

Chapter 20: Criminal History Records: Police Officers

20.1 General Principles

20.1.1 It is not anticipated that the situation where a police officer has a criminal history record and the Crown intends to call him or her as a witness will arise very often. The Crown, however, is still obliged to ascertain whether or not a police witness has a criminal history record and to disclose that, as appropriate, in accordance with the materiality test i.e. information which is likely to materially weaken or undermine the evidence that is likely to be led by the prosecutor; materially strengthen the defence case; or form part of the evidence to be led by the prosecutor in the proceedings against the accused and the guidance set down in Chapter 19 of this Manual.

20.1.2 It is recognised, however, that it would be very resource intensive for the police to carry out a Criminal History System (CHS) check every time an officer is cited as a witness in a summary case or appears on the list of witnesses in a solemn case. Accordingly, procedures have been put in place to ensure that the Crown meets its disclosure obligations, while also ensuring that the information is obtained efficiently.

20.1.3 The COPFS holds and maintains a database detailing all serving police officers with 'S' (CHS) numbers. This database, which is updated weekly based on information provided by SPA and is checked automatically whenever a police report (SPR – Standard Prosecution Report) is submitted to the Procurator Fiscal. Where an officer listed in the SPR as a witness, is also listed in the COPFS database, his/her 'S' (CHS) number will be populated automatically in PROMIS (the COPFS live, operational database which is used to manage the processing of reports submitted to Procurators Fiscal by the police and other reporting agencies), thus enabling COPFS staff to obtain the relevant criminal history record direct from the CHS.

20.2 The Police Officer / CHS Database

20.2.1 Every police officer has a unique reference number (URN). Whenever a police officer is listed in an SPR as a witness, his/her URN is also included in the report. This is mandatory and no police officer can be listed as a police witness unless his/her URN is inserted.

20.2.2 The COPFS database holds details of every serving police officer with an 'S' (CHS) number. In order to ensure confidentiality and satisfy data protection principles, police officers are referred to in the database by their URN rather than their name. Associated to each URN in the table is the corresponding 'S' (CHS) number for that police officer. If a police officer does not have an 'S' (CHS) number, his/her URN will not appear on the table.

20.2.3 The COPFS database can only be viewed and accessed by a limited number of staff in ISD (COPFS Information Systems Division). Staff in PF Offices do not require access to this database.

20.2.4 On receipt of the SPR, POLIN (the COPFS computer system that enables the Crown to receive electronic reports) will automatically access the database and ascertain whether any of the URNs in the database match any of the URNs in the police report. If there are any matches, POLIN will extract the 'S' (CHS) number associated to that URN and insert it into the relevant witness record in FOS/PROMIS.

20.3 Updating the Database

20.3.1 SPA has responsibility for advising ISD on a weekly basis of any updates to the database, for example, when a police officer listed in the database leaves the Police Force, or a police officer requires to be added to the database.

20.4 Obtaining the CHS Record for the Police Witness

20.4.1 The CHS record for the police witness should be obtained in the same way as for a civilian witness with an 'S' (CHS) number, by requesting the record directly from the CHS. Full guidance on this is contained in Chapter 18 of this Manual.

20.4.2 Where a police officer is a witness, but not in his or her capacity as a police officer, then they will be listed in the police report as a civilian witness and their 'S' (CHS) number should be obtained from the police in their witness statement in the same way as for other civilian witnesses.

20.5 Scheduling the CHR in Solemn Proceedings

20.5.1 Where a case is proceeding on petition and therefore subject to the scheduling system as set down in Chapters 16 and 34-37 of this Manual, it is essential that the criminal history records for any police witnesses are included in the sensitive schedule, in the same way as is done for records of civilian, professional, expert and official witnesses.

20.5.2 Where a police witness is identified as having a criminal history record, the precognoscer should immediately contact the relevant force's Professional Standards Department advising them of the relevant police witnesses with records in order that they can prepare a sensitive schedule detailing these records. Once submitted, the precognoscer should consider the schedule in the same way as any other schedule submitted by the Reporting/Reviewing Officer, as set down in Chapter 37 of this Manual.

20.6 Disclosing the CHS Record to the Accused's Representative

20.6.1 Once the criminal history record has been obtained for a police witness, a legal member of staff should consider the record for disclosure purposes and determine, in terms of the principles set out in Chapter 19 of this Manual, whether any of the information requires to be redacted prior to disclosure.

20.6.2 If the police witness has a record but the whole record is considered to be *immaterial and sensitive* the defence should be advised of this. Section 122(4) of the Criminal Justice and Licensing (Scotland) Act 2010 defines sensitive information as that which if it were to be disclosed would constitute a risk of (a) causing serious injury, or death, to any person; (b) obstructing or preventing the prevention, detection, investigation or prosecution of crime; or (c) causing serious prejudice to the public interest