

Royal Mail Group

Royal Mail Internal Information
Investigation Team

Appendix 1 to 5.4 Rules and Continuity of Evidence

Version 6 Final

May 2018

Review Date: May 2020

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Key Accountabilities

Who is accountable?	What do I have to do?	When do I have to do this?	How do I do this?
All members of Royal Mail Group Security	Ensure you comply with these procedures	Ongoing	As detailed within these procedures

Rules and Continuity of Evidence

1. Introduction

- 1.1 For the Investigator **obtaining information, gathering evidence and seeking the truth** are the primary goals. The word **evidence** is used to describe the means by which a point of issue may be proved, or disproved, in a manner complying with the legal rules governing the subject; these rules are known as the "Rules of Evidence".
- 1.2 **Scotland and Northern Ireland.** This Appendix details the rules and types of evidence in England and Wales. The principles should be treated as good practice in Scotland and Northern Ireland. References to advice from the Criminal Law Team (CLT) should be directed to the Procurator Fiscal in Scotland and the Public Prosecution Service in Northern Ireland.

2. Competence and Compellability of Witnesses

- 2.1 A witness is **competent** if he/she can lawfully give evidence. The principle is set out in Section 53 of the Youth Justice and Criminal Evidence Act 1999. There are two exceptions;
 - 2.1.1 Where it appears to the court that a person is not able to understand questions put to them as a witness and give answers to them which can be understood,
 - 2.1.2 A person charged in criminal proceedings is not competent to give evidence for the prosecution.At a trial, the Judge or the Magistrate(s) will decide if a witness is competent. Most witnesses who are competent can be **compelled** to give evidence. The only exception relates to spouses or civil partners.
- 2.2 **Spouses or Civil Partners** can only be **compelled** to give evidence for the prosecution against their partner in cases which involve sexual or violent offences. However, spouses or civil partners are generally **competent** to give evidence against their partners. That is to say if a spouse or civil partner is content to be a witness against their partner then they can be. The only exception to this is if the spouses or civil partners are jointly charged. If they are, neither is competent or compellable on behalf of the prosecution, against the other. Former spouses and civil partners are both competent and compellable.
- 2.3 **Children.** The test for competence applies to all witnesses; however, children under the age of fourteen years always give unsworn evidence. Children of any age can be called to give evidence. Their competence depends upon their understanding, not their age. The court will apply the following test;
 - 2.3.1 Is the child of sufficient intelligence to justify them giving evidence?
 - 2.3.2 Does the child understand the duty to tell the truth?
- 2.4 **Compelling Witness.** If it is thought that a witness will not attend court without being compelled then advice should be sought from the CLT as to whether their attendance is necessary. If so a witness summons can be obtained.

3. Hearsay Evidence

- 3.1 **Hearsay evidence** is evidence of something a person does not know for him or herself, but has been told by another. The admissibility of hearsay evidence is fairly complex and a matter for the Court and the CLT. In order to comply with the hearsay rules Investigators should always adhere to the principle of best evidence. This is to say, if practicable, Investigators should always go to the source of any evidence rather than relying on evidence of witnesses who had been told something by another party.
- 3.2 As an example, say an Investigator was taking a statement from a Delivery Office Manager (DOM); the DOM had been told by one of his managers that they had witnessed a postman sorting a large number of greeting cards to a particular selection on the sorting frame. As a result the DOM carried out a frame check and discovered a bundle of missorted greeting cards in an incorrect selection. The evidence from the DOM should be to the effect that as a result of a conversation with their manager they performed a frame check and discovered a missorted

bundle. A separate statement should be recorded from the manager detailing exactly what they saw. (Of course in a case where the source of the information does not want to be identified for fear of reprisal then Investigators must be careful to protect their identity in accordance with P&S 1.1 Informants and the Intelligence Source Register.)

3.3 If you are in doubt about the admissibility or necessity of potential hearsay evidence in your case you should seek advice from the CLT.

4. Bad Character Evidence

4.1 The Criminal Justice Act (CJA) 2003 introduced legislation in respect of the admissibility of bad character evidence. The legislation covers the bad character of both the **defendant** and **witnesses** in the case. Bad character evidence is defined as evidence of, or of a disposition towards, misconduct and does not just include previous convictions. Should any Investigator at any stage become aware of any evidence indicating a witness is of bad character they should seek advice from the CLT.

5. Other Types of Evidence

5.1 **Direct Evidence** is evidence that directly proves the facts in question at court. It is something that the witness themselves have knowledge of, something they have seen, heard, smelt, felt or touched. An example of this is producing an opened Test letter in court which proves that it exists. If the offender had the Test letter with him when he was apprehended a statement from an Investigator should prove that it was in the offender's possession at the time of the apprehension.

5.2 **Documentary Evidence** is in simple terms information or writing contained within a document. As well as actual documents, such as interview summaries, search records and signing on sheets, it also includes such things as master recordings, photographs, sketch plans etc.

5.3 **Circumstantial Evidence** is evidence, not of the fact in question but of other issues, from which the fact in question may be inferred. For instance, a delivery officer is handed a Test postal packet, which he/she is due to deliver and subsequently the Test postal packet cover is found, minus its contents, in a bin at the office. The recovery of the opened Test postal packet is direct evidence. The fact that it was found in a bin is circumstantial evidence as it infers that the delivery officer may have stolen the contents. For circumstantial evidence to be useful more than one circumstance should exist. The fact that no one else was in the delivery office at the time between the delivery officer being handed the test item and it being found in the bin would also be circumstantial evidence. In the case *R v Exall* (1866) Judge Pollock described circumstantial evidence as, "...a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion, but the whole, taken together, may create a strong conclusion of guilt..."

5.4 **Corroborative evidence** is that which tends to support the truth and accuracy of evidence already given. It is a general rule that a Courts' decision can be made on the evidence of one person. There are exceptions to this such as perjury and speeding which require corroboration to secure a conviction. Corroboration should be sought, if possible, during and after any investigation, as it will add extra weight to the existing evidence. In **Scotland** all evidence must be corroborated if at all possible.

5.5 **Opinion Evidence** is, as a general rule, only allowed in evidence from expert witnesses, for example a Doctor can detail someone's injuries; a handwriting expert can state that, in their considered opinion, similarities exist that would strongly suggest two documents were written by the same person. A **non-expert** can give opinion on such things that might well be interpreted as a fact, for example identification of a person or object, the speed of a moving vehicle, temperature, time, value of an item and whether a person is drunk (however, the witness is required to describe the facts upon which this opinion is based). It is important that opinion given by non-experts does not cover prejudicial evidence for example suggesting that a suspect has been spending a lot of money, without having supporting evidence.

5.6 Real Evidence or Exhibits are the actual objects, which are produced for examination of the court and jury. It is different to documentary evidence as documents pertain to the information contained within it. An exhibit is physical proof of the objects existence. The recovered letter detailed in 5.1 above is both direct evidence and real evidence.

6. Continuity of Evidence

- 6.1** When items of evidence are obtained they must be given an identification reference number, have an identification label attached to them or be placed into an identification bag.
- 6.2** Investigators must ensure that all items of evidence are retained in secure conditions, either individual secure storage accommodation such as a locker, or an Investigation Team secure storage area such as an exhibit room. If challenged Investigators must be able to prove the integrity of the system to prove continuity.
- 6.3** If it is necessary for an item of evidence to leave the secure accommodation it must be sent by Special Delivery or transferred by hand. A written record including, if relevant, the Special Delivery number must be maintained. The receiving Investigator must also maintain a written record of receipt and return of the item and a copy of the written record must be returned to the Investigator. The Investigator in the case must make a record to acknowledge the return of the item. The Special Delivery receipts should be retained until the case has been finalised.
- 6.4** Exhibit Book GS005A can be used to control exhibits in larger individual operations and can also be used by Investigators or teams as the written record of transfer of exhibits for all Investigations conducted by the Investigator or team. The same records could also be maintained on a computer database.
- 6.5** Rather than sending the original item of evidence to another part of the country for a witness to make a statement the Investigator should consider whether the witness could make a statement from a photocopy. If so the photocopy will become an item of evidence in its own right at the time the witness makes the statement. It is suggested that the photocopy be identified by adding a suffix to the Item reference, for example if the original item reference is ABC/1 then the photocopy can become ABC/1a.
- 6.6** Original items of evidence must not be enclosed in case files but good quality copies of the items should be. All items of evidence should be retained in accordance with the Criminal Procedure & Investigations Act 1996

Change Control

Status	Final
Version	6
Owner	Alan Bartholomew
Author	Michael F Matthews
Release Date	May 2018
Document Privacy	Internal

Authorisation

Title	Name	Signature	Date
Senior Intelligence Manager	Alan Bartholomew		May 2018

Distribution List

Name	Version	Date
All Royal Mail Security via Security Sharepoint	V1	November 2012
All Royal Mail Security via Security Sharepoint	V2	December 2013
All Royal Mail Security via Security Sharepoint	V3	December 2014
All Royal Mail Security via Security Sharepoint	V4	December 2015
All Royal Mail Security via Security Sharepoint	V5	June 2017
All Royal Mail Security via Security Sharepoint	V6	May 2018

Documentation History

Issue	V2	V3	V4	V5	V6
Status	Final	Final	Final	Final	Final
Release Date	Dec 13	Dec 14	Dec 15	Jun 17	May 18
Effective From	Dec 13	Dec 14	Dec 15	Jun 17	May 18

Document Change History

Version	Summary of Change	Input Received From
V1	Document Produced in RM Format	
V2	Annual Review undertaken. No significant changes	
V3	Annual Review undertaken. No significant changes	
V4	Annual Review undertaken. No significant changes	
V5	Annual Review undertaken. No significant changes	
V6	Annual Review undertaken. No significant changes	

Glossary

Abbreviation or Term	Meaning
CLT	Criminal Law Team
DOM	Delivery Office Manager
CJA 2003	Criminal Justice Act 2003

Document Summary

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