

Management of Precognition

Precognoscer's Handbook

(Note: Where the precognition arises out of a major incident, reference should be made to [Chapter 6](#) (Case Preparation and Management) of the Major Incidents Manual.)

Pre-allocation

Prior to the allocation of the case for preparation it must be read by the Solemn Legal Manager or, in accordance with arrangements authorised by the Area Procurator Fiscal, an appropriate experienced member of legal staff.

All witness statements submitted by the police at this stage should be carefully considered by the Solemn Legal Manager. If the quality and accuracy of the statements is inadequate, the police should be asked at this stage to obtain statements of a satisfactory standard in accordance with their responsibilities under the [Serious Crime Protocol](#). Any such request should be made with specific reference to the relevant paragraph of the Protocol.

Identifying the Investigative Need

As well as identifying any statements of an unsatisfactory standard at this stage, the Solemn Legal Manager should also carefully consider the available evidence in order to identify any parts of the case requiring further investigation. An essential part of this process will be a discussion with the Reporting Officer or Senior Investigating Officer, which should take place in every solemn case apart from those likely to proceed at Sheriff & Jury level where there are no civilian witnesses. Wherever possible, this discussion should take place prior to allocation. During the course of the discussion, the RO or SIO should always be asked to:

- Provide confirmation of any potentially vulnerable witnesses in the case;
- Identify any physical or mental impairment on the part of any witnesses in the case;
- Confirm the nature and extent of any hostility or reluctance to give evidence on the part of any witness in the case; and
- Complete any further police work considered necessary at this stage, including addressing any inadequate statements or incomplete information on any of the other issues discussed.

The process of identifying the need for necessary further investigation should continue throughout the life of the case. For example, the Solemn Legal Manager may be provided with further information after allocation by the police, precognoscer or VIA officer which identifies the need for further investigative work to be carried out.

Identifying the Appropriate Investigative Method

Once this information has been provided by the police, the Solemn Legal Manager will be in a position to identify the need for further investigation and the most appropriate means of

carrying this out. Precognition interview can be a vitally important means of obtaining necessary further information, but should not be viewed as the only or presumptive option at this stage.

As an alternative, the Solemn Legal Manager should, in keeping with the terms of the [Serious Crime Protocol](#), always give consideration to whether it is appropriate to instruct the police to take a supplementary statement from a witness.

In serious and complex cases which are allocated to Crown Counsel at an early stage, the Solemn Legal Manager will wish to consult the Advocate Depute on any difficult issues surrounding the identification of the investigative need or the most appropriate investigative method during the life of the case.

Purpose Driven Precognition

When deciding which witnesses should be seen for the purposes of precognition interview, the Solemn Legal Manager must clearly identify the purpose of each interview to be carried out. The interview of individual witnesses should only take place where it has a clear purpose and is likely to add value to the overall preparation of the case. It will not be appropriate simply to see certain categories of witnesses as a matter of course in each case.

In assessing which witnesses should be seen, the clear benefits of seeing the witness must always be weighed against the risk that interview may harm the presentation of the Crown case (for example through allowing a clearly reluctant witness the opportunity to rehearse their position).

Although the assessment of the need to see individual witnesses for the purposes of precognition interview will depend on the available evidence in each individual case, the following general principles should be applied to all cases:

1. There is a general presumption against the interview of civilian and police witnesses, including complainers, where the police statements are satisfactory and no factual gaps, inconsistencies or contradictions are apparent.
2. There is a general presumption against the interview of complainers and victims, who, on the basis of the information provided the police, are obviously hostile and reluctant.

It is important, however, that the nature and extent of any hostility and/or reluctance is addressed in the precognition report. Although it is open to the Solemn Legal Manager to instruct precognition interview to clarify the level of hostility and reluctance, in most cases it will be more appropriate to instruct the police to clarify the position if there is no other obvious investigative reason to instruct precognition.

Hostility and reluctance may be demonstrated by an unwillingness to provide a police statement and/or where complainers make clear through contact with the police, VIA, the Solemn Legal Manager or precognoscer that they wish the prosecution to be discontinued. When considering whether a witness is reluctant or hostile and the most appropriate method of determining this issue, it is important to consider whether the witness is reluctant or hostile due to their attitude to the police or whether they are reluctant or hostile to the prosecution process itself. It will also be necessary to consider whether a witness appears to be genuinely reluctant whether there is evidence or information to suggest that they have been coerced or intimidated by the accused, associates of the accused or others.

4. Particular care requires to be given to the decision on whether to interview any of the following:

- Victims and witnesses who have been identified as potentially vulnerable; and/or
- [Victims of](#) any offences aggravated by [prejudice or hate crime](#).

The principles of purpose driven precognition should be applied to this decision. While there is no presumption in favour of interviewing such witnesses simply because of their identified vulnerability or because of the nature of the offence, Solemn Legal Managers should instruct precognition interview where this is the most appropriate way of obtaining the information (including information as the nature and extent of vulnerability) which is required (as opposed to through additional police contact) and it is clear that precognition will add value to the case.?

5. All Crown expert witnesses who are to be asked to express an opinion should be interviewed, subject to the specific exceptions outlined in the chapter on [Expert Witnesses](#).

The Allocation Note

The Solemn Legal Manager must give appropriate guidance to the precognoscer. The guidance should include advice or instruction on:

(i) Which witnesses should be seen - and the extent of the interview required - in accordance with the principles of purpose driven precognition; and

(ii) Any legal principles that may apply, e.g. Moorov, concert,

Where it is decided in accordance with the principles of purpose driven precognition that any essential witnesses should not be invited to precognition interview, the reasons for this should be outlined in the allocation note.

At the same time the Solemn Legal Manager must set dates for completion of the work to ensure that there is compliance with COPFS targets.

At this point, the Solemn Legal Manager should also check whether, if appropriate, the case has been referred to VIA (See also [VIA - Who receives VIA Services](#)). In all VIA cases, a copy of the allocation note should be provided to the relevant VIA officer at the same time as the precognoscer and should clearly outline any additional information of relevance to VIA (see detailed guidance in the section on 'The Role of VIA in Solemn Case Preparation?' below).

A [checklist to assist the SLM](#) at the allocation stage is attached.

The Role of VIA in Solemn Case Preparation

VIA have an important contribution to make to solemn case preparation and should be fully integrated into the solemn case preparation process. VIA will have a role in all solemn cases with an identifiable victim, meaning that the vast majority of cases being prepared by solemn teams will be referred to VIA. Therefore, a close relationship between VIA and solemn teams is essential.

VIA will have an involvement in the case pre-allocation and it is important that any relevant information obtained about the case at this stage is passed on to the Solemn Legal Manager as this may have a significant bearing on the direction of the case. The Solemn Legal Manager should, in turn, be familiar with the terms of the Vulnerability Report when reading the case at the pre-allocation stage and should be aware of any witnesses for whom VIA will be exploring vulnerability and the applicability of special measures.

The allocation note should always be provided to the VIA officer at the same time as the precognition officer. The Solemn Legal Manager should use the allocation note to provide information to VIA on:

- Any additional witnesses who do not feature in the SPR;
- Any additional information on vulnerability provided during the initial discussion with the Reporting Officer or Senior Investigating Officer;
- Any identification issues that may have a bearing on the range of Special Measures applicable; and
- Any complainers who are not to be invited to precognition interview, so that VIA staff can provide the opportunity of a meeting in person (see below).

In accordance with their remit, VIA will be in contact with all victims and potentially vulnerable witnesses to provide information about the case and also to explore vulnerability. In general, where a solemn case has been referred to VIA, personal contact should be made between VIA and the witness wherever possible. Even where a witness does not respond to correspondence, efforts should be made to make personal and/or telephone contact with the

witness where possible. In particular, where a complainer is not to be invited to precognition interview, VIA staff should always provide the witness with the opportunity of a meeting in person.

For some witnesses, therefore, VIA staff may be the first and only point of contact for COPFS. It is essential, therefore, that throughout the life of a case any information provided by the witness which may be of any relevance to the preparation and presentation of the case is appropriately recorded and provided to the Solemn Legal Manager and precognition officer. Again, this may have a significant bearing on the direction of the case and may identify a further investigatory need for police work to be conducted or precognition interview to take place.

Therefore, VIA colleagues should ensure that the [VIA PDP Information Sheet](#) is compiled in respect of any witnesses who provide information which may be of any relevance to the preparation and presentation of the case. The Information Sheet is a living document and should be continually updated with any relevant information, and contained within the precognition volume.

Where a potentially vulnerable witness is to be seen for the purposes of precognition, it is the responsibility of the precognition officer to ensure that the VIA officer is made aware of the interview arrangements in advance.

On allocation

When you receive your case the first thing you should do is consider the instructions and guidance from the Solemn Legal Manager, including the reporting targets, and the time bar date (See also [VIA - VIA and Precognition](#)). Thereafter you should read the case thoroughly and make yourself familiar with it.

The amount of work which will have been completed by the time of allocation will vary depending on the arrangements within your office. You should check to make sure that you have full statements from all the witnesses listed in the list of witnesses as previously requested of the reporting officer. If any are missing, request that they be submitted forthwith, along with any documentary and labelled productions that have not yet been lodged with our production keeper. You should also consider instructing the Police to provide full statements from other persons not listed by them who appear, at any stage, to be able to give relevant evidence.

Steps should be taken to ensure that all requests for necessary documentary evidence or other items not routinely lodged by the police e.g. medical records, housing records, DWP records, HMRC records, telephone records, fingerprint evidence, expert evidence and transcripts of tape recorded interviews etc. are followed up.

A precognoscer should always ask him or herself "what will I need to prove these charges?" You should check whether any of the following have not been requested but may be required: -

Medical records relating to either an accused or victim (see also section on medical records);

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(See [annex 1](#) to this handbook for a pro forma checklist.)

The originals of any type of documentary production are considered to be the best evidence and the various agencies should be asked to provide these if possible. Copy productions are now admissible in terms of Schedule 8 to the Criminal Procedure (Scotland) Act 1995. Reference should be made to the section on Documentary Productions in this handbook for detailed guidance on authenticated copies and statements in business records.

The items set out in the checklist, are examples of what you may require in order to complete your case. In the chapters which follow you will find guidance as to what particular things you should be looking for in order to prove certain types of cases.

Serious and difficult cases

It is vital that proper attention is given to the identification and prioritisation of serious and difficult cases, especially where the accused represents a danger to the public or to any member, members or section of the public. When directing police investigations you should have regard to the terms of the Serious Crime Protocol ([insert hyperlink](#)). The potential danger of a particular accused may be apparent from the accused's record or the nature of the charge(s) he/she faces. It may also be apparent from information about his or her background, personal history, medical history or any psychiatric or other medical reports prepared for the case in hand.

Areas should ensure that arrangements are in place in every office for a senior legal manager (e.g. SCS or Band G graded legal manager ? not necessarily based in the office where the case is reported in the first instance) to see such potentially serious and difficult

cases before full committal and to be involved in their allocation for case preparation. A discriminating approach should be taken to the allocation of such cases for preparation. Consideration must be given to the need for preparation by a member of legal staff or indeed a senior member of legal staff.

Continuing role of Solemn Legal Manager

It is important that Solemn Legal Managers remain involved throughout the case preparation process in all cases, especially in serious and difficult cases. This will be particularly facilitated by the establishment of specialised solemn units where precognition officers will be in daily contact with legal staff. The Solemn Legal Manager, who will have ultimate responsibility for the quality of the precognition report, and will certify its contents accordingly before its submission to Crown Counsel, should assist in identifying the issues which require to be dealt with during the course of the preparation of the precognition report and be available to give guidance to precognoscers whenever necessary. In all cases the Solemn Legal Manager will have been involved at an early stage in decisions relating to forensic examination, consultation with forensic scientists with regard to any necessary work and consultation with other expert witnesses.

Direction of Further Enquiry

It is the Solemn Legal Manager's duty in all cases to consider whether other lines of enquiry should be explored, whether by the police or the Procurator Fiscal, and whether further expert witnesses should be instructed. This is particularly so in cases where it is obvious at an early stage that the available evidence is limited.

Whilst Crown Counsel may in some cases have a role to play in the identification of further lines of enquiry, the initial and major responsibility falls upon the Solemn Legal Manager. He or she must actively consider how this responsibility is to be discharged in a particular case before seeking any guidance or instruction from Crown Counsel.

[REDACTED]

In serious cases, where the opinion evidence of medical or other experts is particularly significant, interview should be carried out by an experienced member of legal staff or an experienced precognition officer acting under close supervision. At such meetings for the purpose of interview, the precognoscer must have in his or her possession all the productions, including photographs, which may be relevant to the witnesses' evidence.

It is good practice in a High Court case to have a meeting with the forensic scientists as soon as possible. The Solemn Legal Manager or other member of legal staff and the reporting officer, if appropriate, should attend. The purpose of the meeting is to exchange information on the case in order that the scientific work is focused and unnecessary work is avoided. However, under no circumstances should scientists be instructed not to carry out work which may be of assistance to the accused in his defence. Where it may be difficult to arrange a meeting due to, for example, the unavailability of the scientists as a result of their workload at the lab, it is still recommended to conduct initial discussions by telephone.

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Early Disclosure to the Defence

A provisional list of witnesses should be sent to the accused's solicitors as soon as possible. In most cases a list should be sent at an early stage. However, in certain cases there may be good reasons why the provision of a list of witnesses should be partially delayed e.g. in a sensitive case involving a sexual offence the Procurator Fiscal may consider it appropriate that the victim should be interviewed by the Crown first to explain the future procedure in the case and alert the witness to the likelihood that the defence will want to interview him or her (VIA can assist here), or where the witness is likely to prove reluctant and attempt to retract a statement to the police and where the precognoscer wishes to interview the witness before the defence interviews him or her. In such cases the provision of such details should be delayed for as long as is necessary for the interview of the Crown witnesses to take place, but, details of other witnesses should be given, under explanation that a further list will follow.

Where the defence has intimated in writing that they act for the accused, documentary productions, e.g. forensic reports, should be released, in accordance with the best practice

set out in the [Disclosure Manual](#) as soon as practicable, but, in any event within 28 days of CFE, in order to facilitate early preparation on their part.

Homicide Cases

In cases of murder and culpable homicide, the next-of-kin should be given the same degree of consideration as in all sudden death enquiries. VIA should be advised at all stages so that the next of kin can be kept informed of the progress of the enquiry, provided the information given is not inconsistent with the requirements of the investigation. Particular care should be taken to keep VIA up to date so that they can inform next of kin of diets in the case if they are not to be cited as witnesses. (See also [VIA - After Precognition](#).)

Managing Your Workload

Once you have requested the various additional items required you are ready to start preparing your case when time permits. You should always be aware of the reporting target you have been set and the time bar date. If there is likely to be any difficulty in meeting a target you should discuss the matter immediately with your Manager.

If it has not been done already, you should request everything required when the case is allocated to you. Don't put the papers away in a drawer and say to yourself, "I'll deal with what's missing when I'm ready to prepare the case". Depending on your workload, it could be several weeks before you look at the case again, and, on occasions, the various agencies may require to be chased before the information you require is provided. In making such requests to the Police or other agencies you should set a time limit for a response and you should use any standard request forms that are in SOSVI. You should also have a system in place to check that a response has been received (e.g. bring-up reminders on SOSVI or on Outlook to check for compliance with your request). Where suitable arrangements are in place within teams, it may be appropriate to delegate the follow up work to a member of support staff.

You should note that although obtaining additional further information and documentation is important and will, in many cases, be essential in order to form conclusions about the case and report it to Crown Office, it need not necessarily hold up the interview of witnesses. [REDACTED]

[REDACTED]

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