

THIRD PARTY REQUESTS FOR WITNESS STATEMENTS PROCEDURE

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THIRD PARTY REQUESTS FOR WITNESS STATEMENTS FOR USE IN CIVIL PROCEEDINGS PROCEDURE

Owning Department: Joint Justice Services

Department SPOC: DCI CIU

Governing Policy: Interviews, Interview Recordings, Written Records and Statements

Risk Rating: Medium Low

Legal Sign Off: 19.05.2023

JNCC: 15.09.2022

Published Date: 06.09.2023 (V2.1)

Review Date: 03.06.2026

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1. Procedure Background and Aim

- 1.1 Interviews and statements are sometimes sought with/from officers and staff by third party legal representatives acting on behalf of claimants in civil proceedings. Typically, such request will be from third parties who wish to sue another third party for damage and where the police were called to the incident.
- 1.2 This policy relates to the process by which such third party requests will be dealt with. The policy relates only to third party requests made regarding an officer or staff members' work-related functions, it does not relate to third party requests made to officers/staff in their personal capacity
- 1.3 Whether or not an interview has been conducted or a statement taken, officers and staff may be summonsed to the civil courts to provide documents or given evidence. Consideration at an early stage to support a request for an interview or a statement may assist to prevent such a summons from being issued.
- 1.4 This policy does not relate to requests for statements within criminal proceedings implemented by the Forces nor requests from our public authority partners or third parties where there is a process or protocol already in place (e.g. Family Court Data Sharing Agreement) or for interviews following a road traffic collision (such requests should be handled in accordance with the Extract Requests: Road Traffic Collisions Unit policy). Where there is any doubt regarding any data sharing agreements in place, advice should be sought from the Data Protection Officer.
- 1.5 Interviews and statements should not be provided if there are on-going criminal proceedings relating to the incident about which the request is made.
- 1.6 The aims of this procedure are:
 - a) To outline managerial and staff responsibilities in relation to the interaction of the Police within Civil Proceedings.
 - b) To outline the action to be taken when either witness orders/summons are received for staff to attend civil proceedings and give evidence and provide evidential material or documents, or requests are made to staff for interviews in relation to civil proceedings.

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- c) To ensure Norfolk and Suffolk Constabularies remain neutral in any third-party civil proceedings.
- 1.7 Correct adherence to this procedure will ensure that the impact on the Force of such a request is minimised and to ensure that the Police and Crime Commissioner recovers the costs it incurs when police personnel are either interviewed, provide a statement or attend court for the purpose of civil proceedings.
- 1.8 The Inspector of any officer requested to give an interview or statement, or the Departmental Head for any officer/staff member, will be responsible for compliance with this policy. You will deal with the necessary arrangements for such interviews and subsequent action. Where there is any doubt as to the course of action to be taken, particularly regarding the disclosure of sensitive information, advice should be sought from the Data Protection Officer or from the applicable Force Legal Services provider.

2. Procedure

Interviews

- 2.1 Interviews with officers and staff in respect of civil matters, which come to police notice as part of the course of duty, are permitted in order for proofs of evidence such as a statement, to be obtained.
- 2.2 In the event that an officer or staff member is approached directly about providing a statement or material in respect of civil orders, they should seek advice from their Inspector or their Department Head and refer to this procedure to aide them through the next steps.
- 2.3 There is no requirement for an officer or staff member to agree to a third party request for an interview; however, given that a summons may be issued to require attendance at court, it may be prudent to consider the request. Prior to completing the statement officers and staff should be reminded to take advice from the Police Federation or UNISON and may request their attendance.
- 2.4 Attendance by an officer or staff member to an interview or hearing will be undertaken in duty time.
- 2.5 Interviews will normally only be granted when the requesting legal representative has confirmed civil proceedings have commenced, or the matter is to be heard before a tribunal. However, consideration may be given to an earlier request where the third party has advised that the request is necessary for and is in the anticipation of the commencement of proceedings. If there is any concern in this regard, advice may be sought from the Data Protection Officer or relevant Force legal provider.
- 2.6 If criminal proceedings are not concluded, when the requirement or request is made, the request should be declined if prejudice might be caused to any on-going investigation or prosecution. If there is any doubt or concern regarding this, advice can be sought from the relevant Force legal provider immediately with the full information.

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- 2.7 Interviews will be authorised by the Inspector or Department Head and be at a time and place convenient to all attending parties.
- 2.8 Interviews will only be permitted on the condition that a copy of the draft proof of evidence (such as a statement) is supplied to the police for sign off prior to use and that the Chief Constable retains the discretion to supply a copy to any other party.
- 2.9 The third party requester must be advised of the fee for an interview prior to attending any interview and must pay the sum due prior to the interview. The Constabularies' Finance Business Partner should be consulted to assist with fees. Fees are in accordance with the National Police Chiefs Council Guidelines for Charging of Police Services at that time and will be paid into the police fund.

Please Note: *these rates are updated yearly, please check with the Finance Business Partner for current rates*

- 2.10 Under certain circumstances it may be appropriate for interview fees to be waived. The decision maker should be the Head of Department or at least the team Inspector/Police Staff equivalent. Indicative examples of where fees may be waived are as follows:
- a) For other public sector bodies such as Local Authorities (including Schools) and NHS Trusts;
 - b) Voluntary organisations such as Resident Groups and Neighbourhood Watch Associations;
 - c) Organisations that receive funding from the Police and Crime Commissioner such as Crimestoppers; and
 - d) Other deserving causes of limited means.

Please Note: *this is not meant to be an exhaustive list, but rather an indication of the types of organisation for which the fees might be waived*

- 2.11 On receipt of the request, the third party requester will be advised of the fee and how to make payment and will be asked to provide details of the civil proceedings and the nature of the information sought from the officer/staff member. Preferably, the requester will provide a list of questions in advance, in order to enable the officer/staff member to prepare for the Interview.
- 2.12 An officer or staff member of at least Inspector rank, or equivalent, must be present throughout the interview unless delegated to a Supervisor with rationale documented.
- 2.13 Officers and staff evidence will be confined to fact. Opinion will not be provided except by an expert witness e.g. Road Traffic Collision Investigator. Occasionally, in family-related court proceedings relating to the long-term care and safety of a child, an officer or staff member will be asked to provide an opinion. This is a matter for the officer/staff member and their supervisor. Officers/staff should avoid providing sensitive information relating to any party without first seeking advice from the Data Protection Officer – for example prior conviction history of any party, medical data etc.

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- 2.14 In the case of information, materials or documentation containing information which is sensitive – for example information that would risk identifying sensitive personal data, confidential information/sources, CHIS's, endanger national security or reveal information about Police methods or criminal techniques, advice needs to be taken from the Inspector/Department Head, in conjunction with the Data Protection Officer and/or the relevant Force Legal provider, before disclosure is made.
- 2.15 The officer or staff member interviewed will have with them at the interview relevant documentation and any original evidence. They will refresh their memory from these sources. If the interviewer expresses a desire for notes to be read out, this may be done at the discretion of the Senior Officer/Departmental Head supervising the interview.
- 2.16 Proofs of evidence must be forwarded by the requesting legal representative to the Senior Officer/staff member who was present during the interview. If correct, they will ensure that the document is signed by the officer concerned and returned. A copy will be retained by the officer or staff member and by the Inspector or Departmental Head.
- 2.17 Proofs of evidence may be supplied to other interested parties on request, and after payment of the usual fee. The attending Senior Officer/staff member should ensure the legal representative is aware this condition applies in respect of any proof of a road traffic report, or statement taken at such an interview. Other statements supplied to one party to litigation will be disclosed by them to other parties by the rules of the civil court.

Attendance at Civil Proceedings

- 2.18 Where a witness summons is subsequently issued for the officer's attendance at court, it should be served in accordance with rules of court to ensure valid service.
- 2.19 Officers who receive requests to attend hearings must always require the issue of witness summons to ensure their attendance except when they are inappropriate, for example in childcare proceedings. If in any doubt, the relevant Forces legal provider must be contacted.
- 2.20 At the end of any proceedings the officer's expenses will be claimed in the usual way. An account of this expenditure will then be submitted to the solicitors calling the officer and, when received, the monies will be paid into the police fund. Please refer to Section 6 on how to claim expenses.

3. Small Claims Track

- 3.1 Claims of a small value pursued in the County Court will be allocated to the small claims track. The procedure and proceedings are informal and, as such, the strict rules of evidence do not apply. However, the rules relating to witness summonses still apply.
- 3.2 Limited costs are recoverable on the small claims track. Expenses for witnesses, (travel, accommodation, loss of earnings or loss of leave) are subject to an assessment of reasonableness by the court. Persons seeking the attendance of

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a Police witness should be made aware in advance of the estimated costs of the officer's attendance at the hearing and seek agreement that that amount will be paid regardless of the court's assessment of reasonableness.

- 3.3 On service of a witness summons, a witness must be offered or paid a) a sum for travel expenses b) a sum for compensation of loss of time. Loss of earnings are based on the sums payable to witnesses attending the Crown Court. The rules permit payment to the witness, not the 'employer' and so loss of earnings should only be claimed if the witness has, in fact, lost earnings (which seems unlikely).
- 3.4 As small claims are often pursued and defended by litigants in person, applications for Police information will be received, in the main, from a party/ the parties involved rather than from a legal representative. As a result, it will be unlikely that an interview will be sought with the officer and the party/ parties will merely be seeking information from the Police as to what occurred on a specific date. If you are asked for information for this purpose, you should submit a brief report or statement of what occurred at any incident, which may become the subject of the small claim, to your Operations Manager/Head of Department to consider. They will decide what information can be disclosed to the party/ parties and advise you generally. Where necessary, advice can be sought from the Data Protection Officer and/or the relevant Force's Legal provider.
- 3.5 If a party wishes an officer to attend at a small claims hearing, they should be asked by the relevant Operations Manager/ Head of Department, to obtain a witness summons. It is unlikely that an interview will be sought, so if you are an officer attending such a hearing, you should restrict your evidence to the information contained in the statement or report drafted. Factual evidence only should be given, and the officer should not be drawn into opinion evidence or supposition, unless so directed by the District Judge.
- 3.6 Where an interview has not been requested, and it cannot be readily ascertained why an officer is required to give evidence, if you are the Operations Manager/Head of Department, you should contact the party to discover what evidence is being sought from the officer and decide what evidence, if any, can or should be disclosed.
- 3.7 Where a party or their representative requests an interview, the procedure in paragraph 2 Interviews will apply.

4. Supply of Criminal Court Statements/Convictions for Use in Civil Proceedings

- 4.1 Any request for information regarding a person's previous convictions or statements made in criminal cases, for subsequent use in civil proceedings, for example divorce and matrimonial cases, care proceedings, industrial tribunals, etc. must be forwarded to the Data Protection Officer Department for guidance. You must do this within seven days of receipt of the request. In the event that there are any current proceedings in a criminal court, you should give Data Protection full details of their nature and status.
- 4.2 Where an application is made for the police to disclose a person's previous convictions for use in civil proceedings, by a party to the proceedings, it may be

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necessary for the person requiring to obtain an order from the court for an officer to attend and give this information. However, you must seek the advice from the Data Protection Compliance Team because of data protection implications. You should note that any person is entitled to a copy of any information which is held on police computers about them. Please refer to the Data Protection Policy.

- 4.3 Statements made by witnesses in criminal proceedings are protected until final verdict. Thereafter, under certain circumstances, this information may be given providing the consent of the person who has made the statement is obtained, is shown to be necessary for the purpose of civil proceedings or by order or direction made by the civil court. Any request for such statements must be referred to Data Protection and or the relevant Forces' Legal provider who may need to liaise with the Crown Prosecution Service before disclosure may be made. Contact with Data Protection or the relevant Forces' Legal provider must be swift as they may wish to intervene in civil proceedings to argue why an order to disclose should not be made. This may occur anytime during child protection proceedings where there is a parallel criminal investigation.
- 4.4 Charges for copies of statements will be made in accordance with The National Police Chiefs Council Guidelines for Charging of Police Services at that time.

Please Note: these rates are updated yearly, please check with the Finance Business Partner for current rates.

5. Private Prosecutions in Criminal Cases

- 5.1 When, in the event of a decision by the Police not to prosecute an alleged offender for a crime (e.g. assault), an injured party or their legal representative wishes to take proceedings privately, all requests by that injured party or legal representative to be supplied with information (i.e. statements, exhibits, or convictions) from the Police report would go to the Data Protection team under a Schedule 2.1.5 request for disclosure for the purpose of civil proceedings.
- 5.2 If the decision not to prosecute was taken by the Crown Prosecution Service, after delivery of a police file, (advice or other) this should be referred to the Compliance Team:
- dataprotection@norfolk.police.uk
 - dataprotection@suffolk.police.uk

Victims' Right to Review

- 5.3 The victims' right to review scheme gives victims of crime the ability to request a review of the Police decision not to bring charges, or refer the decision to the Crown Prosecution Service, against a suspect they have interviewed.
- 5.4 Any victim (including police officers) in a qualifying case where a decision has been made not to prosecute a suspect is entitled to ask for a review of that decision. The definition of a victim is taken from the Code of Practice for Victims of Crime 2013 and is defined as "a person that has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by criminal conduct."

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- 5.5 The victim right to review in Police decision cases flowchart can be found [HERE](#).
- 5.6 Victims wishing to request a review will need to do so by emailing vrnornfolkandsuffolk@norfolk.pnn.police.uk.

6. Finance Guidance

Raising an Invoice

- 6.1 A debtor's invoice will need to be raised to the relevant party in respect of any recoverable charges. This is via a debtor's invoice request form which can be obtained by contacting either accounts@norfolk.police.uk or payments@suffolk.police.uk
- 6.2 The form should be completed and coded to the cost centre of the department where the costs have been incurred, along with the relevant subjective code. Please liaise with your Finance Business Partner if guidance is required. The completed form should then be returned to accounts@norfolk.police.uk or payments@suffolk.police.uk along with supporting back up documentation.

Claiming Expenses

- 6.3 Any relevant officer or staff expenses should be claimed via ERP i-Expenses and a copy of the details provided to the person raising the debtors invoice, so these can be reclaimed.

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