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**ROYAL MAIL GROUP LTD SECURITY – PROCEDURES & STANDARDS**

<b>APPENDIX 1 to P&amp;S 5.4 – RULES &amp; CONTINUITY OF EVIDENCE</b>	<b>Version 1 Jan 10</b>
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<b>1. INTRODUCTION</b>	
<p><b>1.1</b> For the Investigator <b>obtaining information, gathering evidence and seeking the truth</b> are the primary goals .The word <b>evidence</b> is used to describe the means by which a point of issue may be proved, or disproved, in a manner complying with the legal rules governing the subject; these rules are known as the "Rules of Evidence".</p> <p><b>1.2 Scotland and Northern Ireland.</b> This Appendix details the rules and types of evidence in England and Wales. The principles should be treated as good practice in Scotland and Northern Ireland. References to advice from the Criminal Law Team (CLT) should be directed to the Procurator Fiscal in Scotland and the Public Prosecution Service in Northern Ireland.</p> <p style="text-align: right;">Back to Contents</p>	
<b>2. COMPETENCE &amp; COMPELLABILITY OF WITNESSES</b>	
<p><b>2.1</b> A witness is <b>competent</b> if he/she can lawfully give evidence. The principle is set out in Section 53 of the Youth Justice and Criminal Evidence Act 1999. There are two exceptions;</p> <ol style="list-style-type: none"> <li>1. Where it appears to the court that a person is not able to understand questions put to them as a witness and give answers to them which can be understood,</li> <li>2. A person charged in criminal proceedings is not competent to give evidence for the prosecution.</li> </ol> <p>At a trial, the Judge or the Magistrate(s) will decide if a witness is competent. Most witnesses who are competent can be <b>compelled</b> to give evidence. The only exception relates to spouses or civil partners.</p> <p><b>2.2 Spouses or Civil Partners</b> are only <b>compellable</b> to give evidence for the prosecution against their partner in cases which involve sexual or violent offences. However spouses or civil partners are generally <b>competent</b> to give evidence against their partners. That is to say if a spouse or civil partner is content to be a witness against their partner then they can be. The only exception to this is if the spouses or civil partners are jointly charged. If they are, neither is competent or compellable on behalf of the prosecution, against the other. Former spouses and civil partners are both competent and compellable.</p> <p><b>2.3 Children.</b> The test for competence applies to all witnesses; however, children under the age of fourteen years always give unsworn evidence. Children of any age can be called to give evidence. Their competence depends upon their understanding, not their age. The court will apply the following test;</p> <ol style="list-style-type: none"> <li>1. Is the child of sufficient intelligence to justify the reception of his or her evidence?</li> </ol>	

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2. Does the child understand the duty to tell the truth?

- 2.4 Compelling Witness.** If it is thought that a witness will not attend court without being compelled then advice should be sought from the CLT as to whether their attendance is necessary. If so a witness summons can be obtained.

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### **3. HEARSAY EVIDENCE**

- 3.1 Hearsay evidence** is evidence of something a person does not know for him or herself, but has been told by another, or it has been gathered or deduced from a document. The Criminal Justice Act 2003 (CJA 2003) codifies the law in relation to the admissibility of hearsay evidence. Prior to the CJA 2003 there was a general principle that hearsay evidence should not be admitted in criminal cases. Following the introduction of the Act there is now a more flexible approach and hearsay evidence is allowed in the following circumstances:

1. Any provision of the CJA 2003 or any other statutory provision makes it admissible,
2. All parties to the proceedings agree to it being admissible, or
3. The court is satisfied that it is in the interests of justice for it to be admissible.

- 3.2 Section 116 of CJA 2003 allows hearsay evidence in cases where a witness is unavailable.** Information may have been provided to an Investigator which may or may not have been recorded in a witness statement. If the witness is subsequently unavailable to attend court then their evidence may be allowed in the following circumstances;

1. Through fear the witness will not give evidence.
2. The witness is dead.
3. The witness is unfit to testify because of their physical or mental health.
4. The witness is outside the UK and it is not reasonably practicable to secure their attendance.
5. The witness cannot be found.

Hearsay evidence in these cases will only be admissible if the witnesses' oral evidence would have been admissible and the witnesses' identity is known.

- 3.3 Section 117 of the CJA 2003, allows hearsay evidence contained in business and other documents.** Such evidence can be admitted if the following apply;

1. The document was created or received by a person in the course of a trade, business, profession or as the holder of a paid or unpaid office; and
2. The person who supplied the information in the statement had or may reasonably be supposed to have had personal knowledge of the matters dealt with in the statement; and
3. Each person through whom the information was supplied received the information in the course of a trade, business, profession or other occupation or as the holder of a paid or unpaid office.
4. However, in the case of documents prepared for the purpose of criminal investigations or proceedings, the statement will only be admissible if the supplier of the information is unavailable or cannot reasonably be expected to recall any of the matters dealt with in the statement.

- 3.4** By way of explanation consider producing a P13 Personnel Declaration in evidence:

1. If a suspect has identified their signature on the P13 during interview then the Investigator can produce it in evidence. The contents of the P13 would not be hearsay as the signature has been verified by the suspect.
2. If the suspect refused to identify their signature on the P13 then the person who witnessed the suspect's initial signature could produce a statement to the effect that they had witnessed the suspect signing the P13. This is again

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not hearsay.

3. If it is not practicable to get a statement from the person who witnessed the suspect's signature then the Investigator or the Delivery Office Manager could produce the item and say what it is and what is used for. The fact that it is signed by the suspect is hearsay as neither the Investigator or the DOM can say the suspect signed it. However as the document satisfies the criteria of Section 117 of the CJA 2003 then the hearsay, namely that the P13 had been signed by the suspect will be admissible.

To enable the hearsay to be admitted the witness statement should bear a declaration to the following effect;

**The Personal Declaration form P13 Identified as ABC/1a referred to and identified in this statement was created or received by a person in the course of a trade, business, profession or as the holder of a paid or unpaid office and the person who supplied the information in the document had or may reasonably be supposed to have had personal knowledge of the matters dealt with in the document. Additionally each person through whom the information was supplied received the information in the course of a trade, business, profession or other occupation or as the holder of a paid or unpaid office. The supplier of the information is unavailable or cannot reasonably be expected to recall any of the matters dealt with in the statement".**

- 3.5 Section 118 of CJA 2003. This section preserves the existing Common Law categories of admissible hearsay evidence. The categories of hearsay evidence relevant to investigators under this section are;**
1. **Public information.** This includes published works (such as maps and scientific works), public documents (such as the electoral role and land registry titles), records of certain courts (such as court transcripts or certificates of conviction) and evidence relating to a person's age or date of birth.
  2. **Reputation as to character.** Hearsay which deals with a person's reputation could be admissible.
  3. **Res gestae evidence.** Res gestae is Latin for "things done". Simply it is things said or done naturally and spontaneously, without any time to think about what is said, in direct response to an event. Such words or actions, which are closely connected to an event, are thought to be reliable and may be admissible. An example would be a lady is in a High St. She hears an old man, who is across the road shout "The postman is being robbed". The lady then turns and sees a man running away from a postman with a mail pouch. The old man is never found but the lady repeats what she heard him say. The statement would be considered reliable as evidence as the statement was made spontaneously at the time of the event and there is little chance of the lady misunderstanding what the old man said, even though the man cannot be identified.
  4. **Confessions** Will be admissible as long as they fulfil the requirements of sections 76, 76A and 78 of PACE 1984
  5. **Statements made in the presence of the accused.** Statements made in the presence of the accused are admissible but only to prove the reaction of the accused and not as evidence of the truth of what was said.
  6. **Admissions by agents.** An admission made by an agent of a defendant is admissible against the defendant as evidence of any matter stated. Additionally a statement made by a person to whom a defendant refers a person for information is admissible against the defendant as evidence of any matter stated. This in the main relates to legal advisors making admissions on behalf of their client.
  7. **The rule of "common enterprise"** This means that a statement made by a party to a common enterprise will be admissible against another party to the enterprise as evidence of any matter stated. For example, if it is independently proved that A and B are involved in a joint enterprise to rob a Post Office Branch any incriminating statements made by A could be admissible against B.
  8. **The rule of 'expert evidence'.** This permits an expert to give evidence of any relevant matter which forms part of their professional expertise (although not acquired through personal experience) and to draw upon

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technical information widely used by members of the expert's profession.

**3.6 Section 119 of the CJA 2003 Previous Statements.** If a subsequent statement contradicts a previous statement made by a witness then the previous statement may be admitted in evidence in certain circumstances.

**3.7** If you are in doubt about the admissibility or necessity of potential hearsay evidence in your case you should seek advice of the CLT before obtaining the evidence.

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#### **4. BAD CHARACTER EVIDENCE**

**4.1** The CJA 2003 introduced legislation in respect of the admissibility of bad character evidence. The legislation covers the bad character of both the **defendant** and **non-defendants** in the case. Bad character evidence is defined as evidence of, or of a disposition towards, misconduct.

**4.2 Misconduct** is defined in Sec 112 CJA 2003 as the commission of an offence or other reprehensible conduct. This is intended to be a broad definition and covers evidence that shows that a person has committed an offence, or has acted in a reprehensible way (or is disposed to do so), as well as evidence from which this might be inferred. The admissibility of such evidence will be decided by the Court.

#### **4.3 Bad Character of the defendant**

The defendant's previous misconduct or bad character may be admitted in evidence if it is relevant and it demonstrates that the defendant has a **"propensity to commit offences of the kind charged"** and or has a **"propensity to be untruthful"**. If so and if it is in the interests of justice then the courts and juries should be made aware of such character. The test of relevance is simply the similarity and number of previous events of misconduct and how recently those events happened.

**4.4 Propensity to commit offences of the kind charged.** Any evidence that shows that a defendant has a propensity to commit offences of the kind with which he is charged and that evidence makes it more likely that the defendant is guilty of the current offence is generally admissible at court. The legislation specifies two instances when the defendant's propensity to commit offences of the kind with which he is charged may be established. They are evidence that the defendant has been convicted of;

1. An offence of the same description as the one with which the defendant is charged. That is to say when the charge or indictment is written it is in the same terms as the previous charge or indictment. It relates to the particular law that has been broken and not the circumstances of the offence.
  2. An offence of the same category as the one with which he is charged. The Secretary of State has prescribed "categories" of offences which are of the 'same type' for use as an indicator that a defendant has a propensity to commit offences of a certain type. One of the categories is "theft" type offences. This means that where a defendant has previous convictions for an offence of theft, then an offence charged in the same category creates a strong presumption that the previous conviction should be admitted. The theft type offences covered in the category can be found by following this link. The Criminal Justice Act 2003 (Categories of Offences) Order 2004
- The evidence will not be admitted under this type in cases where the court is satisfied by reason of the length of time since the conviction or for any other reason that it would be unjust for it to apply.

**4.5 Propensity to be untruthful.** The law does not define what amounts to untruthfulness and as such the literal meaning must apply. This allows for the inclusion of evidence of previous convictions for offences of perjury,



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perverting the course of justice, deception & fraud. In addition the suspect may be in jeopardy under this section if in the past they have been convicted of an offence after pleading not guilty, because their defence was thought to be untruthful. It can also include untruthfulness in previous disciplinary cases. Evidence of propensity to be untruthful will only be allowed where it is suggested that the defendant is being untruthful in his defence in the current case. If the prosecution and defence agree on the facts of the case and the defence is that an element or part of the offence had not been made out, for example dishonesty, then this type of evidence will not be admissible.

**4.6 Bad character evidence can include;**

1. Evidence such as previous convictions.
2. Evidence from charges being tried concurrently.
3. Evidence relating to offences for which a person has been charged in the past, where the charge was not prosecuted, or for which the person was subsequently acquitted.
4. Evidence of untruthfulness.
5. Evidence of reprehensible conduct such as a disciplinary record at work for misconduct involving dishonesty

**4.7 Bad Character evidence will be generally admissible against the defendant in the following circumstances:**

1. **All the parties agree to it being given.**
2. **The defendant introduces the evidence himself or it is given in response to a question put by the defendant (or his counsel) that is intended to elicit it.** For example the defendant introduces the alibi that they were in prison at the time of the offence.
3. **It is important explanatory evidence.** This is evidence that is needed in order for the court to understand the meaning of the evidence in the current case. An example would be in the past the defendant had used violence to commit robbery on a postperson and was subsequently convicted and imprisoned. Following his release he approached the same postperson but this time demanded the delivery pouch without offering violence. The fact that the robber had used violence in the past is relevant to the current case because the postperson is aware that if he does not give over the pouch then violence could be used again. The fear of the Postperson is relevant to the case as important explanatory evidence of robbery in the latter case.
4. **It is relevant to an important matter in issue between the defendant and prosecution.** This allows evidence of bad character if it demonstrates the defendant's propensity to commit offences similar to the offence charged and/or the propensity to be untruthful.
5. **It has substantial probative value in relation to an important issue between the defendant and a co-defendant.** Only a co-defendant and not the prosecution introduce such bad character evidence. An example of this would be a defendant saying that the co-defendant has previous convictions or a propensity to be untruthful.

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6. **It corrects a false impression given by the defendant about himself.** If the Court is satisfied that the defendant is responsible for giving a false impression during proceedings then the evidence of his bad character will be admissible. The false impression could be given during an interview under caution for example. However a defendant is not responsible for an assertion if he either withdraws or disassociates himself from the assertion. The defendant can also be responsible for assertions made by other people if it was the defendant's intention to give a false impression through for example a defence witness.
7. **Attack on another person's bad character.** A defendant's bad character will become admissible when there has been an attack on another's person character. This can happen in one of three ways;
- a. The defendant adduces evidence attacking the other person's character, or;
  - b. He (or his legal representative cross-examine a witness in his interests) asks questions in cross examination that are intended to elicit such evidence or are likely to do, or;
  - c. The defendant imputes the other person's character when questioned under caution or on being charged or officially informed he may be prosecuted. This means that it will be important that the Investigator includes such an attack in the written record of taped interview or notebook.

**4.8 Bad Character Evidence in the Investigation & Prosecution.** The introduction of bad character evidence may assist the investigation/prosecution in two main areas. Firstly it prevents the suspect from forwarding a defence which, if their true character was known, would bring the plausibility of their defence into question. An example of this would be a suspect being investigated for the theft of mail, forwards the defence that the mail in question was left in his car by another postperson. However if the suspect has been convicted of theft in the past and during that trial he had proffered a similar explanation, then his current defence becomes less plausible. Secondly it allows investigators to highlight similarities between the previous and current suspected misconduct.

**4.9** If an Investigator feels that previous misconduct is relevant to current conduct then they should explore the previous misconduct in the suspect interview. If however the link between the past misconduct and their current conduct is not strong, due to either length of time or the type of previous misconduct then it should not be raised during a suspect interview.

**4.1 Bad Character Evidence Non-defendant**

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Bad Character Evidence of non-defendants mainly pertains to witnesses but it also includes persons other than witnesses whose character could be brought into question, (An example of such could be a person who has died.). Unless the prosecution and the defence agree, evidence of misconduct of a person other than a defendant cannot be given without the permission of the court. The Court will only admit bad character evidence of a non-defendant if it is **important explanatory evidence** or it has **substantive probative value**.

**4.1 Important Explanatory Evidence** is detailed in paragraph 4.7.3 above. An example of when it would be relevant in respect of the bad character of witness would be as follows. A suspect is charged with robbery of mail from a postman. The suspect is a "loan shark" and he states that the postman, who is a drug addict, owed him money. The loan shark states that the postman gave him money to pay the debt but the postman's evidence is that loan shark took mail containing the money by force. Evidence of the postman's drug addiction would be important explanatory evidence without which the jury would find it hard to fully understand the case.

**4.1 Substantive Probative Value.** This is to say the bad character of a non defendant may be relevant to their evidence in the case. For the bad character

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evidence to be admissible the evidence must have substantial probative value in relation to a matter which;

1. Is a matter in issue in the proceedings, and

2. Is of substantial importance in the context of the case as a whole.

Recent convictions for dishonesty are more likely than old convictions for dangerous driving to be of substantial probative value in respect of the evidence of a prosecution witness. An example of when bad character evidence of a prosecution witness may be admitted would be in a case where "Test" letters were handed to a Delivery Office Manager to place in the walk of a suspect offender. It was later reported by the addressee that one of the test letters did not arrive. Subsequently it is established that the addressee has recent previous convictions for theft. In these circumstances the defence would no doubt wish to introduce a prosecution witness's bad character.

- 4.1** If during an investigation an Investigator becomes aware of evidence that identifies Bad Character of a non defendant the matter must be discussed with the CLT.

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## **5. OTHER TYPES OF EVIDENCE**

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

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

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

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

**5.5 Opinion Evidence** is, as a general rule, only allowed in evidence from expert witnesses, for example a Doctor can detail someone's injuries; a handwriting expert can state that, in their considered opinion, similarities exist that would strongly suggest two documents were written by the same person. A **non-expert** can give opinion on such things that might well be interpreted as a fact,

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for example identification of a person or object, the speed of a moving vehicle, temperature, time, value of an item and whether a person is drunk (however, the witness is required to describe the facts upon which this opinion is based). It is important that opinion given by non-experts does not cover prejudicial evidence for example suggesting that a suspect has been spending a lot of money, without having supporting evidence.

- 5.6 Real Evidence or Exhibits** are the actual objects, which are produced for examination of the court and jury. It is different to documentary evidence as documents pertain to the information contained within it. An exhibit is physical proof of the objects existence. The recovered letter detailed in 5.1 above is both direct evidence and real evidence.
- 5.7 Similar Fact Evidence.** This deals with the admissibility of evidence relating to previous similar acts by the accused. In order for evidence to be admissible under this rule, the previous offences have to be similar to the point of being virtually identical to the events in the current case. Although the rules of Similar fact evidence are still in existence most similar fact evidence would now be admissible under the Bad Character rules.

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**6 CONTINUITY OF EVIDENCE**

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

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**7. VULNERABLE (CHILDREN & PEOPLE WITH MENTAL DISORDERS) & INTIMIDATED WITNESSES & SPECIAL MEASURES**

- 7.1 Vulnerable. Witness.** A person is eligible for assistance as a vulnerable witness if they fall within the categories detailed in Section 16 of The Youth Justice and Criminal Evidence Act 1999, which are detailed below:
- 1. A child under 17 years of age at the time of the hearing.**
  - 2. People whose quality of evidence is likely to be diminished because they:**
    - a) Have a mental disorder (as detailed under the Mental Health Act 1983).
    - b) Have a significant impairment of intelligence and social functioning.
    - c) Have a physical disability or are suffering from a physical disorder.
- It is important to consider however that not all adults with a mental disorder will necessarily be vulnerable as a witness or would wish to be treated as such. It will depend on the nature of the person's disability and whether it affects their ability to perform the functions of a witness.
- 7.2 Appropriate Adults.** Whenever statements are to be obtained from children or people whose mental capacity is such that they may not understand the significance of what is said they must have an appropriate adult present. If the child is of tender years, (normally those under 14 years) they may not understand the importance of taking a sworn oath to tell the truth and as such they must not be asked to sign the declaration on the statement form. They

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should however include in their statement the fact that they know what has been said is true.

**7.3 Intimidated Witnesses** are defined by Section 17 of The Youth Justice and Criminal Evidence Act 1999. They are witnesses, but not the accused, whose quality of testimony is likely to be diminished by reason of fear or distress at the prospect of giving evidence. In deciding if a witness falls into this category and is therefore eligible for Special Measures being made available, the Court will need to consider any views expressed by the witness but will also need to take account of a range of factors relating to the witness, the alleged offence and the alleged offender

**7.4** If an Investigator becomes aware, or thinks that a witness is vulnerable or they have any reason to suspect that the witness is or will be intimidated then they must seek advice from the CLT. The question of the necessity of the evidence can then be addressed. If it is thought that a statement is necessary consideration can be given to achieving best evidence. The police have specialist interviewers for vulnerable and intimidated witnesses and the statement can be recorded visually if the case is suitable for "Special Measures". See paragraph 7.6 below.

**7.5** Vulnerable or intimidated witnesses can also receive independent social support during the investigation/prosecution process. Three distinct roles for witness support have been identified;

1. **Interview Support** - from a person much like a RMG friend but not necessarily an employee. For further information on interview supporters see Paragraph 4.4 of P&S 5.4 Witness Statements.
2. **Pre-trial Support** - can be provided to the witness in the period between the interview and the start of any trial. A "Victim Support" volunteer may well play this role.
3. **Court Witness Support** - can be a person known to the witness but is not a party to the proceedings and has no detailed knowledge of the case. The person may have assisted in preparing the witness for their Court appearance. A member of the Witness Service may well fulfill this role.

**7.6 Special Measures** It is the duty of an Investigator and the prosecution lawyer to ascertain whether a particular witness qualifies for Special Measures. Special Measures can include:

1. Screens may be made available to shield the witness from the defendant
2. Removal of Wigs and Gowns by Judges and Barristers to make the criminal proceedings less daunting.
3. The use of video recorded interviews to be admitted as evidence-in-chief and cross-examination.
4. Giving evidence through a live video link from a different location to the Court room
5. Examination of the witness through an intermediary.
6. Examination using aids to communication such as a communicator or translator or by using some communication technique

Permission to use them in Court is only available by application to the Magistrate or Judge. The Magistrate or Judge must take into account all the circumstances of the case including the wishes of the witness and whether the special measures applied for are likely to inhibit the evidence being effectively tested by any party.

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