

Preserving Evidence - Misconduct by the Police

[The key role of the Police Station Representative] by Sajid Malik.

The Actions representative will inevitably greatly rely on the Police Station representative having contemporaneous the evidence, the more credibility it will give to the client's claims. The other reason is that by the time a referral of a client is made to the Actions representative or an appointment is agreed, it may be too late and the case may become weak.

From the moment you take on a client's instructions 28 days is the key time limit. The Police will wipe out CCTV at the police station usually after 28 days. The CCTV may be of the cell or the custody suite. If the Actions representative finds the evidence does not exist the prospects of success of a civil claim will weaken and may not attract funding.

CCTV may have been 'wiped' or 'lost'. A request to preserve CCTV evidence should be made on the custody record and followed up in writing to the Chief Constable of the police station on the police station file. This ought to be done by the police station representative.

CCTV requests are not the only way to preserve evidence. Another effective way is for the police representative to ask their client of any police misconduct when taking initial instructions. The client may simply not realise that they could make a complaint. The representative should make a note of the complaint briefly in their hand written notes and ask the client to sign it. Then the representative should ask the custody officer to clarify the names and collar numbers of the officers involved, and to record the complaint in the custody record.

Another effective method is for the Police Station Representative to take a brief written and signed statement by the client about the misconduct and ask the interviewing officer to read it in the interview, even if the client is giving a 'no comment' interview on the substantive allegations about the alleged offence.

Common Assault has a statutory limitation of 6 months. The police station representative should insist on their client being photographed by Scenes of Crime Officers, have any DNA taken with the consent of their client, insist on the attendance of the FME and ask the Senior Inspector to consider making a referral to the Crown Prosecution Service (CPS) for a charging decision.

If there is an allegation by the client of an assault by a police officer, the police officer ought to be referred to the CPS. Generally, the Police are known for not referring such allegations to CPS or asking an independent police force to conduct an investigation. When a complaint is made to the Professional Standards Department (PSD) the PSD are supposed to interview the officer concerned under caution and if the investigation upholds the complaint, the PSD is expected to refer the matter

to the CPS for a charging decision. If the Officer is subsequently convicted, this will encourage the Police to settle the civil claim out of court.

However, in assault cases the Actions representative will have experienced 'delays' on the part of the PSD, resulting in investigations more than 6 months and no referral can then be made for common assault. This has happened frequently on previous cases and lately happened on the Terrence Else case where the Actions Department has now requested the CPS to consider a more serious charge than common assault such as a s18 OR s20 OAP 1861. If this is not successful, then the Actions department will consider referring the matter to the Attorney General's office for a prosecutorial decision.

The Police Station representative should also consider making representations to the appropriate officer about any allegations of misconduct and ask the client to reiterate them at the reviews of detention.

If there was a failure by the police to call an appropriate adult at the inception of the detention where the client is a vulnerable client (a juvenile or mentally disordered), the Custody officer should be asked to record this in the custody record and the officer should be made aware. Recently the in the VV case, the IPCC following an appeal by the Actions Department concluded that a strip search of a mentally disordered person was unlawful as it was without adequate grounds and further, there was inadequate record keeping on the custody record. Also in the David Rapp case, the son of Derek Martin (Charlie Slater of East Enders) a Freedom of Information request by the client revealed emails between police officers including the two arresting officers that they had knowledge that the client was vulnerable and yet failed to ensure that an appropriate adult was present at the police station. This was despite Derek Martin (Charlie Slater) having made them aware of his son's vulnerability at the time of the arrest. There are also other stark revelations that the Custody Officer was aware from other documents about the vulnerability of the client, and that the client was searched and more than usual checks were made on the client whilst in detention. The Actions Department has appealed to the IPCC after this new evidence has come to light to overturn their previous decision not to uphold the complaint on this point because of lack of evidence.