

Evidential Property

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Policy Statement

Summary

West Yorkshire Police (WYP) do not accept property into our custody or control except where it is illegal or dangerous for the public or other organisations to retain or dispose of it, or if it will aid the Force as the purpose of WYP retaining property is to maximise opportunities for crime detection or the disruption and conviction of criminals. All property of whatever type is recorded, stored and disposed of in accordance with systems and processes in Force at the time, with no property being retained beyond its legal requirement.

Items that are not included in the Lost and Found Property policy, nor are seized as part of an investigation, should not routinely be accepted into Force.

Where West Yorkshire Police do take possession of property falling outside of the above, it is the duty of the officer taking possession to agree with the property owner how they wish for it to be managed when it is no longer required by us, i.e. disposed of or returned to the owner. This must be documented on Niche.

This policy on evidential handling explains the different responsibilities that the Officer in Case (OIC), Sergeants, Senior Leadership Teams (SLT) and Evidence Stores Staff have. The retention criteria for different evidence based on crime types and legislation and the opportunity for photographic evidence. Also the management of the retained property including disposal.

Scope

This policy applies to all police officers, Police Community Support Officers (PCSOs), Special Constables and police staff of West Yorkshire Police and the West Yorkshire Combined Authority (WYCA).

Principles

General

- It is Force policy to **not** routinely retain evidence. Wherever possible evidence will be photographed and returned to its owner or sent for disposal. The exception is if the evidence has been subject to a positive forensic examination and will therefore be retained according to the legal requirements.
- The Force will only seek to store retained evidence where it is connected with major/serious crime or has been subject to positive forensic examination. Wherever possible all other evidence will be returned to its owner or sent for disposal.
- The Force has a separate policy for seizing vehicles for evidential purposes.
- The Force has its own Counterfeit Currency and Cash Handling policies.

- On all occasions where property is seized or retrieved, suspects in possession at the time must be asked to sign a disclaimer for the item(s) involved in the investigation.
 - Officers, PCSOs, special constables, police staff members and anybody else representing WYP will not be allowed to procure any unclaimed property in police possession or property in respect of which a disclaimer has been signed, except by way of a successful bid at a public auction.
 - Property must not be seized where there is an ongoing civil dispute as to ownership. Property must only be seized where Section 19 of the Police and Criminal Evidence Act (PACE) 1984 is applicable.
 - **Property must not be retained where a description or photograph will suffice for evidential purposes (PACE, Section 22).**
 - **All officers must ensure that they apply for either a forfeiture or destruction order for all items as part of the prosecution process/file.**
 - Officers must comply with health and safety regulations when dealing with chemically contaminated or biohazard evidence. The officer taking the evidence into police possession must clearly identify any contamination or suspected contamination.
 - Officers must ensure any evidence identified as being chemically contaminated or biohazard is packaged securely and labelled in accordance with Crime Scene guidance.
 - If evidence is required to be moved from storage temporarily, details must be entered into the Retained Property System. The property with a yellow exhibit label will be given to the officer requiring it, and a receipt of handover is the officer's signature on the system. It must be returned promptly, clearly identified by the original Retained Property Reference number.
 - All firearms and ammunition taken into police possession must be dealt with in strict accordance with the policy documents 'Surrender of Firearms into Police Possession 2005' and 'Firearms and Ammunition Safe Working Practices 2003' and according to National Ballistics Intelligence Service (NABIS) protocols.
 - Firearms or suspected firearms must be examined at the earliest opportunity by an Armed Response Unit (ARU), or Authorised Firearms Officer (AFO). If it looks like a firearm, it must be treated like one until checked appropriately.
 - Firearms that are made safe will be labelled as 'made safe'. This involves the cartridges/cylinders being removed by the ARU or an AFO. Once labelled as 'made safe' the recipient officer, not the ARU or AFO officer, must enter it into the Retained Property System.
 - If an officer is leaving their current role and will no longer be the OIC, they must, prior to moving, attempt to dispose of all evidence they are responsible for based on the retention periods. All remaining evidence must be brought to the attention of the current line manager, who can then reallocate the evidence for future reviews and disposals.
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Responsibilities

Officers and Officer in Case (OIC)

General

Officers and the OIC are responsible for:

- Ensuring regular reviews of the need for continued retention are undertaken as they are held accountable, including a computer system entry in the Retained Property System to monitor activity for considering the necessity for the storage. This is especially important at the key times during an investigation and subsequent trial, being:
 - Whether the suspect has been, or is likely to be, arrested;
 - Decisions made by the police or the Crown Prosecution Service (CPS) on the case;
 - Pleas at court; or
 - Court results;
 - Responding to requests made from the Evidence Store and others regarding retention and disposal. OICs must clearly communicate the retention periods of evidence to the Evidence Store;
 - Ensuring the seized evidence, at the earliest opportunity, is taken to the station for storage and an entry is completed in the Retained Property System;
 - Recording the retained property reference number on all property and exhibit labels and bags before going to the station to be stored in the Overnight or Permanent Evidence Store. Where different owners are involved, each property item must be able to be clearly identified to an owner – on both Niche and the items packaging;
 - Obtaining written disclaimers from any person wishing to relinquish any claim to the title of an item of property;
 - Endorsing the property system correctly, with the location of the property, where the seizing officer is to retain the evidence for the benefit of enquiries; and
 - Liaising with the Evidence Stores Staff and line management where there are any discrepancies.
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Where property is required for evidence...

Officers and the OIC are responsible for:

- Returning perishable property or property where retention by the police would cause hardship only in the following circumstances:
 - It is photographed beforehand;
 - The owner undertakes to produce it at the Court Hearing; or
 - The owner undertakes to produce a copy of the exhibit at the Court hearing if the original cannot be made available. The copy should be an exact likeness of the original. Where the original exhibit is not produced, this must be made quite clear in any prosecution file statements to ensure the Prosecution, Defence and Courts are in no doubt regarding the status of the exhibit;

- Recording in pocket notebooks and on electronic evidence management systems any serial numbers, codes or other identifying marks and where appropriate arrange close up photographs in the above cases;
 - Ensuring opportunity is given to the legal representative of the defendant or the defendant themselves to view the item if there are any disputes regarding the identity or characteristics of the item. The Investigating Officer must ensure the exhibit is retained for Court if the defendant or representative objects to disposal as proposed;
 - Ensuring that the current owners name and address, and for offenders in Prison the date of birth, is recorded by the OIC and any photographs are arranged prior to return of the property. The owner must be advised that the property cannot be disposed of until notified by the police;
 - Ensuring a receipt is provided to the Evidence Stores Staff from the owner when property is returned;
 - Advising owners for property that is chemically treated it should not be returned on health and safety grounds. However the return of the property should still be offered where the property is of high or sentimental value;
 - Ensuring that property which was in the possession of or under the control of the suspects at the time of arrest, and may be the subject of an order by the court following conviction provided they are satisfied it was used for committing or facilitating the offence, is not disposed of until the following are satisfied:
 - Six months have passed since the court order was made;
 - No application has been made by a claimant to the property; or
 - After an appeal against the conviction has been determined; and
 - Ensuring that the required retention period is met communicating with the Evidence Stores Staff. It is the responsibility of the OIC and not any other member of WYP. It must be reviewed regularly by the OIC and released if further retention cannot be legally justified. The OIC will be accountable if a court case is prejudiced or a statutory requirement is not met in relation to retention, release or disposal.
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Sergeants

Sergeants

Sergeants are responsible for:

- Ensuring that all officers under their supervision comply with the appropriate legal requirements, policies and procedure in relation to evidence;
- Monitoring the booking in, retention and disposal of evidence processes that their officers will carry out;
- Ensuring that OIC details on Niche correctly reflect the OIC dealing with the case and removing any previous OIC details;
- Ensuring all evidence seized by the officer has all been disposed of by the officer prior to them leaving their current role; and

- Reallocating any remaining evidence to other officers where disposal is not an option, before the current officer leaves their role, and making sure the Evidence Stores Staff are aware of the reallocation.

Senior Leadership Teams (SLT)

Senior Leadership Teams (SLT)

SLTs are responsible for:

- Introducing requirements and procedures to promote clear and timely communication between the Evidence Store and other staff and that all police officers take responsibility for the evidence they have seized;
- Ensuring that the District has adequate, robust, secure and safe storage facilities;
- Ensuring that all staff seizing property log it correctly on the Force's auditable electronic storage system (currently Niche RMS);
- Ensuring that property and evidence management issues are included as a standing agenda item at all Individual Accountability Meetings (IAMs); and
- Overseeing as the District Commander (or another SLT nominee), that all chasers to officers are responded to promptly and a member of the SLT is identified as a decision maker that the Evidence Stores Staff can make referrals too.

Evidence Stores Staff

Evidence Stores Staff

Evidence Stores Staff are responsible for:

- Confirming the safe custody of property and evidence, ensuring that all items entering police possession are accurately recorded including the creation of items where 1 item leaves the store and multiple items are returned (i.e. 1 item is sent for forensics work and the item is sent back with the packaging sent back as a separate item), securely stored (having regard to any possible hazards) and appropriately disposed, including returning property to owners or authorised persons, where necessary;
- Ensuring that any data containing/storage devices are sold or disposed via an approved contractor who will verify removal and destruction of personal data;
- Providing monitoring reports to officers, where they are named as OIC's for regular review of the need for continued retention;
- Ensuring as the Evidence Manager that all officers and staff, working in the evidence store, who handle heavy and bulky items are subject to a risk assessment and have been given training on safe handling and lifting and prevention of injuries to themselves and others. The relevant health and safety information for officers and staff is listed within the supporting information; and

- Ensuring as the Evidence Manager that all officers and staff, working in the evidence store, rotate roles on a regular basis to ensure that no one individual has permanent ownership for a specific area/process.

Deciding on the Evidence to Retain

Retention Periods

More than 120 days

- Evidence will only be retained for more than 180 days if it is in connection with a major or serious crime, and also subject to PACE Code of Practice B, Section 7.14:
 - (i) for use as evidence at a trial for an offence;
 - (ii) to facilitate the use in any investigation or proceedings of anything to which it is inextricably linked;
 - (iii) for forensic examination or for other investigation in connection with an offence;
 - (iv) in order to establish its lawful owner when there are reasonable grounds for believing it has been stolen or obtained by the commission of an offence.
- **Also subject to section 7.15, that property shall not be retained under 7.14(i), (ii) or (iii) if a copy or image would be sufficient.**
- Evidence that is to be retained will be kept according to the strict rules that govern the retention of evidence. Further information is within the Criminal Procedure and Investigations Act 1996 & Codes of Practice section.

Less than 120 days

- Evidence that is to be retained for less than 180 days will be:
 - Photographed where appropriate to verify value or identifying marks.
 - Returned to its owner with the requirement that it is retained by them for a certain period; or
 - Disposed of appropriately.

Types of Crime

- Officers must identify the nature of the crime committed when deciding on the need to retain evidence. The following table identifies the retention period per type of crime:
- Drug investigations will fall into other crime unless linked with a major or serious crime.

Major Crime

- Attempted murder;
- Murder;
- Manslaughter;
- Rape or other serious sexual assault;
- Offences involving explosives;
- Other suspicious death/homicide offences; and

- Terrorism.

Retention period: Indefinite if undetected. If detected – time served plus 12 months.

Serious Crime

- Abduction;
- Aggravated burglary;
- Arson;
- Blackmail;
- Kidnapping;
- Robbery;
- Serious assaults (Section 20 and 18 Offences Against the Persons Act 1861);
- Serious firearms offences; and
- An investigation undertaken according to the standards set out in the Road Death Investigation Manual.

Retention period: Six years if undetected. If detected – time served plus 12 months.

Other Crime:

- Burglary;
- Theft of and from motor vehicles;
- Criminal damage;
- Minor assault; and
- Crime reports written off as 'No crime'.

Retention period: Dispose within 180 days if undetected. If detected – time served plus 12 months

- The above time periods apply to both detected and undetected crime.
- All major and serious crimes that remain unresolved will be subject of a five yearly review by the Major Incident Review Team.

Considerations for Retention

Unreasonable storage expense

- The Force may dispose of evidence connected with a major or serious crime that are outside of the timescales stated. This is in exceptional circumstances, such as:
 - Where the retention of evidence causes or is likely to cause unreasonable expense or inconvenience. The Police (Property) Act and Regulations permit disposal prior to retention for one year or 180 days in the case of forfeited items;
 - Where another statutory retention requirement does not exist, such as not being considered as 'relevant material' under the Criminal Procedure and Investigations Act (CPIA)1996; or
 - Where evidence will cause WYP unreasonable expense and inconvenience to store, due to physical size and health and safety

implications etc. Evidence Stores staff will dispose of it as early as possible with the agreement of the SIO/OIC, subject to any other policy or legislation.

Bulky property/away from police premises

- Officers must liaise with the staff at the District Evidence Store for suitable arrangements to be made for large, bulky items of property.
- Officers must consider the following alternatives:
 - Photographing the items and returning them to the owner (PACE, Section 22); or
 - Photographing items and then placing them in an off-site storage facility, i.e. items containing combustible fuel tanks.
- Where evidence cannot be stored at a police station or Evidence Store, the OIC must ensure that the appropriate Evidence Store is aware of the location and means of storage so records can be noted. Officers must be mindful of the costs that may be incurred, especially in protracted cases.

Forensically examined evidence

- As well as the retention period based on the crime, any evidence that has been subject to positive forensic examination and clearly marked by the OIC must be retained for a minimum of 6 years, which may be extended subject to the 5 yearly review.
- Any evidence that yields a negative result will be automatically disposed of unless the OIC has stated otherwise at the point of creating the item on Niche.

Criminal Procedure and Investigations Act (CPIA) 1996 & Codes of Practice

- Officers must retain material until a decision is taken whether to instigate proceedings against a person for an offence.
- The below states the legal requirements that will be applied to the retention of evidence connected with major and serious crime as stated in the above.
- Officers must still retain the evidence following conviction.

Category 1

- Undetected Crime – Minimum six years
- Major – Indefinite
- Serious – Six years

Category 2

- Unsuccessful prosecution – End of prosecution

Category 3

- Sentence up to 180 days – 180 days

Category 4

- Sentence 180 days and over – Until release, or before by contacting the owner to arrange for a representative to collect on their behalf, if possible, prior to release.

Category 5

- Unlawful killing;
- Terrorist activity;

- Public interest cases;
- Eminent or notorious offenders;
- Offences against the Official Secrets Act; and
- Offences incurring unlimited hospital orders as a sentence.

Retention period: Indefinite.

Appeals

- Cases involving appeal; and
- Cases referred to the Criminal Cases Review Commission.

Retention period: Retain until the end of the appeal.

Returning to Owner

- If there is no dispute on who owns the property, it can be returned to the owner or representative as soon as possible. This can be done at any time with a retention order, either during an investigation or if the property isn't in relation to an investigation.
- If there is a dispute over ownership, the property will be retained for a 180 day period to allow proof of ownership to be provided.
- The property can be returned to the claimant or disposed of after the 180 day period if no proof of ownership has been provided and if the property is of minimal value.
- Property thought to be of significant value will be considered on a case by case basis in consultation with Legal Services.

Managing Retained Property

Principles

- Officers must not retain unnecessarily. Every item of evidence must be assessed in its own right and, if unsure if it should be retained, individuals must seek advice from a supervisor.
- The OIC will be aware of the retention period of 180 days and they will receive reminders during this period from Evidence Stores staff, as they **must** justify the continued need for retention.
- If the OIC fails to do this, the evidence will be disposed of. If this hinders future investigation, an officer/staff member *may* be held accountable and *may* be the subject of misconduct or unsatisfactory performance procedures.
- Not all evidence will be held at the Evidence Store. It may be that it is retained by its original owner, but only if it is appropriate to do so.
- The OIC must inform the owner if they are unable to use their property during this time, as well as informing them they cannot dispose of the property until notified by the police.
- An exception to this is for commercial owners, they decide when they want to dispose of the property as the product information is retained on file.
- In exceptional cases, property may be seized for safekeeping, if its value or vulnerability dictates such action, or in the case of a sudden death to ensure the safe custody of the deceased's property until claimed.

- In all cases, including those of sudden death, responsibility for tracing owners and reuniting property stays with the OIC. Evidence Stores staff will send TORT letters and arrange to hand over property but only on the authority of the OIC.

Retention Details Required at Six Months

Principles

- The OIC must make sure that sufficient justification is given when wanting to retain evidence for longer than 6 months after the initial period ends, these items will be subject to close scrutiny. The use of terms such as 'for court', 'evidence', 'SOCO examination' etc. are not sufficient on their own as reasons.
- The explanation for retaining evidence longer than the 6 month period, should refer to PACE, Code of Practice B, section 7.14, and after consultation with CPS to include:
 - Full details of any major or serious offence under investigation e.g. offence, date of offence;
 - A crime reference number, road collision reference number or other Force wide recognised reference number which will assist as part of an audit trail;
 - Where relevant, name and date of birth of defendant(s), initial and subsequent court or police bail dates (if applicable);
 - Details of the date, court and sentence of any related conviction.
- If any of the following do not apply to an item of property or evidence retained in excess of 6 months, it's likely that the continued retention is unwarranted and the processes for returning to the owner or disposal will take place.

Additional reasons for retention and additional details required:

- A person has been granted police bail for an indictable offence. Nature of the crime i.e. serious or major crime needs to be identified, is required.
- A major or serious offence is under investigation and no one has been charged or given police bail. Review date within 6 months of seizure is required.
- Following conviction, appeal period has not yet elapsed (28 days), or an appeal is in progress. Details of any appeal are required.
- Following conviction, the property is deemed to be 'relevant material' and the owner is unknown. Specific retention period based on the type of crime, date of conviction and the sentence imposed is required.
- Following conviction, the property is deemed to be 'relevant material' and the owner has been identified. Lawful justification for non-return of the property. Specific retention period based on the date of conviction and the sentence imposed is required.
- The property is the subject of a forfeiture/confiscation order. Date of forfeiture/confiscation order and a copy forwarded to the Evidence Stores is required.

- The property has been seized using specific statutory powers and is subject to a retention requirement imposed by relevant regulations. Details of applicable legislation are required.
- The property has been retained following sudden death and:
 - Dispute arises as to legal owner; and
 - No immediate next of kin/relatives identified.

Where no relatives are known, or they cannot easily be traced, the responsibility for further enquiries and the disposal of property should be determined in consultation with the Coroner's Office. Officers should be aware that title to property belonging to the deceased does not necessarily pass to the next of kin. The division of such property will be determined by the decisions of an executor of a will or, where a will does not exist, the intestacy rules.

- The property is the subject of disputed ownership. Legal Services reference number and details of parties involved are required.
- The property has been subject to Positive Forensic Examination. Date/Details are required.
- The owner of the property is unknown and it is subject to the Police (Property) Act 1897. No additional details are required.

Disposal

Property Involved in Court Cases

- At the conclusion of the case, the Witness Care Unit or OIC will pass the result onto the Evidence Store.
- After the period of appeal the OIC will notify the Evidence Store Staff and they will arrange for the property to either be returned to its owner or disposed of in accordance with the appropriate process for the type of item/s.

Property not Involved in Court Cases

- If the owner of the property is known the seizing officer will advise the Evidence Store and authorise Evidence staff to carry out the return on behalf of the OIC. The owner's signature is required.
- If the owner of the property is not known, the seizing officer will inform the Evidence store, where the property will remain until it is appropriate for disposal.

Proceeds of Sales

- The legislation (The Police (Property) Act 1897 and The Police (Property) Regulations 1997) states that the proceeds of all sales shall be paid to the Police Property Act Fund and may be used to:
 - Cover expenses incurred in conveyance, storage and safe custody in connection with the sale;
 - To pay reasonable compensation to persons by whom property has been delivered to police;

- Make payment of such amounts as the Police Authority may determine for such charitable purposes as they may select.

Retained Property Not Connected with an Investigation but for Public Safety

Knives

- The Knives Act 1997 introduced offences relating to the marketing and sale of combat knives. Section 6 of the Act provides that following conviction a Forfeiture Order may be made in respect of any publications and knives.
 - A 6 month retention period following the date the order is imposed. The retention requirement is detailed within the Knives (Forfeited Property) Regulations 1997 and this requires that the forfeited items are disposed of by way of destruction unless of some historical importance.
 - The Police are not responsible for the disposal of knives from premises such as butcher's shops. In accordance with the Environmental Protection (EPA) Act 1990 (Section 34) such knives are classed as controlled waste. The butcher, or business, is the 'holder' of the waste and, as such, has a legal responsibility to undertake its correct disposal via the local authority or a private waste disposal company.
 - The 'holder' can only transfer waste to an authorised person (as defined by Section 3 of the Act). The Police are not an authorised person. It is an offence to transfer the waste to someone who is not authorised to accept it.
 - Where a request for disposal of such knives is made, appropriate advice, as above, will be given.
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Dangerous Instruments/ Offensive Weapons

- Section 60 of the Criminal Justice and Public Order Act 1994 permits the seizure (where authority for a search has been given) of "dangerous instruments or offensive weapons".
 - The Police (Retention and Disposal of Items Seized) Regulations 2002 provide that where such items remain unclaimed and are not the subject of a court order they must be retained for a period of 6 months from the date of the seizure.
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Forfeited Sound Equipment

- Section 66 of the Criminal Justice and Public Order Act 1994 permits a court to order the forfeiture of seized sound equipment following the conviction of an offender for a relevant offence.
 - The Police (Disposal of Sound Equipment) Regulations 1995 apply to such items and specifically impose a retention requirement of six months from the date of the order.
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- Seized Disguises**
- Section 60AA of the Criminal Justice and Public Order Act 1994 permits the seizure, in certain circumstances of articles used to conceal the identity of a person (disguise).
 - The Police (Retention and Disposal of Items Seized) Regulations 2002 provide that where articles used to conceal the identity of a person remain unclaimed and are not the subject of a court order they must be retained for a period of two months from the date of seizure after which they will be destroyed.
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Additional Information

Compliance

This policy complies with the following legislation:

- The Police (Property) Act 1897, as amended
 - Powers of the Criminal Courts (Sentencing) Act 2000
 - The Police (Property) Regulations 1997
 - Proceeds of Crime Act 2002
 - Police and Criminal Evidence Act (PACE) 1984, Section 22
 - PACE Code of Practice B, Section 7.14, 7.15
 - Criminal Procedure and Investigations Act (CPIA) 1996
 - The Knives Act 1997, Section 6
 - The Knives (Forfeited Property) Regulations 1997
 - Criminal Justice and Public Order Act 1994, Section 60, 60AA, 66
 - The Police (Retention and Disposal of Items Seized) Regulations 2002
 - The Police (Disposal of Sound Equipment) Regulations 1995
 - Environmental Protection (EPA) Act 1990
 - Surrender of Firearms into Police Possession 2005
 - Firearms and Ammunition Safe Working Practices 2003
 - Data Protection Act 2018
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Supporting Information

The supporting information for this policy can be accessed online.

Further Information

Further guidance in relation to this policy can be sought from:

- Evidence Managers at District Evidence Stores or the Force Area Evidence Co-ordinators
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