

# POST OFFICE TRAINING EVENT

Thursday 10<sup>th</sup> July 2014.



**Topics:**

**Preparing for Interview and Significant Statements**

**Special Warnings.**

**Stacked Cases Update including Abuse of Process Considerations.**

**Witness Statements.**

**CartwrightKing**  
S O L I C I T O R S

Cartwright King Solicitors

The McLaren Building

46 The Priory

Queensway,

Birmingham

B4 7LR.



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### PREPARING FOR THE INTERVIEW



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An "interview" is defined as the 'questioning of a person regarding his involvement or suspected involvement in a criminal offence or offences which, under paragraph 10.1, must be carried out under caution.'

The Police often use the PEACE model of interviewing.

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#### Planning and Preparation

- Why is the interview necessary?
- What are the objectives?
- What is known about the suspect?
- What evidence is available?
- What needs to be proved?



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#### CONSIDER WHAT THE SUSPECT MIGHT DO:

- Answer questions
- Maintain silence/answer no comment
- Prepared statement (usually followed by no comment)

If a prepared statement is read out, suspend interview and take time to consider it.

How does the prepared statement affect your planning?

Has the suspect suggested that there was a problem with Horizon?

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#### Engage and Explain

- Establish relationship with the suspect
- Explain the purpose of the interview
- Set out ground rules.

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➤ If suspect is answering no comment, explain that you still have to ask your questions and give him/her the opportunity to answer them.

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#### Account, Clarification and Challenge

- Seek account
- Clarify
- Challenge any part of the account which conflicts with the evidence obtained.

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- If the suspect asserts in the prepared statement that there were problems with the Horizon system, ask him/her about those problems.
- If the suspect will not answer specific questions, remind him/her that the interview is their opportunity to put forwards their account.
- Explain that without his/her cooperation Post Office cannot properly investigate the issues which he/she has raised.

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Closure

- Consider whether the interview has covered all of the relevant issues
- Summarise the interviewee's account
- Explain what is going to happen next.

Evaluation

- Consider what information has been obtained
- Compare it with other information received and what has to be proved
- Consider what further action is to be taken.

It is important to put all relevant questions to a suspect even if they are not answering questions in order to try to ensure that adverse inferences may be drawn at trial.



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HOW SHOULD YOU DEAL  
WITH SIGNIFICANT  
STATEMENTS?

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As noted above, an "interview" is defined as the 'questioning of a person regarding his involvement or suspected involvement in a criminal offence or offences which, under paragraph 10.1, must be carried out under caution.'

- A spontaneous statement made by a suspect cannot amount to an interview.
- However if questions are then put as a result of such a statement, what follows will plainly be an interview.
- One question alone may be an interview.

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➤ A written record should be made of any comments made by the suspect, including unsolicited comments, which are outside the context of an interview but which might be relevant to the offence.

➤ Any record must be timed and signed by the maker.

➤ When practicable the suspect shall be given the opportunity to read that record and to sign it as correct or to indicate how they consider it to be inaccurate.

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When a suspect agrees to read the record and sign it as correct, they should be asked to endorse the record with, e.g. 'I agree that this is a correct record of what was said' and add their signature.

If the suspect does not agree with the record, the details of any disagreement should be recorded and the suspect should be asked to read the details and sign them to the effect that they accurately reflect their disagreement.

Any refusal to sign should also be recorded.

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➤ Any spontaneous remarks should be put to the suspect at the commencement of the formal interview.

The interviewer, after cautioning the suspect, should read out any significant statement and ask the suspect whether they confirm or deny that earlier statement or silence and if they want to add anything.

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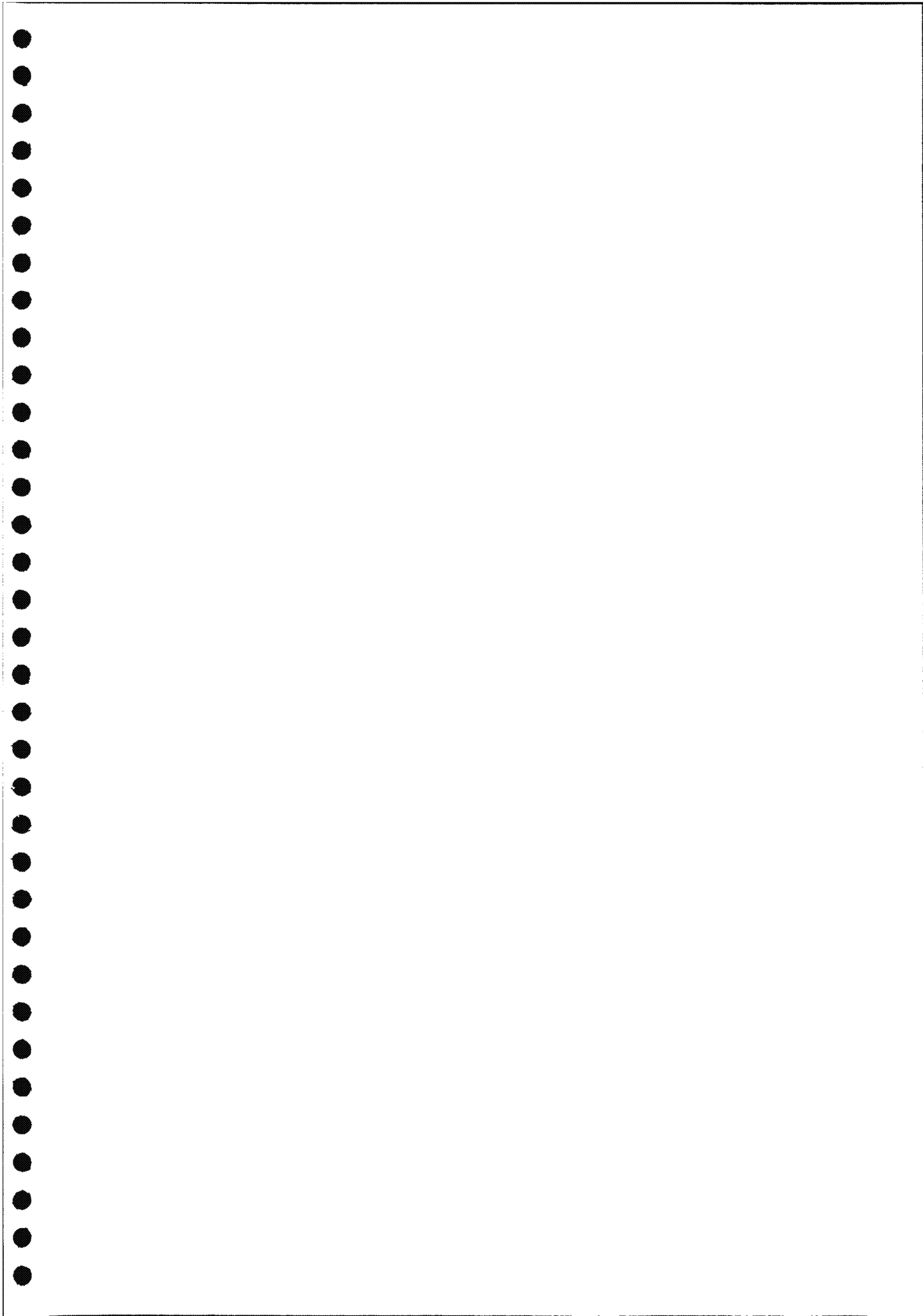
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Special Warnings.

**Criminal Justice and Public Order Act 1994, Sections 36 and 37.**

36      Effect of accused's failure or refusal to account for objects, substances or marks.

(1)      Where—

- (a)      a person is arrested by a constable, and there is—
    - (i) on his person; or
    - (ii) in or on his clothing or footwear; or
    - (iii) otherwise in his possession; or
    - (iv) in any place in which he is at the time of his arrest,any object, substance or mark, or there is any mark on any such object; and
  - (b)      that or another constable investigating the case reasonably believes that the presence of the object, substance or mark may be attributable to the participation of the person arrested in the commission of an offence specified by the constable; and
  - (c)      the constable informs the person arrested that he so believes, and requests him to account for the presence of the object, substance or mark; and
  - (d)      the person fails or refuses to do so,
- then if, in any proceedings against the person for the offence so specified, evidence of those matters is given, subsection (2) below applies.

(2)      Where this subsection applies—

...

- (c)      the court, in determining whether there is a case to answer; and
- (d)      the court or jury, in determining whether the accused is guilty of the offence charged,

may draw such inferences from the failure or refusal as appear proper.

...

- (5)      This section applies in relation to officers of customs and excise as it applies in relation to constables.
- (6)      This section does not preclude the drawing of any inference from a failure or refusal of the accused to account for the presence of an object, substance or mark or from the condition of clothing or footwear which could properly be drawn apart from this section.



37 Effect of accused's failure or refusal to account for presence at a particular place.

(1) Where

- (a) a person arrested by a constable was found by him at a place at or about the time the offence for which he was arrested is alleged to have been committed; and
  - (b) that or another constable investigating the offence reasonably believes that the presence of the person at that place and at that time may be attributable to his participation in the commission of the offence; and
  - (c) the constable informs the person that he so believes, and requests him to account for that presence; and
  - (d) the person fails or refuses to do so,
- then if, in any proceedings against the person for the offence, evidence of those matters is given, subsection (2) below applies.

(2) Where this subsection applies—

...

- (c) the court, in determining whether there is a case to answer;  
and
- (d) the court or jury, in determining whether the accused is guilty of the offence charged,  
may draw such inferences from the failure or refusal as appear proper.

...

(4) This section applies in relation to officers of customs and excise as it applies in relation to constables.

(5) This section does not preclude the drawing of any inference from a failure or refusal of the accused to account for his presence at a place which could properly be drawn apart from this section.

...



Neither Section 36 nor Section 37 of the CJPOA 1994 permits an inference to be drawn unless four conditions are satisfied:

- (a) The accused is arrested;
- (b) A constable reasonably believes that the object, substance or mark, or the presence of the accused at the relevant place, may be attributable to the accused's participation in a crime (in S36 an offence 'specified by the constable'; in S37 the offence for which he was arrested);
- (c) The constable informs the accused of his belief and requests an explanation of the matter in question;
- (d) The constable tells the suspect in ordinary language the effect of a failure or refusal to comply with the request.

Sections 36 and 37 are restrictively drawn:-

- Section 36 is concerned with the state of the suspect at the time of his arrest, and not with his state at other relevant times.
- Section 37 is concerned only with the suspect's location at the time of arrest, and applies only when he was found at the location of the crime at or about the relevant time

The Special Warnings to be given in interview in connection with Sections 36 and 37 are dealt with in PACE Code C, paras 10.10 and 10.11.



### PACE Code C

10.10 When a suspect interviewed at a police station or authorised place of detention after arrest fails or refuses to answer certain questions, or to answer satisfactorily, after due warning, see *Note 10F*, a court or jury may draw such inferences as appear proper under the Criminal Justice and Public Order Act 1994, sections 36 and 37. Such inferences may only be drawn when:

(a) the restriction on drawing adverse inferences from silence, see *Annex C*, does not apply;

(b) the suspect is arrested by a constable and fails or refuses to account for any objects, marks or substances, or marks on such objects found:

- on their person;
- in or on their clothing or footwear;
- otherwise in their possession; or
- in the place they were arrested;

(c) the arrested suspect was found by a constable at a place at or about the time the offence for which that officer has arrested them is alleged to have been committed, and the suspect fails or refuses to account for their presence there.

When the restriction on drawing adverse inferences from silence applies, the suspect may still be asked to account for any of the matters in (b) or (c) but the special warning described in *paragraph 10.11* will not apply and must not be given.

10.11 For an inference to be drawn when a suspect fails or refuses to answer a question about one of these matters or to answer it satisfactorily, the suspect must first be told in ordinary language:

- (a) what offence is being investigated;
- (b) what fact they are being asked to account for;
- (c) this fact may be due to them taking part in the commission of the offence;
- (d) a court may draw a proper inference if they fail or refuse to account for this fact; and
- (e) a record is being made of the interview and it may be given in evidence if they are brought to trial.





**Note 10F**

**The Criminal Justice and Public Order Act 1994, Sections 36 and 37 apply only to suspects who have been arrested by a constable or an officer of Revenue and Customs and are given the relevant warning by the police or Revenue and Customs officer who made the arrest or who is investigating the offence. They do not apply to any interviews with suspects who have not been arrested.**



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## STACKED CASES

### UPDATE

The purpose of the Review was to consider whether the defence, in any individual case, might seek a stay of the proceedings as an Abuse of the Process of the Court by reason of delay and, if such an application is made, the prospects for success.

#### **Abuse of Process – General Principles**

1. The court will stay (*i.e.* bring to an end) any proceedings where it considers that the continued prosecution of a defendant is so unfair such that it amounts to an abuse of the court's process.
2. In the context of POL cases, the unfairness likely to be complained of would be what the defence would assert was an excessive delay in bringing the matter to trial.
3. Thus for our purposes the term Abuse of Process is something of a misnomer, for the real issue is not whether the prosecution has misused the court's process, but whether the defendant may have a fair trial notwithstanding the delay complained of.
4. The jurisdiction to stay proceedings as an Abuse of Process may arise in two categories of case:
  - i. where it will be impossible for the defendant to have a fair trial, and
  - ii. where a stay is necessary in order to protect the integrity of the criminal justice system.
5. In general, we are concerned with the first of those two categories,



although to a limited extent there may be some overlap with the second.

6. Article 6 of the European Convention on Human Rights requires that a defendant be tried "...within a reasonable time..."
7. It does not follow that a breach of the right to a trial within a reasonable time will always result in a stay being granted. Delay will only justify a stay if either a fair trial is no longer possible, or if it would be unfair to try the defendant for some other compelling reason.
8. The higher courts have held that cases where it might be unfair to try a defendant would include cases where the delay was of such an order as to make it unfair that the proceedings should continue. Those cases however will be very exceptional.
9. A stay will never be granted where the defendant is unable to point to some tangible and real prejudice caused by the delay.
10. Even a very long delay will not necessarily justify a stay: in one well-known case the Court of Appeal and (on further appeal) the European Court of Human Rights held that a delay of 56 years had not rendered a fair trial impossible.
11. It is also relevant to note that the Court of Appeal has taken the firm view that delay in bringing complex fraud allegations to trial should not, save in very exceptional circumstances, result in a stay of proceedings, particularly where the only or main evidence comprises of contemporary documents.
12. Delay due merely to the complexity of a case should never be the foundation of a stay and a distinction is to be drawn between cases which turn largely on documentation and those which do not. This aspect of the jurisprudence is of particular interest in the context of POL prosecutions,





13. Where a defendant seeks a stay because of some delay, the court is required to consider a number of principles:

- i. even where delay is unjustifiable, or is the fault of the prosecutor, a permanent stay should be the exception rather than the rule.
- ii. where there is no fault on the part of the prosecution, it will be very rare for a stay to be granted.
- iii. no stay should be granted in the absence of some serious prejudice to the defence so that a fair trial is impossible. Serious prejudice may involve the unavailability of defence evidence and/or witnesses and in this context the loss must be real as opposed to speculative or fanciful.
- iv. the purpose of the trial process is, *inter alia*, to ensure that all relevant factual issues are before the jury, including any reasons for the delay and that, where that approach is adopted the process will usually result in a fair trial.
- v. If, having considered all of the above factors the judge finds that a fair trial will be possible, a stay should not be granted.

**Other Issues Which Can Lead to an Abuse of Process Argument.**

14. Non Availability of evidence e.g. loss of CCTV or other documents that would have assisted the defence.

15. Overriding of client privilege e.g. listening into the conference between a solicitor and his client.



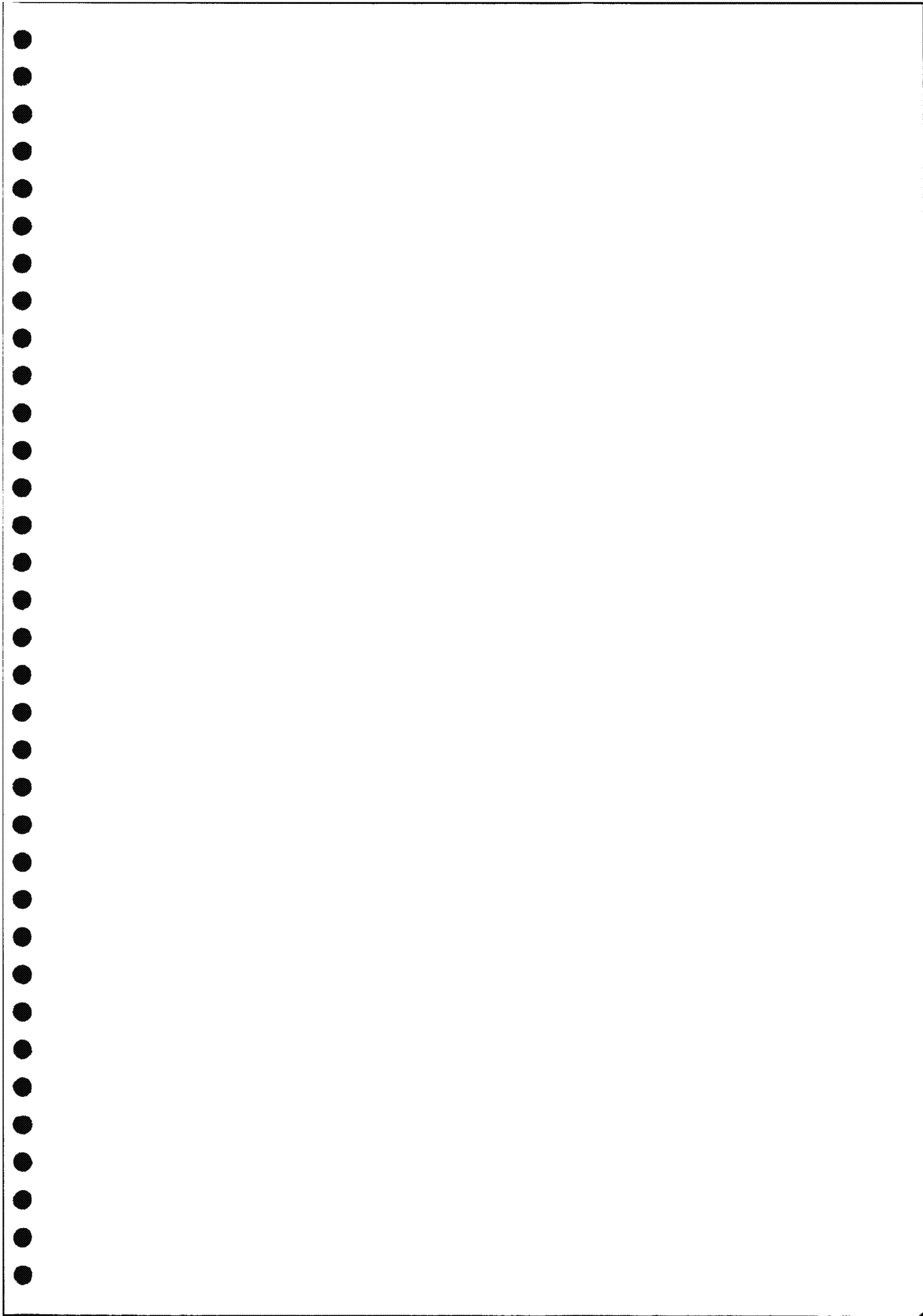
16. Breach of promise where the Crown goes back on a decision not to prosecute. *R v Croydon Justices ex p Dean* Lord Justice Staughton stated that, "the prosecution of a person who has received a promise, undertaking or representation from police that he will not be prosecuted is capable of being an abuse of process." – does not apply when there is fresh material
17. Disclosure - Fair disclosure of information to an accused, by the prosecution, is 'an inseparable part of a fair trial', under article 6 ECHR. A failure on the part of the prosecution to make proper disclosure may result, in appropriate circumstances, in proceedings being stayed as an abuse of process.
18. Entrapment - There is a judicial discretion to stay proceedings where an offence has been incited by another.
19. Unfair Conduct, abuse of executive power - The leading case in this area is *R v Horseferry Road Magistrates' Court, ex p Bennett* Lord Lowry observed: "I consider that a court has a discretion to stay any criminal proceedings on the grounds that to try those proceedings will amount to an abuse of its own process either (1) because it will be impossible (usually by reason of delay) to give the accused a fair trial or (2) because it offends the court's sense of justice and propriety to be asked to try the accused in the circumstances of a particular case."
20. Adverse publicity - Media-generated notoriety can prejudice an accused and this may lead to a jury being discharged, an indictment being stayed or a conviction being quashed because of adverse publicity. Such adverse media coverage may also give rise to a breach of the right to a fair trial under article 6(1) of the ECHR and lead to contempt of court proceedings against the offending publisher.



**Practical Considerations.**

- Do not discuss with a suspect the reasons for a perceived delay in an investigation.
- Do not agree that a delay is unjustified.
- Do not hold out promises that a prosecution might not proceed
- Preserve all evidence both used and unused
- Do not encourage a suspect to commit an offence or encourage another to do so.









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## Witness Statements



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## When to Take the Statement

- The passage of time often results in witnesses forgetting crucial details.
- Statements should therefore be obtained from key witnesses at the earliest opportunity.
- This ensures the evidential integrity and content of the statement.

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## Considerations

- A written statement is the "shop window" of an officers work and so their professionalism is on display.
- Witnesses, magistrates, judges, solicitors and supervisors form their opinion of an officer's credibility and that of Post Office Ltd on the quality of such statements.

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### The Rules

- A separate statement will be required for each witness.
- Statements from one witness should not be taken in the presence of another.
- If a witness asks to write his/her own statement, this should be allowed but should not generally be encouraged.

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- Avoid using leading questions.
- Record statements in an active style, for example 'I posted the letter' rather than 'The letter was posted.'
- Consider using how, what, when, why and who questions.

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- If further statements are taken from a witness, these should be separate documents and not additions to existing statements.
- Such additional statements should begin 'Further to my previous statement(s)...
- All statements should be retained as either used or unused material.

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- Investigating Officers need to consider the offence or the incident and the elements that will be required to establish or prove the offence.

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- Find a suitable place to talk to the witness.
- Put them at ease and fully discuss the incident before embarking on the statement.
- Officers should be satisfied the witness has told them all they know, before a statement is commenced.
- Utilise cognitive interviewing skills.

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- If a witness has any special needs in relation to the giving of evidence in court, such as requiring an interpreter or they have learning difficulties, make a separate record.
- Do not detail the requirement in the statement.

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- A statement should be in chronological order, it should make sense and should be accurate.
- In general terms the statement should provide a word picture of the events as they occurred.

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- Any notes 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.
- You must seek the whole truth and not just those parts that support your case.

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- Never encourage a witness to make a statement on the pretext that they will not be called to give evidence in criminal proceedings
- Do not allow the witness to exaggerate.
- If it is suspected a witness is exaggerating, remind them of their obligation and that what they say in their statement is what they will be expected to say at court whilst under oath.

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### Content.

- A statement should identify the witness and provide details of status, occupation, position held, relationships etc.
- The statement should be in the first person and the speech should be direct.
- Do not reveal the home address of the witness in the body of the statement unless it is relevant to the offence.

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- If possible, each separate event in the statement should be enclosed in a separate paragraph.
- It is advisable that the content of each paragraph is checked with the witness as it is written.
- It is important that the witness views the statement as his, and not the officers version of the events.

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- Jargon or slang should be avoided.
- Abusive language should not be used unless it is in direct speech.
- It is important that the witnesses words or phrases are used.
- SURNAMES and PLACENAMES should be in BLOCK CAPITALS.

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- Exhibits produced in a statement should be given a unique reference number and an exhibit label signed at the time.
- The unique reference number should be recorded in the statement.
- Whenever practicable each item should be given a separate reference number.

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### Concluding the Statement

- When the full text has been written, the witness should be asked to read it and initial any alterations.
- Any words to be ignored should be struck through with single line.

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- Any insertions should not be written between the lines or in the margins.
- Place a letter at the point of the insertion e.g. 'a' at the point of the first insertion and so on.
- Add the text of the insertion to the end of the statement, before the signature. The text should be marked with the letter of the insertion.

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- When the content 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 CIA certificate on the first page should be read and if necessary explained to the witness.
- The witness should then be invited to read and sign the CIA declaration.
- Any blank space at the end of the statement should be struck through and initialled by the Officer taking the statement.

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- If the statement is made by a witness who cannot read it, the officer taking it must read it over to the witness before it is signed and then add at the end of the statement:
- 'The witness being unable to read the above statement, I ..... (name and position) of ..... (POL, department) read it to him/her before he/she signed it. Dated the .....day of..... 20... Signed.....'

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