

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

An inspection of Nottinghamshire Police

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# Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## The inspection approach

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

HMIC examined ten finalised<sup>7</sup> police case files from each force.<sup>8</sup>

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

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

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

- assaults;
- burglary;

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

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

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

- robbery; and
- public order.<sup>9</sup>

## About the force

Information about Nottinghamshire Police is available on HMIC's website, at: [www.justiceinspectorates.gov.uk/hmic/nottinghamshire](http://www.justiceinspectorates.gov.uk/hmic/nottinghamshire)

### Training provided on case file preparation

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

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

Training on the preparation of case files and the NFS is provided in conjunction with Derbyshire Constabulary, Leicestershire and Northamptonshire police forces.

All supervisors who are responsible for checking and certifying the quality of case files prior to submission to the CPS receive a half-day classroom-based training course. In addition, supervisors and officers with an investigatory role receive two-hour classroom-based refresher training courses. The force schedules these courses regularly throughout the year.

Those undertaking courses in protecting vulnerable people receive a one-day training session on the preparation of quality case files.

Training is provided by case managers from the force's criminal justice unit. The unit also offers a monthly 'drop-in' facility for anyone involved in file preparation who wishes to improve their skills.

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<sup>9</sup> The Public Order Act 1996 includes a number of offences. The most common of these offences, dealt with by police include: section 3 – affray, section 4 – causing fear or provocation of violence, and section 5 – disorderly conduct.

## Findings

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

### File quality

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

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

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

Quality of the police report	Number of cases
In how many cases was the summary of key evidence adequately presented in the police report?	5/10
In how many cases was the summary of the interview adequately presented in the police report?	6/9*

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

HMIC considered that five of the ten case files contained an adequate summary of key evidence in the police report. Five of the cases did not contain the required elements to prove that the offence had taken place.

HMIC considered that in six of the nine cases involving interviews, the case file contained an adequate summary of the interview. In three cases, the summary did not include the questions asked to which the defendant made no comment. This information would have assisted the prosecutor in presenting the case to the court.

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

## **Witness care information**

In three of the nine applicable<sup>10</sup> cases, the witness care information was completed correctly and available for the information of the court. In another three of these nine cases, HMIC was unable to establish whether the witness care information was available for the court.

We found that the force was using two versions of the witness statement form. In the three remaining cases we found a version was used which did ask whether the victim or witness had additional needs for attending court in accordance with the NFS.

## **Identifying vulnerability**

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

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

We found that vulnerable victims or witnesses were involved in two of the ten cases. In one of these two cases, the police identified correctly the vulnerability of the victim or witness in the case file. In both cases, the victims were vulnerable because they feared reprisals and intimidation from the defendant.

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

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

The police identified correctly the risk of harm to the victim or witness in one of the two cases and, in this case, subsequently managed that risk. This included detaining

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



the defendant in custody to appear before a magistrates' court, which could then set bail with conditions.

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

The police requested special measures or enhancements to ensure that the victim or witness could give their best evidence in one of the two cases where the vulnerability and risk of harm to the victim or witness was identified.

The police did not apply for special measures or enhancements to ensure that the victim or witness could give their best evidence in the single applicable case where vulnerability and risk of harm to the victim or witness were identified. A special measures assessment was not required in a case for a second vulnerable victim or witness as the police anticipated that the defendant would plead guilty at the first court hearing and there would be no need for a trial.

## Vulnerability-related case study

### **Case study**

A teenage girl was in a relationship and allowed her boyfriend to take intimate photographs of her in private. He then posted these photographs on the internet without her knowledge or consent. She was subsequently contacted by men who had viewed the images. This caused her distress and embarrassment. Her boyfriend was arrested and charged with harassment. The victim was identified as vulnerable at an early stage in the investigation and an application for special measures was made to the court. This application included a request for anonymity and for the victim to be permitted to visit the court room before the trial to familiarise herself with the court. These measures were necessary to give her the confidence to attend court and to give her best evidence. The court granted the application.