



Home Office

Statutory Disclosure Guidance

To Chief Officers of police on providing information for inclusion in enhanced criminal record certificates

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Purpose and Status of this Guidance

1. The Government is committed to the protection of children and vulnerable people. Criminal record checks are an integral part of the wider safeguarding policies and practices used by employers and others during recruitment.
2. Enhanced criminal record certificates (ECRCs) can disclose more than the records of someone's convictions or cautions. On enhanced certificates, the police can also disclose relevant police intelligence or non-conviction information, subject to the statutory test set out below. This helps to protect the public, in particular children and vulnerable adults, by ensuring that prospective employers and others have relevant information upon which to make their suitability decisions. The disclosure of this information is subject to a rigorous relevance test.
3. Section 113B (4) of the Police Act 1997 (the Act), as amended, states that:

“Before issuing an enhanced criminal record certificate the DBS must request any relevant Chief Officer to provide any information which –

 - (a) the Chief Officer reasonably believes to be relevant for the purpose described in the statement under subsection (2), and
 - (b) in the Chief Officer's opinion, ought to be included in the certificate.”
4. Section 119 (2) of the Act says that the Chief Officer shall comply as soon as practicable with a request under section 113B.
5. This guidance is issued under section 113B (4A) of the Act, which states that:

“In exercising functions under subsection (4) a relevant Chief Officer must have regard to any guidance for the time being published by the Secretary of State.”
6. The guidance is intended to assist Chief Officers of police in making appropriate, proportionate and consistent decisions in providing information from local police records for inclusion in ECRCs.
7. Having regard to this guidance does not mean fettering Chief Officers' discretion to make whatever decisions they consider appropriate, within the constraints of the law. It does mean being able to show due regard to the principles set out in this guidance and being able to justify any departure from the principles on a case-by-case basis.
8. This guidance sits alongside the Quality Assurance Framework (QAF) which is a set of processes and more detailed guidance covering the disclosure of information under the Act, drawn up by the National Police Chiefs' Council (NPCC) and the Disclosure and Barring Service (DBS). Chief Officers should also consider the QAF in carrying out functions under section 113B (4) of the Act.

9. This guidance applies to any relevant Chief Officer exercising functions under section 113B (4) of the Act, regardless of the geographical location of the body for which they are responsible. This includes those treated as Chief Officers under section 113B (10) and (11) of the Act.
10. Further to section 117A of the Act, both Chief Officers and the Independent Monitor must have regard to this guidance in carrying out functions arising from disputes about the inclusion of information in certificates provided in accordance with section 113B (4) of the Act.

Principles to be applied

11. In deciding what, if any, information should be provided for inclusion in an ECRC, and in providing that information, Chief Officers should apply the following principles.

Principle 1 - There should be no presumption either in favour of or against providing a specific item or category of information

12. Every piece of information should be assessed on its own individual merits. Information should not be included (or excluded) simply because it is of a certain type.

Principle 2 - Information must only be provided if the Chief Officer reasonably believes it to be relevant for the prescribed purpose

13. The prescribed purposes are set out in regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002 ('the 2002 Regulations') as amended. The purposes relate to activities and roles defined as 'Work with adults' (regulation 5B), activities and roles defined as 'Work with children' (regulation 5C). They also relate to other roles of sufficient sensitivity to be eligible for enhanced criminal record certificates, described in DBS guidance as 'Other Workforce', but which do not fall within the 2002 Regulations' definitions of work with adults or children.

14. The word "relevant" should be given its natural meaning, expressed as pertinent to, connected with or bearing upon the subject in question. Information must only be provided if the Chief Officer reasonably believes it to be relevant. It should not be disclosed on the basis that, although there is no apparent reason to believe that it is relevant, it could conceivably turn out to be. Forming a reasonable belief that information is relevant is a higher hurdle than merely considering that it might be or could possibly be relevant. Any decision to disclose information must always be a carefully balanced decision weighing up relevant factors, including credibility, seriousness and recency, which are set out below. The factors explained below are not an exhaustive list and other factors may come into play in individual cases.

15. Chief Officers must consider what is relevant to the prescribed purpose for which the certificate is being sought. For the prescribed purpose set out in regulation 5A (a) of the 2002 Regulations, the assessment needs to be based on the relevance of information to all the listed roles and activities with children set out in regulation 5C of the 2002 Regulations. For the prescribed purpose set out in regulation 5A (b) of the 2002 Regulations, the assessment needs to be based on the relevance of information to all the listed roles and activities with adults set out in regulation 5B of the 2002 Regulations. An ECRC relating to a prescribed purpose is portable across the roles relevant to that prescribed purpose. However, for decisions relating to the 'Other

workforce', for example, firearm licensing, applications for judicial appointments or applications for taxi driver licences, the relevance of the information will be judged in relation to the particular position applied for, not a prescribed purpose.

16. Linked to this test, Chief Officers should consider the extent to which information from local records is relevant in the sense that it provides background and context in relation to a conviction or other disposal retained in central records which will automatically be included on the ECRC.
17. ECRCs disclose cautions and convictions according to the [filtering rules](#) prescribed in legislation in section 113A of the Act which determine what is automatically disclosed. However, the fact that certain criminal records are not automatically disclosed as criminal records information does not mean that the Chief Officer is prohibited from including them in information disclosed under section 113B (4). Chief Officers must consider such disclosure with care, having particular regard to the view of the Supreme Court¹ that youth cautions (including youth warnings or reprimands) should not be automatically disclosed on criminal records certificates, and explain why, on the particular facts of the case, the statutory test under section 113B (4) is met.

Principle 3 - Information should only be provided if, in the Chief Officer's opinion, it ought to be included in the certificate

18. Having formed what they regard as a reasonable belief that the information is relevant for a "prescribed purpose", the Chief Officer must then consider whether the same information ought to be included in the certificate. The relevance of the information remains related to the "prescribed purpose" for which the certificate is being sought. Given the focus on the 'prescribed purpose', rather than specific positions applied for, the certificate will be portable across the range of circumstances that make up the prescribed purposes of 'work with children' or 'work with adults' as set out in the relevant legislation. Those people who are intended to be protected by the disclosure would necessarily be those in receipt of the services or activities defined within the relevant prescribed purpose.
19. In considering what information 'ought to be included', a Chief Officer is expected to consider what is proportionate. This means that what is disclosed is no more than what is necessary to achieve the legitimate aim and that it strikes a fair balance between the rights of the applicant and the rights of those the disclosure is intended to protect. A legitimate aim might include the legitimate aim of crime prevention and/or the protection of the rights and freedoms of others and/or ensuring public safety. In practice, this will involve weighing factors underpinning relevancy, such as

¹ *R (P and Others) v Secretary of State for the Home Department* [2019] UKSC 3

seriousness, currency and credibility against any potential interference with privacy. Every case should be evaluated on its own facts.

Information should be viewed as sufficiently serious

20. There are no hard and fast rules to apply in this area, but Chief Officers should consider whether a specific piece of information is of sufficient gravity to justify its inclusion. It may not be appropriate to disclose information if it is trivial, or simply demonstrates poor behaviour, or relates merely to an individual's lifestyle.
21. There is some relationship here to the purpose for which the certificate is being sought. A relatively minor piece of information with a clear relationship to that purpose might reasonably be viewed as relevant and proportionate to disclose, while something more serious with no such relationship might not. In some cases, it might be reasonable to view information linked to an isolated incident or allegation less seriously than information linked to a sequence. Clearly there will be occasions where the nature, relevance or severity of a single incident or allegation is such as to require disclosure.

Information should be sufficiently current

22. The age of the information, coupled with the age of the applicant at the time and their conduct in the intervening period, are factors which should be taken into account. The older the information, the more difficult it will be to form a reasonable belief that it is proportionate to disclose. However, there are other factors, especially seriousness, which may mean that even very old information may reasonably be believed to be proportionate to disclose. The currency of information should be considered together with the specific circumstances of the case.

Information should be sufficiently credible

23. This will always be a matter of judgment, but the starting point will be to consider whether the information is from a credible source. Chief Officers are not required to conclude whether the information is true; rather they should determine that the information is not lacking in substance and it is reasonable to believe it may be true. Detailed analysis of the evidence is not required in order to establish sufficient credibility for disclosure purposes. Disclosing information with a lower likelihood of the allegation being true may still be justified for example when the allegation is particularly serious and/or recent.

Disclosure of information relating to a third party

24. In some circumstances, information relating to a third party may also be considered relevant to the prescribed purpose and proportionate to disclose. Information about a third party may indicate a risk relevant to an employer's suitability decision and, where such information is identified, it may be disclosed subject to the Principles set out in this guidance.

25. Home-based occupations, where employment is carried out primarily at the residential address of the applicant, may afford third parties an enhanced level of access to vulnerable groups including children. Where information is held about a third party who resides at the same address as the applicant or who has regular access to that address, it is reasonable and proportionate to consider disclosure of relevant information if it suggests that the third party is a risk to children or vulnerable adults due to the home-based nature of the occupation concerned.
26. For non-home-based occupations, it is not necessary or proportionate routinely to seek information relating to third parties. However, a potential third-party risk may be identified as part of a routine applicant check. It would be proportionate to disclose only if it is reasonable to consider that the third party could gain access to children or vulnerable adults through the applicant's employment and the information held on the third party suggests they may pose a risk to them.

The impact of disclosure on the private life of the applicant or a third party

27. The words "ought to be included" in Principle 3 should be read and given effect in a way which is compatible with the applicant's right to respect for their private and family life under Article 8 of the European Convention on Human Rights. Disclosure of information on ECRCs, as a result of decisions made by Chief Officers, will fall within the scope of Article 8. That being the case, they will, in virtually every case, involve an interference with the applicant's private life; this may include the impact on the applicant in terms of their prospects of being selected for the role in question. Therefore, Chief Officers must ensure that the disclosure of such information is justified in every case.
28. As set out above, the Chief Officer should consider if there is a legitimate aim pursued and then whether the disclosure of the information is necessary to pursue that aim, including consideration of whether there are any other realistic and practical options to pursue that aim. The proportionality consideration referred to above is particularly relevant to a consideration of whether any interference with an Article 8 right is justified.
29. It is essential that the reasoning in reaching a decision is fully and accurately recorded in each case. It may not be appropriate to record the full reasoning for every decision as part of the disclosure text, provided the full reasoning is recorded in audit trail documents.

Adverse impact of disclosure on the prevention or detection of crime

30. There will be exceptional cases in which the specific circumstances will require the Chief Officer to consider whether the value of disclosing information in terms of public protection might be outweighed or undermined by an adverse impact on the prevention or detection of crime.

31. For example, the applicant might be the subject of an ongoing police investigation and disclosing certain information might compromise that by alerting them to the police interest.
32. In the exceptional cases where the Chief Officer concludes that information should not be disclosed to the applicant for such reasons, they should consider alternative ways of dealing with the public protection issues that would otherwise be addressed via disclosure on an ECRC. This may, for example, involve providing information to an employer or potential employer in confidence, using the police's common law powers to act to protect the public. Alternatively, the police may decide to increase monitoring and observation of the applicant's activities to reduce risks to vulnerable groups or individuals.

Principle 4 - The Chief Officer should consider whether the applicant should be afforded the opportunity to make representations

33. In any case where a Chief Officer is minded to provide information for inclusion in a certificate or is uncertain whether to do so, they should consider whether the applicant should be offered the opportunity to make representations before the information is submitted. Some of the factors relevant to this consideration are:
- is there doubt as to whether the purpose for which the certificate is being requested, while eligible for an ECRC, actually requires the disclosure of this specific information?
 - has the applicant ever had a fair opportunity to answer an allegation?
 - is there any doubt as to whether factual information is correct or remains valid?
 - is it questionable whether disclosure of this information would represent a disproportionate interference with the applicant's private life?
 - could the applicant provide information that may alter the assessment of risk?
 - is the information of a nature that it may have been subject to a decision by a professional regulatory body if the applicant belongs to such a profession?
34. The Chief Officer should ask themselves whether it is obvious that nothing the applicant might say by way of representations could rationally or sensibly influence their decision. Only in cases where there is no room for doubt that the information should be disclosed, should a decision to disclose be taken without first giving the applicant an opportunity to make representations. This opportunity to provide representations relates only to the disclosure of police information and not to cautions and convictions subject to automatic disclosure.

Principle 5 - There should be a sufficient and clear audit trail to record the decision-making process and support quality control

35. There should be a clear audit trail running through the decision-making process. The reasons for key decisions within that process should be adequately documented, together with the identity of those responsible for them. This will underpin quality control processes which Chief Officers should ensure are applied on a regular and systematic basis.
36. It will also be critical to enabling effective review processes where specific decisions are challenged.

Principle 6 - Decisions should be made in a timely manner

37. Decisions about whether to provide information for inclusion in a certificate should be made as expeditiously as is reasonably possible, and it is the Chief Officer's responsibility to ensure that there are no unnecessary delays. Chief Officers should be aware that delays feed through into important decisions affecting both the applicant and, potentially, the protection of the public.
38. The requirement to disclose relates to information held at the time that the force receives the application. If the applicant is the subject of a current investigation or prosecution, this should not usually delay a decision to disclose information already held.

Principle 7 - Information for inclusion should be provided in a meaningful and consistent manner, with the reasons for disclosure clearly set out

39. Neither the applicant nor the employer or other body to whom they may wish to show the certificate should be left to speculate as to the reasons why information has been included. Both these reasons and the information itself should be set out in a clear and meaningful way and in a consistent format. A recommended template is included in the QAF.
40. The wording should be clear, concise and unambiguous. It should be written in plain English and easy to read and understand. Police jargon should be avoided, and the text should simply set out the facts, offering no opinion, assumption or supposition on the content itself. Personal opinions as to an applicant's suitability for a prescribed purpose should not be included.
41. The information should be self-contained and stand on its own merits. It should not, for example, cross-reference to other material not available as part of the disclosure or to information contained in a previous disclosure.

Principle 8 - Any delegation of the Chief Officer's responsibilities should be appropriate and fully documented

42. The Chief Officer should consider whether any aspects of the decision-making process are to be delegated. Any delegation should recognise the importance and complexity of the process and the Chief Officer should be satisfied that the person to whom the delegation is made is entirely suitable for the task in terms of skills, training and experience. Where delegation occurs, the Chief Officer should ensure that the delegate has regard to this statutory guidance. Any decision to delegate should be documented and signed off by the Chief Officer.

Acquittals

43. The disclosure of information relating to acquittals was the subject of the Supreme Court judgment in the case of *R (AR) v Chief Constable of Greater Manchester Police* [2018] UKSC 47. It is important, in light of that judgment, that Chief Officers consider the disclosure of allegations in light of the principles set out in this guidance.
44. An acquittal following trial indicates only that the jury or the court is not satisfied beyond reasonable doubt that an individual was guilty. In some cases, an acquittal might be directed because of particular issues relating to the evidence. Additional information may in some cases be available about the circumstances of the acquittal, including the court's own statements (such as a summing up, or a ruling) which may give reasons for treating the court's disposal as less than decisive. Alternatively, that additional information may provide support for treating the allegation which led to the acquittal with caution. In the absence of information of that kind, the Chief Officer is not required to re-investigate or to conduct a wholesale review of the evidence presented at the trial. Rather, the Chief Officer should consider disclosure against the statutory tests and the principles in this guidance, taking into consideration that the individual was acquitted at trial of the allegation concerned.

Health information

45. On its own, information relating to physical health is unlikely to be appropriate for disclosure.

Mental health

46. Disclosure of information relating to mental health is a sensitive issue for people who have encountered the police and requires careful consideration. The long-term effects of disclosure of experiences of mental health problems can be very damaging to the individuals concerned, adversely affecting their private lives and employment prospects. Additionally, it can be very difficult to judge whether an episode of mental ill-health, in itself, is relevant to an application for a job or voluntary activity.
47. Only other additional factors can make a mental illness relevant for disclosure. A person with mental ill-health may experience a specific episode that brings them into contact with the police. Such an episode may lead to detention. The fact of detention under sections 135 (1) or 136 of the Mental Health Act 1983 is unlikely, by itself, to be sufficient to justify disclosure. Sections 135 (1) and 136 provide the police with powers to remove a person to a place of safety when the person is believed to be suffering from a mental disorder and is in need of care or control. Such a detention under the Mental Health Act does not constitute a criminal investigation and should therefore be treated with great caution when considering relevance for disclosure.
48. A key consideration for the Chief Officer is the person's behaviour during the course of the incident. For example, if police records show that the person's behaviour presented a particular risk of harm to others (which may include threats or physical violence), and the Chief Officer believes that the users of the certificate should be aware of that risk (for example, a risk to children or vulnerable people), then the Chief Officer might consider the information to be relevant to the purposes of the application and that it ought to be disclosed. Repeat incidents of such behaviour may also be a factor.
49. As stated at paragraph 19 of this guidance, the age of the information – i.e. how long ago the incident took place – is another important factor when considering how relevant the information is to the application. If the Chief Officer reasonably believes the information is relevant to the application, they should consider giving the applicant the opportunity to make representations about their current state of health before making a final decision on disclosure.
50. If the Chief Officer decides to disclose information relating to an episode of mental ill health, the certificate should provide sufficient explanation to ensure the prospective employer or voluntary organisation will clearly understand the relevance of the information to the application. Please see paragraphs 39–41 for further guidance on completing the certificate.
51. More detailed guidance on information relating to mental health is provided in the QAF.

Information Provided by the DBS and Regulatory Bodies

52. The DBS has the power to tell the police about information which has informed its consideration of barring individuals from work with vulnerable groups, under the provisions of the Safeguarding Vulnerable Groups Act 2006. Any such information received by the police should be considered for recording as police information and, where an application for an ECRC is made, for disclosure in line with this guidance. However, the fact that an applicant is barred, has been barred or is being considered for barring, should not be considered for disclosure as local police information as this would fall outside the statutory provisions governing the provision of barring information on ECRCs.
53. There may be times when Chief Officers know, or are made aware of, decisions taken by the DBS, or a regulatory body, who have considered the same allegation or information and have concluded that it is not appropriate to bar the individual from regulated activity or to otherwise prohibit the individual from particular work. When Chief Officers are considering the disclosure of such information, they should reflect on the judgments in the cases of SD and LG², which relate to such circumstances. A decision of the DBS, or a regulatory body, not to take further action, should always be considered by Chief Officers, where such a decision is drawn to their attention, when undertaking a disclosure decision.
54. Chief Officers should consider that any disclosure text is to assist employers to make informed assessments of risk, and that it may be relevant to that assessment of risk to know that a regulatory body has considered the matter in issue and made a decision not to take further action. Where the DBS or a regulatory body have considered the matter being disclosed and made a decision in favour of the applicant, Chief Officers should consider whether it is proportionate to disclose the information itself (i.e. the allegation or information in respect of which a decision to take no regulatory or barring action was made), and, if disclosure is made, whether disclosure only of the allegation or information that led to a barring referral without reference to the decision not to bar is proportionate. If they decide to include reference to this decision within the disclosure text after this consideration, it may mitigate the interference with the applicant's rights. The presumption should be to include a reference to such a decision if it is considered proportionate to do so. Failure to include a reference in the disclosure text would require a strong rationale for not doing so and this must be recorded in the audit trail.
55. Chief Officers are not under a duty to make enquiries as to whether any such decision has been taken by the DBS or a regulatory body. In a context where the applicant is

² SD v Chief Constable of North Yorkshire [2017] EWCA Civ 1838 ("SD") and R (LG) v Independent Monitor [2017] EWHC 3327 (Admin) ("LG").

subject to a professional regulatory body, the possibility that such a decision has been taken may be one reason for inviting the applicant to make representations.

Time Limit for Disputes

56. The DBS advises applicants that any dispute about the disclosure of information contained in the ECRC should be raised with the DBS within three months of the date of issue of the certificate. After that time, if the individual is still seeking a position or applying for a licence within the Child and/or Adult, or Other Workforce, they should apply for a new ECRC. Out-of-time disputes should still be considered in circumstances when the applicant provides a valid reason for raising a dispute after three months and the role is still available to them.

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