

## PROTECT - POLICY

Published

| Event History

### Policy owned by Investigative Services

#### Threat to Life

#### 1. Policy Purpose and key drivers

##### 1. Principles of the Policy

1.1. Staffordshire Police is committed to ensure Staffordshire is a peaceful and secure place to live and to work. In pursuit of this aim Staffordshire Police will take all reasonable and proportionate steps to protect any citizen who becomes subject to a real and immediate risk to life from the criminal actions of another .

1.2. This policy and supporting procedures are intended to identify and set out responses to those occasions where a protective duty is owed to an individual by Staffordshire Police arising from the European Convention on Human Rights (ECHR) with particular reference to Article 2 (1) Right to Life which states ( in part):-

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of the Court following his conviction for a crime for which the penalty is provided by law ;

1.3. Whilst this policy relates to the identification of those instances where a protective duty is owed to an individual it is important to make the distinction that other case law supports a view that Law Enforcement Agencies do not owe a constant general non specific duty of care towards a member of the public (Hill -v- Chief Constable of West Yorkshire (1988) 2 WLR 1049). The duty owed under Article 2 ECHR arises from a threat to an individual that is both real and immediate .

1.4 . There are seven key human rights principles in the context of threats to life arising from decided cases in the European Court :-

##### Principle 1

Article 2 not only requires the State from the intentional and unlawful taking of life but also to take **appropriate steps** to safeguard the lives of those within its jurisdiction: Mahmut Kaya v Turkey (28/03/2000) ECtHR

##### Principle 2

**Appropriate steps** , extends in certain cases to a positive obligation on the authorities to take preventative operational measures to protect an individual or individuals whose life or lives is or are at risk from the criminal acts of another individual : Osman v UK(1998) 29 EHRR 245

##### Principle 3

The scope of the obligation must not impose an impossible or disproportionate burden on the authorities:Osman v UK(1998) 29 EHRR 245

##### Principle 4

For the obligation to arise it must be shown that the authorities knew or ought to have known of a real and immediate risk to life of an identified individual from the

**criminal acts of a third party** : Osman v UK(1998) 29 EHRR 245

### **Principle 5**

The extent of the obligation is to then take such measures within their powers as were reasonable to avoid that risk: Osman v UK(1998) 29 EHRR 245

### **Principle 6**

This can extend to preventing self inflicted deaths in custody (Keenan v UK (appNo. 27229/95, 22/06/1998 )para 79 - 80). This is important within the context of protected witnesses where the protected person is being accommodated by or on behalf of the Police and they are psychiatrically or psychologically vulnerable and this was or ought to have been known to the officers .

### **Principle 7**

Where an identifiable individual is at risk of paramilitary attack ( or attack from organised crime groups or similar) there may be a duty to provide protection, but not for an indefinite period. Article 2 cannot be interpreted as imposing a duty on the State to give protection of this nature, at least not for an indefinite period;(X v Ireland (1973) 16 Yearbook 388 ECmHR, paragraph 392)

A positive duty to exclude ANY possible violence could not be read into Article 2 (W v UK (1983) 32 DR 190, ECmHR paragraph 200)

1.5 The requirement to protect life does not mean that in every case life will be protected and that no lives will be lost. There are examples where despite the police taking appropriate measures circumstances can always arise where a loss of life can occur

## **2. Origins and background Information**

2.1 British and European legislation places an obligation on Law Enforcement Agencies (LEA) to take all reasonable steps to protect a person whose life is in real and immediate danger from the criminal acts of another . The right to life is enshrined in Article 2 of the European Convention on Human Rights

2.2 In its judgement in the case of Osman v The United Kingdom 1998, the European Court held that an obligation under Article 2 arises where:-

**"the authorities knew or ought to have known at the time of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party".**

## **3. Aims of the Policy**

3.1 Whilst taking all other ECHR Conventions into consideration the purpose of this policy is to address situations where there is a real and immediate threat to the life of any person and the existence of that threat is known or ought to be known to Staffordshire Police

3.2 It also provides appropriate guidance to Staffordshire Police officers and police staff when dealing with and countering real and immediate threats to life .

3.3 The policy and supporting procedures also ensures compliance with the Human Rights Act 1998 which requires public authorities to be aware of all the Convention rights under the European Convention of Human Rights (ECHR) and to act accordingly. In this case that awareness is with particular regard to Article 2 Right to Life.

#### 4. Scope of the Policy

4.1 This policy is primarily intended to deal with situations involving known threats to life only, however some threats may be made to cause serious injury that may prove fatal and it will be appropriate and reasonable to follow this policy when dealing with threats of that nature. All firearms related incidents whether spontaneous or preplanned will be dealt with in accordance with the Force Firearms Policy .

4.2 This policy applies to all cases in which Staffordshire Police knows of or ought to have known of, the existence of a real and immediate threat to the life of an individual. The phrase 'Ought to know' should be interpreted as being a recognition that a threat to life exists after following a logical staged process for researching and managing a threat to life by making further enquiries or investigations; the organisation is then to be treated as knowing what such further enquiries or investigations would have elicited. However the urgency of any given situation will sometimes compress the separate stages of that process .

4.3 The sequence of that logical staged process by Staffordshire Police is :

1. **Receipt and recording of the threat** - Notify a supervisor of Inspector rank . Is the threat real is it immediate? Conduct further research about those involved , their capabilities and motivation . Record what has been done
2. **Documented risk assessment** - use established criteria to identify the nature and severity of the threat which includes an initial investigation and classification of the threat
3. **Response to mitigate the threat /risk** - devising and initiating a written strategy for preventative or disruptive measures to control the threat ;
4. **Resolution** - initiating the agreed strategy , leading to the removal of the threat/risk.
5. **Monitoring** - Senior management to maintain an overview of risk management measures and ensuring the ongoing management of the level of risk as dictated by the developing intelligence picture

4.4 After stages 1&2 of the process if it leads a police officer or member of police staff to reasonably conclude that a real and immediate threat to the life of an individual exists, Staffordshire Police ought to know of it at the organisational level .

4.5 This policy does not apply to terrorist threats or to threats made to persons already receiving police protection. Terrorist threats will be dealt with by Counter Terrorism Units. Threats received against persons already receiving protection from Staffordshire Police will be referred to the West Midlands Person Protection Unit to

be dealt with under existing arrangements

## 5. Real and Immediate Threat

5.1 Police officers deal daily with complaints that appear to involve a threat to an individual's life. The majority of such threats are issued without any real intention of them being carried out on the part of those that make them. Such threats may be said in anger, in a highly pressurised or stressful situation or in an effort to intimidate or place someone in fear but without the motivation to carry out the threat and to kill.

**However in a minority of cases the threat is genuine. Such a threat represents a real and immediate risk to the victim's life**

Determining which threat is real and immediate, genuine or insincere is critical to police decision making for officers and police staff at all levels

5.2 The definition of what constitutes a 'real and immediate threat' can be interpreted liberally but for the purposes of this policy the phrase is taken to mean:

**Real** - defined as being objectively verifiable, that is to say supported by reference to a range of sources of information. This information may or may not be admissible evidence but can include intelligence or other material that substantiates the fact that a genuine threat to life exists in the circumstances. It should not be determined on the subjective fears of the individual concerned alone but those fears should be recorded as part of a proper objective assessment of the potential victim and used as pointers for further research. The victim may have detailed knowledge of the potential offender and be able to give their rationale for the threats

**Immediate** - is defined as present and continuing. This requires officers to consider all available sources of information as part of a fully documented risk assessment process

The threshold to be met is high and goes beyond verbal threats to kill. Allegations of threats to kill or risks to life after initial assessment may show the offender lacks the capability, motivation or intent to carry out the threat. If such matters are to be properly classified as lesser offences or 'no crime' they are not to be dealt with as 'threats to life' within the definition of this policy but other control measures put in place for example from the harassment or anti social behaviour menu of options.

However the existence of information that threats to kill or risk to life has come to the notice of the Police must be properly recorded on the Staffordshire Police Intelligence System (SPIN) and on the Crime management System if appropriate.

Police actions or in-actions are nevertheless answerable to the court which may assess Police response against the question of whether in the circumstances, and without it being a disproportionate burden on policing resources :-

**Did the Police fail to take measures within the scope of their powers which when judged reasonably might have been expected to avoid that risk (to life)**

The position is clarified by the House of Lords as recognised in the case of Van Colle;

'In its formulation of the 'real and immediate' risk test the Strasbourg Court in Osman laid emphasis on what the authorities knew or ought to have known ' at the time'. This is a crucial part of the test, since where - as in Van Colle - a tragic killing had occurred it is all too easy to interpret the events which preceded it in the light of that knowledge and not as it appeared at the time (but) the Court should endeavour to place itself in the chair of (the Police officer) and assess events as they unfolded through his or her eyes.

But the application of the test depends not only on what the authorities knew, but also on what they ought to have known. Thus, stupidity, lack of imagination and inertia do not afford an excuse to a national authority which reasonably ought, in the light of what it knew or was told, to make further enquiries or investigations; it is then to be treated as knowing what such further enquiries or investigations would have elicited'

## 6. Process to be adopted

6.1 Staffordshire Police will adopt a process to be followed when information emerges that there is a real and immediate threat to the life of a known individual .

6.2 The process will:-

- a. Ensure that the information when first received is subject to an initial assessment and research which may give an early indication if a real and immediate threat to life situation exists. This early assessment will be recorded and an identified officer or police staff member will be responsible for progressing the report and researching the information received .
- b. The first responsibility of the owner of that report or information will, as soon as practicable notify an officer of Inspector rank or other supervisory rank where no Inspector is available
- c. To complete or ensure the completion of an evaluation of the information, in line with nationally agreed criteria for the evaluation of Police information using the 3 x 5 x 2 plus 2 system as outlined in guidance published by the College of Policing in 2015
- d. Document any research into the background of the person subject of the threat and also the background of the person/s originating the threat
- e. Use a threat and harm matrix for Threats to Life ( see SOP) to estimate the level of risk into Low / Medium / High and assess consequences of the threat being realised
- f. Ensure the investigation is managed at the appropriate level commensurate with the identified risk:  
Low - by originating Department Inspector  
Medium or High - Identified Out of hours Cadre C/Insp Superintendent / Silver Commander & Gold Commander
- g. Must advise the subject of the threat, if they are not already aware, so they may take steps to protect themselves. This is done by using the template for the 'Threat to Life Warning notice' - The phrase 'Osman Warning' is

- discontinued. Such a notice must be used unless there are very good documented reasons to the contrary. It should be remembered that some subjects may not wish to cooperate with the Police
- h. Engage control measures proportional to the level of threat
  - i. Carefully consider the effect of the use of a 'Threat to Life Disruption Notice' unless there are very good reasons to the contrary which must be documented - previously referred to as a 'reverse Osman warning'
  - j. Monitor the effectiveness of any control measures adopted for changes to the threat level by periodically reviewing the threat level until such time that the threat level is stable or reduced
  - k. Maintain a documented audit trail of actions taken and the outcome of those actions with identified action owners
  - l. To make use of the elements of the National Decision Model for Policing as a strategic process to manage the incident
  - m. To create a practitioner group Chaired by the Director Of Intelligence to meet when required to monitor and progress the on going strategic development of the policy and processes for managing Threat to Life issues .

## 7. DIVERSITY ISSUES

There is a clear commitment on the part of Staffordshire Police to ensure staff reflect on the community that they serve and that the standard of investigation is able to meet their diverse needs and expectations.

National guidelines will be adhered to and ensure that all staff involved in threat to life investigations are equipped with skills and knowledge to effectively deal with diversity issues. Current diversity training aimed at all staff within Staffordshire Police highlights the various requirements and needs of diverse groups and will be respected.

**The policy does not impact on any particular group or individual in society and promotes a fair and equal service to all .**

All officers have an individual responsibility for ensuring that they are properly educated and informed about the extent of their legal powers and the context within which they can be properly exercised. Failure to do so may be unlawful although it is not a criminal offence.

### Related Documents

Links to related documents:

- [Threat to Life - Actions following Receipt of the Threat \(Procedure\)](#)
- [Threat to Life - Command Protocols \(Procedure\)](#)
- [Threat to Life - Completion of the Threat to life Risk Assessment \(Procedure\)](#)
- [Threat to Life - Disruption Notice and Threat to Life Warning Notices \(Procedure\)](#)
- [Threat to Life - Glossary of Terms \(Procedure\)](#)
- [Threat to Life - Memorandum Advice in Respect of Children \(Procedure\)](#)
- [Threat to Life - Menu of tactics for the Disruption and or Prevention of Threat to Life \(Procedure\)](#)
- [Threat to Life - Monitoring and Record Keeping \(Procedure\)](#)
- [Threat to Life - National Decision Model \(Procedure\)](#)
- [Threat to Life - Nature and Sensitivity of Intelligence \(Procedure\)](#)
- [Threat to Life - PNC Recording Process \(Procedure\)](#)
- [Threat to Life - Recording and Management \(Procedure\)](#)
- [Threat to Life - Resolution of Minimal Threats and General Risk to Life](#)

PROTECT - POLICY

- [Proactive/Disruptive Responses \(Procedure\)](#)
- [Threat to Life - Responsibilities Flow Chart \(Procedure\)](#)
- [Threat to Life - Risk Assessment Process and Tracking Document Template \(Procedure\)](#)
- [Threat to Life - Risk Principles \(Procedure\)](#)
- [Threat to Life - Van Colle v Chief Constable of Hertfordshire and Chief Constable of Sussex \(Procedure\)](#)
- [Threat to Life - Witness Anonymity Guidance \(Procedure\)](#)

**Gatekeeper** - the Author suggested the following Procedure document(s) to link to.

<b>Relevant Dates and Review Period</b>	
Effective Date:	27/03/2017
Review Date:	01/04/2018
Review Frequency:	Annually

<b>Policy Basis and Implications</b>	
2. Legal Basis:	Human Rights Act 1998 European Convention on Human Rights Osman-v- UK 1998 Van Colle-v- The Chief Constable of Hertfordshire Police 2008
3. Management of Police Information (MoPI):	<b>MoPI Policing Purpose:</b> Protecting Life and Property, Preserving order, Preventing the commission of offences, Bringing offenders to justice, Any duty or responsibility arising from common or statute law <b>MoPI Review, Retention and Disposal addressed as follows:</b> Protecting Life and Property, Preserving order, Preventing the commission of offences, Bringing offenders to justice, Any duty or responsibility arising from common or statute law
4. Associated Benefits:	Protecting individuals and the community Prevention of crime
5. Consultation:	National Policing Improvements Agency, Unison & Police Federation
6. Financial Implications:	Training costs. Met through existing funding
7. Human Resources / Training:	No HR implications. Awareness training by cascading to all personnel. Management by supervision up to ACC if Critical incident
8. Associated Policy:	Firearms, Major Crime, OCG Management

<b>FOI, Human Rights and Equality Impact Assessment Indicators</b>			
FOIA:	Release to Public		
ECHR:	Compliant with proportionality test	<b>Articles engaged:</b>	Article 2 Right To Life; Article 5 Right to Liberty and Security; Article 6 Fair Trial; Article 8 Right to respect for Private and Family life
EIA:	Compliant	<b>Compliant with Code of Ethics:</b>	Yes

<b>Indexing</b>	
Categories:	Crime Investigation Critical Incidents Firearms Major Crime

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