

PRACTICE DIRECTION: **Witness Statement Taking**

STRATEGY: **Crime Management**

POLICY: **Crime Investigation**

BRANCH: **Crime Management**

1. INTRODUCTION

- 1.1 This Practice Direction is designed to set down the minimum standards for the taking of witness statements in crime and other cases. It is not intended to be restrictive and therefore if an officer is of the view that a statement should be taken over and above the minimum requirements then such a statement should be taken.
- 1.2 The Police and Criminal Evidence Act 1984 Codes of Practice provide a general principle that all citizens have a duty to help the police in the prevention of crime and apprehending offenders. When a police officer is investigating an offence (s)he is entitled to question any person from whom (s)he thinks useful information can be obtained. The fact that the person is unwilling to assist does not effect the officer's entitlement.
- 1.3 Statements play a vital role in both the criminal and civil legal systems. By using written statements those involved in the judicial process can read what a witness would say if they were present and as such they play an integral part by acting as an information filter in the legal system.
- 1.4 Guidance is also included within this PD in relation to the obtaining and use of Victim Personal Statements, as outlined in Home Office Circular 35/2001.
- 1.5 The situation whereby the principal means of presenting evidence is by means of a paper witness statement has been somewhat eroded by the provisions within the Youth Justice and Criminal Evidence Act 1999. This act introduces the aspect of 'Special Measure', including video evidence in chief, for vulnerable and intimidated witnesses. Detailed guidance is included within a separate Practice Direction and should be considered in advance of commencing the recording of a written witness statement.
- 1.6 In addition the skills and competence required to obtain witness evidence varies according to the method used to obtain such evidence i.e. paper, on video or other approved recording media and the nature of the witness concerned i.e child, vulnerable or intimidated. As a consequence it is important to ensure that the person obtaining the evidence is trained to the correct level and is currently classified as being competent. This is both a personal and supervisory responsibility. Further details can be obtained from the PD relating to Investigative interviewing.
- 1.7 The term 'Officer' is used throughout this PD – this term includes any Police Staff who undertake witness statement taking activity.

- 1.8 The legal basis upon which this Practice Direction is based is the Police Act 1997 responsibility to prevent and detect crime, the Police and Criminal Evidence Act 1984 and the various Criminal Justice Acts which provide the rules for the recording and presenting of evidence to Courts.

2. AUTHORITY LEVELS

- 2.1 The authority of a Senior Investigating Officer is required, in serious cases, to use video/ audio interviewing techniques. (See Section [12](#)).

3. WHEN TO TAKE WITNESS STATEMENTS

- 3.1 The passage of time often results in witnesses (including victims) forgetting crucial details regarding an incident. As a consequence statements should be obtained from key witnesses at the earliest opportunity. This ensures the evidential integrity and content of the statement. However consideration should always be taken of the individual circumstances of the witness, their vulnerability, their emotional state and the particular incident itself. As outlined above consideration also needs to be given as to whether evidence should be recorded on video or other approved media, rather than a written witness statement.
 - 3.1.1 In general witness statements, in whatever form, will be obtained, from complainants and key witnesses, in the following instances;
 - 3.2 Detected Crime - As dictated by ['The Prosecution Team Manual of Guidance, incorporating the JOPI'](#).
 - 3.3 Undetected Crime
 - 3.3.1 Every case where an Indictable Only Offence has occurred.
 - 3.3.2 There is a suspect whether identified by name or description only. Such statements should only be taken if the description is of evidential value. Therefore statements need not be taken if the description provided is of a general nondescript nature i.e. youth wearing baseball cap and dark tracksuit. A statement should be taken if there is a facial description or other distinguishing features such as a limp, tattoos, scars and so on. Statements should also be taken in those cases when clothing or other item is distinctive. Examples being a motif on clothing, the suspect was riding a distinctive pedal cycle and so on.
 - 3.3.3 The complainant or witness live locally but the crime was committed in another force area.
 - 3.3.4 The complainant or witness is elderly and may later have difficulty in remembering details.
 - 3.3.5 Where there are positive lines of enquiry which indicate a likelihood of detection.

- 3.3.6 The crime relates to a sexual offence or serious assault (Section 47 and upwards).
- 3.3.7 Where there is an expectation that the witness will not be available at a later date.
- 3.3.8 In those cases when it is suspected that a complaint is not genuine.
- 3.3.9 A Supervisor directs.
- 3.4 When producing business documents such as invoices, bank statements or computer printouts as evidence they are admissible only if certain conditions are satisfied.
- 3.4.1 A witness statement is required from an appropriate member of the business to the effect that the document was created or received in the normal course of that business and that the information contained in the document was supplied by a person who had or may reasonably have been supposed to have had personal knowledge of the matters dealt with. (Section 24 Criminal Justice Act 1988)

4. **CONSIDERATIONS**

- 4.1 Officers should consider that a written statement is the 'shop window' of their work and therefore their professionalism is on display. Witnesses, magistrates, judges, solicitors and supervisors form their opinion of an officer's credibility and that of the police service on the quality of such statements.
- 4.2 It is important to remember that negative statements can be as valuable as positive ones. This particularly applies when dealing with alibi evidence.
- 4.3 When either a witness or a victim is either vulnerable or intimidated, including children, consideration needs to be given to the specialist skills and techniques required. Best practice can be obtained from a document entitled '[Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses and Using Special Measures](#)'. If you are not able/trained to deal with a particular incident say so.
- 4.3.1 Similar consideration needs to be given to significant witnesses in the more serious cases. In such cases the Senior Investigating Officer may wish to record, on video or audio tape the cognitive interview. As with the above Officers have been specifically trained (Tier 3) for this task. See Section 12 for further detail.
- 4.4 If the offence is serious in nature officers should consider the use of cognitive interviewing skills in their efforts to record a witness statement.
- 4.5 A separate statement will be required for each witness.

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- 4.6 Statements from one witness should not be taken in the presence of another.
- 4.7 If a person requests to write his/ her own statement this should be allowed, but should not generally be encouraged.
- 4.8 Officers should avoid using leading questions and should record statements in an active style, i.e. 'I posted the letter' rather than 'The letter was posted'. Officers should consider using how, what, where, when, why and who questions.
- 4.9 If further statements are taken from a witness, these should be separate documents not additions to existing statements. Such additional statements should begin ' Further to my previous statements(s).....' . If the additional statement clarifies something said in an earlier statement, both statements should be retained and submitted. Officers should note that all statements should be retained as either used or unused material.
- 4.10 Officers need to consider the offence or incident and the elements that will be required to establish or prove the offence. It is important that the basics are not forgotten, such as;
- 4.10.1 Prove a motor vehicle was on a road.
- 4.10.2 Prove an item was stolen.
- 4.10.3 Prove a person has been deceived or injured.
- 4.11 Remember - the offence can only be proved from the evidence.
- 4.12 Officers should find a suitable place to talk to witnesses. Put them at ease and fully discuss the incident before embarking on the statement. Consideration may need to be given to interpreters, [interview supporters](#), cultural differences and disability and communication issues. Officers should be satisfied the witness has told them all they know, before a statement is commenced. Officers should utilise, whenever possible, Cognitive Interviewing Skills in obtaining information for a witness statement. (See Appendix A)
- 4.13 If a witness has any special needs, in relation to giving evidence in court, such as requiring an interpreter or they have learning difficulties a record should be made on an MG6 and MG2. Such a requirement should not be detailed in the statement. In this way the credibility of the witness is preserved whilst the CPS are fully informed about the case.
- 4.14 When a statement is complete it should wherever possible be in chronological order, it should make sense and be accurate. In general terms the resulting statement should provide a word picture of the events as they occurred.
- 4.15 Any notes that are made in the process of compiling a statement must be retained. They may be used to negate or confirm subsequent statements by the same witness. Our job is to seek the whole truth and not just those parts that support our case. In certain cases a witness will retract their initial statement. This action should be viewed with caution and consideration given as to whether there has been intimidation. It may be advisable to obtain a

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second statement giving the reasons for retraction and whether the original statement was correct. A retraction statement does not necessarily mean that proceedings will be discontinued.

- 4.16 Officers must never encourage a witness to make a statement on the pretext that they will not be called to give evidence in criminal proceedings. The 'Witness Information' form explains the exact position to the witness and officers should not deviate from the information contained within that form. A 'Witness information' form will be given to witnesses from whom we record statements. Officers should explain the contents of the form to witnesses and wherever possible obtain and record, on the statement form, any non-availability dates.
- 4.17 Juveniles with mental health problems may without knowing or wishing to do so provide information which is unreliable, misleading or self-incriminating. Care should always be exercised and corroboration should be sought where possible.
- 4.18 Witnesses should not be allowed to exaggerate. If an officer suspects that a witness is embroidering the truth they should be tactfully reminded of their obligation and that what they say in their statement is what they will be expected to say at court whilst under oath. If this is not sufficient an explanation of the criminal offences of perjury or giving false evidence should be given (section 9 Criminal Justice Act 1967).

5. CONTENT

- 5.1 A statement should identify the witness and provide details of status, occupation, position held, relationships, and so on, as appropriate. The statement should be in the first person and speech should be direct. It is important that the home address of the witness is not revealed in the body of the statement unless it is relevant to the offence. As an example the statement relates to a burglary at the witness's home.
- 5.2 Whenever relevant a description of the witness, including details of clothing worn, should be included in the text. This is particularly important in public order and assault cases.
- 5.3 It is important that locations of incidents, damage to property and physical injuries are fully described. Officers need to describe visible injuries on victims in their own statements as well as those of the victims. This is particularly important when minor injuries are sustained and no medical evidence is available.
- 5.4 If possible each separate event in the statement should be enclosed in a separate paragraph. It is advised that the content of each paragraph is checked with the witness as it is written. It is important that the witness views this as his/ her statement not the officer's version of events.
- 5.5 Hearsay is information given to a witness by another as to facts not within the witness' knowledge. It should be avoided whenever possible. However if there

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is doubt about whether something is hearsay or not include it in the statement, if necessary it can be excluded later.

- 5.6 Police jargon or slang should be avoided. 'Abusive' language should not be used unless reporting direct speech. It is important that the witness's words or phrases are used.
- 5.7 Medical or technical witnesses should be asked to explain matters in simple English. Their qualifications and experience should be included in the statement.
- 5.8 SURNAMES and PLACENAMES should be in block capitals.
- 5.9 If a husband or wife is a competent witness for the prosecution, his or her statement should always end with an expression of willingness or unwillingness to give evidence. Where the spouse is neither competent or compellable they can be called for the Defence. The statement will assist with any cross examination. (see section 10 for a detailed explanation of Competence and Compellability).
- 5.10 Exhibits produced in a statement **MUST** be allocated a unique reference number and an exhibit label should be signed at that time. The unique reference number should be recorded in the statement. Whenever practicable each item should be given a separate reference number. As an example if a suspects clothing is seized each item should receive a separate reference number, whilst a box of mars bars would receive one reference number.
 - 5.10.1 The unique reference number will be made up of the exhibitors initials and a sequential number, i.e. the third exhibit produced by Arthur Graham White would be identified as AGW/3.
 - 5.10.2 Where a person does not have a middle name, e.g. James Flynn, in the past his exhibit would have been JF/1. To avoid confusion with similar names this exhibit will now be labelled JAF/1. This being the first two letters of the forename followed by the first letter of the surname.
 - 5.10.3 On major enquiries where officers may have the same exhibiting initials special conventions will need to be established.
- 5.11 Exhibit continuity can cause problems but in most cases it can be explained as follows;
 - 5.11.1 After the offence or incident the first person coming into possession of the item is the producer and the item **MUST**, therefore, be given his/her reference number. Once an item has been given a Police Item number all witnesses who refer to the same item will use that number.
 - 5.11.2 An example of the above is as follows;
 - 1. John BROWN sees a man being chased by PC Chris BLACK. The man throws an earring into a hedge.

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2. PC BLACK arrests the thief and finds an identical earring in his pocket. This becomes CHB/1
3. John BROWN recovers the earring, from the hedge, and gives it to PC BLACK. This earring will be JOB/1 and the exhibit label will be signed by John BROWN.
4. PC BLACK will take possession of the earring JOB/1
5. Both earrings will be taken back to the owner to have them identified. PC BLACK will make reference to both earrings in his own statement and sign the reverse of the label JOB/1.
6. The owner's statement will include the identification of both earrings and he/she will sign both exhibit labels. The following wording should be considered for use;

‘ At Hrs on (Day / Date) I was shown two earrings (JOB/1 and CHB/1) by Police Constable Black. I can identify these earrings as being owned by myself (and so on).

7. The witness should not make reference to producing the item but refer to it, i.e. I found in the hedge a gold earring (JOB/1) which I handed over to PC BROWN.

5.11.3 It is essential that continuity can be shown for all exhibits recovered. Any person who handles an exhibit should sign and date the exhibit label and make reference to it in their statement. Without such proof any evidence recovered during an investigation may subsequently become inadmissible at court.

5.11.4 It is essential that accurate descriptions of property are included in the statement, even small items of identifiable property can lead to a crime being detected. Any marks or damage that the owner would be able to recognise again should be recorded.

5.12 If a witness is reluctant to support a prosecution or wishes some other course of action to be taken, this should be noted in the statement. It pre-warns the officer in the case and the prosecutor regarding the attitude of the witness and this may well have a bearing on the decision to prosecute.

6. IDENTIFICATION

6.1 Whenever identification is an issue the content of a witness statement should address the issues outlined in R v TURNBULL. These are as follows;

- (a) How long had the witness had the suspect under observation and at what distance.
- (b) The quality of the light.

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- (c) Whether observation was impeded in any way and, if so, how.
- (d) Whether the witness had any previous knowledge of the suspect and, if so, how long and under what circumstances.
- (e) Whether the witness had any special reason for remembering the suspect.
- (f) How long elapsed between the incident and any subsequent identification of the suspect.
- (g) Whether there is any discrepancy if the witness gave more than one description of the suspect and, if so, how the witness explains it. Additionally reference should be made on the MG6 to any differences between the stated description and the actual description.
- (h) Whether the witness had previously been shown any photographs with a view to identification and, if so, when and by whom. This issue could be addressed elsewhere in a file.

6.2 Comment such as 'I would or would not recognise the man again' should not be included in a witness statement. If an officer wishes to pass on such information they should record it on an MG6.

6.3 In cases of multiple suspects, each suspect should be numbered and fully described when first referred to in a statement. Thereafter they should be referred to by their sex and number i.e. Male 1 or Female 2. Whenever possible descriptions of multiple suspects should be recorded together in any statement.

7. FOREIGN LANGUAGE STATEMENTS

7.1 In the case of a person making a statement in a language other than English;

7.1.1 The interpreter should take down the statement in the language in which it is made and the person making the statement should sign it.

7.1.2 An official English translation should be made in due course by the interpreter.

7.1.3 The interpreter should then make a statement introducing both the original foreign language statement and the English translation as Police items and certifying that the translation is accurate.

8. VICTIM PERSONAL STATEMENTS

- 8.1 As outlined in Home Office circular 35/2001 there is a requirement, in relation to victim statements, to provide the opportunity to have recorded a 'victim personal statement' (VPS). Detailed guidance regarding this issue is included at appendices 'C' and 'D'.

9. CONCLUSION OF THE STATEMENT

- 9.1 When the full text of the statement has been written, the witness should be asked to read it and initial any alterations. Such alteration being single lines through the words to be ignored. Any insertions should not be written between lines or in margins. A letter should be placed at the point of the required insertion e.g. 'a' at the first insertion, 'b' at the second and so on. The text of the insertion should be added at the end of the statement, before signature, and should be marked with the letter of the insertion.
- 9.2 When the contents and accuracy of the statement have been agreed, the witness should sign each page and under the last line of writing on the final page. The CJA certificate on the first page should then be read and if necessary explained to the witness. The witness should then be invited to read and sign it. Any blank spaces at the end of the statement should then be struck out by the officer and initialled by the officer taking.
- 9.3 If the statement is made by a person who cannot read it, the officer taking the statement will read it over to him before he signs it and will then add at the end of the statement the following;
- 9.3.1 'The witness being unable to read the above statement, I
..... (name/ rank/ no) of (Division/ Sector/ Branch)
read it to him/ her before he/ she signed it.
Dated the day of 19...
Signed.....
- 9.4 The address used on Police Officers and other professional witness statements should be their usual place of work.

10. QUESTION AND ANSWER STATEMENTS

- 10.1 In cases where the witness is under 10 years of age or has some form of learning disability it may be advantageous to record the statement using the Question and answer method. Attached at Appendix B is detailed guidance regarding the process of obtaining such a statement.
- 10.2 ***Before commencing a normal written or a Question and Answer statement it is important that consideration has been given to the eligibility of recording evidence by video interviewing. Detailed guidance can be obtained from a document entitled 'Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses and Using Special Measures'.***

10.2.1 The main advantage of video evidence is that the video can be used as evidence in chief in any court proceedings. The use of a video in court proceedings is one of a series of 'Special Measures' provisions that may be available for a particular witness. Further detailed guidance regarding the outline circumstances of when such a video can be used and how to gather evidence in chief by means of video interview are the subject of a separate PD entitled Achieving Best Evidence - Youth Justice and Criminal Evidence Act 1999.

10.2.2 Do not take a Question and Answer or a CJA statement in circumstances without ensuring a video interview has been considered. Once a 'paper' interview has been commenced the option to video maybe lost. In cases of doubt a Supervisor should be consulted.

11. COMPETENCE AND COMPELLABILITY OF WITNESSES

11.1 All persons are competent to give evidence provided they can understand the requirement to tell the truth, are capable of giving rational testimony, and are not excluded by any rule of law. Someone who is competent to give evidence is usually compellable as well, exceptions include accused persons and their spouses in certain circumstances. (see appendix E for further guidance)

11.2 In criminal proceedings an accused is not competent as a witness for the prosecution and is competent but not compellable as a witness in his/ her own defence and that of a co-accused.

11.3 The law in relation to competence and compellability in relation to marriage partners has not benefited from attempts to restate it in statute. The present position would appear to be best described diagrammatically as follows;

Spouse gives evidence in trial	For Prosecution Competent	For Prosecution Compellable	For defence Competent	For Defence Compellable
of marriage partner	Yes	No unless 1 applies	Yes	No
of marriage partner who is jointly charged with spouse 9 and co-accused)	No unless 2 applies	No unless 1 and 2 apply	Yes	No unless 2 applies
of marriage partner's co- accused	Yes	No unless 1 applies	Yes	No unless 1 applies
Unmarried partners and former partners now divorced	Yes	Yes	Yes	Yes

(1) Charge involves assault or an injury or threat of injury to wife or husband of accused or person under 16 or sexual offence (Offence under Sexual Offences Act 1956, the Indecency with Children Act 1960, the Sexual Offences Act 1967, Section 54 of the criminal Law Act 1977 or the Protection of Children Act 1978) against person under 16, or attempting, conspiring to commit, aiding, abetting, counselling, procuring, or inciting such an offence.

(2) marriage partner to give evidence has pleaded guilty or otherwise not liable to prosecution.

12. VIDEO/ AUDIO INTERVIEW OF ADULT SIGNIFICANT WITNESSES

- 12.1 The use of these techniques can be advantageous in terms of maximising the recall of a witness and the process by which we capture that recall. Research would suggest that a good proportion of the information provided by witnesses does not register with the interviewing officers. The recording of the information gathering phase allows officers to revisit it during the process of recording a written witness statement. With simple statements and in the case of hostile witnesses there is the option of recording the written witness statement whilst the tapes are running.
- 12.1.1 It should be noted that such witnesses may be eligible for their evidence to be recorded on video and used as evidence in chief under the 'achieving best evidence' rules. SIOs need to consider which set of rules they are going to apply to an individual witness, prior to any action being taken.
- 12.1.2 Recording accounts in this way has clear advantages in instances where the witness subsequently becomes a suspect due to other evidence. In circumstances in which this arises as a result of discrepancy, anomaly or omission, there can be no doubt as to the accuracy of the record of the initial account provided by that person.
- 12.1.2 [This section applies to the interviewing of Adult Significant Witnesses. In the case of child or vulnerable witnesses the Achieving Best Evidence Guidance should be complied with.](#)
- 12.2 Authority to carry out this type of interview will only be given by a Senior Investigating Officer. The use of such techniques should be detailed in the relevant policy book and will normally only apply to the more serious cases, i.e. Murder or Manslaughter. Experience would suggest that the use of this technique should be used on limited basis and be specifically targeted. It should not be used in a 'Scatter Gun' approach.
- 12.2.1 Normal practice will be to carry out this interview in a 'video suite', however there may be occasions when this is not practicable. An example being, a key witness is the victim of a serious assault and is in hospital and will be there for sometime. As part of the authorisation to carry out the interview the SIO should also police the location, if not to be completed in a 'video suite'.
- 12.3 In granting such authorities SIO's need to give consideration to the evidential issues that will arise in the future. At trial, in most cases, the prosecution will be unable to play the video. The witness will give evidence-in-chief in person and the written statement, created by the O.I.C. from the video, will be used by the Prosecution calling the witness to 'lead' the witness. The witness, as often happens may 'stray' from their original account given on tape or in statement form, once in the witness box. It is what is said in the witness box that counts in the trial. A witness who 'strays' from their original account will be seen as unreliable.
- 12.3.1 If the witness is called by the prosecution, it is doubtful the tape could ever be used by them but the Defence can use it in cross examination. If called by the Defence, the prosecution could use the video to highlight discrepancies.

- 12.3.2 The Defence will use to their advantage unguarded comments made on video by a witness that would never appear in a written statement. Comments may be made that suggest the witness dislikes the defendant for example or is convinced of their guilt despite the evidence.
- 12.4 Significant witnesses are those that directly witness or are victims of the most serious crimes. As an example Significant Witnesses in a murder are those that ;
- (1) may have been, or may claim to have been, an eye witness or witness to the immediate event in some way.
 - (2) were involved in a particular relationship with the deceased or have a central position in the enquiry.
- 12.5 It must be stressed that, under no circumstances, should an SIO authorise the interview of any person using these methods, if they are suspected of involvement in the case under investigation. Under such circumstances, interviews under the Police and Criminal Evidence Act 1984 treating the person as a suspect should be undertaken.
- 12.6 It should be noted that at the conclusion of the information gathering process there is still a need to record a paper witness statement, this should not be a simple copy of the video transcript. Such a statement should include the fact that the information gathering phase was either video or audio taped and a cross reference to the tape seal (or Police item) number should be recorded.
- 12.6.1 If the conduct of the video interview is such that the transcript would be understandable and in a reasonable time order then the evidence can be presented by means of a short statement from the witness to say they were interviewed on video (not including any detail but to include relevant exhibit numbers) and a statement from the interview exhibiting the transcript.
- 12.7 If during the interview process there is a need to take a break, for example in order to have refreshments, then either the recording can cease or continue. If the recording continues then care must be taken to ensure that inappropriate/irrelevant conversations between the witness and interviewers do not take place. If the recording ceases then reference must be made to this when it is recommenced. Witnesses should be asked to confirm that no interviewing has taken place during the period of the break.
- 12.7.1 It is advised that any subsequent interviews be recorded by video or audio. Such interviews could be for the purposes of gathering or clarifying information or for the purposes of signing the written statement. If the intention is not to visually record the signing of a statement, perhaps due to particular circumstances including such things as the length of the statement, the wishes and availability of the witness and so on, then this should be endorsed by the SIO.
- 12.8 Selection of Interviewers

12.8.1 The selection of the interview team is an important first step. Generally, two officers is regarded as the ideal number for a team. Whenever possible, it is suggested there should be a different interview team for each witness.

12.8.2 The Investigative Interviewing PD outlines the training and competence levels required by officers undertaking this role.

12.8.3 If the matter under investigation is such that an FLO is deployed then wherever possible they should complete such witness statements from family members. FLOs may be deployed to take such statements, outside of a family, in those investigations for which they are not deployed as FLOs. Indeed such practice is encouraged to ensure they retain their skills and competence.

12.9 Planning the Interview

12.9.1 The first stage of planning for an interview should be a briefing either by the SIO or a nominated interview co-ordinator. It is essential that the SIO plays an influential role in ensuring the team understands the objectives and aims of the interview.

12.10 Experience has shown that it is advantageous to have a 'Time Spot' schedule of the content of a tape created using these techniques.

12.10.1 A record should be made of any research and planning work undertaken prior to carrying out an interview.

12.11 Tape sealing

12.11.1 The systems and processes used for Child/ Vulnerable Person videoing should be used for the sealing of video tapes created during these interviews. As a consequence victim suite(s) are recommended as locations for such interviewing. If interviews are carried out at other locations or by means of audio only appropriate sealing systems need to be established.

12.12 Disclosure

12.12.1 Officers should be aware that material obtained during these processes is relevant material under the Criminal Procedures and Investigations Act 1996 and are therefore subject to disclosure requirements.

12.13 Foreign Language

12.13.1 In those cases where interpreters are used in this process they should make their notes as required. A draft English statement prepared by the officers should be provided to the interpreter who along with their own notes will prepare a foreign language version for agreement and signature. Upon completion of this an English translation will be prepared.

13. ADMISSIONS AND/ OR REQUESTS FOR IMMUNITY.

- 13.1 If a witness admits, during the process of taking a witness statement, he/ she was part of the crime that is being investigated, officers should caution the witness and cease the interview. They should either arrest the person or inform the person that they are not under arrest and that they can leave at any time. Immediate liaison should take place with the SIO, if applicable.
- 13.2 If the witness admits involvement in criminal activity that is not connected to the matter for which a witness statement is being sought, the person should be cautioned and told whether or not they are under arrest.
- 13.3 If no arrest takes place the interviewing officers then need to decide whether to continue with the interview or not. This will be very much dependant on the seriousness of the offence being investigated as against the seriousness of the offence admitted. If in doubt officers should consult with either the SIO or a Supervisor.
- 13.4 If the decision, by the interviewers, is to continue with the interview. The officers should, after the caution, inform the witness/ suspect that they are not under arrest and can leave at any time. The witness should then be informed that;
- ‘The Police are not in a position to offer you any kind of immunity from prosecution regarding your involvement in the offence of You will be officially interviewed about your involvement in that matter at a later time. You will not be asked any questions about that at this time. Do you consent to continue with this interview?’
- 13.5 If consent is forthcoming, the interview can be completed. If not the interview should be concluded and the admitted matter dealt with. If the witness declines consent and seeks or continues to seek immunity for the other criminal activity then the interviewers should end the interview and seek guidance from the SIO or a Supervisor.
- 13.6 Interviewing Officers should be aware that such admissions, as outlined above, may well be ‘Unsolicited Comments/ Significant Statements’. Therefore the recording requirements of the Police and Criminal Evidence Act 1984, Code C, Paragraph 11.13, should be complied with.

14. WITNESS STATEMENTS FROM SUSPECTS

- 14.1 There are occasions when persons who are being interviewed, as suspects, deny involvement but claim to have been witnesses. If officers intend to record witness statements from such persons then care needs to be taken and whenever possible advice from Supervisor, Decision Maker or the CPS should be sought.
- 14.2 In general terms if a person, who is being interviewed under caution, claims to be a witness and not a suspect, the interview should continue. The aim being to obtain as much information from the suspect as possible.

- 14.3 At the conclusion of the interview(s) a decision will need to be made regarding any action in terms of prosecution. If no such action is taken an approach can be made to obtain a witness statement. No such approach should be made until the prosecution decision has been made.

15. HUMAN RIGHTS ACT

- 15.1 This PD has been drafted in consideration of provisions of the Human Rights Act 1998. Action taken with regards the recording of a witness statement will involve an impact of an individuals private and family life. Therefore action will only be taken in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights or freedoms of others.
- 15.2 Any action taken will be necessary, proportionate and justifiable with regards the issue that is being addressed. In addition the taking of a witness statement should be the least intrusive option available to address a particular problem.
- 15.3 This PD is suitable for general publication.
- 15.4 This PD will be subject to review every three years or sooner in the case of changes in policy or legislation.
- 15.5 Any action taken under the provisions of this PD could be subject to scrutiny in Criminal or Civil proceedings. The Police Complaints procedure is also available for use by anyone aggrieved by actions taken.

16. RACE EQUALITY SCHEME

- 16.1 The content of this PD has been considered under the provisions of the Race Equality Scheme, as dictated by the Race Relations Act 1976 (as amended), and has been subject to consultation with the Force Independent Advisory Group.

17. RACE RELATIONS AMENDMENTS ACT (2000)

- 17.1 An Equality Impact Assessment has been undertaken covering Diversity, Race, Disability, Gender, Sexual Orientation, Religion and Beliefs and Age.

18. DATE OF PUBLICATION

Version 15.12.05
EIA done 5.2.06
Reviewed 11/09/06
[Reviewed 22.1.08](#)
[New version 29.9.08](#)

19. OTHER REFERENCES

- 19.1 Practice Direction - Witness Protection

- 19.2 Practice Direction - Witness and Victim Care Procedures
- 19.3 R v Turnbull
- 19.4 Stone's Justices' Manual.
- 19.5 Document entitled '[Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses and Using Special Measures](#)'
- 19.6 PD Achieving Best Evidence - Youth Justice and Criminal Evidence Act 1999
- 19.7 Documentation associated with National SIO Development Programme.
- 19.8 ACPO Manual Investigation of Volume Crime.
- 19.9 Practice Guidance on Core Investigative doctrine 2005

COGNITIVE INTERVIEWING – PEACE MODEL

Planning and Preparation

- Understand why you wish to interview this person?
- Consider alternative courses of action and secondary plans.
- Location
- Equipment
- Other persons needed – [Interview Supporters](#), Interpreters and so on.
- Cultural problems
- Briefing from SIO

Engage and Explain

- First impressions are important
- Form a proper relationship
- Inform of reason for interview and what is going to happen.
- Give common courtesy
- Establish what interviewee would like to be called
- Reassure person that they are a witness not a suspect.
- Consider welfare and refreshment.

Account, Clarification and Challenge

- Obtain and deal with interviewee's recollection of events
- Cognitive -'Free recall'
- Followed by a least one other 'Free Recall'
- Alternatively use 'Conversation Management'

Closure

- Be prepared for the closure. You may need to come back to this witness.
- Summarise
- Check comprehension
- Invite questions or feedback.
- Give appreciation of their hard work
- Indicate the value you place upon their assistance
- Consider Victim and Witness care.

Evaluation

- Evaluate information obtained
- Evaluate whole investigation in light of information obtained
- Evaluate interviewers performance

QUESTION AND ANSWER STATEMENTS

All officers should be aware of the process of taking question and answer statements and should be capable of doing so when appropriate. The aim of this appendix is to inform you of this process and the guidelines concerning when, why and how they are completed.

1. Why take a Question and Answer Statement?

Question and answer statements are an alternative way of recording evidence from a victim or witness. Normally evidence is gathered by questioning the person and this information is subsequently recorded on the CJA witness statement, Form MG.11. Question and answer statements (Q&A) are a verbatim, written record of a conversation where both the questions and answers are recorded as they are spoken. These are recorded on plain or lined paper, preferably A4 size, NOT on any official form.

Due to age, mental health problems, or a learning disability, some witnesses cannot fully understand the formal statement process or the printed declaration which must be signed on CJA statement, i.e. "... if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated ..." etc. The person's understanding of the truth and an agreement to tell the truth is obtained in another way on a Q & A statement.

Another benefit of Q & A type statements is that it shows how the information was gathered. If the questions are phrased correctly, the defence cannot allege that the evidence was gained by the use of leading questions. Leading questions being those which either suggest the desired answer or assume the existence of a disputed fact.

2. When should you take a question and answer statement, rather than a CJA statement from a victim or witness?

There are some guidelines but ultimately **you** make a decision on the facts known at that time. The guidelines are as follows:-

Under 10 years	Will need Q & A as the CJA caption cannot be enforced.
10 - 13 years	Most should be capable of giving a CJA statement. However, check with the parent or carer first that there are no learning disabilities, communication difficulties, etc. If there are then take Q & A. If unsure, consider a Q & A.
14 years and over	Always take a CJA statement unless there is a known or suspected learning disability, etc. i.e. you should take a Q & A from an adult of any age if you consider there may be a learning disability and the

person may not understand the implications of signing the declaration.

NB: Remember child victims and witnesses, under 17 years of age, may be eligible to give evidence via a video recorded interview. If video recorded, they would not have to relate their evidence in chief in court as the video interview would be shown.

For further guidance re video interviews see PD entitled Achieving Best Evidence - Youth Justice and Criminal Evidence Act 1999. Such interviewing can only be completed by child trained interviewers.

DO NOT take a Q & A or CJA statement without ensuring consideration has been given as to whether a video interview should take place. Once a "paper" interview has been completed, the option to video interview is lost.

3. How do you take a Q & A statement?

- a) Use plain paper or lined paper, preferably A4 size. Do not use any official form, e.g. MG.11.
- b) Explain to the child and other persons present the process of the interview and the difficulties of trying to record everything that is said, i.e. you may need to ask them to slow down. Also explain you will be listening even when you are not looking at the child.
- c) The following should be recorded at the top of your first sheet:
 - Name
 - Age and DOB
 - Date
 - Place of interview (if home address write details on reverse)
 - Interviewer
 - All persons present and their role/relationship
 - Time commenced/time concluded
- d) Leave a margin on the left side of each page to write in relevant times (e.g. breaks) and who is speaking.
- e) You will often need to spend about five minutes building a rapport. This is not just to relax your witness. You should be using this time to assess their vocabulary, sentence length and how detailed their memory of specific events are in order to plan your questions appropriately. However, avoid talking about anything which could lead you into the topic of concern at this stage. E.g. if the complaint is about someone at school, avoid talking about favourite lessons/subjects, homework or anything else school related.

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You should record the topics discussed and the time rapport commenced/concluded. You do not have to record the rapport verbatim but ideally it should be as detailed as possible.

NB Apart from the rapport phase, the rest of the interview must be recorded verbatim.

- f) Explain to the person you are interviewing that when questioned it is okay to say they don't know or can't remember. Also explain that they should tell you if they don't understand something so that you can rephrase it.
- g) Truth, lies, consequences and agreement. This section replaces the declaration on a CJA statement (MG.11). You must ensure the points are covered.

Truth/Lies You need to show whether the person understands the difference between telling the truth and telling lies. This is too complicated for most people to answer directly so it tends to be broken down.

It is suggested that you should not ask for definitions of truth or lies. You should use examples suitable to the child's age, experience and understanding. Secondary school age children can be asked to provide examples of truthful statements and lies, while younger children can be offered examples and be asked to say which is true and which are lies. It is important that the examples chosen really are lies, not merely incorrect statements; lies must include an intent to deceive another person.

Examples are as follows;

- a) For Younger children

'Let me tell you a story about John. John was playing with his ball in the kitchen and he hit the ball against the window. The window broke and John ran upstairs into his bedroom. John's mummy saw the broken window, and asked John if he had broken the window. John said, 'no mummy'.

Did John tell a lie?

What should he have said?

Why do you think he said 'no mummy'?

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b) For older children

So, for example, Tony was having a smoke in his bedroom, after his mum had told him not to. He heard his mum coming and hid the cigarette. His mum said 'are you smoking?' Tony said 'No mum'.

Did Tony tell a lie?

What should he have said?

Why do you think he said 'no mum'?

Consequences

Hopefully, this will display that the person understands that telling lies is wrong or results in negative consequences. Give an example such as "If someone told a lie at school and the teacher found out, what would happen?" Avoid giving examples linked to the topic of concern, i.e. don't mention school at this point if the complaint is about someone or something connected with school. Also avoid giving a personalised example such as "If you told a lie ,, , etc." as this often results in a defensive response such as, "I'm not a liar" and creates unnecessary barriers.

Agreement

Tell the person that whilst you are talking you will tell the truth and that it is important that they tell the truth. Obtain their agreement to tell the truth.

4. Questioning Styles/Points to Note

- a) Try to use open questions - start with what, where, when, who and how or tell, explain and describe. Avoid asking "why" questions as these tend to infer blame on the victim/witness. Avoid asking closed questions, especially initially, which only require a Yes or No answer.
- b) Describe relevant gestures/actions in brackets after recording their verbal comment. Do not assume where someone is pointing. Describe exactly what you see, i.e. pointed to upper body/chest area/breast.
- c) Breaks and their reason need to be recorded as well as the time the interview was stopped and recommenced. Remember children will use these as diversionary tactics when they are uncomfortable with the questioning style or the topic being discussed. If they ask for repeated breaks, you may find it useful to reassure them that you will not be angry or upset and/or they are not in trouble.
- d) Check exactly what a witness means if they use slang or "pet" words, especially when talking about body parts or sexual acts. If the person

does not know another name for the body part then ask what that part of the body does. However, avoid being shown the relevant "bit" if intimate. Do not assume the witness is describing sexual intercourse by their use of certain words - they often mean kissing when questioned fully!

5. Now What?

On completion all persons present should sign each page as well as directly under the last remark. If the witness is of sufficient age and understanding then also obtain their signature on each page.

The Q & A statement is the police item of the person who wrote it. It should be produced as such, with an exhibit label on a CJA statement (Form MG 11), detailing who, when interviewed, etc. and how many pages are being produced.

If two people are present during the interview, for example a police officer and a social worker, then one could ask the questions whilst the other writes it all down to assist communication with the witness.

QUESTION AND ANSWER STATEMENTS

Aide Memoire

1. Plain A4 paper - note break times/reason - use "tell, describe, explain" - describe gestures/actions in brackets.
2. If not obtaining evidence in chief by video interviewing then consider the following;
 - Under 10 years - Most will need Q & A.
 - 10 - 13 years - Consider Q & A if known/suspected learning disability, etc. Most should be capable of CJA (MG.11)
 - 14 years and over - Always take CJA (MG.11) unless known/suspected learning disability, mental health problem, etc.
3. Information on first page
 - Name
 - Age and DOB
 - Date
 - Place of interview (write details on reverse if home address)
 - \interviewer/role
 - All persons present and their role/relationship
 - Time commenced/Time concluded
4. Interview Procedure:
 - a) Explain interview process
 - b) Complete information as at 3 above.
 - c) Introduce people and their role
 - d) Rapport stage - write down topics discussed (avoid topic of concern)
 - and time rapport commenced/concluded
 - d) Explain it's okay to say don't know, don't understand or can't remember.
 - f) Truth/Lies - obtain their explanation and an example of each
 - Consequences - of telling lies (avoid giving a personalised example or linking to topic of concern)

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Agreement - to tell the truth

- g) All sign each page - complete exhibit label and produce as police item on a CJA statement.

EXAMPLE QUESTION AND ANSWER STATEMENT

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Name: Samantha WALKER Date: 09.02.98
Age: 9 years DOB: 17.02.88
Place of Interview: Home address (put details on reverse side if home address)
Interviewer: PC 152 Lynda UNDERWOOD, police officer.
Others present: Janet WALKER, mother; David BROWN, social worker
Time Commenced: 0915 Time Concluded: 0945
0915 to 0920 Introduce selves and roles (i.e. police/social worker)
Rapport subjects discussed: television, music, pets. (Avoid topic/areas of concern)
Q - LU Before we talk about anything else I need to explain a few things. If, whilst we are talking, there is something you don't know, don't understand or can't remember, it's okay to say. Can you do that?
A - SW Yes.
Q - LU I need to check that you understand what telling the truth and telling lies means. Tell me what telling the truth means.
A - SW It's when you say what really happened.
Q - LU Give me an example of telling the truth.
A - SW My name is Samantha Walker.
Q - LU Explain to me what a lie is.
A - SW That's when you make things up.
xQ - LU Okay. 'Let me tell you a story about John. John was playing with his ball in the kitchen and he hit the ball against the window. The window broke and John ran upstairs into his bedroom. John's mummy saw the broken window, and asked John if he had broken the window. John said, 'no mummy'.
Did John tell a lie?
XA - SW Yes
XQ - LU What should he have said?
XA - SW That he did it.
XQ - LU Why do you think he said 'no mummy'?
XA - SW He was scared.
Q - LU What happens if someone tells a lie at school and the teacher finds out? (Avoid topics/areas of concern).
A - SW They get in trouble. Sometimes they get sent to the head teacher or get told off.

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Q - LU It's important that we agree to tell the truth to each other today. I will tell you the truth. Do you agree to tell the truth?

A - SW Yes.

Q - L:U Tell me why you think we are here today?

A - SW Because of what my dad did.

Q - LU Tell me all about that.

A - SW He kept hitting me like that on my shoulder and back and hurt me a lot. (Clenched hand into fist and punched 4 - 5 times in a rapid, downward motion).

Q - JW (Mother) Explain all about it.

A - SW I was in the kitchen and

Signed Interviewer/others present/child if of sufficient age/understanding

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VICTIM PERSONAL STATEMENTS (VPS)

Appendix C

1. Purpose

1.1 The purpose of a victim personal statement is to;

- a) provide a means by which a victim may make known their legitimate interests, such as their wish to receive information about case progress; to express concerns about intimidation or the alleged offender being granted bail; their wish to seek compensation, or to request referral to Victim Support or other help agencies.
- b) give victims the chance to tell the criminal justice agencies and services dealing with their cases how the crimes have affected them -physically, emotionally, psychologically, financially, or in any other way.
- c) provide the criminal justice agencies with a ready source of information on how the particular crime has affected the victim, supplementing other sources of information available, for example form MG 19 detailing compensation, or the confidential information form, MG6.

2. Definition of Victim

2.1 In general, a victim is a person who has complained of the commission of an offence against themselves or their property, where the prosecuting authority is the Crown Prosecution Service (CPS).

2.2 The term 'victim' includes bereaved relatives or partners (including same sex partners) in cases of homicide or serious sexual or physical assault. It also incorporates parents or carers, where the primary victim is a child or a vulnerable adult. It should not be assumed, however, that a child or vulnerable adult is not capable of making a VPS.

2.3 For the purposes of the VPS scheme, a victim must be a discernible individual rather than a large company or business. However, it may include a sole proprietor or partners in a small business, such as a retail outlet or a local service provider.

2.4 In the case of road traffic incidents, a victim for the purpose of VPS will include anyone who has:

- a) suffered serious personal injury in a road traffic collision, or
- b) is the parent, or carer, or partner (including same sex partners) of a deceased victim

where another party is prosecuted for any offence under sections 1,2,3, 3A, 4,5 or 7 of the Road Traffic Act, 1988

2.4.1 Where the definition of death is that currently accepted by the CPS for the purpose of prosecution and the definition of serious injury is that used by the DTLR for recording purposes. Currently, this would mean:

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- a) Death: a death occurring at any time after the collision
 - b) Serious injury: an injury for which a person
 - i) is detained in hospital as an 'in-patient', or suffers any of the following injuries, whether or not they are detained in hospital: fractures, concussion, internal injuries, crushing, severe cuts and lacerations, or severe general shock requiring medical treatment.
- 2.5 It is not the intention of the scheme for these definitions of a victim to be interpreted rigidly. They are provided as guidance. Circumstances vary and investigators may use their discretion to include others where they consider it to be appropriate. The intention is to give a voice to those who have suffered as a result of a crime.
- 2.6 It is important to note that the scheme is intended to be victim led. As such, it is entirely optional for victims. No pressure should be put on victims to make statements if they do not want to, and no inferences should be drawn if they do not. It should never be assumed, for instance, that any victim is unaffected by the crime.
3. Use of the VPS to criminal justice agencies
- 3.1 A VPS is intended to provide additional information to all criminal justice agencies dealing with the case, enabling them to make more informed decisions.
- 3.2 Use of the VPS by investigating officers will include:
- a) determining whether or not victims want to be kept informed of progress on the case;
 - b) presenting information to custody officers regarding the victim's concerns about bail, which may influence their decisions to grant bail under Section 47 of the Police and Criminal Evidence Act 1984, or what, if any, bail conditions would be appropriate to obviate the need to detain a person in custody;
 - c) helping to determine whether to put the victim in early contact with Victim Support or any other support agency;
 - d) highlighting information to the crown prosecutor about the victim's perspective on the crime via the confidential information form, MG6.
- 3.3 Use for the Crown Prosecution Service (CPS) will include;
- a) the VPS will be used in connection with cases where the defendant is before a court for bail;
 - b) the VPS will be used as part of the case review process both for the evidential test and the public interest test set out at Sections 5 and 6 of the Director of Public Prosecutions' "Code for Crown Prosecutors";
 - c) the VPS may inform decisions about the strength and credibility of evidence and the suitability of charge;
 - d) where the VPS forms part of the evidence, or is incorporated into a witness statement, the CPS will include (following the editing of

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sensitive information) the VPS in the committal bundle. In summary cases it will be served on the defence under the provisions of Section 9 of the Criminal Justice Act 1967;

- e) in cases where there is a separate VPS which does not form part of the evidence and is not therefore included within the committal bundle, it should be disclosed (following the editing of sensitive information) to the defence;
- f) in magistrates' courts the CPS should, where a VPS exists, bring this to the attention of the court, following conviction, and hand the statement to the Bench;
- g) in cases before the Crown Court where there is a separate VPS which does not form part of the evidence and is not therefore included in the committal bundle, it should be served separately upon the Crown Court as well as the defence;
- h) the Crown Prosecution Service should send copies of the VPS to the National Probation Service as part of the pre-sentence report package.

3.4 Use for the Courts will include;

3.4.1 The intention is to provide additional information to the courts and to those who pass sentence, about the effect of a crime on the victims.

3.4.2 The Lord Chancellor is issuing a practice direction.

- i) The VPS will form part of the papers for any appeal cases to the Crown Court and the Court of Appeal;
- ii) It is expected that the VPS will also form part of the papers for setting tariffs in life sentence cases.

4. Operating the VPS Scheme

4.1 Overview

4.1.1 The scheme is a two-stage process:

- 1) At stage one the victim will be given the chance to make a VPS when a witness or evidential statement is taken. It will take the form of an additional section added to the end of the MG 11 statement, lined off and clearly separate, with its own particular heading
- 2) Stage two allows the victim to provide a further statement at any time, prior to the appearance of a defendant before court, describing any longer term effects the crime has had. Such details might not have been known when the first VPS was made.

4.1.2 Remember that the VPS is an addition to existing procedures, not a substitute for them. Thus, a VPS may well touch on some of the same issues covered elsewhere in a file, but it provides a vehicle for victims to say exactly what they want, in their own words, about what has happened to them.

4.1.3 Children, Vulnerable and Intimidated witnesses.

4.1.3.1 Victims, who are children or are treated as vulnerable or intimidated witnesses, as identified by the Youth Justice and Criminal Evidence Act 1999, when giving their evidential statements, will be offered the opportunity to make a VPS in the same format as their primary witness statement. Guidance addressing this issue is detailed in the publication entitled 'Achieving Best Evidence in Criminal Proceedings - Guidance for Vulnerable or Intimidated Witnesses, including Children. This guidance is outlined at paragraph 4.7.

4.1.4 For victims whose first language is other than English.

4.1.4.1 It is intended that the VPS leaflet will be produced in a number of different languages. However, if an investigator feels that the use of an interpreter is appropriate and the correct language version is not available, then the interpreter should be asked to translate the VPS leaflet and explain the scheme.

4.2 Stage One VPS

4.2.1 The Police will take the VPS. They will offer a victim the chance to make a first stage, or initial, VPS when taking a witness statement. Victims who are not asked to make a witness statement will not normally be able to participate in the stage one process. This means that a VPS will only be taken for crimes that meet the criteria for taking witness statements as laid down in this practice direction.

4.3 Stage One Procedure

4.3.1 The VPS scheme is supported by a leaflet produced by the Home Office, which offers written guidance and advice to victims. It is intended that all victims, from whom an evidential statement is taken, should be offered a copy of this leaflet.

4.3.2 The VPS will be an addition to the witness statement form. Having taken the witness statement, the interviewing officer will ask the victim if they want to make a personal statement. The officer will emphasise that this is entirely voluntary, and that no implications will be drawn whether or not a VPS is made.

4.3.3 If the victim chooses not to make a VPS, the officer should:

- a) record this fact on the witness statement form;
- b) complete the section on the back of the Home Office VPS leaflet, giving details of the police point of contact.
- c) ensure the victim has a copy of the Home Office VPS leaflet and explain that the victim can always make a personal statement later, if they wish.

4.3.4 If the victim does wish to make a VPS, whether this is simply to state their interest in receiving information, or giving full and emotive details of the effects

of the crime, the following will apply:

- a) VPS will be, like the first part of the witness statement, subject to the provisions of Section 9 of the Criminal Justice Act 1967. The declaration by the victim on the witness statement, in accordance with Section 9, Sub-Section 2(b), will therefore extend to statements made in the VPS.
- b) VPS section will be clearly identified on the witness statement form (MGII) by lining off the evidential section;
- c) a form of words as follows lines will then precede the VPS:

"I have been given the victim personal statement (VPS) leaflet and the VPS scheme has been explained to me. What follows is what I wish to say in connection with this matter. I understand that what I say may be used in various ways and that it may be disclosed to the defence. "
- d) The interviewing officer should then record the personal statement of the victim in the victim's own words, bearing in mind the guidance notes that follow.

4.4 How to guide and advise a victim making their VPS

4.4.1 Since witness statements are often taken within hours of the offence occurring, officers should bear in mind that the victim may be in a state of shock or anxiety and may not fully understand what they are being invited to do. Careful explanation of the purpose and limitations of the scheme will be important, supplemented and reinforced by referral to their copy of the Home Office VPS leaflet.

4.4.2 It is important to emphasise the following points to the victim:

- a) The procedure is entirely optional. It is a means whereby the victim can tell the police, the Crown Prosecution Service and the courts how the crime has affected them. It can say as much, or as little, as the victim wishes to say;
- b) A VPS (like any other formal statement) once completed and signed cannot be altered or withdrawn if the victim has second thoughts about anything said previously, perhaps in the heat of the moment. However, it is possible for a victim to submit a further personal statement offering clarification or correcting anything said in any earlier personal statement. (This, in effect, would be a 'second stage' VPS.);
- c) The VPS will form part of the case papers and will be disclosable to the defence if an offender is prosecuted. You may need to explain the process and implications of disclosure;
- d) A VPS will form part of the total information available to the criminal justice system: It will be taken into account by all agencies subsequently dealing with the case where it is in the public interest to do so. However, it might not be acted upon at all, or any action that is taken may not be obvious;

- e) While the court can take into account the effect the crime has had on the victim, it will not take into account any opinion the victim expresses as to how the offender, if convicted, should be punished. Sentencing is a matter of public policy and remains the prerogative of judges and magistrates;
- f) There may be an opportunity to make an updated (stage two) statement later, unless the defendant pleads guilty at the first court appearance, or, where the case is contested, they are brought to trial too quickly.

4.4.3 Content of the Victim Personal Statement (VPS)

4.4.3.1 It is important that the VPS part of the witness statement provides an opportunity for the victim to express their feelings and to describe the effect of a crime upon them in their own words.

4.4.3.2 However, in order to cover all potential issues, a number of 'prompts' suggesting what information the victim might care to include in their personal statement have been formulated.

4.4.4 Prompts to consider:

- a) whether and to what extent, the victim would like to receive further information about the progress of the case.
- b) Whether the victim has any special communications needs, for example, because of hearing or visual impairment, language or reading difficulties etc.
- c) any concerns about bail.
- d) whether, if the offender is a young person, the victim would agree to being contacted by the local youth offending team.
- e) details about vulnerability as a victim, or any concerns about being a witness (consider reminding the victim about the availability of the Victim Support Service (VSS) and the Court's witness services).
- f) the feelings and effects of any racial element to the crime, beyond the evidential aspects already covered in the main witness statement.
- g) the feeling and effects of victimisation due to gender, sexuality, faith, cultural background or disability, beyond the evidential aspects already covered in the main witness statement.
- h) whether compensation might be sought, if this is not definitively covered in the evidential section of the statement. (Remind victim of the need for supporting detail/evidence. Note that completion of form MG 19, where appropriate, will still be required).
- i) medical/psychological damage, if then known, and any social effects, with any appropriate supporting evidence if available. (Advise that this may be required if such information is to be given in court).
- j) if the victim is a child or a vulnerable adult, which parent or carer should the police or other agency normally get in touch with on any future occasion.
- k) anything else the victim wishes to add.

4.4.5 The victim may wish to discuss with the interviewing officer what information to put in the victim personal statement. The officer can give general advice, but should take care not to lead the victim in a way that might subsequently prejudice the integrity of their statement. The officer must make it clear that it is ultimately for the victim to decide what information to include in their personal statement.

4.4.6 To repeat the point about content, a victim may wish to express in detail, profound effects that the event has had upon them, or they may restrict their comments to simply asking for information about the progress of the case.

4.4.7 The officer should take care not to raise hopes that the scheme will deliver any more than the leaflet or the officer has promised. The officer should ensure completion of the section on the back page of the leaflet giving the police contact details, so that the victim can refer to it if they want to make a further statement.

4.5 Immediate action following VPS

4.5.1 Risks to the victim should be assessed in the light of the case detail known and any VPS made. Effective action must be taken, in consultation with supervisors and specialists to deal with any assessed risk.

4.5.2 Although the VPS scheme is primarily focused upon a mechanism for giving victims a chance to let their feelings be known to criminal justice workers, it is also intended to raise the profile of victim care, whether or not a VPS is taken.

4.5.3 Circumstances vary, but all investigators are encouraged to consider ways in which they may be able to alleviate the victim's distress or suffering. This is a quality of service issue of the utmost importance. The way officers treat a victim may have a profound effect upon the ability of a victim and those around them, to recover and cope with what has happened. This may include referral to other agencies for support.

4.5.4 The case officer should ensure that the completed statement is:

- a) brought to the attention of the custody officer, if anyone is in custody for the alleged offence against the victim at that time;
- b) linked to the file papers.

4.6 Stage Two VPS

4.6.1 The fact that the VPS scheme is divided into two stages does not imply that they are necessarily related. The 'stage' label refers more to the point in time at which they are obtained rather than sequence.

4.6.2 There are always the following options:

- a) victim may make no VPS at all;
- b) a stage one statement alone is made;
- c) a stage two statement alone is made;

- d) both stage one and two statements are made;
 - e) there may also, in some cases, be more than one stage two statement.
- 4.6.3 Stage two allows victims to provide a VPS describing the longer-term effects the crime may have had on them. This may follow on from a stage one statement, or it may be the first VPS an individual has made.
- 4.6.4 It is also appropriate where the victim wishes to add or change anything in a previous VPS, or if, for any reason, the victim did not have the option earlier.
- 4.6.5 When a victim wants to make a stage two VPS, they will normally get in touch with the police contact given in the VPS leaflet. The police contact will make the necessary arrangements as quickly as possible. The statement may be taken at the victim's home, at a police station, -or any other mutually acceptable place.
- 4.6.6 Before taking the statement the investigating officer will need to check case progress. If the case has proceeded as far as charging an alleged offender, the officer needs to consider consulting the CPS to see if there are any 'case handling' issues to be borne in mind, since the CPS will be responsible for the case by this point.
- 4.6.7 As with a stage one statement, the victim will be free to say what they wish. The statement will normally be taken on a standard statement form, MG 11, with the Section 9, Criminal Justice Act 1967 declaration being read and signed by the victim concerned.
- 4.6.8 A standard form of words, broadly similar to those used before, will precede the statement itself, namely:
- "I have been given the victim personal statement (VPS) leaflet and the VPS scheme has been explained to me. What follows is what I wish to say in connection with this matter, in addition to what I said in my previous victim personal statement. I understand that what I say may be used in various ways and that it may be disclosed to the defence."
- 4.6.9 Where the victim has not made a stage one statement, the words 'in addition to what I said in my previous victim personal statement should be omitted or deleted.
- 4.6.10 Before taking the statement, the officer should make sure the victim understands the implications of what they are doing. Please refer back to the 'stage one' section "How to guide and advise a victim making their VPS". for the general points to remember.
- 4.6.11 It must be possible for anyone reading a stage two statement in isolation to comprehend exactly which event or crime is being referred to. Therefore the officer taking a stage two VPS must ensure that such details as are necessary are entered onto the statement form, so that there is no ambiguity or lack of clarity about the matter now being commented upon. This may include references to crime or incident numbers, relevant dates, times and locations or

any other facts that establish a clear connection between the past events and the current context.

- 4.6.12 When making the statement the victim might normally be expected to explain briefly why they were making a stage two statement. This could be because the longer-term effects, such as health or social problems, had only become apparent after the first statement was taken. It could be because of greater or lesser financial loss, because the victim had been harassed or threatened by the offender, their family or associates, or for some other reason.
- 4.6.13 Relevant points from the 'prompts' referred to in the stage one section should also be considered. Points a,c and d are not likely to be applicable, but points e - k may be appropriate.
- 4.6.14 If, during taking a statement, it becomes clear that the victim's primary purpose is to try to influence sentence, the officer should intervene. The victim should be reminded that sentencing is a matter of public policy and, in deciding upon sentence, the court may take into account the effect of the crime upon the victim, but it will not take into account the victim's opinion as to sentence.
- 4.6.15 After the VPS is taken it will be the responsibility of the officer to ensure it is linked to the case papers as quickly as possible.
- 4.7 Obtaining VPS when witness evidence obtained by video.
- 4.7.1 Child witnesses who are victims should be given the opportunity to make a Victim Personal Statement after completing either a video-recorded interview or a written statement. In such cases the victim personal statement should be given in the same format as their witness statement; i.e. where the evidential witness statement is video-recorded, the victim personal statement should also be video recorded.
- 4.7.2 Providing a Victim Personal Statement (video recorded or written) is entirely voluntary. In the first instance the young witness should be given the opportunity to make the statement themselves but in some circumstances it may be appropriate for the parent/ carer to provide the statement on the victim's behalf. In some cases it maybe necessary to take a statement from both the victim and the parent/ carer, in order to establish a full picture of the impact of their experience.
- 4.7.3 Young witnesses over 16 years of age are able to consent to making a Victim Personal Statement. In the case of very young and young children or those with a learning disability interviewers should consider consulting the parent/ carer as to whether the child or the parent/carers or both should make the statement. Children have the right to privacy, including the right to choose to provide information that they do not wish to share with their parent/carers. Thus while children should be invited to make a Victim Personal Statement, account needs to be taken of their age and understanding when considering whether the parent/carers also needs to be consulted. The same considerations apply in relation to seeking further information from the parent/carers after the older

child has made their own statement.

- 4.7.4 In cases where the witness statement has been taken in the form of a video-recorded interview, it is preferable for the Victim Personal Statement to follow on the same tape but there must be a clear break between the two. This can be achieved by dividing the two statements with a still image e.g. the police force logo. Alternatively or in addition, the interviewer may make a statement on the tape acknowledging the change from the evidential interview to the Victim Personal Statement.
- 4.7.5 There is always the possibility that at a later time the victim or their parent/ carer may feel that the impact of the experience has been such that a second statement is needed. Unless there are exceptional circumstances, a second statement should be taken in a written format according to the Home Office guidance on Victim Personal Statements.
- 4.7.6 In those instances when a VPS is recorded on video there is a need to make a written record of it's content for presentation with the file. This will be achieved by recording the content of the VPS in a transcript. In other instances attention should be drawn, on the MG6, to the existence and content of a VPS.

VICTIM PERSONAL STATEMENTS - AIDE MEMOIRE

Appendix D

Think service; think victim care; think RISK

A victim is a person who has complained of the commission of an offence against themselves or their property where:

- a) .In all cases the prosecuting authority is the Crown Prosecution Service

And, for road traffic incidents the definition:

- a) of death, is that currently accepted by the CPS for the purpose of prosecution and
- b) the definition of serious injury, is that used by the DTLR for recording purposes.

Currently, this would mean:

Death: a death occurring at any time after the collision

Serious injury: an injury for which a person

- i) is detained in hospital as an 'in-patient'; or
- ii) suffers any of the following injuries, whether or not they are detained in hospital: fractures, concussion, internal injuries, crushing, severe cuts and lacerations, or severe general shock requiring medical treatment.

'Victim' includes bereaved relatives or partners in cases of homicide or serious sexual or physical assault. It also incorporates parents/ carers, where the primary victim is a child or vulnerable adult.

- a) Take care to explain the scheme;
- b) Do not to promise more than the scheme can deliver.

Stage 1 VPS: offered by investigator at the time of taking an evidential statement.

Stage 2 VPS: arranged in response to request from victim.

VPS prompts:

1. whether and to what extent, the victim would like to receive further information about the progress of the case.
2. whether the victim has any special communications needs, for example, because of hearing or visual impairment, language or reading difficulties, etc;
3. any concerns about bail.
4. whether, if the offender is a young person, the victim would agree to contact from the local youth offending team.
5. details about vulnerability as a victim, or any concerns about being a witness (consider reminding the victim about the availability of the Victim Support Service (VSS) and the Court's witness services).
6. the feelings and effects of any racial element to the crime, beyond the evidential aspects already covered in the main witness statement.
7. the feeling and effects of victimisation due to gender, sexuality, faith, cultural background or disability, beyond the evidential aspects already covered in the

NOT PROTECTIVELY MARKED

- main witness statement.
8. whether compensation might be sought, if this is not definitively covered in the evidential section of the statement. (Remind victim of the need for supporting detail/evidence. Note that completion of form MG 19, where appropriate, will still be required).
 9. medical/psychological damage, if then known, and any social effects, with any appropriate supporting evidence if available or advice that this may be required if such information is to be given in court.
 10. If the victim is a child or a vulnerable adult, which parent or carer should the police or other agency normally get in touch with on any future occasion.
 11. anything else the victim wishes to add.

If the victim chooses not to make a VPS, the officer should:

- a) record this fact on the witness statement form;
- b) complete the section on the back of the Home Office VPS leaflet, giving details of the police point of contact;
- c) ensure the victim has a copy of the Home Office VPS leaflet and explain that the victim can always make a VPS later, if they wish.

If the victim does wish to make a VPS, the following procedure will apply:

- a) the VPS section will be clearly identified on the witness statement form (MG11) by lining off the evidential section;
- b) a form of words along the following lines should then precede the VPS:

"I have read the victim personal statement (VPS) leaflet and the VPS scheme has been explained to me. What follows is what I wish to say in connection with this matter. I understand that what I say may be used in various ways and that it may be disclosed to the defence."

- c) Take victims' statement in their own words.

Ensure victim has Home Office VPS leaflet and is able to contact the Officer in the case

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Competency and Compellability (ACPO Guidance)

Appendix E

Before a witness statement can be accepted in evidence the court must be satisfied that the witness is competent to give evidence. The general rule is that all witnesses are competent and can be compelled where necessary.

The exceptions to the general rule of competency are:

Mentally Disordered witnesses	This category includes all mental disorders whether resulting from witnesses drugs, drunkenness, arrested or incomplete development of the mind, psychopathic disorders or any other disability of the mind.
Co - defendants	Co-defendants who are jointly tried generally cannot give evidence against each other. However, one of them could give evidence if the prosecution has promised not to prosecute one of them, when no evidence is offered against one of them, an order is obtained for separate trails or a co-defendant has pleaded guilty.
Accomplices	An accomplice is a person who is called by the prosecution to give evidence and has been a participant in a particular crime. An example would be the handler of the stolen property who is giving evidence at the trial of the thief. Although the evidence of an accomplice is usually admissible and they are competent witnesses the courts in practice look for corroboration of their evidence.
Spouse of accused	<p>Spouses of accused persons are not compellable witnesses for the prosecution except where:</p> <ul style="list-style-type: none"> a) the spouse of the accused or a person under sixteen is assaulted, injured or threatened with injury; or b) the offence is a sexual one against a person under 16. <p>Spouses are generally competent for both the prosecution and the defence. A spouse can be compelled to give evidence for the defence. An exception to this is where the husband and wife are jointly charged, when neither will be competent or compellable unless one is no longer liable to be convicted because they have pleaded guilty. In practice it is better to try to obtain statements from spouses, irrespective of whether the information contained in them is likely to be deemed admissible, because they help to provide the full picture.</p>
Privileged	<p>Privilege can be claimed by certain witnesses and will have a bearing on whether the statement will be acceptable in evidence.</p> <p>Privilege is where a witness can refuse to give evidence on</p>

	<p>the grounds that:</p> <p>a) the answer to a question or the production of a document would tend to incriminate the witness, or</p> <p>b) the witness is asked to disclose a communication between him and his legal advisor.</p>
Opinion of witness	<p>The opinion of a witness is generally inadmissible in court.</p> <p>There are some exceptions to the general rule, i.e. an expert's evidence on matters such as medicine, science, works of art and non expert such as whether a person was drunk or the speed of a motor vehicle.</p>
Unwilling Witness	<p>When a witness refuses to provide a statement or attend at court they can be dealt with under Section 97 Magistrates' Court Act 1980. This states that a witness who refuses to attend court may be arrested on any warrant issued.</p> <p>A witness who refuses to be sworn or answer questions may be committed into custody for a period not exceeding one month or until they sooner give evidence or produce any relevant document. It is likely that witnesses when aware of these provisions they will co-operate.</p>