

Could you please detail what guidance the Metropolitan Police Service has received from ACPO in relation to the recent Court of Appeal decision on the Step Down procedure.

Letter from Ian Readhead, Director of Information, ACPO 19/12/2008

Re: Step Down Criminal Convictions / Retention Model

As you are aware we are appealing the outcome of the Information Tribunal concerning the five cases brought against Chief Officers by the Information Commissioner which we were asked to weed from the PNC. It has been determined, following advice from our Counsel, David Jones, that we should leave in place the step down model until the appeal of adjudication has been dealt with. It is likely that during the interim approximately 1500 cases will be dealt with by forces across the country.

Can I ask that you make clear in any correspondence that you have with applicants for step down that they should not assume that their convictions will necessarily always be stored in this matter and that a case is currently pending with the appeal court which will determine whether or not criminal conviction data will be held on the PNC for life.

I sense that it is important to be fair with applicants so that they are aware of the background to this process and especially if we win the appeal, in which case the CRB would have access to step down conviction data within their powers under Part V of the Police Act.

Email sent from Ian Readhead, Director of Information, ACPO 20/10/2009:

I attach for your information the full adjudication from the Court of Appeal with regard to the above case. I spent yesterday with colleagues reviewing the case and it raises a number of key issues. In particular it confirms the power of the Police Service to retain conviction data. It justifies a broad interpretation of policing purpose which includes the requirement in law for us to supply conviction data to the Crown Prosecution Service which have a legislative requirement to place before sentencing, a full record of offender's convictions so that the residing Judge or Magistrates can reach an appropriate view on sentencing tariff. It articulates the view that this complete record of criminal convictions should be revealed where appropriate to the Criminal Records Bureau under Part V of the Police Act 1997. It suggests that Parliament may wish to review the Rehabilitation of Offenders Act Exemption Order in so far as the extent of

enhanced disclosures may be excessive, it confirms that this case should not be confused with S&Marper. This Appeal relates to conviction data where as S&Marper concerns the retention of biometric data which had been taken from an individual arrested for a recordable offence but not convicted or charged. The Lord Justices make clear that it is for Parliament and not for the Information Commission alone to consider any limitation on the indirect access of others for the content of the PNC.

I anticipate that I will be suspending the step down of conviction data forthwith and will copy you in to an email to be sent to all forces on this topic. This case will be a subject of debate at our next annual meeting in December.

Email sent from Ian Readhead, Director of Information, ACPO 21/10/2009:

I attach for your information an electronic copy of the full Court of Appeal adjudication with regard to the five constabularies appeal which was announced yesterday. We have taken the opportunity of looking carefully at the judgement in order to determine its scope and the ramifications which may flow from this judicial authority concerning current business processes.

The judgement clearly articulates support for the retention of criminal convictions on the Police National Computer and further articulates the circumstances in which such data can be disclosed to other parties. The Lord Justices decided that the narrow interpretation determined by the Information Tribunal on what constitutes a policing purpose was incorrect and that the police have a wide duty to share conviction data with a range of other agencies in the criminal justice environment. In particular they focused upon the responsibility to maintain a full list of convictions to prove antecedent history to the Court, such conviction data was also relevant for the purposes of enhanced disclosure, crime enquiries and child centered family proceedings.

*Of particular importance was the determination that Part V of the Police Act requires the Criminal Records Bureau to have access to all criminal convictions kept on central records. This impacts upon the current system of stepping down some criminal convictions for police eyes only which was put in place following the first Information Tribunal. In view of the determination from the Court of Appeal, **this process is to be suspended with immediate effect until we have had an opportunity of looking at all the options available.***

I also bring to your attention that the Court made it clear in a number of areas that it is for the Chief Constable as Data Controller to decide what conviction data should be retained and to whom it should be disclosed. The Information Commissioners Office should only exert their regulatory powers if it were clear that the Data Controller was exercising their discretion in a perverse manner. Lord Justice Waller exemplifies this at paragraph 42 where he quotes the words

of Sir Michael Bichard “police judgements about operational needs will not be likely to be interfered with by the Information Commissioner. His office can not and should not substitute their judgement for that of experienced practitioners. His office will give considerable latitude to the police in their decision making. If a reasonable and rational basis exists for a decision, that should be the end of the story”. He continues at paragraph 43 “it is simply the honest and rational held belief that convictions, however old and however minor, can be a value in the fight against crime and thus the retention of that information should not be denied to the police”.

The appeal court concluded in the adjudication for S&Marper which related to biometric data taken from individuals arrested but not charged or convicted of a recordable offence, does not have any bearing on conviction data which was the substance of this case. It was acknowledged by the Court of Appeal that although this matter only involved five cases, it would have undoubtedly meant that all similar convictions and cautions would have been required to be weeded from the PNC and other manual records had the case been lost.

The Information Commissioner was not granted leave to appeal and is now pursuing an application to appeal direct to the Supreme Court. It will take about six weeks for this process to be concluded and for a decision to be made on whether such an application will be accepted.

I will now be working with colleagues in ACPO, ACPOS and Northern Ireland in order to ensure that our business processes reflect the requirements of the adjudication. I should make it clear that nothing in this adjudication, in my professional judgement, impacts upon the Management of Police Information (MOPI). The NPIA and the Home Office will be closely involved over the forthcoming weeks. ACPO will play a fully part in the work now being carried out by the Independent Advisor who has been tasked by the Home Secretary to review criminality information in the light of this judgement.

Email sent from Ian Readhead, Director of Information, ACPO 22/10/2009:

As a result of the Judgement made on 19th October 2009, in the case of the 5 Chief Constables – v – The Information Commissioner, all convictions, cautions, reprimands and final warnings will be retained on PNC until the subject reaches 100 years of age. These records will be routinely disclosed to the disclosure agencies under Part V of the Police Act 1997. The step down of records was suspended by the ACPO Director of Information on 21st October 2009 and will in effect be backdated to the day of the judgement.

An e-mail detailing the ruling was sent to all Chief Constables on 21st October 2009 with further information regarding the judgment.

We will continue to process any requests for step down received prior to 19th October. Requests received after the date of the judgment will not be processed. A template letter has been prepared by ACRO to this effect, for forces to use in response to new requests from members of the public. A copy of the template letter is attached to this email.

Please also note that ACRO are not able to deal directly with members of the Public. Therefore our telephone number or e-mail should not be provided to applicants requesting step down.

Please disseminate this email to any person involved in this process within your force.

TEMPLATE LETTER:

Dear.....

I write with reference to your recent application for the 'Step Down' of your record held on the Police National Computer.

On the 19th October, 2009 a judgement by the Court of Appeal in London supported retention of criminal convictions on the PNC for policing purposes. In particular the police are obliged, under Part V of the Police Act, to provide disclosure services to other parties, including the Criminal Records Bureau, with access to all convictions held on PNC. Therefore, the stepping down of convictions is no longer necessary and consequently your application cannot be processed.

In effect this means that all convictions will be retained on the PNC until an individuals 100th birth date. It is also important to note that this data will now be available for disclosure to the CRB in relation to employment vetting.

Please find below a link which will take you to the full adjudication.

http://www.judiciary.gov.uk/docs/judgments_guidance/chief-cons-v-information-commissioner-191009.pdf

Email sent from Ian Readhead, Director of Information, ACPO 27/10/2009

I have received a number of calls with regard to the above case and clearly there remains some issues which require clarification.

*Firstly, can I make it clear that this case requires all criminal conviction data to be retained and that this **includes** reprimands, warnings and cautions. Secondly, we appear to be struggling with those matters which were in the process of being stepped down but which were received by forces prior to the adjudication being delivered on the 19th October. Some forces have significant numbers of such cases. In my opinion, it would be absurd to now step down any conviction data*

because it does not achieve the original intention which was to make it available for police eyes only. All step down cases will in the future be made available to the Criminal Records Bureau under Part V of the Police Act 1997 as it is a central record. Therefore I am happy for you to advise all applicants irrespective of the date of application that their cases will no longer be stepped down as a result of this adjudication.

I will also be liaising with the CRB and NACRO in order to ensure that they no longer advise any applicants that conviction data can be stepped down.

Letter from Ian Readhead, Director of Information, ACPO 4/12/2009

4th December 2009

Further to my letter dated 11th November 2009, I am now in a position to confirm the arrangements for the reinstatement of 'Stepped down' records. Forces should not reinstate stepped down records. Instead, ACRO will continue to manage stepped down records on behalf of forces. When requiring information on a PNC record, forces should check any warning marker and if the warning marker refers to step down, the force must contact the ACRO Step Down team by email.

Failure to contact the ACRO Step Down team when a step down warning marker is present could result in incomplete information being disclosed.

Access requests will 'trigger' the following action(s):

Records comprised of information derived solely from microfiche (pre-1995). ACRO will provide the requested 'Stepped down' information to forces via e-mail over a secure network i.e. pnn while, concurrently, ACRO PNC analysts will carry out the required back record conversion (BRC). ACRO are able to BRC these records as previously the PNC entries were created solely from information derived from the microfiche records and, as such, the PNC records have no linkage to DNA or Fingerprints i.e. no re-linking is required. Forces will be advised when the BRC has been completed.

Records comprised of force only or force and microfiche information (some or all information is post-1995). At this time, ACRO is unable to BRC records that contain solely force information, or a combination of force information and information derived from microfiche as invariably, the force records have associated links to DNA or Fingerprints and re-establishing the links is proving to be technically challenging. However, ACRO will provide the requested 'Stepped down' information to forces via e-mail over a secure network i.e. pnn and, thereafter, forces should manage the disclosure of conviction histories to the

Disclosure Services for employment vetting as outlined in my letter dated 11th November 2009.

For clarity, it is expected that the 'Lead Force' will take responsibility for disclosing all Part V information i.e. information that is not subject to a test of relevance including all convictions, cautions, reprimands and warnings. However, where information is subject to a 'Relevance test' e.g. acquittals / NFAs, the force that owns the information should decide whether the information should be disclosed.

The approach as outlined will ensure that all criminal record certificates and enhanced criminal record certificates will contain an individual's complete criminal history i.e. all convictions / cautions / reprimands / warnings. This may cause some individuals a degree of difficulty, therefore attached at Appendix A is a suggested response to applicants who query why it is that 'Stepped down' information has reappeared on the certificates provided by the Disclosure Services.

APPENDIX A

Dear

Thank you for your letter/email of [insert date].

You have queried why previously you have been provided with a criminal record certificate or enhanced criminal record certificate which showed fewer or no convictions / cautions / reprimands / warnings than on a more recently issued certificate.

Prior to the *Chief Constable of Humberside Police and others v Information Commissioner* Appeal Court decision on 19th October 2009, the process followed was that outlined in the Retention Guidelines for Nominal Records on the Police National Computer. Under certain circumstances information could be "stepped down" meaning that it was only available to the police, save for those occasions when an individual was subject to an enhanced criminal record check under the vetting process. In those cases, the information was reviewed by the police force concerned and disclosed only once a test of relevance as defined in Home Office Circular 05/2005 had been applied.

Since the aforementioned judgment, the police are now obliged under Part V of the Police Act 1997 to provide all convictions, cautions, reprimands and warnings to the Disclosure Services, regardless of whether this information had been previously stepped down.

Therefore you may have received a certificate which contains information that has previously not been disclosed as at the time it was judged not relevant by the police. Under Part V, all such information must now be disclosed to the Disclosure Services.

Yours sincerely
