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Author:	DCI Matt Markham – November 2015
Force/Organisation:	NABIS – West Midlands Police
NPCC Coordination Committee Area:	NCOCC
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Contact details:	nabis@west-midlands.pnn.police.uk 0121 626 7114
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This revised strategy have been produced and approved by the NABIS and the National Criminal Use of Firearms Group. It has been approved by NCOCC and VPP portfolio lead. The operational implementation of all guidance and strategy will require operational choices to be made at local level in order to achieve the appropriate police response and this document should be used in conjunction with other existing Authorised Professional Practice (APP) produced by the College of Policing. It will be updated and re-published as necessary.

Any queries relating to this document should be directed to either the author detailed above or the Head of Knowledge and Communications at NABIS 0121 626 7114

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1. Witness issues

1.1. General

The type of offenders and, in some cases, the type of victims involved in gun crime can understandably leave some witnesses hesitant or reluctant to provide the police with their account and / or be identified as a person who has helped the police. On one hand, this may be predicated on a genuine reason to fear for their safety given their proximity to those involved. On the other, it may simply be as a result of an individual or communities' perception of risk.

In any shooting incident witnesses are likely to fall into the category of significant witness, i.e they have or claim to have witnessed, visually or otherwise, an indictable offence, part of such an offence or events closely connected with it (including any incriminating comments made by the suspected offender either before or after the offence) and/or they have a particular relationship to the victim or have a central position in an investigation into an indictable offence.

While significant witnesses are usually defined with reference to indictable-only offences, investigating officers may consider designating witnesses as significant in any other serious case where it might be helpful.

A police officer who has witnessed murder, manslaughter, road death, serious physical assault, sexual assault, kidnap, robberies in which firearms are involved or any criminal attempts or conspiracies in relation to these offences should also be considered a significant witness. Refer to the APP (investigations/working with victims and witnesses for more detail).

The CPS has published guidance about Witness Protection and Anonymity, which states: *"The openness of judicial proceedings is a fundamental principle enshrined in Article 6(1) of the European Convention on Human Rights (the right to a fair trial). This underpins the requirement for a prosecution witness to be identifiable not only to the defendant, but also to the open court. It supports the ability of the defendant to present his case and to test the prosecution case by cross-examination of prosecution witnesses. In some cases it may also encourage other witnesses to come forward.*

Therefore, in the interests of justice, police investigating gun crime, should handle witnesses with sensitivity and care so they feel empowered to provide evidence. It is important to manage witness expectations properly from the outset, with no promises or guarantees of such things as anonymity or protected persons status. Equally, due regard must

immediately be given to their and their family's safety, in particular their right to life prescribed by Article 2 ECHR, irrespective of their intention to be a witness.

Where witnesses have been identified and the investigating officer has grounds to believe that, owing to them having witnessed an incident, irrespective of their desire to provide a statement of evidence, they are at serious risk of harm, immediate safeguarding measures should be undertaken. This includes any other persons who by association or proximity might also be at risk.

In cases where a witness' life is believed to be in danger, the investing officer must consider the ACPO National Threats to Life Guidance 2012. In addition, they should consider early dialogue with their regional protected persons unit within the Regional Organised Crime Unit (ROCU).

SIOs should consider as many methods as possible to draw witnesses out in a way which makes them feel comfortable and safe to provide evidence or intelligence. Such methods might include visible targeting of a whole street, in which a suspected witness lives, for house to house enquiries (giving potential witnesses the opportunity to speak to the police without it looking unusual) or leaflet drops with witness appeals supported by the Crimestoppers telephone number.

SIOs might wish to consider high profile public appeals such as BBC Crimewatch. Such approaches do generate a significant number of calls from the public and can help further an investigation by drawing out witnesses, providing corroboration to hypotheses already being investigated. They can, however, also generate a large amount of well-intentioned but misleading information / intelligence all of which will need to be examined for disclosure purposes. In some cases, the information/intelligence generated can overwhelm the investigation.

Witness appeals, house to house enquires and Crimestoppers are likely to generate intelligence that is graded under the 5x5x5 evaluation system as E4 (source is untested and their reliability cannot be judged). In relation to firearms related criminality, it is likely to have taken great courage for the anonymous informant to get in touch. It is in the interests of building and maintaining community confidence that where possible such intelligence is developed and acted upon promptly. Failure to do so might make such persons less likely to provide intelligence/information on a future occasion. Where information has been acted upon, it is a useful tactic to distribute leaflets in the area letting communities know the outcome and encouraging others to come forward in the future.

1.2. Investigation Anonymity Orders

Encouraging potential witnesses to come forward and provide a statement with a view to giving evidence at trial, is widely acknowledged to be one of the most difficult aspects of successfully prosecuting crimes of murder/manslaughter, particularly where guns or knives have been used.

To address this issue, ACPO Criminal Use of Firearms (CUF) proposed the introduction of Investigation Anonymity Orders (IAO) to be used during the investigation of a gang-related death caused by a gun or knife when potential witnesses are actively being sought. These orders are designed to reassure witnesses who have fears for their safety that their identity will be protected during and after the investigation.

Provisions for the use of IAOs are outlined in Part 3 Chapter 1 of the Coroners and Justice Act 2009 ('the Act') (sections 74-85) which came into force on 6 April 2010. An application for an IAO can be made by the police or CPS to a justice of the peace in a magistrates' court during the course of an investigation into an offence of murder or manslaughter where death has been caused by a firearm or knife ('qualifying criminal investigation'). Applications pre-charge will be made by police officers and post-charge by prosecutors. The making of an IAO does not guarantee that anonymity will apply at trial; separate applications will need to be made for Witness Anonymity Orders (WAO) to prevent the disclosure of the identity of witnesses in or in connection with criminal proceedings. .

An IAO prohibits the disclosure of information that:

a) Identifies a specified person as a person who is, or was, able or willing to assist a specified qualifying criminal investigation; or

b) Might enable the specified person to be identified as such a person.

1.2.1. The Process

The process for applying for an IAO can be broken down into five stages:

- Decision to apply – conditions for making an order;
- Application process;
- Outcome of application;
- Discharge;
- Trial - Application for a WAO.

To apply for an IAO there must be reasonable grounds to believe that the following five conditions are satisfied:

- An investigation is being carried out into a qualifying offence (murder or manslaughter where death has been caused by being shot with a firearm and / or injured with a knife);
- The person likely to have committed the offence was aged at least 11 but under 30 years at the time the offence was committed;
- The person likely to have committed the offence is likely, at the time the offence was committed, to have been a member of a group engaged in criminal activity and the majority of the members are aged at least 11 but under 30 years;
- The witness has reasonable grounds to fear intimidation or harm if identified;
- The witness is able to provide information that would assist the investigation and, is more likely than not to provide this information as a consequence of an order being made. .

The application process should be fully explained to the person for whom an IAO appears to be appropriate. At this initial stage, it should be explained that the investigation team will seek authorisation for an application to be made to a justice of the peace from the relevant designated person (Superintendent rank or above). No guarantees should be made that an order will be granted by a justice of the peace.

The person to be specified in the order should be kept informed of the progress of the application.

There is no requirement to inform the person suspected of the offence or their legal representative of the application.

1.2.2. Authorisation

It is anticipated that the majority of IAOs will be required during the investigation stage. The police will, therefore, be primarily responsible for making an IAO application. However, due to the serious nature of the qualifying offence and the impact upon the trial process, the CPS should be consulted, where practical, before an application is made to a justice of the peace.

An IAO application must be authorised in writing by an officer of the rank of Superintendent or above. The authorising officer must be satisfied that the conditions for making the order are met before authorisation is made.

A record should be made in the SIOs policy book detailing the reasons for supporting or rejecting the application and the person to be specified in the order should be notified of the authorising officer's decision.

1.2.3. Record keeping and document security

To ensure procedural accountability, record keeping should commence immediately and access to any material that refers to the identity of a person subject to an IAO, including statements, risk assessments, records of investigation, transcripts, video and audio recordings and so on, should be restricted to those who need to use the information to protect the person's identity or safety, or for other legitimate investigative purposes.

1.2.4. Application to a justice of the peace

Once authorised by an officer of the rank of Superintendent or above, an application for an IAO should be submitted in writing to a justice of the peace.

The applicant should make a preliminary request to the justice of the peace to withhold the identity of the person who will be specified in the IAO, and their wish to refer to them using either a pseudonym or other reference.

A justice of the peace may determine the application without a hearing. If a decision is made without a hearing, the designated officer in relation to that justice must notify the applicant of the outcome as soon as practicable and the investigation team must then notify the witness.

1.2.5. Appeal process

Where a justice of the peace refuses an application, the applicant may appeal against that refusal to a judge of the Crown Court. To lodge an appeal, the applicant must have indicated in their IAO application, (or if there is a hearing, during the course of that hearing) that the applicant intends to appeal any refusal to make an order. If notice has not been given it is not possible for there to be an appeal. The application template contains the relevant notice regarding appealing the refusal of an IAO.

To protect the specified person's identity between refusal and appeal, the justice of the peace must make an interim order to cover the time period before the application is heard before a judge of the Crown Court.

The appeal process should be explained to the individual named in the application to build confidence and provide reassurance.

1.2.6. Discharge process

Applications to discharge an order must be made to a justice of the peace by the person who applied for the original order, the CPS or the person specified in the order and all of those parties are entitled to be party to an application to discharge an IAO.

An application to discharge may not be made unless there has been a material change of circumstances, for example if the person is no longer in fear of intimidation or harm.

There will always be an oral hearing when considering an application to discharge. A justice of the peace may discharge an order if it appears to the justice to be appropriate to do so but may not do so unless the person specified in the order has had the opportunity to oppose the application, or it is not reasonably practicable to communicate with the person.

1.2.7. Trial - Application for a witness anonymity order

Witnesses that have been granted an IAO will not automatically be granted anonymity at trial. If the matter proceeds to trial then a WAO must be applied for to protect the witness during and after the trial. Applications in respect of prosecution witnesses will be made by the prosecutor.

Sections 86-97 of the 2009 Act make provisions for WAOs , which came into force on 1 January 2010.

Guidance on witness anonymity orders is provided by the CPS at: http://www.cps.gov.uk/publications/directors_guidance/witness_anonymity.html.

It is important to note that if an application for trial anonymity is refused ,the witness cannot be called to give evidence until the IAO has been discharged.

1.2.8. Sanction for contravening an order

The 2009 Act creates an offence of disclosing any information which could lead to the identification of the person specified in an IAO.

1.2.9. Key points

- Witnesses of gun crime are likely to be more hesitant than most in coming forward to provide evidence.
- Reluctance to help the police, on one hand, may be predicated on a genuine reason to fear for their safety given their proximity to those involved. On the other, it may simply be as a result of an individual's or communities' perception of risk.
- In the interests of justice, police investigating gun crime, should handle witnesses with sensitivity and care so they feel empowered to provide evidence.

- It is important to manage witness expectations properly from the outset, with no promises or guarantees of such things as anonymity or protected persons status.
- Where it believed that a witness (or other person) is at risk of harm immediate safeguarding measures should be undertaken. Where this amounts to a threat to life, officers must consider the ACPO National Threats to Life Guidance 2012. In addition, they should consider early dialogue with their regional protected persons unit within the Regional Organised Crime Unit (ROCU).
- House to house enquires offer an opportunity for reluctant witnesses, or those with information, to speak with the police without being seen to have solicited the contact themselves.
- High profile witness appeals, such as BBC Crimewatch are successful in generating intelligence, witnesses, and corroboration of investigative hypothesises. They may also, however, overwhelm an investigation with well-intentioned, but incorrect details, which must all be considered for disclosure purposes.
- Witness appeals, house to house enquires and Crimestoppers are likely to generate E4 (source is untested and their reliability cannot be judged) intelligence. Where possible this should be acted upon and feedback given to communities in order to build confidence.
- Investigation Anonymity Orders allow a witness to use a pseudonym (subject to other conditions being met) during an investigation into murder or manslaughter where death resulted from injury by the use of a knife or being shot with a firearm. This means the witness may provide a statement under a pseudonym in making a statement.
- Investigation Anonymity Orders may only be applied for if certain criteria apply; the investigation is a knife or firearm related murder or homicide, the person likely to have committed the offence is aged 11 to 29 years. The person likely to have committed the offence is a member of a group engaged in criminal activity and the majority of the group are aged 11 to 29 years. The witness has reasonable grounds to fear intimidation or harm if identified. The witness has information that will assist the investigation and, would probably provide this information If an order is made.
- An application for an Investigation Anonymity Order must be approved by an officer of at least Superintendent rank. CPS should also be consulted before the application is made to a justice of the peace.
- Any intention to subsequently appeal a refusal to issue an Investigation Anonymity Order must be specified on the initial application, or at the hearing.

- An Investigation Anonymity Order does not automatically guarantee anonymity at a subsequent trial.
- A Witness Anonymity Order must be applied for to provide witness anonymity during and after a trial.
- It is an offence to disclose information which could lead to the identification of the person specified in an Investigation Anonymity Order.

APP** Link to ***Investigation***

APP** Link to ***Major Investigation and public protection***

APP** Link to ***Critical Incident Management***

APP** Link to ***Engagement and Communication***

APP** Link to **Risk**

APP** Link to ***Prosecution and case management***

APP** Link to ***Intelligence Management***

APP** Link to ***Covert policing***

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