

Consolidated Practice Direction (Criminal Proceedings)

General

This Consolidated Practice Direction is issued by the Presiding Judge of the Sovereign Base Areas of Akrotiri and Dhekelia under section 28(1) of the Courts (Constitution and Jurisdiction) Ordinance 2007. It is intended to consolidate and update a number of practice directions and memoranda issued by the SBA Courts since 1983.

This Practice Direction applies to criminal proceedings and has effect in the Resident Judge's Court and the Senior Judges' Court. All previous Practice Directions are revoked.

Language of the Courts

1. All proceedings in the Sovereign Base Areas Court will be conducted in the English language.
2. Advocates are not permitted to address the Court in any language other than English.
3. Where an accused is ignorant of the English language and is undefended, the proceedings at the trial must be translated to and for him. Where the accused has hearing or speech difficulties (or both), the judge must see that proper means are taken to communicate to him the case made against him and to enable him to make his answer to it. Where the accused is represented, only the evidence should be interpreted to him, except when he or his counsel expresses a wish to dispense with the translation, and the judge thinks fit to permit the omission; the judge should not permit it unless he is of opinion that, by reason of what has passed before the trial, the accused substantially understands the evidence to be given and the case to be made against him at the trial.
4. A process of double translation is permissible in those cases where it proves impossible to find an interpreter who is fluent in both English and a language in which the defendant is fluent. However, it is important that both translators who are used in such a situation are wholly impartial and suitably skilled in the interpretation of their particular part of the process and that each is fluent in their common language as well as in either the language used by the defendant or in English.
5. Where a document relied upon is not in the English language, the party relying on it must, at the same time as filing the original, also file a translation into the English language of the document together with a sworn affidavit that the translation is true and accurate. A document produced without a translation will not be taken into account by the Court. This requirement to provide a translation is subject to the discretion of the Judge where it is deemed by the Judge to be expedient to dispense with the need for a translation.

Court Office Opening Hours and Filing of Documents

1. The opening hours for the public for the court offices at Episkopi and Dhekelia are 08:00 - 12:00 from Monday to Friday, and additionally 15:00 to 16:00 on Monday only. Any documents required to be filed with the Court or served on a party by a particular date must be so filed and served within the court opening hours specified in this paragraph.
2. When interim orders are sought, the correct number of copies of each document to be filed and served, together with any required translation, must be produced to the court office in sets, with the phrase "Certified True Copy" at the front of each set of documents.

3. In any case where a party is under a duty to file a document by a particular date pursuant to any legislation or an order of the Court and fails to do so without good reason, the party may face sanctions. These may, subject to the discretion of the Judge, include:
 - (a) refusal to admit documents, and/or
 - (b) a costs order against the defaulting party.

This will apply to all parties including the Crown.

Amended Charge Sheets

Where a Charge Sheet is amended in any way, the prosecution must file with the Court soon as such amendment is made, the amended Charge Sheet. The amended Charge Sheet must bear the word “Amended” in the title and the date of amendment.

Temporary absence of a court staff

1. In the event of the temporary absence of court staff (including a court registrar) at either the court office at Episkopi or at Dhekelia, any party wishing for an action to be performed (which may only be performed by a member of court staff) will have to take the matter to the court where a court registrar or other member of court staff is available.
2. A court registrar or any other member of court staff will not be required to travel to another court office to perform such an action.

Listing of Cases

1. Cases will be listed at 08:30 a.m. on each sitting day. Other than in exceptional circumstances, any application to have a case listed at a different time must be made in open court.
2. Subject to the overall discretion of the Judge, the order in which cases are called on in Court is to be determined by the court registrar.
3. Where a party wishes for a case to be given priority in the daily list, a formal application should normally be made to the Registrar before the Court sitting, giving a valid reason.
4. It is not consistent with the efficient running of the Court to make such applications once the Court is sitting.

Case Management

1. The Court may require a party to provide a certificate of readiness.
2. Where the Court has fixed a date for a hearing, any party who seeks an adjournment of the hearing must:
 - (a) make an application for an adjournment, in writing, to the registrar at least 10 working days before the hearing, and
 - (b) at the same time, send a copy of the application to the other party.

The other party must:

- (a) inform the registrar, in writing, within three days of receiving such application whether or not it opposes it, and
- (b) at the same time send a copy of such response to the party making the application.

3. Where an advocate discovers, subsequent to a case being fixed for hearing, that another case in which he or she is concerned is due to be heard in another court on the same date, then it is the duty of the advocate either to seek to re-arrange the hearing for the other case, or to arrange for another advocate to act in the SBA case.
4. Adjournments of hearings will not usually be permitted other than in exceptional circumstances.
5. Any failure to abide by these Practice Directions on case management may result in the offending party having to pay the costs of any other party resulting from the failure.

Service of Papers

1. In all cases where a party to the proceedings is not legally represented, the service of papers will be made, and will be deemed to be effective, when handed to that person or sent to the address provided by that person to the Court.
2. Where a party to the proceedings is legally represented (nominated legal representative), service of any papers will be deemed to have been effected by:
 - (a) delivering the papers to any person, organisation or business notified to the Court and to the other party by a party's nominated legal representative, or
 - (b) by posting or delivering the papers to an address within the Sovereign Base Areas or the Republic of Cyprus which is notified to the Court and the other party by a party's nominated legal representative.
3. Where a nominated legal representative instructs either counsel or another advocate who is normally resident or who practises outside the jurisdiction of the Sovereign Base Areas or the Republic of Cyprus, the nominated legal representative must still accept service of papers and is responsible for their onward transmission on behalf of his client to any counsel or advocate instructed unless the nominated legal representative applies to come off the record and permission for him to do so has been granted by the Senior Registrar or the Court.
4. If permission is granted, then that person cannot thereafter accept service of papers. The party to the proceedings must either nominate another legal representative who will accept service of documents within the Sovereign Base Areas or the Republic of Cyprus or the party must personally accept responsibility for their reception and any onward transmission to any counsel or other advocate instructed.
5. No party to proceedings in the Court will be entitled to service of more than one set of papers without permission of a Judge.
6. If the person to be served had given an electronic address and has not refused to accept service by electronic means or the person to be served is legally represented in the case and the representative has given an electronic address, then a document may be served by transmitting it by electronic means to that person or representative, as appropriate, at that address. Where a document is served electronically, the person serving it need not provide a paper copy as well.
7. These provisions about service do not apply to the service of summonses, to which section 46 of the Criminal Procedure Ordinance applies.

Coming off the record

1. Where the legal representative of a party applies to come off the record, he must show cause to the Senior Registrar. Permission will be granted only if sufficient cause is shown and, if refused, the legal representative may request that his application be referred to a Judge whose decision will be final.

2. If any such application is made shortly before or in the course of a trial, it must be made to the trial Judge.

Transcripts

1. Transcripts of hearings should not, as a matter of course, be necessary. Parties to a hearing should normally take as full a note of the proceedings as fulfils their own purposes. Recourse to an official transcript should only be necessary in a very limited number of cases.
2. Transcripts of proceedings will not be provided save on the application of a party or other person, who can demonstrate a sufficient interest in the proceedings in question, and sufficient reason for needing a transcript.
3. Application for a transcript must be made, in writing, within 14 days of the conclusion of the proceedings.
4. The application must be made in the first instance to the Resident Judge. If the application is refused, it can be renewed (in writing) either to a Senior Judge who is present in the Sovereign Base Areas or to the Presiding Judge. A decision will be made without oral submissions, and may be communicated by fax, email or telephone to the Senior Registrar who will inform the applicant forthwith.
5. The Court may permit the applicant to have access to all or such part of the transcript, by such means and at such times as may be specified in the permission and on such terms (including terms restraining the publication, dissemination or further disclosure of all or any part of the transcript by the applicant, and the giving of an undertaking to such effect) as the court may direct.
6. If, at the conclusion of the proceedings for which any transcript has been provided the Court is satisfied (upon the balance of probabilities) that the provision of such transcript was not necessary, to the Court may consider whether the party who applied for the transcript should make full or partial contribution towards the cost of its provision, unless prohibited from doing so by legislation.
7. In order to avoid the need for transcripts, a party who can demonstrate an interest in the proceedings may apply to the Senior Registrar for a copy of the tape recording of the relevant part of the proceedings. Again, the Court may permit the applicant to have access to all or such part of the recording, by such means and at such times as may be specified in the permission and on such terms (including terms restraining the publication, dissemination or further disclosure of all or any part of the recording by the applicant, and the giving of an undertaking to such effect) as the court may direct.
8. The cost of preparation of a transcript is the responsibility of the party who requests the same.
9. Transcripts may only be prepared by a transcriber authorised by the Ministry of Justice of England and Wales.

Allocation of criminal cases

1. In all criminal cases, the Resident Judge's Court will take the plea of any accused brought before it.
2. The Senior Registrar will refer the following cases to the Presiding Judge for a decision as to whether the case should be heard by the Resident Judge or a Senior Judge (or Senior Judges) sitting as the Resident Judge's Court:
 - (a) all cases where a not guilty plea is entered and the offence carries a maximum penalty of five or more years imprisonment (other than where the prosecutor decides not to proceed or the matter is not going to be the subject of a trial), except in the following cases:
 - (i) theft to a value of no greater than €750;

- (ii) simple possession of cannabis or cannabis resin no greater than 1 gram;
 - (b) all sexual offences cases;
 - (c) all cases involving the death of another.
3. To assist the Presiding Judge in reaching his decision, a brief synopsis of the case shall be drafted by the prosecution.
 4. In the event of a plea of guilty where the maximum sentence permitted by legislation is five years or greater and the Resident Judge's Court considers that the case may warrant a sentence in excess of five years, the Senior Registrar must seek the directions of the Presiding Judge so that he may consider whether the case should be heard by a Senior Judge (or Senior Judges) sitting as the Resident Judge's Court.

Filing of documents:

Unless the Court directs otherwise:

1. In addition to the original document(s) to be filed, the parties must file sufficient copies of these documents for the Judge(s) hearing the case and the other parties.
2. If any of the documents referred to in paragraph 1 above are in any language apart from English then, these must be filed together with a certified translation. A document produced without a translation will not be taken into account by the Court.
3. Within 24 hours from the filing of any documentation in Court, the party filing it must also file it electronically to the email address of the Senior Registrar and/or the Registrar. Documents must be filed in Word Format where possible. Omission to file the documents electronically within the above prescribed time-limit renders the filing invalid.

Wasted Costs Order

1. In the exercise of its inherent jurisdiction over Officers of the Court the Court may order an advocate personally to pay costs thrown away by reason of a serious breach on the part of the advocate of his duty to the court.
2. No such order may be made unless reasonable notice has been given to the advocate of the matter alleged against him and he is given a reasonable opportunity of being heard in reply.
3. This power should be used only in exceptional circumstances.

Directions' Template

1. In all contested cases, the parties must complete the Directions Template at Annex A at the time that the plea is entered, or at such time as the Judge may order (or further order), and the Judge may give directions in order to ensure compliance with the proposed timetable.
2. A party who cannot comply with the directions must apply in writing to vary the timetable before the expiry of the date for compliance with the direction and must copy such application to any other party. A Judge may permit extension of the time for compliance if good reason is shown.

Vulnerable witnesses - Use of Live Television Link and Video Recorded Evidence:

1. The Sovereign Base Areas courts are fitted with equipment to enable a witness to give evidence by means of a live television link or a video recorded interview.

2. This Practice Direction is intended to serve as a general guide on the administrative arrangements for the use of such equipment in proceedings before a court of the Sovereign Base Areas where there is an application for a Special Measures direction relating to vulnerable or intimidated witnesses:
 - (a) enabling a witness to give evidence by means of a live television link whereby the witness, while absent from the court room, is able to see and hear a person there and to be seen and heard by:
 - i. the Judge or Judges
 - ii. the legal representatives, and
 - iii. any interpreter or other person appointed to assist the witness,
 - (b) where a party intends to rely on a video recorded interviews of a witness; or
 - (c) enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness.
3. This Practice Direction is also applicable where an application is made to adduce video evidence under the Violence in the Family Ordinance 2003.
4. Attached at Annex B are Appendices A to D dealing with the practice in relation to:
 - (a) Court witness supporter in the television link room (Appendix A).
 - (b) Storage, custody and destruction of recordings (Appendix B).
 - (c) Specimen form of receipt of undertaking for visually recorded evidence(Appendix C).
 - (d) Technical guidance (Appendix D).
 - (e) Warning label (Appendix E).

Judicial responsibility for witnesses

5. Judges have a duty to protect the interests of the defendant at trial, where he or she is presumed to be innocent until proven guilty. However they also have a responsibility to ensure that all witnesses, including those who are vulnerable or intimidated, are enabled to give their evidence in such a manner that the quality of evidence given by the witness is not likely to be diminished by reason of fear or distress.

The responsibility of legal representatives

6. Legal representatives must assist the court, at any hearing where the matter arises, to make informed decisions about any Special Measures, or other steps which it may be necessary to take, to assist a particular witness. Both prosecution and defence legal representatives are expected to inform the judge of the special needs of any vulnerable or intimidated witness they intend to call.

Notice

7. An application by a party for a Special Measures direction of the kind referred to in paragraph 2 above must be sent to the court and every other party in the proceedings by the applicant at least 21 days before the trial date. The purpose of such notice is to enable the court to consider, and rule on any objection to, the application, to ensure that the equipment is in good working order and the appropriate persons are available to operate the equipment in the event that the Special Measures direction is made.
8. A party wishing to oppose the application must, within 7 days of the date on which the application was served on him, notify the applicant and the court in writing of his opposition and the reasons for it.

9. Notwithstanding the provisions of paragraphs 4, 5 and 6 an application may be made for a Special Measures direction orally at the trial (with reasons why the application is being made at that stage), or the court may of its own motion raise the issue whether a Special Measures direction should be made if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings and take such steps as it considers necessary to secure the quality of evidence from a witness.

Operation of the equipment

10. The equipment referred to in paragraph 1 above will be operated by court staff, or if such staff is unavailable then by such person or persons as the judge considers to be suitably qualified.

Remote equipment

11. Where a party wishes to adduce witness evidence from a witness who will be situated in a place other than the courtroom where the case is to be heard (“TV link room”), it is for that party to make the arrangements for the attendance of the witness at the remote location. These arrangements should include providing suitably qualified operators for cameras and sound recording equipment at the remote location.
12. In such a case, it is important that as much notice as reasonably practicable is given the court and the other party so that the court may make any direction or directions necessary, including but not limited to directing that SBA court staff liaise with those persons operating the equipment from the remote location and ensuring that the equipment is in good working order. Where possible arrangements are to be agreed between the parties. The court will need to be satisfied that the arrangements at the remote location are satisfactory and consistent with this protocol before allowing testimony.

Witness support

13. The judge having conduct of the case will determine who is to be the Court Witness Supporter (“CWS”), adhering as far as possible the key characteristics of that role set out in paragraph 4 of Appendix A and the needs of the particular witness.

Failure of equipment

14. In the event that video equipment fails, the judge who is hearing the matter will hear representations as to how the hearing should proceed.

Appeals

1. In any case where the permission of the Court to appeal is required, the Senior Registrar or the Registrar shall request the Presiding Judge to select the Judges to sit on the appeal.
2. In the event of the Presiding Judge having sat in the Court that determined the case under appeal, the Senior Registrar or the Registrar shall ask the next most Senior Judge, by appointment of the panel of Senior Judges, who did not determine the case under appeal, to select the judges to try the case under appeal.
3. Where permission to appeal is granted (or permission to appeal is not required), the appellant or his advocate must file and serve skeleton arguments within 10 working days of the grant of permission to appeal or service of the notice of appeal, as appropriate.
4. The respondent or his advocate must file and serve skeleton arguments within 10 working days of receipt of the appellant’s skeleton argument.
5. The skeleton arguments must contain:
 - (a) the time estimate for the hearing including delivery of judgment;

- (b) a list of the issues of both law and fact;
 - (c) a list of authorities to be relied upon together with page references to the relevant passages;
 - (d) copies of the authorities relied upon, translated into English where necessary.
6. Supplementary skeleton arguments must be served by any party, where appropriate, at least five working days before the hearing.

Disqualification from Driving

1. In any case involving disqualification from driving under section 12 of the Drinking and Driving Ordinance 1993, it is for the defence to show, on a balance of probabilities, that there are special reasons why the person convicted should not be disqualified or why he should be disqualified for a term less than the minimum term specified in section 12.
2. The former practice of evidence of special reasons being required to be given under oath should no longer be followed. In future it will be for the Judge concerned to decide, at his discretion, whether or not he wishes to hear evidence on oath or otherwise. In cases where the material relied upon is within the particular knowledge of the person convicted (for example, that drinks were laced), then the Judge concerned is likely to wish to hear such evidence by sworn testimony.
3. Where the prosecutor has concerns about the truth of any submission made by the defence, he is entitled to make such representations as he sees fit, including whether there should be evidence on oath or otherwise by or on behalf of the convicted person, or seek permission to call evidence in rebuttal of any evidence given or submissions made by the defence.
- 4.

Dated this 26th day of June 2015.

The Hon Mr Justice A. R. Collender Q. C.,
Presiding Judge,
HM Court,
Sovereign Base Areas.

Annex A

Criminal Cases – Directions’ Template

Name of Defendant(s):

Case Number:

| Action | Date |
|--|-------------|
| Service of prosecution papers | |
| Request by defence for further material or disclosure | |
| Service by prosecution of additional material and certificate of disclosure | |
| Service by prosecution of expert evidence | |
| Service by defence of expert evidence | |
| Notification by defence of witnesses required and of the issues in the case | |
| Prosecution to serve schedule of facts for agreement | |
| Prosecution to provide translated copies of documents | |
| Defence to provide translated copies of documents | |
| Defence to provide skeleton arguments and translated authorities on legal points to be taken | |
| Prosecution to provide skeleton arguments and translated authorities on legal points to be taken | |
| Further directions’ hearing | |
| Other directions/orders: | |
| Hearing date with time estimate of days | |

Annex B

Appendices A to E to the Practice Direction on Vulnerable Witnesses- Use of Live Television Link and Video Recorded evidence

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APPENDIX A- COURT WITNESS SUPPORTER IN TV LINK ROOM: STANDARDS TO BE OBSERVED

1. Role of the supporter
2. Identity of the supporter
3. The court witness supporter’s conduct
4. Skills required by the supporter for a child or vulnerable or intimidated adult witness

APPENDIX B-STORAGE, CUSTODY AND DESTRUCTION OF RECORDINGS

1. Ownership
2. Registration, storage, management and disposal of recordings
3. After the witness has given evidence which is recorded
4. Storage

5. Copies and Access.
6. Disposal of Recordings
7. Other points

APPENDIX C-SPECIMEN FORM OF RECEIPT OF UNDERTAKING FOR VISUALLY RECORDED EVIDENCE

APPENDIX D-TECHNICAL

1. Preliminaries
2. Vision
3. Acoustics
4. Portable equipment
5. Recorders and tapes

APPENDIX E-WARNING LABEL FOR RECORDINGS

APPENDIX A-COURT WITNESS SUPPORTER IN LIVE TELEVISION LINK ROOM: STANDARDS TO BE OBSERVED

1. Role of the supporter

The role of the court witness supporter is, by their presence, to provide emotional support to the witness and reduce their anxiety and stress when giving evidence, thereby ensuring the witness has the opportunity to give his/her best evidence. The role of any accompanying member of the court staff would include ensuring that the equipment in the room from which the witness will give evidence is working correctly.

2. Identity of the supporter

- (1) If the witness expresses a wish to be supported in the room from which television link evidence is given (the “TV link room”), there can be benefits, both in reducing the stress suffered by the vulnerable witness, and in the quality of the witness’ evidence if this wish is granted. However, in each individual case, it is a matter for the judge to determine who should accompany a witness in a remote TV link room
- (2) An application by the prosecution or defence for the witness to give evidence by means of live television link may be made in advance of the trial for determination at a preliminary hearing.
- (3) The key characteristics of anyone acting in this capacity are as follows:
 - Someone NOT involved in the case, with no knowledge of the evidence, and who has not discussed the evidence with the witness;
 - Someone who has received suitable training in their role and conduct (depending upon the supporter’s identity, consideration needs to be given to their training);
 - Someone with whom the witness will feel comfortable. This may be the person preparing the witness for court, but others may be appropriate.
- (4) Once the decision has been reached on the identity of the supporter in any particular case, the witness should be informed by either the officer in the case or the court witness supporter himself or herself. Additionally, the party against who the witness is to testify, the prosecutor and police should also be informed.

3. The court witness supporter’s conduct

- (1) The court witness supporter will need to act according to the standards of conduct set out below and any particular requirements specified by the Judge. These may relate to communication with the witness, both within and outside the TV link room, ensuring the witness’ comfort, alerting the judge to any problem

arising while the witness is giving evidence. The suggested behaviour to be observed in this role is as follows:

(2) Before the witness gives evidence:

- Accept and follow instructions of the judge with regard to witnesses and procedures to be observed
- Ensure the room is ready for the witness*
- Escort the witness to the waiting room*
- Remain with the witness at all times whilst in non public areas of the court building
- Settle into accommodation in waiting room
- Be present in court to take the oath as required by the judge
- Escort the witness to the remote TV link room

(3) In the TV link room

- Sit the witness in the chair and ensure the microphone is close to them*
- Sit beside the witness and in view of the camera
- As directed by the judge, swear in the witness by enabling him or her to repeat the oath or promise, as appropriate
- Communicate relevant concerns (via an agreed procedure) to the court
- Be present throughout the time the witness is in the room
- Ensure that the witness can clearly see and hear the transmission*
- Ensure that the witness can be clearly seen by the courtroom at all times*
- Remain visible to counsel and defendant during evidence*
- Hand any exhibits to the witness without comment*
- Remain with the witness in the event of failure of the equipment
- Prevent any unauthorised person entering the room
- Ensure there is no attempt to interrupt, intervene or intimidate the witness by any other person present in the TV link room

(4) Contact with the witness:

- Do not speak to the witness about the case, or about his or her evidence, before or during the proceedings, or in any interruption to the proceedings
- Do not explain, interpret, guide or make comments about the evidence in the case
- Do not interrupt or intervene while court proceedings are taking place, unless it is to alert the judge to a problem
- Do not prompt or seek to influence the witness in any way
- Ensure any other person in the room observes these prohibitions
- Maintain a neutral but sympathetic manner, in order to provide comfort and reassurance and help him or her give their evidence clearly with a minimum of stress
- When requested by the Judge, direct the attention of the witness to the questioner

(5) In case of difficulties:

- In the event of a problem, to contact the court by telephone. If the TV link room is not equipped with a telephone, the Court witness supporter should be given a mobile phone and instructed to use it only to alert the judge to the problem and not to speak about the details over the telephone (because of the risk of interception).
- If necessary, speak to the judge via the television link (according to the procedure previously agreed with the court)

(6) After the evidence has been given:

- After completion of the evidence, return with the witness to a safe place

4. Skills required by the supporter for a child or vulnerable or intimidated adult witness

- Impartiality/lack of emotional involvement
- Communication skills (and with parents/carers, professionals and young people) particularly listening skills
- Awareness of the needs of abused children and adults, effects of crime and the effects of the court appearance on child witnesses and vulnerable adults
- Flexibility
- Ability to maintain the confidence of the court
- Ability to liaise and work with other agencies
- Familiarity with basic rules of evidence and awareness of the danger of contaminating or discrediting the evidence of the witness.

Footnote

* Denotes tasks which could be carried out by the court witness supporter, but which would be more appropriate for the member of court staff, if one is present.

APPENDIX B-STORAGE, CUSTODY AND DESTRUCTION OF VIDEO RECORDINGS

A visual recording made in accordance with this Practice Direction can be a highly valuable piece of evidence in any proceedings. It is also a record of intimate and highly personal information and images, which in the interest of the witness, should be held strictly in confidence and for its proper purpose. It is therefore essential that adequate arrangements are made to store the recording safely and securely and that access to it or to any official copies is restricted to those authorised to view the recording.

1. Ownership

- (1) The visual recording will be treated as a document for the purposes of criminal proceedings and the statements in it will not belong to anybody except insofar as they are the property of the person who made them. However, the medium on which they are made is likely to be the property of the court and the fact of ownership of the recording itself conveys certain rights and responsibilities which if properly exercised, will help to ensure that the recording is appropriately safeguarded.
- (2) It is essential that all recordings, whether court exhibits or copies, containing testimony should be kept under optimal conditions.

2. Registration, storage, management and disposal of recordings

Wherever practicable, one named person should be responsible for supervision of the registration, storage and management of recordings of witness testimony. That person should keep a logbook in which the details of all visual evidence are registered and the history and movements of the evidence or testimony recorded. The initial entry in the logbook should record the serial number of the recording, the name of the witness, the name and date of the case and the date on which the statement or testimony is given. Any subsequent copying, transporting or editing of the recording would be recorded against the relevant entry in the logbook.

3. After the witness has given evidence which is recorded

- (1) Once a recording is completed, the tape (if used) should be fully rewound and ejected from the recorder. The 'record protect' device fitted to cassettes should be activated to prevent the accidental erasure of the recording. The recording should be checked for quality.
- (2) The master tape of the visual recording and all copies should be individually labelled and identified in the logbook, so that copies can be distinguished one from another and the master recording readily identified. The ownership of the recording should be treated in the same way as an exhibit for use in court and a signed exhibit label placed over the open side of the box. The seal should not be broken except in the presence of a Court official and for the purposes of copying and access. The ownership of the master recording and any

copies should be clearly indicated with a warning that none must be copied or shown to unauthorised persons. A recommended form of words for the label is shown in Appendix E.

- (3) Where recordings are made for the purpose of adducing evidence under section 10 of the Violence in the Family Ordinance 2003, the rules in section 11 of that Ordinance must be complied with.

4. Storage

- (1) Recordings will inevitably suffer deterioration and loss over time; videotape should not be considered a permanent archiving medium. New technologies, such as digital recording, may solve some of these problems. In the meantime, however, rates of deterioration can be greatly reduced by proper storage arrangements and periodic inspection. Detailed guidance on the storage and management of tapes is set out in Video recorded interviews with child witnesses published by the UK Police Scientific Development Branch (Para's 6.7 to 6.7.3) from which the following guidelines are derived.
- (2) Tapes should be stored on edge, i.e. with the reels vertical, so that the tape is supported by the hub. They should be kept in rigid cases, which are clean and impervious to dust, but they should not be sealed in airtight containers, which may cause condensation damage. When taken out for viewing or copying, tapes or DVDs should not be left in video recorders or DVD players unnecessarily, particularly when switched off. Excessive use of the pause facility can damage or even rupture a tape. Recordings should never be left lying about where unauthorised persons can gain access to them.
- (3) Before long-term storage, tapes should be first wound and then rewound and checked for damage. Recordings should be kept in locked, secure containers. Videotapes should not be subjected to extremes of temperature or humidity and should be stored away from any devices which cause a strong electrical or magnetic field, such as electric motors or loudspeakers.

5. Copies and Access

- (1) Decisions about copying and access to video recordings prepared under this Practice Direction should be taken by the Court. Each decision should be based on the facts of the particular case and with careful regard to the following principles:
 - Copying and access to the recording of an interview should be confined to the absolute minimum consistent with the interests of the witness and justice;
 - No one should have access to any recording unless they are able and willing to safeguard it to the standard set out in this Practice Direction, and
 - No persons accused or implicated in the alleged offences should have custody or unsupervised access to any recording made in connection with the investigation.
- (2) Production of copies should be minimised and carried out in secure manner in accordance with agreed procedures. Particular attention should be paid to the quality of the audio track on any copy. It is recommended that when making copies, the hi-fi track of the original recording be used as the sound source.
- (3) Applications to view or borrow a recording from other individuals or agencies should be scrutinised carefully. Claims to be acting in the interests of the child or justice should be validated and considered on their merits. Consideration should always be given to allowing supervised access in preference to lending a recording; and to a loan in preference to making a further copy.
- (4) Any persons borrowing recordings should have their attention drawn to:
 - the precise ownership of the recording;
 - (in the case of statements) the likelihood that such recordings will form part of a criminal trial, and that;
 - misuse or unauthorised retention of such recordings may constitute contempt of court or other criminal offence.

(5) An entry should be made in the logbook every time a recording is borrowed. The entry should include the name of the borrower and any other persons permitted to view the recording, together with details of the specific authority granted to them. Similar logbooks should also be maintained by any other body authorised to have custody of copies of recordings and such logbooks should be available for periodic inspection by management.

6. Disposal of recordings:

(1) The minimum period for the retention of recorded testimony or statements should be six months from the date of any conviction or after a convicted person has been released from custody, whichever is longer. Material must also be retained for the full duration of any appeal. This ruling applies both to the master copy and to any edited version of the recording approved by the court for use in the trial.

(2) However, for visual or audio taped testimony or witness statements of witnesses, there are good reasons for extending the retention period well beyond the minimum mentioned above. Testimony of witnesses may be used in civil proceedings, where a considerable delay can ensue between the original investigation and any proceedings. In cases of alleged sexual or physical abuse, new allegations against an accused can emerge many years after the original investigation. It will be vital to both prosecution and defence to have access to as complete a record of the original statements and testimony as possible. The need for the preservation of such material needs to be weighed against the understandable concern of many witnesses to close a particular chapter in their lives and to know that all recordings dealing with their allegations have been destroyed.

(3) Duplicate material may be destroyed early. Once any proceedings are completed or after five years have elapsed since the testimony was given, working copies can be disposed of. However, for the reasons outlined above, it is recommended that the master copy of any visual or audio recording should be retained for a period of 20 years. A witness who was a juvenile at the time of the trial may request the destruction of a recording prior to this date, when he or she reaches the age of 18 years.

(4) Where tapes need to be disposed of, this is best done by crushing or by burning. Strict controls must be in place to ensure that all recordings are destroyed and a certificate supplied to this effect by the organisation responsible. Recording media should never be reused: there is a risk of incomplete erasure of the original recording and deterioration in tape quality and reliability.

7. Other points:

(1) Recorded interviews are the primary medium by which vulnerable witnesses will give their evidence at court. However, it can assist the court to have a written transcription of what the witness has said in their interview. The timing of a request for a typewritten transcript is important. Too early a request may result in production of a transcript which is not then required. Too late a request may provide insufficient time for production and the checking of the transcript against the video record. Such checking forms an essential step in the production of the evidence and is best conducted by the person who conducted the interview.

(2) Care should be taken in the packaging, delivery and collection of recordings by court officials and legal representatives to ensure that the security of the recording is safeguarded at all times. Recordings should be sent in tamper-proof packaging, and should be signed for when collected and received to ensure an audit trail while in transit.

(3) Detailed procedures for the management of recorded evidence at court are provided in a UK Practice Direction circulated to all Crown Courts in 1993 by the then Lord Chancellor's Department (now the Ministry of Justice). When a recording is delivered to court, a note should be made on the court file and the tape checked to ensure it is adequately labelled. Recordings should be kept in a secure locked cupboard. A logbook should be kept with any recordings in which the movements of the recording can be logged. A nominated officer is responsible for ensuring that recordings are returned to the lockable cupboard during adjournments and overnight. After the trial, the recording should be returned in its box to the representative of the police who will sign alongside the appropriate entry in the logbook.

VIDEO RECORDED EVIDENCE

Form of undertaking recommended when receiving recorded testimony of witnesses.

Name of person(s) who it is proposed should have access to recording

Position in organisation

Organisation

Address

Telephone

email:

I/We acknowledge receipt of the recording marked "evidence of

I/We undertake that whilst the recording is in my/our possession I/we shall:

- (a) not make or permit any other person to make a copy of the recording;
- (b) not release the recording to [name of the accused];
- (c) not make or permit any disclosure of the recording or its contents to any person except when in my/our opinion it is strictly necessary in the interests of the child and/or the interests of justice;
- (d) ensure that the recording is always kept in a locked, secure container and not left unattended in vehicles or otherwise unprotected
- (e) return the recording to you when I am/we are no longer professionally involved in the matter; and
- (f) will record details of the name of any person allowed access to a recording together with details of the source of the authorisation granted to him or her.

Signed

For and on behalf of

Date

APPENDIX D-TECHNICAL GUIDANCE

1. Preliminaries

- (1) The following guidance sets out the basic recommendations about the equipment that should be used to achieve a standard of recording that is adequate for use in court and likely to meet the requirements of the court rules. Basic hand-held equipment is less likely to reach the required standard and should only be used in exceptional circumstances, for example when the witness has limited mobility and is in hospital or residential care. Guidance for when hand-held equipment has to be used can be found in section 4 below.
- (2) Whatever equipment is chosen, this should be within the competency of the operator and tested in good time before each use. Such testing should involve making a short recording using sound and vision and replaying the recording on another machine to confirm that the quality is adequate. If it is not functioning properly, the equipment should be repaired before use.
- (3) Statements should be given in a specifically equipped interview room. The room should be selected to ensure a reasonably quiet location away from traffic or other sources of noise such as offices, toilets, and banging doors. It should have a carpeted floor and curtains on the windows. Ideally, the room should be rectangular (not square) and no larger than necessary (less than 5m by 4m). When furnishing the room, consideration should be given to simplicity in order to avoid a cluttered image on the screen. The furniture should be set out in advance in relation to camera angles and light source and, once a suitable arrangement has been established, it can be helpful to mark the position of the furniture on the floor for future reference.

- (4) It is very important that the furniture, cushions and in the case of children, any toys or ‘props’ do not provide a source of noise. Furniture filled with polystyrene chips should not be used and care should be taken to avoid intrusive noise from other sources, such as rustling papers.

2. Vision

- (1) For the purposes of this guidance, video-recorded evidence may be given using one or two cameras. However, whilst the use of a single fixed camera need not produce a recording of inferior quality, it will provide less assurance to the courts as to who is present in the room throughout the testimony. This requirement can most easily be satisfied by the use of two cameras:

one focussed on the witness and the other giving a general view of the room. A single camera system is unlikely to be suitable for very young witnesses who are more likely to move around the room. (See section 3.4 below).

- (2) If a two camera system is adopted, a vision mixing unit will also be needed to allow the image from the camera recording the whole room to be inset within a corner of the screen relaying the image from the camera focused on the witness. Mounting the cameras close together may avoid a disorientating effect when images are displayed on the screen. The exact placement of the cameras can best be determined by factors such as the location of doors and windows.
- (3) As far as it is technically feasible, the first camera should aim to clearly show the witness’ head and face. If this camera is fixed, care should be taken that it is not set too high or so low that the view of the witness may be obstructed. A good clear picture of the witness’s face may help the court determine what is being said and to assess the emotional state of the witness. Every reasonable effort should be made to ensure the definition and quality of the image of the witness’ face throughout the testimony. The second camera should provide as full a picture as possible of the whole room. The court may need to be reassured that any part of the room which was not recorded by this camera was unoccupied: the placing of fixed furniture in any ‘blind spot’ could provide that reassurance and should prevent the witness from straying into the ‘blind area’.
- (4) Some younger child witnesses may want to wander around the room. By careful placement of the furniture in a small room it may be found that the child can be encouraged to settle in one spot and not move far from it during the testimony. However, for some children it may be more difficult to remain in the one place.
- (5) This problem might be overcome by the first camera having zoom and pan/tilt facilities but using these features requires considerable skill. The operator has no editorial function with regard to what the witness is saying or doing and care should be taken to ensure for instance that particular parts of the witness’s statement are not highlighted by the use of close up. Close-ups using the first camera, however, can be useful, if the child is drawing a plan or picture or demonstrating with dolls or other props where the information being conveyed would otherwise be obscured. The second camera should maintain the overall view of the room.
- (6) Modern video equipment does not normally require special additional lighting. Natural daylight may be perfectly adequate particularly if enhanced by pale coloured walls and a white ceiling. However, shafts of light, or sudden changes in natural light, can present problems for the automatic iris of the camera and should be avoided if possible. If natural daylight proves insufficient or unsuitable, normal fluorescent light can be used effectively. Ideally, the main sources of light should be either side of the camera. A mixture of natural light, tungsten and fluorescent light should be avoided. This can cause unnatural effects if colour equipment is used.

3. Acoustics

- (1) The evidential value of the video recorded interview will depend very much on the court being able to discern clearly what was said by the witness. Provided that a room of the dimensions and furnishings recommended above (see Preliminaries) has been selected, acoustics should not present a problem. However, the selection and placing of microphones will require very careful attention if a satisfactory recording is to be made.

- (2) The video recorder should preferably be capable of two track sound recording and ideally there should be manual recording level controls for each sound channel so that these can be set at an appropriate level for the facilities and a sound level meter.
- (3) A microphone of the type normally used for recording interviews with suspects, i.e. a boundary layer microphone, will also be suitable for the purpose of this guidance provided that the system is correctly installed. Preferably, two microphones should be used with the aim of locating one close to and within two meters of the conversation to provide the main sound recording. A small pre-amplifier should be used with each microphone to bring the signals up to normal audio line input levels.
- (4) Care is also needed in the placing of remote microphones if they are not to obtrude, distract or otherwise impede the witness' communication. Witnesses may find them inhibiting while some children may be drawn to them as playthings. A further problem is that some witnesses, for example children, may move around the room and far away from the intended location for which the equipment has been optimistically installed. A recommended solution is to mount the second microphone unobtrusively on the wall to provide a second recording. This can be used to back up the main recording where the sound has been made less clear due to the child moving from the intended location. The use of two microphones will also ensure some sound is recorded if one microphone should fail.

4. Portable equipment

- (1) In the event that exceptional circumstances dictate that the recording is made with a portable (camcorder type) system, a good quality recording may still be possible if sufficient care is taken. VHS portables with hi-fi sound are available and 8mm recorders have digital sound recording allowing high quality sound reproduction.
- (2) Most camcorders have built-in microphones and normally these will have to be used, although separate microphones should be used if they are available. Because the built-in microphone will probably need to be located near the witness to get a clear sound recording, the composition of the image that can be obtained may be less than ideal. In these circumstances, some compromise on picture content may be necessary to meet the paramount aim of obtaining a clear recording of the witness' speech.
- (3) Before the testimony begins, a short test recording should be made and replayed to ensure that there are no technical difficulties. Where the recording is made in locations other than a video interview suite, there may be particular problems with poor lighting or extraneous sounds which should be resolved, if possible. The camera should ideally be mounted on a tripod as close to the witness as possible, and the picture composed to include the witness and the interviewer. Movement or adjustment of the camera should be avoided if at all possible, to prevent extra noises being added to the sound track. The use of an external microphone may be beneficial, but great care will be needed in its placement to avoid noise pick-up from contact with the microphone or its support.
- (4) Portable equipment may be less reliable than fixed systems due to damage in transit, careless handling or storage in poor conditions (e.g. exposure to heat and humidity). Where the equipment is brought in from the cold into a warm environment, condensation will form. The equipment and tape should therefore be allowed time to warm up before the tape is loaded. Another cause of difficulty can be lack of familiarity with the controls. Batteries should not be relied on and care must be taken with trailing cables to ensure that they do not present a hazard.

5. Recorders and tapes

- (1) Use of a generator to insert time and date into the picture should avoid the need to demonstrate to the court for each video recording, both when the recording was made and the continuity of the interview. Such devices are therefore strongly recommended. Nevertheless, oral statements of the date and time should be made at the beginning and at the close of the interview to confirm that the device is accurate. In particular, the requirements of section 11 of the Violence in the Family Ordinance 2003 must, where applicable, be complied with.
- (2) The equipment should ideally be capable of making two simultaneous recordings during the interview: the master copy that should be sealed after testimony is given and the working copy. The master copy should

be played only once to check its quality. If two recordings are not made during the testimony, all copies required must be made in a secure and verifiable way with a statement of where and by whom the copy was made, and confirming that no further copies were made.

- (3) Where two recorders are used, the video and audio should not be looped through one recorder to the other in case of failure of one of the recorders.
- (4) Only good quality recording media such as tapes and DVDs from a reputable manufacturer should be used. No more than one interview should be recorded on a new, unused, sealed tape or DVD. The working copy must also be recorded on an unused blank tape or DVD.

APPENDIX E-WARNING LABEL FOR RECORDINGS

This videotape is the property of the Sovereign Base Area [Court] [Police]
It must NOT be copied or shown to unauthorised persons.

(SBA/AG/2/CT/135/4)