



Practice Advice For

EXPERT ADVISERS

Version 3.4

Updated 2011

Produced on behalf of the Association of Chief Police Officers
by the National Policing Improvement Agency
Specialist Operations Centre Crime Team

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If you would like to receive this publication in an alternative format, please contact:

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All other enquiries relating to this publication should also be addressed to the Specialist Operations Centre at the above address.



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ACPO and the NPIA would like to express their thanks to all those involved in the drafting of this document. All of the responses during the consultation phase of this project were appreciated and contributed to the final document.

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Preface

An Expert Adviser (EA) engaged by the police, must understand the obligations placed on them. This document sets out the responsibilities of an EA and will help you to understand the role and what can be reasonably expected of you. Your credibility as an EA will be enhanced by the considered application of this advice and your appropriate management of the materials in the investigation.

Please ensure that prior to being engaged as an EA the officer engaging you has obtained authority from the appropriate force budget holder and that you have agreed a contract of engagement including costs. NPJA does not assist forces with the costs of an EA.

The NPJA has no responsibility in relation to the cost or contract agreed with the investigation.

1

Understanding The Role of an Expert Adviser

An EA is any person able to assist an investigation because their specialist knowledge and/or experience allow them to give an opinion on a particular matter, or provide a specialist service directly related to their expertise. EA's are independent of the Police Service and are usually employed to interpret and present evidence as a forensic expert witness although they are not necessarily an expert witness.

An expert as defined by the Crown Prosecution Service (CPS), is 'a person whose evidence is intended to be put before a court and who has relevant skills and/or knowledge achieved through research, experience or professional application within a specific field sufficient to entitle them to give evidence of their opinion and upon which the court may require independent and impartial assistance. The difference between an expert and other witnesses is that experts are the only witnesses allowed to give opinion evidence'.

Note: An EA's status may change to that of an expert witness as the investigation progresses.

2

The NPIA Specialist Operations Centre

The NPIA Specialist Operations Centre (SOC) provides information, advice and support to those involved in:

- The investigation of murder, no body murder, suspicious missing persons, rape, abduction, series and serious sexual offences;
- Covert issues and techniques;
- Uniform policing;
- Vulnerable victims and witnesses - Witness Intermediary Scheme.

It maintains a database containing the details of Expert Advisers (core forensic services are covered by contractual arrangements with the Police Service) and is the recommended route by which Investigating Officers should obtain the services of an EA. The NPIA SOC is staffed during office hours and operates an on-call system to cover out of office hours for urgent homicide and major crime advice and urgent requests for an EA. All enquiries should be made via the **0845 000 5463**.

The Specialist Operations Centre **does not** accredit Expert Advisers on its database. It is the Investigating Officer's responsibility to ensure that an EA has the necessary and relevant expertise to aid their investigation. Expert Advisers are, therefore, required to complete an accurate and up-to-date CV in the NPIA format, and submit it to the Specialist Operations Centre. Failure to reveal all the information required will negate entry to the Expert Advisers Database. For further information regarding the Specialist Operations Centre, email **soc@npia.pnn.police.uk** or telephone **0845 000 5463**.

3

Responsibilities of an Expert Adviser

- Ensure that your knowledge, experience, qualifications and professional training are appropriate for the investigation.
- Provide expert advice to Investigating Officers by giving an objective, unbiased opinion or service with regard to your expertise.
- Simplify and explain matters specifically relating to your area of expertise.
- Carry out your work expeditiously.
- Agree the Terms of Reference (TOR) with the Investigating Officer prior to commencing work; this may include court attendance, timescales, costs and completion of any statements and reports.
- Develop and maintain clear lines of communication with the investigation, ideally through a nominated Single Point of Contact.
- Ensure that you have all the information you require to complete your task.
- Ensure that no conflict of interest exists that prevents you from working on the investigation.
- Ensure that the methods employed by you are recorded. Full and contemporaneous notes (where applicable) should be taken and kept. These should be given to the Investigating Officer on completion of the work.
- Comply with the codes of conduct or practice of any professional body to which you belong.
- Inform the investigation at the outset of any criminal or disciplinary procedures (pending or past) against you by a professional or trade body of which you are a member. The details of any such actions or judgments should be supplied in writing to the investigation. The same information must be given to the Specialist Operations Centre if you are listed on the database.
- State the facts or assumptions on which your opinion is based. You should clearly discriminate between opinion based on experience and opinion based on research. The latter should be fully referenced.
- Inform the investigation without delay if you change your view on any relevant matter.
- Ensure that any information received during the course of the investigation is treated in confidence and is not disclosed or distributed to third parties without the prior written permission of the Investigating Officer. This includes photographs, plans, audio and visual information, artistic impressions and computer files.
- Ensure the integrity of the material in relation to the investigation, keeping it secure and confidential.
- Understand your responsibility to assist the Investigating Officer to comply with the Criminal Procedure and Investigations Act 1996 (CPIA) throughout your involvement in the investigation.

4

Terms of Reference

You should be provided with Terms of Reference from the Investigating Officer before starting any work. The following should be stated in the Terms of Reference (TOR):

- What the investigation want to achieve by engaging your expertise and your specific task.
- The documents and material that will be given to you.
- You must ensure that the resources required to carry out the work to an agreed standard and within designated timescales are available to you.
- Consideration must be given to providing a detail of costs to include timescales.
- That you should keep a record of the work you have carried out (including the nature of the work and the time and date the work was carried out).
- That the methods employed by you should be recorded. Full and contemporaneous notes (where applicable) should be taken and kept. These should be given to the Investigating Officer on completion of the work.
- That payment is dependent on the services or products being delivered to an agreed level and within the timeframe.
- Should you consult any expert regarding the assignment, prior agreement must be obtained from the Investigating Officer and the name of the individual (including their expertise and qualifications) should also be given.
- That you will inform the Investigating Officer as soon as possible of any possible or real changes to the timescales or likely cost of the work.
- That you will inform the Investigating Officer at the earliest opportunity if your opinion on the matter in question has changed and the reason for the change.
- That you will disclose to the Investigating Officer any personal, financial or other significant circumstances (including actual or potential conflicts of interest) that might influence your professional objectivity.
- That you understand that you will have to justify the results of the findings to the Investigating Officer and/or the court (if applicable).
- That if any part of the assignment is to be undertaken by other parties, prior agreement must be obtained from the Investigating Officer and the name of the individual to be engaged (including their experience and qualifications) should also be given.
- A cancellation clause in the event that the commissioned work becomes unnecessary.
- That you agree, if necessary, to attend court.
- The precise costs to be awarded to you if the case goes to court.

5

Contractual Arrangements

A legally binding contract should be used each time you are employed by an Investigating Officer. Any areas of ambiguity or concern and all terms must be clearly defined and agreed before you sign the contract. You should take legal advice before agreeing to the contract.

The contract should state:

- The service and any product(s) you will be providing.
- That the information you receive during the course of the investigation will be treated in confidence and will never be disclosed or distributed to third parties without the written consent of the Investigating Officer.
- That you have an obligation to assist the Investigating Officer to comply with the Criminal Procedure and Investigations Act 1996 (CPIA) throughout your involvement in the investigation, as per Section 6.

6

Disclosure Obligations

You must understand the obligations placed on you as an EA. These obligations assist the Investigating Officer to comply fully with their statutory disclosure obligations and take precedence over any internal codes of practice or other standards set by any professional organisations to which you may belong. Your obligations can be summarised by the key actions of record, retain and reveal. These key actions apply to all the work you have carried out, and any findings you make in relation to the investigation regardless of a positive, negative or neutral outcome. You should see the Investigating Officer as a source of advice in this respect.

6.1 Record

Begin by making records as soon as you receive instructions from the Investigating Officer. This should continue throughout the time you are involved in the investigation. The medium you use for making your records is not critical as long as it is durable and provides an accessible means of retrieval. You should sign and date your notes. Wherever possible, you should make the notes contemporaneously. They should be sufficiently detailed so that another expert in the same field can follow the nature of your work undertaken and any inferences you may have made. Your notes should be structured so as to facilitate review. Any updates, alterations or comments should be made clear. All records should (as a minimum) contain details of:

- The collection and movement of material – recording the date you take or receive it and the date of its subsequent movement to another party;
- Communications – recording telephone conversations and details of all meetings you attend. Points of discussion and the agreements reached must be recorded. You should keep all emails (or copies) and other electronic transmissions e.g. images (or copies) that you send or receive.

Certain circumstances will mean that you may need to start making records, in accordance with this document, without instruction from an Investigating Officer. These circumstances may include:

- Where a fire scene examiner believes a fire has been started deliberately;
- A medical practitioner believes injuries have been caused deliberately;
- A pathologist believes that the cause of death has not been satisfactorily explained.

Material is defined by the Criminal Procedure and Investigations Act 1996 (s23(1)) as 'material of any kind, including information and objects, which is obtained in the course of a criminal investigation and which may be relevant to the investigation. This includes not only material coming into the possession of the investigator (such as documents seized in the course of searching premises) but also material generated by him (such as interview records)'.

6.2 Retain

Retain everything you receive or produce as part of the investigation and ensure that it is stored in secure facilities that are capable of maintaining the integrity of the material. The Investigating Officer will be able to advise on the most suitable method. You should return the material to the Investigating Officer to store, where practical, during your involvement in the investigation, and at the end of the investigation.

6.3 Reveal

Reveal everything you have recorded to the Investigating Officer. Make the Investigating Officer aware of all the material you have in your possession. This will enable them to make informed decisions on the basis of your revelation. You should not disclose any of the material provided or produced as part of the investigation to any party without the written consent of the Investigating Officer or that of the CPS.



Secure Exchange of Data

Police officers/staff using the services of an external EA may have to send and receive sensitive and possibly restricted data via secure post and the PNN/Non PNN secure/non secure network(s) electronically. Equally EA's working with police are likely to receive and send such data.

Police officers should comply with force policy regarding the sending of sensitive or restricted data.

EA's should familiarise themselves and comply with the transfer guidance protocols below. These protocols are taken from ***NPIA (2009) Guidance for the Physical and Electronic Transfer of Protectively Marked Information***.

¹***Hannigan (2008) Data Handling Procedures in Government: Final Report*** recommends sending and receiving personal and RESTRICTED data securely both electronically and physically.

7.1 Media Types

Electronic Transfer - emails:

Non-PNN Users

- Any attachments sent via email to a non-pnn user should be encrypted using the encryption software contained within WINZIP (VERS 9 or above) AES 128 or 256 (the freely downloadable version of WinZip will not open encrypted files, therefore the recipient needs to have subscribed to a paid WinZip programme) with a 14 alphanumeric password sent separately, via a different medium (i.e. telephone/text) once the encrypted document has been received.

Technical Transfer - secure post:

Police, Police Staff, Medical & Forensic Experts/Staff

- To send all data using the encryption methods outlined above on a CD or DVD only and not USB stick. Password for Encrypted data to be sent separately via an alternative media (i.e. email, text or telephone).
- For secure transport send via Special Delivery (recorded delivery is not secure enough) in double bagged tamper proof envelopes.
- An audit of this process is required so all tracking is recorded on Remedy or a record produced within the case file.
- The person must show proof of identity and have the notification letter for receipt of this data.
- The recipient should call the sender to obtain the password separately; this provides a form of acknowledgement of receipt of the CD/DVD. This can also be sent via email or voicemail.

¹The Hannigan Report

http://www.cesg.gov.uk/products_services/iatp/documents/data_handling_review.pdf

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Court Proceedings

You may be called to give evidence in court. The Investigating Officer will be able to offer advice and guidance to you if necessary. Any information received during the course of the investigation should be treated in confidence and should not be disclosed to anyone outside the Prosecution Team (police and CPS) while the case is under judicial consideration.

Should you feel that you would benefit from formal training there are independent training providers in the field of expert witness court presentation.

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The Defence

Before the case reaches court your primary duty is to provide an impartial service to the police. Once the investigation reaches the court you may be asked to present your findings. Your responsibility at this stage is to the court. The Investigating Officer will be able to discuss your role in detail with you.

A copy of ***Disclosure: Experts' Evidence and Unused Material – Guidance Booklet for Experts*** can be found at

http://www.cps.gov.uk/legal/d_to_g/disclosure_manual/annex_k_disclosure_manual/

You may be directly approached by the defence but you should not speak to them without the permission of the Investigating Officer. It is also possible that you may be required to liaise with other experts e.g. defence experts, about your work.

10

Feedback

You and the Investigating Officer should take the opportunity to debrief each other so that lessons can be learned or good practice identified. If you were originally sourced from the Specialist Operations Centre both parties should feed back any relevant comments. SOC will actively seek feedback from the Investigating Officer by sending a feedback request form to the investigation at least 6 months after the enquiry is received within the Specialist Operations Centre.

Feedback is advantageous for both parties and for other investigators who may wish to engage with you in the future.

Any feedback received will form part of a 360 degree process, as such you will receive the completed feedback form following receipt from an investigation.

