



ACPO Position Statement:

Interviewing Defence Witnesses

National Investigative Interviewing

Strategic Steering Group (NISSG)

Introduction

The *Code of Practice for Arranging and Conducting Interviews of Witnesses Notified by the Accused* (Ministry of Justice 2010) came into force on 1st May 2010. It is essential that this guidance is read in conjunction with the Code. A copy of the Code can be found at:

http://www.legislation.gov.uk/ukpga/1996/25/pdfs/ukpgacop_19960025_en.pdf

The purpose of this paper is to provide some further guidance on this issue.

Background

The implementation of the Code brought into effect Section 6C Criminal Procedure and Investigations Act 1996 (CPIA). Section 6C requires the defence to notify the prosecutor and the court of any information known to them that might assist in identifying or locating any witness that they intend to call. There is no requirement for the defence to indicate the kind of evidence that the witness is likely to give in the notification (i.e. expert¹, character, eye-witness or alibi), although it is assumed that there may be some indication of this in the contents of the defence statement². A copy of the legislation can be found at:

<http://www.legislation.gov.uk/ukpga/1996/25/contents>

The ACPO Position

Decision-Making: Whether to Interview

Having received notification from the defence, the Crown Prosecution Service (CPS) will inform the police of the details of any proposed witness. The CPS and the investigating officer will then decide who is to be interviewed.

¹ Section 6D CPIA requires that the defence notify the prosecutor and the court of any experts they instruct unless they have already included them in a Section 6C notification.

² The contents of a defence statement should include the matters referred to in Section 6A CPIA.

Initial Contact with the Witness

Other than in circumstances in which the defence have already been clear about what the witness is likely to say (e.g. in the defence statement) an attempt should be made to elicit a brief account from the witness, as a means of aiding initial investigative decision making. Any attempt to elicit a brief account from a defence witness should take account of the guidance set out in paragraphs 2.4 to 2.6 of *"Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Guidance on Using Special Measures"* (Ministry of Justice 2011) (ABE).

Where it seems unlikely that there is going to be any value in progressing the matter to a formal interview on the basis of what is said in the initial account further directions should be sought from the CPS (this may, for example, be the case with someone who reveals that they are no more than a character witness).

Where it appears that the witness may have some evidence that has a bearing on the case they should be asked if they consent to being interviewed. If they consent they should be told that:

- They are under no obligation to attend the interview;
- They may withdraw consent and leave the interview at any time;
- They can have their own solicitor present at the interview if they wish to do so³.

They should also be asked if they consent to:

- The attendance of the defence solicitor attending the interview as an observer;
- A copy of the interview record being sent to the defence (if they do not consent they must be informed that the requirements of CPIA are such that the prosecution may have to disclose the record in any event).

A record must be made of any contact with a defence witness and of every attempt to contact them.

³ The provision of Legal Aid for these purposes cannot be guaranteed because the Legal Services Commission is not obliged to provide funding for this purpose.

Pre-Interview Contact with the Defence Solicitor

If the witness consents to the defence solicitor attending the interview they should be given reasonable notice as to when and where it is to take place. They should also be reminded that their role in the interview is confined to that of an observer (see paragraph 8.2 of the Code).

If the defence solicitor fails to attend the interview, after having been given details of where and when it is to take place, it should still go ahead. A record should be made of the fact that the solicitor failed to attend the interview.

The Interview

Interviewer and Appropriate Person

Interviewers should have "sufficient skills and authority, commensurate with the complexity of the investigation" (paragraph 7 of the Code). An 'appropriate person' should also be present during interviews with any witness who is either under 18, mentally disordered or mentally vulnerable (see paragraphs 2 and 10 of the Code).

Recording Method

An interview with a defence witness should be recorded by means of either video or audio-recording equipment unless it is impractical to do so in which event it must be recorded in writing (paragraph 11.1 of the Code). If the witness is either 'vulnerable' or 'intimidated'⁴ and it is intended to play it as evidence-in-chief a video-recording must be made.

Structure and Techniques

Interviews with defence witnesses who are vulnerable, intimidated or significant⁵ should be conducted in accordance with ABE.

⁴ Vulnerable and intimidated witnesses are as defined by Sections 16 and 17 Youth Justice and Criminal Evidence Act 1999.

⁵ Significant witnesses are defined by paragraph 1.25 of ABE.

Product

Applications to play video-recorded interviews with witnesses who are either vulnerable are intimidated are the responsibility of those calling them (i.e. the prosecution or the defence).

The evidence of significant witnesses should be processed in accordance with paragraphs 2.135 and 2.136 of ABE.

Acknowledgement

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

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