

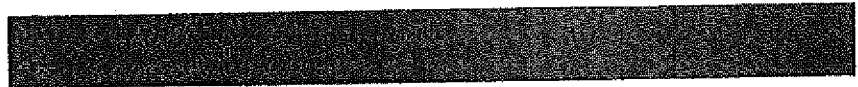
The Leveson Inquiry
Witness Statement for Part 1, Module 2

EXHIBIT MT2



**ASSOCIATION OF
CHIEF POLICE OFFICERS**

Communication Advisory Group



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1. FOREWORD



A successful working relationship between the Police Service and the media is vital. Moreover, working with the media to engage the public – either to help solve crimes or demonstrate police work - is now part of our everyday business in policing. The relationship has changed in recent years. There is a greater degree of openness than ever before. Police forces have responded positively to the demands of the Freedom of Information Act and share a great deal of material that might have been kept from the public in past decades.

The rapid pace of technological change continues to bring new challenges, around the clock, for both media departments in police forces and the media. How the media report has changed dramatically over recent years– mobile phone footage, citizen journalists and social media such as twitter are all immediate, direct communication which sit outside the traditional broadcast and print arenas. They have become part of the mainstream, and controlling the facts and flow of information is increasing difficult. This is a particular challenge for forces in times of crisis or during critical incidents, such as terror attacks or disasters.

Whilst some aspects of media reporting has become less traditional, the relationship between the media and police has conversely become more structured. There are a number of agreements and protocols aimed at ensuring the media has open, timely access to information. Some of it is supplied essentially on trust - for instance pre-verdict trial briefings, under embargo. This is a measure of the robust health of the relationship.

These guidelines aim to widen the shared understanding between the media and the Police Service, outlining the kind of information and cooperation the media can expect and identifying areas of difficulty to help the media understand the practical or legal restraints under which media departments sometimes work.

We have built on the previous set of guidelines produced in 2003 and - adopting the spirit of the times in relation to guidance - they are considerably shorter. We could not have produced them without the valued assistance of the Society of Editors, the Newspaper Society, and the Crime Reporters Association. We hope those bodies will agree the guidelines encourage an open, accessible and common sense approach in which serves the public interest.

Andy Trotter

Chief Constable of British Transport Police and Chair of the ACPO Communications Advisory Group

2. INTRODUCTION

- 2.1. This guidance is produced by the Communication Advisory Group (CAG) of the Association of Chief Police Officers of England and Wales - formerly the Media Advisory Group (MAG) - to help communications staff in the Police Service. It replaces 2003 guidance.
- 2.2. CAG comprises senior communications professionals from forces in England, Wales and Northern Ireland. We have also consulted partner bodies in the Criminal Justice System and representatives of the media such as the Society of Editors, the Newspaper Society, the National Union of Journalists and the Crime Reporters Association.
- 2.3. The Freedom of Information Act 2000 has given the public and the media the power to demand certain material from police, and forces have responded positively in an attempt to release as much information as they can.
- 2.4. There are still areas, though, where individual forces cannot be compelled to co-operate with media requests and this document should not read by the media as an entitlement to unlimited access and disclosure. Decisions will ultimately be taken by forces and accountability rightly rests with them.
- 2.5. However, ACPO aims to encourage a presumption of openness; to promote consistent practice and to offer practical guidance, based on experience, so decision-making by forces will withstand scrutiny.
- 2.6. This guidance does not attempt to cover every eventuality. It sets out broad principles and a practical framework in which forces can make decisions based on local circumstances.
- 2.7. It is in everyone's interests that the relationship between police and the media is robust. It should work adequately on a daily basis, with mechanisms in place to resolve disputes. Police forces will do all they can to assist the media in reporting accurately. The media will recognise, though, that it is ultimately their responsibility to ensure that what they publish and broadcast is accurate and within the law.
- 2.8. Aside from relevant laws, the press is bound by the Editors' Code of Practice, which is administered independently by the Press Complaints Commission. Broadcasters are covered by the Ofcom Broadcasting Code and BBC guidelines. The codes have requirements on accuracy, privacy, harassment, discrimination and several other issues. There are special requirements about how journalists should treat stories involving children, those who are dealing with grief and victims of crime (especially sexual assault). Some of its stipulations go further than the law and it must be observed in spirit as well as to the letter. Information about the media codes can be found at www.societyofeditors.org

3. USING THIS GUIDE

- 3.1. The first three chapters cover major, day-to-day aspects:
- 3.2. Crimes, incidents, investigations, raids, operations and general duties which generate media inquiries or requests for the media to accompany police.
- 3.3. Court cases.
- 3.4. Images – photographs and video footage.
- 3.5. Further chapters cover the publication of court ‘outcomes’; revisiting old cases; sex offenders; police under investigation; racist incidents and other hate crimes; police communications in the digital era; and the implications of the Freedom of Information Act
- 3.6. This is NOT a media law manual, though a short summary of key legal points is available as an Annex 1. In general terms, police communications staff should always take into account the implications of the Data Protection Act, the Human Rights Act, the Contempt of Court Act and the Freedom of Information Act.

A number of Annexes are indicated in this guidance. They include a number of agreements which have been reached with the media in recent years. They will be made available.

4. CRIMES, INCIDENTS, INVESTIGATIONS AND OPERATIONS

Individuals and companies under police investigation

- 4.1. This covers the identification of adults under investigation, including those arrested. Juveniles in Youth Court proceedings are subject to automatic anonymity. When they appear as defendants in adult courts, an order under s 39 of the Children and Young Persons Act is routinely applied for, and routinely granted. These orders impose anonymity unless and until the judge orders otherwise.
- 4.2. A person may not know he or she is under police investigation, or the scope of the inquiry, and forces do not, generally, volunteer the name of those they are investigating.
- 4.3. Although there is no specific law to prevent forces identifying those they have arrested, in practice they give general details of arrests which are designed to be informative but not to identify - for example 'a 27 year old Brighton man' - are given. In high profile cases which may cause major public concern - such as terrorism or murders - forces sometimes provide substantial detail about their investigations without identifying individuals.
- 4.4. The media frequently discover the name of people under investigation and seek confirmation. Again, there is no law to prevent forces giving confirmation. Some forces do choose to confirm the name; others choose not to do so but may indicate that a name is incorrect.
- 4.5. If a suspect is released without charge or bailed to reappear at a police station, the fact of the police action occurring is generally released, though the person remains unidentified. Again, this is practice, rather than an approach dictated by any law.
- 4.6. Most forces give the name and age, with details of the charge and forthcoming court appearance at the point of charge. Some also give the occupation.
- 4.7. The address can be given unless there are compelling operational reasons not to do so - such as that the location is still subject to sensitive inquiries.
- 4.8. If a charge is dropped before someone reaches court, most forces will endeavour to release this information as soon as practicable. However, the responsibility for accurate reporting lies ultimately with the media.
- 4.9. Breath tests are a form of investigation. There is no law to prevent police identifying an adult who has been tested. However, forces have generally not released or confirmed identities unless people are charged. A 17-year-old motorist who tests positive and is charged is not normally identified, as it is likely that identification will be prohibited by a court order, as it is in most cases where juveniles are charged. Forces do not generally discuss the results of breath tests, though there is no law to say they should not.
- 4.10. Identities of people dealt with by cautions, speeding fines and other fixed penalties - which are all 'out-of-court' disposals - are not normally released or confirmed. Again, however, there is no law to prevent this. Forces generally say that "a man" or "a woman" has been dealt with, and only general details of the offence are released. Similar general details can be given about juvenile cautions since the media are usually prevented, in any case, from identifying the individual.
- 4.11. Forces, however, sometimes exercise discretion in this area and are entitled to consider whether the public interest justifies identification. Every case will be judged on its facts. Where a fixed penalty is contested in court, the identity of the individual will appear publicly, on court lists and may be confirmed by police. It may be that refusing to identify becomes untenable - for instance, where the name has been widely reported.
- 4.12. In the case of road traffic collisions and similar incidents, forces usually adopt one of two approaches. Either the investigation of the incident is confirmed, with no identification of the individual involved, or the individual is named as involved in an incident but no confirmation of an

investigation can be given. The individual will only be named as having been investigated once a charge has been brought. Again, this is practice, rather than a policy dictated by law.

- 4.13. The identities of people who come under suspicion of an offence as a result of police attending a location, with or without a warrant, are generally not volunteered by forces, though the question of confirmation, as discussed in 4.5 above may arise.
- 4.14. There is no law to say addresses should not be given. In practice, though, forces refer to general rather than specific locations - for instance, a street name, rather than a house number on the street. Giving the street may be important for local media, which needs to be specific where the national media may be content with the town or city.
- 4.15. Forces will, generally, confirm investigations into companies – unless there is an operational reason not to do so. There is no law to prevent the identification of individuals in companies but forces have generally tended not to identify individuals in companies or discuss whether they are being interviewed. Care should be taken when naming companies. There may be another, innocent company with that name, or something similar.
- 4.16. If the media contacts a force about a company subject to a joint inquiry involving the police and another agency, such as the Serious Fraud Office (SFO), automatic referral of the call to the other agency may in effect provide confirmation. It is best practice to note the media inquiry and consult with investigators before responding.

Victims and witnesses in crimes, road collisions or other incidents

- 4.17. The wishes of victims and witnesses should be sought, wherever possible, before forces decide on publicity in order to strike the proper balance between the right of individuals to privacy and the right of the media to report on events of interest and concern to the public.
- 4.18. When dealing with victims, witnesses or next of kin, police staff should ask a balanced question to establish consent to the release of information. ACPO CAG recommends the following: "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?" This position was agreed between ACPO, the media and the Data Protection Commissioner.
- 4.19. Anonymity for children and young people who are defendants, victims or witnesses in adult courts is not automatic, though the courts have powers to prohibit identification and they are frequently used. The Judicial Studies Board guidelines on Reporting Restrictions - at www.judiciary.gov.uk/media/media-releases/2009/News-release-2609 - are helpful.
- 4.20. If any children are involved in matters which the media inquire about forces should bear the above point in mind and consult a parent, guardian or other responsible adult before making any decision on publicity.
- 4.21. When a victim or any other person requests that their personal details should not be released, how should forces deal with this? The fundamental position of a victim or witness is that their details are, *prima facie*, confidential and should only be released with their consent, or if there is an overriding public interest in so doing. Confidentiality is established in English common law and Article 8 ECHR (covering the right to private and family life) is also important. Where there is a clear refusal on the part of a person to have their details disclosed, there will have to be an absolutely overwhelming public interest case to make such disclosure lawful. Where a force concludes the public interest does override the wishes of a victim or witness not to have their details disclosed, they should be given ample notification that police intend to disclose their details. The law provides exemptions which allow a breach of confidence. If the police have an obligation under a specific law or statute to release information, that would be an obvious exception to the common law expectation of confidentiality. So, too, would the need to breach confidentiality in the overriding public interest, such as the prevention and detection of crime. However under the Human Rights Act, disclosure of confidential information must be necessary to protect individuals or communities from crime or harm, and it must be proportionate. Ensuring compliance with the Data Protection Act by establishing that disclosure is for the prevention or

detection of crime may go some way to identifying a public interest in disclosure at common law, but there will need to be a balancing exercise between the public interest in disclosure and the rights of the individual concerned, and the nature of disclosure should be proportionate, that is to say no more than necessary to achieve the policing purpose concerned.

- 4.22. Where there are no grounds for going against the victim or witness's wishes, this does not mean they can demand that police release no information whatsoever.
- 4.23. Even where victims, witnesses or next of kin have agreed to the release of personal details, police should still consider potential risks in doing so – for instance where publicity might make an elderly person living alone vulnerable to further crime.
- 4.24. The Data Protection Act does not apply to dead people, and their names will become a matter of public record. Dead victims – in homicides, suspicious or unexplained deaths, or accidents – may therefore be named once positive identification has taken place and immediate relatives have been informed, unless there are operational reasons for not doing so.
- 4.25. Newspapers will wish to report deaths that have occurred in unusual circumstances. However, there are limits on what can be published and on the approaches that can be made to bereaved family and close friends. For instance, the Editors' Code of Practice, overseen by the PCC, states that "in cases involving personal grief or shock, enquiries and approaches must be made with sympathy and discretion and publication handled sensitively" (Clause 5, 1). The broadcasters' codes have similar stipulations.
- 4.26. In cases involving suicide, "the press must not include excessive detail when reporting suicide, in order to minimise the risk of copycat cases" (Clause 5, ii). In terms of journalistic approaches, Clause 4 of the Code says that journalists "must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist". The PCC seeks to protect vulnerable individuals and encourages police officers (especially family liaison officers) to ensure that bereaved families in particular are aware of the services it can offer.

Taking the media on police operations

- 4.27. There is no law to prevent police forces taking the media on operations – although there are laws which may affect media reporting, for instance those designed to ensure a fair trial.
- 4.28. Forces should consider whether:
- the project addresses matters which are in the public interest;
 - it is likely to inform or reassure the public;
 - it will help prevent or detect crime.
- 4.29. These are risks to consider. Could the venture:
- interfere with an individual's right to a fair trial or privacy? (Media attending an operation do not have the same rights as the police to be present on private property without the permission of the land/property owner);
 - cause distress or harassment to those being investigated, or to innocent members of the public?
 - jeopardise future police operations?
- 4.30. Most risks can be managed in advance by agreement. ACPO CAG recommends that forces should agree to media attendance only after a clear written agreement has been reached on the roles and responsibilities of all involved and broadcasters or other media bodies have confirmed that they have appropriate public liability insurance.
- 4.31. A sample agreement (Annex 2) and an accompanying Note to Media Representatives outlining their obligations (Annex 3) have been drawn up following lengthy discussions with broadcasters.

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- 4.32. If the project is likely to be over a long period of time, it is good practice to draft overall agreements which in effect allow the automatic renewal of the original conditions each time filming 'goes live' and provide a mechanism for periodic review.
- 4.33. The media should be reminded that all film footage may be subject to a request for disclosure in a prosecution, including footage not broadcast or published. This would require a court order and is subject to provisions concerning "journalistic material" set out in the Police and Criminal Evidence Act 1984.
- 4.34. Editorial control rests with the media. However, it is good practice for the media to attend relevant briefings in the interests of greater understanding and accuracy. Police may take this opportunity to highlight aspects of covert policing they wish to be withheld from the public.

Dealing with reporters, photographers and camera crews at the scene of incidents

- 4.35. Two documents are available, on request, from the ACPO press office. One is a letter from Chief Constable Andy Trotter, chair of CAG, to forces on the subject of dealing with photographers. The second has been prepared by the Directorate of Public Affairs (DPA) in the Metropolitan Police Service and adopted by ACPO CAG. It provides general guidance for dealing with the media 'on the ground' - covering aspects such as cordons and vantage points.
- 4.36. In general, it is important to note that members of the media have a duty to report from the scene of incidents. Where it is necessary to put cordons in place, it is best practice to provide the media with a good vantage point.
- 4.37. There have been a number of instances highlighted in the press where officers have detained photographers and deleted images from their cameras. Andy Trotter has written to all forces to remind them that officers and staff that they should not prevent anyone from taking photographs in public. This applies equally to members of the media and public seeking to record images, who do not need a permit to photograph or film in public places.
- 4.38. ACPO guidance is as follows:
- There are no powers prohibiting the taking of photographs, film or digital images in a public place. Therefore, members of the public and press should not be prevented from doing so.
 - We need to cooperate with the media and amateur photographers. They play a vital role as their images help us identify criminals.
 - We must acknowledge that citizen journalism is a feature of modern life and police officers are now photographed and filmed more than ever.
 - Unnecessarily restricting photography, whether for the casual tourist or professional is unacceptable and it undermines public confidence in the police service.
 - Once an image has been recorded, police can only seize the film or camera at the scene on the strictly limited grounds that it is suspected to contain evidence of a crime. Once the photographer has left the scene, police can only seize images with a court order. In the case of the media, the usual practice is to apply for a court order under the Police and Criminal Evidence Act for production of the photograph or film footage.
- 4.39. If someone who is distressed or bereaved asks for police to intervene to prevent members of the media filming or photographing them, police may pass on their request but have no power to prevent or restrict media activity. This should be understood as a specific limitation on the powers available under Section 43 of the Terrorism Act 2000.
- 4.40. Genuine members of the media usually carry identification which they will produce to you on request. ACPO recognises the National Press Card issued by media bodies but some media organisations have their own accreditation.
- 4.41. In particularly high-profile cases, where the media gather en masse, some individuals may feel under pressure. If they decide they do not wish to speak to journalists, the Press Complaints Commission may be able to assist in circulating a 'message' to relevant newspapers and

broadcasters. This effectively passes on the request of the individual that the media desist in their attentions. The service will not be used in circumstances where an individual is simply trying to protect an exclusive deal with one media outlet. The PCC will also wish to be absolutely certain that the individual's own wishes (rather than simply the wishes of the police) are being acted upon.

5. THE COURT CASE

- 5.1. Courts in England and Wales are public and reportable, with some restrictions.
- 5.2. Under the Contempt of Court Act 1981, the court can postpone reporting until all relevant criminal proceedings are over. Some statutes can also be used, in exceptional cases, to prohibit reporting permanently.
- 5.3. The media is responsible for knowing about, and complying with, all court orders whether temporary or permanent.
- 5.4. These laws were not designed to control information that police forces supply to the media. They are, however, relevant when forces are reaching agreements with the media on how information will be used.

Basic information about prosecutions

- 5.5. The Magistrates Court Act 1980 and the Contempt of Court Act 1981 allow the publication of straightforward facts which can be supplied by police.
- 5.6. The following core information is permitted under the Magistrates Court Act. It was drafted originally for committal hearings, which now no longer exist in the same form, but the principles still hold :
 - the identity of the court and the names of the examining justices;
 - the names, addresses and occupations of the parties and witnesses – where there is unlikely to be any prohibition on naming them in subsequent proceedings, and the ages of the accused and witnesses;
 - the offence or offences, or a summary of them, with which the accused is or are charged;
 - the names of the legal representatives in the proceedings;
 - any decision of the court to commit the accused or any of the accused for trial, and any decision of the court on the disposal of the case of any of the accused not committed;
 - where the court commits the accused or any of the accused for trial, the charge or charges, or a summary of them, on which he/she is committed and the court to which he/she is committed;
 - where the committal proceedings are adjourned, the date and place to which they are adjourned;
 - any arrangements as to bail on committal or adjournment.
- 5.7. Crown Courts may change indictments. A complex case with multiple defendants and charges may be 'severed' into more manageable parts and it may be decided that juries in first or early trials in a sequence should not be made aware of the full extent of the original indictment.
- 5.8. It is good practice for forces to liaise with the Crown Prosecution Service (CPS) to ensure they are aware of any changes or restrictions in newsworthy cases. Police often inform the media of changes but, again, responsibility for accurate reporting lies ultimately with the media.

Supplying prosecution material on a day-to-day basis during the trial

- 5.9. Prosecution material presented to the jury in evidence can be supplied to the media on a contemporaneous basis, in controlled conditions. In principle, it is material in the custody of the CPS. In practice, police and the CPS work closely together.
- 5.10. Annex 4 is a protocol drawn up by the CPS, ACPO and media bodies. The protocol can be found at <http://www.cps.gov.uk/publications/agencies/mediaprotocol.html>. It states that the following

prosecution material, which has been relied upon by the Crown in court, should normally be released:

- maps/photographs (including custody photos of defendants) or diagrams and other documents produced in court;
- videos showing scenes of crime as recorded by police;
- videos of property seized (e.g. weapons, clothing as shown to jury in court, drug hauls or stolen goods);
- sections of transcripts of interviews or statements as read out (and therefore reportable, subject to any orders) in court;
- videos or photographs showing reconstructions of the crime;
- CCTV footage of the defendant.

- 5.11. Material which may be released, after consideration by the CPS in consultation with police and victims, witnesses and family members, includes:
- CCTV footage or photographs of the defendant and victim, or the victim alone that has been viewed by jury and public in court. It covers, too, material presented to the judge for a guilty plea hearing;
 - Video and audio tapes of police interviews with defendants, victims and witnesses;
 - Victim and witness statements.
- 5.12. This CPS protocol makes clear that only prosecution material which has been relied on in open court, or presented to a judge in the event of a guilty plea, can be released to the media.
- 5.13. Prosecution material will only be released after live evidence by each witness has been completed, unless otherwise directed by the judge. Where necessary, it will be accompanied with written advice informing the media that the material should be broadcast or published contemporaneously and strictly framed within the context in which it has been presented in court.
- 5.14. The CPS takes the view that it is for the Crown, ultimately, to decide whether prosecution evidence can be released.
- 5.15. Further ACPO CAG documents at Annex 5 offer a formal protocol for the release of prosecution material in particularly high profile cases. This has been used successfully in terrorism trials and more recently in criminal trials. It complements the CPS protocol.
- 5.16. The CAG protocol is suited to sensitive and high-profile cases where daily demand for Crown material is anticipated. It can be used to demonstrate to the court how the release of material will be managed. It refers to a number of 'release documents' - for the media to request items and the Crown to agree.
- 5.17. There are usually features of released material - such as the faces, addresses or car registration numbers of witnesses on CCTV - which should be pixelated. Some forces strongly advise that material should be edited before it is released.
- 5.18. However, the CPS is satisfied that material can be properly released under a written agreement that the media receiving the material, frequently on a pooled basis, will edit it correctly before supplying it to other organisations.
- 5.19. It is possible that at times the police may have reservations about the release of aspects of evidence, even though they have been aired in court. These might relate to covert tactics. If a force wishes to withhold material, the CPS stipulates that a Chief Officer should put the reasons in writing to the CPS.

Briefing the media before the end of the case – pre-trial and/or pre-verdict briefing

5.20. Briefing is ultimately at the discretion of the force. However, CAG believes that briefings help the media to report accurately what happens in the courts.

5.21. A force should ask whether a briefing:

- highlights good police work or reassures the public;
- sheds light on an innovative technique or noteworthy inter-agency co-operation;
- might deter future offenders or prevent crime;
- could help manage media needs in a high-profile case;
- encourage accuracy in a complex case;
- may counter anticipated criticism of the police, post-trial.

5.22. Briefings are as varied as the cases they relate to. The material released and commented upon often depends on the nature of media questions. The list below was included in the 2003 ACPO guidance on briefings and sets out the points which should be a starting point for any briefing.

The following points can safely be offered in a background briefing on a court case and will form the basis of a clear explanation to the media

- the name, age, occupation and address of the defendant;
- similar details of victim, where appropriate, and general background on any company or organisation involved;
- any blood/legal relationship between victim and defendant;
- details of charges and an explanation of their context;
- the number of witnesses from whom evidence has been heard, or read;
- 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 as it has emerged in the evidence;
- details of the officer who led the investigation, the numbers who worked on the case and any particular expertise or specialist skills 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

5.23. Pre-trial briefings are sometimes held jointly by the CPS and the police and each organisation may decide to hold a pre-trial briefing independently of the other organisation. While some forces will hold pre-trial briefings most brief at the pre-verdict stage - commonly after the jury has retired, or possibly while the judge is summing up.

5.24. Forces and the CPS will not generally brief the media pro-actively on evidence presented in court in the absence of the jury - for instance, in legal argument to decide admissibility. However, it may be that evidence was ruled inadmissible because of criticisms of police practice, and if the media raise the matter, forces may brief on their position.

5.25. If a guilty plea is anticipated a full briefing may be considered ahead of the day of the plea. Forces generally confine such briefings to prosecution material on which the defendant is understood to be pleading guilty and which the judge will use to sentence.

5.26. It is possible that a guilty plea is taken but the hearing is adjourned without the evidence being opened. If a force does not want briefing material to be used until the case has been opened to the judge, it should stipulate this in any written agreement.

- 5.27. Forces generally draw up embargo agreements tailored to the case. In essence, they require agreement that material - ranging from photographs to pre-recorded interviews with SIOs or other officers - is only used when all relevant criminal proceedings are concluded. For the avoidance of doubt, this means all Crown Court (or, sometimes, magistrates court) proceedings. It does NOT mean appeal proceedings which may take place months or years later.
- 5.28. For all types of briefing, it is good practice for the force to involve the CPS; to keep a record of all journalists attending; and to make a full record, as police may be required to disclose the content of briefings. Forces routinely audio-record briefings and may film them.
- 5.29. Police forces are entitled to supply the media with information about their involvement in the granting of anti-social behaviour orders (ASBOs) and other civil court orders, where the court proceedings were open. How long releases about ASBOs remain on websites is left to the discretion of forces.
- 5.30. The Home Office's guidance on the publicising of ASBOs can be found at this link:
http://www.asb.homeoffice.gov.uk/uploadedFiles/Members_site/Documents_and_images/Enforcement_tools_and_powers/ASBOs_PublicisingGuidance_0032.doc

6. IMAGES

- 6.1. There is a heavy demand from the media for images – both photographs and CCTV/video footage. Forces, at times, want to release images for policing and operational purposes - for instance to catch a 'wanted' prison escapee or to trace a known suspect or offender.
- 6.2. Though the practicalities may differ between releasing a police custody image and supplying CCTV footage, the broad principles of image release are the same.
- 6.3. We benefit in this area from a guidance note produced jointly by ACPO, CPS and the Office for Criminal Justice Reform - following consultation with the media - which was published in May 2009. It is at Annex 6.
- 6.4. It sets out the principles - including the legal tests of necessity and proportionality - in this area to help force media officers to make decisions about the release of images of suspects and defendants to the media.
- 6.5. The objectives of this guidance are:
 - to encourage the release of images to the media where appropriate and at the earliest opportunity
 - to ensure greater openness in the reporting of criminal investigations and proceedings.
 - to encourage joint decision making between forces and the CPS as appropriate
 - to ensure a more uniform approach across forces.
- 6.6. The May 2009 document includes a checklist of questions designed to guide forces in establishing the purpose of the release of images and addressing the questions of necessity and proportionality.

7. COURT CASE OUTCOMES

- 7.1. Research suggests the public welcome news about criminals being brought to justice. Police forces are encouraged to publicise court case results and to do all they can to help the media report them.
- 7.2. The views of the Office for Criminal Justice Reform (OCJR), published in 2009, are available at Annex 7.
- 7.3. ACPO CAG, while recognising some of the practical difficulties in placing conviction details on websites, encourages forces to respond positively to the OCJR paper.
- 7.4. This is not a new area for forces. For some years, police have selected certain convictions for publicity on their websites.
- 7.5. The difference now is that police may be expected to publish a higher volume of court results – and to make decisions on how long they leave material on digital outlets.
- 7.6. Forces may also wish to consider publicising other out-of-court disposals, such as Restorative Justice and Local Resolution outcomes.

8. PAST CASES

- 8.1. A cold case is generally one with no standing conviction. It becomes an 'old and cold' case, broadly, when it is no longer the subject of active investigation. Old 'successful' cases are self-explanatory.
- 8.2. When forces are approached by the media, the decision on whether to co-operate is theirs alone. They may ask some key questions.
- Is resurrecting the case, now, useful and beneficial?
 - What effect will it have on any victims or the surviving relatives?
 - Did the crime cause considerable public concern and attract considerable media interest?
 - Is there a need to publish or broadcast, now, in the public interest?
 - Were there covert operational techniques the force still wants to protect?
 - Might the safety of witnesses or informants be jeopardised?
 - Are there current issues of disclosure to be considered?
- 8.3. Decisions should be taken in consultation with media officers.
- 8.4. Forces should advise broadcasters/ publishers on the handling of any fresh evidence which emerges – emphasising the importance of the integrity and continuity of evidence and exhibits in the prosecution process.
- 8.5. The views of the victims or family (or a close surviving relative) must be sought, where practicable, before a final decision is taken and given due weight. If a child is the only surviving relative, an appropriate and responsible adult should be consulted.
- 8.6. While the wishes of the family are important, the force may co-operate for operational reasons or because it is in the public interest to do so.
- 8.7. Editors retain editorial control but forces may seek agreement to allow them to view the material and comment on matters of factual accuracy or operational sensitivity prior to publication.
- 8.8. Procedures in the Metropolitan Police Service (MPS) differ slightly from other forces, as it is subject to the Public Records Act 1958. The Ofcom Broadcasting Code offers guidance on the reconstruction of crimes, encouraging programmes which are sensitive to victims and families.
- 8.9. There may be cases where someone has been acquitted by a jury, or by the Court of Appeal, and others which are due for an appeal hearing or are being considered by the Criminal Cases Review Commission (CCRC).
- 8.10. There is no reason per se that forces should not deal with the media on these cases. Most importantly, police may to an extent be able to protect the interests of victims or relatives.

9. CONVICTED SEX OFFENDERS IN THE COMMUNITY

- 9.1. The Sex Offenders Act 1997 set a requirement for offenders to register with local police, and forces regularly face media questions about them. The management of the disclosure of information is a complex process. Police and other agencies, such as the Probation Service, share a responsibility to protect the public and there is now an established multi-agency system for handling disclosure.
- 9.2. ACPO Crime Committee has considered this issue and the general presumption is that individual, personal details about released sex offenders should not be disclosed, unless there is a clear operational reason to do so. Forces do, though, release general details about the number of convicted sex offenders in their areas in reports on Multi-Agency Public Protection Arrangements (MAPPA).
- 9.3. This section focuses on the involvement of police force communications departments in this area.
- 9.4. Police in England and Wales are not required, as some police forces in the US are, to publish the details of released sex offenders on the Internet.
- 9.5. The law does however allow disclosure to certain limited parties, including potential victims, or their parents, and head teachers.
- 9.6. It is the view of ACPO Crime Committee that information about any offender should not be disclosed unless it is assessed as necessary by the risk management process, in accordance with Home Office guidelines.
- 9.7. The role of force media officers is to advise on potential publicity and, where appropriate, assist in reaching local protocol agreements with the media.
- 9.8. In response to specific inquiries from reporters, about identified individuals, forces and relevant agencies - such as Probation and Social Services - should agree and supply guidance about the individual, as well as general information about any risk management strategies, rather than refuse to comment.
- 9.9. Forces are advised to agree procedures with local editors for handling media inquiries about individual sex offenders, and to ensure they are updated periodically (a suggested protocol and a set of frequently asked questions are at Annex 8.)
- 9.10. A scheme creating a more formal mechanism for concerned members of the public, parents, carers, relatives and neighbours to ask whether an individual has convictions for offences relating to children is being rolled out across England and Wales. Details of the Child Sex Offender Review (CSOR) Disclosure scheme are at Annex 9.

10. CHILD RESCUE ALERT

- 10.1. The Child Rescue Alert (CRA) is a partnership between the police, the press and the public. Its aim is to locate abducted children by using the media to publish details promptly about an abduction. There is explanation and guidance from the National Policing Improvement Agency (NPIA), the custodian of the scheme, at <http://www.npia.police.uk/en/10239.htm>
- 10.2. Forces should try to maintain updated media contact lists, including out of hours numbers, to be able to put a CRA into action quickly.
- 10.3. If a Senior Investigating Officer (SIO) calls on the press office for assistance with a CRA, then time is of the essence.
- 10.4. It is good practice, therefore, for police press offices to discuss CRAs with their local media and to establish a mechanism for putting it into action as quickly as possible.

11. POLICE UNDER INVESTIGATION

- 11.1. Forces work closely with the Independent Police Complaints Commission (IPCC) in cases where police themselves are under investigation. A protocol has been established between police and the IPCC and is at Annex 10.
- 11.2. The aim of agreement is to ensure police and the IPCC address aspects they are responsible for - the IPCC investigating a death and police offering wider operational detail or community reassurance, for instance.
- 11.3. When individual officers are under investigation they are treated no differently from anyone else who falls under suspicion.
- 11.4. The Home Office defines a death in the 'care or custody' as an incident where someone dies 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.
- 11.5. Deaths in police care or custody are automatically referred to the IPCC.
- 11.6. In such cases, unless there is a compelling operational reasons to do otherwise, it is best practice that forces should release a statement - authorised by an ACPO rank officer in consultation with the IPCC - which confirms:
 - the details of the deceased, subject to next of kin having been informed;
 - the cause of death, subject to the agreement of the Coroner, IPCC and the investigating officer;
 - the referral to the IPCC;
 - the name of the investigating officer;
 - any transfer or suspension of officers or staff;
 - details of any charges in connection with the investigation.
- 11.7. As many facts as possible, given the constraints of the investigation, should be released. However, no assertions of responsibility for the death should be made or accepted. Other than in exceptional cases, the names of any police officers or civilian custody staff suspended should not be released.

12. RACIST INCIDENTS AND OTHER HATE CRIMES

- 12.1. There is a difference between the broad definition of a racist incident offered by Sir William McPherson in his report into the Stephen Lawrence case - 'any incident which is perceived to be racist by the victim or any other person' - and the narrower legal definition of 'racially motivated, or aggravated' used by the criminal courts. These features have to be proved by evidence.
- 12.2. The same difference applies in cases of apparent hate crime – including, for example, targeting disability or sexuality.
- 12.3. ACPO CAG believes it is important that incidents that can be described as racist, or hate crimes, continue to be publicly acknowledged as such. The terms 'racist incident' or 'hate crime incident' may be used when making appeals for witnesses and information.
- 12.4. However, forces should be careful when it comes to the descriptions such as 'racially motivated' or 'racially aggravated', or aggravated and motivated by hatred against particular groups.
- 12.5. Motivation is generally an issue for the court to decide, on the evidence. It is not a phrase used in any criminal charge. Forces should therefore be wary of using it.
- 12.6. 'Racially aggravated' is a phrase used in charging people - for instance, racially aggravated GBH. A force can, therefore, state as a fact that an individual has been charged with a specific racially aggravated offence. It should not, though, talk about a 'racially aggravated incident.'
- 12.7. It is good practice to explain the distinctions to the media and what the context in which terms are used.

13. POLICE, THE MEDIA AND THE DIGITAL AGE

- 13.1. Digital engagement with the media, and the wider community, is more than a police/media office/CAG responsibility. It encompasses operational officers and staff, police IT specialists (including those charged with ensuring force networks are secure), and, possibly, commercial partners.
- 13.2. It is a growth area, which is being driven by a number of enthusiasts in forces. The ACPO CAG policy is that, while it supports the police use of digital technology to support community engagement, it will be a matter for each force to determine the level and extent of digital media processes they use.
- 13.3. To assist forces to get the best out of social media, a guidance document 'Engage' has been produced and can be found on the NPJA website at:
http://cfnp.npia.police.uk/files/dm_engage_v6.pdf
- 13.4. ACPO CAG draws attention to two key points:
- This guidance, including legal questions, applies to the release of all material – irrespective of the channel through which it is released. The release of an image through a social network site must be justified in law just as if it was put on a website or handed out as a 'hard copy.'
 - When privately using social networking, all staff are accountable for whatever they put into the public domain and inappropriate use may leave individuals subject to misconduct procedures. Staff should be aware of their force's policy on this issue.
 - This chapter does not offer recommendations on how long material should remain on digital outlets. This is generally left to the discretion of forces.

14. FREEDOM OF INFORMATION REQUESTS FROM THE MEDIA

- 14.1. Some forces are concerned that when they decline, through their communications departments, to help with a media request for information or material, the same request reappears as a Freedom of Information Act (FOI) Inquiry. Equally, the media complain that, at times, that media officers tell them to put complex queries in writing and then 'go down the FOI route', delaying the answer.
- 14.2. ACPO CAG cannot easily offer a policy in this area, as every case will be decided on its particular facts.
- 14.3. Generally however, if there are no grounds for declining the release of material under FOI, then refusing to release it following a media request in the appropriate form would be contrary to the FOIA.
- 14.4. All forces now have publication schemes which promote proactive release of information.
- 14.5. It is good practice for communications and FOI departments to work closely together and, if withholding material cannot be justified, to find the most efficient and least bureaucratic way of releasing information.
- 14.6. The ACPO guide to Freedom of Information is at:
http://www.met.police.uk/foi/pdfs/other_information/corporate/acpo_foi_guidance.pdf
- 14.7. Section 8 of the Freedom of Information Act makes plain that any request for information, made in writing, including e-mails, is technically a request under FOIA legislation.
- 14.8. But to process every such request as an FOIA matter would be overly bureaucratic. There is provision, as outlined in the ACPO FOI Manual of Guidance, for information requests to be treated as normal business - effectively, as 'traditional' media requests - provided certain criteria are met.
- 14.9. The key point is that the information must then be disclosed under normal business 'rules', as the withholding of any information which might have been classed as an FOI request can only be done by the application of exemptions under the Act.
- 14.10. In order to protect the force from any possible legal ramifications of non-compliance with FOIA, the needs of the applicant must be considered foremost. If any doubt exists as to whether a request should be processed through normal business channels, or FOIA, the applicant should be contacted to verify their intentions in making the request, and a record should be kept.
- 14.11. Any queries regarding FOIA and disclosure of information can be directed to the ACPO FOI Central Referral Unit at: acpo.advice@foi.pnn.police.uk.

15. OTHER USEFUL INFORMATION

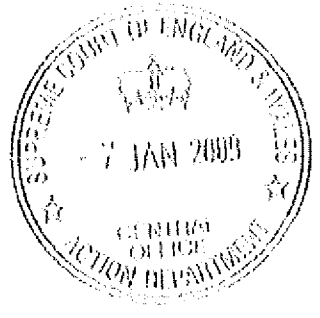
- 15.1. The following subjects are covered by long-established stand-alone guidance and protocols. Inquiries about them should be addressed by forces to the ACPO media office:
- Guidance for dealing with the media during kidnaps and 'Crime In Action' operations.
 - Guidance on dealing with the media in a major incident.
 - Annex 1 to 10 are available on request from the ACPO communications department.

COURT REF:
HQ09 K00029

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

BEFORE MASTER WHITAKER

BETWEEN:



MOHAMMED AMAR

Claimant

-and-

THE BBC

Defendant

ORDER FOR A
STATEMENT IN OPEN COURT

UPON the agreement of the parties

BY CONSENT

IT IS ORDERED THAT:-

1. The parties read the attached Statement in Open Court on a date convenient to both parties and the Court; and
2. The Defendants do pay the Claimant's costs in this action, to be assessed if not agreed.

Dated this 7 day of January 2009

19. DEC. 2008 17:43

BBC LITIGATION
BBC LITIGATION

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NO. 535 P. 4

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

BETWEEN:

MOHAMMED AMAR

and

THE BRITISH BROADCASTING CORPORATION

STATEMENT IN OPEN COURT

Claimant

My Lord, the Claimant is a dental technician and a member of the General Dental Council, practising at a dental implant firm. The Defendant is the BBC.

On 9 July 2008, a programme entitled 'Cars, Cops and Criminals' was broadcast on BBC One. The programme showed a police raid in Mr Amar's home and his subsequent arrest. Mr Amar was identified by name and his face shown. The programme stated that Mr Amar had been charged with offences relating to car finance fraud and conveyed the meaning that Mr Amar was guilty of involvement in car fraud. The programme was repeated on 15 July.

In its edition of 5-11 July 2008, on the listings page for 9 July, the Radio Times published a photograph of Mr Amar. Although his face was concealed by his cap he may have been identifiable by readers who had also watched the programme. To such readers the caption to the photograph conveyed the meaning that Mr Amar was a thief and that he was involved in car finance fraud.

020 7353 1062

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19. DEC. 2008 17:43

BBC LITIGATION
BBC LITIGATION

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NO. 535 P. 5

My Lord, Mr Amar was not in fact charged with any offence but rather was released the same day as his arrest. The allegation that he was a thief involved in car fraud was completely untrue. In those circumstances the BBC has made Mr Amar an Offer of Amends, which he has accepted, and has agreed to join in making this Statement in Open Court today.

The BBC has also agreed to publish an apology on the BBC One website and in the Radio Times and has agreed to pay Mr Amar a substantial sum by way of damages and his reasonable legal costs.

Defendant

My Lord, on behalf of the BBC, I accept everything my friend has said. The BBC wishes to apologise to Mr Amar for the damage to his reputation and the distress which the programme, including the footage of inside his home, and Radio Times publication has caused him.



Mark Thomson
Carter-Ruck
On behalf of the Claimant

BBC Litigation

BBC Litigation Department
On behalf of the Defendant

020 7353 1062

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