



**JANICE**  
**TULLOCK**  
ASSOCIATES

**Guidance on archives  
and legal proceedings**

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*The review's work, like that of any inquiry into the past, can't proceed without the existence of properly preserved records. Records are essential for society to gain an insight into, and learn from, people's experiences*

*Historical Abuse Systemic Review. Residential Schools and Children's Homes in Scotland  
1950-1995*

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## 1. Introduction

### a) Purpose of guidance

This guidance is designed to support archivists and records managers to manage the use of archives and records in legal proceedings. Over the decades archives and records have been regularly produced in legal proceedings over issues such as land ownership and rights of way. More recently there have been several high-profile occasions where the production of archives and records in inquiries and court proceedings have played a pivotal role such as:

- Hillsborough Disaster Inquiry, subsequent inquests and criminal trials
- Northern Ireland Historical Institutional Abuse Enquiry
- Scottish Child Abuse Enquiry
- Independent Jersey Care Inquiry

This report provides an overview of the issues surrounding the use of archives in court and provides some guidance for record-keepers. It also provides case studies which outline current practice in the sector.

### a) Limitations and boundaries

This report is written on behalf of the North West Region of the Archives and Record Association (ARA) for the United Kingdom and Ireland. ARA members might work in the differing legal systems of Scotland, England and Wales, Northern Ireland, the Republic of Ireland and elsewhere and as a result it is not possible to cover the details of the systems of all judicial jurisdictions within this short guidance document. Instead, we have talked in



general terms and highlighted particular areas where record keepers might need to take into consideration in different jurisdictions.

Nothing in this report is intended to be or should be taken as legal advice.

## **b) Methodology**

This report is the result of a literature review, an online discussion session amongst archivists about the nature of guidance needed and a series of interviews (7) with record keepers, former police officers and others. Several of the interviews have results in case studies (Appendix 2) which outline current practice in a variety of archive services.

We were particularly keen to identify any existing guidance in this area written for individual archive services but have not been able to identify any.

## **2. How and why might archives, archivists and records managers get involved in legal proceedings**

Archives, archivists and records managers get involved in providing evidence to a range of legal proceedings but also in police investigations and procurator fiscal<sup>1</sup> enquiries. During the development of this guidance record-keepers described a range of instances where they had supported others connected with legal proceedings:

- Inquiries into historic child sex abuse – supporting those undertaking the enquiries, legal professions and victims themselves
- Inquiries into major disasters such as the Kings Cross fire, Marchioness and Hillsborough.
- Criminal cases related to child abuse, fraud and murder
- Civil cases relating to rights of way
- The Infected Blood Inquiry
- The Gosport Independent Panel

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<sup>1</sup> The Crown Office and Procurator Fiscal Service (COPFS) is Scotland's prosecution service. They receive reports about crimes from the police and other reporting agencies and then decide what action to take, including whether to prosecute someone. They also look into deaths that need further explanation and investigate allegations of criminal conduct against police officers.



Sometimes the records support the legal proceedings directly such as records of residential children homes in historic child abuse cases. In other instances, the records support the investigation and aren't evidential to the case. e.g. providing building plans to investigators searching a building during a murder case.

### **3. Explaining archives to the legal professions**

Our research has shown that the police and legal professions often do not have an understanding of archival principles and practice. As with many professions they may not have ever visited a public archive or made a request of a private archive service and from the outside they may see an archive service as a storage facility rather than a record-keeping organisation. People making enquiries to archive services may presume that they have kept certain records or even that records were created when they were not. Similarly, the destruction of records in the normal course of collections management can be misunderstood and need to be explained.

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*Having discussions around archival principles and authenticity etc has been helpful for us in terms of explaining things like why the records are kept as PDF(A)s and that edited versions need to be saved separately rather than having the actual record covered in redactions or lawyer's notes*

*Local Government Records Manager*

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Concepts that record- keepers may need to explain:

- Original order
- Provenance
- Collections management procedures
- Importance of authenticity
- Processes for retention and/or disposal
- Managing digital records
- Importance of version control of records



- Basics of handling of archives
- The security that an archive service can provide for records.

A basic overview of archive management for the police and legal professions is provided at Appendix 1.

## 4. Areas to consider

Several areas have been identified as being important for record keepers to consider when developing policy and procedures for managing involvement in legal proceedings. Many issues will be covered by your policy and procedures for other areas of access, but many will not.

### a) Procedures for responding to enquiries and access to records

How an archive service should respond to a legal enquiry about the existence of records or a request for access depends on the context of the archive service, the country in which it is operating and the type of archive service.

All archive services should have procedures in place to respond to legal enquiries and provide access to records which come into operation from the very first contact. Queries can come from a range of sources related to legal proceedings: court; solicitors; activist/lobbying groups; the media. Archive services should ensure that all staff are aware of how to manage these enquiries. For many private archives these enquiries should be passed immediately to your in-house legal and media teams for response. It is always best to get your responses checked by others internally, particularly by your Legal Department/advisors. An example procedure is provided by Elspeth Reid in the case study at Appendix 2.

#### Access to closed records

Many records that police services seek to view are closed under the Data Protection Act/General Data Protection Regulations. However, data controllers are allowed to provide access to these records under the exemptions for crime prevention and tax purposes. The Information Commissioner provides detailed advice on how to respond to such requests<sup>2</sup>

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<sup>2</sup> ICO Using the crime and taxation exemptions <https://ico.org.uk/media/for-organisations/documents/1594/section-29.pdf>





Even if the applicant is involved in crime prevention and tax recovery (or similar exemptions), not all activities will be within the scope of the exemption. You will need to make enquiries about the applicant and their investigation to be sure that you are processing the request correctly. Many police forces have their own form requesting access to closed records, which records the purpose of the exemption. You should ask for the completion of this form and then liaise with your Information Governance team or that of the depositor. Alternatively, you could design your own form.<sup>3</sup>

There are several pieces of legislation under which police may request access to records and each should be verified. For example West Yorkshire Police state<sup>4</sup> that they can request disclosure of information under:

- DPA Schedule 2 Part (2); Schedule 8 Parts (1), (2), (3), (6), (7) & (8); Section 8 (a) & (c)
- The Police Act 1996, MOPI 2005
- Crime and Disorder Act 1998
- Coroners and Justice Act 2009 Part 3

It is recommended that you check all such requests for information with your Information Governance or Legal team before complying.

### **Access to original records and potential withdrawal**

During our research several record-keepers have cited instances where police and legal professionals have requested the withdrawal of original archival material for addition into evidence in legal cases. This is not usually an advisable process for several reasons:

- Police evidence stores are unlikely to be able to provide the same levels of security and environmental controls as a high quality archive store. In the past archives have been returned from loans with damage or have been lost.
- The change of custodian of the record would create a break in the chain of custody of the record which could enable the authenticity of the archive to be challenged in a

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<sup>3</sup> An example of a form requesting disclosure of personal data under this exemption is [file:///C:/Users/janta/Downloads/Section\\_29\\_Procedure.pdf](file:///C:/Users/janta/Downloads/Section_29_Procedure.pdf)

<sup>4</sup> West Yorkshire Police Request of Disclosure of Information <http://www.nyhdif.org.uk/Content/Assets/2019%20meetings/March/WYP%20Request%20for%20Disclosure%20of%20Information%20-%20CS%20Clean%20Copy.docx>





subsequent court case. Once out of the custody of the archive you won't be able to verify they haven't been altered or damaged.

- If the archive is withdrawn from the archive it will prevent other criminal investigations using the same document. As described in appendix 2, on at least one occasion two criminal cases have used the same document as evidence.

Where it is the depositing organisation requesting withdrawal of records it is difficult to prevent this, but the case should still be made for retention.

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*I find that, when consulting with depositors or Information Governance contacts regarding access requests (particularly in restricted records), taking the approach of telling them what our plan for managing access is – usually referencing our Access Policy – rather than asking them how they wish us to approach managing access to their collection, can be a more helpful approach.*

*We can usually pre-empt any concerns they may in compliance with the law and it cuts down on requests to temporarily withdraw material so that they, or their legal department, can deal with the request.*

*Local Authority Records and Archives Manager*

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If you do not have any alternative but to allow the transfer of original documents to the police, various statutory requirements relate to property seized or detained by the police in England and Wales and these are set out in the following subsection of procedure:

- Police and Criminal Evidence Act 1984 and Code of Practice, PACE and Code B.
- The Management of Police Information Guidelines (MOPI)

If records are withdrawn by the police a number of steps are recommended:

- Request to visit the proposed storage to assess suitability and advise.
- Ensure that documents that are withdrawn are recorded in detail and that the receiving organisation signs a receipt for the items.



- On return of the documents record the removal of the documents in the administrative history of the catalogue record.

### **Copyright and law firms**

The University of Strathclyde has a photography self-service copyright declaration form specifically for law firms. They created the form because their standard photography self-service copyright declaration form stated: 'I will not lend, sell or reproduce the copy in any way including electronically.' A law firm the archive was dealing with said they couldn't sign because they might be obliged to pass on copies to the court. After discussion with the law firm and our Legal Compliance Team, we added clause no 2 to the existing form to create this form.

The form asks them to agree that they:

1. Have not been supplied with a copy of the same material by University of Strathclyde staff or by any other librarian or archivist.
2. Will not use the copy except for in connection with litigation issued under claim number (X ) (and subsequent cases with common case management) and will only supply copies of the documents to parties of that litigation and as Ordered by the Court.
3. I will not lend, sell or reproduce the copy in any way including electronically other than stated above.
4. I understand written consent for publication and use for any other purpose must be obtained from the University of Strathclyde Archives and Special Collections.
5. To the best of my knowledge the work has not been published before and the copyright owner has not prohibited copying.
6. I understand that if the declaration is false the University of Strathclyde reserves the right to take action.

### **b) Archival research vs legal research and management procedures**

The role of record keepers in supporting legal proceedings is as a facilitator, not as a researcher. Our research has shown that archivists are sometimes asked to undertake



research which is used as evidence and have even been asked to give opinions on the truth of documents.

Record-keepers should limit their role to identifying relevant records, providing access to finding aids, advising on relevant search terms. They can advise on record keeping process and share their knowledge of the collections, but they aren't investigators or lawyers. The interpretation of evidence should rest with those who have the responsibility to investigate.

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*It is essential for the independence of inquiry teams for them to identify evidence relevant to their remit. The role of the archivist should be restricted to assisting the investigating team in use of the catalogue and other finding aids to enable the team to identify relevant records. It is not for the archive staff to identify or suggest which records the investigating team needs to look at or consider.*

*The National Archives*

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Record-keepers should keep a simple record of how enquiries about records have been undertaken, to enable potential future reviews of the process. This log might include:

- Date and source of enquiry
- List of all the databases and datasets searched
- Record of the search terms and fields used in the search
- Truncated and alternate terms, dates and other faceted searching techniques used
- URL links to online searches

This will allow other researchers to replicate your search should the need arise. It will also enable you to identify and explain any changes i.e. if material is added or withdrawn from the collection.

Finally, record keepers should explain that their response is limited to the existence of records, based upon the format of the enquiry made. You may also wish to add a disclaimer



stating that the enquirer should do further research and suggest other sources of information.

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*Archivists give fabulous Customer Service. For legal queries  
Learn to Say No. Do not answer any query other than  
through the agreed channels. Do not answer anything  
without keeping a log of how you answered it.  
Archivist in a Special Collection*

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### **c) Importance of being able to prove custodial history**

Several of the cases examined in this research have demonstrated the importance of being able to explain and demonstrate the full custodial history of records involved in legal proceedings. In these cases archivists have had to demonstrate when archives entered their custody and where; who transferred records to the custody of the archive service; where they were stored; whether they have ever been returned to the depositor. Archivists have even been asked to demonstrate when the deposit of collections was first discussed.

Record keeping professionals should have all the necessary procedures and paperwork in place to meet all necessary requirements of legal proceedings in demonstrating custodial history. Accessioning records and objects entry forms<sup>5</sup> will provide evidence of the entry of items into the collection and it is therefore important that these procedures are carried out effectively and swiftly on receipt of items. Records of loans/transfers back to the depositor will demonstrate whether items have left the custody of the service, as will conservation reports.

For some high-profile legal proceedings the issue of custodial history may become an issue which the archivist will need to explain and defend in a court. In such a case it will be vital to rely to effective record-keeping.

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<sup>5</sup> Forms used within museum services to support the object entry procedures outlined in the Spectrum guidelines.



## d) Digitisation and Certifying copies

As the Falkirk case study at Appendix 1 shows, allowing records to leave the custody of the archive service can cause problems for other researchers (including other legal cases) as well as risking the security of the records and disturbing the chain of custody. For this reason it is strongly recommended that records do not leave the custody of the archive, but that copies are supplied for legal research and proceedings.

Copying and digitisation of records should therefore be undertaken in-house. Prior to digitisation of records each page should be numbered to ensure that it can be confirmed that the copy is complete. For submission into evidence these copies will need to be certified as authentic via one of two methods:

A 'certified copy' is a copy which somebody (usually an archive service manager) has added their signature to in order to prove that the information it contains is identical to the original record. Such documents are not authentic but might be considered as reliable as the original document and as such can be submitted into evidence. Usually archive services provide such copies with an official stamp and signature on each page of the document.

A 'digitally certified' document is a pdf document containing a coloured banner or watermark which confirms that it has been digitally signed as certified by the archive service. This assures the recipient that the document is authentic, comes from a source that has been independently verified, and has not been tampered with. This should be supplied to researchers as a pdf/A document for digital preservation.

## e) Digital records and legal admissibility

During this research record-keepers have discussed instances where the legal profession has tried to compel the use of original archives into evidence. There is a risk that digital information will not be accepted in a UK court if it has not been managed in accordance with best practice standards like BS 10008:2014 Evidential Weight and Legal Admissibility of Electronic Information. A court needs to be assured that the document is what it purports to be and to ensure this record keepers should ensure that processes to capture, store and manage records maximise the evidential weight of the record. These processes might include:

- Digital preservation policy (particularly migration)
- Audit trail
- Access records
- Retention Schedule



- Security Controls

In addition comprehensive procedures for scanning and image management of digitised records are recommended.

If digital records are rejected by the legal system record keeper may find it useful to quote the following guidance from Wiltshire Police:

“The removal of large volumes of material, much of which may not ultimately be retainable, may have serious implications for the owner. Officers must carefully consider if arranging to photograph the relevant material would be a satisfactory alternative to removing the original property.

The retention of a copy or photograph rather than the original is reasonable in all circumstances except when the evidential weight of the property or evidence contained within it cannot be transferred or captured in a photograph / digital extraction.”<sup>6</sup>

Incidentally the Public Records Act 1958 s.9 makes specific provision that any certified copy of a record the National Archives (TNA) holds (or for electronic records, the record as made available through a TNA website) shall be admissible as evidence without any further or other proof being required. The result of this is that these records are never taken to court as evidence, they provide a certified copy instead.

Additional advice may be found as follows:

Edinburgh University, Digital Records and Legal Admissibility: A Summary

<https://www.ed.ac.uk/files/imports/fileManager/LegalAdmissibilitySummary.rtf>

National Records of Scotland, Starting points for Electronic Records Management

<https://www.nrscotland.gov.uk/record-keeping/electronic-records-management/starting-points-for-electronic-records-management>

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<sup>6</sup> Seizure, Storage , Retention and disposal of special property policy and procedure, Wiltshire Police



## 5. Presenting evidence and being an expert witness

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*Be confident. We are information professionals and we know what we are doing. Make sure that you stay confident when being asked questions on the evidence you have collated.*

*Archivist at Special Collections Archive*

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Occasionally an archivist or records manager may have to give evidence in court or legal proceedings. It could be that the evidence is within the record itself or in the record-keeping processes. Record keepers will have specialist knowledge about a record that will be useful in deciding the facts and will probably be treated similarly to an Expert Witness. An Expert Witness is a specific role that provides an independent view to the court, based on their experience.

Processes and terminology are different in the various countries of the UK and Ireland so the following is a general introduction only.

### a) Submitting records as evidence

Where the required evidence is within the record itself the police service, investigator or court may ask for the record to be physically entered into evidence. In most cases this is not recommended. Archive stores are usually highly secure and the record will usually be more secure remaining in the custody of the archive service. Additionally, when a record is submitted in evidence it is not available to other researchers. In the Falkirk case study appended, two criminal cases used the same record, which would have been impossible if the record had been physical entered into evidence and removed from the archive.

If physically entering a record into evidence is suggested, then archivists and records managers should explain their record keeping processes and the need for continued access. The archive service should offer to provide certified copies of the documents, following their usual procedures for certified copies. Withdrawing records from the custody of the archive service to enable the investigating body to make digital copies is not recommended. Once withdrawn from the custody of the archive office record keepers cannot be responsible for





the management of these records and would potentially be unable to provide a complete custodial history.

## b) Providing a statement

In all the cases explored during the development of this guidance, record keepers were approached by police for written statements during their investigations. These statements usually cover the ownership and management of the records. Police officers will guide you through the process of giving a statement but you should expect to state the facts relating to:

- Your role, qualifications and experience
- How you manage the records in your care e.g. record keeping procedures, access arrangements, security measures etc
- How far these meet professional standards (or otherwise)
- The provenance and administrative history of records

It's natural to feel anxious about giving evidence in court, but there are people that can support and advise you. The Citizens Advice run a Witness Service in criminal courts in England and Wales. These trained volunteers can show you round the court and explain the process.

Remember that your audience will not be aware of professional record-keeping standards and you should use language and detail that will enable all to understand. You should stress the professional ethics and guidelines that you follow.

You will be given a copy of your statement and asked to certify a copy. In England and Wales if your statement is clear and not in dispute you may not be required to give evidence in court, but will be entered into the court as evidence. In Scotland and Northern Ireland reliance on sworn witness statements is not usual. Alternatively, you will be advised by letter that you will be expected to attend court and the expected date. If you have access requirements which will enable you to attend the court you should contact them in advance. If you have any other reasons that mean you cannot attend court you should contact the court as soon as possible. You are expected to go to court even if the date clashes with your holiday plans. If you are too ill to go to court on the day you have been called to give evidence, contact the clerk of the court who asked you to give evidence and explain.

## c) Taking evidence to court

On arrival at the court staff will direct you to a specific waiting area. Its best not to talk to other people about your evidence while waiting. You may be able to look into the courtroom



before your case starts to familiarise yourself, but you will not be able to hear evidence from other witnesses in your case.

When it is your turn to give evidence a court official will show you into the court. You will be expected to take an oath on a holy book or promise to tell the truth. You will be asked questions by the lawyers, based on your evidence. You should be confident in your evidence and provide a concise statement of facts which can be easily understood by others. If you do not know the answer to the question, then state that. After your evidence has been given you can stay in court for the rest of the case if you want.

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*The Public Records Act 1958 acknowledges explicitly the status of the Public Record Office (now part of The National Archives) as a trusted custodian of the government and Court records, to the extent that a certified copy of a public record in the Keeper's custody can be provided to a Court and can substitute definitively for the original in legal evidence. This avoids the need to fillet out individual documents for legal proceedings.*

*The National Archives.*

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## **d) Other sources of advice and information**

There are plenty of other sources of advice and guidance on presenting evidence in court:

Crown Prosecution Service, Going to court

<https://www.cps.gov.uk/going-court>

My gov.scot, Being a witness in court

<https://www.mygov.scot/being-a-witness/giving-evidence/>

Bath and North East Somerset Council, Giving Evidence in court

[https://bathnes.proceduresonline.com/chapters/p\\_giv\\_evidence.html](https://bathnes.proceduresonline.com/chapters/p_giv_evidence.html)



Republic of Ireland Citizens Information – Witness

<https://www.citizensinformation.ie/en/justice/witnesses/>

Northern Ireland Direct Giving Evidence in Court

<https://www.nidirect.gov.uk/articles/giving-evidence-court>



## Appendix 1: Introduction to archives for the police and legal professions

### a) What are archives?

Archives are records created during the everyday business or activities of organisations and individuals, which have been selected for permanent preservation. They are unique and are valuable as evidence as activity. Archives can be in a range of formats including paper, digital, photographs, film and sound.

Archives and records are managed by professionally qualified and experienced archivists and records-managers who seek to provide access to archives, preserve archives, restrict access to archives when closed and ensure the security of records. They are experts in the legislative environment for record-keeping.

### b) Important concepts in archive management

There are several important concepts which direct the work of archive management and you should take these into consideration when using archives:

- Original order and provenance – One characteristic of archives is the provenance (the origin) that they share as a group. They are not a haphazard, unrelated, or created group of paper items: they belong together. When using archives you should retain the original order you find them in.
- Authenticity – People that use archives rely on their authenticity. As a result, record-keepers need to be able to demonstrate a chain of custody. Archives are not usually loaned to other organisations as a result.
- Security – Ensuring authenticity requires high levels of security in storage and access. Archives should usually be stored in high security areas with restricted access. Access is usually provided in secure conditions and under supervision. Archives are always safer in the secure storage of an archive office than elsewhere.
- Access – Archives in public archive services are usually accessible to all, unless closed under legislation. This means that all parties in an investigation or court case can see an archive. Similarly, if archives are withdrawn from an archive office they are not



accessible to other investigations. The presumption should always be to keep archives in the custody of a public archive service.

- Retention and disposal – It isn't possible or advisable to retain every record produced during day-to-day business. Record-keepers make decisions on what to retain and dispose of based on administrative and historical value. They are governed by ethical guidelines which prevent them from destroying material unnecessarily.
- Preservation – Record-Keepers aim to preserve archives for as long as possible. To achieve this they store them in a specific environment and ask that people handle archives in specific ways:
  - Handle with clean hands
  - Use only pencils when using archives, in case of slips
  - Never use non-archival paperclips or post-it notes which cause damage
  - Do not fold records unless they have been previously folded.

Record-keepers are keen to work with the police and legal professions and you can achieve this by taking these concepts into consideration.

## Appendix 2: Case Studies

With thanks to Elspeth Reid, former archivist, Falkirk Archives.

### a) Falkirk Archives – taking archives to court

This case study relates to two criminal court cases for historic child sex abuse. Both cases were connected to the same document, a school register but the cases were separate and dealt with by different Procurator Fiscals. The records were closed under data protection legislation but the police demonstrated their Data Protection exemption and visited to see the document. The archive felt that they didn't have sufficient digital security protocols in place to be able to transfer a digital copy of the relevant entry.

Following the identification of the relevant item, the archivist had to give a statement to the police on the background, custodial history and management of the item. She also had to agree to attend court to give this information as evidence if required. Initially the police wanted to withdraw the school register from the archives and add it to evidence. This evidence would then be stored for up to 2 years. The archivist at Falkirk explained that people had a right to access to the register and this could not be provided if it was in



evidence. At the time, the archivist, as an employee of the Council had the delegated authority to take the register to court. Currently the archives is managed by a Trust which acts as a record controller and processor. It was agreed that the register would remain in the archives and the archivist would bring it to court at the appropriate stage.

A formal court summons was delivered to the Archive service by a police officer, requiring the archivist to attend court along with the school register. This was followed up with a summons to the archivist's home address. The summons required that the person who completed the statement should be the one who attended court. On attending court, the archivist met staff of Victim Support, who were able to show her around the court and explained the process and where she would give evidence. This helped the archivist to feel comfortable and familiar with the space. The archivist took the document to the court and as the prosecution and defence agreed to accept this evidence without it being produced in court, the archivist did not have to appear. A copy of the entry was kept by the court. The register, its background and management wasn't disputed by either the prosecution or defence.

As a result of this experience the Archivist, Elspeth Reid suggested the following procedures should be followed at Falkirk when dealing with police enquiries and court cases:

## **Supplementary guidance on archives as evidence for prosecutions**

The following is guidance written by Elspeth Reid for Archives staff which may provide useful to others:

On rare occasions we may be asked to supply archives documents as evidence in a prosecution. It is the role of the police to identify the evidence they require and obtain a witness statement from a member of staff about the document(s). The member of staff who provides the statement may then be required to appear as a witness in court.

### **Dealing with the initial investigation**

1. Phone call from police officer. Tell the police officer whether we have the document required or not. Do not provide any information about any data protected contents over the phone. Advise the police officer that they must come in person and provide a data protection exemption certificate.
2. Visit from police officer. Ask for a data protection exemption certificate and get them to complete production forms for each item they request. If possible use the Study to allow them to go through the documents – stay with them as they do this.



3. The police officer will want to take the relevant document with them. This should be refused on the following grounds: (1) the document will not be accessible to other people while in the custody of the police/procurator fiscal (potentially up to 2 years before the case is concluded); and (2) the storage conditions are not environmentally monitored so there are preservation issues. [The first reason is the main reason – we actually had two concurrent cases which required access to the same document as well as a couple of subject access requests during the period that these cases were in progress]
4. Make two photocopies of the relevant pages that they request. Give them one copy and keep the second copy.
5. Get the entry form for each of the documents they want so that you can provide information for the statement.
6. Provide a statement. The police officer will write this with you. They will ask for your name and address (use the work address only), what your job title is and how long you have held the post, what the document is and how long the archives has had custody of the document (refer to the entry form) and who had custody of it prior to the archives. They will then state that you are willing to bring the document to court. Ask them to state that another member of staff will be able to do this if you are unavailable. They will then ask you to sign and date this
7. Make a photocopy of the witness statement.
8. Ask the police officer any questions you have – they will be able to give you an indication of the likely maximum time period but that does depend on the procurator fiscal and the courts.
9. Create a file (red folder) to hold the production slips, the photocopy of the document and the statement and put it in the archivist's locked drawer. Write it up on the enquiries database – do not put the names of the victims. Put in the description "police investigation for procurator fiscal" and add the document reference and a note that the paper file is held in the locked drawer.

### **Providing the document for court**

1. You will get a written summons to the High Court or the Sheriff Court providing the time and date of when the trial will start and when you are required to be there.
2. If you are going to be on holiday at that time, contact them immediately and ask if another member of staff can substitute for you. This should be acceptable.
3. You may get a phone call telling you that the hearing has been postponed. If the hearing is postponed, you will not get this in writing. This is scary because the





- written summons has all sorts of penalties shown on it, so ensure you record the name and job title of the person who tells you that the hearing has been postponed.
4. Check in advance the location of the court and plan your journey so that you arrive in time.
  5. Complete a production slip for the relevant document, checking the photocopy of the relevant page so that you know exactly what you have to produce in court. Make sure the relevant document is packaged appropriately for your journey and keep it with you at all times. If you need to take it home the night before, keep it secure in your house and do not leave it in a car overnight. Take the file with the copy of the witness statement and the copy of the document with you.
  6. Go prepared for a long wait. If you have been called for the first day of the trial, you will have to wait while the jury is chosen and sworn in and preliminaries are completed. You are not permitted to go into the court itself until you are called.
  7. If you can find a volunteer from Victim Support, ask them to show you an empty court so that you have some advance information about what it looks like and what you will be asked.
  8. As a prosecution witness you should have access to the prosecution witness waiting room. You will see other witnesses in this room, possibly including the victims of the alleged crime that you are providing documents for. Remain professional and try not to get involved in conversations.
  9. There is a high probability that you will not have to appear in court as the defence and prosecution should agree that they both accept the evidence that is in the document. If this happens, you will be advised by one of the court officials and you will then be free to go back to work.
  10. If you are called into court, answer the questions factually and do not offer opinions. If the prosecution think that you may be called into court, they will go over any questions in advance.
  11. You should claim travel expenses before leaving the court. Your time there is considered work time and you therefore will not need to claim any daily rate expenses.

### **Return to work**

1. Write up your experience for the benefit of others
2. Return the document
3. Retain the file for a further 3 years in case of a mistrial or appeal.



## b) Glasgow Archives – Scottish Child Abuse Inquiry (SCAI)

With thanks to Dr Irene O’Brien, Glasgow City Archives

### Background

SCAI’s Terms of Reference (“ToR”) require it to “investigate the nature and extent of abuse of children in care in Scotland” during the period from within living memory to 17 December 2014 and to create a national public record and commentary on abuse of children in care in Scotland during that period. It is investigating a range of abuse, the impact of that abuse and to consider whether the abuse arose from any failures in duty or systemic failures. It should also make recommendations for the protection of children in care now and in the future.

The first stage in the process of inquiry is detailed investigations, research and analysis by SCAI staff and others. This stage involves the issuing of notices under Section 21 of the Inquiries Act 2005 to local authorities and others, requesting documentation and other information which feed into the inquiry. The information published at the time of writing, includes descriptions of some of the records found under this analysis.

This stage was followed up with the public hearings, involving the taking of oral evidence from individuals and the presentation of case studies. Case studies are being published and focus on the nature and extent of abuse at a specific range of childcare institutions and any systems, policies etc applied.

### The role of Glasgow City Archives

Glasgow City Archives holds a very large number of archives from childcare institutions in the former Strathclyde local government area. As a result, the lead counsel for the Inquiry made an early visit to the archive service to understand what he might find within the archives. As the work of the inquiry grew, Glasgow City Council set up a historic child abuse group,

#### *The Inquiries Act*

Section 21 of the Inquiries Act covers the powers of the chairman of the Inquiry to compel the production of evidence. It allows the chairman to require a person to:

- Give evidence
- Produce any documents in their custody or control
- Produce any items in their custody or control

Section 21 also explains the consequence of non-compliance and how you could claim that compliance would not be reasonable.



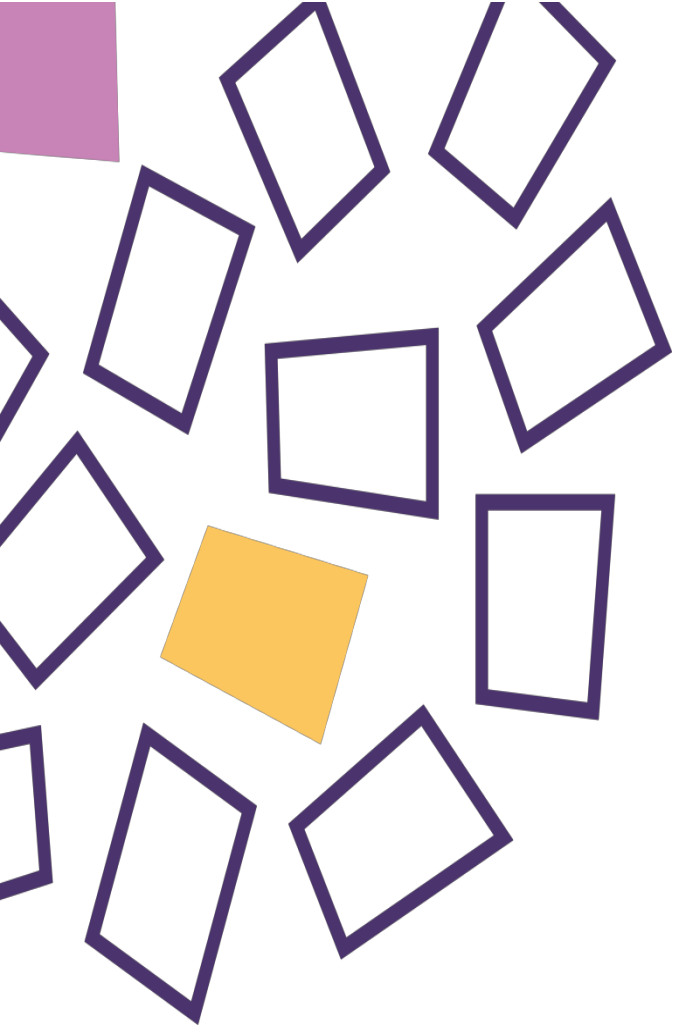
comprised of social workers and the archivists to manage the flow of information. Subsequently, the inquiry issued a questionnaire to the Council about the history of institutions and the archives it holds. The archive service developed a series of indexes and databases about the records it held. Archivists researched the administrative history of each of the institution and shared this with the inquiry. This work grew to include information on children sent to other parts of Scotland and overseas and eventually to individual case files.

As the inquiry moved on requests were made to supply copies of the files, but the archive service does not have the resources to make the copies, so the files are sent to the inquiry who make the copies and return them to the archive. The Inquiry also placed 2 historians at the archive service to look at the evidence relating to the management of the systems of childcare. This was welcome support, but this also created additional work for the archive service. The by-product of all this work have been more detailed collections information.

Further enquiries have been made of the archive service relating to the migration of children within the care system. In this case the Inquiry issued a very detailed questionnaire to the archive service. This level of detail caused the archive service some problems, as it would have meant them undertaking detailed historical research, rather than just supplying information on holdings.

### **c) Sheffield Archives - Hillsborough Archive (publish when possible)**





**JANICE TULLOCK**

ARCHIVE & HERITAGE  
CONSULTANT

**07912 115 045**  
**0151 222 9909**

[janice@janicetulloch.co.uk](mailto:janice@janicetulloch.co.uk)  
[janicetulloch.co.uk](http://janicetulloch.co.uk)

36 Hightor Road, Liverpool L25 6DL

CRN: 09557972