



Disputed Property Policy

Disputed Property Policy

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Introduction

Policy Statement

It is the policy of the Gloucestershire Constabulary to return property to its lawful owner as soon as is practicable. Where ownership is disputed and cannot be lawfully determined, Gloucestershire Constabulary will invoke legal proceedings in either the Magistrates' or the County Court.

Purpose

Summary

This policy details procedural guidance as to the disposal of property, which has come into police possession, where there is a dispute in ownership.

This policy also includes guidance for operational officers in matters appertaining to the recovery of stolen vehicles.

Legislative Requirements/ National Guidance/ Policy Requirement

In formulating this policy the following legislation and documents have been taken into consideration

- Police Property Act 1897 and associated regulations
- Police Property Act 1997

Implications of the Policy

Applications to the courts for the determination of ownership issues will be dealt with by the Head of Legal Services relieving other departments of that obligation.

Compliance

This policy has been prepared taking account of prevailing legislation. New legislative requirements or changes in current legislation may necessitate a review of this policy document.

Gloucestershire Constabulary policies are intended to promote equality, eliminate unlawful discrimination and actively promote good relationships regardless of age, disability, gender, race or ethnicity, religion and belief, and sexual orientation.

In the application of this policy there is the potential for an individual's Human Rights to be engaged in the following areas:



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Article 6 – Right To A Fair Trial

The Policy is designed to provide redress in respect of disputed ownership of property as soon as is practicable.

Article 7 – No Punishment Without Law

Depriving an individual of the use of property that they believe is theirs could cause this article to be invoked. There is legal authority for the actions described in this policy provided by the Police Property Act 1897. The legitimate aim is the restitution of property to its lawful (determined) owner.

Protocol 1, Article 1 : Protection of Property

The maintenance of rights under this Article is the basis of this Policy. The deprivation of property is for the lawful purpose of establishing ownership. Such deprivation will be proportionate to the establishment of ownership.

This policy has been impact assessed using the Equalities Impact Assessment Template. By building equality considerations into our policy-making process, we have been able to identify any actual or potential inequalities and reduced them as much as possible, by applying the policy differently or looking for alternatives.

This policy is suitable for publication under the Freedom of Information Act 2000.

Section 1 - General

Inevitably, property (e.g. motor vehicles, antiques, jewellery etc) comes into the possession of the police when they are conducting criminal investigations. Police may only take possession of property where there is a statutory or common law right to do so. Property will be returned to the person from whom it was seized as soon as its retention is no longer required. From time to time police will take possession of property where more than one person claims ownership.

This may for example be where property has been stolen or obtained by deception and is in the possession of an innocent purchaser. It is a general rule of law that where property is stolen, ownership cannot pass to any other person, although where property is obtained by deception ownership may validly transfer.

Where there is any dispute over the ownership of property which has come into the possession of the police as a result of a police investigation, the officer in the case, will submit a file to the Head of Legal Services containing the following information:

1. How the property came into possession of the police.
2. The full names and addresses of the claimants.
3. Statements from each claimant, detailing their grounds for claiming ownership, how it was obtained by the person from whom it was seized and how the person who claims to be the original owner lost possession of it.
4. Statements from appropriate witnesses.
5. A statement by the officer in charge, fully describing the property, detailing their enquiries into the validity of the claims, details of seizure, current storage location and whether there is any insurance company involvement.
6. The location of the property and the J1 reference number.



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7. If any claimant has received an insurance payment in respect of the property, identify the insurance company, policy number and the contact at the insurance company and if the company wishes to make a claim.

8. Relevant copy documentation:-

- Incident logs
- Crime Report
- Arrest/Prosecution File
- Form J7
- Property Receipts
- MG10

9. The CJ Dept file reference number

10. Form MG10 completed for the OIC's availability for the next 6 months

The role of the Legal Services Department is to present the facts to the court. It is the role of the officer in charge to obtain those facts.

Requests for the commencement of legal proceedings received by the Legal Services Department will only be dealt with if accompanied by a file as described.

The Head of Legal Services will apply for and The Court Service will issue a summons to the appropriate parties. The Legal Services Department will serve the summons (if necessary) on the appropriate parties. The court hears the parties' evidence and then makes an order regarding the disputed property. The officer who seized the property will normally be required to attend court to explain how the property came into his/her possession and what enquiries were made to establish its ownership.

The Head of Legal Services will normally make an application for costs against the unsuccessful claimant although the decision to award costs rests with the Court.

Section 2 – Guidance to Operational Officers in Respect of Stolen Motor Vehicles

In the case of stolen vehicles, ownership of the vehicle is never lost by the original owner (and/or the respective insurance company) and the innocent purchaser has no legal claim to the vehicle itself. Most legal disputes now relate to claims in respect of work undertaken on a vehicle following its theft and the addition of new component parts or accessories. All vehicles concerned are routinely seized by the police, examined and stored by the vehicle recovery scheme contractor. Costs are sometimes incurred unnecessarily and can often fall to be discharged by the Police and Crime Commissioner.

To avoid the unnecessary cost to the public and distress and anxiety to claimants it is necessary to ensure that disputes are resolved as quickly as possible. The following procedures will therefore be adopted:

- All stolen vehicles seized must be examined as a matter of urgency, photographed and returned as soon as possible to the original loser, on the authority of an Inspector, who must ensure that all necessary enquiries have been made as to the *bona fides* of the original loser.
- The innocent purchaser must be advised that he/she does not have a lawful claim to the vehicle in such circumstances and if necessary should be advised to take independent legal advice on the matter. It is not for the police to commence legal proceedings in such circumstances.

Where in exceptional circumstances the Officer in the Case (or the Inspector) decides that legal proceedings are necessary, then the Officer in the Case must report the facts to the Head of Legal Services as in 5.1.3



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above. Where this occurs, all claimants must be advised that this is occurring and that the vehicle will have to be retained by the Constabulary until the outcome of the legal proceedings are known.

Legal proceedings can only be taken following completed prosecution of any offenders, or where a decision is taken not to prosecute. The storage costs referred to also apply during this stage and therefore this procedure will equally apply. Where the Inspector believes that the vehicle concerned is needed for evidential purposes, including the Court hearing, either the vehicle must be retained for court or the vehicle is to be photographed and returned to the original loser together with a Form J7 'Tort Notice' who should be instructed to retain possession of the vehicle until the conclusion of the Court hearing. Every effort must be made to facilitate final disposal of the vehicle through the criminal Court hearing without having to wait for any later civil hearing.

Identification, Monitoring and Review

Policy should enable consistent and effective decision making. Where operational or managerial circumstances

require any decision making that would adversely affect adherence to the policy or procedure, in line with the 'Statement of Intent' of the constabulary and the police service 'Code of Ethics', if an officer/ police staff member believes that they need to make a decision that steps outside of policy and procedure they should do so, provided that:

- the officer/ police staff member raises the matter at the earliest opportunity (and ideally before any such decision is made) with their line manager declaring their intended (or actual) course of action if notification is made after the decision is taken,
- produces, in a timely manner, a signed and dated written explanation of why it is/ was deemed necessary to step outside of policy and procedure, and
- maintain an adequate record of this written rationale for audit purposes appropriate to the circumstances/ contravention

Document Title			
Disputed Property Policy			
Type	URN	Strategic Board	Author/Reviewer
Policy	3.5/081	SLB	Head of Legal Services
Version	Date	Changes	
3.6	12/9/2017	No changes from M.Griffiths. Generic decision making wording added by the request of the CC.	
3.5	30 April 2014	Reviewed Minor amendments reflecting role of the Police and Crime Commissioner	
3.4	18 October 2013	Reviewed Minor amendments to sections 2 and 5.	
Next Document Review Date:			1 May 2018
EIA	EIA Sign Off		EIA Review
LOW/MEDIUM/HIGH			
SIA	SIA Sign Off		SIA Review



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MONITORING / REVIEW / FEEDBACK

Monitoring

This Policy is owned by the Legal Services Department who will monitor the application of this policy.

Review

This policy will be reviewed at four yearly intervals by the Head of Legal Services.

Feedback

Comments and feedback relating to this policy can be made by telephone, in writing, or by e-mail to the Head of Legal Services.

Contact details	
Head of Legal Services Legal Services Department Gloucestershire Constabulary, County Police Headquarters, No.1 Waterwells, Waterwells Drive, Quedgeley, Gloucester GL2 2AN	Telephone: 01452 754306 E-mail: legal.services@gloucestershire.police.uk