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Ethics and Values:

The Criminal Justice System

Version 2.3

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Authorised Professional Practice

These notes are aimed at learners completing their Initial training to meet the learning outcomes specified on the National Policing Curriculum. The primary source of content is the Authorised Professional Practice (APP) and the supporting evidence based research of “what works” in policing.

APP can be found at: <http://www.app.college.police.uk/>

1. Introduction to the Criminal Justice System

These notes are for Pre-Join, Police Officers, PCSOs, and IL4SC Phase 1.

The CJS is made up of numerous agencies with differing responsibilities (including the police service) who work collaboratively to deliver the criminal justice process. The details and roles of key agencies are outlined within these notes.

The work of these agencies is overseen by three government departments: the Home Office, the Attorney General's Office and the Ministry of Justice. These departments and agencies work together to reform and improve the CJS in order to deliver a quality service to all those who come into contact with it.

Local Criminal Justice Boards lead on key priorities for reducing crime and administering justice on a regional basis. Specifically, they are charged with local delivery of its objectives, which are to:

- improve the effectiveness and efficiency of the CJS in bringing offences to justice
- increase public confidence in the fairness and effectiveness of the CJS
- increase victim satisfaction with the police, and victim and witness satisfaction with the CJS
- consistently collect, analyse and use good quality ethnicity data to identify and address race disproportionality in the CJS; and
- increase the recovery of criminal assets.

1.1 Key Agencies' Roles in the CJS

The following are the primary agencies involved in the CJS:

- The police service
- The Crown Prosecution Service (CPS)
- The Courts
- The National Offender Management Service (NOMS).

1.1.1 The Police Service

The purpose of the police service is to uphold the law fairly, firmly and with integrity by:

- Preventing crime
- Pursuing and bringing to justice those who break the law
- Keeping the Queen's Peace
- Protecting, assisting and reassuring the community.

Role of a Constable

A police officer, referred to in legal terms as a constable, is required to:

- protect life and property
- preserve order
- prevent the commission of offences; and
- where an offence has been committed, to take measures to bring the offender to justice.

All these aspects are expressed in the 'Oath of Attestation' as set out in Schedule 4 of the Police Act 1996.

To fulfil these duties, police officers are granted powers and a wide discretion with which to exercise them. High professional standards of behaviour are expected by the public. All police officers must attain these standards. Individuals who fall short of these standards will have their conduct examined.

1.1.2 The Crown Prosecution Service

The CPS's role is to prosecute criminal cases, in partnership with the police and other investigators, and advise on potential lines of inquiry. The CPS also determines appropriate charges or other outcomes, in accordance with the Code for Crown Prosecutors.

The Director of Public Prosecutions (DPP) is the head of the CPS and operates independently, under the superintendence of a government minister called the Attorney General. As a government minister, the Attorney General is accountable to Parliament for the work of the CPS.

The CPS consists of:

- 13 geographical areas across England and Wales
- 4 Casework divisions

- CPS Direct service
- CPS Headquarters

The four specialist casework divisions of CPS deal with prosecutions connected with:

- Central Fraud
- Welfare Rural and Health
- Special Crime and Counter Terrorism
- Organised Crime.

They include the prosecution of cases investigated by a range of government departments such as the UK Border Agency (UKBA) and Her Majesty's Revenue and Customs (HMRC).

Getting the Accused to Court

When the police detect an offence, they (in conjunction with advice from the CPS) make the initial decision whether to prosecute a person for it. Following a decision to prosecute, the CPS will review the evidence and, if satisfied that the criteria set out in the Code for Crown Prosecutors are met, will conduct the prosecution.

When the decision is made to prosecute, the accused is either charged or summoned to appear before a court. When the accused is charged, the police may either hold them in custody until they can be brought before a Magistrates' Court, or release them on bail after being charged to appear at the Magistrates' Court on a specified date.

Under certain circumstances, the police now have the power to attach conditions to bail, if the accused is prepared to agree. If the accused is not prepared to agree, they may be detained by the police and placed before the next available court whereupon the court will be asked to impose conditions.

The police may only impose bail conditions where it appears necessary in order to prevent the person from:

- failing to surrender to custody
- committing further offences whilst on bail
- interfering with witnesses
- otherwise obstructing the course of justice (whether in relation to himself or any other person, or for that person's own protection)

or

- in the case of children and young people, for their own welfare or in their own interests.

Alternatively, a person can be reported for summons to attend court. In these circumstances bail is not appropriate and bail conditions cannot be imposed.

1.1.3 The National Offender Management Service

NOMS is an Executive Agency of the Ministry of Justice. Their role is to:

- commission and provide cost-effective offender services in the community, and in custody, in England and Wales
- protect the public and reduce reoffending by delivering the punishment and orders of the courts and supporting rehabilitation by helping offenders to change their lives
- keep the public safe by ensuring that offenders securely undertake the punishment of the courts through custodial (prison) or community sentences provided through the prison and probation services and an increasingly wide range of partner agencies in a developing mixed economy of providers.

There are over 130 prisons in England and Wales and several immigration removal centres that are operated by NOMS on behalf of UKBA. The management of around 10% of prisons is contracted to private sector partners and the rest are run by the public sector through Her Majesty's Prison Service.

Probation services are provided by 35 Probation Trusts across England and Wales. These receive funding from NOMS to which they are accountable for their performance and delivery.

2. Categories of Offence

There are three types of offences. It is crucial that you understand the classification of offences as the type of offence determines which court a case is heard and what sentence may be imposed. The three types of offences are classified as:

- summary offences
- either way offences
- indictable offences.

2.1 Summary Offences

Summary offences in England and Wales are those that are the least serious offences, sometimes referred to as petty offences, which are tried in the Magistrates' Court.

Examples:

- The majority of motoring offences (careless driving, drink driving and unlicensed driving)
- Drunk and disorderly behaviour
- Common assault - including assaulting a police officer in the execution of their duty
- Criminal damage, which has caused less than £5,000 worth of damage.

2.2 Indictable Offences

These are the most serious offences that can only be dealt with at the Crown Court. An indictment is a formal legal statement of the crime(s) of which the defendant is accused.

Examples:

- Murder
- Manslaughter
- Drug trafficking
- Causing death by dangerous driving
- Rape
- Robbery
- Aggravated burglary
- Wounding with intent.

2.3 Either Way Offences

These offences, sometimes referred to as 'triable either way' may be tried either in the Magistrates' Court or at the Crown Court. Initially, the magistrates will decide where the case would most suitably be tried. If the magistrates are of the view that the case is most suitable for trial in the Magistrates' Court, the accused is nevertheless given the option of 'electing' to be tried on indictment at the Crown Court. In general, either way offences should be tried summarily, unless it is likely that the court's sentencing powers will be insufficient (generally, if the outcome is likely to result in a sentence in excess of six months' imprisonment for a single offence).

Examples:

- Assault occasioning actual bodily harm
- Wounding, or causing grievous bodily harm
- Possession of an offensive weapon
- Possession of a bladed article
- Harassment - putting people in fear of violence
- Stalking - involving violence or serious alarm or distress
- Violent disorder and affray
- Cruelty to a child
- Sexual assault
- Witness intimidation.

3. Different Types of Court and Roles within Them

Different types of case are dealt with in specific courts: all criminal cases will start in the Magistrates' Court, but the more serious criminal matters are committed (sent) to the Crown Court for trial or sentence (where the magistrates' powers are insufficient). Appeals from the Crown Court will go to the High Court, and potentially to the Court of Appeal or even the Supreme Court.

The approach is broadly split along lines of those dealing with civil cases, such as tribunals of various kinds and those dealing with criminal cases. As an officer's role is concerned with criminal behaviour, we will concentrate on those aspects of the court system.

3.1 The Purpose of a Criminal Court

The purpose of a criminal court is to:

- decide whether one or more people are guilty of committing the offences for which they have been charged or reported for summons
- sentence those found guilty. The maximum penalties are set by law and vary from fines, penalty points or disqualification from driving to imprisonment. Under some circumstances the defendant may have grounds to subsequently appeal against their conviction or sentence.

3.2 Types of Court

Court	Presided Over by:	Description
County Court	Circuit Judges, Recorders, District Judges, Deputy District Judges.	Trial for most civil cases.
Magistrates' Court	Magistrates (Justices of the Peace; known as JPs), District Judges (Magistrates' Courts), Deputy District Judges.	Summary trial for most criminal offences and some civil and family matters.

Court	Presided Over by:	Description
Crown Court	Circuit Judges, Recorders and juries.	Jury trial for all indictable and some either-way criminal offences. Appeals against conviction and sentence from the magistrates' court.
High Court; divided into: Chancery Queen's Bench Family Division.	High Court and Deputy High Court Judges.	Her Majesty's High Court of Justice in England, together with the Court of Appeal and the Crown Court, is one of the Senior Courts of England and Wales. It deals initially with all high value and important civil cases and also has a supervisory jurisdiction over subordinate courts and tribunals.
Court of Appeal	Lord Chief Justice, Heads of Division and Court of Appeal Judges.	Sits in London at the Royal Courts of Justice and consists of two divisions: The Civil Division, which hears appeals from: - the three divisions of the High Court (Chancery, Queen's Bench and Family Division) - the County Courts across England and Wales; and - tribunals related to employment, social security benefits, immigration and land related challenges.

Court	Presided Over by:	Description
		The Criminal Division, which hears appeals from the Crown Court. The Court of Appeal is the highest court within the Senior Courts, which also includes the High Court and Crown Court and normally sits in up to 12 courts in the Royal Courts of Justice.
UK Supreme Court	Justices of the Supreme Court.	The final court of appeal in the UK for civil and criminal cases from England, Wales and Northern Ireland. It hears cases of the greatest public or constitutional importance affecting the whole population.

3.2.1 The Magistrates' Court

There are over 250 local justice areas in England and Wales, each with their own Magistrates' Court. All criminal cases begin in a Magistrates' Court. Most criminal cases do not progress any further; the alleged offender is either tried and convicted or acquitted. Whilst more serious offences may be destined for trial at a Crown Court, they are still initially presented to the Magistrates' Court to decide whether there is sufficient evidence to support a trial at a higher court. Hearings are usually open to the public.

Roles within the Magistrates' Courts

The Magistrate: Cases at a Magistrates' Court are held before either a bench of magistrates or a single magistrate called a District Judge. Magistrates (also commonly known as Justices of the Peace) are members of the community appointed by the Crown on the advice of the Lord Chancellor because of their good character. They are unpaid and are not legally qualified, generally coming from a work background in other walks of life. Magistrates are

appointed for life, but generally do not sit in court after reaching 70 years of age. They are addressed as 'Your Worship'.

A bench can consist of between two and seven magistrates, but is normally made up of three magistrates, and supported by a legally qualified Court Clerk. The sentencing powers of magistrates are limited - they cannot normally order sentences of imprisonment that exceed 6 months, or 12 months for consecutive sentences, or fines of over £5000. If a more severe sentence is necessary, the offender may be committed to the Crown Court for sentence.

The District Judge: District judges in magistrates' courts are required to have at least seven years' experience as a barrister or solicitor, and two years' experience as a Deputy District Judge. They sit alone and deal with more complex or sensitive cases. They should be referred to as 'Your Worship'.

The Magistrate's clerk: The magistrates' clerk is an employee of the court and is a barrister or solicitor of at least five years' standing. The clerk advises the magistrates on questions of law and administers the court. Assistant clerks may be employed to perform the same role in court, although there is only one magistrates' clerk appointed for each petty sessional area.

Procedure in a Magistrates' Court

When an accused person appears before a Magistrates' Court for the first time, the court may either deal with the case or adjourn it. Reasons for adjourning a case could include:

The prosecution requires more information

The defence requires more information

The defendant wishes to plead not guilty, and witnesses must be warned to attend court

The accused may plead guilty, but the court requires further information about the accused person's circumstances before passing sentence.

If a case is to be adjourned, the court may remand the accused either in custody or on bail. There is a statutory right to bail under section 4 of the Bail Act 1976, with the exception of some of the most serious offences, or where it can be established that the accused has offended whilst already subject to bail.

Determining the Venue for Trial

Where an accused is before the court for an offence that is triable either way, the magistrates will have to decide where the case should be dealt with. Current Sentencing

Council Guidelines state that either way offences should be tried summarily, unless it is likely that the court's sentencing powers will be insufficient.

Placing Charges

The charge is put to the accused and they are asked to indicate their plea. If the accused pleads guilty, the magistrates hear the facts of the case and any other relevant information. They may proceed to pass sentence themselves or they may commit the accused for sentence at the Crown Court if they consider that their powers of sentence are inadequate.

Not Guilty or No Plea Entered

If the accused pleads not guilty or is not prepared to indicate a plea	The magistrates will: • ask the CPS where they think the case should be dealt with • the accused, or their legal council, will be allowed to make representations to the court. Triable either way cases should be dealt with summarily unless the magistrates' sentencing powers are likely to be insufficient. If the case is too serious to be dealt with in the Magistrates' Court, the magistrates will direct that the case be allocated to the Crown Court. Magistrates do have the power to adjourn allocation proceedings, and this power should be used when needed to allow the parties sufficient time to gather the information to review charging decisions or ensure that the court has sufficient information to take an informed allocation decision. If the magistrates consider that the case is suitable to be tried in the Magistrates' Court, the accused still has the right to choose to be tried by a jury at the Crown Court. The accused has no right to choose (referred to legally as 'right of election') if the offence is triable summarily only or triable only on indictment.
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If the accused pleads not guilty at summary trial	The court will hear evidence from witnesses (either in person or in the form of a witness statement) and must decide whether to convict the accused or dismiss the case. The question of guilt is determined by the lay justices (or district judges) who are judges both of law and fact, although they may seek legal advice from their clerk.
If the accused pleads guilty or is found guilty after a summary trial	The court may proceed to sentence immediately or adjourn the case if further information is required about the accused. This may involve obtaining reports about the accused person's personal circumstances from the National Probation Service (NPS).

With some of the less serious summary only cases, the accused may be invited to plead guilty by post and so avoid having to appear in court.

Committal Proceedings

Where a case is to be dealt with at the Crown Court, the prosecution must satisfy the Magistrates' Court that there is a case to answer by serving witness statements and copies of documentary exhibits upon the accused or their legal representatives in advance of the committal hearing.

The accused may accept that the evidence contained in the papers served establishes a case to answer and so consent to Crown Court Trial, or they may argue that the evidence contained in the papers served does not establish that there is a case for them to answer. This will usually involve the accused or their legal representative making oral representations to the court to the effect that the papers served disclose insufficient evidence for a jury, properly directed by a judge in accordance with the law, to convict them.

If the case arises out of a police investigation that commenced prior to 1 April 1997, the defence may require the prosecution to call witnesses to give evidence so that their evidence can be challenged by cross-examination.

Where an accused is committed for trial, the charges upon which they are to be tried will be read to them and they will be told the date upon which they must appear at the Crown Court.

Section 51 of the Crime and Disorder Act 1998 established the procedure whereby an adult who appears or is brought before a Magistrates' Court charged with an indictable or either-way offence shall be sent to the Crown Court for trial for the offence.

Section 51A of the Act applies a similar procedure for children and young people subject to certain conditions been satisfied.

Where a defendant, who has been sent for trial on an indictable only offence, appears at the Magistrates' Court and is subsequently charged with an either way or summary offence which fulfils the requisite conditions, the court may send him to the Crown Court for those offences. If the court decides not to send the defendant to the Crown Court, then plea before venue and mode of trial should follow as normal (Section 51(2) of the Crime and Disorder Act 1998). The preliminary hearing in the Magistrates' Court is to decide on issues of bail and legal aid.

3.2.2 Youth Courts

Certain courts within the Magistrates' Courts are designated as Youth Courts which deal with all but the most serious charges against people aged between 10 (the age of criminal responsibility) and 17 years (inclusive). People aged 18 years old or older are tried as adults.

Those who sit in Youth Courts have normally received special training. There are restrictions on who may be present in a youth court and there is no public gallery. The press can attend, but there are restrictions on what they can report on. Otherwise, procedures in the Youth Court are very similar to those in the adult Magistrates' Court.

A juvenile has no right to elect to be tried at the Crown Court, but they must be dealt with at the Crown Court if they have been charged:

- with murder or manslaughter
- with firearms offences where a minimum custodial sentence applies
- with offences carrying at least 14 years' imprisonment for an adult with a specified violent or sexual offence under section 224 Criminal Justice Act 2003, e.g. Kidnapping or Rape; or
- jointly with an adult and the adult is to be tried at Crown Court.

3.2.3 Crown Courts

There are approximately 90 Crown Court centres in England and Wales, divided into six regions (known as circuits). Crown Courts try more serious cases before a judge and jury, following the preliminary hearing at the Magistrates' Court.

The Crown Court has jurisdiction to hear cases to be tried on indictment (a formal legal statement accusing someone of a crime or crimes). It also deals with people committed for sentence from the Magistrates' Court, and hears appeals from the lower courts, including Youth Courts. The Crown Court is usually presided over by a circuit judge or, sometimes, part-time judges known as recorders. Only a High Court judge can try the more serious offences.

Roles within the Crown Court

The Judge: Judges are appointed from within the legal profession, generally beginning as recorders and progressing to be circuit then high court judges. The title used to address a judge depends upon their rank: circuit judges and recorders are referred to as 'your honour' and high court judges are referred to as 'my lord/lady'. The judge decides questions of law and, if appropriate, imposes a sentence on the person found guilty by a jury of the offence/s charged.

The Jury: A jury usually consists of 12 members of the public aged between 18 and 70 who have been selected from the Electoral Register for jury service. They receive legal advice from the judge and consider questions of fact before deciding whether or not a case is proven.

Proceedings in the Crown Court

Magistrates may order a preliminary hearing; if they do not, they must order a 'Plea and Case Management Hearing'. If the accused pleads not guilty at this hearing the case will be adjourned for trial by jury.

Key Features of Trial by Jury

The trial commences with the prosecution outlining the substance of the case to the jury. The prosecution will then call their witnesses to give evidence. The prosecuting barrister initially questions prosecution witnesses - this process is known as examination-in-chief and can be cross-examined by the defence barrister.

At the conclusion of the prosecution case, the defence can argue that the evidence that the jury have heard is not sufficient to establish a case for the accused to answer. If the judge agrees with such a submission, they will direct the jury to enter a not guilty verdict

If no submission of 'no case to answer' is made, or if such a submission is unsuccessful, the defence may call witnesses on the accused's behalf. If the accused is giving evidence, then they must be called as the first defence witness. They are examined in chief by the defence barrister and may then be subject to cross-examination by the prosecuting barrister

When all of the evidence has been heard, both prosecution and defence counsel make a closing speech to the jury. The judge will then sum up the evidence and give directions to the jury on any matters of law. The jury will then retire to consider their verdict

The level of proof required in a criminal court is 'beyond reasonable doubt'; unlike a civil court, where it is based upon 'the balance of possibilities'. The judge will advise that a unanimous decision is preferred. However, after two hours, the judge is able to accept what is known as a majority verdict - this must be at least ten to two with a full jury.

4. The Adversarial System of Justice

The system of justice in this country is known as an 'adversarial system'. This system requires that a person (the defendant) is accused of an offence, and tried by a court which is required to determine the defendant's guilt 'beyond all reasonable doubt'. In civil courts and cases, the standard of proof is lower being 'on the balance of probabilities'. Therefore, generally, the prosecution bear the duty of proving or disproving facts beyond a reasonable doubt. There are a few instances, however, where the burden of proof is on the defence. This is often referred to as the reverse burden (or onus) and usually occurs when certain defences are submitted by the accused. However, this will only be an 'evidential' burden and the situation when such a burden would occur is exceptional.

4.1 Representation

The prosecution is usually conducted by a lawyer on behalf of the CPS. The defendant may conduct their own defence, but is usually represented by a defence lawyer, or barrister. The case is conducted as a contest between the prosecution and the defence (the 'adversaries') who must comply with the rules of evidence.

4.1.1 Self Representation

In the Magistrates' Court, a defendant has the right to present their own case. They may feel that it is in their own interest to talk directly to the judge, jury or magistrate, or they may not be able to afford to pay a barrister or solicitor (although they may qualify for legal aid to help pay for legal costs). If they self-represent, they are allowed someone to help them take notes. This person is known as a 'McKenzie friend' and is not allowed to speak or otherwise interfere with proceedings.

If the case is to be dealt with in the Crown Court, the defendant may also present their own case, although a barrister will usually represent them. More commonly someone will be represented by one, or both, of the two classes of lawyer:

- Solicitors
- Barristers

4.1.2 Solicitors

Solicitors tend to have more direct access to clients, and may do transactional-type legal work. Solicitors are attorneys, meaning that they can act in the place of their client for legal purposes (as in signing contracts) and may conduct litigation on their behalf by making applications to the court, writing letters in litigation to the client's opponent, and so on. Unless solicitors have 'higher audience rights', they will only be able to represent their clients in the Magistrates' Court.

4.1.3 Barristers

Barristers tend to specialise in courtroom advocacy, drafting legal pleadings, and giving expert legal opinions. Barristers are usually retained (or instructed) by solicitors to act on behalf of clients, rather than being hired by clients directly. A barrister is not an attorney and is usually forbidden, either by law or professional rules or both, from "conducting" litigation. This means that while the barrister speaks on the client's behalf in court, he or she can do so only when instructed by a solicitor or certain other qualified professional clients, such as patent agents.

The NPS or Social Services may also assist the courts. Their principal role in the criminal process is to provide the court with information to assist it in reaching decisions about bail and sentence. If a community sentence is passed, the NPS will be called upon to supervise

that sentence. If the defendant received a custodial sentence, the NPS will be called upon to provide support following the defendant's release.

In the life of a criminal case (from the initial investigation of an offence through to the conclusion of court proceedings) you are likely to have some contact with all of these people, but your principal contact will be initially with the defendant and subsequently with the CPS.

4.2 Role of the Prosecution

The prosecution has a duty to the court to ensure that all relevant evidence is disclosed.

They present evidence to attempt to establish that:

- the offence with which the defendant is accused was committed, and
- the defendant was the person who committed the offence.

4.3 Role of the Defence

The defence challenges parts of the prosecution evidence with which they disagree and, once the prosecution has established that there is a case to answer, may present evidence to establish that:

- the offence with which the defendant has been accused has not been committed, or
- the defendant did not commit the offence, or
- the defendant has a specific defence for the offence (known as a statutory defence).

On the basis of the evidence given, the magistrates or jury decide whether the defendant is guilty or not. The magistrates' clerk and the judge must ensure in their respective courts that the rules of evidence are followed.

Evidence is generally presented to a court in the form of a witness testimony, although in certain circumstances written statements can be accepted if they are not challenged or are otherwise inadmissible.

4.4 The Order of Evidence Heard in a Criminal Court Case

Evidence is heard in a criminal court in a specific order following the chronological events of the incident. Although there is no rigid rule, people/roles are often called into court to give their evidence in the following order:

- plan drawer

- photographer
- victims/eye witnesses
- arresting/interviewing officers
- police expert witnesses (scenes of crime officers, fingerprint officer)
- professional/expert witnesses (doctor, forensic scientist)
- defence witnesses (if any).

Note: allowing the plan drawer or photographer to produce their evidence first i.e. the plans or photographs may assist the magistrate or judge and jury to visualise the scene or quickly understand the evidence from subsequent witnesses.

Each witness called into the court will give their evidence as follows:

1. The prosecution witness gives their evidence (known as their evidence in chief, for example, the information recorded in their statement and production of their exhibits)
2. The defence cross examine that witness (if they wish to do so)
3. The prosecution lawyer may re-examine the witness to ask further questions and clarify their evidence if necessary
4. This process is repeated until all of the prosecution witnesses have given their evidence.
5. The defence then may call any defence witnesses and the defendant to establish the case for the defence
6. The defence witness or defendant gives their evidence (however, the defendant does not have to give evidence and if they choose not to, they cannot be cross examined)
7. The prosecution cross examine that witness if they wish to do so
8. The defence lawyer re-examines to ask further questions to clarify their evidence if necessary.

5. Summonses

This section is for **police officers** only. Police officers have the necessary powers to apply this legislation where applicable. PCSOs will find having knowledge of this legislation useful due to your work with communities.

A summons orders a person to attend court and in some cases, it is used as an alternative to arrest. A summons does not necessarily indicate that an individual has committed an offence - they may not be accused or suspected of an offence, or the offence may only be minor.

Example:

You may have to serve a summons on a witness who is apprehensive about giving evidence in court.

Most police forces employ Civilian Enforcement Officers (CEO) and Approved Enforcement Agencies (AEA). These are referred to as authorised officers and part of their role is to fulfil routine functions such as serving of summonses. As well as the police, authorised officers are empowered under Schedule 4A of the Magistrates' Court Act 1980 to serve summonses.

However, as a police officer you will also need to know the contents and purposes of summonses. Remember that the task of enforcing summonses may seem routine, but to the recipient it may involve distress, anxiety and embarrassment.

5.1 Defendant Summons

A defendant summons is a written order (signed by a justice, magistrate or clerk of the court) addressed to the accused person, which directs them to appear at a time and place specified in the summons to answer the offences detailed therein.

The sequence of events leading to the issue of a defendant summons can be broken down as follows:

- A person is seen committing an offence, or an allegation is made that the person has committed an offence
- A police officer informs the offender that he or she will be reported for the offence
- A police officer completes a pocket notebook entry
- A written report is submitted to a supervisory officer. This is often an 'offence' or 'process' report, and can be a pro forma document which you have to complete, accompanied by a statement made by you and any other relevant documents or statements

- A decision is made whether to prosecute, caution or take no further action. If the decision is made to prosecute, an application is made for a summons. You may be required to serve the summons and to attend court to give evidence concerning the case

By reporting for summons the person responsible, you are formally notifying somebody that you suspect them of having committed the offence alleged and, as a result, the facts of the matter will be reported, and may result in a defendant summons being issued to that individual to appear at court to answer the allegations being made.

The process involved in obtaining a summons is called 'laying information'. This is done before a justice or justice's clerk. In the majority of cases it is the police, or someone acting on behalf of the police, such as the CPS, who 'lay an information' however, it is open to anyone to apply.

Example:

In animal cruelty cases, the RSPCA 'lay an information' to require an accused person to appear before the court to answer the allegation made in the summons.

5.1.1 Completing a Summons Correctly

If a summons is to be successfully served, the correct information must be obtained when dealing with suspected offenders. There is a national minimum standard of offender information which is required to ensure the person is who you think they are before serving the summons. You must always ensure that you obtain the person's:

- full name
- full address, including post code
- date of birth
- wherever possible, a national insurance number.

The following advice will also assist you:

- Ask the person to spell any names which are unfamiliar to you or have alternative spellings

- Refer to any document the person may be able to produce, such as a driving licence or letter
- As a summons is usually served on a person at home, you should establish whether you have been given a private or business address - a person may not wish their family or landlord to know that they have been summoned, and they may either give their business address or nominate an address where the summons may be served
- Ensure that the address provided is where a summons can be served. This should be where the person will be for a sufficiently long period to enable the summons to be served, or at which another specified person will accept the summons on behalf of the accused. For example, a person may have no fixed address, but be in regular contact with a social worker, priest, probation officer or member of some voluntary organisation who would be prepared to accept the summons.

5.2 Witness Summons

A witness will usually be notified that they are required to attend court to give evidence. However, a court can issue a summons to ensure that the witness attends court if:

- a person is likely to be able to give material evidence, or produce any document or thing likely to be material evidence, for the purpose of any criminal proceedings before the court
- the court is satisfied that it is in the interests of justice to do so.

In certain cases this will allow the court to issue a witness summons early in the proceedings, to pre-empt the likely non-attendance of a witness. The witness summons can be applied for by both the defence and prosecution. In many cases the summons will also act as a measure of protection for a witness whose employer is reluctant to release them, or who faces some degree of discouragement or low-level intimidation in the community.

5.3 Service of Summons

The actual summons must be served on the person specified by:

- handing it to them personally (if the individual to whom the summons is addressed is 18 years of age or under, a copy of the summons must be handed to their parent, or another appropriate adult, unless no such person is readily available) (Rule 4.3 Criminal Procedure Rules (CrPR) 2010)

- handing it to their legal representative (where an individual is legally represented in a case) (Rule 4.3(c) CrPR 2013)
- leaving it at an address where it is reasonably believed that they will receive it (Rule 4.4 CrPR 2010)
- posting it by first class post to an address where it is reasonably believed they will receive it (Rule 4.4 CrPR 2010).

A summons for an offence committed by a corporation may be served by handing it to a person holding a senior position in that corporation.

If the court has no proof that the accused actually received the summons, and the accused does not appear when directed, the procedure must be repeated.

If you are handed a summons and told to serve it on a named person, you should:

- check it thoroughly for possible errors and return it to a supervisory officer if it is incorrect
- record in your pocket notebook that you have received the summons
- serve it on the named person and endorse the back of the copy with the date, method of service and your signature
- record your actions in your pocket notebook
- return the endorsed copy according to your local instructions.

When serving a summons, it is important that you:

- take time to speak to the person first
- ensure that you check all the information required
- go on to explain the purpose of the summons.

You should be aware that the person being served with a summons may well feel under stress and your behaviour can help to alleviate or worsen this.

6. Types of Evidence and Exhibits

Evidence is information that may be presented to a court or tribunal in order that it may decide some fact before it.

6.1 Types of Evidence

Evidence may be presented to the court in one of three ways: Oral, Real or Documentary.

6.1.1 Oral Evidence

Oral evidence is the most common form of evidence and is given when the witness relates their experience directly to the court. The witness may generally only give testimony of what has been perceived using their own senses, i.e. what they have heard, seen, tasted, felt or smelt.

6.1.2 Real Evidence

Real evidence is any article or object that is produced to a court as an exhibit by a person who is able to give evidence by introducing the article and, if appropriate, explaining its significance to the case.

Example:

A flick knife found in a person's possession would be produced by the police officer who found it. The knife is 'real' evidence, but this must be supported by the oral evidence given by the constable of the circumstances of the find.

6.1.3 Documentary Evidence

This is a document produced for examination by the court as an item of real evidence, or to prove that the document exists. The rules of evidence relating to documents are complicated and vary according to the nature of the document and the circumstances in which it was written.

The general rule is that a document should be produced by the person who made it and who can give evidence as to the accuracy of its contents. There are also rules that apply to documents that come into the possession of people in their professional capacity, including police officers. In certain circumstances these rules enable such documents to be admitted in evidence without being proved by the maker of the document.

6.1.4 Hearsay Evidence

Hearsay evidence is evidence of what a witness has heard another person say. The main reason for the exclusion of hearsay evidence is that the person who made the statement that

was overheard by the witness cannot be cross-examined. It is not therefore possible to test the accuracy of the evidence.

Hearsay also includes documents whose existence or contents cannot be proved by the maker. It applies to what people wrote as well as to what they were heard to say, and to what the witness himself or herself said out of court as well as to what he or she proves to have been said by others whether they are or are not called as witnesses.

Example:

Alex says in the witness box 'Bethany told me that Charlie was in the pub'. The court cannot test Alex's evidence, therefore his evidence would be hearsay and inadmissible (unless any of the exceptions applied).

This assumes Bethany is unable or unwilling to give evidence. If Bethany was available, she would be expected give the evidence herself and this problem would not arise. An assertion, other than one made by a person while giving oral evidence in the proceedings, is inadmissible as there is no opportunity for cross examination.

Hearsay is generally inadmissible if it is used to prove the truth of what was said, although there are exceptions which apply in particular circumstances.

The rules surrounding hearsay are a complex area of law being under both statutory and common law. The golden rule for investigators is to record anything that may be valid as evidence in their pocket note book, incident report or in a witness statement even if it is recognised as potential hearsay. The information can always be excluded from the evidence at a later date as hearsay (if none of the exceptions apply).

Part 34 of the Criminal Procedure Rules 2013 applies in a Magistrates' Court and in the Crown Court where a party wants to introduce hearsay evidence, within the meaning of section 114 of the Criminal Justice Act 2003. Part 34 of the Criminal Procedure Rules 2013 (Rule 34.2) requires notice to be given where hearsay is to be introduced under the following sections of the CJA 2003:

- 114(1)(d) (interests of justice)
- 116 (witness is unavailable)

- 117(1)(c) (evidence in a statement prepared for the purposes of criminal proceedings; and
- 121 (multiple hearsay).
- The notice must:
- identify the evidence that is hearsay
- set out any facts on which the party relies to make the evidence admissible
- explain how the party will prove those facts if disputed by another party
- explain why the evidence is admissible
- attach any statement or other document containing the evidence if it has already been served.

Under section 114 of the Criminal Justice Act 2003, a statement not made in oral evidence is admissible as evidence of any matter stated only if:

- a statutory provision makes it admissible
- a rule of law preserved by section 118 makes it admissible
- the parties agree to it being admissible
- it is in the interests of justice for it to be admissible.

Section 116 of the Criminal Justice Act 2003 sets out a series of categories under which hearsay evidence (whether oral or documentary) will be admissible if the witness is unavailable to testify in court proceedings. In this situation, hearsay evidence is only admissible if:

- the evidence would be admissible if it were to be given as oral evidence
- the person who made the statement is identified to the court's satisfaction; and
- any of the following five conditions are satisfied:
- that the relevant person is dead
- that the relevant person is unfit to be a witness because of his bodily or mental condition
- that the relevant person is outside the United Kingdom and it is not reasonably practicable to secure his attendance

- that the relevant person cannot be found although such steps as it is reasonably practicable to take to find them have been taken
- that through fear the relevant person does not give (or does not continue to give) oral evidence in the proceedings, either at all or in connection with the subject matter of the statement, and the court gives leave for the statement to be given in evidence (in these circumstances 'fear' is viewed in a wide sense such as fear of the death, injury of another person or of financial loss).

Examples:

A person has fallen on the pavement, bleeding heavily from a wound in their stomach. A passer-by stops, calls an ambulance and attempts to give first aid. Before anyone else arrives the injured person says 'Jo stabbed me' and dies.

This would be admissible as a statutory exception as a dying declaration under section 116(2)(a) Criminal Justice Act 2003.

A person saw a road traffic collision where a pedestrian was knocked over and injured by a vehicle and they gave the police a written witness statement of what they saw. Although willing to give that evidence orally in court, by the time the case was to be heard, the witness had moved from the UK to live in Australia and had just started a new job. Due to the minor injuries involved, the costs and required compensation, the court accepted the written statement (made at the time of the collision by the independent witness) as admissible hearsay evidence, as it is not reasonably practicable to secure his attendance.

A person living in short term rental property gave a witness statement that gave details of when they overheard an argument outside their bedroom window. They described the content of a verbal argument between two people, hearing a threat to kill from one to the other, hearing a scream and footsteps running away. The following day it was on the news that a person had been found dead just around the corner. Several months later the officer in the case tries to contact the witness, but is told they have moved. No-one has a forwarding address for them and all enquiries to locate them fail. The court accepts the written statement as admissible hearsay, as the witness cannot be found although such steps to find them as is reasonably practicable have been taken.

There are further statutory exceptions to hearsay where the evidence would be allowed in court proceedings, including:

- statements made in the presence and hearing of the accused
- evidence of acts done or statements made by a co-conspirator in the furtherance of the common purpose of the conspiracy
- documentary material where there is a serious problem with the attendance of the witness or it was made in the course of a business
- statements made as confessions.

Note: Confession of the accused, made in the presence of a third party (who may also be a co-accused) is admissible as an exception to the hearsay rule as part of the evidence given by that third party, provided it complies with section 76 and 78 of the Police and Criminal Evidence Act 1984. These sections cover areas such as confession obtained by oppression and confessions by defendants who have a learning disability within the definition of that section.

Example:

A store detective observes a shoplifter place items in their pocket and leave the store without making any payment. The store detective detains the suspected thief just outside the store, takes them back inside and calls the police. When the police officer attends, they ask the store detective to repeat their evidence whilst in the presence and hearing of the accused. The police officer subsequently details this in their own statement, which is subsequently tendered in evidence as part of a case file. This is admissible hearsay as it was said in the presence and hearing of the accused, and the accused would have the option to make comment, agree or disagree.

In some circumstances, notice to introduce hearsay within court proceedings is required. Ensure you seek advice if you are preparing a case file where some of the evidence you wish to be presented to the court is hearsay. Introduction of hearsay evidence may also be opposed. In some circumstances there is a requirement to give notice of, and explain, any objection to the introduction of hearsay evidence but, again, these rules are complex and you should seek advice from your supervisor and where necessary, your force's legal advisor.

6.1.5 Evidence of Opinion and Expert Witness Evidence

A witness may testify to facts, but may not generally give evidence of opinion. However, witnesses with recognised specialist knowledge of a subject may, with the court's permission, give an opinion within their area of expertise.

Police officers and PCSOs will generally give evidence at Magistrates' and Crown Courts relating to facts within their knowledge e.g. what they saw, heard, smelt or felt. In this respect, your position is the same as any other witness. However, because you will give evidence as part of your professional role (and do so more frequently than other witnesses) the courts will expect a more competent performance.

Police Officers are Expert Witnesses in Drunkenness

One notable exception is that police officers are deemed to be expert witnesses in drunkenness. If a witness is accepted by the court as an expert in a particular subject, then evidence of their opinion on issues relating to that subject can be given. Therefore police officers are able to give evidence of their opinion of a person's state of drunkenness in court. This must also be supported by evidence of facts that they are able to relate and from which they formed their opinion such as appearance, behaviour and manner of speech.

Examples:

- A pathologist completes a post mortem on a dead body that was recovered from a river. The pathologist is allowed to give evidence of the victim's cause of death based on their knowledge and experience during a murder trial at Crown Court.
- A doctor completes a forensic medical examination of a victim of assault. They record the size and position of all marks, bruises, cuts and grazes etc. both on body map charts and in full written form within a statement. They note circles of bruising around the upper arm and a bruise with a distinct marking on the victim's upper back. During the trial the doctor is allowed by the court to give evidence of opinion of the manner by which a victim's injuries have been caused. They state that in their opinion the circles of bruising on the victim's upper arm appear to be finger print bruising caused by someone grasping them hard. The doctor also states the bruising on their upper back was severe and consistent with a kick or a stamp showing the markings of the tread of a trainer or a shoe.
- A police officer is called to a high street where they see a man shouting and swearing at passers-by, staggering about on and off the pavement causing passing vehicles to

brake and swerve, and lowering his trousers showing his backside to a queue of adults and children waiting to go into a cinema. When the officer speaks to the man, they can see that his eyes looked glazed, his breath smells of intoxicating liquor, his speech is slurred and he is unsteady on his feet. The officer believes he is drunk and decides to arrest him due to his behaviour and appearance for being drunk and disorderly. The officer's observations of the man would be allowed to be given in evidence as an expert witness testimony of the person's drunkenness.

6.2 The Importance to the Criminal Justice System of Notes Made at the Time of an Incident

All police officers and staff with evidential and supervisory responsibilities are required to make notes at the time of an incident, regardless of their rank or role. When you are involved in the conduct of a criminal investigation, you have a statutory responsibility to record and retain relevant material which could be used as evidence. This is explicitly laid out under Part 2 of the Code of Practice to the Criminal Procedure and Investigations Act (CPIA) 1996:

“All investigators have a responsibility for carrying out the duties imposed on them under this code, including in particular recording information and retaining records of information and other material.”

Throughout your police career you will attend a great many incidents, some of which will result in you having to attend court to give evidence. At court you will be expected to provide a clear, honest and accurate account of the incident, even though it may be months after the incident has occurred. To assist you, the court allows you to refresh your memory from original notes you made at the time of the incident.

If there is a suggestion that something in your notes was improperly altered or deleted, it may be challenged in court. If a case was jeopardised or lost due to the inadmissibility of information this could have a severe impact on:

- public confidence
- the reputation of the police
- confidence in the criminal justice system.

There are also financial implications for taxpayers' money in terms of lost police and court time.

Notes are used:

- to record, at the earliest point, evidence and details of any incident that may result in criminal or civil proceedings. Entries in a pocket notebook (PNB)/evidence and action book (EAB) should be made at the time the event occurs or as soon as reasonably practicable
- as the first record of evidence, and should state full details of any incident and any other information you feel may assist you to recall the circumstances of the event at a later date, in particular when you are giving evidence in court
- to record information about an occurrence or event which you consider to be significant
- to record when you are on and off duty; rest days, annual leave and periods of sickness in order to justify any gaps between entries
- to record "verbal comments" made by a victim, suspect or witness
- to record any offer made to a suspect to sign the PNB/EAB to acknowledge the accuracy of the notes. If a suspect refuses to sign or otherwise disagrees with the content, this should also be noted
- to record any contact, either in person or by other media, e.g. text messages, voicemail, email, and social media must be regarded as potentially relevant and therefore should be recorded and retained in a durable and retrievable form, for examination by a Disclosure Officer when compiling a prosecution file.

7. Swearing an oath or affirming to tell the truth in a criminal court

All witnesses need to swear or promise to tell the truth, the whole truth and nothing but the truth whilst giving evidence in court. Failing to tell the truth in court is a criminal offence.

7.1 The Purpose of an Oath of Affirmation

The Magistrates' Court Act 1980 requires that witnesses giving evidence shall give the evidence upon oath in the prescribed manner or by means of a solemn affirmation when it is not possible for the oath to be taken (or in the case of a person who objects to being sworn).

The Perjury Act 1911 section 1(1) states:

‘If any person lawfully sworn as a witness or as an interpreter in a judicial proceedings who wilfully makes a statement material in that proceeding, which he knows to be false, or does not believe to be true, is guilty of perjury.’

There are various offences against the administration of justice and the public interest. Perjury is an offence that interferes with justice. This is a serious offence that is triable on indictment only, and you or any other witness can be sentenced to a maximum of seven years’ imprisonment if found guilty.

If you make sure you tell the truth, the whole truth and nothing but the truth about what you experienced (i.e. saw, heard, felt, tasted, smelt) you will not need to worry about committing this offence when giving evidence in court or other hearings.

7.2 Different Types of Oath of Affirmation

The Oaths Act 1978 explains that a witness will be sworn in the particular form and manner binding on their conscience, or affirms according to the circumstances. In the case of a person who is neither a Christian nor a Jew, the oath shall be administered in any lawful manner. Whether the administration of an oath is lawful concerns two matters only:

- did the oath appear to the court to be binding on the witness’s conscience?
- if so, did the witness consider the oath to be so binding?

The question whether an oath is lawfully administered does not depend on what may be the considerable intricacies of the particular religion adhered to by the witness.

Courts hold copies of many religious texts and are able to obtain others if requested. Any preparation or cleansing rite before taking the oath will also be accommodated. The following is a brief guide to the affirmation or oaths given and procedures used according to the more common ethnic or national groups and religions.

Affirmation	If for any reason a witness does not wish to swear the oath (for example, they have no specific religious beliefs, or there is no written version of their own faith available in court) then they may make an affirmation promising to tell the truth. The terms of the affirmation are: “I do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.”
Buddhism	Buddhists will normally affirm, although Tibetan Buddhists may decide to take an oath in front of a picture of a deity or a picture of the Dalai Lama, or any Lama of the individual witness’s practice. Sometimes such a witness will take an oath by elevating a religious textbook above their head and swearing by it. If such a witness does not stipulate such a practice and does not have the appropriate book with them, they should affirm.
Chinese	There are many different religions in China. Unless they are Christians or Muslims, for example, Chinese witnesses should be asked to make a solemn affirmation.
Christianity	The oath is taken on the New Testament in the following manner: “I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.”
Hinduism	The oath is taken on the Bhagavad-Gita (which should be kept wrapped in a cloth cover) in the following form: “I swear by the Gita that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.” There are a number of circumstances in which Hindus will not wish to touch the Gita. In such circumstances their wishes will be accommodated, if necessary by their affirming.

Islam	The oath is taken on the Koran, which should be kept in a cloth cover and unwrapped by the follower of the faith. Muslims prefer to wash their hands, feet or other parts of their body before they take the Koran in their hand. The right hand is used. Both women and men may wish to cover their head when taking the oath, which is as follows: “I swear by Allah that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.” Muslim women who are witnesses may wish to affirm rather than take the oath. The request should always be granted.
Judaism	The oath is taken on the Old Testament. Jewish men who are witnesses cover their head when taking the oath. Jewish women who are witnesses are not obliged to take an oath on the Old Testament, but will affirm. The oath is given as follows: “I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.” However, both men and women may prefer to affirm.
Quaker, Moravian, Jehovah's Witness, Seventh Day Adventist	Followers of these religions and faiths will normally affirm.

Rastafari	Rastafarianism is generally regarded as a way of life rather than a religion. Rastafarians are not Christians, but they hold the Bible in great reverence. As such, Rastafarian witnesses may wish to be bound by an oath on the New or the Old Testament, which will be as for Christianity and Judaism. If there is any doubt as to whether the witness's conscience will be bound, they should be asked to affirm. The explanatory note to the Equality Act 2010, states that religion (for the purposes of Section 10 of the Act) includes religious or philosophical belief, which is stated to include for a lack of religion or belief. It also states that for the purposes of Section 10, this includes Rastafarianism.
Sikhism	The Holy Book of the Sikh religion is the Guru Granth, but the oath is taken on a smaller book, the Sunder Gutka, as follows: "I swear by Guru Nanak that the evidence I shall give shall be the truth, the whole truth and nothing but the truth." However, Sikh witnesses may wish to affirm.
Child or young person	When an oath is administered in a Youth court, or is taken by a child or young person in any court, the wording is commonly: "I promise before Almighty God to tell the truth."
Interpreters' oath/affirmation	The interpreter's oath is not fully prescribed, but is commonly as follows: "I swear by *Almighty God that I will well and truly interpret and make true explanation to the court and the witness of all such matters and things as shall be required of me to the best of my skill and understanding." *Variations of the interpreter's oath would be administered in accordance with the religious beliefs of the witness or the wish to make a solemn affirmation.

8. Officers Court Warnings

There are many reasons why you may be required to attend court after the completion of an investigation. You may have been the officer in the case (investigating officer) or the disclosure officer, you may have been a witness to an offence (including an arresting officer) or you may have recovered evidential exhibits which the court needs producing to prove the offence, for example, drugs found at a scene or on a person you searched, stolen property which you have recovered or a weapon you have seized.

A request for attendance at court to give evidence of involvement in an investigation will generally come from the police/CPS Witness Care Unit, and is commonly referred to as a court warning. The warning will usually be personally addressed to you and include information and/or instructions such as:

- the time and date of the case
- which court the case is taking place in
- ensuring that any other witnesses are warned
- to ensure that any exhibits are made available.

It is essential that, as the person named on the court warning, you respond promptly to these warnings. Failure to do so would indicate a lack of professional responsibility and could affect the eventual outcome of the trial. It could involve dates and times having to be re-scheduled which would waste the court's time. You may also wish to consider how other witnesses, the prosecution and defence teams may view such inefficiency.

When a court warning is issued, it is common practice for your shift/working hours/tour of duty (pre determined hours of work) to be amended in order to facilitate your court appearance on that day. In doing so, you should have plenty of time to prepare yourself and the evidence that may be required.

Once you know in which court you will be giving evidence, it is worth trying to visit before the given proceedings date to familiarise yourself. Time spent familiarising yourself with the surroundings and court procedures in both a Magistrates' and Crown Court would enable you to concentrate on giving evidence for the first time on the day of the proceedings. It would help you to understand how a hearing is conducted, the roles of those present and the ways in which people behave. Often some issue will arise which will illustrate how the rules of evidence apply in practice. Court observation will make the court a more familiar and less intimidating place when the time comes for you to play your part in proceedings.

8.1 Exhibits

When items of evidence (real or documentary) are produced before a court, they are known as exhibits. Many items can be exhibits.

Examples:

- In the case of theft, an exhibit could be something stolen and recovered by the police. When you produce an audio recording in court of an interview with a suspect the recording media would be real evidence.
- In the case of assault, it could be a weapon, real evidence, that may have been used.
- In other cases, any item that is relevant to the case such as a driving licence that has been illegally altered. This could be either real or documentary evidence.

8.1.1 The 'Officer in the Case'

If the officer is the only or principal officer involved in the case they will be referred to as the 'officer in the case' and will have to ensure that any exhibits that are in police possession are available to the court. This may mean you need to arrange to transport a large amount of exhibits, as produced by the victim and all the witnesses in their statements, from the secure exhibits' stores in police premises. Some exhibits may be difficult such as weapons etc. that will also need secure storage on arrival at the court.

8.1.2 Maintaining the Continuity and Integrity of Exhibits

So that exhibits can be introduced in court, they need to be dealt with in a standard way. This means they should have been labelled with the appropriate exhibit label when the items were seized so that each potential exhibit can be identified by its unique number.

The information included on the exhibit label can best be remembered by using the mnemonic 'DC SAID', however the information may vary slightly between forces.

D - Description of exhibit(s)

C - Custody number/BCU or Divisional identification

S - Signature of witness

A - Address/person from where/on whom, the exhibit was found

I - Identity mark of exhibit

D - Date/time/number of person(s) taking possession

The case file contains a list of all the exhibits in the case on a form MG12 (Exhibit list). On the MG12, exhibits should be listed chronologically as they appear in a written statement, with their description, the exhibit reference number, the person producing that evidence and the exhibit's current location. You will need a copy of this form to be able to locate all the exhibits to take them to court. The exhibits may be in a secured exhibit store room, a valuables' safe, a fridge or freezer etc. As the officer in the case, you will need to make sure you have time to gather all the exhibits and transport them to court to give to the prosecutor before the case commences.

Some items of evidence can be easily and safely handled, others cannot. You must always seek the help and advice of specialists before touching certain items which cannot be easily handled such as:

- items which need forensic examination (for fingerprints, blood or other marks)
- items which may cause harm (e.g. guns, explosives, drug implements etc.).

If you do take possession of any items you will be required to sign for them and you will remain responsible for them until you sign them over to somebody else. This is called the continuity of exhibits and you will be required to document continuity by completing a witness statement on an MG11 form.

The only exception to this rule is when items are actually produced as exhibits in court and are held by the court for a further hearing. Sometimes the court has the power to order the article to be destroyed. You must not destroy anything. Take it back to the officer in the case and act on their instructions or seek advice from a supervisor. Exhibits are returned either:

- to the owner (or their representative) or
- to the station (with a note of the court's directions, if any).

Once property has been made an exhibit at court, it may not be released without the court's authority. Sometimes, to avoid inconvenience to an owner, the court may release the property before the end of the proceedings. Any such release must be with the authority of

the court. If you are asked to release an exhibit, get the advice of your supervising officer or the court.

At the conclusion of the case, exhibits are normally returned to their owners. The restoration of the exhibit to the accused will depend on what it is and what powers the court is given to dispose of it. If the accused is convicted, burglary tools, offensive weapons or articles seized in connection with gaming etc. are not to be returned to the accused except by direction of the court. The CPS solicitor will ask for directions when the accused has been found guilty.

8.2 Dress Codes

Officers who are well turned out may be more likely to make a good impression on the court, be respected and believed. Your force will have a policy outlining the required dress code at court: some forces will require you to wear hats, protective clothing and equipment to deter conflict or offences or to deal with offences committed within the court buildings whereas others will not. Some forces have different dress codes for different types of court i.e. magistrates', youth, coroners' and crown courts. Make sure you check your appropriate uniform is available, clean and presentable prior to the court date. However, you may find that you have no choice but to attend court directly from a job that demanded casual dress in order not to stand out as being a police officer. Under such circumstances, it will be appreciated if you explain the situation in the court at the first opportunity.

8.3 Reviewing Evidence in Advance of the Hearing

Preparation is key to good presentation of evidence. Consider the whole process, not just the few minutes spent in the witness box. From the first report or observation of an offence and throughout the course of the investigation and preparation of the case papers, remember that everything you do or say, or that you record having seen and heard, and those things you fail to do or to record, may be subject to the critical scrutiny of the court one day. Taking care to ensure the accuracy and clarity of notes made in your PNB/EAB, sketch plans or other records will help you when you are called to present your evidence and answer questions on it.

Check that all the necessary administrative steps have been taken, that the case papers are complete and that any exhibits are available and correctly ordered and labelled. It gives a poor impression if exhibits are mishandled or mislaid, so take some time to organise them beforehand, especially if there is a large number. Any doubts created by apparent inefficiency or lack of knowledge of the case could detract from the prosecution case.

Exhibits that are poorly organised or mislaid can cast doubt on the efficiency - or even the honesty - of a police officer. Equally, attempts to embellish the facts when you do not have the required information can be damaging to you personally and the service you represent or could have serious implications for the defendant.

It is standard practice for police officers to refresh their memories when giving evidence, by reference to a PNB/EAB, witness statement or other written material. This is often essential, since cases are often not heard until some months after charges have been brought and routine or everyday matters can often be difficult to remember.

Where material relevant to your evidence is the responsibility of others, check with them that everything is available and organised so that you will be able to give a complete and competent account.

9. Giving Evidence in Court

9.1 On Arrival at the Court

On the day of the court proceedings, ensure that you allow plenty of time to get to court. Try to ensure that you arrive at court in good time so that you have an opportunity to talk to the CPS lawyer or prosecution barrister before the hearing. Make sure they know who you are and can discuss any outstanding points with you or answer any questions you may have before you enter the witness box. On occasion, the prosecution lawyers may not arrive much in advance of the hearing, or may appear to be too busy to spare the time to talk to you. However, bear in mind that clarifying issues prior to going into the witness box will benefit both you and them, so do approach them and talk through any problems in advance wherever possible.

Failure to attend on time may result in the case being adjourned and having to be rescheduled at public expense. Additionally, witnesses/victims in the case may not be available in the future. You must appreciate the stress and uncertainty that your victims/witnesses will be experiencing - they may be reluctant to attend in the future, causing the case to be discontinued.

Make sure that you are familiar with the case. This is especially important if the offence took place some time ago, or if the case is complex; do not rely on your memory, but re-read your notes made at the time. You should review your statement of evidence, as this is the evidence in chief you will be going through in court. Do not try and memorise the contents.

Ask the CPS prosecution lawyer for a copy of your statement to refresh your memory from whilst waiting to be called into the courtroom.

9.2 Contact with Victims, Witnesses and Defendants

You may have to wait in a public waiting area with the victim, witnesses, defendant, prosecution and defence lawyers before being called into the court to give evidence. If you need to speak to the prosecution lawyer, there will be private rooms for their use that you can go to speak.

You may not be the only person that might be apprehensive about giving evidence. Good practice would be for you to acknowledge the prosecution witnesses at court and, if appropriate, ask if they have any concerns. You could then ensure the witness care service or court officials are aware of any issues raised. You can acknowledge the victim or witness, and point out the facilities available in the building to try to put them at ease but you must not discuss any of the evidence with them (which may be seen as coaching). Training or coaching for witnesses is not permitted. Remind them if necessary that the witness service should be available to assist them. Check your local policies and procedures for the role and responsibilities of the witness support services at court.

The support and guidance of defendants will be facilitated by either their solicitor and/or prosecution barrister before the hearing. Do not speak to the accused or their solicitor about the case unless you have permission of the prosecutor to do so.

9.3 Reporting any Breaches of Court Procedure or Protocol

Breaches of court procedures are very rare. If they take place as the evidence is being heard, they will be dealt with by court officers/officials. Should you witness what you consider to be a breach of protocol (for instance, a defendant talking to a key witness or vice versa prior to the trial or a court official brings something to your attention) then you should report this fact to the CPS solicitor (barrister) immediately. Witness intimidation is a serious offence.

9.4 Entering the Court Room

Wait in the appropriate waiting area for the court in which you will be giving evidence. Many court buildings have numerous court rooms hearing different cases simultaneously. On arrival at the court building, speak to the court staff near the entrance and ask which court room your case is being heard in - it will be listed under the defendant's name. They will

inform you and direct you to the appropriate waiting area. You may be waiting minutes or hours, depending on where your case is on the list to be heard that day and where you are on the list of witnesses for that case. Identify yourself to the court usher responsible for that court room on arrival and they will let you know when you are next on the list to be called into court. Do not enter the court room under any circumstances until your name is called. Make sure you stay within earshot of the court usher, as you cannot know how long each witness appearing before you will spend in the witness box.

Your name will be called out, and on entering the court room you will be shown to the witness box. Remain standing and swear the oath or affirm.

9.5 Introducing Yourself and Giving Evidence

The general rules for giving evidence apply to all witnesses and, following the oath or affirmation, a witness called by the prosecution will give evidence first in response to questions from the prosecutor and then the defence.

As a police officer or PCSO, when you have given the oath or affirmation you should introduce yourself giving your name, rank, number and police station. Once you have the full attention of the court you can start giving your evidence.

In simple cases, you may be required to give your evidence in chief directly, i.e. give a full and accurate chronological description of the events without prompting by the prosecutor. In more complex cases, and invariably at Crown Court, you will give your evidence in response to questions by the prosecutor. A record will be made of what you are saying. Often this is a manual record and you should pace your evidence accordingly.

The role of the police officer is to explain, as clearly and concisely as possible, what they have seen, heard, recorded or done, honestly, impartially and without embellishment, in order to help the jury or magistrate to reach a decision.

If you want to refer to your notes made at the time of the incident such as a PNB/EAB, you should ask the court for permission. You may be questioned about the manner and time of your note-taking and you should include this information in notebook entries. The court and representatives of the prosecution and defence may wish to examine your PNB/EAB entries relating to the case. This is regarded as totally acceptable, as is reference to your PNB/EAB to confirm dates, times, locations etc.

The way in which you use your notes is important. If you are very heavily dependent on your notes and you merely read from them, magistrates, jurors or judges may gain the impression

that you do not remember the case at all which may reduce the value of your evidence. Reading your notes in a wooden monotone makes the material both boring and difficult to understand, and may mean that those listening fail to notice important points in the prosecution case.

A more effective way to use your notes is to refer to them as necessary to refresh your memory, then to look up and tell the story in your own words. Assuming that you have familiarised yourself with the material prior to going into the witness box, you should not have to consult your notes continually, but only on specific issues. In general, notes are best read out only when a precise point has to be answered, such as verbatim quotes, times, vehicle registration marks etc.

Do not be tempted to memorise every detail of your evidence and then deliver it without any reference to your notes. This may give the appearance of a rehearsed, contrived performance in the witness box and may suggest that you are giving an unthinking repetition because you are uncertain of yourself or of your evidence.

9.6 Cross-Examination

Once you have given your evidence, the defence may wish to ask you some questions. This is known as 'cross-examination'. The defence may be testing your evidence to establish any areas of weakness that may be of benefit to the defendant. Some of your evidence may also be favourable to the defendant and the defence may wish to explore or expand on this aspect. You may be questioned on your conduct in the investigation of the case, any evidence that you have given and the way you have given it.

You should listen carefully to the questions, ask for clarification if necessary and give concise answers. Answer one question at a time and direct your answers to the judge or the magistrates.

After the cross-examination, the prosecution may wish to ask you some further questions to clear up any ambiguities or misunderstandings. The 're-examination' can only address issues raised during cross-examination; new evidence cannot be introduced at this stage.

You should remain in the witness box until the judge or magistrate tells you to stand down. You may then remain in the court and listen to the rest of the evidence. You can only be released from the court with the permission of the bench. If this is granted, then you must not speak to witnesses still waiting to give evidence.

9.6.1 Dealing with Cross-Examination

Some officers find the prospect of cross-examination by the defence particularly daunting. In practice, it should not be too much of a problem if you are well-prepared, confident that the investigation will stand up to scrutiny and do not attempt to answer questions beyond your level of knowledge or powers of recall. Cross-examination gives officers the chance to demonstrate their professional skills in public. Indeed, some experienced officers regard responding to the challenge of tough cross-examination as one of the most satisfying elements of the job.

Listen carefully to the questions you are asked and think before you answer. If you do not understand a vague, complex or poorly phrased question, say so and ask politely for clarification. Of course, you should be aware that some defence lawyers will sometimes try to discredit your evidence by pointing out supposed inconsistencies or challenging you to remember difficult or barely relevant details.

Some may even accuse you of lying. This can be extremely upsetting but it is important to remember that this is a standard operating technique, not a personal attack. Even though you may feel that such allegations are reprehensible and unethical, you should appreciate that the lawyer may be able to find no other grounds for attacking you or your colleagues' evidence.

9.6.2 Managing your Emotions

Do not take defence attacks on your integrity personally - only by remaining calm will you be able to deal effectively with such assertions. Do not become emotional, angry or lose your temper, but respond firmly and courteously. Bear in mind that as a general rule, the more rude and outrageous the questioner, the more cool, calm and collected you should be; in an acrimonious exchange it is usually the person who remains reasonable and composed who will gain respect and credibility from those who witness the dialogue.

In police work, it is important to control your emotions and to deploy reason rather than anger when facing assertions of inefficiency or misconduct - the courtroom is no exception to this general rule. Of course it may be difficult to keep calm, but you must remember the defence lawyers are trying to provoke a reaction - do not let them gain the satisfaction of doing so!

9.7 Leaving the Witness Box

Stay in the witness box until you are given permission by the court to leave. It is not your decision as to when you have finished being cross-examined or re-examined by the prosecution. For example, if the case is lengthy, the court may adjourn for lunch before you have finished giving evidence. If this happens the magistrate or judge will explain the rules to you. You cannot speak with any witness that has already given evidence or is waiting to do so, as this may jeopardise the proceedings; the case may be abandoned and the defendant released without further action.

Once you have given your evidence, you may be able to observe the rest of the case from the public benches if you have the time. It is a good learning experience to see how the evidence you have gathered and put together in a case is used in court. For example, it may help you to identify where you could have gathered more detail in statements that would have helped the court to make their decisions.

9.8 Key Points to Remember When Giving Evidence

Be confident: Officers who stare at the floor or mumble can appear evasive. Stand straight and speak clearly and confidently, addressing the judge, magistrate or lawyer who has asked the question. People commonly believe that a truthful person looks you straight in the eye rather than avoiding your gaze, so do not be afraid of direct eye contact. Give your replies in a pleasant, courteous and helpful manner. Remember to address the various court officials correctly.

Be objective: It is only natural to see the court hearing as the culmination of an investigation and an opportunity to get a result. Whilst it is satisfying to see a conviction if you have investigated a case and are personally convinced of the guilt of the defendant, securing a conviction is not your job. If the evidence (including your own) presented to the court results in an acquittal, you must accept it. However convinced you may be of the defendant's guilt, you should present the facts as you know them in a dispassionate and impartial manner. Many prosecution and defence lawyers take the view that obvious bias against a defendant on the part of a police officer is often helpful to the defence, but it is almost invariably unhelpful to the prosecution.

It is not helpful to try to cover up lack of knowledge or errors. Say what you know to be the case and, where appropriate, do not be afraid to admit to being human and fallible.

This may mean that you may have to show that you have a different recollection or perception of events from those of your colleagues, which should not be a major source of concern. It is rare for two or more people's accounts of the same set of events to be identical. Officers who all give exactly the same story can look as if their evidence was – at best – written up jointly after the event or – at worst – part of a conspiracy to eradicate any discrepancies and thereby minimise any cause for doubt. There is a fine line to tread - too many discrepancies and uncertainty about the true course of events will escalate, too few discrepancies and questions will be asked about collusion. Use your judgement, stick to the facts and do not be tempted to reconstruct what you do not know.

Be straightforward: Try to speak clearly and positively. Present your evidence succinctly and in a straightforward way, avoiding the use of jargon and acronyms. Listen to the questions you are asked and try to answer them precisely. Avoid rambling, or giving extraneous information or personal opinions. Do not be monosyllabic, but give the information required as simply as possible. Speak in plain English – do not use long, uncommon words when short, familiar ones will do just as well.

There are ten key points well worth remembering when in the witness box:

1. Listen to the question
2. Make sure you really understand the question - if not, ask for it to be repeated or clarified
3. Think carefully about the answer
4. Answer the question (and only the question)
5. Keep your answer short and to the point - don't rush
6. Never be evasive
7. State the facts plainly
8. Be courteous at all times
9. Admit your mistakes
10. Above all tell the truth.

10. Revision Questions

- What are the three categories of offence?
- What are the aim and objectives of the Criminal Justice System in England and Wales?
- What is the purpose of the police service?
- What are the six types of court?
- How may a defendant be represented within the courts' process?
- Why might a defendant's right to bail be overruled?
- Which roles work within the different types of court?
- What is the role of the witness service?
- What is the purpose of a summons?
- How may a summons be served (in accordance with the Criminal Procedures Rules 2013)?
- What order is evidence heard in a criminal court case?
- What is the difference between opinion and hearsay evidence?
- What types of information could a police officer give as an expert witness in drunkenness?
- What is the difference between an oath and an affirmation?
- What are the ten key points well worth remembering when in the witness box?

11. Key Legislation

Key pieces of legislation applicable to this topic are:

- Oaths Act 1978
- Part 2 of the Code of Practice to the Criminal Procedure and Investigations Act (CPIA) 1996
- Schedule 4A of the Magistrates' Court Act 1980
- Section 1(1) The Perjury Act 1911
- Sections 51 and 51A of the Crime and Disorder Act 1998
- Section 76, 78 and 47(3) Police and Criminal Evidence Act (PACE) 1984
- Sections 114, 116, 121 and 224 Criminal Justice Act 2003.

12. E-learning

In addition to this book the following e-learning is available via the College of Policing Managed Learning Environment (MLE):

- Criminal Justice System.

The MLE is regularly updated with new learning programmes and materials.