

# **Witness for the prosecution: Identifying victim and witness vulnerability in criminal case files**

An inspection of the Metropolitan Police Service

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# Introduction

The police are the gatekeepers of the criminal justice system. When an offence occurs, the police investigate and, when the circumstances of the case justify a prosecution, are responsible for the submission of case files to the Crown Prosecution Service (CPS). The CPS is responsible for prosecution decisions about the case and presenting the evidence in court.

Frontline<sup>1</sup> police officers investigate the vast majority of cases dealt with by the criminal courts. Dealing with victims and witnesses is an important part of these officers' work. If victims or witnesses are vulnerable<sup>2</sup> this may affect their ability to attend court and give evidence. It is therefore essential that officers identify accurately the vulnerability of victims and witnesses in the case files they submit to the CPS, so that:

- the court is given accurate information of the circumstances of the case, particularly when determining sentence;
- risks to victims and witnesses are identified to the court; and
- victims and witnesses are able to give their best evidence.

In a criminal trial, an officer should consider making an application for special measures<sup>3</sup> or other suitable arrangements to help victims and witnesses give their best evidence (for example, elderly or disabled persons may need to sit down to give their evidence in court). It is the responsibility of the police to assess the victim or witness need for special measures and for the CPS to make the application to the court. It is important therefore that the police provide the CPS with the required information to enable the prosecutor to explain to the court what special measures are required and why this is the case.

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<sup>1</sup> Her Majesty's Inspectorate of Constabulary defines frontline police officers as those members of police forces who are in everyday contact with the public and who directly intervene to keep people safe and enforce the law.

<sup>2</sup> For the purpose of this inspection, vulnerability applies to the following categories of victim or witness: young (under 18); elderly; disabled; suffer from mental health issues; have learning difficulties; have another form of vulnerability (e.g. in fear of intimidation); or a mix of these.

<sup>3</sup> 'Special measures' are a series of provisions (for example the use of screens, a live link from outside the court, or use of an intermediary) that help vulnerable and intimidated witnesses give their best evidence in court and help to relieve some of the stress associated with giving evidence. Special measures apply to prosecution and defence witnesses, but not to the defendant. Special measures were introduced in section 18, Youth Justice and Criminal Evidence Act 1999.

In this inspection we examined these issues in depth, using the National File Standard<sup>4</sup> (NFS) as a basis for identifying whether officers had adequately assessed the needs of victims and witnesses in the preparation of case files. The NFS sets out the standard for case file preparation to ensure that the right information is incorporated into the files at the right time.

In some cases, the vulnerability of victims or witnesses may be key evidence if it was relevant to, or an aggravating factor in the offence. The NFS states that key evidence is:

"that evidence which either alone (the evidence of one witness) or taken together with other evidence (further witnesses or exhibits) establishes the elements of the offence to be proved and that the person to be charged committed the offence with any necessary criminal intent."

To fulfil the requirements of the NFS, every case file prepared by the police must include a report setting out the details of the case. This is known as the police report. We have examined these police reports to determine whether there is sufficient information for the prosecutor to inform the court of the circumstances of the case. In accordance with the NFS, the police report must include a summary of:

- the key evidence in the case; and
- the interview with the defendant.<sup>5</sup>

The NFS requires, in all cases, that a supervisor certifies that the information in the police report is an accurate summary of the available evidence in the case and the report has been prepared in accordance with the required standard.

When investigating an offence, a police officer will usually ask a witness to make a written statement about what happened. All witness statements include a section entitled 'witness care'. It is here that the officer is required to record information about the needs of vulnerable and intimidated witnesses. We have examined whether officers recorded this information correctly.

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<sup>4</sup> The National File Standard (NFS) sets out a staged and proportionate approach to the preparation of case files. It specifies the material required for the first hearing and identifies how the file is to be developed at appropriate stages throughout the life of the case. The NFS was first published in July 2011.

<sup>5</sup> A defendant may not always be interviewed. For example, if a police officer witnesses an offence of disorderly conduct the defendant is not routinely interviewed regarding his or her conduct.

This is the third in a series of inspections of case file quality conducted jointly by Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI).<sup>6</sup> In this inspection HMIC examined practice in all police forces in England and Wales. In this report, we set out our findings for the Metropolitan Police Service.

We are also publishing a national thematic report which will draw together findings from the individual force reports to identify key themes, and highlight effective practice and areas for improvement across the police service as a whole.

## The inspection approach

This inspection examines the effectiveness of police in providing accurate information of the circumstances of the case, identifying the vulnerability of victims and witnesses, and assessing and managing risks so that their needs are met effectively.

HMIC examined finalised<sup>7</sup> police case files from each force. The number of cases was increased to 40 for the Metropolitan Police Service to give a better representation of the high number of case files generated by the force.

Five of the case files selected involved offences where the victim or witness may have been vulnerable by reason of the circumstances of the offence:

- two cases of domestic violence/sexual offences;
- two cases of racially and/or religiously aggravated offences; and
- one case involving a homophobic offence.

The other five cases were selected solely on the basis of offence type where the involvement of vulnerable victims or witnesses was not necessarily to be expected. These offences include, for example:

- assaults;
- burglary;

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<sup>6</sup> The two previous inspection reports are: *Stop the Drift 2 – A Continuing Focus on 21st Century Criminal Justice (a joint review by HMIC and HMCPSI)*, HMIC, London, June 2013, available from [www.justiceinspectorates.gov.uk/hmic/media/stop-the-drift-2-03062013.pdf](http://www.justiceinspectorates.gov.uk/hmic/media/stop-the-drift-2-03062013.pdf) and *Getting Cases Ready for Court – A joint review of the quality of prosecution case files by HMIC and HMCPSI*, HMIC, London, July 2013, available from [www.justiceinspectorates.gov.uk/hmic/media/getting-cases-ready-for-court.pdf](http://www.justiceinspectorates.gov.uk/hmic/media/getting-cases-ready-for-court.pdf)

<sup>7</sup> These are defendant cases charged or summonsed whose case was completed in the magistrates' courts or in the Crown Court between June and August 2014.

- robbery; and
- public order.<sup>8</sup>

## About the force

Information about the Metropolitan Police Service is available on HMIC's website at: [www.justiceinspectorates.gov.uk/hmic/metropolitan](http://www.justiceinspectorates.gov.uk/hmic/metropolitan)

### Training provided on case file preparation

The College of Policing sets standards of professional practice for the police service. This includes designing the national syllabus for the Initial Police Learning and Development Programme for new recruits. Each force is required to provide the two-year programme which normally includes 35 weeks of classroom learning and practical on-the-job training. One module of the syllabus relates to case file preparation to be carried out in the classroom and, during the on-the-job phase of the training programme, new recruits prepare a case for court. In addition, the College has produced a 70-minute interactive e-learning training course on case file preparation. This course is available to all police officers and police staff via the National Centre for Applied Learning Technologies.

In this force, new police recruits receive case file preparation training in accordance with the national syllabus for new recruits provided by the training department. Their learning continues during their workplace assessment with a trained tutor constable.

When officers join the case progression unit they receive training on case file preparation during the evidence and procedure course.

Newly-promoted sergeants attend a one-day classroom-based course on case papers and police decision-making to assist them with the supervision of case files.

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<sup>8</sup> The Public Order Act 1996 includes a number of offences. The most common of these offences, dealt with by police include: section 3 – affray, section 4 – causing fear or provocation of violence, and section 5 – disorderly conduct.

## Findings

We examined 40 case files in the Metropolitan Police Service. Our findings are presented in two parts. The first section relates to the overall quality of the case files examined and their compliance with the NFS. The second section focuses on the vulnerable victims and witnesses involved in these cases.

### File quality

In the two previous thematic joint inspections of case file quality, we found that the police were more effective at summarising the defendant's interview than the key evidence. Both these sections of the police report provide important information for the prosecutor. However, it is in the summary of key evidence where the circumstances of the case and relevant issues affecting key witnesses are explained. It is important, therefore, that all the relevant information is summarised in the correct section of the police report. This will support the prosecutor's review of the case file and enable them to present the evidence to the court more effectively.

The results for the Metropolitan Police Service are set out in the table below:

**Table 1: Summary of file quality findings from HMIC case file review**

Quality of the police report	Number of cases
In how many cases was the summary of key evidence adequately presented in the police report?	24/40
In how many cases was the summary of the interview adequately presented in the police report?	26/38 <sup>9</sup>

HMIC considered that twenty-four of the forty case files contained an adequate summary of key evidence in the police report. Eleven case files did not contain information about key witnesses and the evidence they provided, and five cases were not succinct or in chronological order.

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<sup>9</sup> In one case involving a public order offence witnessed by police, the police decided it was not necessary to interview the defendant. In a second case, police were unable to locate the offender and present the case to court within the time limit for a summary offence.

HMIC considered that in twenty-six of the thirty-eight relevant cases involving interviews, the case files contained an adequate summary of the interview. In six of the cases the summaries did not include the questions asked to which the defendant made no comment.

In six case files, key questions that were put to the defendant, and the defendant's answers, were not accurately outlined. This information would have assisted the prosecutor in presenting the case to the court.

In 16 of the 40 case files examined, the certification of the police report by a supervisor was completed correctly.

### **Witness care information**

Inspectors found that the witness care section on the reverse of witness statement forms was not included in the electronic case files submitted to the CPS. This was a practice agreed between the Metropolitan Police Service and the London CPS. We were told the practice involves communicating vulnerabilities to the London CPS through direct input to witness management systems.

## **Identifying vulnerability**

In this section, we focus on the journey of victims and witnesses through the criminal justice system. Officers must identify accurately the vulnerability of victims and witnesses to the prosecutor so that the court receives accurate information of the circumstances of the case from the prosecutor. For example, if an elderly woman is targeted and robbed because of her age or disability, it is essential that the police include this information in the case file.

### **Did the police provide accurate information to the prosecutor of the circumstances of the case?**

We found that vulnerable victims or witnesses were involved in 18 of the 40 cases. In 17 of these 18 cases, the police identified correctly the vulnerability of the victim or witness in the case file. This included victims who feared reprisals or intimidation from the defendant, those with learning difficulties and those who were vulnerable because their young age.

As the case progresses, risks to victims and witnesses must be identified to the court and these risks must be managed to ensure victims and witnesses are able to give their best evidence. For example, a rape victim who is afraid of the defendant may need special measures – such as giving evidence from behind a screen or via 'live link'. Alternatively, the police may manage the risk to the victim or witness by imposing conditions to restrict the movements of the defendant in order to reduce the risk to the victim. For example, police may impose a curfew or other conditions on the defendant.



**Did the police identify the risk(s) to the vulnerable victim(s) and key witness(es) to the court and, where applicable, manage that risk?**

The police identified correctly the risk of harm to the victim or witness in 17 of the 18 cases and in 14 of these cases they subsequently managed that risk. This included police imposing appropriate bail conditions on the defendant prior to release from police custody, or by detaining the defendant in custody to appear before a magistrates' court, which could then set bail with conditions.

**Did the police enable the victim(s) and key witness(es) to give their best evidence?**

The police requested special measures or enhancements to ensure that the victim or witness could give their best evidence in seven of the sixteen applicable cases where the police had identified vulnerability and risk of harm to the victim or witness. A special measures assessment was not required for the two further vulnerable victims or witnesses, as the police anticipated the defendants would plead guilty at the first court hearing and there would be no need for a trial.

## Vulnerability-related case studies

### Case study

The police were investigating a case involving a young boy who had been sexually assaulted by his grandfather. As a result of the abuse on the boy, his mother had broken off all contact with her father. While the case was still being investigated, she came across her father while out one day. They began to argue, and he assaulted her with his crutch. The police were called and the defendant was arrested on suspicion of assault, which he denied when interviewed.

The police identified correctly from the outset that the victim was vulnerable as she was in fear of the defendant. They made an application to the court for special measures to be considered in order for her to give her best evidence in court. The measures included a request for the victim to give evidence from behind a screen. The application was granted by the court, and the defendant pleaded guilty to assault at the first court hearing.

### Case study

A woman and a man had been married for a number of years and had one child. The woman told her husband that she wanted a divorce. They continued to live in the same house and after pressure from her husband the woman reluctantly agreed to continue sleeping in the marital bed. On two occasions on the same day he sexually assaulted her. The following day they had an argument, when the man accused the woman of seeing someone else and threatened to kill them both.

The police arrested the man, charged him with two offences of sexual assault and one offence of assault and remanded him in custody to appear at court. The victim was vulnerable (domestic violence) and in fear of the defendant. This was not identified by the police.

The victim's vulnerability was identified by the CPS when they reviewed the case and they requested that an assessment for special measures was made to allow the victim to give her best evidence. No assessment for special measures was made.