

# **CROWN OFFICE**



## **REPORTS TO THE PROCURATOR FISCAL A GUIDE FOR SPECIALIST REPORTING AGENCIES**

**SEVENTH EDITION**

**2006**



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A GUIDE FOR SPECIALIST REPORTING AGENCIES – SEVENTH EDITION**

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## **FOREWORD BY THE LORD ADVOCATE**

I am pleased to be able to provide you with the Crown Office publication ‘Reports to the Procurator Fiscal – a guide for specialist reporting agencies’.

Over fifty agencies other than the Police report cases to Procurators Fiscal each year. I am committed to ensuring that such reports are dealt with appropriately and effectively by Procurators Fiscal.

This requires understanding on the part of Procurators Fiscal of the relevant legislative provisions and appreciation of the role and functions of the reporting agencies. The other essential ingredient is that reporting agencies follow best practice in the investigation and reporting of cases to Procurators Fiscal and in preparation for the giving of evidence by their officers in court.

The department is committed to compliance with the Race Relations (Amendment) Act 2000 and this is incorporated within the guide. The guide provides detailed guidance and suggests best practice in areas such as language needs and cultural sensitivities of both accused and witnesses.

The Guide also takes account of changes following our departmental management review. The department consists of eleven areas that correspond with the police forces in Scotland. Details of Area and District Procurators Fiscal are contained in Appendix 1.

The aim of this publication is to provide advice for specialist reporting agencies which will enable them to contribute effectively to achieving an outcome in reported cases which best serves the public interest.

**COLIN D BOYD**

## **FOREWORD**

The purpose of this guide is twofold:

- 1) to assist specialist reporting agencies in knowing exactly what the Procurator Fiscal requires when a case is reported and to provide some indication of how trials are conducted in Scotland; and
- 2) to identify and to address common problems in reporting and in prosecuting such cases which more often than not involve employees or members of specialist reporting agencies.

The publication of the first edition of this guide to the submission of reports provided a working framework that assisted in achieving consistency and effectiveness in prosecutions. Previous editions of the guide have been received positively and we have now produced a further updated seventh edition.

This guide contains detailed guidance on matters relevant to the Race Relations (Amendment) Act 2000 including, in Appendix 3, Crown Office guidance on race related matters. The updated guide takes account of the changes recommended in the report which was prepared following our management review, as well as the reorganisation of the Crown Office and Procurator Fiscal Service from six regions, to eleven areas that correspond with the Scottish police forces. Contact details for these revised Area Offices are contained within the guide in Appendix 1.

It must be stressed that the information contained in this guide is not intended to be an absolute instruction. Each case should be considered on its own particular facts and circumstances. Moreover, for some specialist reporting agencies there may already have been agreed a form of report that best suits the reporting of cases in bulk.

The guide is intended for the reporting of cases that will in the view of the Procurator Fiscal be prosecuted in the public interest. Trivial matters need not be reported but may be dealt with pragmatically.

This paper seeks to describe the best practice for reporting cases to Procurators Fiscal although there may be local variations or differences from one agency to another. The best practice described is that in April 2006.

### **Constitutional Position**

Following devolution, the Crown Office and Procurator Fiscal Service is now a department of the Scottish Executive. The department is headed by the Lord Advocate, assisted by the Solicitor General for Scotland. Collectively they are known as the Scottish Law Officers and both are members of the Scottish Executive.

The Lord Advocate's position as the independent head of the system of prosecution of crime and investigation of deaths in Scotland is preserved by the terms of the Scotland Act 1998, specifically sections 29(2) and 48(5).

## 1. INTRODUCTION

1.1 Procurators Fiscal receive reports from the eight Scottish police forces and British Transport Police, Ministry of Defence Police and the United Kingdom Atomic Energy Constabulary, as well as over fifty specialist reporting agencies. These amount over a year to many thousands of reports. There are virtually no private prosecutions in Scotland. Procurators Fiscal prosecute in the public interest. A full list of addresses can be found at Appendix 1 to this paper.

1.2 As all police constables in Scotland attend at the Scottish Police College at Tulliallan in Fife their training results in early lessons in the uniform reporting of crimes. A common format of report has been devised and has been employed for many years.

1.3 The diverse nature of the subject matter of each of the specialist reporting agencies has resulted in a wide range of cases reported for consideration of proceedings. These reports are the working papers of Procurators Fiscal and the advantages of uniformity are obvious with so many different agencies involved.

1.4 Each specialist reporting agency is governed by its own primary legislation and of course that legislation must be seen in the context of (i) the professional training and approaches of the reporting agency; and (ii) the nature and requirements of the law of Scotland in relation to the prosecution of crime.

In general the approach of most agencies will be to secure compliance with the law by educating and offering advice in the first instance and enforcement of provisions by direct action may be the next step. Reporting cases to the Procurator Fiscal will be seen as a last resort.

The advice contained in this guide should be followed at all stages of the action by an agency in relation to a particular case, even at the stage of early advice and warnings given to a suspect. This is to ensure that, should these measures fail to secure compliance and a report to the Procurator Fiscal becomes necessary, it will be possible for the agency to rely upon properly maintained records of their actions and to report to the Procurator Fiscal a full picture of the steps taken by them short of reporting to the Procurator Fiscal, and the response or lack thereof by the suspect. The Procurator Fiscal may in due course wish to lead evidence of such matters. However this will only be possible if the evidence is available and admissible.

1.5 Further, each specialist reporting agency is usually closely governed by its own secondary legislation by way of statutory instruments, regulations or similar orders. These too must be seen in the context referred to above.

1.6 The provisions of the Human Rights Act 1998 and the incorporation of the Convention Rights in that Act both in terms of the Act itself and by reference to the Scotland Act 1998 must be borne in mind. Since 20 May 1999 the Lord Advocate and Procurators Fiscal have been required by the Scotland Act 1998 to ensure that they do not act incompatibly with any of the Convention Rights. This requirement extended to the

whole of the Scottish Executive as from 1 July 1999. All other public bodies including specialist reporting agencies not included in the Scottish Executive became subject to the requirement to act compatibly with Convention Rights with the coming into force of the Human Rights Act 1998 on 2 October 2000. All specialist reporting agencies are affected by this requirement. Even those agencies which are not public bodies subject to the Human Rights Act 1998 will be indirectly affected by the obligation on Procurators Fiscal not to act incompatibly with Convention rights. This is because Procurators Fiscal are under a duty to scrutinise all reports received by them which may form the basis of criminal proceedings. Procurators Fiscal must ascertain whether any evidence has been obtained in breach of any Convention Rights and whether, by seeking to rely on that evidence in taking proceedings, the Procurator Fiscal might breach the accused's Convention Rights. Specialist reporting agencies should take steps to make and keep staff aware of the implications of the incorporation of Convention Rights for the practice of each individual agency. This will minimise the possibility of any breach of Convention Rights arising from the investigation of any case ultimately reported to the Procurator Fiscal.

## 2. GENERAL LEGAL REQUIREMENTS

2.1 In any trial under Scots law, before a person can be convicted of a criminal offence there must be corroborated evidence to prove two essential facts:- firstly, that an offence was committed and secondly, that it was committed by the accused. The burden of proving these beyond a reasonable doubt is on the Crown.

Corroboration simply means evidence from at least two sources and can be in the form of eye-witnesses, admissions or surrounding facts and circumstances. Even if there are no eye-witnesses, there may well still be sufficient evidence e.g. one witness seeing an accused with an axe in his hand standing beside a freshly felled tree, plus one witness who hears the accused admit cutting it down would provide corroboration of the fact that the accused cut down the tree. Some Statutes contain a concession allowing a prosecution on the basis of one witness.

It should, however, be noted that the law of corroboration does not require that every piece of evidence has to be spoken to by two witnesses. The evidence of a single witness may still be relevant and significant to the case. In some cases the evidence of separate witnesses on different dates may be mutually corroborative if it relates to the same offence and accused. If there is only one witness to an admission, the evidence is still admissible, relevant and, probably, vital. If there is any doubt, the matter should be discussed with the Procurator Fiscal.

2.2 Each specialist reporting agency has its own legal problems in relation to its interests. For example, in cases under town and country planning legislation, the process of negotiation does not always easily square with the process of timeous criminal prosecution. This can cause particular problems with (a) time-bar and (b) preserving evidence.

### 2.2.1 Time-Bar/Delay

There is a general rule that summary prosecution of statutory offences must be started within six months of the date of the offence unless a statute makes a different provision on time. The rule has been varied somewhat by legislation in 1996 but to avoid unnecessary delay everything must be reported as soon as possible and in any event well within six months. Negotiations obviously can take time and will often continue well beyond periods for compliance, e.g. for steps required by an enforcement notice. However, any report to the Procurator Fiscal must be submitted well before the expiry of the six month time-bar for the case to be fully considered, if necessary for discussion or further investigations to take place, and then brought before the court. As a comparison, police officers generally submit reports to the Procurator Fiscal within 28 days of the commission of the offence. Although negotiations may cause delays, any difficulties about reporting in any particular case should be discussed with the Procurator Fiscal and the reason for any delay in reporting should be specified in the report.

Since the incorporation of the European Convention on Human Rights by the Scotland Act 1998 and the commencement of the Human Rights Act 1998, Procurators Fiscal have

regularly been faced with preliminary challenges to their right to prosecute based on Article 6 and the accused's right to a fair trial within a reasonable time. This might arise where the reporting agency reports cases to the Procurator Fiscal containing common law charges, which are not subject to time bar, or statutory charges where the time bar is in excess of six months. Such cases should be reported promptly to the Procurator Fiscal together with a detailed explanation for any period of apparent delay. Procurators Fiscal in the face of a challenge will require to satisfy the court that any delay is reasonable and can be explained. It may be necessary to justify the apparent delay taken in reporting the case to the Procurator Fiscal from:

- (a) date of offence;
- (b) date of discovery of offence by the reporting agency; and
- (c) date on which the accused is made aware by the reporting agency that he is under suspicion for the alleged offence, e.g. during interview, caution and charge or on the execution of a search warrant.

In some instances the Procurator Fiscal may require to mark cases no proceedings where there has been a delay on the part of the reporting agency since to proceed would be regarded as incompatible with the Article 6 obligation. Delay in reporting cases can also detract from the public interest in prosecuting them.

### 2.2.2 Preserving Evidence

A breach of planning control, for example, may not be viewed as a prosecution matter at its inception. Thereafter, informal negotiations are likely to be made without a thought for preserving or noting evidence for the purpose of presenting evidence to a court. But, however laudable the negotiation process may undoubtedly be, the criminal law makes no allowances for evidence of insufficient quality. While the time, economy and convenience of planning departments may militate against this, corroborated evidence must clearly exist and be kept to be led before the court if a case is to result in a conviction.

### 2.3 Proof of the Offence

Normally there should be two witnesses to speak to all of the essential facts that constitute the offence. Essential facts are those that form the basic essence of the charge. For example, the original mileage of a car in a "clocking" case would require to be corroborated, as this would be an essential fact.

### 2.4 Identification of the Accused

Identification in court of an accused as the culprit is crucial in a criminal case. As this is an essential fact, it must be corroborated. It cannot, for example, be assumed that because a person's name appears on a valuation roll that he is the owner or occupier of the property. There must be direct evidence to prove the fact of identification. This will usually require at least two witnesses to point to the accused in court.

It is essential that the correct person is prosecuted, whether this be an individual, a partnership or a limited company. In the case of a limited company, particular care must be taken to ensure the name and address is correctly given.

The identification of the correct limited company cannot be over-emphasised especially where there are many subsidiary companies with similar sounding names. It should also be noted that in some circumstances companies may have engaged sub-contractors, and so it is essential to clearly investigate the appropriate accused. Of course, it may also be appropriate to proceed against more than one legal person. Agencies are encouraged to recommend in their reports to the Procurator Fiscal which particular person or persons they consider should be prosecuted and the reasons for the recommendation. It must be borne in mind that if an accused is charged in a particular capacity e.g. an owner/occupier, director or a company, etc, the evidence to prove this must be included in the report.

Particular care must be taken to ensure that there is sufficient evidence of identification in cases where negotiations or meetings have been with employees or agents rather than with the accused. For this reason, details of meetings, conversations, events etc should be noted and dated.

## 2.5 The Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA)

Some specialist reporting agencies may require to use covert surveillance techniques in targeting criminals. Authorisation under RIPSA is required to give lawful authority to carry out covert surveillance. Covert surveillance is defined as being that which is undertaken in a manner calculated to ensure that the person subjected to it is not aware that it is taking place.

The Act does not seek to regulate less intrusive forms of surveillance, which the public is generally aware of. General observation forms part of the duties of many law enforcement agencies and other public authorities and is not usually regulated by RIPSA. For example, police officers will be on patrol to prevent and detect crime, maintain public safety and prevent disorder. Trading standards officers might observe and then visit a shop as part of their enforcement function to verify the supply or level of supply of goods or services that may be liable to a restriction. Such observation may involve the use of equipment to merely reinforce normal sensory perception, such as binoculars or cameras, but not involving the systematic surveillance of an individual.

A code of practice is published on the Scottish Executive website at <http://www.scotland.gov.uk/library5/government/cosu.pdf> which provides guidance on the use of covert surveillance by public authorities under RIPSA.

## 2.6 Relationship with the UK Regulation of Investigatory Powers Act 2000 (RIPA)

The UK Act (RIPA) is the appropriate legislation for surveillance that will mainly take place outside Scotland or start outside Scotland or is for purposes reserved to the UK Government, such as national security or economic wellbeing. For all other surveillance

in Scotland, the Scottish Act (RIPSA) is the appropriate legislation and should be used by Scottish public authorities.

## 2.7 Case Law

Scotland has in practice a smaller range of crimes or offences within any given topic covered by a specialist reporting agency. That means that there tend to be fewer reported criminal cases under the legislation covering the topic.

English and Welsh, and Northern Irish legislation is frequently very similar to that in Scotland but not invariably so. Case law from elsewhere is thus persuasive or highly persuasive but not binding. Thus case law from other jurisdictions is frequently of assistance but no more than that.

### 3. FORM OF REPORT TO PROCURATOR FISCAL

#### 3.1 ISCJIS

Given the nature of criminal proceedings, a large volume of information and documentation is generated at various stages throughout the process, which requires to be transferred between agencies. The transfer of information has traditionally been paper-based; necessitating repeated entering of data onto the computer systems of the respective agencies.

It has long been recognised that the efficiency of the system could be improved if information was more easily exchanged and shared among the criminal justice organisations. This recognition has resulted in the development of the Integration of Scottish Criminal Justice Information Systems (ISCJIS) Project, which has been ongoing since the early 1990s.

Through the creation of a series of IT linkages between the various computer systems of the main criminal justice organisations, with the SCRO computer database as the hub, and the development of agreed rules and data standards, ISCJIS has enabled the electronic transfer and exchange of information between agencies. This avoids repeated data entry and the speed and quality of inter-agency communication have increased as a result.

Information exchange links are in place between the police forces, COPFS, the sheriff courts and SCRO, with further developments ongoing to develop and pilot links with other criminal justice organisations and agencies.

#### 3.2 Electronic Reporting

As part of these developments, all specialist reporting agencies should from **1 January 2006** be reporting cases electronically to the Procurator Fiscal, either by the use of a secure email system or via the COPFS secure website, SRAWEB. Procurators Fiscal will no longer accept cases reported in 'hard copy' paper form. This will result in improvements in efficiency, speed, accuracy and access to information. Further information in relation to this can be obtained from the ISCJIS Team at the Scottish Executive Justice Department on 0131 244 8372 or, in relation to SRAWEB, from the Crown Office Policy Group on 0131 247 2668.

#### 3.3 Requirement to obtain 'S' numbers

To enable information to be exchanged between different agencies, tracked throughout the justice process and recorded on the SCRO database of pending and previous cases, it is necessary that all accused details are accompanied by a unique SCRO or 'S' number. The effect of this is that **all** cases being reported to the Procurator Fiscal, by police and specialist agencies, require an 'S' number **before** they can be reported.

'S' numbers are obtained by applying to the police Records Office in the area where the offence was allegedly committed. Customised forms have been produced for use when making an application and copies of these can be obtained by contacting the ISCJIS Team at the above number or by accessing the ISCJIS website at [www.scotland.gov.uk/justice/iscjis](http://www.scotland.gov.uk/justice/iscjis). The ISCJIS Team can arrange to register your organisation to access this website.

ISCJIS style offence charges have also been drafted, each with a unique charge code, which enables cases to be tracked and recorded throughout the system. These uniform charges and codes, details of which can be found on the ISCJIS website, must be used when applying for 'S' numbers and reporting cases to the Procurator Fiscal. If no draft charge and code exists for an offence you wish to report, you can request that a new style charge be added to the system by contacting the Information Systems Division at Crown Office.

Once an 'S' number has been provided by the police Records Office, the application and number should be sent together with the offence report to the Procurator Fiscal.

To find out any further information about electronic reporting or other ISCJIS developments, contact the ISCJIS Team or the Crown Office Policy Group.

### 3.4 Form of Report

In order to comply with ISCJIS, it has been necessary to agree a standard format for reporting cases. This is known as the SPR and is based on the standard style of report submitted to the Procurator Fiscal by the police. All agencies reporting cases, whether electronically or not, should submit reports in this format.

The following guidance provides a style for reporting cases in this way: -

### 3.5 Name of Reporting Authority

First and foremost the name and telephone number of the reporting officer to be contacted should be specified as necessary for discussions or further enquiries.

### 3.6 The Accused

3.6.1 *Individual*: Name, address, occupation and date of birth should be given.

3.6.2 *Firms*: Name and place of business, the names and dates of birth of partners should be given.

3.6.3 *Companies*: Full name, registered office and any other relevant places of business, the names and positions of relevant company officers should be given.

In all cases details of previous convictions known should be given.

### 3.7 Draft Charges

Draft charges help to focus on the essential facts to be proved and also should clearly identify the relevant statutory provisions. Breach of a departmental code, for example, is not a breach of the law. The draft charge should identify any European Directive and United Kingdom legislation in full, that is, both the main Act and any Regulation in delegated legislation. Copies of delegated legislation ought to be provided.

Each charge should be modified to take account of the individual circumstances and facts of the case. Charges should be listed chronologically. The place of the offence and the date or the period of the offence must be clearly and accurately stated.

Reference to the appropriate penalty provisions should be made for each charge. Notices of Penalty are no longer a requirement of Scots law but Courts have made it clear that they may look to those lawyers appearing before them for assistance in these matters.

### 3.8 Time-Bar

**THE TIME BAR SHOULD BE CLEARLY STATED BENEATH EACH DRAFT CHARGE INCLUDED IN THE REPORT.**

### 3.9 Antecedents (Previous history of the accused)

Relevant background information should be given, e.g. information on the employment or business of the accused, previous dealings with the agency or warnings. This is very important where an accused limited company has carried out similar work in other countries.

### 3.10 The Locus

A description should be given with details of the locus, and, if appropriate, its character, significance and the particular area in which it is situated.

The locus of the charge determines the court in which the prosecution is to take place. Multiple charges with several loci should be reported to the Procurator Fiscal who has the greater number of charges in his or her jurisdiction.

Offences involving failures to submit returns or false returns may allow a choice of venue for prosecution. Where a false return is suspected the envelope submitting the return should be kept and it may be possible to raise proceedings at the court having jurisdiction over the place where the return was made or posted - in most cases however jurisdiction will fall at the place where the return was received or a failure to make a return occurred.

### 3.11 Introduction

This should give details of how the Agency came to take action; how it became aware of the offence, and in particular complaints from the public, may be highly relevant. Details of attempts to negotiate with the accused and their results should be given. Alternatively an explanation may be given as to why negotiations are not appropriate.

The effect of the offence on the public or the locality in general should be given to highlight the significance of the offence.

### 3.12 Summary of Facts and Evidence

This should summarise the relevant facts that constitute the offences and specify the evidence which proves them. All relevant evidence must be disclosed whether favourable to the Crown or the defence. There must be no wilful suppression of relevant evidence.

Particular attention should be given to specify the evidence that identifies the accused as the person responsible for the offence (see paragraph 2.4 above). Experience has shown that this fact may be assumed by investigating officers instead of ensuring that it is established by corroborated evidence.

Details of relevant discussions or interviews with the accused should also be given. (See paragraph 4.2 below).

It should be borne in mind that this summary will be the basis of the facts narrated to the court by the Procurator Fiscal in the event of a plea of guilty. Accordingly, it should contain all facts that the Agency regards as significant.

Where scientific tests or inquiry form a material basis of the evidence a summary of their procedures is considered helpful.

The importance of providing a full narration cannot be over stated. Non-lawyers writing for lawyers frequently make assumptions or assume technical knowledge: this is an error that arises irrespective of the nature of the legal business being considered.

Reporting officers must realise that what is put in a report has a direct impact upon the nature of the prosecution and on the result.

The prosecution of a family butcher was the subject matter of the appeal in Murray v Normand. The Opinion from the appeal courts is reproduced in Appendix 2 to this paper and it indicates the importance of full explanation and disclosure to the Procurator Fiscal.

### 3.13 Anticipated Line of Defence/Mitigation

If it is known or anticipated that the accused will put forward a particular defence, then this should be stated together with details of any evidence that either contradicts or supports it. A good case is only as strong as its weakest link. It is always preferable to know this from the outset, since it may be possible to either make further inquiries into the matter, or alternatively prevent a case proceeding unnecessarily when it is unlikely to result in a conviction.

Even if there is no specific defence stated, any evidential difficulties should be specified. A useful question for investigating officers to ask is "If I were the accused, what defence would I think of?" and thereafter consider whether it can be disproved by evidence.

Any mitigating circumstances known should also be given. In particular, if the accused has taken any step to rectify the situation, the Procurator Fiscal should be kept advised of the up-to-date position. On conviction, the court would wish to know the current position.

### 3.14 Remarks

#### 3.14.1 *Why Prosecute?*

The decision whether or not to prosecute is taken by the Procurator Fiscal on the basis of the public interest. The views of the reporting Agency are clearly of significance and are taken into account. But the final decision is for the Procurator Fiscal. Any expected consequences of failure to prosecute this offence should be detailed, as should any difficulties enforcing a policy that may mean the prosecution is desirable to deter others from doing likewise.

Procurators Fiscal assume that a responsible public body will not report a matter unless it is of some importance, but it is desirable to state the reasons for the reporting. A court will certainly require this information to be given in deciding how serious an offence is and what penalty is appropriate.

For example, prosecution of a person who installs unauthorised windows may seem an excessive way to deal with an apparently trivial matter until it is known that there are numerous such cases occurring which substantially affect the character of a street, and failure to secure compliance may render an important policy unenforceable.

In short, it should be stated (a) why prosecution is considered necessary and in the public interest and (b) the consequences of the offence in the public interest.

If a non-court disposal is considered a reasonable approach, that ought to be stated with reasons. Non-court disposals include warnings by the Procurator Fiscal and fiscal fines ranging from £20 to £100.

### 3.14.2 *Benefit to the Accused*

The extent to which an accused has benefited from his offending is also a relevant matter which the court will require to consider if it is to sentence appropriately.

This information (and the evidence on which it is based) should therefore be given or estimated as far as possible so that the Procurator Fiscal can, firstly, decide whether summary proceedings are sufficient and, secondly, advise the court of this information on conviction.

For example in a car clocking case it is essential to provide information about the apparent enhancement to value of the vehicle by offering it for sale with a lower mileage.

The benefit to an accused from his offending may not necessarily be restricted to financial matters. It is clear that in relation to environmental crimes companies may incorporate a possible offence into its risk strategy and that may be a financial benefit. However, other offences may be committed out of a desire to save time or beat competitors.

### 3.14.3 *Cost to the Community or Agency*

If there is any continuing aesthetic or financial cost to the community or the Agency (for example, to clear up after an oil spill) as a result of the offence, this information should be given so that the court can be advised accordingly, and the amount should be given together with a copy of any invoice so that the court may consider whether a compensation order should be made. The making of a compensation order is, however, a matter entirely for the discretion of the court.

## 3. 15 Language Needs and Cultural Sensitivities

It is important to ensure that the Procurator Fiscal is aware of the language and cultural needs of the accused and witnesses. The Procurator Fiscal should be advised of the first or preferred language of the accused, victim and witnesses (and bereaved relatives if relevant). This should include an assessment as to whether an interpreter will be required in court and whether correspondence to the individual will require to be translated. The Procurator Fiscal should also be advised of any particular needs that arise from the individuals' racial, cultural or religious backgrounds. Reference should be made to the Lord Advocate's Guidelines to Chief Constables, which are set out in Appendix 3. These were issued to Chief Constables in April 2002 and present best practice in reporting cases to Procurators Fiscal when accused persons, victims or witnesses have needs that arise from their particular backgrounds.

### 3.16 List of Witnesses

Names and addresses should be given together with telephone numbers if known. If a witness is involved in a case in the course of their work or employment their business

address should be given. Where the witness is involved in a private capacity, the home address should normally be given.

If a witness does not wish his or her home address to be given in court, this fact should be clearly stated, both on the list of witnesses and on his or her statement. Holiday dates of witnesses for the year following the submission of the report should be given if known (together with any dates unavailable).

### 3.17 Statements of Witnesses: General Considerations

#### 3.17.1 *Character of Witness*

Different people have different personalities and as such require to be treated in different ways. The approach depends on the individual. This involves a high level of common sense, and an element of intuition.

#### 3.17.2 *Ability to "Listen"*

A successful interviewer will undoubtedly be a good listener. A good listener gives the witness the confidence to talk, by appearing interested in what he is saying. A relaxed and talkative witness is more likely to give the most information, even if as an afterthought.

#### 3.17.3 *Accuracy*

It does not matter how helpful and honest a witness may be, it is still difficult on occasions to establish all the facts. He may have poor recollection of events or an inability to say exactly what he thinks. There are times when a witness will believe what he is telling you to be the truth when in reality his account is inaccurate. This may be because through the passage of time his mind becomes unable to distinguish truth from what he imagined. Care should be taken to distinguish information within the witness' own knowledge from information disclosed to the witness by others.

It is therefore important that any investigating officer be alert and not misguided by information that is not accurate.

#### 3.17.4 *Use of Tact*

With the use of tact much resentment can be avoided. A witness should not be ridiculed, and rarely rebuked. Far more information will be obtained from a witness who is at ease during the interview.

#### 3.17.5 *When a Statement should be taken*

As mentioned already, memory fades as time passes, therefore a statement should be obtained as soon as reasonably practicable after the event. This way the statement is to hand as soon as possible and negates the need to chase up witnesses at a later date, only

to find that they have left the address or have taken a holiday. (For further discussion on statements see para 4.3).

### 3.17.6 *Witness Statement Form*

Each statement should have the facilities for the following information:

- (1) Surname
- (2) Maiden name
- (3) Forename(s) or middle names
- (4) Title
- (5) Home address
- (6) Home telephone number
- (7) Business address
- (8) Business telephone number
- (9) Care of address (if applicable)
- (10) Care of address, telephone number
- (11) Date of birth
- (12) Occupation
- (13) Known as or alias
- (14) Identity of statement taker
- (15) Department of statement taker
- (16) Time, day, date of noting of statement
- (17) Location of making of statement
- (18) Indication as to whether the person noting the statement was alone or accompanied at time, and if so by whom
- (19) Whether the witness read the statement over and was asked if it was accurate and signed it.

Notes:

- (a) All the above information is vital if we are to establish who is speaking to particular issues. Remember at (3) above the spelling of both surnames and forenames vary, so confirm with the witness the proper spellings. For example: Lesley and Leslie; Ian and Iain; Brian and Bryan; Jacqui and Jackie.
- (b) The benefit of remembering to obtain the telephone number at (6) above is obvious. It is a quick means of getting in contact with the witness; especially to countermand the witness. This applies to both police and Procurator Fiscal. Again remember the telephone number at (8) above as your witness is not always going to be at his home address.
- (c) Numbers 11, 12 and 13 are all mentioned so as to establish and confirm the identity of the witness, i.e. if there are two witnesses with the same name then they are unlikely to have all other personal details the same.

- (d) Numbers 14-18 are noted so that if ambiguities arise then it can be readily established who in fact had noted the statement from the witness. It may be necessary for the Fiscal to put the terms of a statement to a witness if the evidence of that witness appears to depart from the terms of a statement previously given by him. Ultimately, perjury proceedings might require to be considered based upon the difference between the statement originally given by the witness and the evidence given in court under oath by the witness.

### 3.17.7 *Witness Statement Contents*

- (1) If the statement is not written out at the time of the interview with the witness and in the presence of the witness it must reflect exactly the notes taken by the investigator during the interview.
- (2) The witness should be invited to read and thereafter asked to sign the statement noted to confirm the accuracy of its contents. This should particularly apply in instances where it is suspected that the witness may want to go back on his statement at a subsequent date.
- (3) It is important that care should be taken to ensure that proper personal particulars are noted.
- (4) The statement must be factual and comprehensive. Full information of the likely evidence of the witness must be included whether or not it is going to be of benefit to the prosecution/defence.
- (5) Almost inevitably the content of the statement should be in chronological order.
- (6) In appropriate circumstances, the relationship of the witness with any other person involved in the case should be included, e.g. brother, employee.
- (7) In appropriate cases the physical location of the witness to the incident must be included, e.g. "across the road"; "from first floor window".
- (8) Where a witness is speaking to a production, (known in England and Wales as an exhibit) this must be shown in the margin, e.g.:  

LABEL PRODUCTION	Video Recorder
and the fact that the witness has signed and dated the label included. In the case of documentary productions the appropriate entry will be:	
PRODUCTION	Invoice.

The production should be shown to the witness and its importance and content explained by the witness in the statement (see later at para 3.12).
- (9) The ability of the witness to identify the accused should be included as the last paragraph.

- (10) The statement taken should include in the report any other information that would be helpful, e.g. "witness is very hard of hearing" or "witness has poor command of English language" or "has a stammer" etc. This is especially important if an interpreter is necessary. The language should be specified and the particulars of the interpreter used should be provided.

#### 3.17.8 *Agency Employee Witness Statement Form*

The contents of the Agency employee witness statement should follow as near as may be the above guidelines, but emphasising qualifications and experience.

#### 3.17.9 *Method of Taking the Statement*

As a generalisation, the following method should be adopted when taking a statement from a witness:

- (1) If necessary, explain the nature of the enquiry you are making.
- (2) Where possible, conduct the interview without the presence of others (except in the case of child witnesses) to avoid interruption and witnesses influencing each other. Other distractions such as TV, traffic noise, etc, should also be avoided.
- (3) Get the witness to relax by using introductory pleasantries, if appropriate in the circumstances.
- (4) Depending on the circumstances and the type of witness, it is often beneficial to ask the witness to relate what has occurred in his own words before attempting to make a written account in an official notebook. This allows an overall view to be gained of what took place and in what sequence without inhibiting the witness by producing an official notebook. The statement taker at this stage should keep an open mind on the subject. Conjecture based on incomplete information may seriously hamper the enquiry.
- (5) During this stage the witness may be questioned to bring out all of the details relevant to the case. This should be done in an agreeable way, and not in the manner of an inquisition. Leading questions that tend to suggest the required answer should not be used, as the answers expected by the investigator may not describe what actually happened.
- (6) Thereafter, the statement should be noted and should include the necessary information for completing a standard statement form.
- (7) The text of the statement should be written in the first person, e.g. "I was driving east when I saw..."
- (8) The facts should, as far as possible, be taken down in chronological order, using the words and expressions used by the witness. It should not be converted into

precise official language. Further questioning whilst writing the statement will probably be necessary to ensure total accuracy. Vague generalisations should not be accepted without attempting to get the witness to express himself more clearly using further questioning.

- (9) Once the statement has been written it should be read over to the witness, who should be asked if he wishes to amend or add to it in any way.

### 3.17.10 *Types of Witnesses*

#### The Helpful Witness

Most members of the public are happy to assist with any enquiries. They may be only too willing to provide a statement outlining events.

#### The Reluctant Witness

There are going to be occasions when a witness will either refuse or be reluctant to give a full statement. Apart from some statutory exceptions, the police have no power to require a person to provide a statement. Some Agencies may be in a different position and should be familiar with their own powers.

It is on these occasions that an investigator's communicative skills, which will develop with dealings with the public, are of use and eventually co-operation from the reluctant witness may result.

The Procurator Fiscal may precognosce and compel a witness to attend at the office for questioning. Precognition is a process where the Procurator Fiscal undertakes his own investigation into allegations of an offence. As part of this process the Procurator Fiscal can interview witnesses independently, and check the available evidence. This is normally undertaken in more serious cases.

#### The Lying Witness

On the discovery of a witness lying it may be advantageous not to intervene immediately. It can be more productive to allow the interview to continue with both careful and detailed questioning.

One lie often leads to another lie, and the lies can be identified as such. On some occasions, the lies will have been told to cover up some criminal action, which may later be exposed when the witness is at last challenged regarding the lies. In most cases the statements of two persons witnessing the same incident will differ widely on some facts, whilst at the same time being truthfully related. If, on the other hand, the statements are found to coincide with remarkable precision, the possibility of collusion and possible lies should not be overlooked.

During an investigation the telling of lies by a witness can, in some circumstances, be criminal. This may involve a charge of attempting to pervert the course of justice.

3.17.11 *Example of Standard Statement Form*

STATEMENT OF WITNESS

Surname ..... Maiden Name .....

Forename(s) ..... Title .....

Address (Home) .....

..... Tel No .....

Address (Business) .....

..... Tel No .....

Place and Date of Birth .....

Occupation .....

"Care of" Address (e.g. students, etc) .....

.....

Occupation ..... Tel No .....

Known as or Alias .....

.....

Taken by ..... Agency/Dept .....

At (Time) ..... On (Day, Date) .....

At (Location) .....

I was alone/accompanied by .....  
when the statement was noted. It was/was not signed by the witness.

States:

.....

.....

Date ..... Signed .....

### 3.18 List of Productions

Relevant productions may take many forms, e.g. photographs, letters, plans, sketches, and videos (if at all possible with a factual commentary and not opinion). Where possible the productions should be dated and signed by the appropriate witnesses and have labels attached to them which indicate precisely the description of the item and where and when the productions were obtained and from whom they were obtained. This is crucial for the witness to be able to identify the production later. Where a number of items are taken in evidence at the same time they should each be given a unique reference number, as this will facilitate the identification of the precise item if for example subsequent examination or analysis is required.

There should be reference to the obtaining of the productions in the statement of each witness who was present.

Productions ought not to be interfered with in any way by, for example, marking the face of a document by writing on it with an ink highlighter.

The investigator should lodge original documents with the Procurator Fiscal for subsequent production at the trial, and copies of all relevant documentary productions should normally be submitted with the report unless this is impracticable. If original documents have been lost or destroyed, the reason for this should be explained, so that steps can be taken to correct, if possible, the deficiency. In all cases involving a search warrant, the principal warrant should be sent to the Procurator Fiscal with the report and a copy of the warrant should be enclosed within the report.

Notes taken by a witness at the time of an event or made as soon as practicable afterwards, can be used as productions and referred to for the purpose of refreshing the memory of that witness. A subsequently typed statement cannot be used in court when the witness is giving evidence.

In general, photographs are very helpful in presenting a case in court. Most Sheriffs appreciate a photograph rather than a lengthy verbal description. Photographs should be numbered, dated and signed by the witness taking them. All productions should be listed in chronological order and numbered in pencil.

Statements should clearly specify which witness speaks to each production but where there are a large number of productions it may be helpful to also add this to the list of productions, e.g.

1. plan (witnesses A and B)
2. photographs (witnesses A and D)
3. invoice (witness E)
4. letter (witness B).

Care should be taken when handling productions, not only to preserve their evidential value, but also to protect all persons who handle the articles during the investigation and prosecution of the case. This is particularly important when dealing with contaminated or otherwise dangerous articles.

All those handling productions should be mindful of health and safety considerations and should ensure that productions are carefully and adequately packaged and, where appropriate, properly labelled as "HAZARDOUS" or "DANGEROUS", to alert others to the potential risks involved in handling these articles. Procurators Fiscal may not wish to have certain hazardous or dangerous productions lodged with them in advance of a trial and consultation should take place with Procurators Fiscal at the time of reporting to determine the arrangements for these productions.

### 3.19 Note on Law

Any particular matters of law, which the Agency feels should be explained, can be referred to. Appeal procedures might have been available to the accused but he may have ignored these and therefore effectively left little option but prosecution. Those should be mentioned with any relevant case law known, including any English cases (see paragraph 2.5 above).

#### 4. PREPARATION FOR TRIAL

4.1 Any person accused of an offence has a right to have the evidence against him tested in a court of law. Generally, he need not submit a defence and the prosecution must prove beyond a reasonable doubt that an offence was committed and the accused is, in law, guilty of that offence. It is necessary therefore to regard every detection as potentially a case that will come to trial and prepare to the same high standard in all cases. It is also relevant to note that the reporting agency must be able to satisfy the Procurator Fiscal that the available evidence would be likely to persuade a court before he or she will commence a prosecution against an accused person. It is important that each case is given the same diligent and careful approach so that the best evidence can be presented to the Procurator Fiscal and the court.

#### 4.2 Use of Notes

Preparation for trial begins at the moment suspicions are aroused that an offence has been committed. At that stage, such detailed notes as are necessary or practicable should be taken by the investigator concerned. A notebook or other contemporaneous notes are the only documents that may be taken into court and referred to by a witness when he or she is giving evidence. A witness cannot refer to the original statement provided to the Procurator Fiscal whilst in the witness box. Witnesses will have to balance carefully the need to stop and take notes against the need to ensure that the salient facts that may be referred to in court are adequately recorded in a notebook. It is especially important to ensure that the actual words of the caution, and any response thereafter by the accused, are recorded. This will include any answers to questions put by investigating officers and any statement made by the accused. The attitude of an alleged offender to the formal caution and intimation to him of the offence of which he is suspected is valuable to the Procurator Fiscal in developing the case in court.

It should be remembered that the silence of an accused cannot corroborate guilt. It should be noted that any remarks made by the accused before caution should not be omitted from a witness statement. These may have relevance to the confirmation that an offence had taken place and although they may be admissible as evidence the Procurator Fiscal will need to be aware of anything that transpired during the investigation which is relevant and which led to the investigator concerned believing that an offence had been committed.

The question of when to caution a suspected person appears to cause those in specialist reporting Agencies some concern. The answer to that question is to apply the test of fairness as can be seen from the decision of *Pennycuik v Lees*, a copy of which is in Appendix 4 to this paper.

In situations where the suspect's guilt is not clear it is permissible to ask questions prior to caution to find out relevant information. It may be that an innocent explanation is forthcoming which requires to be checked out; on the other hand if incriminating admissions are made it will be necessary to caution the accused before proceeding further with any questioning.

Care should be taken to ensure that all the essential evidence can be corroborated and that the name of a witness or witnesses who can corroborate evidence is given in any statement.

A corroborating witness should be aware of what the investigating officer is doing so that he can provide evidence that will be acceptable to the court. The defence may attack the corroborating witness and if they are successful in destroying his or her credibility or reliability it may leave the court with the evidence of one witness only and that would not be sufficient to meet the general requirement in Scots law of corroboration. That is not to say that a witness should exclude from his statement relevant information that is not corroborated but any such evidence should be accompanied by a clear indication that only one witness was involved so that the Procurator Fiscal is aware of the fact.

#### 4.3 Statements

Statements serve two purposes. First, they are the raw material from which the Procurator Fiscal prepares a case for trial and as such provide him or her with an indication of the evidence each witness can give which he or she will use for reference during court proceedings. Their primary purpose is to indicate to the prosecutor that an offence has been committed and that sufficient evidence is available to hold the reasonable assumption that a conviction can be obtained and therefore a complaint can be issued against the alleged offender. Statements should set out clearly all the available evidence within the knowledge of the witness which is relevant to the offence. As a general rule witnesses should include too much rather than too little.

Secondly, at a trial the Procurator Fiscal will work from the statement to determine the questions he or she will ask of a witness and there may be little scope for that witness to add to the evidence provided in his or her statement when giving testimony in court without running the risk of disrupting the presentation of the case and jeopardising the outcome. If relevant evidence is omitted from a statement this may result in that evidence not being presented for consideration by the court.

Wide discretion must always be available to any witness to report a particular case in his or her own words according to the circumstances. It is worth repeating that no case can be treated with any less care and attention to detail than another as the witness concerned may be required to give his or her evidence in court.

Statements should not be regarded as the witness' only opportunity to record the salient facts of the investigation of an offence. Whilst every care should be taken to record all the relevant information, if it occurs to a witness at a later date that he or she has omitted material that would be useful or if expansion on any part of the statement is worthwhile a supplementary report should be submitted. Additional information or clarification of statements can be submitted to the Procurator Fiscal as soon as possible. It is preferable that this is done rather than risk losing the opportunity to improve the case against an alleged offender.

#### 4.4 Availability to Attend Court

Witnesses should indicate in their statements if for any good reason they will be unable to attend court at a future date so that the Procurator Fiscal can take this into account when arranging the trial.

#### 4.5 Detrimental Evidence

Finally it is important that material which may be detrimental to the prospect of a conviction is not omitted from the statement. In order to perform his or her function properly the Procurator Fiscal must be aware of all the evidence which has been gathered regardless of whether it contributes to the evidence against an accused person or is in his or her favour. Procurators Fiscal proceed in the public interest which necessarily connotes a broader approach than the wishes of the reporting Agency alone.

## **5. ACTION FOLLOWING SUBMISSION OF STATEMENTS**

5.1 Once all the statements are available the case will be prepared for submission to the appropriate Procurator Fiscal. At any stage up to the date of trial investigators may be asked to submit supplementary statements or to expand their descriptions of the events.

The Procurator Fiscal will decide on the basis of the available evidence in the statements submitted to him if a complaint should be issued against the accused or if there is insufficient evidence to justify that action. He may also request further enquiries to be made if necessary. Reporting agencies should pursue these inquiries if so requested. If a complaint is issued and the accused pleads not guilty a trial will be arranged. The defence agents may seek to interview prosecution witnesses to find out the strength of the case against the accused. If the accused does not change his plea a trial will take place.

## 6. ROLE OF THE PROCURATOR FISCAL

6.1 Almost all criminal proceedings in Scotland are by means of public prosecution rather than by private prosecution by individuals or departments. The Procurator Fiscal is entirely independent of all reporting agencies including the police and the decision whether or not to institute proceedings is entirely a matter for him or her. That decision is a legal and a professional one.

6.2 Before any case can proceed the Procurator Fiscal must satisfy himself that an offence has been committed and that the alleged offender committed that offence and is therefore liable to prosecution. He or she must also be satisfied that there is sufficient evidence available to prove beyond a reasonable doubt that an offence had been committed. The Procurator Fiscal's powers are wide ranging. He or she may:

- (i) decide that it is not in the public interest to prosecute;
- (ii) issue a warning letter or consider some other alternative to prosecution;
- (iii) mark any case "no proceedings" or desert the prosecution case at any stage of the proceedings; or
- (iv) make his or her own enquiries into an alleged offence and, in particular, interview witnesses either himself or before the Sheriff under oath. It follows therefore that the investigative stages of a case need not end when a report is submitted and while investigators should always endeavour to submit comprehensive reports there may be occasions when further enquiry is necessary, either by the reporting agency or the Procurator Fiscal.

6.3 The Procurator Fiscal is only liable for the costs of analyses and investigations in connection with a case in which he has decided to take proceedings. The costs of any analyses or investigations prior to the Procurator Fiscal's decision to take proceedings must be borne by the agency from which the report originates.

**7. CONTACT WITH PROCURATOR FISCAL BEFORE TRIAL**

7.1 Experience suggests that normally the Procurator Fiscal will accept the evidence that is provided and will not require to see witnesses before a trial. An investigator must therefore ensure that all the relevant evidence is contained in the statements and, if necessary, any salient material that has been omitted is covered by providing a supplementary statement. Witnesses should not rely on the court appearance as an opportunity to expand on statements since it is important that the Procurator Fiscal should be aware of all the evidence which the witness is able to give so that he can decide how best to present that evidence to the court.

## 8. DEFENCE PRECOGNITION

8.1 Given that the Procurator Fiscal does not normally need to see witnesses prior to trial it follows that the first contact with a witness subsequent to giving a statement to the Agency may be made by a defence solicitor. The Lord Advocate has instructed Procurators Fiscal that they must be as helpful as possible in advising the defence of the strength of the Crown case and the defence will be given a full account of all the evidence available. The defence may nevertheless wish to contact the witnesses in any case which goes to trial to find out about the testimony which witnesses can give. Anyone who has witnessed a breach of the law has a duty to give information and the defence is entitled to seek factual information from any prosecution witness. However, a witness is not required to submit any written statement to the defence and, in particular, should not supply a copy of his formal statement unless specifically requested to do so by the Procurator Fiscal.

8.2 If possible, upon receiving a request from a defence solicitor a meeting should be arranged. It would be wrong for a public servant to adopt an unco-operative attitude, for example by offering a difficult place or time for the meeting.

8.3 When the discussion with a defence agent takes place witnesses may find the following advice useful:

- (i) witnesses ought not to supply written statements nor offer copies of the statements which they provided to the Procurator Fiscal, although this is actually now a common practice;
- (ii) witnesses should not offer opinions or speculate on matters outside their knowledge. Defence questions should be specific and witnesses should not refuse to answer any reasonable questions. If the appropriate response is, "I do not know" investigators should say so;
- (iii) do not deliberately mislead the defence agent or fail to correct a misunderstanding which he may have taken from what has been said. A concise and clear account of the evidence which witnesses can provide may lead to a guilty plea being submitted;
- (iv) witnesses should do all they can to prepare themselves before speaking to defence agents. The first contact with a witness may determine to a large extent the attitude of the defence when the officer appears in the witness box and a clear and positive response to any question during defence precognition may help to prevent unnecessary cross-examination in court.
- (v) witnesses should not be subjected to cross-examination during a defence precognition and if the witness feels that the defence solicitor is testing his or her evidence by, for example, repeatedly asking about a particular incident the witness should say, "I have already answered that question" and refuse to discuss the matter further. Care should be exercised in this

and witnesses should ensure that they have given as full an account as is necessary to convey a clear understanding of the point at issue.

- (vi) if discussing a case jogs the memory of the witness and it becomes apparent in the course of such an interview that the statement to the Procurator Fiscal could usefully be expanded a supplementary statement must be prepared and submitted to the Procurator Fiscal as soon as possible.

## **9. COURT PROCEDURE**

### **9.1 Arrival at Court**

The citation form will advise witnesses of the time and date of trial and witnesses should arrange to arrive at court in good time. Generally witnesses are asked to arrive at the court before 10.00 am. Special arrangements are frequently necessary for witnesses with particular needs, e.g. the aged and infirm or where a large number of witnesses come from the same office or shop. Some types of court business may take priority over other cases and trials are often not commenced until this and other more routine business which can be processed quickly is conducted by the Sheriff. Witnesses will be directed to the appropriate witness room where they should remain until called to give evidence or otherwise excused.

### **9.2 Contact with the Procurator Fiscal**

If it is necessary to speak to the Procurator Fiscal, for example to leave items which are to be lodged as productions before the trial, an arrangement should be made in advance. On days when the court is sitting the Procurator Fiscal may be very busy preparing for other cases and it is advisable to contact him or her beforehand if you need to see him or her.

### **9.3 Early Departure of Witnesses**

It is not unusual for a trial to last more than one day but in those cases courts will make every effort to hear all the evidence of prosecution witnesses. However, if there is a good and compelling reason why a particular witness should be heard at an early stage in the trial to ensure that he can be released that day he should contact the Procurator Fiscal and explain fully the reason.

### **9.4 Order of Appearance of Witnesses**

The presentation of the Crown case is entirely within the control of the Procurator Fiscal. Generally witnesses are called in the same order as they were involved in the chronological sequence of events but the Procurator Fiscal's only consideration is to ensure that evidence is led in a manner which will enable the Sheriff to achieve an understanding of the events and how they transpired and the Procurator Fiscal may decide to produce witnesses in a different way.

### **9.5 The Oath**

At the appropriate time witnesses will be called from the waiting room by a court room officer and taken into the court and shown into the witness box. Immediately on arrival in the witness box the Sheriff will administer the oath. To avoid embarrassment witnesses wishing, for religious or other grounds, to affirm rather than take the usual form of the oath should advise the court officer of their wishes before entering the court.

## 9.6 Court Officials and Order of Questioning

The Sheriff will be immediately recognisable in any courtroom as he or she sits in a prominent place. The Procurator Fiscal can be identified, as he or she will always begin the questioning of any prosecution witness. Once he or she has completed his questions the defence solicitor is given the opportunity to question the witness.

The Procurator Fiscal then has a further opportunity to ask questions on the matters raised by the defence. Any dispute about whether the questions asked are relevant or not will be settled by the Sheriff but witnesses should always answer any question asked unless advised not to respond by the Sheriff. If clarification is needed the Sheriff may ask his or her own questions. Witnesses should be aware that as the Sheriff listens to the evidence he or she takes notes of the proceedings and therefore may ask a witness to expand on the answer to an earlier question put by the Procurator Fiscal or the defence.

The Procurator Fiscal and the defence agent will always give way to the Sheriff and witnesses should therefore concentrate on what the Sheriff has asked. If he has been interrupted the Procurator Fiscal or the defence agent will put their questions to the witness again once the Sheriff's query has been answered. It is possible if more than one accused is involved there may be two or more defence agents. The only other court officer likely to be present is the Sheriff Clerk who sits in front of the Sheriff in the well of the court.

## 9.7 Examination of Witnesses

As each case will be different there is very little guidance that can be given to witnesses about what to say about a particular type of offence in court but the following will apply in each case brought to trial.

## 9.8 Initial Questions

The first few questions put by the Procurator Fiscal will lead the witness to put before the court the professional qualifications to give evidence at that trial. As mentioned before the first paragraph of any statement submitted by a witness should include all relevant personal details and experience together with a brief note of how he or she came to be involved in the detection so that the Procurator Fiscal will be able in the initial stages of examination of a witness to draw that information from him for the benefit of the court. It is in the best interests of a witness to include in his statement all the relevant details so that at that stage he will be faced with questions which can be answered easily and thus be given time to settle into the unfamiliar circumstances of the witness box.

## 9.9 Development of Case

The development of the Crown case must be left in the control of the Procurator Fiscal. Witnesses should not expand unnecessarily on specific questions asked unless it is clear that he or she is being given scope to do so. The Procurator Fiscal will be aware of the evidence a witness can provide from study of the statement and any supplementary

statement provided and witnesses should be given such details as are necessary to answer specific questions. In particular witnesses must ensure that they do not go beyond what they can reasonably substantiate by their own experience or qualifications. Witnesses may be asked to identify an accused by actually pointing to him or her and to justifying that identification.

#### 9.10 Provocative Questions

Defence solicitors will often ask provocative questions intended to disconcert witnesses. Witnesses should remember that the defence are entitled to test the evidence given. Allegations of harassment of the accused or criticism of the process of investigating an alleged offence or any other provocative statements which may be delivered forcibly should be met with a calm response and witnesses should concentrate on answering the question rather than reacting to the manner in which it is asked.

#### 9.11 Questions to Corroborating Officers

Defence solicitors may attack the witness who provides corroboration and care should be taken that any witness who provides corroboration should be aware of why particular steps were taken and therefore be able to respond meaningfully to defence questioning at trial.

#### 9.12 Opinions

If a witness is asked to express an opinion care should be taken to ensure that the court is given a reasonable assessment of the balance between possibility and probability. If the appropriate response is to concede that a particular motive or result was a remote possibility the witness should say so and be prepared to support his view. It would be wrong and misleading for a witness to concede a possibility suggested by the defence without giving the court the full benefit of his experience to qualify that answer. On occasion the witness may be forced to answer "yes" or "no" to a particular question but otherwise every opportunity to justify the response should be taken and to provide the court with a better appreciation of whether what has been suggested is reasonable or fair. Witnesses should not be tempted to provide replies based on what they would have done in a hypothetical situation rather than what they can clearly recall or what is recorded in their statement or notebook. If there is a routine procedure to be followed which was carried out that should be recorded in the witness's statement and in his personal notebook for reference at the trial.

#### 9.13 Reference to Notes

In Scotland witnesses generally cannot refer to their statements in the witness box. The only documents that may be referred to are those that are before the court as productions or contemporaneous notes and witnesses should always ask the permission of the court before referring to notes made in a personal notebook at the time of detection or incident. If the permission of the court is sought to refer to notes witnesses will be asked

specifically if the notes were taken at the time and will only be allowed to consult them if they were.

#### 9.14 Identification of Productions

In a case where items of real evidence were seized witnesses should be prepared to identify the articles which should be clearly labelled and signed by the witness beforehand. This may entail the witness leaving the witness box to walk to the place in the courtroom where the items are displayed and identifying his signature on the label attached. Witnesses may also be required to leave the witness box to point to places on charts or other productions before the court. It should be borne in mind that any demonstration or identification of articles in court is made for the benefit of the Sheriff and must be given in such a way as it is clear to the Sheriff rather than addressed to the Procurator Fiscal or the defence solicitor.

#### 9.15 Technical Terms

Witnesses should avoid using jargon or terms which are not easily understood by the Sheriff. For example, in fishery cases witnesses should be able to give the scientific name of fish. Often in fisheries legislation it is necessary to provide that illegally caught fish are of a particular species and witnesses should be familiar with the scientific name and be able to identify any sample brought to court.

#### 9.16 Permission to remain in Court after Giving Evidence

Once a witness has given his evidence he may either leave the court room or take a place in the public gallery at the back of the court. In cases where the accused is facing more than one charge and witnesses are required to give evidence of more than one incident in which they are involved the practice is that all the evidence which that witness can give will be heard in one visit to the witness box rather than hearing all the evidence of one detection then recalling the witnesses again to give evidence about a second or subsequent incident. In these circumstances witnesses must take extra care in preparing for the trial to ensure that the incidents or detections are not confused. Detailed notes taken at the time of the detections in a personal notebook which can be produced in court are invaluable in such cases.

#### 9.17 Form of Addressing the Sheriff

The correct form of address for the Sheriff is "My Lord" or "My Lady" whichever is appropriate. The correct form of address for Stipendiary Magistrates and Justices is "Your Honour".

#### 9.18 Verdict and Sentence

At the conclusion of the trial the Sheriff may deliver his decision immediately, retire to consider a verdict or defer judgement to a later date. If the Sheriff adjourns the case to consider the evidence further witnesses are not required to attend when the case is

brought back into court unless specifically requested to do so. The Sheriff may find the accused Not Guilty or Guilty or find the charge Not Proven, the first and third verdicts both being verdicts of acquittal. If the Sheriff finds that the case against the accused has been proved the following options are open to him:

- (i) Absolute Discharge: this disposal means that the court has stopped short of convicting an offender but makes a finding that it is satisfied that the accused committed the offence;
- (ii) Admonition: if an offender is admonished it is recorded as a conviction against him but no penalty is imposed;
- (iii) Fine: fines must be related to an offender's ability to pay and the court will take account of any plea in mitigation.

The court also has wide ranging powers of sentence to impose, for example compensation orders, community service orders and imprisonment.

## **10. JURY TRIALS**

10.1 The importance of some of the crimes or offences reported by specialist agencies is now such that the Crown may opt to proceed by solemn procedure. That means in practice that the accused has trial by jury. Trial by Jury is proceeded by investigation by the Procurator Fiscal, usually in the form of precognition. Witnesses are interviewed to determine their evidence. This is rare for summary cases. The decision to proceed to trial by jury is solely for the Crown and not for the accused. The foregoing description of trial procedure applies equally to trial by jury and the presence of a jury of 15 citizens induces a greater sensitivity by all. On conviction the sentencing powers of the Judge (in the High Court of Justiciary) or the Sheriff (in the Sheriff Court) are greater.

## **11. APPEALS**

11.1 The Crown in the event of an acquittal may consider an appeal on a matter of law or in regard to an unduly lenient sentence.

If an appeal is taken then it may be possible to show a copy of the draft Stated Case which sets out the grounds of appeal to the reporting agency if time permits. This is especially so with technical matters relating to the agency's area of expertise

APPENDIX 1

PROCURATOR FISCAL SERVICE INFORMATION

**Procurator Fiscal Areas and Area Procurators Fiscal**

(*Italics* indicate the area office)

**Argyll and Clyde:** *Paisley*, Campbeltown, Dumbarton, Dunoon, Greenock, Oban,  
Rothesay

**John Watt**

**Ayrshire:** *Kilmarnock*, Ayr

**John Dunn**

**Central:** *Stirling*, Alloa, Falkirk

**Geraldine Watt**

**Dumfries and Galloway:** *Dumfries*, Kirkcudbright, Stranraer

**Tom Dysart**

**Fife:** *Kirkcaldy*, Cupar, Dunfermline

**Cameron Ritchie**

**Glasgow and Strathkelvin:** *Glasgow*

**Catherine Dyer**

**Grampian:** *Aberdeen*, Banff, Elgin, Peterhead, Stonehaven

**Morag McLaughlin**

**Highlands and Islands:** *Inverness*, Dingwall, Dornoch, Fort William, Kirkwall,  
Lerwick, Lochmaddy, Portree, Stornoway, Tain, Wick

**Andrew Laing**

**Lanarkshire:** *Hamilton*, Lanark, Airdrie

**Janet Cameron**

**Lothian and Borders:** *Edinburgh*, Duns, Haddington, Jedburgh, Linlithgow, Peebles,  
Selkirk

**Frank Mulholland**

**Tayside:** *Dundee*, Arbroath, Forfar, Perth

**David J Howdle**

**CROWN OFFICE AND PROCURATOR FISCAL SERVICE DIRECTORY**

<b>Office</b>	<b>Tel No.</b>	<b>PF Name</b>	<b>Address</b>	<b>Fax No.</b>
<b>Aberdeen</b>	01224-585111	<b>Area PF.</b> Morag McLaughlin  <b>District PF</b> Kate Frame	Atholl House, 84-88 Guild Street, AB11 6QA  DX No. AB67	01224-585550
<b>Airdrie</b>	01236-747027	<b>District PF</b> Ann Donaldson	Sheriff Court, 87A Graham Street, ML6 6EE  DX No. 570417	01236-747677
<b>Alloa</b>	01259-214561/ 721736		Sheriff Court , FK10 1HR  DX No. 560437	01259-219577
<b>Arbroath</b>	01241-876555	<b>District PF</b> Elisabeth Miller	Aitken House, 15 Hill Street DD1 1BR  DX No. 530443	01241-430052
<b>Ayr</b>	01292-267481/ 260748	<b>District PF:</b> I Murray	29 Miller Road, KA7 2AX  DX No. AY21	01292-611415
<b>Banff</b>	01261-812131/ 815318	<b>District PF:</b> Sandy Hutchison	Sheriff Court, AB45 1AU  DX No. 521326	01261-818282
<b>Campbeltown</b>	01586-553383	<b>District PF</b>	Sheriff Court, PA28 6AN	01586-551180
<b>Cupar</b>	01334-654991	<b>District PF</b> EB Russell	Sheriff Court KY15 4LS DX No. 560553	01334-656041

<b>Office</b>	<b>Tel No.</b>	<b>PF Name</b>	<b>Address</b>	<b>Fax No.</b>
<b>Dingwall</b>	01349-862122/ 864058	<b>District PF</b> R Urquhart	Sheriff Court, Ferry Road IV15 9QX  DX No. 520587	01349-862715
<b>Dumbarton</b>	01389-730972	<b>District PF</b> Andrew Millar	St Mary's Way G82 1NL  DX No. 500598	01389-731182
<b>Dumfries</b>	01387-263034	<b>Area PF</b> Tom Dysart  <b>District PF:</b> J Service	44 Buccleuch Street DG1 2AP  DX No. 580628	01387-259356
<b>Dundee</b>	01382-227535	<b>Area PF:</b> David Howdle  <b>District PF:</b> Betty Bott	Caledonian House, Greenmarket DD1 1QX  DX No. DD35	01382-202719
<b>Dunfermline</b>	01383-723688	<b>District PF:</b> Andrew Grant	Sheriff Court, Carnegie Drive KY12 7HW  DX No. DF19	01383-624828
<b>Dunoon</b>	01369-702292	<b>District PF</b> DL Webster	Sheriff Court PA23 8BQ  DX No. 591657	01369-702191
<b>Duns</b>	01361-882345	<b>Scottish Borders PF</b> Graham Fraser	Sheriff Court TD11 3DU  DX No. 581205	01361-882060

<b>Office</b>	<b>Tel No.</b>	<b>PF Name</b>	<b>Address</b>	<b>Fax No.</b>
<b>Edinburgh</b>	0131-226 4962	<b>Area PF:</b> :Frank Mulholland  <b>District PF</b> Lesley Thomson	29 Chambers Street EH1 1LD  DX No. 550315 Edinburgh 37	0131-220 4669
<b>Elgin</b>	01343-547133/ 543594	<b>District PF:</b> Sharon Ralph	Sheriff Court IV30 1BU  DX No. 520661	01343-544146
<b>Falkirk</b>	01324-638396	<b>District PF</b> Kenny Donnelly	Mansionhouse Road, Camelon FK14LW  DX No. FA11	01324-628841
<b>Forfar</b>	01307-463296	<b>District PF</b> Elisabeth Miller	Sheriff Court DD8 3LA  DX No. 530681	01307-463589
<b>Fort William</b>	01397-703874	<b>District PF</b> Alison Wyllie	Sheriff Court PH33 6BR  DX No. 531404	01397-701476
<b>Glasgow</b>	0141-429 5566	<b>Area PF:</b> Catherine Dyer	10 Ballater Street, G5 9PS  DX No501557	0141-418 5177
<b>Greenock/ Rothesay</b>	01475-728316	<b>District PF</b> Anne Marie Hicks	Sheriff Court, Nelson Street PA15 1TR  DX No. GR20	01475-724488
<b>Haddington</b>	01620-825761	<b>District PF</b> Lesley Thomson	15 Lodge Street EH41 3DX  DX No. 540735	01620-822940

<b>Office</b>	<b>Tel No.</b>	<b>PF Name</b>	<b>Address</b>	<b>Fax No.</b>
<b>Hamilton</b>	01698-284000	<b>Area PF:</b> Janet Cameron  <b>District PF:</b> David Spiers	Cameronian House, 3/5 Almada Street ML3 0HG  DX No.HA7	01698-422929
<b>Inverness</b>	01463-224858	<b>Area PF:</b> A Laing  <b>District PF:</b> Gary Aitken	2 Baron Taylor's Street IV11QL  DX No. IN26	01463-711187
<b>Jedburgh</b>	01835-862345	<b>Scottish Borders PF</b> Graham Fraser	Sheriff Court TD8 6AR  DX No. 581221	01835-864514
<b>Kilmarnock</b>	01563-536211	<b>Area PF:</b> John Dunn  <b>District PF</b> Les Brown	St Marnock Street KA1 1DZ  DX No. KK17	01563-571786
<b>Kirkcaldy</b>	01592-268661	<b>Area PF:</b> C Ritchie  <b>District PF:</b> J Robertson	Wing D, Carlyle House, Carlyle Road, Kirkcaldy, KY1 1DB  DX No. KY18	01592-261120
<b>Kirkcudbright</b>	01557-331403	<b>District PF</b> ASKennedy	TEMPORARILY CLOSED - REDIRECT TO DUMFRIES OFFICE  Sheriff Court DG6 4JW  DX No. 580814	01557-331764
<b>Kirkwall</b>	01856-873273	<b>District PF</b> Susan Foard	Sheriff Court KW15 1PD	01856-870505

<b>Office</b>	<b>Tel No.</b>	<b>PF Name</b>	<b>Address</b>	<b>Fax No.</b>
<b>Lanark</b>	01555-661669	<b>District PF:</b> S R Houston	Sheriff Court House, 24 Hope Street, ML11 7NE  DX No. 570835	01555-663716
<b>Lerwick</b>	01595-692808	<b>District PF</b> Susan Foard	Sheriff Court ZE1 0HD	01595-695152
<b>Linlithgow</b>	01506-844556	<b>District PF</b> R Stott	Stuart House, 181/201 High Street EH49 7EN  DX No. 570884	01506-670102
<b>Lochmaddy</b>	01876-500243	<b>District PF</b> D Teale (Stornoway)	Sheriff Court HS6 5AE	01876-500432
<b>Oban</b>	01631-564088/ 564921	<b>District PF</b> Clifford Most	Third Floor, Boswell House, Argyll Square PA34 4BD  DX No. OB9	01631-570352
<b>Paisley</b>	0141-887 5225	<b>Area PF:</b> J Watt  <b>District PF:</b> Moira Ramage (Interim)	1 Love Street PA3 2DA  DX No. PA50	0141-887 6172
<b>Perth</b>	01738-637272	<b>District PF</b> D Griffiths	82 Tay Street PH2 8NN  DX No. PE31	01738-626673
<b>Peterhead</b>	01779-476628	<b>District PF</b> AB Hutchison	70 St Peter Street AB4 6QD  DX No. 521375	01779-490284

<b>Office</b>	<b>Tel No.</b>	<b>PF Name</b>	<b>Address</b>	<b>Fax No.</b>
<b>Portree</b>	01478-612510	<b>District PF</b> Roderick Urquhart (Dingwall)	Sheriff Court IV51 9EH	01478-613499
<b>Selkirk/ Peebles</b>	01750-20345	<b>Scottish Borders PF</b> Graham Fraser	Sheriff Court TD7 4LE  DX No. 581013	01750-21113
<b>Stirling</b>	01786-462021	<b>Area PF:</b> Geraldine Watt  <b>District PF:</b> Ruth McQuaid	Carseview House, Castle Business Park, FK9 4SW  DX No. ST16	01786-446823
<b>Stonehaven</b>	01569-762048	<b>District PF</b> EK Barbour	Sheriff Court AB39 2JD  DX No. 521026	01569-765614
<b>Stornoway</b>	01851-703439	<b>District PF</b> D Teale	Sheriff Court Buildings, Lewis Street, HS1 2JF	01851-704618
<b>Stranraer</b>	01776-704321	<b>District PF</b> Kenny Grieve	Sheriff Court, DG9 7AA  DX No. 581259	01776-889465
<b>Tain</b>	01862-892472	<b>District PF</b> AN Mac Donald	11 Stafford Street, IV19 1BP	01862-892883
<b>Wick</b>	01955-602197	<b>District PF</b>	Sheriff Court, KW1 4AJ	01955-606507
<b>Crown Office</b>	0131 226 2626	<b>Crown Agent</b> Norman McFadyen,	25 Chambers Street, Edinburgh, EH1 1LA  DX No. 540310 Edinburgh 37	

<b>Office</b>	<b>Tel No.</b>	<b>PF Name</b>	<b>Address</b>	<b>Fax No.</b>
<b>Inspectorate of Prosecutions for Scotland</b>	0141 229 6200		5th Floor, Corunna House, 29 Cadogan Street, Glasgow, G17 1LP  DX No. 512302	0141 204 2538

**APPENDIX 2**

HIGH COURT OF JUSTICIARY

OPINION OF THE COURT

delivered by

THE HONOURABLE LORD WEIR

in

NOTE OF APPEAL

by

ALAN MURRAY

Appellant

against

PROCURATOR FISCAL, GLASGOW

Respondent

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3 October 1996

The appellant runs a family butchers business in Govan, Glasgow. It is an old established business and from what we have been told there has been no trouble with the food inspectors in the past. This was so until 26 June 1995 when, in the course of what we were informed was a regular visit, one of the inspectors called and purchased mince which turned out to have a preservative added. The consequence was that the appellant was charged with selling to the prejudice of the inspector, who was the sampling officer, 1lb of steak mince which was not of the nature or substance or quality demanded by the purchaser in respect that it contained 1,600 mg per kilogram of the added preservative sulphur dioxide. This was a contravention of Section 14 of the *Food Safety Act 1990* and Regulation 4 of the *Preservatives in Food (Scotland) Regulations 1989* (as amended).

The Sheriff was in receipt of remarkably little information on which to form a judgement as to what was the appropriate fine to impose for an offence of this kind and we have to confess that we are not in a much better position despite the assistance afforded by Mr Wheatley and the Advocate Depute. The simple fact is that preservative of this kind is only allowed in sausage meat and is not allowed in steak mince. We were not told what the nature and effect of the preservative in steak mince and it is very difficult to decide how to assess the degree of seriousness of this offence. What, of course, cannot be disregarded is that it was an offence to add preservative to steak mince and thereafter sell it on the market.

What has been said on behalf of the appellant is that this addition to the mince in question was not a deliberate act. It was done at a time when the appellant's father was absent from the business and supervision was perhaps momentarily lacking. It was done, it was said, on account of the mistake made by an employee. In that situation and bearing in mind the fact that the appellant's business had never come to the adverse notice of the food inspectors before, a fine of £1,500 which was imposed by the Sheriff was excessive.

The Sheriff did not enlighten us as to why he chose the figure of £1,500 as being the appropriate sentence. He certainly did have in mind that the maximum penalty for this offence is a fine not exceeding £20,000 or imprisonment for 6 months or both.

In our view, standing the paucity of information regarding the seriousness of this offence, if it was serious, but bearing in mind that this was apparently done as the result of a mistake and not as part of a deliberate course of conduct, and also bearing in mind the good record of this butchers business, we are prepared to say that the fine of £1,500 was excessive and we shall quash that and substitute for it a fine of £500.

We wish to add that the task of the Sheriff and indeed of ourselves would have been easier if the Crown had provided further information concerning the nature of the offence so that a proper assessment of its gravity could have been made.

**APPENDIX 3****LORD ADVOCATE'S GUIDELINES TO CHIEF CONSTABLES**

- 1. INVESTIGATION AND REPORTING OF RACIST CRIME**
- 2. ASSESSMENT OF LANGUAGE NEEDS AND CULTURAL SENSITIVITIES**
- 3. DEATH REPORTS AND ASSOCIATED CRIME REPORTS**

**INTRODUCTION**

**Lord Advocate's Guidelines dated May 2001, dealing with the investigation and reporting of racist crime to Procurators Fiscal, have already been issued. This consolidated guidance contains the earlier guidelines and provides further guidance to the police in relation to issues of reporting of racist crime, assessment of language needs and cultural sensitivities and the information which is required by Procurators Fiscal from the police to ensure that liaison with bereaved relatives takes place in a manner which is sensitive to their religious and cultural needs.**

Both the recent review of casework conducted by the Crown Office Race Strategy Group and the HMIC Report "Without Prejudice?" identified a number of areas where improvements can be made in both the reporting by the police of racist crime and in the information provided by the police to the Procurator Fiscal in cases:

- of racist crime;
- where victims, witnesses and/or the accused have particular needs arising from their ethnic or cultural backgrounds and
- where the first or preferred language of the witnesses and/or accused is not English.

These guidelines have been drafted in light of the areas highlighted in the reviews by the Crown and the police and also against the background of the requirements of the Race Relations (Amendment) Act 2000.

**INVESTIGATION AND REPORTING OF RACIST CRIME**

Recommendation 12 of the Lawrence Inquiry Report by Sir William Macpherson states that:

*"A racist incident is any incident which is perceived to be racist by the victim or any other person."*

The Scottish Executive has accepted this definition for the purposes of the reporting to, and recording of, racist crime by the police. The definition does not alter the onus or the standard of proof in criminal proceedings and it remains the case that the prosecutor requires to be satisfied that there is sufficient evidence to proceed before criminal proceedings in respect of allegedly racist crime may be taken against any individual.

It is of crucial importance however that the prosecutor is advised whether the victim or any other person has perceived an incident to be racist.

The Lord Advocate therefore directs that, in the investigation of crime, police officers must ascertain the perception of the victim and witnesses as to the motive for the crime<sup>1</sup>. This must be fully investigated and clearly recorded. If racism is perceived to be a factor by the victim or witnesses this should be investigated and evidence recorded. Police officers should bear in mind that victims of racism may be reluctant to express their fears or beliefs, including their belief that an incident has been motivated by racism, and that victims reporting racism may often be doing so against a background of previously unreported racism. It will be necessary for officers in such cases to make every effort to ascertain the true perception of the victim as to the motive for the crime.

The Procurator Fiscal should always be advised in police reports of the perception of the victim and witnesses as to motive. The Procurator Fiscal should always be advised of the existence, and provided with a copy, of a racist incident monitoring form.

### **Bail/Custody/Use of Undertakings**

It is important to ensure that prosecutors and courts are able to consider both requesting and imposing appropriate special conditions of bail in cases of repeat offending or where it appears that victims and witnesses may be at risk.

The Lord Advocate therefore directs that in cases of racist crime<sup>2</sup> accused persons should be reported in custody where that is consistent with the Lord Advocate's Guidelines on Bail, which are already in existence. Further, where reporting in custody is not appropriate in terms of the existing guidelines, accused persons should be liberated subject to an undertaking to appear at court in early course unless there is a good reason not to proceed in this way.

In cases of racist crime where an early arrest is not possible the Police should ensure that an early report is submitted to the Procurator Fiscal in order that consideration may be given to an application for a warrant to arrest.

In all cases Reporting Officers should provide an indication of the known language and interpreting needs of the accused.

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<sup>1</sup> Leading questions should not be used. Examples of appropriate questions include: "Why did this happen?" or "What was the motive behind the incident?"

<sup>2</sup> Racist Crime should be interpreted to mean any case reported to Procurators Fiscal in which the police have charged the accused with a statutory racial offence or aggravation (including offences in terms of the Public Order Act 1986, S50A of the Criminal Law Consolidation (Scotland) Act 1995 and where the aggravation under S96 of the Crime and Disorder Act 1998 has been used).

### **Impact of crime on victims**

As with all crime, when reporting racist crime to Procurators Fiscal police officers should include details of the impact of the crime on the victim. This should include information such as: whether the victim is in a state of fear due to the crime; whether, for example the victim is considering moving home due to the nature of the crime and any financial loss sustained by the victim. Details of the impact of the crime on the victim's family and community should also be provided where relevant.

### **ASSESSMENT OF LANGUAGE NEED AND CULTURAL SENSITIVITIES**

#### *Accused persons, Victims and Witnesses*

In any case where it appears that the first language of the accused, victim or witnesses may not be English, the accused, victim or witness should be asked to state their “first” or preferred language should they be called to give evidence in court in due course. The accused, victim or witness should also be asked whether correspondence and documentation sent to them will require to be translated. The preference of the accused, victim or witness should be included in the police report. The Reporting Officer should also include an assessment as to whether the accused, victim or witness will require the services of an interpreter in court and to have correspondence and relevant documentation translated by the Procurator Fiscal.

The language and dialect required should be specified in the police report and in the full statement of a witness<sup>1</sup>. If the Reporting Officer is in doubt as to whether an interpreter is or is not required an interpreter should be provided by the police during the investigation and the Procurator Fiscal advised of the view of the Reporting Officer. If, in the view of the Reporting Officer, an interpreter will not be required, this should be specifically stated.

In cases where an interpreter is required for court purposes (either because of the request of the individual concerned or the view of the Reporting Officer) and it is necessary to ensure that religious and cultural needs are respected, the Procurator Fiscal should be advised of both the ethnic and religious background of the individual who requires interpreting services.

If it has been necessary to use an interpreter to interview the accused, victim or witnesses the name and contact details of the interpreter used by the police should be contained in the police report.

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<sup>1</sup> If the reporting officer is unable to ascertain the language and/or dialect required this fact should be set out in the police report to allow the Procurator Fiscal and the police to work together to ensure that a genuine assessment of the language needs of the individual takes place prior to attendance at court.

## **Instruction of Interpreters for Criminal Court Assignments**

In cases where an accused requires an interpreter and where he or she is kept in custody pending appearance at court or liberated on undertaking the police should arrange for an interpreter, skilled in the language and dialect required, to assist the accused at his or her first court appearance.

The protocol which follows these guidelines sets out agreed arrangements between the Crown Office and Procurator Fiscal Service, ACPOS and Scottish Court Service in relation to the instruction of interpreters for criminal court assignments and should be viewed as being part of these guidelines for that purpose<sup>1</sup>.

## **DEATH REPORTS AND ASSOCIATED CRIME REPORTS**

### **Liaison with Next-of-Kin and Bereaved relatives**

The Lord Advocate directs that in death reports and associated crime reports the Procurator Fiscal should be advised of the involvement and identity of the Family Liaison Officer where such an officer has been appointed by the police.

In deaths cases police officers should bear in mind that while communication with the next of kin will be appropriate, the deceased may have an extended family or partner to whom relevant information will also require to be communicated. The death report and any associated crime report should clearly identify both the next-of-kin and any other appropriate individuals to whom communications should be directed. This is to ensure that the family of the deceased is advised of developments in the case. In such cases the death report and associated crime report should also specify whether the next-of-kin or any other individual identified as an appropriate point of contact requires interpreting or translation services. Good practice will require appropriate liaison between Procurators Fiscal and Senior Investigating Officers.

In cases where it appears that the deceased's family may have specific cultural or religious needs the death report and associated criminal report should clearly specify both their ethnic and religious background to ensure that liaison can take place in a manner which is sensitive to their cultural and religious needs.

CROWN OFFICE  
FEBRUARY 2002

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<sup>1</sup> The protocol will come into force from 1 April 2002 and should be followed with regard to cases calling for the first time in court thereafter.

## INSTRUCTION OF INTERPRETERS FOR CRIMINAL COURT DIETS

### PROTOCOL

**This protocol sets out agreed arrangements between Crown Office, Scottish Court Service and ACPO(S) for the instruction of interpreters for criminal court diets. It is intended to cover the instruction of community, foreign and sign language interpreters (and other interpreters required for those with sensory impairment).**

It is the responsibility of the police to advise the Procurator Fiscal in the police report whether the accused or any proposed prosecution witness requires the services of an interpreter to give evidence in court. The reporting officer should specify the language and dialect required in the police report and should also provide the name, designation and qualifications of any interpreter used at the investigative stage so that the Procurator Fiscal and the Scottish Court Service may ensure that, so far as possible, the same interpreter is not used at any court diet.

It is the responsibility of the Procurator Fiscal to engage a suitably qualified and experienced interpreter<sup>1</sup>, skilled in the language and dialect specified in the police report, to assist prosecution witnesses in giving their evidence.

It is recognised that there is limited time available between arrest and the first appearance of an accused person in custody.

In all cases therefore where accused persons are appearing for the first time from custody the police will, so far as possible, arrange, *on behalf of the Scottish Court Service*, for a suitably qualified and experienced interpreter to appear at court to assist the accused. The interpreter engaged for court should not be the same interpreter who assisted the accused during the investigation stage although it is recognised that it may not always be possible to secure the services of a different interpreter who has appropriate qualifications and experience given the limited time available. The fact that the police have engaged an interpreter for the accused's first appearance from custody should be set out in the police report to the Procurator Fiscal. If difficulties arise in securing the services of an interpreter the police should make early contact with the Procurator Fiscal. The fee of the

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<sup>1</sup> So far as possible spoken language interpreters engaged should have the Diploma in Public Service Interpreting (Scottish Legal Option) and recent experience of both consecutive and simultaneous interpreting in the court context. It is recognised however that there is a shortage of qualified and experienced interpreters in some languages and that particular difficulties may arise in relation to first appearances from custody. On occasion it is recognised that interpreters who do not have the preferred qualifications and experience will require to be engaged. When this is necessary the interpreting service involved should be asked to provide a written assessment setting out why the interpreter is deemed to be suitable for the proposed work.

Sign language interpreters should be registered as qualified interpreters with the Scottish Association of Sign Language Interpreters.

interpreter in such cases will be paid by Scottish Court Service and they will instruct the interpreter for the accused for any continued diets in the case.

In respect of all other criminal court diets, both pre-trial and trial diets, it is the responsibility of the Scottish Court Service to engage a suitably qualified and experienced interpreter, skilled in the language and dialect required to assist the accused. In respect of all other diets the Procurator Fiscal will advise the Sheriff Clerk (or in High Court cases the Deputy Principal Clerk of Justiciary) in writing of the language needs of the accused, namely the language and dialect as set out in the police report, at least 14 days prior to the scheduled diet.

It is recognised that the role of the interpreter in the criminal court is crucial. The Procurator Fiscal, Scottish Court Service and the police will ensure, so far as possible, that interpreters are engaged through recognised interpreting services and that interpreters engaged have appropriate qualifications and experience.

CROWN OFFICE  
FEBRUARY 2002

**APPENDIX 4**

## PENNYCUICK V LEES

1992 SLT 763

An accused person was charged on summary complaint with making false statements and representations to the effect that through incapacity he had not been working when in fact he had been working, for the purpose of obtaining benefit, contrary to s. 55 of the Social Security Act 1986.

In the course of the trial evidence was led of an interview conducted by 2 Department of Social Security officers for the purpose of satisfying themselves that the accused, whom they had been following and had seen working, was in receipt of sickness benefit and whether he would be entitled to benefit for a particular week. The accused was not cautioned but when asked, gave his name and address and signed a statement declaring that he was employed for more than 24 hours per week and that he wished to withdraw his claims for sickness benefit and income support.

Four months later the same officers interviewed the accused and told him that they were investigating an overpayment of sickness benefit and income support. He was shown 4 claim forms and without being cautioned, admitted signing them. Thereafter the accused was cautioned and asked to sign a declaration which inter alia acknowledged having been cautioned. Objection was taken to the admissibility of the evidence of both interviews but the sheriff repelled the objection.

The accused was convicted and appealed on the ground that the sheriff had wrongly admitted the evidence of the interviews since the accused had not been cautioned.

Held by the Appeal Court; (1) that the question in all cases where inquiries were being conducted into activities which might be criminal was whether in all the circumstances there had been unfairness to the accused in what took place; (2) that since the questions at

the first interview were designed merely to obtain information from the accused on matters relevant to their inquiries at a stage when the officers were still unable to say whether or not the accused had committed an offence, the line of questioning was fair and proper and the evidence was admissible; (3) that since it could not be said that the accused at the second interview did not appreciate what was going on and there was no suggestion that any pressure, deception or other device was used to obtain the admissions, the sheriff was entitled to hold that there was no unfairness and to admit the evidence and appeal *refused*.

Observed by the Appeal Court; that there was no rule of law requiring that a suspect must always be cautioned before any question could be put to him by the police or by anyone else by whom the inquiries were being conducted.