences which are punishable by imprisonment and would not include motoring offences such as speeding.

If a PNC check is required the lead investigating inspector’s line manager must ensure prior to submitting a request that HSE employees who are witnesses are made aware that the PNC checks will be carried out.

Defence witnesses

Defence witnesses are witnesses on whom the Defence seeks to rely. Their identity will not be known until HSE receives a Defence Case Statement and Notification of Intention to call Defence witnesses. Upon receipt, PNC checks should be carried out to ascertain whether there are any convictions which would support, where the relevant criteria are met, an application to introduce evidence of bad character under Part 21 of the Criminal Procedure Rules. The appointed legal advisor (LAO or Solicitor Agent) will be able to provide advice on this matter.

What checks should be undertaken?

NB - This section sets out what checks should be done. It does not provide guidance about whether the information which arises from those checks should be disclosed or at what stage. Those decisions are covered in the Enforcement Guide section on disclosure.

HSE staff witnesses (who have completed the HSE Staff Disciplinary Record for Criminal Investigations form)

Where HSE staff are witnesses (including the lead inspector), it is the responsibility of the lead inspector’s line manager to ensure that the following checks are undertaken, when any of the boxes have been ticked on the HSE Staff Disciplinary Record for Criminal Investigations form.

PNC check

If box 2 has been ticked, the lead inspector's line manager should complete the electronic PNC request form from the PNC folder on forms desktop.

Disciplinary check

If box 1 has been ticked, the lead inspector's line manager should contact the line manager of the person completing the form to obtain copies of the disciplinary record held on the Single Operating Platform (SOP) or a copy if it has still to be placed on SOP.

The individual's line manager should provide the line manager of the lead inspector making the request with details of the adverse record including the following:

- date
- basic description of the matter; and
- whether disciplinary procedures are complete or ongoing.

The line manager of the lead inspector will then inform the prosecutor.

All PNC and disciplinary records are confidential and should be kept securely. They should be revealed in the first instance only to an HSE solicitor or a solicitor agent. Records of HSE staff should be viewed internally only by managers at B2 or above.

Checks on witnesses from other government departments and the police

Where the witness is an employee of another government department, including the police or other emergency service, the originator should request the required information direct from the relevant department by means of the letter template Request for Disciplinary and Adverse Judicial checks which is available in the PNC folder on forms desktop.

If the prosecutor (i.e. the inspector, HSE solicitor or Solicitor Agent) determines that material meets the test for disclosure and discloses material subject to these arrangements, it should be served on the defence solicitor acting in the case either personally or by post. If served by post, the envelope should be addressed for the personal attention of the defence solicitor and marked 'In confidence'.

Any information on staff from HSE, other government departments, the police or other emergency services, including Adverse Judicial Findings (Ganey findings) must be treated confidentially.

Adverse Judicial Findings (Ganey Findings)

An adverse judicial finding is a finding by a court, expressly or by inevitable inference that an individual has knowingly, whether on oath or otherwise, misled the court.

The lead inspector's line manager should contact LAO regarding adverse judicial findings and where they are recorded. The PNC operator will send an email stating this to the originator.

In the event of a Guney finding against an HSE member of staff, LAO should be informed by the lawyer acting for HSE. LAO will keep a record of the finding so that it can be considered for disclosure when searches are conducted in future cases involving the member of staff.

A copy of the court transcript and summary details will be sent by the LAO to the originator's line manager who should discuss the relevance of the finding with the HSE solicitor or solicitor agent and the individual's line manager.

See [Appendix 2](#) for advice on HSE's duty to record and disclose adverse judicial findings.

Arrangements for PNC check responses to inspectors

For checks carried out within HSE, the requesting inspector will be informed initially by email whether the result is positive or negative.

In the event of a positive result, a hardcopy printout will be posted to the inspector who made the request and marked **Official Sensitive**.

If urgently required, responses can be sent by fax provided arrangements are made for the inspector to receive the fax personally.

Arrangements for ensuring the security of findings

All personal information relating to criminal matters is classified as **Official Sensitive**. Inspectors, line managers, and others who are entitled to handle this information, should ensure that information resulting from PNC and disciplinary record checks is disclosed only to authorised personnel for legitimate purposes.

They should ensure that there is no unauthorised access, deletion or alteration of this information.

Where PNC prints, disciplinary records and adverse judicial findings need to be distributed as single items (as opposed to within dossiers/case files, etc.), the following procedure should be followed:

- If distributed within Redgrave Court it should be marked for the addressee only and contained within a sealed envelope marked **Official Sensitive**.
- If conveyed by courier outside of Redgrave Court, the record itself should be sealed in an envelope, addressed and marked **Official Sensitive**, which itself should be sealed in another envelope which has no **Official Sensitive** marking and also be marked "TNT – SIGNED FOR";

- If distribution is by fax, before sending the PNC operator must confirm the fax number and that the originator will be on hand to receive the fax. The recipient must immediately confirm receipt.

PNC printouts must not be available to anyone other than authorised personnel. Accordingly, they must not be left on display or stored electronically, e.g. in TRIM, COIN, personal folders or other shared drives.

In the event of deliberate or accidental disclosure, staff may be liable to disciplinary action and potential prosecution since unlawful disclosure of PNC data is an offence.

For storage within HSE offices all documents relating to PNC checks must be kept in a sealed envelope, protectively marked '**Official Sensitive**' in line with the Government Protective marking Scheme.

PNC records should be disposed of in accordance with HSE's Business Classification Scheme and Disposable Schedule
<http://www.hse.gov.uk/foi/busclasschem.pdf>.

Material should be revealed in the first instance only to an HSE solicitor or solicitor agent. Material related to HSE staff witnesses and adverse judicial findings should be marked '**Official Sensitive**'.

Disclosure test

Information obtained as a result of the checks undertaken above must be assessed to see whether it meets the CPIA test for disclosure. Not all convictions will meet this test, and you should not disclose any material recovered as a result of the checks set out in this guidance without applying the section of the Enforcement Guide on disclosure.

In addition, the CPS has issued detailed guidance on how they assess whether a witness' conviction history is disclosable, which you can find in this link:
http://www.cps.gov.uk/legal/d_to_g/disclosure_of_previous_convictions_of_prosecution_witnesses/

Background

The CPIA provides the statutory framework governing the disclosure of unused material in criminal proceedings. A Code of Practice made under Part II of the CPIA details how relevant material obtained in a criminal investigation is to be recorded, retained and revealed to the prosecutor.

Rule 8.3(b)(iv) of the Criminal Procedure Rules requires the prosecutor to provide details of the defendant's previous convictions as part of the initial details of the prosecution case. The details should include the date of sentence, the Court, the offence(s) and the sentences imposed.

A revised CPIA code of practice came into force on 19 March 2015. See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/447967/code-of-practice-approved.pdf

This changes the procedure and timing for initial disclosure in cases which are likely to be dealt with in the Magistrates' court. The procedure for cases allocated to the Crown Court remains the same.

Organisation

No specific organisational requirements.

Contacts

Legal Adviser's Office.

Appendices

Appendix 1:

PNC system administration

The Home Office controls access to the PNC and is vigilant in ensuring that the system is not misused. As a condition of direct access to the PNC, certain control measures have to be implemented in order to comply with Home office requirements and HSE can be subject to audits by the Home Office.

Under HSE's system:

- access to the PNC is restricted to trained, accredited staff;
- regular audits of PNC transactions are carried out by a PNC auditor;
- a PNC Manager is appointed to oversee the correct operation of the arrangements described in this guidance;
- all PNC transactions are centrally logged.

To achieve the above:

- line managers of "originators" are required to confirm the legitimacy of PNC checks when requested by Legal Advisors Office;

- audit checks will be carried out on requests.

It is the responsibility of the current line manager to check and confirm that the request is for a legitimate purpose even if the case was approved by a previous line manager.

All staff should note:

- any misuse of the PNC will be readily evident;
- improper use of the PNC system is a disciplinary issue, and potentially a criminal offence for which the current line manager is liable – not the approver.
- such misuse may result in disciplinary and/or criminal action being taken against the staff involved; and
- may result in HSE's direct access to this facility being withdrawn or limited.

Appendix 2:

HSE has a duty to record and disclose adverse judicial findings and a record will be kept of:

- any previous decisions of the Court of Appeal in which convictions have been quashed on the express basis of misconduct or lack of veracity of identified officers; and
- any cases which have been stopped by a trial judge or discontinued on the same basis.

It is the duty of any advocate representing HSE to record an adverse judicial finding in full. A transcript of the judgement should be obtained wherever available. The finding and the transcript should be forwarded by the advocate to the LAO, who will record and action the information.

The number of adverse judicial findings against HSE staff is expected to be minimal.