

Statements Obtained Over the Telephone – Best Practice Guidance

1. Background

- During the current Covid 19 outbreak individuals and organisations are required to put in place rigorous measures to protect public safety. Police forces may wish during the time of social isolation to undertake the obtaining of witness statements over the telephone.

2. Relevant Legislation and Rules

- Section 9 Criminal Justice Act 1967 requires that a statement '*...purports to be signed by the person who made it...*'. There is no requirement in relevant statutes or Rules for a signature to be in ink on paper (a so-called 'wet signature') or that a document must be signed in any particular way.
- There is specific legislative provision in the Electronic Communications Act 2000 that makes the use of digital signatures admissible in evidence in any legal proceedings. Section 7 Electronic Communications Act 2000 provides that an electronic signature is admissible in any legal proceedings for the purpose of establishing the authenticity or the integrity of any communication or data **into which it is incorporated**.
Section 7(3) states:
For the purposes of this section an electronic signature incorporated into or associated with a particular electronic communication or particular electronic data is certified by any person if that person (whether before or after the making of the communication) has made a statement confirming that—
(a) the signature,
(b) a means of producing, communicating or verifying the signature, or
(c) a procedure applied to the signature,
is (either alone or in combination with other factors) a valid means of signing.
- Rule 5.3(2) Criminal Procedure Rules provides for '*any written or electronic authentication of the form by, or with the authority of, the signatory unless other legislation otherwise requires, or the court otherwise directs*'.
- Signatures can be captured in a variety of ways in connection with digital documents:
 - as a graphical digital representation of the witness's usual signature;
 - as a scanned copy of a 'wet signature';
 - by the use of a password (an e-mail from a named e-mail account could also be considered to 'purport to be signed' by the account holder, particularly so if it is a secure account and one that requires a password to obtain access);
 - by the use of a digital signature authorised or certified by the makerAll of the above would appear to 'purport to be' a signature for the purposes of both the Criminal Justice Act 1967 and Magistrates' Courts Act 1980.
- Rule 16.2 of the Criminal Procedure Rules set outs the requirements for the contents of a witness statement:
The statement must contain—
(a) at the beginning—
 - (i) the witness' name, and
 - (ii) the witness' age, if under 18;
(b) a declaration by the witness that—

- (i) it is true to the best of the witness' knowledge and belief, and
- (ii) the witness knows that if it is introduced in evidence, then it would be an offence wilfully to have stated in it anything that the witness knew to be false or did not believe to be true;
- (c) if the witness cannot read the statement, a signed declaration by someone else that that person read it to the witness; and
- (d) the witness' signature.

- A witness statement can be taken over the telephone. It must be authenticated by the witness. This process of authentication requires the witness to place their electronic signature on the statement. This process can be done by e-mail.
- Any doubts as to the provenance, authenticity or integrity of a digital document containing a digital signature would need to be tested in the same way that they would be tested in respect of a traditional 'wet' signature on paper by the calling of relevant evidence.

3. Best Practice for taking statements over the telephone

- Witness statements taken over the telephone must be typed digitally by statement taker.
- The statement must then be authenticated by the witness. This can be done by sending the witness the typed copy of the statement by e-mail so that they can read it, make any relevant amendments/corrections and place their electronic signature on the statement. The statement can also be posted to the witness for signature.
- The correspondence attaching the statement should require the witness to do the following:
 1. review the contents of the statement
 2. make any amendments or corrections
 3. place their electronic signature under the statement of truth to confirm the contents are accurate and true.
- If the witness is unable to make any corrections or amendments to the statement themselves, the statement taker can do this over the telephone. The amended version of the statement can be sent to the witness.
- The electronic signature can be done in the following ways:
 1. as a graphical digital representation of the witness's usual signature (typed version);
 2. as a scanned copy of a 'wet signature' (if they have the facilities to do so);
 3. by the use of a digital signature authorised or certified by the maker;
 4. by the use of a password (an e-mail from a named e-mail account could also be considered to 'purport to be signed' by the account holder, particularly so if it is a secure account and one that requires a password to obtain access).
- A typed version of the signature below the statement of truth is preferable.
- If the witness cannot read the statement, a signed declaration is required by someone else that that person read it to the witness. This can be in the form of another statement signed by the person who read the statement to the witness confirming the same.

- All statements taken by telephone should state that they have been taken by telephone and that the witness has had the opportunity to consider the contents and authenticate it. The following suggested wording can be placed at the top of the statement (in addition to the required statement of truth):

"This statement has been taken over the telephone by xxxx[Officer's Name/ Interpreter's name]. I have had the opportunity to review the contents of the statement and confirm that the contents are accurate and true."

- The e-mail correspondence between the police and the witness will be relevant unused material and should be scheduled by the disclosure officer on the schedule of unused material.
- If the statement is taken in a foreign language by the use of an interpreter the same process set out above applies to authenticate the contents of the statement by the witness.
- The officer must consider whether there is a risk of harm to the witness if the statement was to be intercepted when sent by e-mail or post.

4. Charging

- The Code for Crown Prosecutors requires that for a prosecution to be authorised there is sufficient evidence to provide a realistic prospect of a conviction. It follows therefore that whilst a statement can be obtained over the telephone, for a full code test decision to be made arrangements will be needed to be put in place for the statement to be authenticated so it is admissible as evidence at the point of charge.
- For a decision to charge to be made under the Threshold Test all five conditions of the Threshold Test must be met. The first condition is that there are reasonable grounds that the person has committed the offence. An unsigned statement is not admissible evidence but can be material capable of being put in an admissible form and presented to the court. This evidence must be able to be obtained within a reasonable time to satisfy the second condition of the Threshold Test.
- It is recognised that it may not be possible to obtain a statement in an admissible form before a Threshold Test decision is required to be made.
- During this time Threshold Test decisions can be made on the basis of an unsigned statement only where the following conditions are met:
 1. the statement was obtained in circumstances where the integrity of the statement is achieved;
 2. obtaining a signature/electronic signature before charge is not possible because of restrictions in place due to Covid 19 and;
 3. an electronically signed statement can be supplied to the Crown Prosecution Service **within 7 days of any charging decision.**
- The MG3/request for charging advice should clearly identify any unsigned statements. The officer can confirm that the statement has been read to the witness and the contents agreed in principle. If unsigned statements are submitted to the CPS they should be named accordingly with the addition of the word UNSIGNED.