



Crown Office and Procurator Fiscal Service

LORD ADVOCATE'S GUIDELINES TO CHIEF CONSTABLES

- 1. INVESTIGATION AND REPORTING OF RACIST CRIME**
- 2. ASSESSMENT OF LANGUAGE NEEDS AND CULTURAL SENSITIVITIES**
- 3. DEATH REPORTS AND ASSOCIATED CRIME REPORTS**

INTRODUCTION

Lord Advocate's Guidelines dated May 2001, dealing with the investigation and reporting of racist crime to Procurators Fiscal, have already been issued. This consolidated guidance contains the earlier guidelines and provides further guidance to the police in relation to issues of reporting of racist crime, assessment of language needs and cultural sensitivities and the information which is required by Procurators Fiscal from the police to ensure that liaison with bereaved relatives takes place in a manner which is sensitive to their religious and cultural needs.

Both the recent review of casework conducted by the Crown Office Race Strategy Group and the HMIC Report "Without Prejudice?" identified a number of areas where improvements can be made in both the reporting by the police of racist crime and in the information provided by the police to the Procurator Fiscal in cases:

- of racist crime;
- where victims, witnesses and/or the accused are from an ethnic minority background and
- where the first or preferred language of the witnesses and/or accused is not English.

These guidelines have been drafted in light of the areas highlighted in the reviews by the Crown and the police and also against the background of the requirements of the Race Relations (Amendment) Act 2000.

INVESTIGATION AND REPORTING OF RACIST CRIME

Recommendation 12 of the Lawrence Inquiry Report by Sir William Macpherson states that: -

“A racist incident is any incident which is perceived to be racist by the victim or any other person.”

The Scottish Executive has accepted this definition for the purposes of the reporting to, and recording of, racist crime by the police. The definition does not alter the onus or the standard of proof in criminal proceedings and it remains the case that the prosecutor requires to be satisfied that there is sufficient evidence to proceed before criminal proceedings in respect of allegedly racist crime may be taken against any individual.

It is of crucial importance however that the prosecutor is advised whether the victim or any other person has perceived an incident to be racist.

The Lord Advocate therefore directs that, in the investigation of crime, police officers must ascertain the perception of the victim and witnesses as to the motive for the crime¹. This must be fully investigated and clearly recorded. If racism is perceived to be a factor by the victim or witnesses this should be investigated and evidence recorded. Police officers should bear in mind that victims of racism may be reluctant to express their fears or beliefs, including their belief that an incident has been motivated by racism, and that victims reporting racism may often be doing so against a background of previously unreported racism. It will be necessary for officers in such cases to make every effort to ascertain the true perception of the victim as to the motive for the crime.

The Procurator Fiscal should always be advised in police reports of the perception of the victim and witnesses as to motive. The Procurator Fiscal should always be advised of the existence, and provided with a copy, of a racist incident monitoring form.

Bail/Custody/Use of Undertakings

It is important to ensure that prosecutors and courts are able to consider both requesting and imposing appropriate special conditions of bail in cases of repeat offending or where it appears that victims and witnesses may be at risk.

¹ Leading questions should not be used. Examples of appropriate questions include: “Why did this happen?” or “What was the motive behind the incident?”

The Lord Advocate therefore directs that in cases of racist crime² accused persons should be reported in custody where that is consistent with the Lord Advocate's Guidelines on Bail which are already in existence. Further, where reporting in custody is not appropriate in terms of the existing guidelines, accused persons should be liberated subject to an undertaking to appear at court in early course unless there is a good reason not to proceed in this way.

In cases of racist crime where an early arrest is not possible the Police should ensure that an early report is submitted to the Procurator Fiscal in order that a consideration may be given to an application for a Warrant to arrest.

In all cases Reporting Officers should provide an indication of the known language and interpreting needs of the accused.

Impact of crime on victims

As with all crime, when reporting racist crime to Procurators Fiscal police officers should include details of the impact of the crime on the victim. This should include information such as: whether the victim is in a state of fear due to the crime; whether, for example the victim is considering moving home due to the nature of the crime and any financial loss sustained by the victim. Details of the impact of the crime on the victim's family and community should also be provided where relevant.

ASSESSMENT OF LANGUAGE NEED AND CULTURAL SENSITIVITIES

Accused persons, Victims and Witnesses

In any case where it appears that the first language of the accused, victim or witnesses may not be English, the accused, victim or witness should be asked to state their "first" or preferred language should they be called to give evidence in court in due course. The accused, victim or witness should also be asked whether correspondence and documentation sent to them will require to be translated. The preference of the accused, victim or witness should be included in the police report. The Reporting Officer should also include an assessment as to whether the accused, victim or witness will require the services of an interpreter in court and to have correspondence and relevant documentation translated by the Procurator Fiscal.

The language and dialect required should be specified in the police report and in the full statement of a witness³. If the Reporting Officer is in doubt as to whether an interpreter is or is not required an interpreter should be provided

² Racist Crime should be interpreted to mean any case reported to Procurators Fiscal in which the police have charged the accused with a statutory racial offence or aggravation (including offences in terms of the Public Order Act 1986, S50A of the Criminal Law Consolidation (Scotland) Act 1995 and where the aggravation under S96 of the Crime and Disorder Act 1998 has been used).

³ If the reporting officer is unable to ascertain the language and/or dialect required this fact should be set out in the police report to allow the Procurator Fiscal and the police to work together to ensure that a genuine assessment of the language needs of the individual takes place prior to attendance at court.

by the police during the investigation and the Procurator Fiscal advised of the view of the Reporting Officer. If, in the view of the Reporting Officer, an interpreter will not be required, this should be specifically stated.

In cases where an interpreter is required for court purposes (either because of the request of the individual concerned or the view of the Reporting Officer) and it is necessary to ensure that religious and cultural needs are respected, the Procurator Fiscal should be advised of both the ethnic and religious background of the individual who requires interpreting services.

If it has been necessary to use an interpreter to interview the accused, victim or witnesses the name and contact details of the interpreter used by the police should be contained in the police report.

Instruction of Interpreters for Criminal Court Assignments

In cases where an accused requires an interpreter and where he or she is kept in custody pending appearance at court or liberated on undertaking the police should arrange for an interpreter, skilled in the language and dialect required, to assist the accused at his or her first court appearance.

The protocol which is contained in Annex 1 to these guidelines sets out agreed arrangements between the Crown Office and Procurator Fiscal Service, ACPO(S) and Scottish Court Service in relation to the instruction of interpreters for criminal court assignments and should be viewed as being part of these guidelines for that purpose⁴.

DEATH REPORTS AND ASSOCIATED CRIME REPORTS

Liaison with Next-of-Kin and Bereaved relatives

The Lord Advocate directs that in death reports and associated crime reports the Procurator Fiscal should be advised of the involvement and identity of the Family Liaison Officer where such an officer has been appointed by the police.

In deaths cases police officers should bear in mind that while communication with the next of kin will be appropriate, the deceased may have an extended family or partner to whom relevant information will also require to be communicated. The death report and any associated crime report should clearly identify both the next-of-kin and any other appropriate individuals to whom communications should be directed. This is to ensure that the family of the deceased is advised of developments in the case. In such cases the death report and associated crime report should also specify whether the next-of-kin or any other individual identified as an appropriate point of contact requires interpreting or translation services. Good practice will require appropriate liaison between Procurators Fiscal and Senior Investigating Officers.

⁴ The protocol will come into force from 1 April 2002 and should be followed with regard to cases calling for the first time in court thereafter.

In cases where it appears that the deceased's family may have specific cultural or religious needs the death report and associated criminal report should clearly specify both their ethnic and religious background to ensure that liaison can take place in a manner which is sensitive to their cultural and religious needs.

CROWN OFFICE
JANUARY 2002

ANNEX 1

INSTRUCTION OF INTERPRETERS FOR CRIMINAL COURT DIETS

PROTOCOL

This protocol sets out agreed arrangements between Crown Office, Scottish Court Service and ACPO(S) for the instruction of interpreters for criminal court diets. It is intended to cover the instruction of community, foreign and sign language interpreters (and other interpreters required for those with sensory impairment).

It is the responsibility of the police to advise the Procurator Fiscal in the police report whether the accused or any proposed prosecution witness requires the services of an interpreter to give evidence in court. The reporting officer should specify the language and dialect required in the police report and should also provide the name, designation and qualifications of any interpreter used at the investigative stage so that the Procurator Fiscal and the court may ensure that, so far as possible, the same interpreter is not used at any court diet.

It is the responsibility of the Procurator Fiscal to engage a suitably qualified and experienced interpreterⁱ, skilled in the language and dialect specified in the police report, to assist prosecution witnesses in giving their evidence.

It is recognised that there is limited time available between arrest and the first appearance of an accused person in custody.

In all cases therefore where accused persons are appearing for the first time from custody the police will, so far as possible, arrange, *on behalf of the court*, for a suitably qualified and experienced interpreter to appear at court to assist the accused. The interpreter engaged for court should not be the same interpreter who assisted the accused during the investigation stage although it is recognised that it may not always be possible to secure the services of a different interpreter who has appropriate qualifications and experience given the limited time available. The fact that the police have engaged an interpreter for the accused's first appearance from custody should be set out in the police report to the Procurator Fiscal. If difficulties arise in securing the services of an interpreter the police should make early contact with the Procurator Fiscal. The fee of the interpreter in such cases will be paid by Scottish Court Service and the court will instruct the interpreter for the accused for any continued diets in the case.

In respect of all other criminal court diets, both pre-trial and trial diets, it is the responsibility of the court to engage a suitably qualified and experienced interpreter, skilled in the language and dialect required to assist the accused.

In respect of all other diets the Procurator Fiscal will advise the Sheriff Clerk (or in High Court cases the Deputy Principal Clerk of Justiciary) in writing of the language needs of the accused, namely the language and dialect as set out in the police report, at least 14 days prior to the scheduled diet.

It is recognised that the role of the interpreter in the criminal court is crucial. The Procurator Fiscal, Scottish Court Service and the police will ensure, so far as possible, that interpreters are engaged through recognised interpreting services and that interpreters engaged have appropriate qualifications and experience.

**CROWN OFFICE
JANUARY 2002**

¹ So far as possible interpreters engaged should have the Diploma in Public Service Interpreting (Scottish Legal Option) and recent experience of both consecutive and simultaneous interpreting in the court context. It is recognised however that there is a shortage of qualified and experienced interpreters in some languages and that particular difficulties may arise in relation to first appearances from custody. On occasion it is recognised that interpreters who do not have the preferred qualifications and experience will require to be engaged. When this is necessary the interpreting service involved should be asked to provide a written assessment setting out why the interpreter is deemed to be suitable for the proposed work.

© Crown Copyright

**Crown Office
25 Chambers Street
EDINBURGH EH1 1LA**