



ASSOCIATION OF  
CHIEF POLICE OFFICERS



HM Courts  
& Tribunals  
Service

**A PROTOCOL BETWEEN THE  
ASSOCIATION OF CHIEF POLICE  
OFFICERS, THE CROWN  
PROSECUTION SERVICE AND  
HER MAJESTY'S COURTS &  
TRIBUNALS SERVICE TO  
EXPEDITE CASES INVOLVING  
WITNESSES UNDER 10 YEARS**

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## **1. SECTION 1 - Introduction**

- 1.1 Children can find the experience of giving evidence a frightening and daunting one. Very young children are also liable to forget the details of their evidence over a relatively short period of time.
- 1.2 Section 16 of the Youth Justice and Criminal Evidence Act 1999 recognises children's vulnerability and automatically classifies child witnesses as being eligible for Special Measures. However, despite the use of these measures, the judicial process can still be too slow to afford very young witnesses the opportunity of providing their best evidence.

## **2. SECTION 2 - Purpose**

- 2.1 The CJS agencies are committed to supporting witnesses throughout the Criminal Justice process, and particularly when they attend court and give evidence. This protocol details the working arrangements between the police, the CPS and HMCTS to expedite cases involving very young witnesses to:
  - a) maximise the opportunity for them to provide their best evidence
  - b) minimise the stress and emotional impact of the Criminal Justice process.
- 2.2 The parties recognise that, in certain cases, a considerable amount of time may be needed in order to build the necessary trust and rapport with very young witnesses to give them the confidence to engage with the Criminal Justice process. In all cases the interests of the child should be paramount and the arrangements outlined in this protocol should not override proper and appropriate victim and witness care; including management where appropriate to preclude the need for a child to give evidence at all.
- 2.3 In meeting the arrangements outlined in this protocol, there is not an expectation that agencies will incur additional costs to expedite cases, for instance by fast-tracking forensic submissions, unless the circumstances of the investigation make this appropriate.

## **3. SECTION 3 – Scope**

- 3.1 This Protocol only applies to cases charged on or after 1 April 2015 where:
  - a. A witness is under the age of 10 at the time the incident is reported to the police and
  - b. the witness under 10 has provided an evidential statement or ABE interview in relation to the incident, either in support of the prosecution or defence.
- 3.2 This protocol is not exclusive to offences falling under the National Crime Recording Standard and may apply in other criminal cases where a witness is under 10, for instance certain driving offences.
- 3.3 Section 28 of the Youth Justice and Criminal Evidence Act 1999 (Section 28), providing for the pre-trial cross examination of witnesses, is currently being piloted in 3 Crown Court areas. It is expected that cases eligible for the use of Section 28 in the pilot areas will follow the Section 28 procedures, subject to the usual assessment of the witness' needs and approval by the Court. The timescales set out in this protocol prior to the first hearing are the same as those being used for the Section 28 pilots.

#### **4. SECTION 4 – Investigation**

- 4.1 The police will consider from the outset of the investigation whether the case is one that falls under the scope of this protocol. The police will review this position as the investigation progresses and any further witnesses are identified.
- 4.2 When a criminal offence is reported to the police, the police supervisor signing off the initial report will endorse the case papers if the offence falls, or is likely to fall, within the scope of this protocol.
- 4.3 In all cases identified as falling under this protocol, the police supervisor overseeing the investigation will ensure that an action plan is produced detailing the actions necessary to expedite the investigation to a charging decision.
- 4.4 The police will be alert to any potential need for an intermediary to assist with communication with the witness and, where such a need is identified, ensure the engagement of a registered intermediary as early as possible in the investigation and prior to the witness being interviewed.<sup>1</sup>
- 4.5 In cases where there has been an unavoidable delay in the investigation, for instance where the suspect could not be located, the case should still continue to be considered as falling under this protocol, unless the delay is so substantial as to render any such fast-tracking inconsequential, for instance where the delay is in excess of 18 months.
- 4.6 In certain cases, the involvement of a witness under 10 may not be initially apparent. Such cases should still be managed under the provisions of this protocol from the point that they fall under the scope outlined in paragraph 3.1.

#### **5. SECTION 5 – Early Consultation**

- 5.1 Investigators should consider the need for early consultation with CPS in cases involving a witness under 10. Early consultation is a requirement for rape cases under the Director’s Guidance on Charging. A note of any advice given at this stage should be recorded by the Area Prosecutor.

#### **6. SECTION 6 – Charging**

- 6.1 When submitting a case for a charging decision, the police will ensure that the file has been confirmed as having reached the required standard by a supervisor. The file should comply with The Director’s Guidance on Charging.

[Director's Guidance on Charging](#)

- 6.2 The police will clearly identify on the MG3 and MG6 that the case is one which falls under the scope of this protocol.
- 6.3 The investigating officer will make the visually recorded interview and a written summary available to the prosecutor for the purposes of the charging decision. The prosecutor will watch the visually recorded interview prior to applying the Full Code Test or consider the summary when applying the

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<sup>1</sup> The Criminal Practice Directions 2014, paragraph 3F.5, <http://www.justice.gov.uk/courts/procedure-rules/criminal/docs/criminal-procedure-rules-and-criminal-practice-directions-complete-edition..pdf> states, ‘For children aged 11 years and under in particular, there should be a presumption that an intermediary assessment is appropriate.’ Where an intermediary assessment is not considered necessary the rationale should be recorded.

Threshold Test. The CPS will retain responsibility to produce the ROVI post charge as per current procedures.

- 6.4 The investigating officer will prepare a full and detailed MG2 in all cases, in order to ensure that any requirement for Special Measures receives early and informed consideration. The MG2 should include whether the witness would be likely to benefit from the use of Section 28, where available.
- 6.5 The CPS should ensure that every MG3 (charging advice) provided by a prosecutor, in accordance with this protocol, is provided within 7 days of receipt of the file and contains an Action Plan unless there is no additional or outstanding work required from the police. To ensure cases are managed efficiently, action dates will be agreed between the CPS and the police and recorded on the Action Plan. All Action Plans should include consideration for obtaining any material needed to support an application for Special Measures.
- 6.6 Once the CPS has received a response to their Action Plan from the police, they should provide any subsequent advice/actions within 7 days of receipt.
- 6.7 The prosecutor should record on the MG3 whether there is an intention to apply for the use of Section 28, where available.
- 6.8 The prosecutor should consider whether the case is one for which notification should be made under Section 51C of the Crime and Disorder Act 1998 for the case to be taken over and proceeded with without delay in the Crown Court.<sup>2</sup>
- 6.9 Where a Full Code Test is to be applied, the police and CPS should seek to ensure that the time period between first complaint and charge does not exceed eight weeks (or four weeks where a Threshold Test is applied). It is recognised that the nature and complexity of some investigations, for instance those involving significant electronic media analysis or 3<sup>rd</sup> party disclosure, may be such that they cannot be resolved within these timescales. The police and CPS should still endeavour to keep the time taken for such investigations to a minimum.

## **7. SECTION 7 – Disclosure**

- 7.1 The investigator, disclosure officer and prosecutor should be proactive in identifying and seeking access to relevant third party material. Access to third party material will be sought by the police prior to the decision to charge, wherever possible, and if the consent of a parent or guardian is required, this consent will be sought in a sensitive manner, having regard to the nature of the material in question. From 1 January 2014, a protocol on the handling of third party material in child sexual abuse cases came into force.<sup>3</sup>

### [Third Party Protocol](#)

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<sup>2</sup> Section 51C(1) Crime and Disorder Act 1998 states, that a notice may be given by the Director of Public Prosecutions under this section in respect of an offence falling within subsection (3) (which includes all assaults, or threats of assaults, sexual offences, kidnapping and child abduction offences) where an under 17 will be called as a witness and 'for the purpose of avoiding any prejudice to the welfare of the child, the case should be taken over and proceeded with without delay by the Crown Court.'

<sup>3</sup> 2013 Protocol and Good Practice Model: Disclosure of Information in cases of alleged child abuse and linked criminal and care directions hearings, October 2013.

## **8. SECTION 8 – Case Preparation and Review**

- 8.1 When a defendant is charged, the officer in the case will, unless a remand in custody is being sought, request that the custody officer bail the defendant to appear at the Magistrates' Court on a date within 7 days of the date of charge. If the case is one that requires it to be heard by a District Judge at the first hearing the case should be bailed to an available hearing as close as possible to the 7 day period.
- 8.2 Where a defendant is summonsed or requisitioned to attend court the hearing date will be chosen to minimise any delay in proceedings, bearing in mind the need to allow at least 14 days for postal notification of the hearing date.
- 8.3 Thereafter, the officer in the case will ensure that a file which accords with [The National File Standard](#) is provided to the CPS as soon as possible and, in any event, no later than 48 hours before the first hearing at the Magistrates' Court in bail cases. The file shall include four copies of each video recorded interview with a victim or witness; one of which will be provided to the Defence with the Initial Details of the Prosecution Case (IDPC) and another will be provided to the Crown Court in advance of the preliminary hearing.<sup>4</sup>
- 8.4 Where a registered intermediary has been involved at the investigation stage of the case, the police will notify the intermediary of the date by when their court report will be required, having regard to the timescales set out in this protocol. That notification and any response from the intermediary will be appended to the MG2.
- 8.5 Within 3 weeks of the initial hearing in the Magistrates' Court, the police will provide the CPS with an Upgrade File, irrespective of whether the defendant is on bail or in custody. The CPS will serve its case within 35 days of the initial hearing.
- 8.6 If an application for the use of Section 28 is made and agreed by the court, the case will be managed under the agreed working arrangements for that process and will cease to fall under the arrangements detailed in this protocol.

## **9. SECTION 9 – MAGISTRATES' AND YOUTH COURTS**

### **First Hearing**

- 9.1 Where possible the case record/file should be marked to highlight to the court that it is a case to which this protocol applies and, in all cases, the prosecutor should confirm that the court is aware that the matter is a protocol case.
- 9.2 It is expected that progress will be made at the first hearing. Applications for adjournments prior to plea/sending should be the exception and only granted where it is in the interests of justice to do so.

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<sup>4</sup> Unrepresented defendants should not be provided with a copy of any ABE interview. This follows the *Achieving Best Evidence in Criminal Proceedings Guidance 2011*; p223, which states, 'No persons accused or implicated in the alleged offences should have custody of, or unsupervised access to, any recording made in connection with the investigation.'

9.3 All trials for protocol cases should be given a category status of “High” to ensure the trial will take priority on the day.

9.4 If the case is sent to the Crown Court for trial (for example, if sent under s.51, s.51A, s.51C of the Crime and Disorder Act 1998) the Magistrates’ Court shall inform the Crown Court that the case is one to which the protocol applies. The Magistrates’ Court should also set a date for the preliminary hearing.

#### **Cases Proceeding in the Magistrates’ Court**

9.5 Where a not guilty plea (NG) plea is to be entered, unless exceptional circumstances apply, the following procedure should be followed:

- A plea should be entered on first appearance (or at the first available hearing following any adjournment);
- A provisional trial date should be set no more than 8 weeks from date of plea;
- The Court should consider whether or not it is necessary to list a case management hearing (CMH) and/or a ground rules hearing. If such a hearing is necessary this should be listed on a date deemed appropriate by the court but not later than 14 days prior to the trial date;
- The Court, together with the parties, should case manage the case as fully as possible ensuring that the case management form is completed and timetabling agreed;
- Standard time limits for matters such as hearsay evidence, expert evidence and defence statements should apply unless the Court directs otherwise;
- The Court should deal with any applications, e.g. Special Measures or bad character, at the first appearance wherever possible. If not possible, the standard time limits for applications under the Criminal Procedure Rules shall apply unless the Court varies those time limits.

## **10. SECTION 10 - CROWN COURT**

10.1 Upon receipt of a case falling within this protocol the file must be referred to the List Officer and/or Judge.

10.2 The Preliminary Hearing should take place within 14 days of sending and, if proceeding to trial, a plea should be taken (defendant to be arraigned) wherever possible. The Court and parties should have regard to the time limits set out in rule 39.1 of the Criminal Procedure Rules.

10.3 If the matter is to proceed to trial, unless exceptional circumstances apply, the following procedure should be followed:

- A provisional trial date should be set no more than 8 weeks from the date of plea;
  - The Court, together with the parties, shall case manage the case as fully as possible ensuring that the case management form is completed and timetabling agreed;
  - Standard time limits for matters such as hearsay evidence, expert evidence and defence statements should apply unless the Court directs otherwise;
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- The Court should consider whether or not a ground rules hearing is necessary. If such a hearing is necessary the procedure set out in the Section 28 judicial protocol shall apply.<sup>5</sup>

Signed:

Date: 19/01/2015



Print Name: Gareth Cann, Assistant Chief Constable,  
National Policing Lead for Victims & Witnesses

For and on behalf of the  
**Association of Chief Police Officers**

Signed:

Date: 19/01/2015



Print Name: Alison Saunders, Director of Public Prosecutions

For and on behalf of the  
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Signed:

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<sup>5</sup> See the, *Judicial Protocol on the implementation of section 28 of the Youth Justice and Criminal Evidence Act 1999: 'Pre-recording of cross-examination and re-examination'*, September 2014, pp.7-8.