

EMPLOYMENT AGENCY

STANDARDS (EAS)

INSPECTORATE

PROSECUTION

GUIDANCE

FOR

EAS INSPECTORS

EMPLOYMENT AGENCY STANDARDS INSPECTORATE PROSECUTION GUIDE

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Employment Agency Standards Policy

1 The Employment Agencies Act 1973 (The 1973 Act) and associated Regulations require all employment agencies and employment businesses to abide by specified minimum standards of conduct. The majority of employment agencies and employment businesses are aware of and strive to comply with the requirements of the legislation and it is only a minority that purposely flout the law to the detriment of those that use their services. In this respect, care must be taken to ensure that appropriate enforcement action is adopted by making sensible use of our powers of enforcement and not acting overly bureaucratic. For ease of reference, where possible throughout this Guide employment agency will be used to describe the activities of both an employment agency and an employment business.

2 It is important, therefore, that the Inspectorate follows a consistent policy on prosecution. It is recognised, however, that in aiming for consistency, the Inspectorate will be faced with the difficulty that the facts and circumstances of two cases are never alike in every detail and each must be considered on its own merits. It is crucial that in any cases where prosecution is likely to be pursued that the procedures set out in the *Police and Criminal Evidence Act 1984 (PACE)* (which partly governs the treatment and questioning of people and the procedures to be followed when tape recording interviews) and the *Criminal Procedure and Investigations Act 1996(CPIA)* (which relates to the collation of documents, methods of record keeping and making these available to the defence), are strictly conformed to.

General Enforcement Policy

3 In general, the aim should be to bring breaches of the legislation to the attention of the offender and where appropriate, to encourage compliance and good practice. Furthermore, our prime objective should be to resolve the matter through issuing a corrective letter where necessary with a formal warning of the powers to consider prosecution. Where previous warnings have gone unheeded, we may have to give thought to criminal proceedings. Though, saying this, consideration must be given to the severity of the breaches and whether it is in the public interest to institute criminal proceedings. Prosecution could also be considered irrespective of whether the matter has previously been brought to the attention of the alleged offender(s).

Purpose of Prosecution

4 The purpose of our prosecution policy is condemnatory and admonitory. Another purpose is to make the bad behaviour the subject of public record. The offender is punished and it can serve to warn against continuing the bad conduct. Equally importantly, it can also serve as a warning to other employment agencies or employment businesses that the legislation must be complied with and that we will not hesitate in using our enforcement powers.

Strategy

5 Before embarking on a case which could lead to prosecution, Inspectors must carefully consider the practical and legal requirements essential to bring about a successful prosecution. An investigation should be carefully planned and Inspectors should remain objective and focused on what it is they are trying to achieve.

Time Limit

6 The time limit for presenting a prosecution under the 1973 Act is provided by section 11A of that Act and the Magistrates' Court Act 1980. This provides that a case can only be brought, if an information is laid within 3 years following the date the offence was committed. In addition to this 3 year time limit proceedings must be commenced within 6 calendar months of the Secretary of State having sufficient evidence to justify the commencement of proceedings. Therefore, a fundamental factor, in deciding if prosecution should be considered, is to establish at the outset, the time the offence was committed in order to determine if sufficient time remains to prepare fully the case.

General Prosecution Information

7 All prosecutions in England and Wales commence in a Magistrates' Court. There are two types of Magistrate. The most common is a Lay Magistrate, sometimes called a Justice of the Peace. These are unsalaried, unqualified nominated members of the public who are assisted by a qualified Magistrates' Clerk (who will usually be a qualified solicitor or barrister). Lay Magistrates usually sit as a bench of three.

8 The second type of Magistrate is a District Judge. They are salaried, qualified legal professionals who sit alone and do not require the assistance of a qualified clerk. They are usually found in major cities but increasingly are being appointed in non-metropolitan areas.

The role of the reviewing lawyer, the prosecutor in Legal D2's is to consider the evidence and decide the merits and prospects of successful prosecution. The lawyer has firstly a duty to weigh up the evidence and decide whether it supports the alleged breach of the law. He /she must then be satisfied that the complaint meets the criteria for a prosecution under the Code for Crown Prosecutors.

Before any criminal proceedings can be commenced in England and Wales the prosecuting lawyer must be satisfied that, firstly there is sufficient evidence to be satisfied of a realistic prospect of conviction and secondly, that a prosecution is in the public interest. This two fold test is set out in a document laid before Parliament by the HM Attorney General for England and Wales.

Types of Offences Handled by a Magistrates' Court

9 There are three types of offence. Firstly, "**summary only**" offences, which cover offences under the 1973 Act, some motoring offences and Companies Act offences. In this context "summary" means that the offence can only be tried in a Magistrates' Court. The defendant cannot elect for trial by Jury in the Crown Court. Should the defendant appeal against a Magistrates' Court conviction, the case will be re-tried in the Crown Court with a Crown Court Judge sitting with two Magistrates.

10 Secondly, there are "**either way**" offences. As the name suggests, these cases can be tried either in the Magistrates' or Crown Court. Where the case is tried may depend on the seriousness of the offence, however the defendant has the right to elect for trial by Jury in the Crown Court. Examples of either way offences include theft and fraudulent trading.

11 Thirdly, there are “**indictable only**” offences. These are the most serious offences that can only be tried in the Crown Court. Although they commence in the Magistrates’ Court, they will be “sent” to the Crown Court following the first appearance in the Magistrate’ Court. Murder is an example of an indictable offence.

EVIDENCE

General

12 For a person to be found guilty of a criminal offence. The Court must be satisfied “**beyond all reasonable doubt**” or using the formula expressed in the Crown Court “Sure and Satisfied of the Defendant’s guilt”, from the evidence produced by the Department that an offence has been committed. The following points should be borne in mind:

- the alleged offender is considered innocent until proven guilty;
- it is for the prosecution to prove its case beyond reasonable doubt;
- the prosecution cannot rely on any assistance in Court from the defendant, who is entitled to remain silent;
- an unsound case will not be considered in the hope of a guilty plea in Court or on the basis of an interview given under caution;
- every matter relating to a case must be supported by evidence acceptable to the Court.

Meaning of Evidence

13 The word “evidence” can have many meanings. For the purposes of a trial, evidence can be defined as something which tends to prove a fact. It can come in many forms and complex rules govern what type of evidence is admissible in criminal proceedings. In most cases the evidence for the prosecution will consist of:

- witness statements and supporting documents as exhibits;
- testimony;
- information obtained during an interview under caution;
- evidence before the court

Testimony

14 Testimony is what someone can tell the Court from his or her own knowledge (eg. when an employer tells the Court that an employment agency introduced a worker to him, or when a worker states he was introduced to an employer by an employment agency). It is not a “*second-hand story*”.

Hearsay

15 This involves the knowledge someone has of a person who is not the person giving evidence in Court.. It can best be regarded as information which has been received from another source, “a second-hand story”. For example, an Inspector cannot tell the court that an employment agency introduced a worker to an employer when the employer told

him that. The employer himself must give that evidence. Hearsay is not admissible as evidence. However, there is an important exception to this rule, which is that hearsay evidence can be given if the witness is told something by the defendant. This means that an Inspector can give evidence of what a defendant said when interviewed (which would normally arise from an interview given under caution or when the Inspector visited the agency under section 8 powers).. So if the defendant mentioned that he had introduced a worker to an employer, the inspector can tell the Court of that admission as evidence, if asked.

Evidence which would otherwise be hearsay, because the maker of the statement is not available to give evidence at court may be admissible as agreed facts by the defence. However, as the prosecution must prove the case against the defendant it may be difficult if not impossible to secure agreement that such evidence be given to the court. .

Telephone conversations

16 If a witness is called to testify concerning the contents of a telephone conversation he had with the defendant, he must be able to say that he recognised the voice on the telephone as that of the defendant - not merely that the caller identified himself as the defendant. If the witness cannot do this, the conversation will be treated as hearsay.

Documents

17 Various documents may be produced in Court as evidence. Many documents may contain hearsay evidence and may have to be edited. However, in most trials documents produced in the course of business are admitted even though the maker is not called and they represent the most significant inroad against the rule against hearsay. Documents used in a trial may include:

- records maintained in accordance with the 1973 Act and Regulations;
- invoices for payment;
- bank statements;
- correspondence (eg. corrective letters sent to the defendant)

It is important that all such evidence relates directly to the alleged offence(s).

Computer Generated Documents

18 When computer generated documents, such as bank statements, invoices, receipts, cheques, etc. form part of the evidence in a prosecution case brought by the Inspectorate, it has to be shown that there are no reasons to believe that the content of any document used as evidence is inaccurate due to improper use of the computer and that the computer was operating properly at all material times, or if it were not, that it has not affected the accuracy or production of the document in any way.

19 Annex 1 is a standard witness statement, which should be used to obtain a statement from the person responsible for producing the document in question eg. an accounts clerk or supervisor. However, in some cases it may be difficult to identify the actual person responsible for creating a particular entry on a document or printout. This may be due to the fact that it is a large organisation dealing with many transactions on a

daily basis. Model paragraphs 2 and 3 of Annex 1 should be incorporated into the statement.

20 Sometimes, the Inspectorate will wish to bring forward bank statements as evidence (eg. in section 6(1) or Regulation 25 breaches). As banks are usually unwilling to disclose information to third parties without an order of the Court, Inspectors should ask the account holder to sign an authority of the kind shown at Annex 2. The example is very widely drawn and the account holder may prefer that it is modified to authorise the bank to provide the Inspector only with specifically named documents. If, however, a bank refuses to co-operate they should be asked to put in writing that they will not co-operate without a Court Order. In these circumstances, the letter from the bank can be taken to Court and used in the proceedings and, if necessary, an order can be obtained.

Documentary Evidence

21 When obtaining documentary evidence from witnesses, Inspectors should collect original documents to use in Court. However, if a witness is not prepared to allow the Inspector to take the original documents, he/she should be instructed to bring them to Court. When documents are being used to support a witness statement, the Inspector must ensure that the witness certifies each of the documents with a signed exhibit label.

22 If copies are used as exhibits, the statement must include the fact that the original exhibits are retained by the witness for business or personal use, and they undertake to produce them in Court if they are called to give evidence. Refer to Annex 1 and insert paragraph 3. Exhibit labels should be attached to each document and marked accordingly including the witness' signature. Original documents will be returned after the case has been heard or sooner if the witness statement is not to be used in any proceedings.

23 All documents must not contain any alterations or other notes made on them. Where a photocopy is taken and the reproduction is not clear, the Inspector must not attempt to ink over any of the entries. If there is any doubt as to whether a copy is acceptable, a manuscript copy of the original document should be made.

Inspection and copying of material

24 Cases considered for prosecution may commence either with the receipt of a complaint, where generally this will be followed up by obtaining statements and supporting documentary evidence from witnesses, or where breaches have been identified during an inspection .

25 In either case, Inspectors should give consideration to obtaining evidence of the agents breach by inspecting the records of the agency and acquiring copies of relevant documentation using the powers under section 9 of the 1973 Act. Inspectors should provide a full report of their findings so that lawyers can consider the case and establish if there is a realistic prospect of securing a conviction. Lawyers will also be able to identify if further documents need to be obtained and may advise on questions to be put to the agent during an interview under caution. Clearly, if during a visit to the agency, the agent starts to incriminate him/herself, the Inspector must issue a caution in accordance

with section 9(3) of the 1973 Act and continue with the interview by completing a manual record of the interview.

The Inspector must also warn the agent that they are entitled to receive legal advice and whether any formal interview should be conducted on a later occasion. This should not deflect the Inspector from seeking to obtain documents to further their enquiry but they must consider whether it is appropriate to continue interviewing a suspect who may be incriminating themselves in what could be a criminal enquiry.

In addition, the Inspector must take great care when interviewing a known and identified suspect. If the Inspector is genuinely undecided whether a criminal offence has occurred he may interview or continue to interview (as the case may be) but at the point when it is clear that an agent is making an admission to a criminal offence then the provisions of the Criminal Proceedings and Investigation Act 1984 and the Codes of Practice take effect

26 Where an Inspector feels that a computer may contain information that could be used in evidence, he may ask for information to be produced in a form which can be inspected and copied and in which it is visible and legible. The Inspector should record at the moment the documents are produced how, and in what circumstances, the documents were generated.

27 When inspecting and copying documents at an agency's premises, the Inspector should make a record which includes the following:

- the address of the premises concerned;
- the date, time and duration of the visit;
- the name of the Inspector(s) who conducted the interview/inspection;
- the name of the person in whose presence the interview/inspection was conducted;
- a list of the documents inspected and copied.

Translation

28 Where it has been necessary to obtain a translation of a document written in another language, a statement should be obtained from the person making the translation certifying that it is a true and accurate translation, together with the date and details of their qualifications. Before instructing a translator, it should be established that the translator is an accredited member of the National Register of public Service Interpreters. The Code of Practice now requires that only accredited interpreters be instructed and it is in the interests and affords a measure of protection to the Inspector conducting an interview that only suitably qualified persons are used as interpreters.

Evidence from Interview under Caution

29 This aspect of evidence is dealt fully in paragraphs 42-65.

Questioned Documents

30 A situation may arise when the authenticity of a document obtained during an investigation and which relates to an alleged offence, is questionable. For example, if documents obtained during the course of an investigation are believed to have been falsely drawn up by an agent and they have in turn caused harm to work-seekers, the Department may consider prosecuting under section 10 of the 1973 Act.

31 If these documents were to be used in Court, the Department would need to call an expert witness. The Laboratory of the Government Chemist (LGC) employs Document Examiners who are able to assist in certain cases, with investigations from the initial stage through to a prosecution in Court. They would be able to write a report and incorporate it into witness statement form and give oral evidence in Court. Before pursuing such assistance, legal advice should be sought on the steps to be taken. See the LGC web site for further details of their services. www.lgc.co.uk/products/products.htm

Obtaining Evidence - *Important Factors*

Scope

32 It is important that the evidence gathered clearly establishes the scope element; firstly, it must be shown that the activity under investigation is in scope, and, secondly, that there is no ambiguity as to whether the activity is that of an employment agency or employment business. Therefore, documentation such as terms of business, contracts etc will be needed to make the position clear.

Isolate elements of breach

33 When considering the constituent parts of an offence, for example breaches of the Conduct Regulations, it is important to isolate elements of the breach. Each Regulation contains a number of elements which have to be isolated in order to determine the evidence that is needed to substantiate the breach. See Annex 3 which illustrates examples when considering breaches of Regulation 24 and 25.

Evidence gathering

34 When gathering the evidence needed to substantiate a prosecution case, it is often beneficial to approach the complainant first, where this is applicable. If there is no complainant, or the complainant does not wish his/her identity to be disclosed, Inspectors should consider approaching other workers and employers for evidence. If there is no other avenue open, it may be necessary to visit the agency to gather the relevant information using the powers under section 9(1).

WITNESSES

General

35 During an investigation, potential witnesses should always be told that enquiries are being made in connection with a complaint under the 1973 Act and the Inspector should make it clear by showing his/her warrant that he/she is duly authorised to make such enquiries. Witnesses should also be told that they may be required to attend Court and their written consent for this purpose should be incorporated into their statement.

36 If complainants are unwilling to attend Court as a witness, the purpose of the legislation should be carefully explained to them. However, if complainants still decline, it is not normally the Department's policy to pursue an unwilling witness or issue subpoenas in such circumstances. The complainants should be asked if they know of any other person(s) who could be approached.

Obtaining statements

37 Where it is necessary to use information provided by complainants or witnesses, the Inspector should test their allegations or information offered, to find out what they are really sure of, discussing and examining with them, the information and any documents provided. Wherever appropriate, Inspectors should ask open questions to minimise the possibility of suggestion (leading the witness) and may increase the amount of relevant information obtained. The Inspector should bear in mind that the purpose of the statement is to set out precisely the information that the witnesses are prepared to swear to and be questioned on (perhaps rigorously) in Court and that it is of prime importance that the information is accurate in every detail.

38 If a person is willing to make a written statement, the final version should be set out in the form shown at Annex 1, using the model paragraphs, if appropriate. Inspectors should adopt the following procedures when preparing a written statement:

- remain objective;
- ensure the statement is factual, whilst allowing the person to tell the story in his/her own way;
- write down what the person says in direct speech in Inspector's note book;
- include all relevant dates and amount of any payments/fees, if referring to a composite fee, this should be broken down and explained;
- include all relevant documentation to support the information given by the witness which should be referred to as exhibits within the statement and numbered - wherever, possible originals should be used. See also paragraphs 21 – 22;
- record details of any evidence that the witness gives but is unwilling to have included in the written statement;
- obtain within the statement their consent to appear in court as a witness;
- advise witnesses they might not be called in the event of a guilty plea or if the defence accepts their written statement.

39 The Inspectorate does not have a strict policy on the strategy used in obtaining completed statements from witnesses. Inspectors can exercise their own judgement on the best way to achieve this in terms of speed and cost effectiveness. In some cases, Inspectors may find it appropriate to obtain a statement from a witness over the telephone, in other situations there may be a need to visit in order to do this. It is expected, however that the witness is visited at some point during the process of getting a completed statement.

40 Ideally, statements should be typed up from the notes of any interview with a witness. However, the rough notes **must** be retained. When arranging for the witness to

sign the statement, the Inspector can either visit the witness again or send it through the post [Steve- Would an email be sufficient? Probably not]. In the latter scenario, the Inspector should send a covering letter, which should read along the lines of “*Please find enclosed a statement, which has been drawn up based upon our conversation. Please read the statement carefully and if you are happy with its contents, sign the declaration on the first page and also sign at the foot of each page in the appropriate place.....etc.*” They should also be asked to sign each exhibit label if they have not already done so. See Annex 4 for an example letter.

41 A separate report should be made by Inspectors of the interview including the witnesses’:

- date and place of birth;
- full name and contact details, including address with daytime and evening telephone number;
- their availability 6 months hence

See Annex 5 (some of this information will then need to be used in completing Annex 17 – list of witnesses).

Sometimes witnesses do not sign draft statements and decline to assist in a prosecution. Should this occur the witness must be told, that in the event of a prosecution the Department is duty bound to make disclosure of any draft that has been prepared. They must also be told that the prosecution is under a specific duty to disclose the names and addresses of all persons to a defendant who have information relevant to a prosecution. NB Home Office rules preventing disclosure of prosecution

INTERVIEWS UNDER CAUTION

General

42 In any investigation, where prosecution proceedings are likely to be pursued, the procedures set out in the *Police and Criminal Evidence Act 1984 (PACE)* must be followed. Whilst each case will vary in its complexities, as will the Inspectors’ approach to it, the PACE procedures must be adhered to at all times. Inspectors should have in their possession a copy of the PACE Codes of Practice and must familiarise themselves with Code E which relates to the tape recording of interviews with agents.

43 It is essential that, as soon as there are grounds to agents that an offence has been committed, any further interview with the agent is conducted “under caution”. This is to safeguard the agents from incriminating himself unwittingly. A statement made without a caution would probably not be admissible in court. Inspectors should also bear in mind that another purpose of carrying out an interview under caution is to allow the agents to put across their side of the story - it is not to extract a confession to an alleged offence(s).

44 As with all interviews, the success of an interview under caution will depend to a large extent on the preparation beforehand. Whenever possible, all the evidence of material facts; statements and exhibits from witnesses, should be obtained before seeing

the agents, as these may enable the Inspector to validate or challenge the agent's version of events. Inspectors should give considerable thought to the questions to be put to the agent and may find it beneficial to prepare these in a written format. Whilst it may not be possible to prepare for every eventuality, the aim should be to remain in control, be precise and to the point and give direction to the interview.

45 in all cases, the interview under caution **must** be tape-recorded. The only exceptions to this are:

- if the agent refuses to allow the interview to be tape recorded; and
- Inspectors had reason to caution an agent whilst exercising their powers under section 9 (see also para 25) of the 1973 Act.

Location

46 Where it is necessary to interview an agent under caution, the Inspector should wherever possible, make arrangements to conduct the interview away from the agency's premises. Contact a Government office in the locality of the employment agency and make arrangements to use a private room. This approach should be adopted as agents interviewed under caution at their own premises, may feel compelled to answer questions put to them under section 9, which would conflict with the provisions of PACE which allow the "agents", the right to remain silent. In addition, to this, as a human rights issue, the interviewing of the "agents" on "neutral" premises, should be viewed by the Court as having been conducted in a fair and open manner.

Contacting the agents

46 The Inspector should contact the agent and agree a date at least 10 working days between contact and the date of the proposed interview. An Investigation Manager will accompany the Inspector. As soon as a date is arranged, a letter **must** be sent to the agent by recorded delivery to confirm the appointment. Annex 6 shows the content of the letter which advises the agent that the Department has been investigating matters pursuant to the Act and Regulations, that the interview will be tape recorded and conducted in accordance with PACE. It also advises the agent of their rights including the fact that they can have a solicitor present. Inspectors should also enclose a "CONFIRMATION OF INTERVIEW" form with this letter and a pre paid business reply label and envelope. See Annex 7. Agents are requested to complete and return the enclosed form within 7 days.

48 If the agents make contact and refuses to be interviewed or fails to return the confirmation of interview form, another letter should be sent as in Annex 8. This letter advises the agents that as they appear to have declined the offer of an interview, the case papers will be sent to the Department's lawyers to decide whether or not to prosecute. It also allows the agents a final opportunity to agree to be interviewed.

Transporting tape recording equipment

49 All tape machines and tapes are held securely at HQ. Under normal procedures, the Investigation Manager accompanying the Inspector will transport the machine and new tapes to an agreed location. Prior to the date of the interview, the Inspector and

Investigation Manager will need to have agreed a strategy, including who will be responsible for operating the tape machine and who will conduct the interview.

Commencement of interviews

50 To assist Inspectors with the entire procedures of a tape-recorded interview under caution and, to ensure that the PACE Codes of Practice are followed, an aid memoire at Annex 9 has been compiled. Inspectors should have an example of this with them when conducting an interview under caution.

51 On arrival at the premises, the tape machine should be set up as quickly as possible. Inspectors must make available to the agents, or his solicitor, to read, a copy of the PACE Codes of Practice (green book), the 1973 Act and Conduct Regulations. These should be laid out on the table in front of the agent and if applicable, the solicitor or legal adviser. The agents should be told that the interview will be formal and taped in accordance with PACE and they must be shown the unopened tapes before inserting them into the machine. It is also advisable to explain to the agents, that on starting the tape machine, a buzzer sounds for approximately eight seconds, after which the interview will begin. The Inspectors must then tell the agents formally about the tape recording. They should state:

- that the interview is being tape recorded;
- the time, date and place of the interview;
- his/her name and grade and ask the Investigation Manager to state his/her name and grade;
- ask the agents to identify themselves by giving their full names, dates of birth and address;
- ask any other parties present to identify themselves and state their relationship to the agents;
- that at the end of the interview the agents will be given a notice explaining what will happen to the tapes and how they can obtain copies of them.
- the suspect may themselves read the Codes of Practice

NB The Inspector should carry a copy of the Code of Practice and allow appropriate time for the suspect to do read the provisions if they so wish prior to the commencement of any formal interview

52 The Inspectors should then explain that they must formally caution the agents saying the following:

“Before I put questions to you concerning the allegation, I must caution you that you are not obliged to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence. Do you understand the caution”

Minor deviations do not constitute a breach of this requirement provided that the sense of the caution is preserved. The Inspectors should ask the agents if they understand the caution and if the Inspectors are in any doubt, they should explain the caution in their

own words. It should be remembered that there are 3 parts to the caution and Annex 10 shows a suggested wording, which Inspectors can use.

53 The Inspectors should then advise the agents of the following:

- that they are not under arrest;
- that they are free to come and go as they please/they are free to ask the officers to leave the premises;
- that he may seek legal advice, if they wish;
- that they can consult their solicitor at any time (if one is present);
- that they are being given form EAS1, a notice to persons being interviewed which sets out their rights. See Annex 11. The agents should be given time to read it and asked to sign a copy for the Department's records and asked if they understand their rights (and if not, why). Ensure that they have their own copy. Should they refuse to sign the form, ask them why;
- ask them if they are prepared to continue with the interview (and if not, why).

Changing Tapes

54 When a tape is coming to an end, the agents should be asked to choose the master tape. They must be asked to sign the seal, which should be affixed to the tape in their presence. For the benefit of the tape, the Inspector should tell the time and the fact that the machine is being turned off.

55 When the new tape starts, the Inspectors should resume by saying this is a continuation of the interview with.....the time is.....For the benefit of the tape, the agents should be asked to confirm that no discussion took place during the tape change about the matter at hand and that there has been no change in the persons present. If there are any changes, these must be stated. The agents should be reminded that they are still under caution.

Interruptions during interview

56 Whenever there is a break in questioning under caution, the Inspector must remind the agents that they remain under caution. If there are any doubts, the caution should be given again in full when the interview recommences. When tape recording the interview, the Inspector should for the benefit of the tape, explain the reason for stopping the interview and state the time. When recommencing, the time should once again be stated.

End of interview

57 At the end of the interview, the agents should be asked if they wish to clarify anything they have said or if they wish to say anything else. They should be given form EAS2 "*Notice to Persons whose interview has been tape-recorded*". See Annex 12. This form explains to the agents what happens to the tapes and how they can obtain copies.

58 After a taped interview has been completed, the tapes and machine must be returned to Head Office. The master copy of the tape(s) that was sealed in the presence of the agents will be stored securely at Head Office. The working copies will be copied immediately on return to Head Office so there are two working copies. The relevant Investigation Manager will deal with any requests for copies of the tapes, from either the agents or their solicitors.

59 The Investigation Manager will arrange to have a fully typed transcript of the taped interview prepared.. The typed transcript must be proof read, a task that can be performed by either the Investigation Manager or the appropriate Inspector.

Manual Interview Under Caution

60 If the agents refuse to be interviewed on tape or a caution is issued whilst exercising powers under section 9 of the 1973 Act, a manual interview record will need to be completed. See Annex 13, which is a copy of the form to be used to record the interview and includes the procedures to be followed at the commencement and end of the interview.

61 If the agents are prepared to allow the Inspectors to write down details of the interview, the **exact** words spoken by the agents must be recorded; they must not be edited or paraphrased. All questions asked and the answers which are given must be recorded contemporaneously.

62 If, after the agents' interview has been manually recorded, the agents wish to make a separate statement, they should be asked to write out and sign the following before writing out what they wish to say:

"I make this statement of my own free will. I understand that I do not have to say anything but it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence."

63 Any persons writing their own statement must be allowed to do so without any prompting except that the Inspectors may indicate to the agents which matters are material or question any ambiguity in the statement. The Inspectors should ask the agents to initial any alterations and to sign each page.

64 Where the Inspectors are recording the statement, the agents should be given time at the end of the interview to read it and make any alterations or additions to it. The following should be added to the end of the statement, which should be signed by the agents:

"I have read the above statement and I have been able to correct, alter or add anything I wish. This statement is true. I have made it of my own free will."

65 After the manual record of interview has been completed, the Inspectors should return the hand-written record and case file to Head Office, who in turn will submit the case to lawyers.

DISCLOSURE OF INFORMATION

Introduction

66 The Criminal Procedure and Investigations Act 1996 (the 1996 Act), which came into force on 1 April 1997, requires prosecuting authorities to follow proper procedures when bringing actions in the Criminal Courts, especially with regard to disclosure of material to the accused, which has been obtained in the course of an investigation. Inspectors should possess individual copies of the Criminal Procedure and Investigations Act Code of Practice (the CPIA Code), which covers Part II of the 1996 Act (Blue Booklet) and extends to England and Wales only. Failure to follow correct procedures is likely to have important consequences on the outcome of the case. These include the possibility of having evidence excluded; a successful abuse of process argument; a successful appeal; release of the accused from obligations created by the 1996 Act; criticism and costs against the Department. Departmental staff involved with legal proceedings should be mindful to apply the relevant provisions of the CPIA Code whilst taking into account and applying internal operating procedures. The Attorney General has in addition issued guidelines which supplement the CPIA, these are available at www.lso.gov.uk

67 Certain words, expressions and terms are defined in the 1996 Act and CPIA Code., which are listed below with guidance on how they should be applied to Employment Agency Standards Inspectorate prosecutions and to those concerned in the investigation and prosecution process:

Investigator - the Inspector or Investigation Manager dealing with the case. All investigators have duties imposed upon them by the CPIA Code, including in particular, recording information and retaining records of information and other material.

Officer in Charge - either the Inspector or an Investigation Manager. Duties include directing a criminal investigation and for ensuring that proper procedures are in place for recording and retaining information and other material.

Disclosure Officer - an Investigation Manager or Inspector who will reveal material to the *Prosecutor* during the investigation and any criminal proceedings resulting from it and certify this has been done and disclosing material to the accused at the request of the *Prosecutor*. (The responsibility of actually disclosing material to the accused or their legal representative will be undertaken by a law clerk or lawyer from Legal D2). NB. The Investigator and Disclosure Officer can be the same person.

Prosecutor - the authority responsible for the conduct of criminal proceedings on behalf of the Crown. In the Inspectorate's case, lawyers from Legal D2 fulfil this role.

Material - material of any kind, notes, documents and even objects which have been obtained by the Investigator(s) during the course of a criminal investigation and which are relevant to the investigation.

Unused material - material obtained during the course of a criminal investigation, which is relevant to the investigation but does not form part of the prosecution case ie. material which is not going to be used as evidence.

Relevant material - material which appears to have some bearing on any offence under investigation, or any person being investigated, or even on the surrounding circumstances of the case. Material is not relevant and is, therefore, not unused material, only if it is incapable of having any impact on the case.

Disclosure - the act of providing the defence with either copies of, or access to inspect, unused material. There are two types of disclosure under the 1996 Act., which are Primary and Secondary Disclosures (see paragraphs 69-76)

Sensitive material - material which is not in the public interest to disclose. The material may be identified in the first instance by the *Investigator* or *Disclosure Officer*. If there is any doubt as to the “sensitivity” of a document, advice should be sought from lawyers in Legal D2.

Unused Material

68 All documents obtained or raised, during an investigation, which could lead to criminal proceedings, must be retained on the investigation file. These include hand written notes, letters that have been sent and draft witness statements (photocopy these from Inspectors’ notebook). A written record must also be kept of any telephone calls that are made to or received from the agent(s) and linked to the case file. These records will be considered as unused material.

Primary Disclosure

69 The Inspector or Investigation Manager should produce a schedule of “non-sensitive unused material”. (See Annex 14) This should list and describe all the unused material in their possession eg. notes of telephone conversations which are relevant to the investigation and preparatory notes for interviews. All material obtained or raised, excluding witness statements, exhibits and interview under caution transcript, starting with the complaint form or letter, must be listed on the form separately. The schedule should list separately each item of unused material. The description of the item should give sufficient detail to enable the prosecutor to make an informed decision as to whether it should be disclosed. The investigator should put the prosecutor on notice of any items he believes are potentially capable of undermining the prosecution case and hence must be disclosed

70 A separate schedule as in Annex 15 should be produced for any material, which is deemed “sensitive”. Such material will not necessarily be disclosed to the defence even if it satisfies the legal tests for disclosure as it may be subject to Public Interest Immunity (PII) or Legal Advice or Litigation Privilege (formally called Legal Professional Privilege or “LPP” may be asserted. An example of “sensitive material” would be the identity and contact details of a complainant who has specifically asked the Inspectorate for anonymity. NB the Department cannot guarantee the anonymity of a complainant. It is ultimately a matter for the court. Should a court order disclosure of the identity of a complainant who is an informant and is to be treated as such, then the prosecution must either withdraw the prosecution or disclose the relevant information in accordance with the order made by the court

71 Disclosure only normally arises where the case is going for trial, either in the Magistrates’ or Crown Court - it will not necessarily apply if the defendant pleads guilty at

the plea hearing. The only relevant duty of disclosure arises in relation to material that could undermine the prosecution case.

72 The Prosecution Lawyer in the case on examining the schedule and inspecting the material then has a duty to disclose to the defence;

any prosecution material which has not previously been disclosed and which in the Prosecutor's opinion might undermine the case for the prosecution against the accused.

Any unused material which does not satisfy this test does not have to be disclosed at this stage. Whilst it is the Lawyer's decision, the Inspector or Investigation Manager is under a positive duty to bring to the Lawyer's attention any material which he/she feels might satisfy this test.

Secondary Disclosure

73 The schedule of non sensitive unused material will be sent to the defence by the Prosecuting Lawyer with a covering letter indicating either, that there is no material to disclose, or copying material or giving the defence the opportunity to inspect disclosable material.

74 The defence may then serve a **Defence Statement** which should set out in general terms the nature of the defence and any matters on which the defence take issue, giving reasons. Serving this statement is compulsory in Crown Court trials but voluntary in Magistrates' Court trials .

75 The Prosecuting Lawyer, upon receipt of a Defence Statement, will then need to reconsider the unused material in the light of the Statement and apply the following test in deciding whether anything now needs to be disclosed which has not already been:

Any prosecution material which has not previously been disclosed and which might reasonably be expected to assist the accused's defence as disclosed by the Defence Statement.

76 It is again the Prosecuting Lawyer's decision as to what satisfies this test. However, Inspectors or Investigation Managers are under a positive duty to bring to the prosecutor's attention should flag up anything they are aware of which might satisfy this test. Doubts about the helpfulness of further material should be exercised in favour of disclosure in the interests of fairness and to prevent unnecessary defence applications to the court for further information. Disclosure will then ordinarily be made (unless PII or "Legal Advice or Litigation Privilege are relevant) or the defence will be informed in writing that there is no material which satisfies the test.

General responsibilities of the Investigator (Inspector or Investigation Manager)

77 The CPIA Code states that an investigator should ***pursue all reasonable lines of enquiry - whether these point towards or away from the suspect.*** This is important, as the investigator should pursue enquiries even if they are likely to provide a defence to the suspect. Any unused material arising in these circumstances obviously will not help the prosecution case but would ordinarily be disclosed under the CPIA tests. This does not mean that the Inspector has to go out of his way in all cases to try and establish the

defence case, the duty is only to make reasonable enquiries and what is “reasonable” will depend on the circumstances of each case. It may, however, mean seeking out documents in the possession of third parties eg. other Government Departments, see Attorney General’s guidelines on disclosure (6 additional words at end)

Recording of information

78 Inspectors must ensure that any unused material is *inspected, retained and its existence recorded* on the relevant schedule. This needs to be done either at the time they comes across it or as soon as is reasonably practicable afterwards. This should include any telephone conversations that other EAS staff may have had with the agents(. Refer also to paras 68 and 69 relating to unused material.

79 The material should be recorded in a lasting and retrievable form (eg. in writing, computer disk or audio tape). This also applies to material supplied to the Inspector by third parties .

80 The duty to retain and record applies equally to unused material the Inspectors create themselves in the course of an investigation. Hence notes should be made and retained of telephone conversations where these are relevant to the investigation and preparatory notes for interviews will also need to be retained and their existence recorded. Material includes oral information where relevant and there is a duty to record (eg. record of telephone calls).

General responsibilities of the Disclosure Officer

81 It is the duty of the Investigation Manager, if acting as the Disclosure Officer, to check the unused material by ensuring the Inspector has completed in detail and comprehensively the relevant schedules, correctly separating sensitive and non-sensitive material and to sign and date both schedules. The Investigation Manager working together with the Inspector should identify any material, which *might undermine the prosecution case* and bring it to the attention of the Prosecuting Lawyer, providing copies of such material wherever possible. Should the Inspector also act as the Disclosure Officer then the same duties apply. The CPIA disclosure regime provides that the Investigation Officer and the Disclosure Officer roles are separated but in simple cases both roles may be held by the Inspector. In complicated cases or where there is a criticism or an attack on the actions undertaken by the Investigation Officer another official not connected with the investigation should be appointed the Disclosure Officer.

82 The Investigation Manager must then certify in writing that all unused material in the Inspectors possession has been scheduled and that the CPIA Code has been complied with. He/she must also state in writing that all such material has been revealed to the Prosecuting Lawyer. The form as at Annex 14, “Schedule of Non-sensitive Material” can be used.

83 When a Defence Statement is received, the Investigation Manager should re-examine the schedule(s) to identify any previously undisclosed material which, in the light of the Defence Statement *might reasonably be expected to assist the defence case*. Any such material should be sent to the Prosecutor and another certified statement signed to the effect that all material has been revealed in accordance with the CPIA

Code. A form as at Annex 16 [Annex 14?] should be used. In cases of uncertainty, the Disclosure Officer should consult with the Prosecuting Lawyer.

General responsibilities of the Prosecutor

84 On receipt of the unused material schedule(s) from the Disclosure Officer, the Lawyer will need to consider whether there is anything to disclose in applying the test for primary disclosure. Material that might undermine the prosecution case is ***material that is capable of having an adverse effect upon the strength of the prosecution case.*** (it is important that the Inspector provides a sufficiently particularised schedule(s)). This is material, which *might* undermine the case, not will. This is actually a wider test than it first seems.

85 If a Defence Statement is received, the Prosecuting Lawyer, in collaboration with the Investigation Manager, will need to reconsider the unused material. The secondary disclosure test is wider than that for the primary disclosure test. ***Material which might reasonably be expected to assist the defence*** has, however, to be read in the context of as ***disclosed by the defence statement.*** Given the defence statement only has to be in general terms and usually is, the Lawyer cannot be expected to address disclosure of material which might assist the defence case on a particular line of defence if that line of defence were not mentioned in the Defence Statement. In many cases there will be no material to disclose at this stage, either because there is nothing satisfying the test or because it has already been disclosed at primary stage.

86 If the Lawyer determines that none of the material fulfils the primary disclosure test (or secondary test on receipt of a defence statement) including anything on a schedule of sensitive material, then there is no duty to disclose it.

When to disclose

87 The duty to serve a schedule of non-sensitive unused material arises as soon as is reasonably practicable after a not guilty plea is entered or committal takes place according to the CPIA. In some Crown Courts there is a standing direction by the resident judge that the non-sensitive schedule should be served on the defence at the time of or within 7 days of committal.

Voluntary Disclosure

88 The fact that there is no duty to disclose material which does not appear to satisfy the disclosure tests does not mean that it cannot be disclosed. Where unused material is relevant to the investigation, it may be that the defence will be permitted to inspect the material, often on the basis that material which does not at first appear to satisfy the disclosure tests may subsequently do so as a case progresses. This is all part of the Lawyer's continuing duty to review the position regarding unused material, as the case goes on. Voluntary disclosure avoids the risk of not disclosing something, which it subsequently transpires, should have been disclosed. This is clearly a matter for the discretion of the Lawyer in any given case.

Pre-Interview Disclosure

Section 34 of the Criminal Justice and Public Order Act 1994 enables an inference to be drawn against an accused if, where the accused failed to mention in interview a fact which he subsequently relies upon in his defence at trial, the jury consider that, in the circumstances that existed at the time, it would have been *reasonable* for him to mention it during interview. The key criterion is the reasonableness of maintaining silence. The Court of Appeal in R -v- Roble [1997] Crim LR 449 stated that, in determining what is reasonable, one of the factors to consider is the degree to which pre-interview disclosure had been given to the suspect and his legal advisors:

“Good reason [for remaining silent] may well arise if, for example, the interviewing officer has disclosed to the solicitor little or nothing of the nature of the case against the defendant, so that the solicitor cannot usefully advise his client ...”

The Inspector must therefore consider to what extent if any it is appropriate to make pre-disclosure of any relevant witness statements and exhibits that he/she holds before interviewing a suspect under caution. The issue is one that if the suspect is legally represented will be raised before any interview.

ACTION BEFORE HEARING - ENGLAND AND WALES

Preparation of files

89 Each file submitted for prosecution must have the following:-

- **Inspector's/Investigation Manager's Report** - this should set out the details of the complaint, the steps taken to investigate the case and the suggested offences. If there are any witnesses who are likely to be reluctant to attend court or be hostile to the prosecution, details should be included. It is not necessary to give an opinion as to the suitability of each witness.
- **List of Witness Statements** - The witness statement list as shown at Annex 16 should be completed in full. Details for witnesses must include: full name, address, date and place of birth, together with daytime and evening telephone numbers. The list will be amended by Legal D before the case goes to Court to remove the column containing addresses. It is not necessary to complete the statement number or exhibits columns as this will be done by Legal D.
- **Copy Statements** - Should be presented as one tagged document in exhibit list order with the statement list on the front.
- **List of Exhibits** - This should be completed with the exhibit reference and the description of the exhibit and should use the same order as the list of statements. See Annex 17. The description should mention whether or not the exhibit is an original or a copy. It is not necessary to complete the exhibit numbers or the, if copied columns, as this will be done by Legal D.
- **Copy Exhibits** - Should be completed as one tagged document in exhibit list order with the exhibit list on the front.

Completed Set of Papers

90 This should be the Inspector's/Investigation Manager's report, together with list of statements and copy statements, followed by list of exhibits and copy exhibits.

Original Documents

91 The original statements should be placed in statement list order in an envelope clearly marked "original statements for (name of the case)". The original exhibits should be kept together for each witness and put into separate envelopes. The cover of each envelope should list the exhibits which it contains. Common practice is to use the relevant section from the exhibit list and to fix it to the envelope.

92 All original documents should remain with the registered file at Head Office until the trial. At this time they will be handed to Legal D.

PREPARATION OF CASES

Laying of Information

93 Non-police prosecutions usually commence by the "*Laying of Information*". "Laying the information," means making a formal application to the Court by a person known as the "informant" for a summons alleging that an offence has been committed. Law clerks in Legal D will prepare the relevant documents for prosecution suggesting a date for the hearing. They will prepare the information to be laid before the Magistrates. The information is a document containing the name and address of the defendant and a short statement of the alleged offence(s), together with the date and place where the offence(s) was committed. A law clerk will send this information to the Court having jurisdiction over the alleged offence(s), obtain in return the summons and issue this to the accused.

Summons

94 A summons is an official document issued by a Court warning the defendant of the precise charge(s) made against him and the date and time of the hearing. Once issued, it is necessary to serve the summons on the defendant. This is usually accomplished by first class post. If this fails, a process server may be instructed or the Inspector who carried out the investigation may be asked to serve the summons personally. In the latter case, the Inspector should prepare a "*Certificate of Service*". See Annex 18. Where a limited company is involved, the summons must be served at the registered office of that company for this is the official address of the company.

Previous Convictions

95 Legal D2 are able to check with the police for any previous convictions of the defendant and the witnesses, including the Inspector. They do this by directly accessing the Police National Computer. The agreement governing the access to the police National Computer provides for use only in connection with criminal proceedings. Accordingly, access to the authorised staff within LSD2 is only permissible where a prosecution is actually being considered or in progress.

Calling of Witnesses

96 Law Clerks are responsible for arranging the attendance of witnesses including the Inspector. Initially, letters are sent out checking the availability of all the witnesses. Following this, witnesses will be notified in writing of the date of the hearing and a copy of their statement will be enclosed.

Preparation for hearing

97 In some cases, the Prosecuting Lawyer may wish to set up a meeting with the Inspector and Investigation Manager prior to the hearing, to brief the Inspector on the presentation of the Department's case, if he is likely to be called as a witness. In other instances, the Prosecuting Lawyer may restrict any briefing to a short meeting on the day of the hearing. He will want to be assured that the Inspector is prepared and can readily recall necessary events together with dates etc.

HEARING

Onus of Proof

98 Where a person is prosecuted the onus of proof of all offences rests entirely on the prosecution. It follows that evidence must be obtained and produced to prove every element of each alleged offence, as otherwise the defence is entitled to secure acquittal simply on the ground of failure to prove the offence. The defendant or his legal representative has the right to cross-examine witnesses for the prosecution.

Giving evidence

99 Prior to calling witnesses to give evidence, it is a convenience for everybody concerned for the Prosecuting Lawyer to outline the case beforehand to the Magistrates' Court. He can then explain how each piece of evidence he proposes to call fits into and builds up the whole case and thus enables the Court to appreciate from the outset the relevance of each piece of evidence. When Inspectors are called to give evidence, they must, as in every part of their duties, be strictly impartial. They are not expert witnesses and should not volunteer their views upon any question relating to the case. If pressed by the Court, they may give their views but should make it clear that these are their own personal views and not necessarily those of the Department. The Inspector must give evidence upon all matters into which it is their duty to enquire for the purposes of the 1973 Act. However if they are questioned upon matters which come to their knowledge during the course of other duties which are not material for that purpose, they should ask the Court whether it is necessary for them to answer the question. Before attending Court to give evidence, Inspectors and Investigation Managers should note the following, which may prove helpful:

- it is not the Inspector's duty to secure the defeat of the accused;
- it is the Inspector's duty to assist the Court in the administration of justice by informing it, in answer to questions which are asked, of the facts within their knowledge whether they fall for or against the defendant;
- be prepared to read out the transcript of the interview under caution with the Prosecuting Lawyer;
- be prepared to recite the "caution" from memory;
- give evidence in an objective and unbiased manner;

- if necessary, take time before answering so that a firm and clear answer can be given;
- give evidence firmly and deliberately and not in halting and uncertain manner;
- if recollection on a point is unclear, refer to notes of conversations to refresh memory;
- be sure to answer the question asked and not some other question and make sure to confine the answer to the question;
- if an answer to a question merely requires “yes” or “no”, keep to this - do not elaborate;
- avoid the use of official terms - if referring to an exhibit, describe it in a way that would make it understood outside the Department;
- after giving such a description there would be no objection to adding, “officially known as.....”;
- do not volunteer information on matters that have not been raised in the questions;
- it is the responsibility of the Prosecuting Lawyer to decide what evidence should be introduced;
- do not argue when being cross-examined by or on behalf of the defendant as this will create a very bad impression;
- remain polite at all times and address the bench in the appropriate manner;
- do not discuss the case outside the court room.

Payment of expenses and loss of earnings to witnesses

100 Law clerks from Legal D2 will handle any expenses incurred by witnesses including overnight stays where applicable.

ACTION IN SCOTLAND

General legal requirements

101 In Scotland the Procurator Fiscal decides whether proceedings should be brought on the basis of the public interest. In any trial under Scottish law, before a person can be convicted of a criminal offence there must be corroborated evidence to prove beyond reasonable doubt two essential facts; firstly, that an offence has been committed and secondly, that the accused is the person responsible for committing the offence. The burden of proving these is on the Crown. Corroboration simply means evidence from at least two sources and can be in the form of eye-witnesses accounts, admissions or surrounding facts and circumstances.

102 Legal D2 have no involvement in dealing with potential criminal proceedings in Scotland. It would be the responsibility of the Inspector or Investigation Manager to liaise with the appropriate Procurator Fiscal. The Inspectorate would need guidance on how to proceed with any case, including the gathering of evidence and any interviews or statements from the accused.

Time-bar

103 There is a general rule in Scotland that summary prosecution of statutory offences must be started within six months of the date of the offence unless a statute makes a different provision on time. Due to the changes made to the Employment Agencies Act 1973 by means of the Employment Relations Act 1999, the prosecution time limit has been extended to 3 years, or 6 months of the date the Secretary of State has sufficient evidence to justify proceedings, whichever is the earliest. However, reports to the Procurator Fiscal are generally submitted well before the expiry of the time-bar for the case to be fully considered, if necessary for discussion or further investigations to take place and then brought before the Court.

Tape recording of interviews

104 The practice of tape recording and its extent are not governed by legislation in Scotland but rather by guidance issued to the police by the Secretary of State. That guidance has no legal significance and in particular is not an enforceable code. However, section 277 of the Criminal Procedure (Scotland) Act 1995 governs the procedure in relation to the transcript of the interview. Once proceedings have been commenced, the tapes are transcribed by the Procurator Fiscal's office and the transcript is served on the accused at least 14 days before trial. Where this is done, a certified transcript is received in evidence and is sufficient for the making of the transcript and its accuracy.

105 Before undertaking an interview under caution (taped or otherwise) guidance must be sought from the Procurator Fiscal to determine if such evidence could be admissible.

106 It may happen that a recording includes prejudicial material such as disclosure of previous convictions. In such a case, the recording should be edited, as should the transcript. Editing is done on copies so that the original and full evidence is preserved.

Proof of the Offence

107 Normally there should be two witnesses to speak to all of the essential facts, which constitute the offence. Essential facts are those which form the basic essence of the charge. Therefore under Scottish law, interviews under caution should be conducted in the presence of two officers.

108 It should however, be noted that the law of corroboration does not require that every piece of evidence has to be confirmed by two witnesses. The evidence of a single witness may still be relevant and significant to the case. In some cases the evidence of separate witnesses on different dates may be mutually corroborative if it relates to the same offence and accused. If there is only one witness to an admission, the evidence is still admissible, relevant and probably vital. However, care should be taken to ensure that all the essential evidence can be corroborated and that the name of a witness who can corroborate evidence is given in any statement. If there is any doubt, the matter should be discussed with the Procurator Fiscal.

109 The ultimate decision on whether there is sufficient evidence to prosecute is taken by the Procurator Fiscal having jurisdiction over the geographical area in which the

offence occurred and to whom all the relevant papers should be passed. Thereafter, the case is solely in the hands of the Procurator Fiscal, who prepares the case for the Sheriff's Court and arranges attendance at Court.

Preparation of Cases

110 The Procurator Fiscal Service and the Crown Office receive cases from a large number of non-police reporting agencies. In order to maintain uniformity with the presentation of cases, the Procurator Fiscal Service and Crown Office have a preference as to the way in which each case is reported.

111 The information held on the accused should include:

- Individual; name, address, occupation and date of birth;
- Partnerships; name and place of business, names and dates of birth of partners;
- Limited Companies; full name, registered office and place of business, names and positions of relevant company officers;

- Details of previous convictions known.

112 The witness statement form should have the facility for the following information:

- (1) Surname
- (2) Maiden name
- (3) Forename(s)
- (4) Title
- (5) Home address
- (6) Home telephone number
- (7) Business address
- (8) Business telephone number
- (9) Care of address (if applicable) and telephone number
- (10) Place and date of birth
- (11) Occupation
- (12) Known as or alias
- (13) Statement noted by
- (14) Department of statement taker
- (15) Time, day, date of noting of statement
- (16) Location of making the statement
- (17) Indication as to whether the person noting the statement was alone or accompanied at the time and if so by whom

- (18) Whether the witness read the statement over and was asked if it was accurate and signed it

113 If a witness does not wish his or her home address to be given in Court, this fact should be clearly stated, both on the list of witnesses and on their statement. Holiday dates or other dates when a witness is unavailable for the year following the submission of the case, should also be given.

114 In Scotland an exhibit is known as a “PRODUCTION”. When referring to a production, this should be marked in the margin of the statement and the witness should explain its importance and content. The witness should also have the ability to identify the accused and this should be included at the end of the statement.

Court Procedures

115 In any Court Room in Scotland, proceedings are conducted by the Sheriff who will immediately be recognisable as he or she sits in a prominent position. He or she should be addressed as “My Lord” or “My Lady”, whichever is appropriate. When a witness is called into the witness box, the oath is administered by the Sheriff. Apart from the Procurator Fiscal and the defence lawyer(s), the only other Court official likely to be present is the Sheriff Clerk who sits in front of the Sheriff in the well of the Court. The Procurator Fiscal will always begin the questioning of any prosecution witness.

Verdict

116 At the end of a trial, the Sheriff may deliver his decision immediately, retire to consider a verdict or defer judgement to a later date. If the Sheriff adjourns the case, witnesses are not required to attend when the case is brought back into Court unless specifically requested to do so. In Scotland, the Sheriff may find the accused Not Guilty or Guilty or find the charge Not Proven. The first and third verdicts are both ones of acquittal.

Payment of expenses and loss of earnings to witnesses

117 In Scotland, these payments are met from public funds through the Court’s administration. In cases of doubt, advice should be sought from the appropriate Procurator Fiscal.

(Revised March 2005)

Witness statement

(CJ Act 1967 s9; MC Act 1980 ss5A(3)(a) and 5B; MC Rules 1981 r70)

Statement of :

Age:

Occupation:

This statement consisting of _____ page(s) each signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the _____ day of _____ 20____

Signed _____

The document(s) I produce in this statement, were/was created and/or received in the course of the business of ** and the information contained in them was supplied by a person (whether or not the maker of the statement) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with. The person or persons who made the statement contained in the documents cannot reasonably be expected (having regard to the time which has elapsed since the statements were made and to all the circumstances) to have any recollection of the matters dealt with in the statements.

In relation to the above documents produced by me which have been generated by computer, there are no grounds for believing that the information contained in those documents is inaccurate because of improper use of the computer. At all material times the computer was operating properly, or if not, any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or documents or the accuracy of the content.

The original exhibits are retained by me for business/security/other reasons and I undertake to produce them at Court if I am called to give evidence or if I am notified that they are so required. I will also make them available for inspection by the prosecution or defence before the trial after due notice.

DEPARTMENT OF TRADE AND INDUSTRY

AUTHORITY TO BANK/BUILDING SOCIETY MANAGER

I

do hereby authorise

.....

or his representative to make enquiries of account number

.....

in the name of

.....

at the

.....Branch

I further authorise that any information or documents as requested by
..... be passed to him/her or his/her
representative by the said Bank/Building Society without hindrance or delay.

Signed

.....

Dated

.....

REGULATION 25(2- 6)

“...an agency shall not request or directly or indirectly receive money on behalf of a work-seeker unless—

(a) such monies consist of the work-seeker’s remuneration from employment in any of the occupations listed in Schedule 3; and

(b) the agency maintains one or more client accounts in accordance with Schedule 2.

1. IS IT AN EMPLOYMENT AGENCY AS DEFINED BY SECTION 13(2) OF THE 1973 ACT?

2. IS THE AGENT RECEIVING MONEY ON BEHALF OF A WORKER?

3. HAS THE AGENT RECEIVED THE MONEY?

4. HAS THE AGENT PAID THE WORKER?

5. DOES THE AGENCY OPERATE A CLIENT’S ACCOUNT?

6. WAS THE MONEY PAID INTO THE CLIENT’S ACCOUNT?

7. WAS THE WORKER GIVEN A STATEMENT SETTING OUT THE DETAILS OF THE PAYMENT TO THE AGENCY

Annex 4
(Para 40)

Employment Agency Standards
Department of Trade and Industry

1 Victoria Street
London SW1H 0ET

Enquiries
020 7215 5000

Fax 020 7215 2636

Direct line
Our ref
Your ref
Date

Dear

EMPLOYMENT AGENCIES ACT 1973

Please find enclosed a statement which has been drawn up based upon our conversation.

Please read the statement carefully and if you are happy with its contents, sign the declaration on the first page and also sign at the foot of each page in the appropriate place. (I have also enclosed individual exhibit labels, which you should sign.)

If you wish to make minor amendments to the statement, please make them in manuscript and initial each one. Should you have any queries concerning the statement, please telephone me on my direct number which is shown above. I would be grateful if you would return the statement (and labels) as soon as possible using the enclosed envelope and business reply label.

In closing, I would like to thank you for your co-operation.

Yours sincerely

Inspector

Enc.

WITNESS FORM

FULL NAME:

ADDRESS:

DATE AND PLACE OF BIRTH:

DAYTIME & EVENING CONTACT NUMBERS:

DATES NOT AVAILABLE – 6 months hence:

(this information to be used in compiling witness list as in Annex 18)

**Employment Agency Standards
Department of Trade
and Industry**

1 Victoria Street
London SW1H 0ET

Enquiries
020 7215 5000

Fax 020 7215 2636

Direct line
Our ref
Your ref
Date

Dear

EMPLOYMENT AGENCIES ACT 1973

Further to our recent telephone conversation, I am writing to confirm that we have reason to conduct an investigation in relation to the services that you have provided to

..... Our investigation concerns compliance with the provisions of the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

Because we have reason to believe that you may not have complied with the statutory provisions of the legislation, we wish to interview you formally, under caution, to ask you questions in relation to this matter. The interview will also give you the opportunity to give any explanation that you may wish to offer. You are not obliged to answer any questions but it may harm your defence if you do not mention in answering any questions something which you later rely on in Court, anything you say in response to the questions may be given in evidence.

The interview will be tape recorded and carried out in accordance with the Police and Criminal Evidence Act 1984. This means that depending on what you tell us during the interview, we may take criminal proceedings against you. You have the right to obtain legal advice about this matter and it may be in your interest to consult a solicitor before responding to this letter. You are entitled to have your solicitor or a friend present during the interview and you will be entitled to terminate the interview at any time or ask to leave the interview. You will not be under arrest.

You are invited to attend this interview on
.....at at the premises of
.....

.....
..... Please report to
..... and I will arrange for you to be
shown to the interview room. I have enclosed a "Confirmation of Interview"
form which I would ask you to complete and return it to me, as soon as
possible, in the enclosed pre-paid envelope.

You do not have to consent to be interviewed but I must advise you that
failure to agree to be interviewed in respect of this matter may not prevent
criminal proceedings being taken.

Yours sincerely

EAS Inspector

PRIVATE AND CONFIDENTIAL

Annex 7

(Para 47)

**Employment Agency Standards
Department of Trade
and Industry**

1 Victoria Street
London SW1H 0ET

Enquiries
020 7215 5000

Fax 020 7215 2636

Direct line
Our ref
Your ref
Date

CONFIRMATION OF INTERVIEW

Name.....
.....

Contact telephone
number.....

I confirm that I will attend the interview
on.....

I understand that I am entitled to be legally represented at the interview and
that the responsibility for such representation is mine and not that of the
Department of Trade and Industry.

I understand that the interview will be conducted in accordance with the
Codes of Practice as set out in the Police and Criminal Evidence Act 1984.

I have been informed that I will not be under arrest and that I am allowed to
leave or terminate the interview at any time.

Signed.....
Name.....

PRIVATE AND CONFIDENTIAL

Annex 8

(Para 48)

**Employment Agency Standards
Department of Trade
and Industry**

1 Victoria Street
London SW1H 0ET

Enquiries
020 7215 5000

Fax 020 7215 2636

Direct line
Our ref
Your ref
Date

Dear

EMPLOYMENT AGENCIES ACT 1973

As you are aware we have been making enquiries into matters concerning compliance with the Employment Agencies Act 1973 and associated regulations.

I refer to my earlier letter dated As you have failed to respond to this letter, it must be assumed that you have declined the offer of an interview. The offer for you to be interviewed is made to enable you to answer certain allegations made against you. I must therefore advise you that the case papers will be submitted to the Department's solicitors for a decision to be made as to whether or not you will be prosecuted.

Should you decide you wish to be interviewed you may contact me or my manager,..... to arrange a mutually convenient time and place. I must, however, point out that the case file will be submitted to the Department's solicitors within the next 2 weeks. Should a decision be made to prosecute you, it will not be possible to conduct an interview after a decision to prosecute has been made.

Yours sincerely

Inspector

TAPED INTERVIEW UNDER CAUTION

On arrival at the premises set up the tape machine as soon as possible and advise the interviewee that the interview will be formal and that it will be taped in accordance with PACE 1984. Ensure that you have a copy of the PACE Code of Practice with you as well as a copy of the Employment Agencies Act 1973 and the Conduct Regulations 2003.

Consider asking the interviewee to speak clearly for the benefit of the tape and show him/her the sealed tapes before inserting them into the machine. Inform the interviewee that on starting the machine, a buzzer sounds for about eight seconds, after which the interview will commence. Suggested opening format is as follows;

This interview is being recorded. It is(time) On(date).
We are at(state where)

I am(Name and grade)

Also present are.....(second interviewer to identify themselves by name and grade, plus solicitor or witnesses, if present)

What is your full name?

What is your date of birth?

What is your address?

Do you agree there is no one else in the room?

Can you confirm that the tapes used in this interview are new and were unsealed in your presence?

At the end of the interview I will give you a notice that will explain the procedure for dealing with the tape(s) and how you can obtain a copy of it (or them) if you wish.

This is a formal interview and I am obliged to give you a formal caution.

Before I put questions to you concerning the allegation, I must caution you that you are not obliged to say anything but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you say may be given in evidence.

So that I know you understand the caution would you please explain to me in your own words what that means?

If necessary, repeat the caution. If the interviewee still does not understand, explain the meaning in your own or agreed words.

If the interviewee's solicitor or any other person is present, refer the interviewee to his/her solicitor or any other person for an explanation.

Advise the interviewee: "You are not under arrest."

"You are free to come and go as you please or ask us to leave."

You have the right to consult the Codes of Practice. Copies are available if you wish to read them

You are entitled to be legally represented.

"You may seek legal advice, if you wish, at any time. Do you wish to seek legal advice?" (If a solicitor is present, tell them they can consult their solicitor at any time). *Should you wish, this interview can be suspended at any time to allow you to seek legal advice.*

"Is there any reason why you do not wish to seek legal advice?"

"I am now issuing you with form EAS1 which is a notice to persons being interviewed."

"Would you please sign a copy of the form for our records." (If not why)

"Do you understand your rights as I have explained them?" (If not why)

"Are you prepared to continue with the interview?" (If not why)

Interpreters (if not covered as above)

The language isThe interpreter is here to assist you to understand any questions I may ask and to assist you in any answer that you may wish to give in response.

If it is clear an interpreter is needed and there is not one present, the interview should be suspended.

You are entitled to an interpreter to help you in the understanding of the questions I will ask, and any answers that you may give. If at any time you have difficulty in understanding English tell me and I will arrange for an interpreter to be present. Please confirm that you have understood all that has been said to you.

Do you fully understand what I have told you and what your rights are as I have outlined them?

I am investigating>>>>>

CHANGING TAPES

End of tape – “This tape is coming to an end. Please indicate which tape you wish to be the master copy and sign the seal for it. The time is.....I shall now switch the machine off.”

Start of new tape – “This is a continuation of an interview with....., the time is....., and I will resume the interview. For the benefit of the tape, can you confirm that during the tape change no discussion took place between us concerning the matter at hand and that there has been no change in the persons present (state what changes have been made, if necessary).”

“I must remind you that you are still under caution. Do you understand?” (If in doubt, re-issue the caution in full and re-state rights).

END OF INTERVIEW

“Do you wish to *add* or clarify anything you have said?”

“Do you wish to add anything?”

“This is the notice that I told you about at the start of the interview explaining what is going to happen to the tapes. Please indicate which tape you wish to be the master and sign the seal.”

I will be submitting a file to lawyers within the DTI who will decide if there is sufficient evidence to prosecute. You will be contacted in due course.

“The time is I shall now switch the machine off.”

If they do not understand the caution – Explain that:

“You do not have to say anything if you don’t want to.”

“If the case goes to court and you mention something which was not mentioned during this interview, then the court will decide whether or not to accept any new information.”

“Anything said or answered may be read out or played in court.”

Annex 11
(Para 53)

**Employment Agency Standards
Department of Trade
and Industry**

1 Victoria Street
London SW1H 0ET

Enquiries
020 7215 5000

Fax 020 7215 2636

Direct line
Our ref
Your ref
Date

NOTICE TO PERSONS BEING INTERVIEWED - EAS1

1 This interview is being conducted in accordance with the codes of practice of "The Police and Criminal Evidence Act 1984 (PACE)".

2 This interview is to enable you to offer an explanation of the facts, though should evidence of an offence emerge, you may be prosecuted.

3 You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence.

4 You are not under arrest or detained here, you may leave at any time during the interview. If (the officer) is conducting the interview other than in official premises, you may ask him to leave.

5 You may have a friend with you if you wish.

6 You may have a solicitor and/or an interpreter with you if you wish, in which case this interview may be suspended until another interview can be arranged. You may seek legal advice.

7 A copy of the PACE Code of Practice is available if you wish to consult it.

ENDORSEMENT: I CERTIFY THAT I HAVE BEEN GIVEN AN EXPLANATION OF MY ENTITLEMENTS OF WHICH THIS IS A TRUE COPY.

PERSON BEING INTERVIEWED:

SIGNATURE

.....

NAME

.....

DATE

.....

WITNESS:

SIGNATURE

.....

NAME

.....

DATE

.....

**Annex 12
(Para 57)**

**Employment Agency Standards
Department of Trade
and Industry**

1 Victoria Street
London SW1H 0ET

Enquiries
020 7215 5000

Fax 020 7215 2636

Direct line
Our ref
Your ref
Date

**NOTICE TO PERSONS WHOSE INTERVIEW HAS BEEN TAPE RECORDED -
EAS2**

This notice explains how the tape recording will be used and how you or your solicitor will be provided with a copy of the tape if you are summonsed or informed that you will be prosecuted.

General

The interview has been recorded on tape. One of these tapes (or sets) has been sealed in your presence and will be kept securely in case it is needed in court. The other will be a working copy to which we may listen. Both sets of tapes are protected against tampering.

If you are summonsed or informed that you will be prosecuted a copy of the tape will be supplied to you or your solicitor as soon as practicable.

If you have a solicitor

If you have a solicitor, a copy of the tape will be sent to him or her to assist in the preparation of your defence before the case comes to court. If you do not intend to appoint a solicitor, a copy of the tape can be sent to you.

You may choose not to receive a copy of the tape, or tapes. This does not prevent you or your solicitor from requesting a copy at a later date. If you do not have a solicitor at this time but intend to appoint one later, he or she can ask us to provide a copy of the tape(s).

Request for tapes

Requests for a copy of the tape(s) should be made to:

Department of Trade and Industry

Employment Agency Standards Inspectorate

3136

1 Victoria Street

LONDON

SW1H 0ET

Quote the reference

Record of Interview

Date of interview..... Time interview started.....

Name of interviewing officer.....

Official address.....

.....

Name of person being interviewed.....

Address.....

.....

Place of interview.....

.....

Interviewee's date of birth.....

Others present (name and status).....

.....

Caution

"You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence."

Time caution issued.....

Ask the interviewee if he/she understood the caution. If not, read out the full caution again slowly. If the interviewee still does not understand the caution explain it to him/her in your own words.

Inform the interviewee:

“You are not under arrest”

“You are free to come and go as you please, or ask us to leave”

“You may obtain legal advice if you wish” (If a solicitor is present - tell the interviewee that he/she can consult his/her solicitor at any time)

“Do you wish to obtain legal advice?” - If the response is no.

“Is there a reason why you do not wish to obtain legal advice?”

Issue the interviewee with a copy of the Notice to Persons Being Interviewed (EAS1).

Signature acknowledging receipt

Name

Ask the interviewee:

“Do you understand your rights as I have explained them?” (If not, why)

.....

“Are you prepared to continue with the interview?” (If not, why)

.....

Ask the interviewee to read through the record of interview and ask them to sign each page and the wording of the caution. If they refuse to sign the record or caution, ask them why?

.....

Both the interviewer and interviewee should initial any agreed minor changes to the record. If the interviewee disagrees with any part of the record, please list out these points:

.....
.....
.....
.....

Voluntary statement (*delete where inappropriate)

Ask the interviewee if they wish to make a statement.

*He/she *volunteered/declined to make a statement.

*He/she said that they wanted me to write the statement at *his/her dictation, see statement A.

*He/she said that they wanted to write the statement *himself/herself, see statement B

Statement A

Before writing down the statement on behalf of the interviewee, ask him/her to sign or initial the certificate at the head of the statement.

After you have finished taking down the statement in the interviewee's own words ask him/her to read it and make any corrections, alterations or additions that he/her wish to.

When the interviewee has finished reading the statement ask him/her to write out and sign or initial the following certificate at the end of the statement.

I have read through the above statement and I have been able to correct, alter or add anything I wish. This statement is true. I have made it of my own free will.

If after writing down the statement, the interviewee;

refused to read the statement

could not read the statement

could not write the certificate

refused to write the certificate

refused to sign or mark the certificate

read the statement over to the interviewee and ask them whether they want to make any corrections, alterations or additions and to sign or initial at the end of the statement. You must then record on the statement itself what had happened.

Statement B

Ask the interviewee to read and sign or initial the certificate at the head of the statement before writing down what he/she wants to say. Ask him/her to sign or initial the statement after he/she has read through what he/she has written down.

Time interview ended

Signature of interviewing officer.....Date.....

Signature of official witness.....Date.....

Signature of interviewee.....Date.....

**DEPARTMENT OF TRADE AND INDUSTRY SCHEDULE OF
NON-SENSITIVE MATERIAL**

Department of Trade and Industry
V

.....

Number.....

EAS Ref.....

Item No	Description	Location

To the best of my knowledge and belief, none of the material listed in this schedule is sensitive

Prepared by.....(Disclosure Officer)

Signed..... Date.....

Lawyer in the case.....

Signed..... Date.....

NOT TO BE DISCLOSED CONFIDENTIAL INFORMATION

DEPARTMENT OF TRADE AND INDUSTRY
SCHEDULE OF SENSITIVE MATERIAL

Department of Trade and Industry

v

.....

Number.....

EAS Ref

Item No	Description	Location and reason for sensitivity

The Disclosure Officer believes that the above material listed in this schedule is sensitive

Prepared by.....(Disclosure Officer)

Signed

Dated

Lawyer in the case.....

Signed

Dated

