

Feedback form for consultation Authorised professional practice (APP)– Media relations (25 May – 8 July 2016)

Please complete electronically using MS Word and return by **8 July 2016**.

Notes on Use: Please add any comment or suggested change under the corresponding question or heading. Please note that formatting anomalies may occur in the online document when viewing in different browsers. In view of this, please focus your comments or suggested changes on areas that will have policy, procedural or other specific content impact.

Whilst reviewing this draft, please consider:

- Is the length and content appropriate?
- Is it easy to understand?
- Is there any information missing or should anything be removed?
- Is there any unnecessary repetition?

We are particularly interested in responses to the **specific questions** at the start of this template.

The template is intended to help you to structure your comments. You may provide as much, or as little, feedback as you wish. There is no requirement to complete every section. Please provide your answer in the comment box under the relevant section/sub-section.

When finished please, email completed document to: [Media relations feedback](#)

If you have any questions regarding the completion of this form, please e-mail [Media relations query](#)

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| Position Held: | <i>Legal Adviser</i> |
| Organisation: | <i>News Media Association</i> |
| Completion date: | <i>30 June 2016</i> |
| | |

Consultation questions

1. Do you find the APP easy to follow and understand? Please give reasons for your answer.

[Click here to enter text.](#)

2. The media play an important role in holding the police to account. The APP seeks to encourage openness and transparency, while recognising data protection issues and the obligation on the police to safeguard the integrity and confidentiality of information. Does the APP strike the correct balance between these competing issues?

The police must be open and accountable to the public they serve. As the first sentence of the draft guidance states, ‘a successful working relationship between the police service and the media is vital’. However, professional guidance must create a framework to help and support police officers in achieving a good relationship, rather than erecting new barriers that entrench police secrecy. The draft guidance proposes unnecessary retreats from the 2010 ACPO Guidance - and indeed from subsequent draft iterations - in a way that will adversely affect day-to-day reporting to the detriment of the public.

For example, a helpful section that was in the 2015 draft of paragraph 2 *Key principles* but has now disappeared read – ‘*Work on the principle of “withhold only what you must.” Only withhold information when it is necessary to protect ongoing investigations and legal proceedings, to ensure the safety and security of the public, to protect personal information, or to comply with legislation limiting the release of information about individuals*’. That grounded the advice in a practical application. The HMIC report *Without fear or favour: A review of police relationships* (December 2011) noted with approval that this principle “seeks to find the balance between providing journalists and the public with access to appropriate information, while maintaining necessary confidentiality and security”.

It unhelpful to warn (as does the second paragraph of the draft) that ‘Difficulties and uncertainties can sometimes arise in ensuring [the principles of open justice and the public interest] are correctly applied and observed’. This sets a negative tone for the rest of the document.

It would be useful to emphasise that institutional and individual police openness and the release of information are vital to public oversight of the police. It is not only integral to accurate reporting of the role and work of the police but also to accurate reporting about the locality and the communities served by that police force.

Lord Justice Leveson emphasised that “Given that the police operate with the consent of the public, the media also play a key role in holding the police to account by providing transparency *and challenge* [emphasis added].....Sandra Laville, crime correspondent for the Guardian, argued, I have no doubt

correctly, that journalism had a legitimate and proper role in a democratic society to interrogate, challenge and question in the public interest or, in other words, to be the peoples' eyes and ears" [Leveson Report, para 2.1].

3. The APP includes a simple rule for officers and staff to guide communications: am I the person responsible for communicating about this issue and is there a policing purpose for doing so? Do you agree that this rule is helpful?

The guidance does not attempt to define what might be a 'policing purpose', save for an allusion to promoting and maintaining public confidence in the police in the *Introduction*. There is a danger that this will be given an unduly restrictive construction.

4. The APP includes speaking terms intended to establish clarity about the basis for a conversation. These speaking terms make clear that unless exceptional circumstances apply, police communications should be reportable and attributable. Exceptions to this rule include where an embargo might apply ahead of a proactive crime operation, or to enable dialogue on a non-reportable basis, for example where the reporting of crime or terrorism has an impact on public safety or police operations. Do you agree that these speaking terms are necessary and useful?

The draft guidelines impose a number of unwelcome new controls on police contact with journalists. They mandate that 'non reportable' [off-the-record] conversations should only happen in 'exceptional circumstances' and prescribe a wide range of circumstances in which officers are urged to involve Corporation Communications Departments rather than liaise with journalists directly. The guidelines effectively crystallise the climate that has obtained since August 2011, with individual police officers becoming increasingly reluctant to speak to journalists. This is detrimental to the public interest.

There are often compelling reasons why briefings are given 'off-the-record'. Such briefings are an important channel for police officers to articulate their concerns and expose corruption, malpractice and abuse of power. The general utility of 'off-the-record' briefings was conveyed by a number of witnesses in their evidence to the Leveson Inquiry [see Part G Chapter 3, paragraphs 2.51 - 2.62], particularly in promoting openness and transparency and contextualising an issue. The *Sunday Times* journalist Jonathan Ungoed-Thomas explained: "*The value of such briefings is that it allows officers to speak freely and provide useful intelligence, without being nervous that anything they say might be published. The information helps provide useful background and credibility to an article, and helps the reporter understand the intelligence on which police officers may base their assertions.*"

Lord Justice Leveson himself acknowledged that it was “difficult to quantify the extent to which the practice actually gives rise to the problems identified in the above sections” and remarked upon an “apparent reluctance to break the trust that exists between police officer and journalist where information is being provided confidentially” [para 2.71].

The ‘non-exhaustive’ list of grounds for referring media inquiries to CCDs set out in the draft Media Relations guidance effectively makes any prospect of direct contact between reporters and police officers vanishingly small. Inevitably this will further erode the trust between the two groups, and inhibit meaningful dialogue. Adding an intermediary between a reporter and a police officer with information to impart could result in delay, inaccuracy, lack of context and a certain superficiality in the information provided.

Press officers taking charge of stories does not always result in the message being properly put across, because they can - and do - edit it to the point that it is bland, lacking in detail and essentially valueless.

Police forces which rely on individual officers being able to use social media to inform the public of their work have not addressed the key issue of what is important to the public. As one reporter comments: “Instead we are seeing more fluff about police puppies and parking concerns than proper policing action in our communities. Even when officers do post updates about policing action, it is invariably days or even weeks later, with little or no context, because those officers do not know what they can release, and choose to act “on the safe side”, with minimal information”.

It must surely be possible to address the relationship between the police and the press without treating journalists like pariahs. As Lord Justice Leveson cautioned: “It might be said that, where relations are poor and there is insufficient engagement, public confidence will suffer” [para 2.6].

5. The APP places an expectation on the police to record contact with the media. Do you agree that this requirement should be included?

Please give reasons for your answer.

Making a record of every contact with reporters will do little to improve relations between the police and the media, and indeed will have a ‘chilling effect’ on the flow of information. The guidelines constitute a bureaucratic nightmare for any officer who dares to speak to a journalist. Officers have indicated privately that it will be simpler not to talk to journalists rather than risk being reprimanded if their words cause the force discomfort or embarrassment.

Informal contact between detectives and crime reporters, based on professional respect and trust, would lead to more positive publicity and a better informed public.

Additional consultation content for consideration

Section 4 of the APP (Arrests, charges, and judicial outcomes) maintains the position that the police will not name those arrested or under investigation, except in exceptional circumstances where a policing purpose applies. It further reinforces this approach by clarifying that no details that could identify such a person will be released in response to an inquiry from the media. This position is intended to preserve the integrity of police decision making around safeguarding or sharing personal information concerning the identities of those under investigation or arrested, but not charged with any offence.

In these circumstances a policing purpose could include an appeal for witnesses or victims, where appropriate to an investigation.

It is important to recognise that the APP is intended solely to guide police decision making and does not interfere with the rights of the media to publish information obtained from any other source.

Once charges are brought, the presumption set by the APP is reversed. In accordance with the principle of open justice, the police will name those charged, either in response to an enquiry or proactively according to the seriousness of the crime. A decision not to name a person charged would be exceptional, and would require a legitimate policing purpose and consultation with the Crown Prosecution Service.

- Do you agree with this approach?

Responding to inquiries about arrests [paragraph 4.3] has adopted a very unhelpful stance, stating unequivocally: 'If a name or names are put to the police with a request for confirmation of an arrest the response should be "we neither confirm nor deny". No guidance should be given'. That is an illogical approach.

In similar vein, the indemnity agreement includes a clause which attempts to ban the media from identifying anyone arrested during an operation.

The 2010 Guidance stated that 'there is no specific law to prevent forces identifying those they have arrested' [paragraph 4.3, also in paragraph 3.5.1 of the May 2013 document '*Guidance on Relationships with the Media*'], and 'no law to prevent forces giving confirmation' [paragraph 4.4 of 2010 Guidance]. That is an accurate reflection of the legal position. There is a public interest in naming those under arrest, not least to maintain oversight of the police process.

In May 2007 the then Attorney General Lord Goldsmith advocated the release of more details to the media following high-profile arrests. In his view this

would militate against selective leaks and unduly sensational reporting. Lord Goldsmith pointed out that 'radio silence' could damage public confidence in the police by giving the impression there was no good case to answer in the first place.

Whilst this is not specifically articulated, the approach taken in the draft Media Relations guidance places great weight on the Article 8 and Article 6 ECHR rights of those individuals who are the subject of police operations, but fails to balance this against the Article 10 right to freedom of expression. This encompasses the entitlement of the media to impart and the public to receive information in relation to the process of justice, and is integral to the principle of open justice. Furthermore, there is a significant public interest in encouraging people to come forward if they have further information, and in generally deterring people from involvement in crime.

- Do you agree that this section provides appropriate guidance to protect the personal information of those under investigation?

See above

1. Introduction

Comment or suggested change

[See response to Q2 above](#)

2. Key principles

Comment or suggested change

[See response to Q2 above](#)

3. Police and the media

Comment or suggested change

3.1 Defining speaking terms

[See response to Q4 above](#)

3.2 The corporate communications department

[See response to Q4 above](#)

3.3 Attendance at media interview

[Click here to enter text.](#)

3.4 Recording contact with the media

[See response to Q5 above](#)

3.5 Managing inaccurate or misleading media coverage

[Click here to enter text.](#)

3.6 High-profile or sensitive investigations or operations

[Click here to enter text.](#)

3.7 Media briefings

[In relation to pre-verdict briefings this previously read: 'It should be made clear to the media that no information supplied that may prejudice a trial must be printed or broadcast until the end of a trial....' The text now reads: 'It should be made clear to the media that no information supplied that may *affect or* prejudice a trial must be printed or broadcast until the end of a trial..." \[emphasis added\]. This is too vague and all-encompassing and is open to over-wide interpretation.](#)

3.8 Taking the media on police operations

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3.9 Reporting from a scene

[Paragraph 4.36 of the 2010 Guidance acknowledged that 'In general, it is important to note that members of the media have a duty to: Report from the scene of incidents'. This is a useful reminder which is missing from the current draft.](#)

3.10 Exclusives

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3.11 Documentaries

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3.12 Hospitality, gifts, and gratuities

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3.13 Associations

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4. Arrests, charges, and judicial outcomes

Comment or suggested change

4.1 Referring to reports of a crime

[Click here to enter text.](#)

4.2 Naming on arrest

[See above](#)

4.3 Responding to enquiries about arrests

[See above](#)

4.4 Information about a police investigation or ongoing operation

[In the January 2016 draft the text read: 'Information on investigations can also be proactively released when it is deemed to be a matter of public interest'. That has now been deleted. This is an exemplar of the negative tenor of the new document.](#)

4.5 Naming on charge

There is no reference to the fact that there is no law which prevents the identification of people dealt with by way of a fixed penalty [as was acknowledged in paragraph 4.10 of the 2010 Guidance]. There is no reason why the identities of those dealt with by way of cautions should be concealed. They have committed - and admitted to - an offence. There has been criticism of inappropriate use by the police of cautions, which, like speeding fines and other fixed penalties, are criminal sanctions. Insight into the prevalence of (for example) speeding and its antisocial nature can only be achieved by publicity; 'naming and shaming' is in the public interest.

4.6 Identifying victims

The new text jettisons most of the 2010 guidance on *Victims and witnesses*, including the helpful section on establishing consent to the release of information [paragraph 4.18] which was the subject of lengthy and constructive debate in ACPO's Media Advisory Group under the chairmanship of Andy Trotter. The concept of the 'balanced question' was arrived at, with ACPO recommending the following form of words: "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 should be re-introduced into the text.

4.7 Information during criminal proceedings

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4.8 Information at the end of criminal proceedings

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4.9 Deaths

In contrast to the 2010 Guidance, the new draft states that "nothing should be released that could identify the deceased". Furthermore, the exception in the event of a fatal RTC that appeared in the 2015 draft has now been deleted. It is unacceptable that police should delay in identifying a dead person until after a coroner has been appointed and has agreed to disclosure.

The old provisions made clear that the Data Protection Act does not apply to dead people and stated: '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' [see paragraph 4.24]. In August 2001 Dame Elizabeth Neville, then Chair of the Media Advisory Group, wrote to her colleagues reminding them of this

fact. She cautioned that “Giving bad or wrong reasons for withholding information is damaging to the Service and is obviously not conducive to good media relations”. This is also covered in the media’s own guidelines such as the Editors’ Code for newspapers and broadcasters’ codes.

4.10 Images/footage

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4.11 Registered sex offenders in the community

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5. Police under investigation

Comment or suggested change

5.1 Publicising internal investigations and misconduct matters

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5.2 Incidents investigated by the Independent Police Complaints Commission (IPCC)

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6. Freedom of information

Comment or suggested change

6.1 Media requests under the Freedom of Information Act 2000

It would be helpful to have more positive wording to underline the fact that FOI is an important means whereby the media gather information about policing, and that the police should try to fulfil such requests wherever possible.

Dedicated section on police under investigation

Comment or suggested change

1. Complaint

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2. Misconduct

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3. Support

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4. Proactive operations

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5. Criminal investigations

This states that “Any information given should be broadly consistent with that given by the CCD to the media in the case of any other crime. In line with these guidelines, the person should not be named on arrest”. Please see our comments at ‘Additional consultation content section above’. There is a

public interest in naming those under arrest, particularly where that individual is a public servant.

6. Misconduct hearings

There should be explicit reference here to the openness requirements in the Police Conduct (Amendment) Regulations 2015. As a minimum this should make clear that (1) the chairman may require the publication of certain information; (2) the full list of such information; and (3) the requirement to publish the information on the authority's website. There should be an express recognition of the fact that police forces can release such published information, whether or not in response to specific media requests.

General comments about media relations APP

As you will be aware, the IPCC has written to the College of Policing to seek clarification on the use of Police Information Notices in a journalistic context, following the rescinding of a PIN given to Gareth Davies of the *Croydon Advertiser* by the MPS. The Media Relations guidance must include a strong warning against the misuse of PINs, and an emphasis on investigating the allegations to establish a base level of plausibility before issuing a PIN. It is imperative that criminals are not given the facility to block legitimate, public interest journalism by taking advantage of the PIN system.

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Diversity impact assessment – Is there any content in the draft document which you consider would have a negative impact on any diverse group?

| Section No. | Comment |
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