



CROWN PROSECUTION SERVICE

PRE-TRIAL WITNESS INTERVIEWS

CODE OF PRACTICE

1 Introduction

- 1.1 In December 2004 the Attorney General published a report which concluded that Prosecutors should be able to speak to witnesses for the purpose of clarifying or assessing the reliability of the evidence they could give. The report also concluded that the interview process should be supported by a Code of Practice. This Code of Practice, issued by the Director of Public Prosecutions, provides guidance to prosecutors conducting pre-trial interviews with witnesses.

2 Interviews to which this Code of Practice Applies

- 2.1 This Code of Practice applies to interviews for the purpose of assisting a prosecutor to assess the reliability of a witness's evidence or to understand complex evidence (referred to throughout this document as a pre-trial interview). It does not apply to other meetings with witnesses such as special measures meetings, court familiarisation visits or meetings to explain a decision to discontinue a case or to significantly alter a charge.
- 2.2 A Crown Prosecutor may conduct a pre-trial interview with a witness when he considers that it will enable him to reach a better informed decision about any aspect of the case. Pre-trial Interviews must not be held for the purpose of improving a witness's evidence or performance although a prosecutor conducting a pre-trial interview may answer a witness's questions about court procedure.
- 2.3 Where a prosecutor conducts a pre-trial interview to assess the reliability of a witness's evidence, the witness may be asked about the content of his/her statement or other issues that relate to reliability. This may include taking the witness through his/her statement, asking questions to clarify and expand evidence, asking questions relating to character, exploring new evidence or probing the witness's account.
- 2.4 A pre-trial interview may take place at any stage of the proceedings (including pre –charge) until the witness starts to give evidence at trial. However, no interview should be conducted until the witness has provided to the police a signed witness statement or has taken part in a visually recorded evidential interview. Once a prosecutor has decided that a pre-trial interview is appropriate it should be conducted as soon as reasonably practicable.
- 2.5 Before a pre-trial interview takes place the prosecutor should consult the Senior Investigating Officer (or the officer in the case if there is no SIO). The prosecutor will require confirmation that the person to be interviewed is not, and is not likely to become, a suspect in the case. If

there is any possibility that the witness may come under suspicion the interview must not take place until that possibility ceases to exist.

- 2.6 If, during an interview, the witness comes under suspicion, whether in relation to the offence then under investigation or another offence the prosecutor must terminate the interview immediately. The prosecutor can also terminate the interview for other reasons (such as hostility) at any time.

3 Persons who may conduct an interview

- 3.1 A pre-trial interview may be conducted by a Crown Prosecutor designated by the Chief Crown Prosecutor for their area or Head of Division to conduct such interviews, or by an independent advocate on the authority of a designated Crown Prosecutor.

4 Persons present at interview

- 4.1 The presence of a police officer will not normally be necessary but exceptionally the prosecutor or other designated person conducting the interview may request the presence of a police officer if they deem this necessary. The officer attending the interview must be familiar with the case but if possible he or she should not be the officer who obtained the witness's original statement. An officer attending an interview under these circumstances should play no part in the questioning of the witness. If, as a result of something said in interview, the officer and prosecutor need to confer about an evidential point, the interview should be suspended and the discussion take place in the absence of the witness.
- 4.2 An interview may be conducted by more than one prosecutor or by a prosecutor and an independent advocate. However, where this is done, the interview process should be led by one person.
- 4.3 Other CPS staff may also be present to provide administrative support to the prosecutor.
- 4.4 In any case where the prosecutor considers it necessary for the witness to have the assistance of an interpreter or intermediary, (whether or not the original statement was taken in such manner), the prosecutor shall arrange for the attendance of a suitably qualified person to attend the pre-trial interview. Persons who may themselves be potential witnesses must not act in the role of interpreter or intermediary but a person who assisted in the taking of a witness statement may assist at a pre-trial interview. Prosecutors should refer to existing guidance on the selection of interpreters.

5 Witness support

- 5.1 The witness may be accompanied by a supporter. The prosecutor must satisfy him / herself that the supporter has no actual or potential involvement in the case and has no personal knowledge of the matters likely to be discussed. The prosecutor conducting the interview has discretion as to whether the supporter should be permitted to be present at, or remain in, the interview. If the proposed supporter is, in the view of the prosecutor, unsuitable to act as a supporter then the witness should be given an opportunity to arrange for an alternative suitable supporter and the interview should be rearranged for this purpose.
- 5.2 The prosecutor must outline the supporter's role and ensure that he or she does not prompt, influence or inhibit the witness in any way.

6 The interview

- 6.1 The attendance of a witness at a pre-trial interview is voluntary and cannot be compelled. If a witness declines to attend a pre-trial interview, this fact and any reasons advanced by the witness should normally be disclosed to the defence in accordance with the prosecutor's disclosure obligations.
- 6.2 The prosecutor must remain objective and dispassionate at all times during the interview. He/she shall explain to the witness his/her statutory role, having regard to the duties of the prosecutor set out in the Code for Crown Prosecutors and this code of practice. He/she should also explain in advance to the witness in clear terms the purpose of the interview and deal with any questions that the witness may have in relation to the process.
- 6.3 A witness must not be interviewed in the presence of any other witness in the case (except the officer in the case where he or she is present at the invitation of the person conducting the interview).
- 6.4 The witness should see copies of his or her witness statement(s) before or during the interview. Where the witness has participated in a visually recorded interview, he/she should be given an opportunity of viewing it again. Where the prosecutor considers it to be necessary the witness should be given an opportunity of commenting on the contents of his/her statement or visually recorded interview.
- 6.5 If the witness has seen a copy of their written statement, or has viewed their visually recorded statement in advance of the interview then this fact should be confirmed at the start of the interview.
- 6.6 Where the prosecutor considers it to be necessary, the witness may be shown items or documents exhibited by him/her.

7 Questioning

- 7.1 Training or coaching for witnesses is not permitted (see R v Momodou and Limani (2005) EWCA Crim 177). Prosecutors must not under any circumstances train, practise or coach the witness or ask questions that may taint the witness's evidence. Leading questions should be avoided.
- 7.2 Where there is significant conflict between witnesses that cannot be resolved by careful questioning, alternative accounts may be put to the witness for comment so long as any source of the alternative account is not attributed. If this is done, it should never be suggested to the witness that they adopt the alternative account.
- 7.3 Prosecutors should remain dispassionate about the responses that a witness gives. In particular they must never suggest to the witness that he/she might be wrong, indicate approval or disapproval in any way to any answer given by the witness. To depart from this standard carries with it the risk of allegations that the witness has been led or coached in their evidence.

8 Recording and Disclosure

- 8.1 A comprehensive audio recording of the interview must be made. If a witness has previously given a visually recorded evidential interview the pre-trial interview may also be video recorded.
- 8.2 Where, in the course of an interview, the witness provides further evidence which is material to the case, a further witness statement should be taken (or visual interview conducted) by a police officer and served upon the defence.
- 8.3 The disclosure officer will be notified of any unused material generated through this process and will record it on the appropriate disclosure schedule.
- 8.4 The record of a pre-trial interview will generally be unused material and disclosure should be determined by the application of the appropriate statutory test(s). A record of a pre-trial interview will normally meet these tests and, subject to the application of Public Interest Immunity, the recording of the interview will be supplied automatically to the defence as unused material. When a recording is supplied to the defence a transcript will not be prepared.

9 Children and other vulnerable witnesses

- 9.1 Special care will be taken in making a decision to hold a pre-trial interview with a child. The purpose of video recording the evidence in chief of children and other vulnerable witnesses is to preserve their evidence at an early stage and to protect them from the necessity to continually repeat their account during the course of the criminal prosecution process. Further, in cases where children and other vulnerable witnesses are victims of abuse, therapy may have commenced following the video recording of their testimony.
- 9.2 It will only be in exceptional cases, therefore, that pre-trial interviews are considered for children and vulnerable witnesses. Prosecutors will have the benefit of the video recording in order to assess the witness and if there are areas that require further clarification, consideration will be given to asking the original interviewer to explore these by way of an additional video recorded interview. The investigative interviewers will have already built a rapport with the witness and have the special skills required to gently probe the issue in a simple and non-suggestive way.
- 9.3 In reaching a decision to hold a pre-trial interview consideration will be given to the age, degree of vulnerability and status of the witness. Where the original statement was video recorded the pre-trial interview will also be video recorded. The venue must be appropriate for the witness and in most cases the police video interview suite will be used. The witness must have appropriate support and the prosecutor will take advice from the trained police interviewer as to the type and level of questions to be put. The prosecutor must also be conversant with the practice guidance 'Achieving Best Evidence in Criminal Proceedings'.

10 Witness Expenses

- 10.1 A witness will be reimbursed for any expense reasonably incurred in attending the place at which the pre-trial interview is held. This may include the expenses of a supporter. Payment will be in accordance with standard witness allowances.

11 Remote Interviewing

- 11.1 In order to provide the greatest opportunity to assess the reliability or credibility of a witness's evidence, a pre-trial interview should, wherever practicable, involve face to face contact between the prosecutor and the witness. Face to face contact affords greater

opportunities to the witness to raise issues of concern and to be put at their ease about the process of giving evidence.

- 11.2 However, a prosecutor may at his or her discretion conduct a pre-trial interview by indirect means including (but not limited to) telephone or video-link. In such cases the prosecutor must make arrangements for a record of the interview to be made in compliance with the requirements set out above.

A handwritten signature in blue ink that reads "Ken Macdonald". The signature is written in a cursive style with a large initial 'K'.

KEN MACDONALD QC
Director of Public Prosecutions

22 February 2008