

## IPCC Police Witness Policy

### Purpose

This document outlines the IPCC's approach to obtaining witness evidence from police officers, special constables and other police personnel. It also includes details of the power to require a police witness to attend a witness interview.

This policy does not apply where a police officer or person listed at (b) to (e) below may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings. Guidance on conducting misconduct and criminal interviews can be found in the Operations Manual.

### Police witnesses

For the purposes of this policy, a police witness<sup>1</sup> is a:

- (a) police officer;
- (b) member of police staff;
- (c) special constable under the direction and control of a chief officer;
- (d) person who is serving with SOCA, NPIA, MOD, BTP, CNC, Port of Bristol Police, Port of Liverpool Police, Port of Tilbury Police, Tees and Hartlepool Harbour police; or
- (e) person who is serving with a police force in Scotland or the newly created Police Service of Scotland.

The legislation, which sets out the power to require police witnesses to attend an interview, uses the term "serving officer" to describe these persons.

This power does not extend to retired officers, special constables or police staff, or those persons who have retired from the bodies listed at (d) and (e) above.

This list is wider than the list of persons who ordinarily fall within the IPCC's jurisdiction. For example, at the time of writing this document, Ministry of Defence police officers fall directly within the IPCC's jurisdiction but Ministry of Defence civilian members of staff do not. This means if a person's status changes from a witness to a suspect it will not automatically follow that the IPCC will conduct any misconduct or criminal interview. For advice on the

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<sup>1</sup> Paragraph 19F, Schedule 3, Police Reform Act 2002; Police (Complaints and Conduct) Regulations 2013

extent of the IPCC's functions and powers relating to police witnesses, particularly categories (b), (d) and (e), please consult a lawyer.

## Identifying witnesses

Police witnesses can be identified at any point from the start of an investigation. When a police witness is identified, the lead investigator must decide whether that witness should be classified as a significant witness. A record of that decision should be made, together with the rationale for it.

Evidence from significant witnesses should be obtained in accordance with this policy and the IPCC Significant Witness Policy.

The IPCC may also wish to conduct witness interviews with other police witnesses who have not been deemed to be significant witnesses.

From 7 March 2013, the investigating officer in managed and independent investigations has the power to require a police witness of any rank to attend a witness interview<sup>2</sup>. Normally this power will be used before the final report is completed. However, on 7 March the use of this power should be considered on all ongoing investigations where any subsequent proceedings have not yet commenced, irrespective of when that investigation started.

It should be noted that from 7 March 2013 the Authorised Professional Practice on Armed Policing (dated January 2013 and which replaced the ACPO Manual) is out of date in its statement that "*The independent investigative authority will wish to have detailed statements from witnesses. These statements may be taken by the independent investigative authority or be provided by the witnesses themselves. The manner in which the statements are obtained or provided will be decided by individual witnesses subject to the legal advice they receive*".

Regardless of this statement, the investigating officer in managed and independent investigations has a power to require a police witness to attend an interview and will use it in accordance with this policy.

As the IPCC has direction and control in a managed investigation, any decision to require a police witness to attend a witness interview or not should be agreed with the IPCC.

The lead investigator must consult with the commissioner about whether or not to require a police witness to attend for interview.

All decisions should be recorded by the lead investigator in their policy file, whether or not they decide to use the power to require a police witness to attend an interview.

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<sup>2</sup> Paragraph 19F, Schedule 3, Police Reform Act 2002; Police (Complaints and Conduct) Regulations 2013

## Procedure for requiring a police witness to attend an interview

### Step 1

As soon as a decision is made to interview a police witness (possibly at a post incident procedure), the lead investigator should give the police witness a written notice informing them that an interview will take place under the Police (Complaints and Conduct) Regulations 2013 (see step 1 letter template) and seek to agree a date and time for them to attend a witness interview<sup>3</sup>.

### Step 2

Where no date and time is agreed, the lead investigator must consult with the commissioner about whether or not to require the witness to attend an interview.

Where no date and time is agreed and a decision is made to require the witness to attend an interview, the lead investigator shall specify a date and time for an interview<sup>4</sup> (see step 2 letter template).

### Step 3

If the police witness or the person accompanying them (see below) will not be available at the time specified, the police witness must propose an alternative date and time which must be reasonable and fall before the end of the period of 5 working days beginning with the first working day after the day specified by the investigator.<sup>5</sup>

### Step 4

Once the interview date has been agreed, specified or an alternative proposed, the police witness must be given written notice of the date, time and place of the interview<sup>6</sup> (see step 4 letter template).

The regulations do not specify how this notice should be served, but the IPCC's view is that it should be served as soon as possible after the interview date and time have been agreed or specified, and should be delivered in such a way as to ensure prompt receipt.

The lead investigator may require a police witness to attend more than one witness interview during the course of an investigation. The procedures set out in this policy must be applied to the arrangement of each individual interview.

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<sup>3</sup> Regulation 2(1), Police (Complaints and Conduct) Regulations 2013

<sup>4</sup> Regulation 2(2), Police (Complaints and Conduct) Regulations 2013

<sup>5</sup> Regulation 2(3-4), Police (Complaints and Conduct) Regulations 2013

<sup>6</sup> Regulation 2(5) Police (Complaints and Conduct) Regulations 2013

## Fitness for interview

As with other witnesses, where a police witness is to be interviewed, their fitness for interview should be considered prior to agreeing or specifying a date for that interview.

For example, the Authorised Professional Practice on Armed Policing recommends that evidential statements are *“not normally obtained immediately and are left until the officers involved in the shooting are better able to articulate their experience in a coherent format, usually after at least forty-eight hours”*.

The lead investigator should consider this factor when arranging an interview following a fatal shooting as well as other incidents, such as deaths in custody.

If a police witness is on certificated sick leave, it should not automatically be assumed that they are not fit to be interviewed. It may be that they are not fit to perform their police duties, but are perfectly capable of being interviewed.

If a witness states that they are not fit to attend an interview, perhaps because they are on certificated sick leave, they should be asked to provide evidence of this, for example by way of a letter from their GP specifying why they are not fit to be interviewed.

If the lead investigator considers that the witness is not fit to attend an interview, they should consider:

- postponing the interview until they are fit (and then arranging it in accordance with the procedures above), or
- as a last resort, providing them with questions and asking them to provide prepare their own witness statement.

The welfare of the witness should always be a consideration when organising an interview, but this should be balanced with the need for the investigation to obtain evidence and progress as quickly as possible.

## Disclosure prior to a police witness interview

The regulations state that the investigating officer shall, in advance of the interview, provide the police witness with such information as the investigating officer considers appropriate in the circumstances of the case to enable the officer to prepare for interview<sup>7</sup>.

The police witness may ask to be provided with a list of topics about which the investigating officer intends to ask questions during the witness interview.

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<sup>7</sup> Regulation 2(6), Police (Complaints and Conduct) Regulations 2013

This request could be satisfied by providing them with the terms of reference or a high level list of topics.

However it is important to note that civilian witnesses are given little if any information prior to being interviewed as a witness to an incident. This is in order to protect the integrity of their account and prevent it being tainted by other witnesses' evidence.

It is the IPCC's view that protecting the integrity of a witness's account is of paramount importance and this should be the guiding principle in deciding what information it is appropriate to give the witness. In some circumstances, therefore, the investigator may consider it appropriate to disclose no or minimal information to the witness in advance of the interview, in order to protect the integrity of their witness account.

The lead investigator should record in their policy file their decisions about what information will be provided to the police witness prior to interview, and justify the disclosure or non-disclosure of any information to them. A clear record or copy of the information disclosed must be retained.

### Accompanying persons

The regulations state that a police witness can be accompanied to a witness interview by an accompanying person which means any person nominated by the serving officer and who is not otherwise involved in the matter<sup>8</sup>. This may be a police friend, a lawyer or any other person who is not involved in the matter.

The regulations state that the accompanying person may not answer any questions asked of the police witness during the interview<sup>9</sup>.

### Recording the interview

The IPCC cannot compel a witness to allow an interview to be video or audio recorded. As stated in the IPCC Significant Witness Policy, the preference is that such interviews are video recorded, or if consent for this is not provided, then audio recorded. If consent for video or audio recording is withheld then a written record of the interview should be made by an observer, with the conversation recorded as accurately as possible.

The IPCC believes that it is beneficial to all that the interview is recorded so that there is a clear record of the questions asked and the answers given.

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<sup>8</sup> Regulation 1(2), Police (Complaints and Conduct) Regulations 2013

<sup>9</sup> Regulation 2(8), Police (Complaints and Conduct) Regulations 2013

At the start of a recorded interview, the police witness should be told that the recording may be used during the investigation process and in any proceedings that follow the investigation.

During the interview (or as soon as possible afterwards), a witness statement will be made up from the recording or notes, to be signed by the witness. If the witness asks for changes to be made to the statement before signing it, a clear audit trail of any such changes should be retained.

### Copies of statements or recordings

Witnesses often ask for a copy of their statement or recorded interview. Different considerations apply to such requests depending on when the request is made and whether there are any criminal, coronial or misconduct proceedings afoot. As a general rule, copies of statements and recorded interviews should not be disclosed to the police witness before any proceedings have concluded. For specific advice, please refer to a lawyer.

### Witness account during the interview

At the start of the interview, police witnesses should be informed that there is currently no indication that they may have committed a criminal offence or behaved in a manner justifying disciplinary proceedings and so they are being treated as a witness. If their status changes, they will be informed. (Assessment of conduct is discussed in further detail below).

They should however be reminded that the acts, omissions, statements and decisions (whether actual, alleged or inferred) of all those involved are under scrutiny as part of the investigation.

Police witnesses should also be told that they do not need to answer the questions put to them, but that this is their opportunity to set out what took place and the IPCC hopes that police witnesses will cooperate fully during interviews by answering questions put to them.

Interviewers may encounter police witnesses who read out a prepared statement at the start of an interview and then refuse to answer questions put to them, despite the public expectation that they should provide full accounts of their actions while on duty.

The investigating officer in managed and independent investigations can only require the police witness to attend the interview (i.e. be present during the interview), but cannot compel them to provide an account. Therefore if interviewers encounter police witnesses who refuse to answer questions in interview, the interviewer should continue to put the questions to them despite their lack of response. In this way officers cannot later claim that they did not provide certain evidence because they were not asked to do so.

On occasion interviewers may encounter a lack of cooperation so striking that the commissioner may decide to notify the force of it and ask what action they intend to take in response.

### **Assessment of conduct**

During interviews with police witnesses interviewers should assess whether the account given by the witness means that their status as a witness is no longer valid because it appears to the person investigating that there is an indication that the police witness may have committed a criminal offence, or behaved in a manner which would justify the bringing of disciplinary proceedings.

If during an interview the interviewer decides that there may be such an indication, they should first pause the interview to consider the matter. The lead investigator should then make a policy decision about whether the person's status as a witness has changed.

If the lead investigator decides that the person is still a witness, then the interview can resume.

If the lead investigator decides that there is an indication that the person may have committed a criminal offence, or behaved in a manner which would justify the bringing of disciplinary proceedings, then the witness should be informed of that fact and the interview should be stopped. The conduct matter should then be reported to the commissioner in the normal manner, recorded by the force and re-referred, a severity assessment conducted and a notice served, after which an interview under caution can take place.

### **Non attendance at interview**

If a police witness is required to attend an interview, and then does not attend, the lead investigator should find out the reason for the non attendance and discuss this with the commissioner.

Non attendance without reasonable cause may in itself amount to misconduct or gross misconduct, and the commissioner should write to the force or body concerned to inform them of the non attendance, and ask them what action they intend to take as a result.