



ACPO Position Statement: dealing with Prepared Statements in Investigative Interviews with Suspects

**National Investigative Interviewing
Strategic Steering Group (NISSG)**

DEALING WITH PREPARED STATEMENTS IN INVESTIGATIVE INTERVIEWS WITH SUSPECTS

Introduction

In simple terms a prepared statement is a document that is prepared during consultation between a suspect and their legal adviser with a view to using it during or after an investigative interview. The consultation during which the document is prepared may be prior to interview or prior to attending the police station, depending on the circumstances. The statement can be read out or given verbally to the police. Handing over a statement setting out the relevant facts has been treated by the courts as 'mentioning' them for the purposes of the silence provisions, under Section 34 and the same principle should apply to providing an account for the purposes of section 36 and section 37 Criminal Justice and Public Order Act 1994. There is no statutory basis for the practice around prepared statements but it is an accepted defence tactic that has been endorsed by the Law Society.

This guidance set out in this position paper is intended to encourage interviewers to confidently approach the issue of dealing with prepared statements in interview.

Background

Why are Prepared Statements Used?

Prepared statements are considered by legal advisers when there are good reasons for informing the police of facts that are likely to be relied upon by the defence at trial or for providing an account, while not wanting to place the client at risk of 'cross-examination' by the police (e.g. because this may be the first time that the suspect has been in custody, lack of knowledge around procedure and not wanting their client to be drawn into police interview techniques).

What are the Benefits of the Defence Handing a Prepared Statement to the Police?

Handing in a statement commits the suspect to a defence and may have the effect of providing the police with sufficient evidence to charge where it can readily be refuted.

What are the Benefits for the Suspect?

Provided that the facts subsequently relied upon at trial are adequately covered, a statement handed to the police during a police interview could avoid a direction being given in respect of adverse inferences under Section 34(1)(a) Criminal Justice and Public Order Act 1994 (or under Sections 36 and 37).

When should the Prepared Statement be Handed Over?

The *legal adviser* must consider at what point the statement should be given to the police. Strictly, a statement only prevents inferences under section 34(1)(a) if it is handed to the police during a police interview so that it amounts to mentioning facts 'on being questioned under caution'. In a straightforward case where the legal adviser is satisfied that the police have made adequate disclosure, it they will often consider it appropriate to hand in the statement at the beginning of the interview. However, in a more complex case or where the police have given no or only a limited pre-interview briefing they may consider it better to hand the statement over towards the end of the interview. In this case, before the interview ends, the legal adviser should tell the police that before it is concluded they wish to have a private consultation with their client. The legal adviser statement will then draft the statement in consultation with the suspect and hand it in to the police at the resumed interview. Alternatively, it can sometimes be handed to the police at the point of charge.

If the prepared statement is handed in following charge and it contains new facts or area's not previously covered, a further interview should be considered¹.

¹ NB: the appropriate caution should be used during any interview after charge

Who owns the Prepared Statement?

The statement is owned by the author even though legal privilege may have been waived if the statement has been read out. There is no requirement or power to physically seize the statement if the legal adviser or the accused are not prepared to hand it to the interviewing officers. If the statement is not handed over to the interviewing officers the issue can be addressed at court as the onus is then on the suspect's legal adviser to show that the information read out during the course of the interview is word for word what was written on the prepared statement.

Not allowing the prepared statement to be read aloud by the legal adviser or the suspect will disadvantage the investigation and is depriving the suspect of their right to follow the legal advice that they have been given. *Interviewers should not, therefore, take this course of action. The police have no power to prevent the introduction of a prepared statement into an interview under caution.*

The ACPO Position

What to do with a Prepared Statement

There is no legal requirement for the statement to be introduced by any particular means. When discussing issues with the legal adviser, interviewers or interview advisers may wish to ask them how they prefer to deal with prepared statements so that they can take account of it in their interview plan.

Below are three options that should cover all eventualities.

1) If the legal adviser is prepared to hand over the statement

Interviewers should:

- Allow the suspect or their legal adviser to read the statement aloud, preferably on tape;
- Check with the suspect that the statement provided is a correct and accurate account (regardless of who has written it);
- Invite the suspect to sign and date the statement (NB: there is no power to compel them to do so if they refuse);

- Retain and exhibit the statement;
- Conclude the interview session for the purpose of considering the prepared statement against the interview plan;
- Photocopy the statement for the legal adviser and hand copy to legal adviser at the earliest opportunity.

2) If the legal adviser is prepared to hand over the original statement but only for the purposes of copying

Interviewers should:

- Allow the suspect or their legal adviser to read the statement aloud, preferably on tape;
- Check with the suspect that the statement provided is a correct and accurate account (regardless of who has written it);
- Invite the suspect to sign and date the statement (NB: there is no power to compel them to do so if they refuse);
- Conclude the interview session for the purpose of considering the prepared statement against the interview plan;
- Photocopy the statement and exhibit the copy returning the original to the legal adviser at the earliest opportunity.

3) Where the legal adviser refuses to hand over a Prepared Statement. There is no power to compel the legal adviser to hand over the prepared statement

Interviewers should:

- Allow the suspect or their legal adviser to read the statement aloud, preferably on tape;
- Check with the suspect that the statement provided is a correct and accurate account (regardless of who has written it);
- Ask the legal adviser if there is a reason for not wishing to hand over the statement (the document is not subject to legal privilege once it has been read out, as this right has been waived by the suspect);

- Not challenge the legal adviser but clearly point out to the legal adviser that the interview may have to be terminated for a transcript of the interview to be made in order that the prepared statement can be reviewed against the interview plan. This will take time and delay the interview;
- Conclude the interview for the purpose of considering the prepared statement against the interview plan;
- Have the interviews transcribed for court purposes as per normal practice and exhibit them, this ensures that the information given in the prepared statement is captured and put before the court.

The information given within the statement should become part of the interview plan and any gaps that are identified should be explored. If the prepared statement is plainly inconsistent and the interviewer can expose it as such by questioning it is entirely appropriate to do so. Prepared statements should not be allowed to restrict the scope of the interview because it may not cover all relevant areas/times; interviewers should adhere to their interview plan, this will ensure that there is no criticism of them at court.

Can more than one Prepared Statement be made?

If there is more than one interview, or there is a 'phased disclosure' by way of pre-interview briefing, the statement can be reviewed in light of any new information being disclosed by the police during the course of the interviews. As a result of this the legal adviser may consider handing in a supplementary statement. In these circumstances, interviewers should ensure that any additional statements produced are dealt with in the same manner as the first.

Relevant Case Law

It was held in *R v Knight* [2003] EWCA Crim 1997 that handing in a statement does not, in itself, prevent inferences from being drawn. If the suspect relies on facts at trial that were not mentioned in the statement, inferences can still be drawn from failure to mention those facts.

For this purpose the police need to ensure that all areas of the interview plan are covered thoroughly to maximize the opportunities for inferences being drawn.

Other cases of Note

Bourgass, R v [2005] EWCA Crim 1943 (19 July 2005)

Turner v R [2003] EWCA Crim 3108 (6 Nov 2003); [2004] EWCA Crim 3108.

Ali & Ors, R v [2001] EWCA Crim 1757 (3rd April, 2001)

McGarry, R v. [1998] EWCA Crim 2364 (16th July, 1998)

Acknowledgement

This guidance is based on information sourced from the Law Society.

This position statement was prepared by DC Kim Bowen, an ACPO Approved Interview Adviser from Cambridgeshire Police.

In the event of any queries about this position statement please contact either Gary Shaw at gary.shaw@npia.pnn.police.uk or Kevin Smith at kev.smith@npia.pnn.police.uk