

## FORMAL MEMORANDUM

### INTERVIEWING

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#### Introduction

1. Interviews are conducted to assist the Commission's review, or as part of an inquiry directed by the Court of Appeal, or when considering a matter referred by the Secretary of State in connection with the prerogative of mercy.
2. Although the nature of interviews conducted by the Commission will vary, they are either to gather information, or to establish what evidence a witness is or is not able to give. Interviewees will include police officers, lawyers, forensic scientists, applicants and convicted persons, members of the public and persons who have been victims of crime.
3. In all cases there must be a belief that the interviewee is able to provide information or evidence that is material to the case review. Interviews are conducted in order to obtain the best evidence or information to assist the Commission in the exercise of its function.
4. The Commission should always act in a fair and reasonable way and with due consideration towards all interviewees regardless of race, ethnic group, religion,

gender and sexual orientation. The independent role of the Commission should be maintained.

### **Interviewing Applicants**

5. A decision to meet with an applicant will be made on objective grounds, related to the needs of the review or to advance the objectives of the review. An applicant or his representative may be asked to submit a request in writing if they feel that an interview would benefit the review.

### **Interviews with Witnesses**

6. Where the Commission is provided with a witness statement containing new evidence or information relevant to the review, the witness should normally be interviewed to establish the circumstances under which the statement was taken and to confirm the evidence or information that they can give.
7. Where a referral is being considered by the Commission, based upon the information contained within a statement provided by a witness, s/he may be interviewed by the Commission in order to confirm the evidence.
8. A witness who gave evidence at trial (or at a previous appeal) will not normally be interviewed unless there is reason to believe they are in possession of some new information or evidence, or their credibility has been called into question.

### **Vulnerable Interviewees**

9. Where the Commission feels that it is necessary to interview a child or young person the interview should normally be in the presence of a parent or other appropriate adult<sup>1</sup>. The Commission will also consider whether a police officer or other person with special skills should undertake the interview on the Commission's behalf.
10. Where the Commission considers it necessary to interview a person who has some form of mental impairment, is vulnerable or has a learning difficulty an appropriate adult must be present.
11. Where other vulnerable witnesses, such as those that have been intimidated, or if they have been the victim of a violent, sexual, homophobic or racist crime, are interviewed consideration should be given as to whether they may require support.
12. Interviews with protected/supported<sup>2</sup> witnesses or witnesses given anonymity at trial should be arranged through those responsible for managing them.

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<sup>1</sup> By "appropriate adult" the Commission refers to people described as such in the Codes of Practice to the Police and Criminal Evidence Act 1984.

<sup>2</sup> "Supported" and "protected" witnesses are in reality the same category of witness. Either title may be used by the investigative authority having responsibility for that witness.

13. Witnesses who cannot speak English or whose English is not fluent are also vulnerable. An appropriately qualified independent interpreter will be arranged.

### **Accompanied Interviewees**

14. Where interviewees wish to have their legal adviser present, or to be accompanied by a relative or a friend, this will generally be acceptable, so long as that person is not likely to become a witness in the review, or inhibit the interviewee's ability to be frank in interview.

### **Interviews with Victims**

15. Where the Commission considers that there is a need to conduct an interview with a victim, consideration will be given to making the approach through an appropriate Family Liaison Officer (FLO).
16. Where a victim of a sexual crime is to be interviewed, consideration will be given to the constitution of the Commission's interview team. The preferences of the victim, if any, should be taken into account.

### **Codes of Practice for Victims of Crime**

17. In circumstances where interviews with a witness may result in the victim becoming aware of the Commission's review, consideration will be given to the appropriate course of action in relation to the victim, as required under The Codes of Practice for Victims of Crime.

### **Jurors**

18. There may be occasions where it becomes necessary to interview a juror during a Commission review. Generally this will be as a result of a direction from the Court of Appeal under section 15 Criminal Appeal Act 1995. For further information see Interviewing Jurors.

### **Interviewees who might admit offences**

19. The Police and Criminal Evidence Act 1984 (PACE) does not apply to Commission interviews. It will never be appropriate, therefore, for the Commission to administer a PACE caution.
20. The Commission will consider a section 19 investigation where it appears that an interviewee may have committed an offence and it would be in the public interest to prosecute should there be sufficient evidence of that offence (e.g. perjury by a police officer). For further information see Section 19 Investigations.
21. When conducting an interview or meeting and there arises some possibility that what a witness might say could be self-incriminating the interview will be stopped at any point at which it would be inappropriate to continue.

22. The Commission will also have regard to its policy on Reporting Matters to the Police or Other Agencies.

### **Recording of Interviews**

23. Where the Commission holds any meeting or interview an appropriate written record of the meeting or interview will be made and the interviewee will be given the opportunity to sign this record.
24. Where the interviewee is able to provide evidence which will assist the Commission in its review of a case, a signed witness statement or a signed record of interview will be obtained.

### **Tape-recording**

25. The Commission does not routinely tape-record interviews. A decision may be taken to tape an interview if the interviewee or his/her legal representative requests it; where an interpreter is used; where the interview is likely to be complex; or it is important to maintain the flow of the interview; or to safeguard the integrity of the interview and Commission.
26. Where it is appropriate to use tape recordings in interview the consent of the interviewee to tape-recording will be obtained and appropriate tape recording equipment will be used and procedures followed.

### **Confidentiality**

27. The Commission cannot give any assurance that information given by an interviewee will not be disclosed. The interviewee can be provided with an explanation of the Commission's disclosure policy, and the level of care that the Commission will take with sensitive information will be explained. For further information see the Commission's policy on Disclosure.