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SECTION 3

Investigative Code of Practice (Part II)


Introduction

- 3000 This Code of Practice is for all officers who are engaged on counter fraud activity in NHS National Services Scotland Counter Fraud Services.
- 3001 It is split into two sections in the CFS Manual:
- Section 2 – Investigative Code of Practice (Part I)
 - ⇒ Explains the Investigative Code of Practice
 - ⇒ Explains the roles and responsibilities a CFS investigation officer
 - ⇒ Provides an overview of how an investigator should conduct investigations
 - ⇒ Explains how to deal with referrals and background investigations
 - ⇒ Gives guidance on when a referral or background investigation is upgraded to a full investigation
 - ⇒ Details how to log evidence in an official notebook
 - Section 3 – Investigative Code of Practice (Part II)
 - ⇒ Gives information on how to interview witnesses
 - ⇒ Gives an overview on how to take a statement
 - ⇒ Explains a production and its importance
 - ⇒ Explains the importance of continuity of evidence
 - ⇒ Gives an overview search warrant procedures
 - ⇒ Gives an overview of search procedures
 - ⇒ Outlines the time limits for bringing cases to Court
 - ⇒ Explains how to report a case to the Procurator Fiscal
 - ⇒ Gives an overview of the Integration of Scottish Criminal Justice Information Systems
 - ⇒ Explains court procedures and how to give evidence in court


- 3002 It contains instructions and guidance on effective counter fraud investigation methodology and aims to ensure that investigation officers and operational managers:
- ☐ Carry out investigations legally, ethically and without undue delay
 - ☐ Interpret policy and law correctly
 - ☐ Make best use of recognised good practice
- 3003 Most of the information is precise instruction, where that is the case it will be made clear. However, there are parts of this Code which are in the form of advice and guidance only.
- 3004 This Code of Practice, which complements accredited counter fraud specialist training, is intended to ensure that investigation officers carry out their duties in a fair, professional and ethical manner and are seen to do so thus enhancing the integrity and reputation of CFS.
- 3005 A common sense approach must be adopted in reading, interpreting and applying the content of this document.
- 3006-3009

Statements

Introduction

- 3010  When a potential witness is identified and is willing to provide information the CFS officer must record this in the form of a statement, even if it is considered negative or not seen as beneficial to the enquiry. It is for the Procurator Fiscal to determine which statements are relevant.


All potential witnesses should be interviewed

- 3011  All potential witnesses should be interviewed, so that all sources have been exhausted before the investigation is complete. It can prove very embarrassing at court to suddenly have a defence witness called whose evidence is unknown.

- 3012 With this in mind, it can be useful to obtain statements, particularly from sources close to the subject e.g. mother, wife, or close friend. It is extremely difficult for them if they have made a statement that they know nothing about an incident, to suddenly remember occurrences and subsequently turn up as a defence witness.

- 3013 If all available witnesses are interviewed and as much accurate detail as possible is obtained this will assist with interviewing the suspect. It will give the interviewing officer scope to validate or challenge the suspect's version of events.

Vulnerable persons/Adults with Incapacity

- 3014  Vulnerable persons must be treated with particular consideration at all times:
- ☐ Those with
 - mental or physical disabilities or handicaps
 - dementia
 - a learning disability
 - an acquired brain injury or severe and chronic mental illness
 - a severe sensory impairment
 - ☐ Young children
 - ☐ Juveniles

3015 For more information on interviewing vulnerable persons see CFS Manual Investigative Interviewing – Witnesses – Interviewing people ‘at risk’.

3016-3029

Witness statement format

3030 Where appropriate witness statement should be recorded directly into the FINDS system. However, this may not always be practicable/possible.

3031 Witness statement templates can be found in Word. Click ‘file’ then ‘new’ to access required template. The templates are:

- ☐ Witness statement
- ☐ Witness statement (lined)

3032 It is important that care should be taken to ensure that proper personal particulars are noted. The witness statement template has the facility to record the following information:

- ☐ (1) Surname
- ☐ (2) Maiden name
- ☐ (3) Forename(s) or middle names
- ☐ (4) Title
- ☐ (5) Home address
- ☐ (6) Home telephone number
- ☐ (7) Business address
- ☐ (8) Business telephone number
- ☐ (9) Care of address (if applicable)
- ☐ (10) Care of address, telephone number
- ☐ (11) Date of birth
- ☐ (12) Occupation
- ☐ (13) Known as or alias
- ☐ (14) Identity of statement taker
- ☐ (15) Department of statement taker
- ☐ (16) Time, day, date of noting of statement
- ☐ (17) Location of making of statement
- ☐ (18) Indication as to whether the person noting the statement was alone or accompanied at time, and if so by whom
- ☐ (19) Whether the witness read the statement over and was asked if it was accurate and signed it.

Spelling of witness's name

- 3033 All the above information is vital if the procurator fiscal is to establish who is speaking to particular issues. Remember the spelling of both surnames and forenames vary, so confirm with the witness the proper spellings. For example: Lesley and Leslie; Ian and Iain; Brian and Bryan; Thomson and Thompson.

Witness's telephone numbers

- 3034 The benefit of remembering to obtain the witness's telephone number is obvious. It is a quick means of the Procurator Fiscal getting in contact with the witness; especially to countermand the witness. This applies to both police and Procurator Fiscal. Again remember to record the witness's business telephone number, as the witness is not always going to be at his or her home address.

Details required to establish and confirm witness's identity

- 3035 It is important to record the witness's place and date of birth, occupation and any other name they are known by or have been known by. This information is required so as to establish and confirm the identity of the witness, i.e. if there are two witnesses with the same name then they are unlikely to have all other personal details the same.

3036-3039

Interviewing officer's details and location of making statement


- 3040 Interviewing officer's details and location of making statement etc. are noted so that if ambiguities arise then it can be readily established who in fact had noted the statement from the witness.

Recording the witness statement


- 3041 Further questioning whilst writing the statement will probably be necessary to ensure total accuracy. Vague generalisations should not be accepted without attempting to get the witness to express himself or herself more clearly using further questioning.

3042-3049

Sections 259, 260 and 263 of the Criminal Procedure (Scotland) Act 1995

- 3050  It is a fundamental requirement that statements should be compiled as accurately as possible. There are specific reasons why such accuracy is critical, not least because witnesses often do not adhere to their original statements. Officers should be aware of the impact of Sections 259, 260 and 263 of the Criminal Procedure (Scotland) Act 1995, with regard to statements noted from witnesses.
- 3051 In defined circumstances, Section 259 of the above Act allows the statements of absent or deceased witnesses to be used in criminal proceedings. Since the decision in *Jamieson v. HMA* 1994 SLT 537, and the introduction of its statutory equivalent in Section 260 of the Act, if a witness is unable to remember the contents of their statement but acknowledges that the statement was indeed made, then that statement may be incorporated as their evidence.
- 3052 If the statement was recorded in a document, the officer who took the statement can give evidence as to the content of the document and thus provide the necessary evidential link.
- 3053 Section 263(4) allows an earlier statement to be put to a witness during a trial, should their evidence differ from what is contained in that statement. Accuracy, therefore, in the completion of witness statements is vital if a prosecutor is to use these legislative provisions.
- 3054-3059

Statement must be factual

- 3060  Statements are the raw material from which the Procurator Fiscal prepares a case for trial and as such provide an indication of the evidence each witness can provide and which will be referred to during court proceedings. Therefore it is important that the statement is factual.
- 3061-3069

Incorporate actual words used by the witness in a chronological order

- 3070 It will not necessarily be clear from a statement submitted to the Procurator Fiscal whether words contained in that statement are the **actual** words of a witness or represent the interviewing officer's interpretation of the evidence a witness can provide.


3071 Although desirable, it is appreciated that a witness statement will rarely be a verbatim account of **everything** the witness has said. It is important, however, that the statement does contain, as far as possible, the **actual** words used by the witness.

3072 This can be of crucial importance in any future legal proceedings where the witness in giving evidence disputes the content of their statement. This is not an excuse for taking an extremely brief verbatim statement from a witness, as an investigating officer is entitled to ask probing questions in an effort to elicit information from a witness or otherwise jog the witness's memory or clarify points in their statement.

3073 The facts should, as far as possible, be taken down in chronological order.

3074-3079


Information which may prove detrimental to the Crown case

3080  Although not everything said by a witness during an interview will be recorded, it is essential that all relevant information is recorded including that which may be of assistance to the defence.


3081 As a general rule a witness statement should include too much rather than too little information. If relevant evidence is omitted from a statement, this may result in that evidence not being presented for consideration by the court. It should also be remembered that defence agents normally precognose prosecution witnesses and may obtain information which the investigator has neglected to obtain or include in the witness's statement.

3082-3089




Setting up appointments with witnesses

- 3090  Before leaving the office to obtain witness statements the interviewing officer should where possible arrange an appointment to see the witness. Cold calling must be treated as a last resort and operational managers agreement sought before cold calling. The interviewing officer should consider asking the Investigation Assistant to:
- XXXXX

Ineffective visits


- 3091  When an officer fails to get a response when arriving at an address always leave a Form CFS 12 – Ineffective visit letter. It may also be worthwhile making enquiries with a neighbour to confirm:
- ☐ If the individual still resides at the address
 - ☐ When the individual is normally home

Leading witnesses


- 3092  During witness interviews officers must exercise care when questioning witnesses in order that the way in which the question is phrased does not itself suggest the expected response from the witness. This is known as 'Leading'.
- 3093 To obtain a statement in this way will almost certainly result in adverse comment from not only the prosecuting authorities but defence solicitors and will clearly devalue the content of the witness's statement.
- 3094  Under no circumstances should the interviewing officer lead witnesses during the statement taking process.
- 3095  Extra care should be taken when showing productions to ensure an officer does not inadvertently lead the witness.

3096-3099

Relationship of witness with person involved

- 3100  Should during the course of an investigation it become known that a witness is related to a suspect or any other witness either by marriage, family, employment or in some other way, then the investigating officer must include details of the identified relationship within the relevant report for the information of the Procurator Fiscal and/or any other CFS personnel who may require to become involved in the investigation at some future time.
- 3101 In such instances it is the policy of CFS to obtain from any available independent source corroboration of the information obtained from the related witness.
- 3102 Additionally, where it is known by the investigating officer that a witness who is about to be interviewed is related to a suspect by marriage, family, employment or in some other way, then consideration should be given as to whether a second CFS officer is required to corroborate the witness interview.
- 3103-3109


Spouse of an accused

- 3110  When an officer takes a statement from the spouse of an accused it must commence with the opening paragraph:
- 'I am willing to give evidence in court against my if proceedings are brought against him or her by the NHS. I voluntarily agree to give evidence knowing that I am not compelled to do so'.***

3111-3119


Productions

3120 A witness refers to a production in their statement with the intention of producing it before the court. A production is referred to as a 'LABEL' in a witness statement. This applies to videotapes, video records etc. If an officer takes a still image from a hard drive/CD ROM a documentary backing sheet should be attached and this would be referred to as a production in a witness statement.

3122  The production must be shown to the witness and its importance and content explained by the witness in the statement.


3123-3129

Production identification

3130  It is essential that items seized as productions are accurately described on the Production Label or Documentary Backing Sheet attached to the article. It is of great importance thereafter that when referring to a specific production in a witness statement or report there exists a consistency of description in order to avoid confusion.

3131 In large-scale fraud investigations whilst there may be a similarity in respect of the nature or description of items/documents seized, it is important that some distinguishing feature is inserted on the Production Label/Documentary Production Backing Sheet. This may take the form of the date seized and/or the location from which the item was taken or indeed the name of the person to whom the document relates.

Label production

3132  Where a witness is speaking to a production this must be shown in the margin e.g.:

 LABEL NO. Video Recorder

and the fact that the witness has signed the label included.

3133-3139

Documentary production

3140 In the case of documentary productions the appropriate entry will be:

PROD NO. Invoice

Identification of accused

3141 The ability of the witness to identify the accused must be included as the penultimate paragraph.

**Read or allow witness to read their statement**

3142 In concluding the statement, the witness should be given the opportunity to read the statement personally or the interviewing officer should read over the statement to the witness. In any event, the statement must be concluded with a sentence indicating that the witness has indeed had the opportunity to read or have had read to them their statement and they are satisfied with the content and do not wish any (or wish the following) changes to the content.

**Ask witness to sign statement**


3143 In Scotland it is not necessary for a witness to sign their statement nevertheless the interviewing officer is required to ask the witness to sign the bottom of each page of their statement.

**Address any concerns the witness may have**


3144 The witness should be advised what may result from the interview and any further concerns, which they may have, should be addressed. The officer should bear in mind it is possible that they will meet the witness again and may seek their continued co-operation. A contact telephone number/name should be provided to the witness in case they have future questions to ask or information to provide.





Do not supply a witness with a copy of their statement

- 3145  Crown Office advice is that no witness should be given a copy of his or her statement whether taken contemporaneously or not. Best practice would be for statements to be noted down contemporaneously and for the witness to read over the statement and then sign it to say it is accurate.
- 3146 This would assist the Crown if a statement needed to be put to a witness in the course of giving their evidence (if for example they gave different evidence at a trial or indicated that they could no longer remember what they said). However, witnesses should not be given a copy of their statement as they should give evidence from memory in due course and not with reference to any statement. Clearly CFS officers are in a different situation as we draft our own statements and retain a copy of them.
- 3147 The approach in Scotland is different to the way witness statements are dealt with and put before the court in England. When dealing with a witness familiar with the English procedure the interviewing officer may need to explain this, and the fact that a copy of their statement cannot be handed to them.
- 3148 In circumstances where the witness has been e-mailed a copy of their statement, this should be brought to the attention of the Procurator Fiscal in an appropriate section of the SPR.
- 3149-3149


Fraud Investigation National Database Scotland

- 3150  Any statements taken on the official CFS proforma statement or recorded in the officer's notebook must be recorded in Fraud Investigation National Database Scotland (FINDS) immediately or as soon as is reasonably practicable. This will involve creating a witness and statement record within FINDS to ensure all information recorded on the statement is captured.

Supplementary statements or other information


- 3151  Statements should not be regarded as the witness' only opportunity to record the salient facts of the investigation of an offence. Whilst every effort should be made to record all the relevant information available at that time, if it occurs to a witness at a later date that he or she has inadvertently omitted or recalled further pertinent information or if expansion of any part of the statement is worthwhile, a supplementary statement must be taken.
- 3152  Any such supplementary statements or other additional information must be submitted to the Procurator Fiscal as soon as possible. It is important that this action is taken in order to provide the Procurator Fiscal with the most comprehensive information available. To do otherwise would risk losing the opportunity to improve the case against an alleged offender and attract criticism from the Procurator Fiscal.

Only interviewing officer's notes available


- 3153  If a statement is not written out at the time of the interview with and in the presence of the witness but is subsequently submitted to the Procurator Fiscal it must reflect exactly the notes taken by the interviewing officer during the interview. This should only occur in very exceptional circumstances. In such instances, the reason a statement was not taken from the witness must be recorded in the officer's official notebook, FINDS and a full explanation provided to the Procurator Fiscal with minimum delay in the form of a subject report.

3154-3159

Investigation Officer witness statement

- 3160  Procurators Fiscal and the Courts expect, and are entitled to expect, that a statement submitted in the name of an investigation officer has been prepared by that officer and contains an accurate and reliable account of the evidence which that officer can provide from their own recollection and notes. Each officer is solely responsible for drafting and completing their own witness statement. The individual responsible for the statement must make any subsequent amendments.
- 3161 The contents of an investigation officer's witness statement should follow the same format as outlined above, emphasising qualifications and experience.
- 3162 It is good practice for details of the investigating and corroborating officers' annual leave to be incorporated in the statement. This would normally appear in the margin of the first page of the statement. This may prove of mutual assistance to the Procurator Fiscal when citing witnesses during holiday period and minimise inconvenience for CFS officers.
- 3163-3169


Corroborating officer

- 3170  A corroborating officer must be aware of what the investigating officer is doing so that he or she can provide evidence, which will be acceptable to the court. The defence may attack the corroborating officer and if they are successful in destroying their credibility or reliability it may leave the court with the evidence of one witness only and that would not be sufficient to meet the general requirements in Scots law of corroboration. That is not to say that an officer should exclude from their statement relevant information which is not corroborated but any such evidence should be accompanied by a clear indication that only one witness was involved so that the Procurator Fiscal is aware of the fact.
- 3171 In the adversarial system of justice carried on in the Scottish courts, the defence is entitled to challenge and test the evidence of prosecution witnesses, including and especially the evidence provided by CFS officers. Defence solicitors/counsel will examine closely the procedures followed and actions taken by officers throughout the duration of an investigation. It is essential therefore that officers and their corroborating colleagues prepare themselves fully prior to giving evidence. This does not mean colluding as to what evidence is to be given but rather refreshing memories from notes, reports and statements taken from witnesses.

3172 It is therefore of great importance that corroborating officers are fully aware of the procedures followed, actions taken and the reasons for such as the defence may well direct the main thrust of their attack towards the corroborating officer rather than the reporting officer in an effort to cast doubt on that aspect of the Crown case. Should the defence be successful in creating doubt as to the credibility and/or the reliability of the evidence provided by the corroborating officer then it is highly likely that this may adversely affect the value of the evidence previously given by the reporting officer.

3173-3179

Procurator Fiscal

3180  It is normal practice for the Procurator Fiscal to accept the evidence which is provided and not require to see witnesses before a trial except in complex or large-scale cases. An officer must therefore ensure that all the relevant evidence is contained in the statements and, if necessary, any additional salient material which becomes known is communicated to the Procurator Fiscal by way of a supplementary statement or subject report.

3181 Officers should not rely on a court appearance as an opportunity to expand on their statement. Therefore it is important that the Procurator Fiscal is made aware of all the evidence which the witness is able to give so that he or she can decide how best to present that evidence to the court.

Powers to compel witness to give statement

3182 When carrying out his or her functions, a CFS officer is largely dependent on obtaining information from the public. An officer has no power to compel a witness to give a statement.

3183-3199

Person declines to give statement

3200 XXXXX



3201 The reasons why the person declined to provide a statement must be recorded in the officer's official notebook.



3202-3209

Productions and continuity of evidence

Introduction

3210



This part of the Code of Practice deals with productions and continuity of evidence. The security, handling of and accounting for productions throughout any investigation is of paramount importance and must be treated seriously by all officers in order to ensure the integrity of evidence is maintained throughout the process of the investigation.

Definition of a production

3211

The term 'production' (referred to in England and Wales as an 'Exhibit') is used to denote any animal, document, liquid, etc, which is alleged to have some connection with a crime or offence under review, in that it was, for example, dishonestly appropriated, or used in the commission of the crime or offence, or left behind by the offender, or is a product of the crime or offence.

3212

Productions are referred to by witnesses in court. Each document or item seized must be identified and 'spoken to' by a witness from whom a statement will have been taken.

3213-3219

Labelling of non-documentary and documentary productions

3220



The advice relating to the labelling of non-documentary and documentary productions is:

- ❑ Any document or article seized as a production must as soon as possible after being seized by CFS have attached thereto a documentary backing sheet/production label signed by each witness who will give evidence in respect of that document/article. The officers who seized the item must also sign the documentary backing sheet/production label
- ❑ If an officer makes a mistake when writing out a label/backing sheet, destroy it, and start a fresh one. If signatures are already present on it and a mistake is discovered score out the error with one line, enter the correct details, initial and date the alteration
- ❑ Any containers of liquids or other substances should have their corks or stoppers soaked if this is necessary to prevent interference with the contents

3221

At the 'Where Found' part of a label state exactly where the production was found e.g. Top left hand drawer of grey filing cabinet in the reception area. The 'date' is the date the production was seized or received at CFS premises.


3222 Put the backing sheet to the reverse of the documentary production back-to-back, with the backing sheet facing downwards. Then with the front of the documentary production facing upwards staple the backing sheet to it at the top left hand corner.

3223-3229

Preserving productions


3230 Always bear in mind that a documentary production, or any production for that matter, may require to be forensically examined. Therefore, great care should be taken when handling certain productions e.g. in a case where the productions are being submitted for forensic examination it is important that two pairs of protective gloves are worn to preserve the evidence and prevent fingerprint contamination.

3231 It is the responsibility of the person seizing the production to ensure it is maintained in good order and in the condition in which it was seized. It is always best practice to place a production in a protective sleeve or bag to ensure its integrity.

3232  Any documentary production must not be damaged or defaced in any way. Under no circumstances must a production be tampered with or written on.


3233-3239

Photocopy/scanning documentary productions


3240  Photocopies/scanning of all documentary productions should be made as working copies and the originals kept secure. Before forwarding documentary productions to the Procurator Fiscal these must always be photocopied/scanned so CFS have copies for reference purposes.

3241-3249

Continuity of evidence

- 3250  Continuity of evidence relates to the 'chain of evidence' that is required for all evidence. Signatures of witnesses are essential to maintain the continuity of evidence i.e. from the time the production was first spoken to by a witness until it is produced in court. Therefore, care should be taken to ensure the absolute accuracy of all particulars on the label/documentary-backing sheet attached to the production. Each witness who is to testify to the production must sign the label or documentary backing sheet. This is vital for the witness to be able to identify the production later if the case results in court proceedings.
- 3251 It is important that corroboration exists in relation to each and every production seized during an investigation. This ensures the continuity and chain of evidence.
- 3252 Corroboration can be provided by:
- ☐ Either two CFS officers
 - ☐ One CFS officer who takes possession of the production and the witness from whom the document or article is taken
- 3253 Continuity of evidence also requires a chain of witness statements showing every action that was taken in relation to a particular piece of evidence.

Security of Productions


- 3254  The following rules must be adhered to by CFS officers when seizing productions during the course of any search operation.

CFS has adopted a two-phase handling process for the control and security of productions. The first phase concerns productions from the point of seizure up to the point of preparation for court. This will be recorded in the '**Property in Retention**' book, which contains a User guide. The second phase concerns the security and handling of productions for court use. This will be recorded in the **Production book**.


'Property in Retention' book

- 3255 CFS has created a bespoke bound register for use by all CFS Officers to secure and maintain the continuity of evidence in relation to all productions for an individual Operation. This is referred to as the **'Property in Retention' book**. The book is yellow in colour and is controlled stationery. Business Support Team (BST) will maintain the storage and issue of these documents. **'Property in Retention' books** will be issued to the CFS Officer In Charge of each Operation. This book will then become the sole responsibility of the Officer In Charge of the case, who will maintain possession and control of the book.


Large quantities of documentation seized

- 3256  During planned searches when large quantities of documentation are seized, CFS officers will collect the various record cards, order forms, invoices etc and place them in 'bundles' labelling these accordingly e.g. 'a bundle of record cards'. This is necessary when dealing with a substantial quantity of documents when it is impractical to individually identify productions for court at the time of the seizure. Details of the bundles recovered should be recorded in the relevant **'Property in Retention' book** as soon as practicable.

Small quantities of documentation seized

- 3257  In other situations when only a few documents are involved, these documents should be quantified at the time and labelled appropriately. Details of the property recovered should be recorded in the relevant **'Property in Retention' book** as soon as practicable.

Recording seizure

- 3258  Nothing in this approach should dilute the need to accurately record the circumstances of the finding and seizing of productions. It is essential that the officers seizing the documents record the time, date, specific location and person from whom the property is recovered on the Production Box label and in their notebook.

3259-3262

Large volumes of seized documents placed in sealable Production Box

3263



In circumstances where large 'bundles' of documentation are seized, these should be placed in the sealable Production Boxes and sealed by the two seizing officers taking possession of the documents. The Production Boxes should be secured using the serialised security tags and the numbers recorded in the CFS Officers notebook. The sealed Production Boxes should then be labelled and the relevant CFS Officers should sign the label. If a '**Property In Retention**' book is in use at this time, details of the security tag serial numbers and the Production label number should be entered in the '**Property in Retention**' book. The sealed and labelled Production Box/Boxes should then be conveyed to Earlston House with minimum delay.

Opening the sealable Production Box

3264



As soon as practicable thereafter, the sealed Production Box should, if possible, be opened by the same two seizing officers. The serial numbers of the security seals should then be entered into the '**Property in Retention**' book at the section provided and the seals retained within the Production Box.

Same two seizing officers unavailable

3265



In the eventuality that only one of the officers who sealed the container is available, another officer who was present during the process should be present to witness the opening of the Production Box, thus ensuring the continuity of evidence. In the event that this is not possible for some reason, then the container may be opened in the presence of another officer, who would then be required to sign the production label attached to the Production Box and provide a witness statement attesting to the fact that the container was in fact securely sealed prior to being opened.

Sealable Production Box opened and contents accounted for


3266




At the earliest opportunity the contents of each box should be examined and a schedule of its contents made. This will ensure an accurate record of the contents. Details of the schedule may need to be included in the eventual report to the Procurator Fiscal and referred to in the officers' statements.


3267-3269

Identified Productions removed and entered in 'Property in Retention' book


3270  All relevant evidence should be identified and a production label/backing sheet attached by the Investigating Officer. Each production should then be recorded individually in the '**Property in Retention' book**, as per the guidance contained within the book. Only documents that are being produced should be logged in the '**Property in Retention' book**. Any documents, which are clearly of no relevance to the investigation, may be returned to the owner and a receipt obtained.


3271  The '**Property in Retention' book** should be used to accurately record the movement, disposal and continuity of evidence for all productions concerned with that case.

Temporary Removal


3272  Retained property is the responsibility of the officer in charge of the investigation. If property has to be removed from their responsibility i.e. sent for forensic examination, hand writing analysis, to the police or CFSMS then the movement must be recorded in the '**Property in Retention' book**. When this property is returned from the organisations this should also be accurately recorded in the '**Property in Retention' book**. This process does not extend to visiting witnesses or taking productions on the road.

Disposal



3273  When a production is returned to its owner a signature should be obtained from the recipient in the '**Property in Retention' book**. Again, if a schedule is used then it should be signed and attached to the page bearing the details of the first item handed over.

3274  If a production is being lodged for court purposes, the details should be logged in the '**Production Book**', and the item secured with other productions ready for court use. (See examples provided following paragraph 3283)



Property in Retention Checks

3275  Property in Retention will be checked on a regular and ad hoc basis. The manager conducting the check should annotate the book with the time/date of the check and a note of any findings. A Property in Retention check will also be carried out on completion of the case SPR to ensure that all productions are available for Court use.

Operating Remotely from Base

- 3276  All search operations, with few exceptions, are planned operations and therefore included in that planning, provision must be made to identify a suitable secure location for the storage of articles/documents seized or handed over to CFS when operating remotely from base. This may be a police office (with the prior agreement of the relevant Force) or suitably secure NHS facility.
- 3277  Such arrangements are especially important to address on the occasion when CFS personnel are engaged upon operations necessitating overnight stays. Only in exceptional circumstances or when it is impractical to return to Earlston House to lodge productions are these to be stored out with the **Production Room**. In these circumstances, the integrity of productions seized and the continuity of evidence can be maintained by the use of the sealable Production Boxes.

Production Book

- 3278  The purpose of the **Production Book** is to record details of all productions included in the Standard Prosecution Report (SPR) to the Procurator Fiscal. There will only ever be one **Production Book** in operation at any one time. If a production is being lodged for court purposes the details should be logged in the **Production Book** and the item secured with other productions ready for court use. The most appropriate time to do this is after the SPR has been approved by the relevant manager but prior to the SPR being forwarded to the Fiscal.
- 3279 The **Production Book** consists of bound sequentially numbered pages of double-page width divided into columns. Each column is headed, providing an indication of the information that should be entered in any given column. The **Production Book** will be under the control of the Investigation Assistants and will be stored in the Production Room. At no time should this register leave CFS premises unless required in court.
- 3280  While the Investigation Assistants will be responsible for the control of the **Production Book**, individual CFS Officers will be responsible for making sure that details of all appropriate productions are made available to the Investigation Assistant for entry into the **Production Book**. All entries in the **Production Book** must be legible and if entered by hand, must be in black ink.
- 3281 Details of all productions logged in the **Production Book** should be taken directly from details held in the '**Property in Retention**' book. No production should be entered directly into the **Production Book**.

3282 If during the course of an investigation a total of thirty productions are recovered, then all thirty productions should be recorded, individually, in the **‘Property in Retention’ book**. However, if only ten of these productions are included in the SPR then only these ten productions will be transferred from the **‘Property in Retention’ book** in to the **Production Book**. The **Production Book** should be completed as follows:

Column	Details
1	Crime/Offence No. and Date seized Enter details of Operation name and year together with the date on which the item was transferred from the ‘Property in Retention’ book to the Production book .
2	Accused and Nature of Case Enter name of suspect/accused and nature of crime/offence.
3	Production Book No. Enter sequential Production Book entry number.
4	Quantity and Description of Articles Seized Enter individual descriptions of productions. (One line per production)
5	Property in Retention Book Details. Enter details of the Property in Retention Book Serial Number and Page Number
6	Signature of Officer Lodging In this column the officer lodging the productions(s) enters his or her signature.
7	Signature of Officer Receiving The officer receiving the production(s) enters his or her signature in this column. (This will usually be the relevant Investigation Assistant)
8	Storage Place This column provides information as to the exact location of specific items within the Production Room.
TEMPORARY TRANSIT FROM STORAGE	
9	No. of Article and Reason for Removal
10	OUT Signature/Date-Time
11	RETURNED Signature/Date-Time This section refers only to the productions lodged in this Book and does not include reference to productions, which remain in the control of the ‘Property in Retention’

book. In these columns should be recorded details of the removal/return of productions from the Production Room. Entries in these columns must record details of the reason for productions being removed as well as times/dates of removals/returns, together with the signature of the officer removing/returning the item.

DISPOSAL

12 Reason-Method Date/Time

13 Signature, Name, Address, Designation of Claimant

14 Signature, Rank & Div. No. of Disposing Officer Corroborating

This section refers only to the productions lodged in this Book and does not include reference to productions, which remain in the control of the '**Property in Retention**' **book.** In these columns are the details relating to the disposal of productions. This will include the reason for disposal, together with the method of disposal, the time/date as well as the signature, name, address and designation of the claimant/recipient. The officer returning the item(s) must also enter his or her signature in the last column provided.

Examples of Production Book entries


3283 For samples of entries in the Production Book see the following examples:
XXXXX

3284 Following the conclusion of criminal proceedings and in the absence of any pending appeal proceedings, the Procurator Fiscal will release the productions in a case and provide instruction as to how these should be 'disposed' of by the investigating body. It may be that the instruction will be to return the items or in some cases dependent upon the nature of the items the instruction may be to destroy the items e.g. counterfeit documents. For further information see under 'Disposal of Productions' later in this section of the CFS Manual.


3285-3289

Production Room


Introduction

- 3290  The Production Room is a controlled environment, which is available to Investigation staff only. Within the Production Room is an area for the storage of Productions in Production Boxes, an area for the storage of Productions ready for Court and, in addition, there has been an area set aside to house the Master Copy Tapes for Suspect Interviews in a secure metal cabinet. These tapes will be treated as productions in their own right and managed, day- to- day, by the Investigation Assistants.
- 3291 The room is fitted with metal racks, which will enable officers to store their productions in a sealable Production Box.
- 3292 Each rack space within the room is identified with a letter and a number. The Investigator /Investigation Assistant entering the production through the **Production book** must indicate against that production its exact location within the Production Room.
- 3293 The Production Room must not be used for storing miscellaneous items. Only material seized as potential productions or spent productions should be stored within this room.
- 3294-3299


Keypad code

- 3300  Clearly, access to the Production Room must be regulated in order to preserve its integrity, security and contents. Currently, the access door is fitted with a secure keypad lock, the number for which will be held by members of the Investigation Team. These officers have been instructed not to divulge this code number.
- 3301-3309

Entry


- 3310  Whilst access to the **Production Room** does not pose any difficulty to investigation staff, there will be occasions when other CFS staff, contractors or visitors may require access to the **Production Room**. On such occasions a CFS investigation officer must be present to allow access and accompany visitors to the **Production Room**. Under no circumstances should visitors be given un-supervised access to productions.

Access to productions

- 3350  CFS Investigation staff can access their productions as required, however if other CFS members of staff require access to productions, this should only be done via the relevant Investigator.


3351-3359


Movement of box

- 3360  Where the entire box and production contents are removed from the Production Room, this will be carried out by the Investigator concerned with the case. At no time should productions be removed from the Production Room without the prior consent of the Investigator or other relevant Authority.

3361-3369


Movement of productions from box

- 3370  It is the CFS Officers responsibility to remove productions from their respective Production boxes. There is no requirement to record the movement of productions within the office or whilst visiting witnesses etc. Only when the production is handed to an external agency (out-with the CFS Officers control), should an entry be made in the relevant '**Property in Retention**' book.

- 3371  To ensure the integrity of the Production Room and the continuity of evidence it is imperative that productions are only removed or re-located within the Production Room with the consent of the CFS Officer In Charge of the case.

3372-3389

Photocopying/scanning documentary productions

- 3390  The practice of photocopying/scanning documentary productions in order to obtain 'working copies' can minimise the need to access the Production Room and any unnecessary movement of productions.


3391-3399

Flowchart

- 3400 See the flowchart at **Appendix A** for a summarised guide to production handling.

3401-3569


Major incident books

- 3570  The police use major incident books in, as the name suggests, 'major incidents'. In enquiries that have hundreds of productions e.g. record cards seized from a contractor, the potential productions must be recorded in a major incident book, each record card numbered individually.

- 3571 If necessary, obtain major incident books from the police officer that is assisting CFS with the enquiry.

- 3572 Productions recorded in a major incident book should be entered in the same method as those entered in the 'Property in Retention' Book



Lodging productions with the police

- 3573  If CFS hand over productions to the police they also have to record them in the 'Property in Retention' Book. Each production is numbered individually and if a number of productions are passed to the police it can be very time consuming for them to record them all. The officer handing over the productions is required to obtain a receipt from the police or alternatively ask them to sign a CFS prepared one.

- 3574 Once the productions have been entered in the production register (Police document) they are lodged in a police production store.

- 3575 This is generally a lock fast room under the control of the nominated officer who has the sole responsibility for the safe storage of the productions until the trial.
- 3576 The Production Officer records in the production register the exact location of the production in the storeroom so it can be easily recovered for court purposes.
- 3577 Productions are conveyed to the Procurator Fiscals Office or the court prior to a trial taking place. The responsibility then passes to these departments to maintain the production in good order in lock fast premises.
- 3578-3589

Disposal of productions

- 3590  Once a case is reported to the Procurator Fiscal, no production under CFS control should be returned or disposed of without reference to the Procurator Fiscal. (See paragraph 3673 for further information)
- 3591  Some types of production can be disposed of prior to any trial taking place. In these circumstances, the permission of the Procurator Fiscal must be obtained. Where a production is an animal or perishable item or an item urgently required by its owner, it may be returned under the signature of the owner.
- 3592 It is advantageous to photograph the item prior to its release. In addition retain the original production labels as evidence.
- 3593 At the conclusion of a criminal trial the productions will be released in order that they can be returned to their owners. The court reserves the right to forfeit productions in special circumstances, e.g. counterfeit money, documents or other articles.
- 3594 In many cases, the Procurator Fiscal will return some articles with an instruction to destroy the item(s).

XXXXX

3595 XXXXX
3596-3599

XXXXX

3600 XXXXX

3601 XXXXX

3602 XXXXX

3603 XXXXX
3604-3609

XXXXX

3610 XXXXX

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3611 XXXXX

XXXXX

3612 XXXXX

3613 XXXXX.

XXXXX

3614 XXXXX

3615 XXXXX

3616 XXXXX

3617 XXXXX

3618-3629

Search Warrants

XXXXX

3630 XXXXX to 3679

Time Limits for bringing cases to Court


Commencing proceedings

- 3680 Summary proceedings commence when the Procurator Fiscal issues the complaint. Solemn proceedings commence with action by the Procurator Fiscal who lays the petition before the Sheriff.
- 3681 There is a general rule 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. This will have a minimal impact on the CFS, as the majority of cases will involve solemn proceedings.

Summary prosecutions

- 3682 The vast majority of criminal cases are summary prosecutions where the accused is simply cited to attend court without having been detained or arrested, and where there has been no search carried out. A person may be cited without ever having been charged, although the majority of those cited will have been charged.

European Convention on Human Rights

- 3683 It is essential that CFS are able to survive any challenge made under The European Convention on Human Rights (ECHR) that the rights of an individual, who has been the subject of an investigation, have been breached.
- 3684 The main areas of concern for CFS are likely to be:
- ☐ *Article 6* - the right to a fair trial within a reasonable time
 - ☐ *Article 8* - the right to respect for private and family life
- 3685  Alleged breaches of an individual's human rights as defined in Article 6 are now regularly used by defence solicitors to challenge cases brought by the Procurator Fiscal and Crown Office. To reduce the possibility of Article 6 challenges, CFS are required to eliminate or at the very least minimise any delays in the investigation and reporting process, especially any delays that could be deemed as unjustifiable.

XXXXX

3686 XXXXX

3687 Delay in reporting cases can also detract from the public interest in prosecuting them.

CFS Criminal investigation timescales

3688 CFS has a duty to ensure all investigations are progressed timeously. This ensures wherever possible:

- ☐ Proceedings are taken while the actions leading to them are relatively fresh in the memories of the parties involved
- ☐ No undue stress is caused to a person by having allegations against them for a lengthy period of time

3689 To assist in this process and where possible, CFS will adhere to the timescales detailed in the process map attached at **Appendix B**. These timescales are to be used as a guide and each investigation must be managed, reviewed and prioritised on its own merits.

3690-3699

Reporting cases to the Procurator Fiscal

Introduction

3700



Reports submitted to the Procurator Fiscal must be accurate and presented in a professional manner, which complies with CFS standards. The content and layout of this report will vary depending upon which organisation is reporting the matter to the Procurator Fiscal, the NHS CFS or Police.

3701

CFS follow Crown Office guidance and use a Standard Prosecution Report (SPR), which is split, into 10 sections:

- ☐ Case Details
- ☐ Accused
- ☐ Charges
- ☐ Summary
- ☐ Productions
- ☐ Reporting Officer
- ☐ Supervisory Officer
- ☐ List of Witnesses
- ☐ Case Related Documents
- ☐ Previous Convictions

Purpose of Reports

3702

To communicate information to the Procurator Fiscal to enable him to take the following decisions:

- ☐ Has a crime been committed?
- ☐ If so what crime?
- ☐ Who committed it?
- ☐ Is there sufficient and reliable evidence?
- ☐ Is the complaint inspired by malice or ill will?
- ☐ Is there a reasonable explanation for the accused's conduct?
- ☐ Is the incident too trivial to warrant prosecution?
- ☐ Is the matter really civil?

No wilful suppression of relevant evidence

3703



The report must summarise the relevant facts, which constitute the offences and specify the evidence, which proves them. All relevant evidence must be disclosed whether favourable to the Crown or the defence. There must be no wilful suppression of relevant evidence.

Example

If following an IUC further conversations with or contact by the accused and/or his legal representative take place; especially when matters of evidential value have been raised, then details of this must be reported to the Procurator Fiscal.

Report must contain all relevant facts

3704



As previously outlined, reports submitted to the Procurator Fiscal must contain all the known relevant facts surrounding the case under investigation. It is important to be aware that in cases where a guilty plea has been tendered by an accused, the report provided by CFS will be referred to comprehensively by the Procurator Fiscal Depute presenting the prosecution case. The content, therefore, of the Standard Prosecution Report will have some significant influence not only on the prosecutor's ability to present the facts to the Court clearly and with maximum impact but perhaps also on the outcome of the proceedings.

Reporting officer must not restrict the report in any way

3705



The reporting officer must not restrict the report in any way to what he or she thinks is important e.g. if 50 witness statements are obtained then details of all 50 must be reported to the Procurator Fiscal to decide which ones will be used in the prosecution. Once all statements are available the case can be prepared for submission to the appropriate Fiscal.

3706

The decision whether to prosecute or not will be made by the Procurator Fiscal on the basis of the evidence presented within the CFS report and accompanying statements.

3707-3709



Checking Reports

- 3710 When an officer completes a report the onus is on them to ensure that the report is correct. Before an officer passes a report to an Operational Manager for checking consider the following:
- ☐ Has anything relevant or important been omitted?
 - ☐ Has anything been included, which is irrelevant?
 - ☐ Is the report factual and accurate in every respect?
 - ☐ Is it free from bias, exaggeration or inconsistency?
 - ☐ Is it grammatically correct and readable?
 - ☐ Has it been presented clearly and succinctly, ensuring it easily understood by the Procurator Fiscal?

XXXXX

- 3711 XXXXX to 3792

Section 71 - Race Relations (Amendment) Act 2000

- 3793 Section 71 of the Race Relations (Amendment) Act 2000 requires all of the public bodies specified in Schedules 1A of the Act, which includes National Health Services Scotland, to promote race equality. The Lord Advocate has issued guidelines to police and specialist reporting agencies in Scotland, and the Crown Office have suggested best practice in areas such as language needs and cultural sensitivities of both accused and witnesses. CFS has adopted this best practice.

Language needs and cultural sensitivities

- 3794 It is important to ensure that the procurator fiscal is aware of the language and cultural needs of the accused and witnesses. The procurator fiscal should be advised of the first or preferred language of the accused, victim and witnesses (and bereaved relatives if relevant).
- 3795 This should include an assessment as to whether an interpreter will be required in court and whether correspondence to the individual will require to be translated. The procurator fiscal should also be advised of any particular needs, which arise from the individuals' racial, cultural or religious backgrounds.
- 3796 If necessary, for an accused/witness forward the following additional details to the Procurator Fiscal:
- ☐ Full Name
 - ☐ First or preferred language and dialect (including sign language)
 - ☐ Written correspondence to be translated? (including braille)
 - ☐ Interpreter used? (if yes, provide full name and address)
 - ☐ Qualifications of interpreter (Diploma in Public Service Interpreting – Scottish Legal Option)
 - ☐ Ethnic/religious background
- 3797 For further information see **Appendix B** – Instruction of interpreters for Criminal Court Diets Protocol in the Prosecution of Crime in Scotland part of the Manual. Also see **Appendix A** - Assessment of language need and cultural sensitivities in the Investigating Interviewing – Suspects Section of the CFS Manual.
- 3798-3799
- 3800 XXXXX to 3819

Integration of Scottish Criminal Justice Information Systems (ISCJIS)

Introduction

- 3820 ISCJIS is a programme, which was conceived out of a recognition that the efficiency of criminal justice organisations in Scotland could be improved if information was more easily shared and exchanged among them. In June 1994 the ISCJIS Project Board (now more accurately called the Programme Board) was formed to co-ordinate and expedite the integration of the computer systems of the various criminal justice organisations. The Scottish Executive Justice Department chairs the Board and the Crown Office has been represented on it since its inception.
- 3821 The Crown Office is committed to the development of the programme and has set a target to have as many non-police reporting agencies as possible reporting cases electronically to the Procurator Fiscal within three years.
- 3822 At present the XXXXX and CFS are the only specialist reporting agencies who report their cases to the appropriate Procurator Fiscal's Office by using an electronic transfer.

Electronic reporting

- 3823 Electronic reporting has several benefits for both the reporting agency and the Procurator Fiscal's Service. Cases reported in this manner can be tracked on computer from the outset. On receipt of the case it is automatically assigned a Procurator Fiscal reference number which can be supplied to the reporting agency with the result that information can be fed back, and enquiries dealt with more effectively.
- 3824 XXXXX
- 3825-3829

3830 In addition any further information which requires to be transmitted to the Procurator Fiscal, after the original case report has been received, can be electronically transferred directly into the Procurator Fiscal's case directory. This will allow documents, such as statements, to be reproduced by the Procurator Fiscal as often as is required.

XXXXX

3831 Whether or not individual agencies enter in to the system of electronic reporting, the implementation of the ISCJIS programme has implications for CFS in the reporting of our cases.

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3833 XXXXX

3834 XXXXX

3835-3839

XXXXX

3840 XXXXX

3841 XXXXX

3842 XXXXX

3843 XXXXX

3844 XXXXX

3845 XXXXX

Website

3846 XXXXX

3847-3859

Court procedures

Introduction

- 3860 The following section is an overview for officers regarding Court procedures and contains useful guidance if an officer is cited to give evidence. Considerable reliance is placed on testimony so it is essential that the principles in this section be observed.
- 3861 Generally, the procedure for giving evidence that is followed in court tends to be the same for both civil and criminal proceedings with the witness being sworn in then taken through their evidence and thereafter they are subject to cross-examination.
- 3862 The court may also question or advise the witness at any stage in the proceedings.
- 3863 It is not uncommon for a witness to feel that their honesty or integrity is being challenged during cross-examination so it is helpful to understand that the purpose of cross-examination is not confined to an attempt to undermine the credibility of a witness. The purpose is to:
- ❑ Test the honesty of the witnesses and the accuracy of their evidence
 - ❑ To obtain evidence on points they have not already been asked which could support the case of the cross-examiner
- 3864-3869

Court appearances by CFS officers


- 3870 In general, the main requirement of any CFS officer called as a witness is to answer honestly questions put to them. When an officer appears in court, follow the rules, procedures and advice listed below. If these rules are followed officers will:
- ❑ Not feel intimidated
 - ❑ Not show unseemly emotions
 - ❑ Give helpful and honest evidence

Professionalism

- 3871 When officers of the CFS give evidence before the court, it is inevitable that they will be expected to demonstrate a level of professionalism and expertise in respect of the matters about which they give evidence. Officers should take extra care to ensure that they are smartly dressed which will help project a professional image.

Regulations


- 3872 The court will expect that an officer with any experience will at least have a good grasp of regulations. If he or she does not they will inevitably ask the question, how can he or she investigate alleged irregularities of a system he or she does not understand?

- 3873  Officers should understand this and bear it in mind whenever they are called to give evidence. It does not mean they should speculate about things they know nothing about. Officers should be prepared for the fact that if they do demonstrate an ignorance, the court may question this and officers may feel embarrassed under cross examination. As a result the officers evidence may be undermined which in turn will affect their credibility.

NHS officers or Scottish Executive officers

- 3874 The point about professionalism and knowledge applies in respect of other NHS officers or Scottish Executive officers who are called to give evidence at court. The court will see these people as expert witnesses who are not part of the investigation but are there to assist the court in understanding NHS procedures. It therefore follows that a degree of helpfulness and knowledge will be expected.

Officer cannot attend Court

- 3875  If because of illness an officer cannot attend court, the officer must contact the Procurator Fiscal immediately and explain the situation.

3876-3879

Refresh memory before giving evidence

3880



Before giving evidence, an officer should recount in their own mind the facts and circumstances to which they have to speak, refresh their memory by reference to their official notebook or copy statement and any other relevant source including any productions in the case. Officers must have with them the notebook relevant to the date(s) of the investigation in order that they may refer to notes when giving evidence should this be necessary. An officer should also consider what questions are likely to be asked, both by the prosecution and by the defence and be ready to answer them frankly and accurately.

Arrival at court

3881

The citation form will advise witnesses of the time and date of trial and witnesses should arrange to arrive at court in good time. Generally witnesses are asked to arrive at the court before 1000 hours.

3882

Special arrangements are frequently necessary for witnesses with particular needs, e.g. the aged and infirm or where a large number of witnesses come from the same office or shop.

3883

Witnesses will be directed to the appropriate witness room where they should remain until called to give evidence or otherwise excused.

3885

Some types of court business may take priority over other cases and trials are often not commenced until these matters are processed.

3886-3889

Be punctual

3890



CFS officers must attend at the designated court punctually. Any delayed arrival at court may result in an adverse comment from the Procurator Fiscal and/or the presiding Sheriff.

Witness present during trial before giving evidence

3891

If a person, who is to be examined as a witness, is present at any trial during any part of the proceedings without permission, that person may be rejected. But the court may accept the witness under certain circumstances.

Do not enter the courtroom

3892



Prior to being called to give evidence a CFS officer must not be present in the courtroom without permission since they may be influenced by the proceedings and could be rejected as a witness if an objection is lodged.

Contact with the Procurator Fiscal

3893

If it is necessary to speak to the Procurator Fiscal, for example to leave items, which are to be lodged as productions before the trial, an arrangement, should be made in advance.

Order of appearance of witnesses

3894

The presentation of the Crown case is entirely within the control of the Procurator Fiscal. Generally witnesses are called in the same order, as they were involved in the chronological sequence of events.

3895

The Procurator Fiscal's main consideration is to ensure that evidence is led in a manner, which will enable the Sheriff to achieve an understanding of the events, and how they transpired. Therefore the Procurator Fiscal may decide to produce witnesses in a different order.

3896-3899

Witness box

3900

At the appropriate time witnesses will be called from the waiting room by a Courtroom officer and taken into the court and shown into the witness box. To avoid embarrassment witnesses wishing, for religious or other grounds, to affirm (promise to tell the truth) rather than take the usual form of the oath should advise the court officer of their wishes before entering the court.

The oath

3901

An officer will be asked to take the oath or affirmation by the Judge, Sheriff or Justice of the Peace. An officer will be asked to raise their right hand and "swear by almighty god/affirm to tell the truth the whole truth and nothing but the truth". Once this is complete the officer will be asked to give their evidence.

Court officials and order of questioning

3902 The Sheriff will be immediately recognisable in any Courtroom as he or she sits in a prominent place. The Procurator Fiscal can be identified, as he or she will always begin the questioning of any prosecution witness. Once he or she has completed his questions the defence solicitor is given the opportunity to question the witness.

3903 The Procurator Fiscal then has a further opportunity to ask questions on the matters raised by the defence. Any dispute about whether the questions asked are relevant or not will be settled by the Sheriff but witnesses should always answer any question asked unless advised not to respond by the Sheriff.


Sheriff may ask questions

3904 If clarification is needed the Sheriff may ask his or her own questions. Witnesses should be aware that as the Sheriff listens to the evidence he or she takes notes of the proceedings and therefore may ask a witness to expand on the answer to an earlier question put by the Procurator Fiscal or the defence.

3905 The Procurator Fiscal and the defence agent will always give way to the Sheriff. Witnesses should therefore concentrate on what the Sheriff has asked. If he or she has been interrupted the Procurator Fiscal or the defence agent will put their questions to the witness again once the Sheriff's query has been answered.

3906-3909

Form of addressing the sheriff

3910 The correct form of address for the Sheriff is "My Lord" or "My Lady" whichever is appropriate.  The correct form of address for Stipendiary Magistrates and Justices is "Your Honour". An officer should direct their evidence towards them.

More than one accused

3911 It is possible if more than one accused is involved there may be two or more defence agents. The only other court officer likely to be present is the Sheriff Clerk who sits in front of the Sheriff in the well of the court.



Examination of witnesses

- 3912 As each case will be different there is very little guidance, which can be given to witnesses about what to say about a particular type of offence in court, but the following will apply in each case brought to trial.

Initial questions

- 3913 The first few questions put by the Procurator Fiscal will lead the witness to put before the court the professional qualifications to give evidence at that trial.
- 3914 The first paragraph of any witness statement should include all relevant personal details and experience together with a brief note of how he or she came to be involved in the investigation. This will enable the Procurator Fiscal in the initial stages of examination of a witness to draw that information from him or her for the benefit of the court.
- 3915 It will also benefit the witness as he or she will be faced with questions which can be answered easily and thus be given time to settle into the unfamiliar circumstances of the witness box.

Answering questions

- 3916  It is vital that officers always tell the truth and answer the questions asked, both for their own sake and the fairness of the proceedings. An officer should never deviate from this concept for any reason. Meet an allegation of untruthfulness with a polite, simple denial.
- 3917  Officers must show proper respect and this should be accorded to members of the court at all times.
- 3918 Exaggeration or bias should be avoided when giving evidence since it is likely to damage the CFS officer's credibility and also indicates that the officer is concerned with the result of the trial, which should not be the case.
- 3919 When giving evidence a CFS officer should stand upright and speak clearly and confidently. Apart from avoiding the risk of being told to speak up a positive stance creates a good image and aids credibility.

3920-3929

Listen carefully to questions and think before answering

- 3930 Always listen to and consider each question carefully before answering and keep answers short. It is not necessary or desirable to volunteer extraneous information. An officer should remember to take their time and speak slowly and clearly.
- 3931 Officers should ask for questions to be repeated if they do not understand or cannot hear. If an officer is not sure of the answer, they should say so. Officers should avoid sounding as though they know the evidence by heart.

Development of case

- 3932 The development of the Crown case must be left in the control of the Procurator Fiscal. Witnesses should not expand unnecessarily on specific questions asked unless it is clear that he or she is being given scope to do so.
- 3933 The Procurator Fiscal will be aware of the evidence a witness can provide from study of the statement and any supplementary statement provided and witnesses should be given such details as are necessary to answer specific questions.
- 3934 In particular witnesses must ensure that they do not go beyond what they can reasonably substantiate by their own experience or qualifications.
- 3935 Witnesses may be asked to identify an accused by actually pointing to him or her and to justify that identification.

Provocative questions

- 3936 Defence solicitors will often ask provocative questions intended to disconcert witnesses. Witnesses should remember that the defence is entitled to test the evidence given.
- 3937 Allegations of harassment of the accused or criticism of the process of investigating an alleged offence or any other provocative statements, which may be delivered forcibly, should be met with a calm response. Witnesses should concentrate on answering the question rather than reacting to the manner in which it is asked.
- 3938-3939

Remain composed

3940 As explained in the aforementioned paragraphs defence counsel on occasions use tactics designed to unnerve or intimidate witnesses. In these circumstances, do not get angry if the defence counsel:

- ☐ Is aggressive
- ☐ Is rude
- ☐ Is unpleasant
- ☐ Suggests that you are untruthful

Questions to corroborating officers

3941 Defence solicitors may attack the witness who provides corroboration and care should be taken that any witness who provides corroboration should be aware of why particular steps were taken and therefore be able to respond meaningfully to defence questioning at trial.

Opinions


3942 If a witness is asked to express an opinion care should be taken to ensure that the court is given a reasonable assessment of the balance between possibility and probability. If the appropriate response is to concede that a particular motive or result was a remote possibility the witness should say so and be prepared to support his or her view.

3943 It would be wrong and misleading for a witness to concede a possibility suggested by the defence without giving the court the full benefit of his or her experience to qualify that answer. On occasion the witness may be forced to answer "yes" or "no" to a particular question but otherwise every opportunity to justify the response should be taken and to provide the court with a better appreciation of whether what has been suggested is reasonable or fair.

3944 Witnesses should not be tempted to provide replies based on what they would have done in a hypothetical situation rather than what they can clearly recall or what is recorded in their statement or notebook. If there is a routine procedure to be followed which was carried out that should be recorded in the witness's statement and in his or her official notebook for reference at the trial.

3945-3949


Reference to official notebook


3950  In Scotland a witness *cannot* refer to the original statement provided to the procurator fiscal whilst in the witness box. The only documents, which may be referred to, are those, which are before the court as productions or contemporaneous notes, and witnesses should always ask the permission of the court before referring to notes made in a official notebook.

3951 If the permission of the court is sought to refer to notes witnesses will be asked specifically if the notes were taken at the time and will only be allowed to consult them if they were.

3952 If the notebook is not used in giving evidence, the defence is not normally entitled to ask for its production.

Producing official notebook

3953  Before attending court an investigator should ensure that he or she takes with him or her the notebook appropriate to the case being heard and a marker should be inserted at the page(s) in question in case reference has to be made to notes. This ensures that no other pages can be viewed.

3954  Reference to official notebooks can only be made with the Sheriff's permission or where they have been lodged as productions. Investigation officers should only resort to the use of their official notebook in situations where they could not reasonably be expected to remember - minute details, sketches and lengthy statements.

3955 Once an official notebook has been produced in court it is effectively admitted in evidence and is therefore subject to the scrutiny of the court, cross-examiner, jury etc.

3956-3959

Identification of productions

3960 In a case where items of real evidence were seized witnesses should be prepared to identify the articles which should be clearly labelled and signed by the witness beforehand. This may entail the witness leaving the witness box to walk to the place in the courtroom where the items are displayed and identifying his or her signature on the label attached.

3961



Witnesses may also be required to leave the witness box to point to places on charts or other productions before the court. It should be borne in mind that any demonstration or identification of articles in court is made for the benefit of the Sheriff and must be given in such a way, as it is clear to the Sheriff rather than addressed to the Procurator Fiscal or the defence solicitor.

Technical terms

3962

Witnesses should avoid using jargon or terms, which are not easily understood by the Sheriff. For example, avoid using NHS abbreviations or record card abbreviations.

Remaining in/leaving court after giving evidence

3963

Once an officer has given their evidence they may either leave the courtroom or take a place in the public gallery at the back of the court. This is allowed, as the practice is that all the evidence a witness gives will be heard in one visit to the witness box rather than hearing all the evidence of one charge then recalling the witness again to give evidence about a second or subsequent charge.

3964



An officer should avoid discussing the case with other witnesses who have not yet been called to give evidence since this could influence their testimony and make their evidence inadmissible.

3965-3969

Verdict and sentence

3970

At the conclusion of the trial the Sheriff may deliver his or her decision immediately, retire to consider a verdict or defer judgement to a later date. If the Sheriff adjourns the case to consider the evidence further witnesses are not required to attend when the case is brought back into court unless specifically requested to do so.

3971-3979

Not guilty, guilty or charge not proven

3980 The Sheriff may find the accused Not Guilty or Guilty or find the charge Not Proven, the first and third verdicts both being verdicts of acquittal. If the Sheriff finds that the case against the accused has been proved the following options are open to him or her.

Option	Result
Absolute Discharge	This disposal means that the court has stopped short of convicting an offender but makes a finding that it is satisfied that the accused committed the offence.
Admonition	If an offender is admonished it is recorded as a conviction against him or her but no penalty is imposed.
Fine	Fines must be related to an offender's ability to pay and the court will take account of any plea in mitigation.

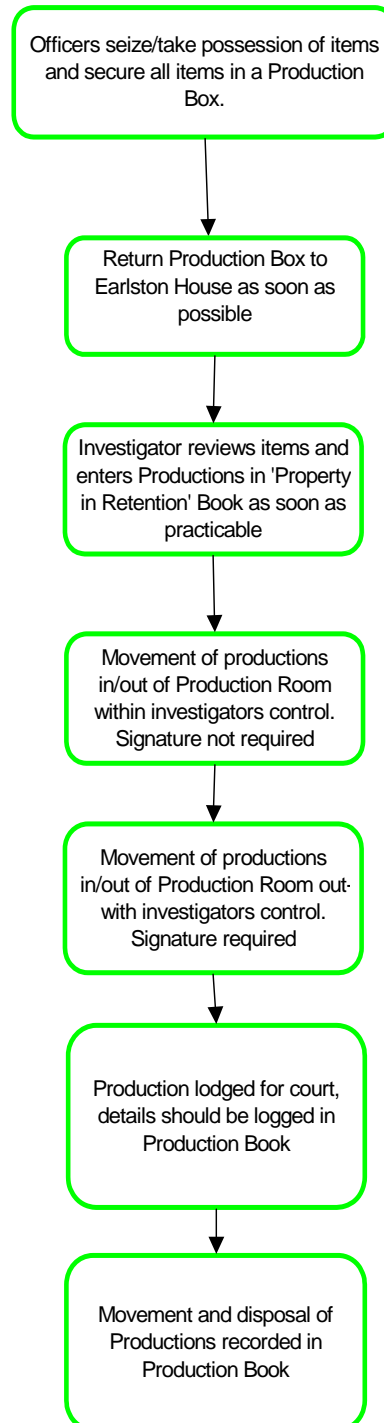
3981 The court also has wide ranging powers of sentence to impose:

- ☐ Compensation orders
- ☐ Community service orders
- ☐ Imprisonment

3982-3999

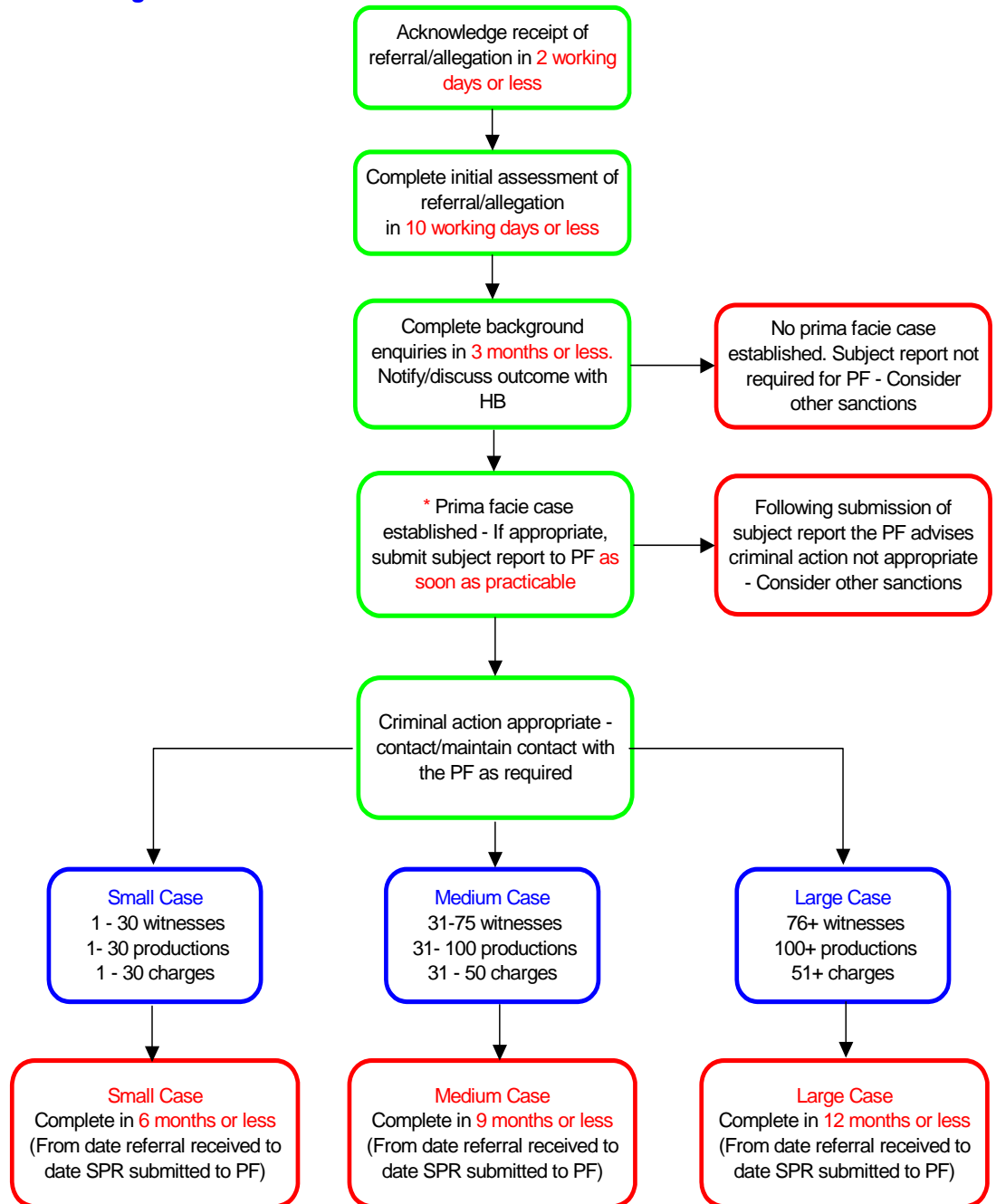
Appendix A

Production Room Process



Appendix B

Criminal Investigation Timescales



Each case must be assessed, reviewed and progressed on its own merits and decisions made accordingly. The above process map should be used as a guide. If a case requires longer timescales than those detailed above a record of this and the reasons why should be recorded in FINDS and a Subject Report explaining the circumstances of the delay must be sent to the PF. * Subject Reports to the PF could be notification of an offence, advising an SPR will be forthcoming and giving details of the size and nature of the case. It could also be an application for a search warrant or seeking the PF's advice on how the case should be progressed.