

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

An inspection of Lincolnshire Police

November 2015

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ISBN:

www.justiceinspectorates.gov.uk/hmic

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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.

Frontline¹ police officers investigate the 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 vulnerable² this may affect their ability to attend court and give evidence. It is therefore essential that officers accurately identify 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 measures³ or other suitable arrangements to help victims and witnesses give their best evidence (for example, elderly or disabled people 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.

¹ 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 intervene directly to keep people safe and enforce the law.

² 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.

³ '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 Standard⁴ (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.⁵

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.

⁴ 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.

⁵ 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 (HMCPSP).⁶ In this inspection HMIC examined practice in all police forces in England and Wales. In this report, we set out our findings for Lincolnshire Police.

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 ten finalised⁷ police case files from each force.⁸

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;

⁶ The two previous inspection reports are: *Stop the Drift 2 – A Continuing Focus on 21st Century Criminal Justice (a joint review by HMIC and HMCPSP)*, HMIC, London, June 2013, available from www.justiceinspectors.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 HMCPSP*, HMIC, London, July 2013, available from www.justiceinspectors.gov.uk/hmic/media/getting-cases-ready-for-court.pdf

⁷ 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.

⁸ With the exception of the Metropolitan Police Service where inspectors examined 40 finalised police case files.

- robbery; and
- public order.⁹

About the force

Information about Lincolnshire Police is available on HMIC's website, at: www.justiceinspectrates.gov.uk/hmic/lincolnshire/

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 (NCALT).

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

Although there is no further formal training on case file preparation provided to officers and staff, each main police station in Lincolnshire has a champion who provides guidance and assistance to officers as and when needed. Guidance on case file preparation is available on the force's intranet along with regular updates on developments in case file preparation.

⁹ 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 ten case files in each force. 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 Lincolnshire Police 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? | 6/10 |
| In how many cases was the summary of the interview adequately presented in the police report? | 4/9* |

***In one case involving a minor public order offence witnessed by police, the police decided it was not necessary to interview the defendant**

HMIC considered that six of the ten case files contained an adequate summary of key evidence in the police report. Four of the cases did not contain the required elements to prove that the crime took place.

HMIC considered that in four of the nine relevant cases involving interviews, the case files contained an adequate summary of the interview. In two of the cases the summaries did not include the questions asked to which the defendant made no comment. In two cases there was insufficient detail included in the summary. This information would have assisted the prosecutor in presenting the case to the court.

In all ten of the case files examined the certification of the police report by a supervisor was completed correctly.

Witness care information

In seven of the nine applicable¹⁰ cases, the witness care information was completed correctly and available for the information of the court.

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 four of the ten cases. In three of the four cases, the police identified correctly the vulnerability of the victim or witness in the case file. In three cases victims were vulnerable because they feared reprisals and intimidation from the defendant. One case involved a young victim.

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 three of the four cases, and in these three cases subsequently managed that risk. This included police imposing appropriate bail conditions on the defendant prior to release from police custody, or detaining the defendant in custody to appear before a magistrates' court, which could then set bail with conditions.

¹⁰ HMIC defines applicable as cases where a witness statement is required. Cases involving police witnesses only do not require witness care information. There was one such case in this force.

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 one of the four cases where the vulnerability and risk of harm to the victim or witness was identified.

Vulnerability-related case study

Case study

Two men were subjected to homophobic abuse by their neighbour over the course of a few months. The neighbour used homophobic language towards the victims, played his music loudly and banged on the walls to annoy them. He had previously been reported to the police and was subject to a restraining order.¹¹ However, he continued to harass the victims, who recorded each offensive incident in a diary as it occurred. They then brought this to the attention of the police.

The police identified that the victims were vulnerable because they feared the defendant and thought he might try to intimidate them. Victim personal statements were taken and an application for special measures was made to the court. The measures included the victims being taken to the court building before the trial to familiarise themselves with the court room. Both victims expressed their willingness to give evidence without screens if they were in a court where there was some distance between them and the defendant, or with screens if they were to be placed close to him. The victims were permitted to visit the court to familiarise themselves with the layout prior to the trial.

¹¹A restraining order is a command of the court issued on the filing of an application for an injunction. It prohibits the defendant from performing a threatened act until a hearing on the application can be held.