



Ministry  
of Justice



# Achieving Best Evidence in Criminal Proceedings:

## Guidance on Interviewing Victims and Witnesses, and Guidance on Using Special Measures

January 2022



# Acknowledgments

Achieving Best Evidence was originally drafted and published in January 2002 on behalf of the Home Office by a writing team led by Professor Graham Davies from the University of Leicester and Professor Ray Bull from the University of Portsmouth (now the University of Derby). The guidance was subsequently revised and published in 2007 and 2011 with contributions from a wide-ranging group of academics and practitioners, particularly Professor Rebecca Milne from the University of Portsmouth.

## 2022 Revision

The writing team consisted of Dr Kevin Smith (National Crime Agency) and Professor Gary Shaw (University of Sunderland).

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The writing team are also grateful for the comments made by the Ministry of Justice following the publication of "The End-to-End Rape Review Report on Findings and Actions" in June 2021. Particular thanks are extended to Connie Briggs, Harmanjit Sidhu, Laura Pankhurst, Phil Campbell, Stephanie Maddison and Tom Henwood.

The writing team would like to acknowledge the many individuals and organizations that contributed their time and expertise to the revision of this guidance, particularly Ruth Marchant (Registered Intermediary and Triangle Services), Laura Hoyano (Wadham College, Oxford University) and Laura Hynes (Greater Manchester Police).

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## Foreword

The Government is committed to delivering the highest quality of support for victims and witnesses when they engage in the criminal justice system. The system must be fair and accessible to vulnerable and intimidated witnesses and victims, including children, to enable justice to be delivered.



Victims and witnesses are at the heart of our criminal justice system, they enable criminal justice agencies to secure convictions and make our communities safer. However, doing so can be a traumatic and intimidating experience. We have made significant progress in ensuring that the correct support and provision, tailored to individual needs, is made available to those that need it. The measures available in court include video-recorded statements, witness intermediaries and evidence via live link. As well as these important measures being available, it is vital that practitioners feel confident and able to deliver these provisions effectively, in a way that supports the efficient delivery of justice.

The purpose of this guidance is to assist those responsible for conducting video-recorded interviews with vulnerable, intimidated and significant witnesses, as well as those tasked with preparing and supporting witnesses during the criminal justice process. The guidance incorporates best practice from local areas and the expertise of practitioners, charities and voluntary groups who support victims and witnesses at a local level.

The last edition of this guidance was published in 2011. Since then, key changes have been introduced and therefore this guidance now refers to:

- The statutory Code of Practice for Victims (Ministry of Justice, 2020) which came into force on the 1st of April 2020 and allows victims to choose the gender of their interviewer.
- The Modern Slavery Act 2015 and the Domestic Abuse Act 2021, in order to ensure the changes introduced with this legislation are being taken into consideration throughout the process.
- The rollout of video-recorded cross-examination for vulnerable and intimidated victims and witnesses.
- Safeguarding guidance for children in England & Wales to ensure that children are being referred to the right services when required



- The revised Witness Charter (Ministry of Justice 2013) which sets out the standards of service that all witnesses can expect to receive at every stage in the criminal justice process.
- The Advocate’s Gateway ‘toolkits’, a helpful tool when preparing for trial in cases involving a witness or a defendant with communication needs.
- The importance of a trauma informed approach following more research and understanding gained in this area in recent years.
- Witness support that should be in place or arranged immediately after an interview.
- Complex cases and how to include an effective and trauma-informed survivor/victim/witness engagement strategy.

From a personal perspective, I recall the first iteration of this guidance being released and how invaluable it was in modernising the criminal justice system’s handling of these important cases. I am pleased that this guidance has been updated to reflect our greater understanding of how to achieve best evidence in order to secure justice.

**Victoria Atkins MP**  
Minister of State for Justice

# 1. Introduction

## Status

- 1.1 This document describes good practice in interviewing victims and witnesses, and in preparing them to give their best evidence in court. While it is advisory and does not constitute a legally enforceable code of conduct, practitioners should bear in mind that significant departures from the good practice advocated in it may have to be justified in the courts.
- 1.2 The guidance is generic; it cannot cater for every possible set of circumstances that might arise. Each witness is unique and the way in which they are interviewed and subsequently prepared for their court appearance must be tailored to their needs and circumstances.

## Scope

- 1.3 This document considers planning and preparing for interviews with witnesses, decisions about whether to conduct an interview, and decisions about whether the interview should be video-recorded or whether it would be more appropriate for a written statement to be prepared following the interview. It covers the interviewing of witnesses for the purpose of making a video-recorded statement and for the purpose of preparing a written statement. It also covers the preparation of witnesses for court and their subsequent court appearance. It applies to both prosecution and defence witnesses and is intended for all persons involved in relevant investigations, including the police, national law enforcement bodies such as the National Crime Agency, adults and children's social care workers, and members of the legal profession. This document does not cover the interviewing of suspected offenders by the police, but it does contain some guidance on the giving of evidence by defendants in court (see [paragraph 5.56](#)).
- 1.4 The guidance in this document specifically covers the following:
  - Vulnerable and intimidated witnesses (eligible for special measures); and
  - Significant witnesses (not eligible for special measures)

## **Vulnerable and Intimidated Witnesses (eligible for Special Measures)**

### **Vulnerable Witnesses**

- 1.5 [Section 16 of the Youth Justice and Criminal Evidence Act 1999](#) (as amended by the Coroners and Justice Act 2009) (hereafter referred to as "the 1999 Act") makes certain witnesses eligible for special measures on the grounds of age or incapacity. Section 16(1)(a) makes all child witnesses (other than the accused) who are under 18 years of age at the time of the hearing, appearing as defence or prosecution witnesses in criminal proceedings, automatically eligible for special measures to assist them to give their evidence in court.
- 1.6 In addition to witnesses who are under the age of 18 at the time of the hearing, three other groups of witnesses are identified as eligible for special measures by section 16(2) of the 1999 Act. These are:
- Witnesses who have a mental disorder as defined by the Mental Health Act 1983 (as amended by the Mental Health Act 2007);
  - Witnesses significantly impaired in relation to intelligence and social functioning (witnesses who have a learning disability); and
  - Witnesses who have a physical disability.
- 1.7 Witnesses in this category are only eligible if the quality of the evidence that is to be given by them is likely to be diminished by reason of the disorder or disability (section 16[1][b] of the 1999 Act). Wherever a reference is made in the legislation to the 'quality of a witness's evidence' for the purposes of defining a witness as vulnerable or intimidated, and in terms of access to special measures, it refers to the "completeness, coherence and accuracy" of the evidence and "coherence" refers to a witness's ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively (section 16[5] of the 1999 Act).
- 1.8 The court must take account of the views of the witness in determining whether a witness may be regarded as vulnerable by virtue of a disorder or disability (section 16[4] of the 1999 Act).
- 1.9 The legislation also provides that if a witness gave video-recorded evidence-in-chief on the grounds that they were under 18 years of age but subsequently turned 18, the video recording is still admissible as evidence in chief (section 21[9] of the 1999 Act).
- 1.10 Early identification of the individual abilities as well as disabilities of each vulnerable adult witness is important to guide subsequent planning. An exclusive emphasis upon disability ignores the strengths and positive abilities that a vulnerable

individual possesses. Vulnerable witnesses may have had social experiences that could have implications for the investigation and any subsequent court proceedings. For example, if the vulnerable adult has spent a long time in an institutional environment, they may have learned to be compliant or acquiescent. Such characteristics are not, however, universal and can be ameliorated through appropriate preparation and the use of special measures.

## Intimidated Witnesses

- 1.11 [Section 17 of the 1999 Act](#) makes witnesses whose quality of evidence is likely to be diminished by reason of fear or distress over testifying eligible for special measures (excluding the accused). In determining whether a witness falls into this category, the court should take account of:
- The nature and alleged circumstances of the offence;
  - The age of the witness;
  - Where relevant
  - the social and cultural background and ethnic origins of the witness
  - the domestic and employment circumstances of the witness
  - any religious beliefs or political opinions of the witness;
  - Any behaviour towards the witness by the accused, members of the accused person's family or associates, or any other person who is likely to be either an accused person or a witness in the proceedings.
- 1.12 Complainants in cases of sexual offences and sections 1 or 2 of the [Modern Slavery Act 2015](#) fall into this category by virtue of section 17(4) of the 1999 Act. Witnesses to specified gun and knife offences fall into this category by virtue of section 17(5) of the Act (as inserted by the Coroners and Justice Act 2009). [Vulnerable and Intimidated Witnesses: A Police Service Guide](#) (Ministry of Justice 2011) suggests victims of and witnesses to racially motivated crime, crime motivated by reasons relating to religion, homophobic crime, gang related violence and repeat victimisation, and those who are elderly and frail could also fall into this category.
- 1.13 Research suggests that the intimidation of witnesses is likely to arise in sexual offences, assaults, in offences where the victim knew the offender and in crimes that involve repeated victimisation, such as stalking and racial harassment. In addition, some witnesses to other crimes may be suffering from fear and distress and may require safeguarding and support to give their best evidence. While the legislation distinguishes between vulnerable and intimidated witnesses, in respect of the criteria for their eligibility for special measures it is important to recognise that:

- Some witnesses may be vulnerable as well as intimidated (e.g., an elderly victim of vandalism who has dementia on an inner-city estate);
- Others may be vulnerable but not subject to intimidation (e.g., a child who witnesses a robbery in the street); and
- Others may not be vulnerable but may be subject to possible intimidation (e.g., a young woman who fears violence from her current or former partner or someone who has been the subject of a racial attack).

While these examples provide illustrations of the application of the legislation, it is important not to attempt to categorise witnesses too rigidly.

## Special Measures

- 1.14 The 1999 Act introduced a range of special measures that can be used to facilitate the gathering and giving of evidence by vulnerable and intimidated witnesses.
- 1.15 The special measures that are available to vulnerable and intimidated witnesses with the agreement of the court are:
- Screening the witness from the accused so that the witness does not have to see them ([section 23](#));
  - Giving evidence by way of live TV link ([section 24](#));
  - Giving evidence in private ([section 25](#)) (limited to sexual offences, offences contrary to sections 1 and 2 of the [Modern Slavery Act 2015](#) and offences involving intimidation. Victims of offences involving domestic abuse will also be eligible when [section 62 of the Domestic Abuse Act 2021](#) comes into force);
  - The removal of wigs and gowns ([section 26](#));
  - The use of video recorded interviews as evidence-in-chief ([section 27](#));
  - Video-recorded cross-examination ([section 28](#)) (available in all crown courts in England and Wales for section 16 Youth Justice and Criminal Evidence Act “vulnerable” witnesses. Also commenced for adult complainants to sexual offences and offences contrary to section 1 or section 2, [Modern Slavery Act, 2015](#) in the crown courts at Durham, Harrow, Isleworth, Kingston-upon-Thames, Leeds, Liverpool and Wood Green, with commencement to all crown courts planned).
- 1.16 Vulnerable witnesses are also eligible for the following special measures:
- Communication through intermediaries ([section 29](#)); and
  - The use of special communication aids ([section 30](#)).
- 1.17 With the exception of video-recorded cross-examination, the special measures listed above have now all been fully implemented. Video-recorded cross-examination is being incrementally implemented as outlined in paragraph 1.15, above.

- 1.18 Even though some witnesses may now be eligible for these measures it is important to remember that different witnesses have different needs. It is a matter of judgment based on a consideration of these needs, as well as the circumstances of the alleged offence, as to which special measures may be appropriate in any given case.
- 1.19 A combination of special measures may be used where appropriate. For example, if a witness who is to give evidence by live link wishes, screens can be used to shield the live link screen from the defendant and the public, as would occur if screens were being used for a witness giving evidence in the court room (see Criminal Practice Directions available on the [Courts and Tribunals Judiciary website](#)).
- 1.20 Access to special measures is very much a matter for the court that is contingent on:
- Whether the witness falls within the scope of sections 16 or 17 of the 1999 Act; and
  - Whether special measures would improve the quality (meaning the completeness, coherence and accuracy) of the evidence of an eligible witness in the circumstances of the case (which take account of the witness's views and the possibility that the measures might tend to inhibit the evidence being tested effectively).
- 1.21 Sections [21](#) and [22A](#) of the 1999 Act establish rebuttable presumptions to the effect that video-recorded evidence-in-chief is most likely to maximise the quality of the evidence from child witnesses and from adult complainants to sexual offences. The effect of this is that children and adult complainants to sexual offences should be given an opportunity to participate in a video-recorded interview, though they can, of course, opt for a written statement instead, if they wish to do so.
- 1.22 For any other vulnerable or intimidated witness the court needs to be satisfied that video-recorded evidence-in-chief, in common with any other special measure, is likely to maximise the quality of their evidence. In some cases, other special measures such as live evidence-in-chief from behind a screen or via a television link may be of more assistance to the witness.
- 1.23 The court must also take account of the interests of justice when considering an application for video-recorded evidence-in-chief ([section 27\[2\]](#)).
- 1.24 In addition to special measures, the Act also contains the following provisions intended to enable vulnerable or intimidated witnesses to give their best evidence:
- Mandatory protection of witness from cross-examination by the accused in person. This prohibits the unrepresented defendant accused of certain offences (including sexual offences) from cross-examining complainants, witnesses to the commission of those offences, child witnesses or vulnerable/intimidated adult

witnesses who had their evidence in chief video-recorded in those cases (sections [34](#) and [35](#));

- Discretionary protection of witness from cross-examination by the accused in person. In other types of offence, the court has a discretion to prohibit an unrepresented defendant from cross examining the victim in person (section [36](#));
- Restrictions on evidence and questions about complainant's sexual behaviour. The 1999 Act restricts the circumstances in which the defence can bring evidence about the sexual behaviour of a complainant in cases of rape and other sexual offences (section [41](#));
- Reporting restrictions. The Act provides for restrictions on the reporting by the media of information likely to lead to the identification of certain adult witnesses in criminal proceedings (section [46](#)). The [Children and Young Persons Act 1933](#), sections 39 and 49 apply in relation to child witnesses.

1.25 Vulnerable or intimidated witnesses can also receive social support at all stages of the investigation. Three distinct roles for witness support have been identified and it is unlikely to be appropriate for the same person to be involved in all three. They are:

- Support during the Interview provided by someone independent of the police, who is not a party to the case being investigated and who sits in on the original investigative interview; they may be a friend or relative, but not necessarily so;
- Support after the interview, while the case is waiting to go to trial. [Appendix K](#) sets out National Standards for Young Witness Preparation; and
- Support in court from a person who may be known to the witness, but who is not a party to the proceedings, has no detailed knowledge of the case and may have assisted in preparing the witness for their court appearance. A direction for evidence to be given via live link under section 24 of the 1999 Act (as amended by the Coroners and Justice Act 2009) may also provide for a supporter. [Appendix L](#) sets out National Standards for the Court Witness Supporter in the Live Link Room.

1.26 Research indicates that pre-trial and court support are best undertaken by the same person. Any supporter used during the interview, however, should not be used to prepare the witness for court or support them while they are giving evidence because they are already aware of the witness's account.

## **Significant Witnesses (not eligible for Special Measures)**

1.27 Significant witnesses, sometimes referred to as 'key' witnesses, are those who:

- 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

- Have a particular relationship to the victim or have a central position in an investigation into an indictable offence.

1.28 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.

1.29 Consideration should always be given to video-recording interviews with significant witnesses because it is likely to:

- Increase the amount and quality of information gained from the witness; and
- Increase the amount of information reported by the witness being recorded.

1.30 Video-recorded interviews with significant witnesses can also have the additional benefits of:

- Ensuring that the interview process is transparent; and
- Increasing the opportunities for monitoring and for the development of interview skills.

1.31 There is no statutory provision for video-recordings of interviews with significant witnesses to be played as evidence-in-chief, although interviewers should be aware that the defence might ask the court for permission to play some or all of the recording in support of their case. The options for adducing the testimony on the recording as evidence in chief are set out in [paragraphs 2.155 to 2.157](#) of this document.

## Training

1.32 The police are committed to embedding a consistent approach to dealing with victims across all crime types, recognising that each victim is an individual with differing needs and vulnerabilities. The College of Policing have reviewed the National Police Curriculum and developed a central set of learning resources to support learning in relation to victims and witnesses. Police forces should use this resource as the basis for any relevant locally based training. Such training should include working with Registered Intermediaries.

1.33 Police forces should develop specialist training to interview witnesses with particular needs. For example, [DA Matters](#) is an innovative programme that has been developed by the College of Policing with SafeLives. The focus is on uncovering evidence of coercive and controlling behaviour, responding effectively, and most importantly making victims feel safe. It includes training for front line responders and a workshop for senior managers.



- 1.34 It is important to note that training alone is unlikely to deliver effective performance in the workplace. Agencies regularly involved in conducting interviews with witnesses should have the necessary policies, procedures, and management structures in place to quality assure interviews on an ongoing basis.

## **Supervision**

- 1.35 Supervisors should monitor and review interviews and the associated plans appropriately.
- 1.36 Supervisors should, ideally, be involved in the development of interview plans for complex investigations.
- 1.37 It is important that supervisors review video recorded interviews prior to any trial where they are intended to be played as evidence-in-chief (as recommended by Her Majesty’s Crown Prosecution Service Inspectorate and Her Majesty’s Inspectorate of Constabularies in their December 2014 report “[Achieving Best Evidence in Child Sexual Abuse Cases: A Joint Inspection](#)”).

## 2. Planning and Preparation

The importance of planning and preparing for an interview cannot be overstated. In essence, the process consists of considering what is known about the witness, the incident, any alleged offence(s) and any wider investigative material that may be important to the investigation (e.g., the background to a relationship) and then using that information to set the objectives for the interview and to determine its structure, the techniques to be used, the method of recording and the people who should be present. A full written record should be maintained of the decisions made during the planning process and of the information and rationale underpinning them.

This chapter describes this process with reference to what should, ideally, be established about child, vulnerable and intimidated adult and significant witnesses, the incident, any alleged offence(s) and any wider investigative material that may be important to the investigation before considering how to use the information to plan the interview.

### The Importance of Planning

- 2.1 The purpose of an investigative interview is to ascertain the witness's account of the alleged event(s) and any other information that would assist the investigation. A well-conducted interview will only occur if appropriate planning has taken place.
- 2.2 The importance of planning cannot be overstated. The success of an interview and, thus, an investigation could hinge on it. Even if the circumstances necessitate an early interview, an appropriate planning session that takes account of all the information available about the witness at the time and identifies the key issues and objectives is required. Time spent anticipating and covering issues early in the criminal investigation will be rewarded with an improved interview. It is important that, as far as possible, the case is thoroughly reviewed before an interview is embarked upon to ensure that all issues are covered and key questions asked, since the opportunity to do this will be lost in most cases once the interview(s) have been concluded.
- 2.3 In some cases it may be useful to obtain the assistance of an interview adviser to develop a witness interview strategy (see [National Investigate interviewing Strategy](#), Association of Chief Police Officers 2009). The appointment of an interview adviser is particularly important in complex investigations (e.g., large-scale enquiries into child sexual exploitation or wide-spread abuse in an institutional setting for vulnerable adults).

## **Initial Contact with Victims and Witnesses**

- 2.4 The need to consider a video-recorded interview will not always be immediately apparent, either to the first police officer or member of police staff who has contact with the witness or to other professionals involved prior to the police being informed. Even where it is apparent, the need to take immediate action in terms of securing medical attention and making initial decisions about the criminal investigation plan might be such that some initial questioning is necessary.
- 2.5 Any initial questioning should be intended to elicit a brief account of what is alleged to have taken place; a more detailed account should not be pursued at this stage but should be left until the formal interview takes place. Such a brief account should include where and when the alleged incident took place and who was involved or otherwise present. This is because this information is likely to influence decisions made in respect of the following aspects of the criminal investigation plan:
- Forensic and medical examination of the victim;
  - Scene of crime examination;
  - Interviewing of other witnesses;
  - Arrest of alleged offender(s); and
  - Witness support.
- 2.6 Some initial questioning may also be needed to obtain enough information to formulate a risk assessment for the witness and to take whatever action is necessary to remove or reduce any risks that are identified.
- 2.7 In these circumstances, any early discussions with the witness should, as far as possible, adhere to the following basic principles:
- a) Listen to the witness;
  - b) Do not stop a witness who is freely recalling significant events;
  - c) Where it is necessary to ask questions, they should, as far as possible in the circumstances, be open-ended or specific-closed rather than forced-choice, leading or multiple; Any questions should be focused on investigative issues, as identified in paragraphs 2.5 and 2.6 above, evidential detail regarding the allegation should be avoided as far as possible.
  - d) Ask no more questions than are necessary in the circumstances to take immediate action;
  - e) Make a comprehensive note of the discussion, taking care to record the timing, setting and people present as well as what was said by the witness and anybody else present (particularly the actual questions asked of the witness);
  - f) Make a note of the demeanour of the witness and anything else that might be relevant to any subsequent formal interview or the wider investigation;
  - g) Fully record any comments made by the witness or events that might be relevant to the legal process up to the time of the interview.

Where an initial account is necessary, it should not be delayed solely on the basis that the witness has consumed alcohol. Research, notably Crossland, Kneller and Wilcock, 2016<sup>1</sup> and 2020<sup>2</sup>, has established that blood alcohol levels up to a level broadly equivalent to the UK drink drive limit do not reduce accuracy.

## **Competence, Compellability and Availability for Cross Examination: The Legal Position**

- 2.8 [Section 53](#) of the 1999 Act provides that in principle ‘all persons are (whatever their age) competent to give evidence’. Investigators should not make early judgements on whether a witness is likely to be accepted as ‘competent’ by the courts and should act on the general presumption that they will be regarded as competent.
- 2.9 Section 53 qualifies this principle by saying that persons are only regarded as incompetent as witnesses where the court finds that they are unable to understand questions put to them, or unable to give answers to them which can be understood; but section 54(3) makes it clear that in considering this question a court must bear in mind the various special measures that are available under sections 23 to 30 of the 1999 Act.
- 2.10 In the case of children, the Court of Appeal judgment in *R v B* [2010] EWCA Crim 4 makes it clear that “...although the chronological age of the child will inevitably help to inform the judicial decision about competency, in the end the decision is a decision about the individual child and his or her competence to give evidence in the particular trial.”
- 2.11 The Court of Appeal judgment in *R v B* [2010] EWCA Crim 4 also makes it clear that “these statutory provisions are not limited to the evidence of children. They apply to individuals of unsound mind. They apply to the infirm. The question in each case is whether the individual witness, or, as in this case, the individual child, is competent to give evidence in the particular trial. The question is entirely witness or child specific. There are no presumptions or preconceptions. The witness need not understand the special importance that the truth should be told in court, and the witness need not understand every single question or give a readily understood answer to every question. Many competent adult witnesses would fail such a

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<sup>1</sup> Crossland, D., Kneller, W. and Wilcock, R. (2016) “Intoxicated Witnesses: Testing the Validity of the Alcohol Myopia Theory”, *Applied Cognitive Psychology*, vol. 30, Issue2, pp 270-281, <https://doi.org/10.1002/acp.3209> (accessed 14 December 2021)

<sup>2</sup> Crossland, D., Kneller, W. & Wilcock, R. (2020) “Improving Intoxicated Witness Recall with the Enhanced Cognitive Interview. *Psychopharmacology* 237, 2213–2230, <https://doi.org/10.1007/s00213-020-05531-x> (accessed 14 December 2020)

competency test. Dealing with it broadly and fairly, provided the witness can understand the questions put to him and can also provide understandable answers, he or she is competent”.

- 2.12 Where a video-recorded interview is to be played in court as evidence-in-chief, there is no need for the witness to be sworn. Section 31(2) and (3) of the 1999 Act expressly provides that such a video-recorded statement, if admitted by the court as the evidence of the witness, shall have the same legal status as that witness’s direct oral testimony in court, even where, if giving direct oral testimony in court, the witness would have been required to take an oath.
- 2.13 Where a witness is competent to give evidence, they are usually also compellable. This means that they can be legally required to attend trial. In general, however, the fact that a witness is compellable does not mean that they can be legally required to give any kind of preliminary statement to the police, including the sort of statement that is made under this guidance.
- 2.14 It does not necessarily follow that because a witness is competent and compellable, the CPS will insist on making them attend court to give evidence if they are unwilling to do so. The prosecution is not legally required to call every piece of evidence available, and in some cases may proceed without a particular witness’s evidence if they believe they can secure a conviction without it. In cases where they believe the evidence of a particular witness is essential, the Code for Crown Prosecutors leaves it open to the CPS to drop the case if they think that it would be particularly damaging to the witness to proceed. In deciding whether to include a particular witness’s evidence, and whether to proceed with the case at all, the CPS will always take account of the wishes of the witness (although they will not necessarily defer to them). Reports to the CPS should always include clear information about the wishes of the witness, and, if appropriate, their carers, about going to court. The CPS may in any event need to seek further information from the investigating team and should always be kept up to date throughout the case to ensure a continuous review.
- 2.15 A video-recorded interview is usually only admissible as evidence-in-chief at trial where the witness is ‘available for cross-examination’. There are two exceptions to this general rule:
- The hearsay provisions in [section 116 of the Criminal Justice Act 2003](#) give the judge discretion to allow the court to hear the pre-trial statements of witnesses who are unable to give evidence for various specified reasons.
  - Criminal Practice Directions (see the [Courts and Tribunals Judiciary website](#)) state that “when the witness is young or otherwise vulnerable, the court may dispense with the normal practice and impose restrictions on the advocate ‘putting his case’ where there is a risk of a young or otherwise vulnerable

witness failing to understand, becoming distressed or acquiescing to leading questions”.

- It must be remembered, however, that the judge has the final word on whether the statement will be admitted.

## Gender

- 2.16 The reference in paragraph 2.8 of the statutory [Code of Practice for Victims of Crime](#), Ministry of Justice 2020), which came into force on 1<sup>ST</sup> April 2021, relating to victims being able to choose the gender of their police interviewer should be read as allowing for victims to choose the sex or gender of their interviewer. The right therefore includes both protected characteristics of sex and gender reassignment.
- 2.17 The [Equality Act 2010](#) permits the provision of services which are single or separate sex. Therefore, victims may request an interviewer of a particular sex or gender and, as per paragraph 2.8 of the Code of Practice for Victims of Crime, the police must meet the victims request unless doing so would prejudice the fairness of the proceedings.
- 2.18 Transgender victims and witnesses must always be treated with the utmost respect and given a choice about the gender of the interview team. Interviewers should not make assumptions about a witness’s acquired gender just by looking at them and/or hearing their voice. They should be led by the witness in respect of language; if a witness makes it clear how they would like to be addressed in terms of their gender, especially as regards their name, pronoun and / or title, their choices should be respected.

## Race, Culture and Ethnic Background

- 2.19 The witness’s race, culture, ethnicity and first language should be given due consideration by the interviewing team. They have a responsibility to be informed about and to take account of the needs and expectations of witnesses from the specific minority groups in their local area. The interviewing team’s knowledge of the witness’s religion, culture, customs and beliefs may have a bearing on their understanding of any account given by the witness, including the language and allusions the witness may make, for example, to reward and punishment.
- 2.20 The interviewing team needs to bear in mind that some families may have experienced discrimination and/or oppression through their contact with government agencies and local authorities. Their experiences of racism, for example, may result in them distrusting the professionals involved in an investigative interview. Asylum-

seeking witnesses and refugees may have a fear of disclosing abuse because of what may happen to them and their family.

- 2.21 It is also important that the interviewing team considers the complexities of multiple-discrimination. For example, in the case of a witness from a minority ethnic community who has a disability, and of individuals' experiences of discrimination. The specific needs and experiences of dual-heritage witnesses must also be taken into account.
- 2.22 Some possible relevant considerations include the following, although this list is in no way intended to be exhaustive:
- Customs or beliefs that could hinder the witness from participating in an interview on certain days (e.g., holy days) or may otherwise affect the witness's participation (e.g., when fasting);
  - The relationship to authority figures within different minority ethnic groups; for example, witnesses from some cultures may be expected to show respect to authority figures by not referring to them by their first names, and by not correcting or contradicting them;
  - The way love and affection are demonstrated;
  - The degree to which extended family members are involved in caring for the witness;
  - The degree of emphasis placed on learning skills in independence and self-care; and
  - Issues of shame; for example, carers in some cultures may inhibit the witness from talking about a sexual assault for fear of shaming the family.
- 2.23 A witness should be interviewed in the language of their choice. If a witness is bilingual, then this may require the use of an interpreter. The interpreter should be from the National Register of Public Service Interpreters to ensure that they are competent and subject to the ethical standards needed for a fair trial. Interpreters from the local community should not be used in cases when doing so might put victims at increased risk, for example, instances of honour-based violence. The statutory provisions of the Welsh Language (Wales) Measure 2011 apply to interviews conducted in Wales.

## Trauma

- 2.24 The development and implementation of victim and witness interview strategies and plans should take a trauma-informed approach, particularly where the investigation relates to the kind of events that are likely to cause victims and witnesses to experience trauma (e.g., child abuse, murder, sexual offences, domestic abuse and



critical incidents such as terrorist attacks resulting in death or serious injury) and specialist advice should be sought where necessary.

- 2.25 Taking a trauma-informed approach in these circumstances includes considering how trauma might affect the emotional wellbeing, behaviour and memory recall of victims and witnesses. Establishing and maintaining a good rapport is central to the management of trauma throughout the investigative process (see Risan, Milne and Binder, 2020<sup>3</sup> and Smith and Milne, 2018<sup>4</sup> for more on the management of trauma during interviews).
- 2.26 Interview strategies and plans in investigations where trauma is likely should be developed and implemented in conjunction with a victim/witness care strategy that sets out the options for access to support and therapy and a safeguarding policy that makes it clear that the safety and welfare of victims and witnesses takes primacy over the needs of the investigation.

## Overview of the Planning Process

- 2.27 The planning phase of an interview with a witness involves some consideration of three types of information:
- Information about the witness;
  - Information about the incident and alleged offence(s); and
  - Any wider investigative material that is important to the investigation.
- At this stage, interviewers need to have differing amounts of knowledge about each type of information. In a general sense, they need to know as much as is possible in the circumstances about the witness and a little about the incident and any alleged offence(s) and the wider investigative material relevant to the investigation.
- 2.28 The kind of information needed and the decision making that surrounds it differs for each category of witness and is set out in detail later in this chapter but as a minimum it should include:
- Age;
  - Gender;
  - Race, culture, ethnicity, religion and first language;
  - Preferred name/form of address;

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<sup>3</sup> Risan, P., Milne, R. and Binder, P-E. (2020) "Trauma Narratives: Recommendations for Investigative Interviewing, Psychiatry, Psychology and Law, DOI: 10.1080/13218719.2020.1742237, available at: <https://doi.org/10.1080/13218719.2020.1742237> (accessed 11 December 2021).

<sup>4</sup> Smith, K., and Milne, R. (2018) "Witness Interview Strategy for Critical Incidents (WISCI)", Journal of Forensic Practice, Vol. 20 Issue: 4, pp.268-278, <https://doi.org/10.1108/JFP-03-2018-0007> (accessed 14 December 2021)



## **Achieving Best Evidence in Criminal Proceedings:**

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- Domestic circumstances including nature of relationship to any suspected offender;
- How the investigative team became aware of the witness (e.g., reported in person or a referral from a third party);
- Any learning disabilities and/or mental health issues;
- Communication skills;
- Current emotional state and range of behaviours;
- Likely impact on the witness's behaviour of recalling traumatic events.

2.29 It is preferable that the interviewer knows little detail of the incident(s) and any alleged offence(s) for the purposes of the interview. Where such information is available, interviewers generally need at least some knowledge of the following:

- The type of the incident and any alleged offence(s);
- The approximate time and location of the incident and any alleged offence(s);
- The scene of the incident and any alleged offence(s) (note that this should only be enough general knowledge to help the interviewer understand what might be said during the interview);
- How the incident and any alleged offence(s) came to the notice of the police; and
- What, if anything, the witness has previously told the police about the incident (the amount of detail needed here depends on the circumstances).

2.30 Interviewers should also know about any wider investigative material that could be important to the investigation such as the background to a relationship, the suspected offender's access to vehicles or technology and/or the places they frequent. The nature and extent of such material is obviously case specific.

2.31 This planning information should then be used to:

- Set the objectives for the interview;
- Make decisions about logistical issues including personnel, recording equipment, time and place;
- Determine the structure of the interview and, where practical and appropriate, the sequencing of the topic areas to be covered in it;
- Consider the techniques to be used to
  - cover truth and lies (if applicable)
  - initiate the account (with supplementary options)
  - support and/or probe the account by questioning (including the use of props if appropriate).

2.32 A full written record of the planning process should be maintained and revealed as unused material to the CPS under the requirements of the Criminal Procedure and Investigations Act 1996.

## Planning Information

- 2.33 This section sets out the information needed in respect of each of the following categories of witnesses:
- Children ([paragraphs 2.34 to 2.77](#));
  - Vulnerable adults ([paragraphs 2.78 to 2.138](#));
  - Intimidated witnesses ([paragraphs 2.139 to 2.150](#));
  - Significant witnesses ([paragraphs 2.151 to 2.158](#));
  - The information that is needed about the incident is covered in [paragraphs 2.166 to 2.171](#) and wider investigative material important to the investigation is covered in [paragraphs 2.172 to 2.175](#)).

## Child Witnesses

### Definition

- 2.34 Section 16 of the 1999 Act, as amended by the Coroners and Justice Act 2009, defines child witnesses as being under the age of 18.

### Preliminaries

- 2.35 A consideration of child protection issues, consent, medical examinations and psychiatric/psychological assessments necessarily informs the planning process as it applies to child witnesses. Each of these matters will be considered in turn prior to considering the information that should ideally be obtained before planning an interview with a child.

### The Context of Allegation: The Intersection of the Child Protection and Criminal Justice Systems

- 2.36 This section should be read in conjunction with the guidance set out in [Working Together to Safeguard Children in England](#) and the guidance set out in [Safeguarding Children at Risk of Abuse or Neglect and/or Safeguarding from Child Sexual Exploitation in Wales](#).
- 2.37 Any video-recorded interview serves two primary purposes. These are:
- Evidence gathering for use in the investigation and in criminal proceedings; and
  - The evidence-in-chief of the witness.
- 2.38 Any relevant information gained during the interview can also be used to inform enquiries regarding significant harm under [section 47 of the Children Act 1989](#) and any subsequent actions to safeguard and promote the child's welfare, and in some cases, the welfare of other children.

- 2.39 Some information may be common to both purposes, but there will be issues specific to each to be considered at the planning stage. A video-recorded interview may additionally serve a useful purpose in informing any subsequent civil childcare proceedings, or in disciplinary proceedings against adult carers (e.g., in residential institutions), and its potential value for these too should not be overlooked.
- 2.40 At a minimum, such as instances in which the child has experienced no previous contact with the public services, the investigating team in child protection cases should include representatives from both the police and the local authority children's social care. It may also be important to involve primary health care or educational professionals who know the child. For children who have had past or current involvement with that local authority children's social care, useful information may already have been provided from different professionals or may be obtained from other adults who know the child (e.g. parents, carers, teachers, educational psychologists, youth workers, occupational therapists), and it may be that other individuals are offered a more active role in the planning process for the investigation (e.g. facial composite operators where the suspect is not known to the child).
- 2.41 Whenever there is a reasonable cause to suspect that a child has suffered, or is likely to suffer, significant harm, there should be a strategy discussion involving local authority children's social care (including the fostering service, if the child is looked after), the police, health and other bodies such as the referring agency. This might take the form of a multi-agency meeting or phone calls and more than one discussion may be necessary.
- 2.42 A strategy discussion can take place following a referral or at any other time, including during the assessment process. If enquiries under section 47 of the Children Act 1989 are pursued following the strategy discussion, then the assessment will provide considerable information about the child and their carer(s), see [Appendix D](#) for a summary of the assessment framework. The investigative interview and criminal investigation will run alongside such section 47 enquiries and the interviewer(s) might, therefore, have access to detailed information about the child that can be drawn upon when planning and conducting the investigative interview, depending upon the exact timing of the interview in relation to the section 47 enquiries.
- 2.43 Where it has been agreed by the police and children's social care, in a strategy discussion, that it is in the best interests of the child that a full criminal investigation be carried out, the police are responsible for that investigation, including any investigative interview (video-recorded or otherwise) with the victim (recommendation 99 of the Victoria Climbié Inquiry Report). Having responsibility for the criminal investigation does not mean that the police should always take the

lead in the investigative interview. Provided both the police officer or member of police staff and social worker have been adequately trained to interview child witnesses in accordance with the guidance set out in this document, there is no reason why either should not lead the interview. The decision as to who leads the interview should depend on who is able to establish the best rapport with the child. In circumstances where a social worker leads the interview, the police should retain their responsibility for the criminal investigation by ensuring that the interview is properly planned and that the police officer or member of police staff has an effective role in monitoring the interview. Similarly, where a police officer or member of police staff leads the interview, the local authority retains their duty to make enquiries under section 47 of the Children Act 1989 by ensuring that the interview is properly planned and that the social worker has an effective role in monitoring the interview.

- 2.44 Enquiries should be carried out in such a way as to minimise distress to the child and to ensure that families are treated sympathetically and with respect. The decision as to whether to conduct a joint investigative interview or joint visits should be determined by what is in the best interests of the child, for example by limiting the number of occasions that the child is asked to provide an account of what happened to them or by reducing the frequency of agency visits to the child. Investigators should consult Safeguarding Children Board procedures for their area about how enquiries relating to children suffering or likely to suffer significant harm (under [section 47 of the Children Act 1989](#)) and associated criminal investigations should be conducted and the circumstances in which joint enquiries are necessary and/or appropriate.
- 2.45 Different circumstances experienced by the child prior to the interview will have implications both for the amount of knowledge that may already be available about the child to be shared between agencies, and subsequently for the manner in which any investigative interview is planned and proceeds:
- Some children will hitherto have been unknown to the local authority children's social care, but known to their GP, health visitor or school;
  - Some children may not be known to the local authority children's social care but may be known, for example, to child and adolescent mental health services or education professionals because of emotional or behavioural problems, or special educational needs;
  - Some children will be known to the local authority children's social care, as open cases or as previously open cases, as well as to health and education services.
- 2.46 Whatever the child's circumstances, the police officer or member of police staff, the children's social care worker and any other members of the investigating team should give a proper explanation of their roles to the child and their carer. The

child's knowledge and understanding should be monitored throughout the investigation.

- 2.47 Children who have not previously been known to the local authority children's social care and the police are likely to have the least understanding of the interviewing process, and of the nature of professional interventions. The way in which the purpose of the interview and the roles of the investigation team are explained to the child and their carer(s) will need to take account of the fact that they have had no previous contact with public services regarding child protection concerns about a child's safety or welfare.
- 2.48 Children who have previous experience of public services may be more knowledgeable about the roles of different personnel, though their experiences will have varied depending on their individual circumstances. However, no assumptions should be made about a child's level of knowledge of public service personnel, especially children's social care workers, who may have been involved with the family for a variety of reasons (e.g., children in need services, services for disabled adults, or adults with mental health issues). If there have been concerns about a child's safety and/or welfare or current concerns have resulted in the consideration of an investigative interview, an assessment of the child's needs and their family members will have already been undertaken by the local authority children's social care.
- 2.49 Consideration should be given to holding a discussion between the investigating officer and the CPS where necessary to discuss what special measures might be needed to assist the witness before and during the trial (see the "Special Measures Discussions with the Police" section on the [Special Measures page of the CPS website](#)).

## **Consent**

- 2.50 This section refers to obtaining consent for the investigative interview. It does not refer to initial contact with child victims and witnesses. Consent in some form is always required for the formal investigative interview process that is described in chapter 3 of this guidance. Consent is not required for the purposes of obtaining a brief account to determine what initial action, if any, is required as described in [paragraphs 2.4 to 2.7](#) above.
- 2.51 When coming to a view about how a child's evidence should be obtained interviewers should take account of the following:
- The child's needs assessment that the police must conduct by virtue of Right 4 of the statutory [Code of Practice for Victims of Crime](#) (Ministry of Justice 2020) and the [Witness Charter](#) (Ministry of Justice 2013);
  - The views of the child and their carer (unless it is inappropriate to do so).

- 2.52 The law presumes that child witnesses under 18 will normally give their evidence outside the court room by playing a video-recorded interview as evidence-in-chief and cross-examination via live link unless this will not improve the quality of their evidence. Subject to the agreement of the court, however, children may opt out of giving their evidence by either a video-recorded interview as evidence-in-chief or by means of live link or both. Where a child opts out of participating in a video-recorded interview, they should be given the opportunity to make a written statement.
- 2.53 The consent of the child is necessary if they are able to understand the implications of participating in the interview. The interviewers are responsible for ensuring that, as far as possible, the child is freely participating in the interview, and not merely complying with a request from adult authority figures.
- 2.54 The consent of an adult with parental responsibility is required where the child is not able to understand the implications of participating in the interview (includes the local authority if the child is subject of an interim or full care order). In cases where an adult with parental responsibility refuses to allow a child to be interviewed and the child is not able to consent in their own right the interview cannot take place. A strategy discussion between the police and social services should consider whether it is appropriate to make an application for an [Emergency Protection Order \(EPO\) under section 44 Children Act 1989](#) and to seek a direction from the court under section 44(6)(b) for an interview to take place as part of the assessment of the child. Where the consent of an adult with parental responsibility is forthcoming or it is proposed that an interview take place under the legal authority of an EPO or an interim/full care order it is important to remember that it is unlikely to be practicable or desirable to video-record an interview with a reluctant or hostile child; consent and cooperation are different things.
- 2.55 In coming to a view about video-recorded evidence-in-chief, children and/or the adult with parental responsibility for them should be given enough information for them to come to an informed decision. Interviewers should, therefore, take steps to explain the purpose of any proposed video-recorded interview to the child and/ or the adult with parental responsibility, at a level appropriate to their age and understanding. Such an explanation should include the following:
- The nature of video-recorded evidence-in-chief (including the distinction between it and cross-examination);
  - The benefits/disadvantages of having or not having the interview video-recorded, including not being able to access video-recorded cross examination in the absence of a video-recorded interview;
  - Who may see the video-recorded interview (including the alleged offender both before the trial and at court);



- The different purposes to which a video-recorded interview may be put (e.g., if it appears the video maybe useful in disciplinary proceedings against a member of staff who is suspected of abusing or neglecting a child in their care); and
- That the child may opt out of video-recorded evidence-in-chief if they wish to do so.

- 2.56 The child or the adult with parental responsibility should be advised that, should the case proceed, whether a video-recording is made or not, they may be required to attend court to answer further questions directly (e.g. cross-examination), as required by Right 2 of the statutory [Code of Practice for Victims of Crime](#) (Ministry of Justice 2020). A live link facility will normally be available to enable the witness to give best evidence at court. There is a presumption that this aid will normally be required by the child. The existence of a video-recorded interview does not by itself guarantee that it will be used.
- 2.57 If a child or the adult with parental responsibility wishes to opt out of video- recorded evidence-in-chief, they may give all their evidence by live link from outside the courtroom, if the court agrees. The child may also opt out of live link evidence, if the court agrees, but the law presumes that they will give evidence in the court room behind a screen. Should they not wish to use a screen, they may also be allowed to opt out of using it. Ultimately this is a matter for the court to decide but the court must take the witness's views into account when making its decision on whether to approve a request to opt out.
- 2.58 While interviewers should ensure that they obtain consent for the interview from the child or the adult with parental responsibility and make a note to that effect, it is not necessary for a child or person with parental responsibility to sign a written record of consent.
- 2.59 Child witnesses sometimes change their views about giving evidence using particular special measures. Special measures discussions should, therefore, be ongoing and discussed at the police interview stage before submission of a special measures application and reviewed again after a pre-court familiarisation visit.
- 2.60 It is generally presumed that the parents or carers of a child witness will be informed of any interview before it takes place, irrespective of whether their consent is needed. While it is permissible to speak to a child in order to obtain an initial account, as suggested in [paragraph 2.4](#) above, without the knowledge of their parent/carer in exceptional circumstances (see page 40 of [Working Together to Safeguard Children](#) [Department for Education, 2018] and paragraph 53 of [Working Together to Safeguard People, Volume 5 – Handling Individual Cases to Protect Children at Risk](#) [Welsh Government, 2018]) consent for the investigative interview

is always required in the absence of a legal authority in the form of an [Emergency Protection Order \(EPO\)](#) or an [interim/full care order](#).

### **Medical Examinations**

- 2.61 Medical examinations should only be contemplated if they are strictly necessary for the purposes of the criminal proceedings. Where they are necessary, the number of examinations should be kept to a minimum (Right 2 of the statutory [Code of Practice for Victims of Crime](#), Ministry of Justice, 2020). The advice of the CPS should be sought at the earliest opportunity in cases where there is any doubt about the need for a medical examination.
- 2.62 Consideration should be given to the timing, purpose and content of any medical examination or paediatric evaluation in relation to the interview. Sometimes the medical examination will have preceded the interview, for example after 'acute' abuse or if the examination needs to take place before a laboratory closes (e.g., for identification of sexually transmitted diseases). The doctor may be aware of problems that might be making the child uncomfortable, such as soreness or vaginal discharge, and/or may suggest the significance of any symptoms reported by the child at the time of the abuse or later. When examining children, doctors should take care to avoid asking leading questions or anticipating the investigative interview. They should, however, make contemporaneous notes of any spontaneous comments by the child concerning the origins or circumstances giving rise to the evaluation or examination. On other occasions, the medical examination will be after the interview; in such cases where a medical examination is a possibility, a discussion should take place with the paediatrician or the police Forensic Medical Examiner who will undertake this to ensure that expectations of possible outcomes of the examination are realistic and appropriate. It is essential that all notes and records concerning medical examinations and decisions made in the course of investigations are preserved, as they may be required for disclosure as part of any subsequent criminal or civil court proceedings.
- 2.63 Consideration should also be given to the identity of the examiner. The evaluation should only be carried out by suitably qualified and experienced clinicians and should not be confined solely to examination of the child's genital and/or anal areas. Guidance is available from the British Paediatric Association Child Interest Group about the training and experience of such a clinician and the content of the paediatric evaluation. A child who is concerned that abuse may have damaged them in some way can be reassured by a sensitive examination. Conversely, children who do not allege penetration should not receive unnecessary medical examinations.



### **Psychiatric/ Psychological Assessment Interviews**

2.64 The role of child and adolescent mental health specialists should be considered where appropriate. Where assessment interviews by a psychiatrist or a psychologist take place, their primary purpose is to inform the childcare planning process. For this reason, they will not resemble interviews conducted in accordance with this guidance. However, such assessment interviews can also be of assistance to the criminal investigation, including the planning process for a video-recorded interview. The limits and expectations of such assessments should be agreed with the psychiatrist or the psychologist prior to the assessment taking place.

### **Information about Child Witnesses**

2.65 Consideration needs to be given to a number of factors pertaining to the child, their family and their background in the planning of the investigation and interview, and in considering any request made by the child about support. Some of this information may exist as a result of the assessment by the local authority children's social care under [Working Together to Safeguard Children](#) [Department for Education, 2018] or [Working Together to Safeguard People, Volume 5 – Handling Individual Cases to Protect Children at Risk](#) [Welsh Government, 2018]) or may be provided by other professionals consulted or involved in the planning process. Other information might best be provided by the child's parent(s) or carer(s). A checklist of some of the desirable information is provided in Box 2.1, and, again, interviewers may find the assessment framework in [Appendix D](#) a useful guide when considering the child in their family context. The interviewing team will need to balance the need to obtain as much of this information as possible with their desire to conduct the interview as soon as practicable.

#### **Box 2.1: Checklist of desirable information**

Factors to be considered at the planning stage include:

- Child's age;
- Child's gender;
- Child's race, culture, ethnicity and first language;
- Child's religion;
- Child's sexuality (where the child is old enough for this to be relevant);
- Child's preferred name/form of address;
- Any physical and/or learning impairments;
- Any specialist health and/or mental health needs;
- Any medication being taken and its potential impact on any proposed interview;
- Child's cognitive abilities (e.g., memory, attention);

- Child's linguistic abilities (as a rule of thumb, an intermediary may be able to help improve the quality of evidence of any child who is unable to detect and cope with misunderstanding, particularly in the court context, i.e., if a child seems unlikely to be able to recognise a problematic question or tell the questioner that they have not understood, assessment by an intermediary should be considered);
- Child's current emotional state and range of behaviours;
- Likely impact on the child's behaviour of recalling of traumatic events;
- Child's family members/carers and nature of relationships (including foster or residential carers);
- Child's relationship to alleged perpetrator;
- Child's overall sexual education, knowledge and experiences;
- Types of discipline used with the child (e.g., smacking, withholding privileges);
- Bathing, toileting and bedtime routines;
- Sleeping arrangements;
- Any significant stressors recently experienced by the child and/or family (e.g., bereavement, sickness, domestic abuse, job loss, moving house, divorce, etc.);
- Current or previous contact with public services (including previous contact with the police or the local authority children's social care); and
- Any other relevant information or intelligence known.

2.66 Box 2.1 is not comprehensive: investigators will develop their own agenda in the light of their experience or knowledge of the individual child and of all other relevant circumstances. Information on these issues will inform decisions about the structure, style, duration and pace of the interview. Children of the same age can differ widely in their development, particularly if they have been abused or neglected. Children may also react to the investigative process itself because it is unfamiliar, and aspects such as a medical examination or personal questions may be particularly difficult and/or upsetting for the child (although a sensitively conducted medical examination or paediatric evaluation can be reassuring).

### **Previous Interventions**

2.67 In cases where the child is a suspected or known victim of previous abuse, the investigating team may also find it helpful to address the issues listed in Box 2.2.

#### **Box 2.2: Checklist of additional factors**

Additional factors to be addressed in cases where the child is known or suspected to have been previously abused, whether the previous abuse is linked to the current investigation or otherwise, include:

- The detailed nature of the child's attachment to their parents;
- The age and developmental level of the child at the onset of abuse;
- Abuse frequency and duration;
- Whether different forms of abuse co-exist;
- The relationship of the child to the alleged abuser(s);
- The type and severity of the abusive act;
- The existence of multiple perpetrators;
- The degree of physical violence and aggression used;
- Whether the child was coerced into reciprocating sexual acts;
- The existence of adult or peer support;
- Whether or not the child has been able to tell someone about the abuse; and
- The parental reaction to the allegation.

### **Other Life Experiences**

2.68 Interviewers must also consider the possible impact on the child of one or more of the following that the child may have experienced: abuse, neglect, domestic abuse and discrimination based on race or disability. There is no single 'diagnostic' symptom of any of the above, but some possible effects on children are provided in Boxes 2.3 to 2.6. It must be recognised that children who are abused in different ways or who suffer the impact of discrimination in some form may exhibit all, none or some of the behaviours listed. As a result of their culture, language or religion, children may also have had other experiences that impact on the interview situation.

#### **Box 2.3: Some possible effects of child abuse and neglect**

These include:

- Fear;
- Behaviour problems
- Sexualised behaviours;
- Poor self-esteem;
- Post-traumatic stress disorder;
- Negative social behaviour (e.g., increased aggression, non-compliance, conduct);
- Disorder, criminal activity;
- Self-injury or suicidal behaviour;
- Increased emotional problems (e.g., anxiety, depression); and
- Lower intellectual functioning and academic achievement.

### **Box 2.4: Some possible effects of racism**

These include:

- Fear;
- Poor self-esteem;
- Fear of betrayal of community;
- Mistrust of people from outside own community;
- Difficulty in establishing positive (racial) identity; and
- Increased vulnerability to racist abuse

### **Box 2.5: Some possible effects of discrimination based on impairment(s)**

These include:

- Lack of autonomy, experience of being patronised by able-bodied people;
- Feelings of being perceived as ‘voiceless object’;
- Difficulty in establishing positive self-identity as a disabled child;
- Experience of being isolated (geographically, physically, socially);
- Dependency;
- Feelings of being perceived as ‘asexual’; and
- Increased vulnerability to abuse.

### **Box 2.6: Some possible effects of domestic abuse**

These include:

- Fear – for own, siblings’ and abused parent’s safety;
- Sadness/depression, possibly reflected in self-harm or suicidal tendencies;
- Anger, which may be demonstrated in aggressive behaviour;
- Negative impact on health (e.g., asthma, eczema, eating disorders or developmental delays); and
- Impact on education (e.g., aggression at school, lack of concentration, truanting).

2.69 It is important for interviewers to consider these factors in relation to each individual child, rather than work from assumptions based on stereotypes associated with any minority group. Being sensitive to such factors will enable interviewers to create a safe and non-judgemental interview environment for the child. It is essential that the interview process itself does not reinforce any aspects of racist or otherwise discriminatory or abusive experiences for the child.

## **Assessment Prior to the Interview**

- 2.70 Interviewers should conduct an assessment, particularly if the child has not had previous or current involvement with the local authority or other public services. The extent of such an assessment depends on the circumstances but it could be an opportunity to explore some or all of the factors listed in Box 2.7.
- 2.71 Interviewers must be careful to balance the need to ensure that the child is ready and informed about the interview process against the possibility of any suggestion of coaching or collusion (for further discussion about coaching see [R v Momodou and Limani \[2005\] EWCA Crim 177](#)).

### **Box 2.7: General factors that could be explored via an assessment prior to interview**

These include:

- The child's preferred name/form of address;
- The child's ability and willingness to talk within a formal interview setting to a police officer or member of police staff, children's social care worker or another trained interviewer;
- An explanation to the child of the reason for an interview;
- The ground rules for the interview;
- The opportunity to practice answering open questions;
- The child's cognitive, social and emotional development (e.g., does the child appear to be 'streetwise' but in reality has limited understanding?);
- The child's use of language and understanding of relevant concepts such as time and age (as a general rule of thumb, an intermediary may be able to help improve the quality of evidence of any child who is unable to detect and cope with misunderstanding, particularly in the court context, i.e. if a child seems unlikely to be able to recognise a problematic question or tell the questioner that they have not understood, assessment by an intermediary should be considered);
- Any special requirements the child may have (e.g., do they suffer from separation anxiety or have an impairment? Are they known to have suffered previous abuse, or to have previously undergone an investigative interview?);
- Any apparent clinical or psychiatric problems (e.g., panic attacks, depression) that may impact upon the interview, and for which the child may require referral for a formal assessment; and
- An assessment of the child's capacity to give consent to interview and medical examination.

- 2.72 Again, the assessment framework (summarised in Appendix D may be helpful. A full written record of any such assessment(s) must be kept and must be referred to

in the body of the section 9 of the Criminal Justice Act 1967 statement (form MG11) that reports on the planning and conduct of the interview. This record should be disclosed to the CPS under the requirements of the [Criminal Procedure and Investigations Act 1996](#).

2.73 Interviewers must have clear objectives for assessment(s) prior to interview and should apply this guidance on talking with children during such assessment(s) (e.g., they should avoid encouraging a child to talk about the alleged offence and should not interrupt them if they freely recall significant events). The interviewer must make a full written record of any discussion, making a note of the timing and personnel present, as well as what was said and in what order. The interviewer should begin by explaining the objectives of the interview to the child; one possibility may be as follows:

‘We will talk about the things you are concerned about tomorrow. Today, I want to get to know you a bit better and explain what will happen if we do a video interview tomorrow.’

2.74 The interviewer can also use the opportunity to answer any questions the child might have about the conduct of the interview and explain any transport arrangements. Some interviewers use this opportunity to introduce some of the ground rules to the child, while others do so exclusively on the recording as part of the rapport phase of the interview. If any of the ground rules are introduced at this stage, the child should be reminded of them during the formal interview to demonstrate that the necessary procedures have been completed.

2.75 The needs of the child may require that this assessment should take place over a number of sessions.

2.76 No inducements should be offered for complying with the investigative process.

2.77 It is likely that for some children, assessment(s) will indicate that their needs are not best met by proceeding with a full formal interview.

## **Vulnerable Adults**

### **Definition (page 31)**

2.78 Section 16 of the 1999 Act makes vulnerable adult witness eligible for special measures (see [paragraph 1.6](#)). In essence, the legislation identifies vulnerable adult witnesses are those who have a mental disorder, learning disability or physical disorder/disability that is likely to have an impact on the quality of their evidence.

## **Preliminaries**

### *Recognising Vulnerable Adult Witnesses*

2.79 Vulnerable and Intimidated Witnesses: A Police Service Guide (Ministry of Justice 2011) contains some prompts intended to assist in recognising vulnerable adult witnesses.

### *Mental Disorder*

2.80 Mental disorder is legally defined in section 1(2) of the [Mental Health Act 1983](#) as amended by the Mental Health Act 2007 as any disorder or disability of the mind. This may be the most difficult category to identify for support by means of special measures because of the fluctuating nature of many mental disorders. A person with such a disorder may need special assistance only at times of crisis.

2.81 A brief interview may not reveal mental disorder, but if clear evidence and/ or a clear diagnosis becomes available which suggests the need for special measures they should take account of any emotional difficulties so as to enable the witness to give evidence with the least possible distress.

2.82 In addition, mental instability might be aggravated by alcohol, drugs and withdrawal from drugs. The effect may be temporary, and the time elapsed before a witness is able to give clear evidence will vary according to the type and severity of the intoxication from a few hours to a few days.

### *Significant Impairment of Intelligence and Social Functioning (Learning Disability)*

2.83 Learning disability is not a description of one disability, but a collection of many different factors that might affect a person's abilities in relation to learning and social functioning to greatly varying degrees. While there are many causes of learning disability most formal diagnoses tend to be 'unspecified' or 'complex' learning disabilities. People with high support needs may be easily identified but it may be more difficult to identify people with mild learning disabilities.

2.84 It is impossible to give a single description of intellectual functioning and behaviour in relation to any particular disability because there is such a wide range of abilities within each in terms of degree of intellectual and social impairment. However, there are some indicators that may help identify a witness with a learning disability.

2.85 Though generalizations cannot be made, some characteristics may exist in relation to some syndromes. For example, witnesses with autistic spectrum disorder, which includes Kanner's syndrome and Asperger's syndrome, have a huge range of abilities/disabilities, but:

- They often have difficulty in making sense of the world and in understanding relationships;
- They are likely to have little understanding of the emotional pain or problems of others; and



- They may display great knowledge of certain topics and have an excellent vocabulary but could be pedantic and literal and may have obsessional interests.

2.86 Some people with learning disabilities are reluctant to reveal that they have a disability, and may be quite articulate, so that it is not always immediately obvious that they do not understand the proceedings in whole or in part.

### *Physical Disability*

2.87 Recognition of this type of disability is less likely to be a problem, although some disabilities may be hidden, but it is important to be aware of whether or how a physical disability may affect the person's ability to give a clear account. Most witnesses will be able to give evidence with support.

2.88 Some physical disabilities may require support. Hearing or speech difficulties may require the attendance of a skilled interpreter and/or a registered intermediary.

## **Support for Vulnerable Adult Witnesses**

### *Witnesses with a Mental Disorder*

- 2.89 A mental disorder does not preclude the giving of reliable evidence. However, for many disorders there is a need to protect the witness from additional stress and to provide support to enable them to give reliable evidence. The recall of traumatic events can cause significant distress, and recognition of the mental state of the witness and its effect on their behaviour is crucial. There is also the need to ensure that the type of behaviour is identified, as far as possible.
- 2.90 Witnesses with a mental disorder, such as schizophrenia or other delusional disorders, may give unreliable evidence through delusional memories or by reporting hallucinatory experiences, which are accurate as far as the witness is concerned but bear no relationship to reality (e.g., they might describe a non-existent crime). Challenges to these abnormal ideas may cause extreme reactions and/or distress. Interviewers should probe these accounts carefully, sensitively and in a non-judgemental way with a view to identifying which elements of the account may be delusional and which elements might have a firmer foundation in reality.
- 2.91 Witnesses may suffer from various forms of anxiety through fear of authority, exposure or retribution. Extreme fear may result in phobias, panic attacks or unjustified fears of persecution. Anxious witnesses may wish to please, they may tell the interviewer what they believe they wish to hear or fabricate imaginary experiences to compensate for loss of memory. The evidence given by depressed witnesses may be influenced by feelings of guilt, helplessness or hopelessness. Witnesses with anti-social or borderline psychosis may present with a range of behaviours such as deliberately giving false evidence. These disorders cause the most difficulties and contention in diagnosis and require very careful assessment.



- 2.92 Witnesses, particularly some older witnesses, may also have dementia, which can cause cognitive impairment. A psychiatrist or a clinical psychologist with experience of working with older people should be asked to assess their ability to give reliable evidence and the effect such a procedure might have on their health and mental welfare.
- 2.93 Witnesses with a mental disorder may show some of the behaviour seen in witnesses with a learning disability, such as confusion, memory loss and impaired reasoning. For this reason, many of the interview practices that are likely to help witnesses with a learning disability may also benefit witnesses with a mental disorder. Properly preparing the witness for the interview may help to identify and reduce confusion, emotional distress and anxiety. Cognition may not be an immediate difficulty, but attention to the way a statement is given and how questions are posed must always be considered.
- 2.94 The witness may wish to please the person in authority. They may be suspicious of the person, aggressive, or wish to impress the interviewer. Interviewing teams should be aware of such possibilities. Consultation with people who know the witness well should give some indication of their likely behaviour and some suggestions as to how interviewers can best interact with the witness.
- 2.95 Confusion may be exacerbated by the use of drugs or alcohol or withdrawal from drugs. An assessment should include information as to how this is likely to affect the interview, and how long this effect is likely to last.
- 2.96 Preparation of the witness for the interview and a rapport stage prior to formal questioning during the interview is essential. This will allow the witness to have some familiarity with the personnel who will be involved in the interview, including the interviewer, interview monitor and intermediary (where used).

*Witnesses with a Significant Impairment of Intelligence and Social Functioning (Learning Disability)*

- 2.97 Some witnesses with a learning disability may wish to please people in authority. Some may be suspicious of people, or aggressive, or may wish to impress the interviewer. Interviewing teams should be aware of such possibilities. Consultation with people who know the witness well should give some indication of their likely behaviour and some suggestions as to how interviewers can best interact with the witness.
- 2.98 Some witnesses with a learning disability may show confusion, memory loss and impaired reasoning. Properly preparing the witness for the interview may help to identify and reduce confusion, emotional distress and anxiety.

- 2.99 In some instances of mild and moderate learning disability, a difficulty with cognition may not be immediately apparent. The experience that many people with learning disabilities have of discrimination towards them in society is likely to act as an incentive to conceal or minimise their disability whenever possible. Where there are concerns that a witness has a learning disability, even if the extent of the disability is considered relatively mild, it is essential that a great deal of care is taken in framing questions and evaluating the witness's response to them.
- 2.100 Some witnesses with a learning disability communicate using a mixture of words and gestures (e.g., Makaton signs/symbols when used as an augmentative communication system). While a registered intermediary should be considered in every case where a witness has a learning disability, their services are essential in circumstances where a witness communicates using a mixture of words and gestures.
- 2.101 Some witnesses with a learning disability do not use speech but communicate using alternative methods of communication. Such alternative methods include sign and symbol systems. Examples of sign systems include Makaton signing and Sign-a-long (these systems may be used either as an augmentative system with speech or as an alternative system without it). Examples of symbol systems include Rebus, Bliss and Makaton. The symbols may be printed on boards or cards or contained in booklets. They vary from being iconic and concrete to being more abstract in their composition. They may be personalised and can be composed of words, pictures and symbols. While a Registered Intermediary should be considered in every case where a witness has a learning disability, the services of an intermediary are essential in circumstances where a witness uses an alternative method of communication instead of speech.
- 2.102 Many witnesses with a learning disability will be unable to give their evidence in one long interview. In many instances, several short interviews, preferably held on the same day (though not necessarily), would be more likely to lead to a satisfactory outcome.
- 2.103 Preparation of the witness for the interview and a rapport stage prior to formal questioning during the interview is essential. This will allow the witness to have some familiarity with the personnel who will be involved in the interview, including the interviewer, interview monitor and intermediary (where used).

*Witnesses with a Physical Disability*

- 2.104 For witnesses with hearing and communication difficulties, every effort should be made to ensure that their usual means of communication is supported at interview by means of an interpreter (and/or an intermediary, if appropriate).

- 2.105 If the witness does not communicate by speech, alternative communication systems are available, such as British Sign Language (BSL) and Sign Supported English (SSE). In these instances, an interpreter capable of signing will be required.
- 2.106 Other sign and symbol systems may be required for witnesses with additional disabilities. Examples of sign systems include Makaton signing and Sign-a-long. Symbol systems include alphabet boards and boards/books/cards containing pictorial symbols (these symbols vary from being iconic and concrete to being more abstract in their composition). Examples of pictorial symbol systems include Makaton, Rebus and Bliss. Communication boards may also be personalised and composed of words, pictures and symbols. In these circumstances, an intermediary capable of using the communication system in question will be required.
- 2.107 Some witnesses may also communicate using a mixture of words and gestures. If a witness has an idiosyncratic speech or communication pattern, a vocabulary should be worked out which will need to be explained to all the personnel present at the interview. Initially, at least, signs for 'yes', 'no', 'don't know' and 'don't understand' should be identified.
- 2.108 Witnesses who have limited movement may require computer or other electronic communication equipment that can be accessed via fingers, or by pointing to letters or symbols on a board, or by indicating letters or symbols by blinking or by some other means. Witnesses should move or point to the letters or symbols themselves whenever possible.
- 2.109 The witness may have some associated health or mobility difficulties and would benefit from short interviews, spaced out with periods of rest and refreshment.
- 2.110 Preparation of the witness for the interview and a rapport stage prior to formal questioning during the interview is essential. This will allow the witness to have some familiarity with the personnel who will be involved in the interview, including the interviewer, interview monitor and intermediary (where used).

### **The Context of the Allegation: The Intersection of the Safeguarding Adults and Criminal Justice Systems**

- 2.111 As is the case with child protection, there is an overlap between the investigative processes described in this document and the processes for safeguarding adults at risk. These processes were introduced by the [Social Services and Well-being \(Wales\) Act 2014](#) and the [Care Act 2014 in England](#). Section 126 Social Services and Well-being (Wales) Act 2014 and section 42 Care Act 2014 impose a duty on local authorities to make or cause to be made enquiries where an adult in need of care and support is at risk of abuse or neglect and is unable to protect him or herself.

### *Consent*

- 2.112 It is a general principle that all witnesses should freely consent to be interviewed and to have the interview recorded on video. For this reason, interviewers should explain the purpose of a video-recorded interview to the witness in a way that is appropriate to their understanding. Such an explanation should include:
- The nature of video-recorded evidence-in-chief (including the distinction between it and cross-examination);
  - The benefits/disadvantages of having or not having the interview video-recorded;
  - Who may see the video-recorded interview (including the alleged offender both before the trial and at court); and
  - The different purposes to which a video-recorded interview may be put (e.g., if it appears the video may be useful in disciplinary proceedings against a member of staff who is suspected of abusing a vulnerable adult in their care).
- 2.113 While interviewers should make a record of the action taken to obtain consent for a video-recorded interview, it is not necessary for the witness to give their consent in writing. Where a witness who has been asked to consent does not want to participate in a video-recorded interview, they should be given the opportunity to make a written statement.
- 2.114 Obtaining consent for a video-recorded interview may raise difficulties regarding some groups of vulnerable witnesses, such as those with a learning disability or a mental disorder. In these circumstances, it is important to take account of the principles set out in the [Mental Capacity Act 2005](#) and the [Code of Practice](#) that accompanies it.
- 2.115 Briefly, the Mental Capacity Act applies to anyone over 16 who lacks mental capacity and a 'decision' needs to be made. A 'decision' covers a wide range of matters and would include consent to a video-recorded interview. The Act establishes the principle that everybody should be assumed to have capacity unless established otherwise. It goes on to point out that a communication issue should not be confused with a capacity issue and that every effort should be made to communicate with people, using whatever methods are necessary. A registered intermediary may be of use in these circumstances (see section 29 of the 1999 Act).
- 2.116 If, following an assessment (the extent of which depends on the circumstances), it is concluded that lack of capacity is an issue, actions should be taken in the 'best interests' of the witness. As far as is reasonably ascertainable, when considering the person's best interests, account should be taken of the matters set out in Box 2.8.

### **Box 2.8: Matters that should be taken into account when considering best interests**

The matters that should be considered (as specified in section 1(6) of the Mental Capacity Act 2005) include:

- The person's past and present wishes and feelings;
- The beliefs and values that would be likely to influence the person's decision if they had capacity; and
- The other factors that the person would be likely to consider if they were able to do so.

2.117 In seeking to determine the matters set out in Box 2.8, account should be taken of the views of those referred to in Box 2.9.

### **Box 2.9: Views that should be considered when considering best interests**

As specified in Sections 4(4) and 4(7) of the Mental Capacity Act 2005, the following should be considered:

- Such views as the witness is able to express (with such assistance as is necessary); and
- Where it is practicable and appropriate to consult them, the views of anyone named by the person as someone to be consulted on the matter in question or on matters of that kind;
- Anyone engaged in caring for the person or interested in their welfare;
- Any person with lasting power of attorney granted by the person; and
- Any deputy appointed for the person by a court.

2.118 Where somebody who is involved in the care of a person believed to lack capacity is also suspected of abusing them, this should be taken into account when considering their views of the person's best interests.

2.119 The scope of the consultation with others involved in the care, welfare and treatment of the person lacking capacity very much depends on the nature of the decision and the time available in the circumstances; this means taking account of the urgency of the case and the time at which it arises.

2.120 When considering best interests, account should also be taken of any possibility that the witness will regain capacity and, if so, when this is likely to be (section 4[3], Mental Capacity Act 2005). This is important in circumstances where, for example, the effect of a witness's medication on their capacity to make a decision can change over time or when a witness is likely to recover from an injury or an illness to the

extent that they are likely to be able to participate more fully in the process of making a decision.

2.121 Records should be kept of all decisions taken in a person's best interests, the rationale for that decision and the scope of the consultation that took place when reaching it.

#### *Information about Vulnerable Adult Witnesses*

2.122 While circumstances will sometimes limit what can be found out about the witness prior to the interview taking place (e.g., as a result of time constraints where the alleged perpetrator is in custody), as much of the following information should be obtained about the witness as is possible:

- Age;
- Gender;
- Sexuality (where the alleged offence might contain a homophobic element);
- Preferred name/form of address;
- The nature of the witness's disability or mental disorder and the implications of this for the interview process;
- Any medication being taken and its potential impact on the interview (including its timing);
- Domestic circumstances (including whether the witness is currently in a 'safe' environment);
- The relationship of the witness to the alleged perpetrator;
- Current emotional state (including trauma, distress, shock, depression, fears of intimidation/ recrimination and recent significant or stressful events experienced);
- The likely impact of recalling traumatic events on the behaviour of the witness;
- Current or previous contact with public services (including previous contact with the police, the local authority adult services or health professionals); and
- Any relevant information or intelligence known.

#### *Life Experiences*

2.123 Where the witness may have experienced abuse, neglect, domestic abuse and/ or discrimination based on race or disability, the interviewers must consider its potential impact on the interview. There is no single 'diagnostic' symptom of abuse or discrimination, but some of the possible effects on vulnerable adult witnesses are set out in Boxes 2.10 to 2.13. When considering the possibility of abuse or discrimination, it must be understood that vulnerable adult witnesses who have experienced it will not necessarily exhibit all, or indeed any, of the behaviours set out in these boxes.

### **Box 2.10: Some possible effects of abuse and neglect**

These include:

- Poor self-esteem;
- Post-traumatic stress disorder;
- Self-injury and suicidal behaviour;
- Increased emotional problems, e.g., anxiety and depression;
- Decreased cognitive functioning;
- Sexualised behaviour; and
- Negative social behaviour, e.g., increased aggression, non-compliance and criminal activity

### **Box 2.11: Some possible effects of racism**

These include:

- Fear;
- Poor self-esteem;
- Fear of betrayal of community;
- Mistrust of people who are from outside their community;
- Difficulty in establishing positive (racial) identity; and
- Increased vulnerability to racist abuse.

### **Box 2.12: Some possible effects of discrimination based on disability**

These include:

- Fear for safety of self and others in family;
- Sadness/depression, possibly reflected in self-harm or suicidal tendencies;
- Anger, which may be demonstrated in aggressive behaviour;
- Negative impact on health (e.g., asthma, eczema or eating disorders); and
- Negative impact on behaviour (e.g., aggression).

### **Box 2.13: Some possible effects of domestic abuse**

These include:

- Fear for safety of self and others in family;
- Sadness/depression, possibly reflected in self-harm or suicidal tendencies;
- Anger, which may be demonstrated in aggressive behaviour;
- Negative impact on health (e.g., asthma, eczema or eating disorders); and
- Negative impact on behaviour (e.g., aggression).

2.124 It is important for interviewers to consider these matters in relation to each individual witness, rather than work from assumptions based on stereotypes. Being sensitive to such factors should contribute towards a safe and non-judgemental interview environment for the witness. It is essential that the interview process itself does not reinforce any aspects of discriminatory or abusive experiences for the witness.

#### *Witnesses with a Significant Impairment of Intelligence and Social Functioning (Learning Disability)*

2.125 Some people with learning disabilities can be isolated and distanced from other communities, congregated together, dependent on others (learned helplessness) and waiting for 'permission' to do anything. Interviewers should try to establish what impact this kind of situation may have had on the witness and take it into account when planning the interview, preparing the witness for the interview and conducting the interview. It is essential that every possible effort is made to encourage the witness's active participation in the interview process and to ensure they know that their contribution is valued, whatever the outcome.

2.126 It is not possible to provide advice in this document covering every form of learning disability because there are over 200 of them. Autistic Spectrum Condition (autism) and Down's Syndrome are simply highlighted in this section as examples. When planning and conducting interviews, it should be remembered that there will be significant variation in the abilities of individuals with autism or Down's Syndrome, or with learning disabilities more generally; each witness is an individual and should be treated as such.

2.127 When interviewing witnesses with autism, best practice suggests that being aware of the following may be helpful:

- The interviewer should try to be calm, controlled and non-expressive;
- The witness may be frightened of emotion or shouting;
- The witness may be fearful of unfamiliar stimuli, including noise, colour and unknown people;
- The witness may not like people to come too close to them;



- The witness may not like to make direct eye contact;
  - The witness may prefer a consistent and stable environment. For example, if there is more than one interview, they should be carried out in the same place, with the same people in the same positions within the room. This also applies to the courtroom situation if they have to appear on more than one day.
- 2.128 See [Planning to Question Someone with an Autism Spectrum Disorder, including Asperger Syndrome Toolkit 3](#), The Advocate’s Gateway, December 2016 and [Witnesses and Defendants with Autism: Memory and Sensory Issues, Toolkit 15](#), The Advocate’s Gateway, February 2015 for further information on autism.
- 2.129 The guidance developed by the National Autistic Society entitled “[Autism: A Guide for Police Officers and Staff](#)” is also a useful reference source.
- 2.130 Witnesses with Down’s syndrome and many other people with learning disabilities might:
- Be disturbed and become anxious if there is shouting or aggression, especially if they are questioned by unknown people, particularly authority figures; and
  - Be affected by noise. If they have a significant hearing loss they may, for example, confuse similar sounding words (this has particular relevance in responses to questions regarding when, where, what, why and who).
- 2.131 See [Planning to Question Someone with a Learning Disability, Toolkit 4](#), The Advocate’s Gateway, November, 2015, for further information on learning disabilities.
- 2.132 All witnesses with learning disabilities are eligible for an intermediary where the use of an intermediary would maximize the quality of their evidence. Communication is naturally ambiguous and often depends on tone, gesture and body language as well as words. This is also the case for witnesses with learning disabilities, who may use a combination of single words, signs and gestures. It will be important to ascertain any differences in their use of language, and to identify a person who knows how the witness communicates (such as a parent, carer, adult social care social worker or speech and language therapist) to facilitate the identification of an intermediary with the appropriate skills prior to the interview.
- 2.133 There is also the possibility of additional physical disabilities, which might contribute to intellectual impairment and add to the difficulty of giving evidence.
- 2.134 Elderly witnesses may also have cognitive impairments (e.g., as a result of dementia). They may require the support of special measures in order to be able to give full and reliable testimony.

### *Witnesses with a Physical Disability*

2.135 A physical disability may cause additional health problems. Witnesses who have associated health or mobility difficulties may benefit if their interviews are spaced out, with periods for rest and refreshment. Planning should allow for the extra time necessary. Physically disabled witnesses may need a carer on hand to give assistance with toileting, medication and drinks. Access requirements may also need additional planning. Where the witness has speech and/or hearing losses, this may require the use of an intermediary.

### *Witnesses with a Mental Disorder*

2.136 Where there is a major concern about the mental health of a witness or information that suggests mental disorder, consent for an early psychiatric assessment might be sought to establish whether the witness is able to give a reliable account of events. Under the [Criminal Procedure and Investigations Act 1996](#), any report might have to be disclosed to the defence prior to the trial as unused prosecution material.

2.137 It might also be helpful to ask the witness if they are in contact with a professional such as a doctor, adult social care social worker, community psychiatric nurse or legal representative who might be able to assist them. In some cases, it may be clear either from the location of the witness (e.g., hospital) or from other information volunteered by the witness, or by one of the professionals known to the witness, that they have a mental disorder.

2.138 Witnesses with a mental disorder are eligible for the assistance of a Registered Intermediary where it would maximise the quality of their evidence.

## **Intimidated Witnesses**

### **Definition**

2.139 Section 17 of the 1999 Act makes intimidated adult witnesses eligible for special measures (see [paragraph 1.11](#)). Briefly, intimidated witnesses are those whose quality of evidence is likely to be diminished by reason of fear or distress.

### **Preliminaries**

#### *Support for Intimidated Witnesses*

2.140 Intimidated witnesses need to feel safe and may require support and encouragement to participate in an interview. Such witnesses should be consulted at an early stage about the possibility of having a supporter present during the interview where this is appropriate and about the pre-trial support that can be made available to them.

- 2.141 Intimidated witnesses are likely to benefit from the support of an Independent Sexual Violence Adviser (ISVA) or an Independent Domestic Violence Adviser (IDVA), as appropriate.
- 2.142 Intimidated witnesses should also be informed about the protection might be available to them, including witness protection schemes where appropriate. Where there is risk of intimidation, witnesses should be offered information about where rapid help and support can be obtained. A leaflet listing names, addresses and telephone numbers of relevant individuals and agencies should be available in each locality for distribution to witnesses.
- 2.143 The special measures that intimidated witnesses might be given access to at the trial should be outlined and their views ascertained in respect of them. Their views about the possibility of having a supporter present while they are giving evidence should also be ascertained. When these matters are discussed, it is essential that the witness understands that while their views will be listened to, access to special measures and/or a supporter during the trial is very much a decision for the court based on an application by the prosecution, and as such should not be taken for granted.
- 2.144 Investigators need to be alert to the possibility that a witness may not be intimidated at the time the offence is reported but that subsequent events may give rise to fear and distress later in the criminal process that would qualify the witness for consideration for special measures.

### *Consent*

- 2.145 It is a general principle that all witnesses should freely consent to be interviewed and to have the interview recorded on video. For this reason, interviewers should explain the purpose of a video-recorded interview to the witness. Such an explanation should include:
- The nature of video-recorded evidence-in-chief (including the distinction between it and cross-examination);
  - The benefits/disadvantages of having or not having the interview video-recorded; and
  - Who may see the video-recorded interview (including the alleged offender both before the trial and at court).
- 2.146 While interviewers should make a record of the action taken to obtain consent for a video-recorded interview, it is not necessary for the witness to give their consent in writing. Where a witness who has been asked to consent does not want to participate in a video-recorded interview, they should be given the opportunity to make a written statement.

### *Information about Intimidated Witnesses*

2.147 While circumstances will sometimes limit what can be found out about the witness prior to the interview taking place (for example, as a result of time constraints where the alleged perpetrator is in custody), as much of the following information should be obtained about the witness as possible:

- Age;
- Gender;
- Sexuality (where the alleged offence might contain a homophobic element);
- Preferred name/mode of address;
- Domestic circumstances (including whether the witness is currently in a 'safe' environment);
- Relationship of the witness to the alleged perpetrator;
- Any medication being taken and its potential impact on the interview;
- Current emotional state (including trauma, distress, shock, depression,
- Fears of intimidation/recrimination, and recent significant stressful events experienced);
- Likely impact of recalling of traumatic events on the behaviour of the witness;
- Current or previous contact with public services (including previous contact with police, the local children's or adult services authority or health professionals);
- Whether or not the witness has previously been a victim of crime; and
- Any other relevant information or intelligence known.

### *Life Experiences*

2.148 Where the witness may have experienced abuse, neglect, domestic abuse and/ or discrimination based on race or disability, the interviewers must consider its potential impact on the interview. There is no single 'diagnostic' symptom of abuse or discrimination, but some of the possible effects on vulnerable adult witnesses are set out in Boxes 2.10 to 2.13 above. When considering the possibility of abuse or discrimination, it must be understood that vulnerable adult witnesses who have experienced it will not necessarily exhibit all, or indeed any, of the behaviours set out in these boxes.

### *Presenting the Evidence of Child, Vulnerable Adult and Intimidated Witnesses*

2.149 Child, vulnerable adult and intimidated witnesses are eligible for video-recorded evidence-in-chief provided that the court determines that access to this special measure is likely to maximise the quality of the witness's evidence and it is not against the interests of justice to admit such video recorded evidence (section 27[2]).

2.150 Accordingly, it may be helpful if a discussion with the CPS takes place in accordance with the guidance set out in the "Special Measures Discussions with the Police" section on the [Special Measures page of the CPS website](#). A special

measures discussion is likely to be particularly important if there is any doubt as to whether an application for video-recorded evidence-in-chief will be made. Where practical, such a discussion should take place before the interview. Where it is not practical to hold a discussion beforehand it should, ideally, take place within a few days of the interview so that if a decision is made not to apply for video-recorded evidence-in-chief an alternative method of presenting the witness's evidence, including the possibility of a full written statement, can be considered while the events are still fresh in their memory.

### **Significant Witnesses (not eligible for Special Measures)**

#### *Definition*

- 2.151 Significant witnesses are defined as such in [paragraph 1.27](#) of this guidance and the reasons for video-recording interviews with significant witnesses are set out in [paragraphs 1.29 and 1.30](#).
- 2.152 While interviews with significant witnesses should generally be video-recorded it is important to remember that there is no statutory provision for video-recordings of interviews with significant witnesses to be admitted as their evidence-in-chief, although interviewers should be aware that the defence might ask the court for permission to play some or all of the recording in support of their case. The options for adducing the testimony on the recording as evidence in chief are set out below.

#### *Consent*

- 2.153 It is a general principle that all witnesses should freely consent to be interviewed and to have the interview recorded on video. For this reason, interviewers should explain the purpose of a video-recorded interview to the witness. Such an explanation should include:
- The benefits/disadvantages of having or not having the interview video-recorded; and
  - Who may see the video-recorded interview (including the alleged offender both before the trial and at court).
- 2.154 While interviewers should make a record of the action taken to obtain consent for a video-recorded interview, it is not necessary for the witness to give their consent in writing.

#### *Presenting the Evidence of Significant Witnesses*

- 2.155 The testimony on a video-recorded interview with a significant witness may be adduced as evidence in the following ways:

**Option 1: Brief written statement from the witness followed by the production of a transcript of the video-recording as an exhibit**

- a) The witness should be invited to make a brief [section 9 Criminal Justice Act 1967](#) statement as soon after the interview as possible, while what was said

is fresh in their memory, confirming that what they said during the interview is an accurate account of their evidence. This statement should not include the detail of what was said during the interview because it will subsequently be reflected in the transcript;

- b) A transcript should be compiled by the police. The interviewer should check the transcript for accuracy against the recording and produce it as an exhibit in a Criminal Justice Act 1967 statement;
- c) The witness's and the interviewer's Criminal Justice Act 1967 statements, together with the transcript, should be adduced as evidence. The existence of the recording(s) should be revealed to the Crown Prosecution Service (CPS) as 'unused material' under the terms of the [Criminal Procedure and Investigations Act 1996](#).

**Option 2: Full written statement of the witness's evidence derived from the video- recording**

- a) A full Criminal Justice Act 1967 statement should be prepared from the video- recording as soon as possible, while what was said is still fresh in the witness's memory. It is good practice to review the recording prior to preparing the statement. There is no need to have the witness present during this process;
- b) The witness should be asked to review the Criminal Justice Act 1967 statement and invited to make any alterations or additions to it that they consider necessary. Having agreed its content, the witness should be invited to sign the statement;
- c) The witness's Criminal Justice Act 1967 statement should be adduced as evidence. The existence of the recordings should be revealed to the CPS as unused material.

2.156 For resource reasons option 2 represents the usual method. It is accepted, however, that there will be exceptional cases where option 1 may be more appropriate; it is essential that the agreement of the CPS is obtained before this option is pursued.

2.157 In circumstances where multiple witnesses are involved, it is important that the number of witnesses who are visually recorded be limited to a number that is likely to be manageable by the prosecution team. Such a decision should be made by the senior police officer in charge of the investigation, in consultation with the CPS, if appropriate and practical, and a record should be made of the rationale underpinning it, including the criteria used for determining which witnesses were visually recorded.

### *Information about Significant Witnesses*

2.158 The information needed about a significant witness for the purposes of planning an interview is the same as for an intimidated witness (see [paragraphs 2.147 to 2.148](#)).

### **Reluctant Witnesses**

2.159 Reluctant witnesses are people believed to have witnessed an offence, part of an offence or events closely connected with it, but who are reluctant to engage with the investigative process. At times within an investigation, interviewers will encounter reluctant vulnerable, intimidated or significant witnesses. There could be several different reasons for this. For example: adverse perceptions of the police or criminal justice process based on experience or popular perception; fear of an alleged perpetrator; concern about the response of the community where they live; worries about their identity being released; or uncertainty about how they fit into the overall process. The initial actions of the interviewer should, therefore, include trying to establish the reasons for the witness's reluctance, since it is only by doing so that an attempt to address the issue can be made.

2.160 In order to try to address the issues underpinning the witness's reluctance, it is essential that interviewers have a good knowledge of the criminal justice process and the special measures that intimidated witnesses are eligible for. Interviewers should also be conversant with local protocols in relation to witness protection programmes and in respect of witness support organisations.

2.161 Interviewers should endeavour to build a rapport with reluctant witnesses and take reasonable steps to address their concerns prior to the interview. In some instances, it might be necessary to build rapport over several sessions. Reluctant witnesses should be given an outline of the offence(s) being investigated and informed that it is suspected that they might have witnessed it, part of it or events closely connected with it (as appropriate). Specific details of the allegation and the particulars of what is alleged to have been witnessed should not be discussed during these sessions. No pressure should be brought to bear on these witnesses to talk to police or to give evidence; the function of the investigator in these circumstances is simply one of providing enough information to allow the potential witness to make an informed choice. Records should be kept of these sessions either in the form of notes or by way of a visual or audio-recording, as appropriate in the circumstances

2.162 Where a witness remains reluctant, they should be told that they can change their mind at any time and given the details of who to contact should they wish to do so. In appropriate cases, consideration can be given to visiting the witness again but, if they are given an opportunity to change their mind about engaging with the investigative process and participating in an investigative interview, great care



should be taken to avoid giving them the impression that they are being put under any pressure to do so.

- 2.163 Interviewers should seek advice from a supervisor, the senior officer in charge of the investigation or an interview adviser (see [National Investigative Interviewing Strategy](#), Association of Chief Police Officers 2009) wherever necessary.

### **Hostile Witnesses**

- 2.164 Hostile witnesses are people believed to have witnessed an offence, part of an offence, or events closely connected with it, who are opposed to the investigative process. During some investigations, interviewers will encounter hostile vulnerable, intimidated or significant witnesses. The reasons for such hostility might include their lifestyle or the fact that they have a close relationship to the alleged perpetrator and intend later to appear before the court as a defence witness. Some of these witnesses might simply refuse to co-operate with police, while others might choose to provide false information intended to support the alleged perpetrator's account. Records must be kept of all interactions with hostile witnesses, regardless of the reason for their hostility and the extent of their co-operation.
- 2.165 Where a hostile witness consents to an interview, it should be recorded in accordance with the guidance set out in this document; on video unless they object to it.

### **Information about the Incident**

- 2.166 It is usually preferable (and not always necessary or essential) that the interviewer knows little detail of the incident(s) and any alleged offence(s) for the purposes of the interview. However, in order to plan and prepare for the interview, the interviewer will need a general knowledge of:
- The type of the incident and any alleged offence(s);
  - The approximate time and location of the incident and any alleged offence(s);
  - The scene of the incident and any alleged offence(s) (note that this should only be enough general knowledge to help the interviewer understand what might be said during the interview);
  - How the incident and any alleged offence(s) came to the notice of the police; and
  - What, if anything, the witness has previously told the police about the incident (the amount of detail needed depends on the circumstances).
- 2.167 Where the interviewer is also the investigating officer and has been involved in a multi-agency strategy discussion, it is accepted that circumstances and practical resource considerations will probably be such that they are likely to know more about the incident and any alleged offence(s) than is set out above. In this situation, the interviewer should try as far as possible to avoid contaminating the interview



process with such knowledge. It is also accepted that circumstances and resource considerations might be such that it could be necessary for an interviewer to interview more than one witness during the course of an investigation. In such a situation, care should be taken to avoid asking questions of a witness based upon the responses of previous witnesses, because this could contaminate the witness's account.

2.168 Nothing in this guidance is intended to limit operational decision-making in cases where the nature of the investigation, the context of the interview and the circumstances as they are known at the time make it necessary for interviewers to have a more detailed knowledge of the incident and any alleged offences than the general information outlined in paragraph 2.166 above.

*Material Relevant to General Investigative Practice*

2.169 When planning the interview, the interviewer should consider what they know of the incident and any alleged offences to determine the areas of general investigative practice that might need to be covered in it.

2.170 Material relevant to general investigative practice includes:

- Points to prove any alleged offence(s);
- Any statutory or likely defences;
- Information that should be considered when assessing a witness's identification evidence, as suggested in *R v Turnbull and Camelo* ([1976] 63 Cr App R 132) and embodied in the mnemonic ADVOKATE
  - A** Amount of time under observation
  - D** Distance from the eyewitness to the person/ incident
  - V** Visibility, including time of day, street lighting, etc.
  - O** Obstructions, anything getting in the way of the witness's view
  - K** Known or seen before – did the witness know, or had they seen, the alleged perpetrator before?
  - A** Any reason to remember – was there something specific that made the person/ incident memorable?
  - T** Time lapse, how long since the witness last saw the alleged perpetrator?
  - E** Errors or material discrepancies;
- Anything said by the witness to a third party after the incident (evidence of first complaint, etc.); and
- Any other witnesses present.

2.171 This is not intended to be an exhaustive list. The nature of the information important to the investigation pertaining to general investigative practice varies according to the circumstances of the case.

## **Wider Investigative Material**

2.172 While obtaining an account of the incident is essential, other matters might need to be covered during the interview in order to progress the investigation. These matters can be regarded as ‘wider investigative material important to the investigation’. Obtaining a complete picture of all the relevant issues within an interview is essential because it will provide the investigating officer with the material necessary to conduct a comprehensive investigation. It could also prove beneficial in discussions with the CPS if the subject of witness assessment is raised. Interviewers should introduce this material either in the latter part of the interview or in a subsequent interview session, depending on the complexity of the case.

2.173 Wider investigative material important to the investigation could include:

- Access by the victim, witness and suspect to electronic media including computers and mobile telephones;
- Relevant financial transactions by the victim, witness and suspect;
- Any background information relevant to the witness’s account (e.g., matters that might enhance or detract from the credibility of the witness’s evidence);
- Any lifestyle information relevant to the witness’s account;
- Where the witness has knowledge of an alleged victim or a suspected perpetrator, an exploration of their relationship, background history, places frequented and any events related or similar to the matter under investigation; and
- Any relevant activity after the incident leading up to the interview;
- Any risk assessment issues that the witness might know about that concern the likely conduct of the alleged perpetrator, family or associates.

2.174 This is not intended to be an exhaustive list. The extent and nature of wider investigative material important to the investigation varies according to the circumstances of the incident and any alleged offence, the nature of any relationship between the witness and the alleged perpetrator and what is alleged to have been seen, heard or otherwise experienced.

2.175 The amount of knowledge that the interviewer has about the wider investigative material important to the investigation prior to the interview will depend on how much they know about what is believed to have been witnessed by the witness.

## **Use of Planning Information**

### *Overview*

2.176 The planning information should be used to:

- Set the objectives for the interview;
- Determine the techniques to be used within the phased interview; and
- Decide

- The means by which the interview is to be recorded
- Who should conduct the interview and if anybody else should be present (including social support for the witness)
- If anybody should monitor the interview (e.g., investigating officer, supervising officer, specialist/interview adviser, etc.) and who will operate the equipment
- The location of the interview
- The timing of the interview
- The duration of the interview (including pace, breaks and the possibility of more than one session); and
- Consider what is likely to happen after the interview.

### *Objectives*

2.177 At the outset it is important that clear objectives in the form of topic-areas are set for the interview. These topic-areas should then be divided between those relating to the incident and those relating to wider investigative material important to the investigation. This process usually begins by specifying realistic time-parameters for the 'incident'. Relevant topic-areas falling within the time-parameters should be designated as 'incident,' while those falling before or after the time-parameters constitute wider investigative material. The general structure of the interview flows from this process: the incident should be covered before moving on to the wider investigative material.

### *Structure and Sequence*

2.178 Interviews should be structured as described in chapter 3 of this guidance.

2.179 In cases that involve multiple suspects, multiple locations and/or multiple incidents over an extended period of time some consideration should be given to the sequence within which the various offences are to be covered (e.g., chronologically or thematically based on suspected offender, location or activity) as a means of avoiding confusion during the interview and in order to make editing easier should the need subsequently arise.

### *Techniques*

2.180 The kind of techniques used within the phased structure will vary according to what is known about the witness and the offence when planning the interview, as well as how the witness behaves and what emerges during the interview itself. As a general principle, an interview plan should briefly outline the techniques that might be used to:

- Cover truth and lies (if necessary);
- Initiate and support an account (with supplementary options to be used if the primary method of initiating the account does not work);
- Clarify and develop the account through questioning.

## **How the Interview is to be Recorded**

### *Vulnerable and Intimidated Witnesses*

- 2.181 Vulnerable and intimidated witnesses are all eligible for video-recorded evidence-in-chief (section 27 of the 1999 Act) in magistrates, youth and crown courts.
- 2.182 The 1999 Act includes rebuttable presumptions to the effect that video-recorded evidence-in-chief is likely to maximise the quality of the evidence given by child witnesses ([section 21](#)) and by adult complainants to sexual offences ([section 22A](#)). These witnesses should automatically be given the opportunity to participate in a video-recorded interview.
- 2.183 Judges have the discretion to make direction orders requiring the police to conduct a video-recorded interview in cases where witnesses would be eligible for video-recorded cross-examination (section 28 of the 1999 Act) but for the fact that they made a written statement rather than participating in video-recorded interview. When a witness is eligible for section 28, it is, therefore, important that the police make a proper record of the decision-making process when a video-recorded interview is not made and that they share it with the CPS so that prosecutors can explain it to the court. Such an explanation may or may not influence the decision of the Judge to direct the police to conduct a video-recorded interview with the witness.
- 2.184 The playing of a video-recorded interview as evidence in chief is a matter for the court that is contingent on:
- Whether the witness falls within the scope of sections 16 or 17 of the 1999 Act; and
  - Whether special measures would improve the quality (meaning the completeness, coherence and accuracy) of the evidence of an eligible witness in the circumstances of the case (which take account of the witness's views and the possibility that the measures might tend to inhibit the evidence being tested effectively).
- 2.185 Where a vulnerable or intimidated witness either does not consent to or is not offered a video-recorded interview they are still eligible for any other special measures that are likely to maximise the quality of their evidence (e.g., evidence from behind screens or over the live TV link), provided that does not inhibit their evidence being tested effectively.
- 2.186 In cases where it is thought that video-recorded evidence-in-chief may be the best way for the witness to achieve their best evidence the option to do so should be discussed with the witness in accordance with Right 2 of the statutory [Code of Practice for Victims of Crime](#) (Ministry of Justice 2020) and charter standard 4 of the [Witness Charter](#) (Ministry of Justice 2013). It is essential that the informed consent

of a vulnerable or intimidated witness is obtained before the video-recorded interview takes place.

- 2.187 It is important to remember that the final decision as to whether to make an application for video-recorded evidence-in-chief is a matter for the CPS and that the final decision as to whether or not to grant an application where it is made is a matter for the trial judge. No promises or guarantees should be given to the witness when their views about special measures are ascertained.

### *Significant Witnesses*

- 2.188 Interviews with significant witnesses should usually be video-recorded for the reasons set out in [paragraphs 1.29 and 1.30](#). It is important to note that there are no statutory provisions that permit the playing of video-recorded interviews with significant witnesses as evidence-in-chief, although interviewers should be aware that the defence might ask the court for permission to play some or all of the recording in support of their case. The options for adducing the testimony on the recording as evidence in chief are set out in [paragraphs 2.155 to 2.157](#) of this document.
- 2.189 Where a significant witness withholds consent for the interview to be video-recorded, consideration should be given to making an audio-record of it. Where a witness withholds consent for the interview to be audio-recorded, a written record in the form of notes should be made of it. In any event, a Criminal Justice Act statement should subsequently be prepared from the visual/audio-recording or notes. The statement should then be adduced as evidence and the visual/audio-recording or notes revealed as unused material to the CPS.
- 2.190 Where an interview with a significant witness has been recorded by means of visual or audio-recording equipment, consistency between what was said by the witness during the interview and what is recorded on the witness's Criminal Justice Act statement is likely to be greater if the visual or audio record is reviewed prior to the statement being drafted. This is particularly true of complex or lengthy interviews where witnesses and interviewers alike could suffer from the effects of fatigue. It is, therefore, important for there to be a break between the interview and the witness reviewing and signing their Criminal Justice Act 1967 statement. In complex cases, it might be advantageous for the statement to be checked independently against the recording prior to the witness being invited to review and sign it.
- 2.191 In circumstances where there are grounds to believe that the witness may not return to review and sign the statement, consideration may be given to obtaining a brief written statement from the witness followed by the production of a transcript of the video-recording as an exhibit (as per option 1 in [paragraph 2.155](#)).

2.192 Regardless of how the interview is recorded, notes should always be taken that are sufficiently detailed to help the investigating officer to determine any further lines of enquiry that might be necessary and to brief the custody officer and any other interviewers where a suspected offender is in custody. Responsibility for the compilation of such notes should be agreed during the planning phase of the interview. This responsibility should fall to the interview monitor, where they are in the adjoining room with the monitoring equipment, or the recording equipment operator. While interviewers should consider taking brief notes to assist them during the free narrative phase of the interview where this is appropriate, they should not be responsible for taking notes for the purposes of briefing others because this is likely to distract the witness, obstruct the flow of recall and slow the interview process down, thus hindering the maximum retrieval of information.

### **Interviewers and Others Present at the Interview**

#### *The Interviewer*

- 2.193 Consideration should be given to who is best qualified to lead the interview. A special blend of skills is required to take the lead in video-recorded interviews. The lead interviewer should be a person who has established or is likely to be able to establish rapport with the witness, who understands how to communicate effectively with witnesses who might become distressed, and who has a proper grasp of the rules of evidence and criminal offences. The lead interviewer must have good knowledge of the points needed to prove particular offences and of the wider investigative material important to the investigation.
- 2.194 In addition to taking account of the prospective interviewer's skills, the following factors should be taken into account when considering who should conduct the interview:
- The experience of the prospective interviewer in talking to witnesses in respect of the type of offence under investigation, and any other skills that they possess that could be useful;
  - Any personal or domestic issues that the prospective interviewer has that might have an adverse impact on the interview; and
  - Whether any previous experience that the prospective interviewer has with the witness is likely to either inhibit rapport building or give rise to challenges of coaching, prompting or offering inducements.
- 2.195 Where the witness expresses a preference for an interviewer of either gender or sexual orientation or from a particular race, cultural or ethnic background, this should be accommodated as far as is practical in the circumstances.
- 2.196 All victims of sexual violence, gender-based violence or domestic abuse have the right to request that their interview is conducted by a person of the gender of their choice. Such a request must be met unless doing so would prejudice the fairness of

the proceedings. In these circumstances, victims must be told why their request cannot be acceded to (Right 2 of the statutory [Code of Practice for Victims of Crime](#), Ministry of Justice 2020).

- 2.197 Where more than one interview is needed, the same interviewer should conduct all the interviews if possible (unless this would prejudice the proper handling of the investigation) (Right 2 of the statutory [Code of Practice for Victims of Crime](#), Ministry of Justice, 2020, and associated guidance for service providers).
- 2.198 The interviewer should consider the appropriate mode of dress for the witness. For example, research shows that a person's perceived authority can have an adverse effect on the witness, especially with respect to suggestibility.
- 2.199 Exceptionally, it may be in the interests of the witness to be interviewed by an adult in whom they have already put confidence but who is not a member of the investigating team. Provided that such a person has appropriate professional qualifications, is independent and impartial, is not a party to the proceedings, is prepared to co-operate with appropriately trained interviewers and can accept adequate briefing (including permitted questioning techniques), this possibility should not be precluded.

#### *The Interview Monitor*

- 2.200 The presence of an interview monitor is desirable because they can help to ensure that the interview is conducted in a professional manner, can assist in identifying any areas that need clarifying or developing in the witness's account that emerge, and can ensure that the witness's needs are kept paramount. Careful consideration needs to be made with regard to whether the interview monitor is present in the interviewing room itself (in the event of which they might effectively be regarded as being a 'second interviewer'), or in the adjoining room with the monitoring equipment (in which case they might effectively be regarded as being an 'observer'). The possibility that the witness might feel intimidated by the presence of too many people in the interview room should be taken into account in determining where an interview monitor is situated, particularly when an interview supporter and interpreter are also to be present in the interview room.
- 2.201 Regardless of who takes the lead, the interviewing team should have a clear and shared remit for the role of the interview monitor. Too often this role is subjugated to the need for someone to operate the video equipment when, in reality, the interview monitor has a vital role in observing the lead interviewer's questioning and the witness's demeanour. The interview monitor should be alert to any interviewer errors and apparent confusions in the communication between the lead interviewer and the witness. The interview monitor can reflect back to the planning discussions and communicate with the lead interviewer as necessary. Such observation and



monitoring can be essential to the overall clarity and completeness of the video-recorded account, which will be especially important in court.

### *Equipment Operators*

2.202 The equipment should always have an operator for the duration of the interview. This will allow the view recorded by the camera to be adjusted if the witness moves. It should also provide an opportunity for the interviewer to be alerted at the earliest possible moment in the event of an equipment failure, rather than such a failure only being discovered at the end of the interview.

### *Interpreters*

- 2.203 Witnesses should always be interviewed in the language of their choice, unless exceptional circumstances prevail (for example, in respect of the availability of interpreters). This will normally be the witness's first language, unless specific circumstances result in their second language being more appropriate. Interviewers should be aware that some witnesses could be perfectly fluent in English but might use their first language to express intimate or more complex concepts. As a result, the possibility of using an interpreter should be considered while planning the interview, even where a witness is bilingual.
- 2.204 Interpreters should be appropriately accredited and trained so that they understand the need to avoid altering the meaning of questions and replies. They should either be selected from the National Register of Public Service Interpreters or the Signature National Registers of Communication Professionals Working with Deaf and Deafblind people (NRCPD) or be trained and experienced to an equivalent standard. All interpreters need to be independent, impartial and unbiased.
- 2.205 Family members, other close relatives or members of the community should not be used to interpret either during the interview or when preparing the witness for it.
- 2.206 Interpreters should be involved in the planning process. They should have a clear understanding of the objectives of the interview, its structure and the function served by any specific techniques used (e.g., those of the cognitive interview).
- 2.207 It should be remembered that some words in English might not have an exact equivalent in other languages and communication systems. This possibility should, therefore, be discussed while planning the interview with a view to developing strategies to address what might otherwise be a problem.
- 2.208 If interviewers are working with an interpreter, it is important to have clarified at the outset who will lead the interview in terms of maintaining direct communication with the witness. If the witness is communicating via an interpreter, lead interviewers should identify themselves as such while maintaining appropriate eye contact with the witness, so that the witness understands that they should address the



interviewer, not the interpreter. If, however, a signer is being used to communicate with a witness who has a hearing impairment, it may be more important for the signer to maintain the direct communication with the witness.

- 2.209 Where an interpreter is present, they must be clearly identified at the beginning of the interview. Whenever possible, they should also be visible in one of the shots recorded.
- 2.210 Where a sign-language interpreter is being used to interpret for a witness with a hearing impairment, a camera should be used to record the signer's face and upper body, including their hand movements, as well as those of the witness. In some interview suites, it might be necessary to make use of a portable camera, in addition to the static equipment already set up in the suite, for this purpose. Interviewers should also emphasise to the signer that it is important to avoid inadvertently leading the witness by presenting only one option when some of the more generic signs are used, e.g., the signs for 'weapon' and 'touch' depend on the context so it may be important to present the witness with a number of alternatives.
- 2.211 Further guidance on the use of interpreters is available from the Crown Prosecution Service website at <https://www.cps.gov.uk/legal-guidance/interpreters>.

### *Intermediaries*

- 2.212 Right 2 of the statutory [Code of Practice for Victims of Crime](#) (Ministry of Justice, 2020) and the associated guidance for service providers obliges interviewers to consider whether vulnerable victims are eligible for the support of a Registered Intermediary and, if so, to take account of that when the interview is planned.
- 2.213 A Registered Intermediary may be able to help a vulnerable adult or child witness (within the meaning of section 16 of the 1999 Act) to give their best evidence when they are being interviewed and when they are in court. Intermediaries are not available to 'intimidated' witnesses within the meaning of section 17 of the 1999 Act (unless they can also be categorised as 'vulnerable').
- 2.214 The information provided in this section is intended to summarise the role of a Registered Intermediary and provide general principles that need to be considered in criminal investigations. Detailed procedural guidance and a case checklist can be found in the [Registered Intermediary Procedural Guidance Manual](#) (Ministry of Justice, 2020).
- 2.215 Even though section 29 of the 1999 Act makes it clear that an intermediary can assist a witness to communicate by explaining questions put to and answers given by a vulnerable witness, this rarely happens in practice. It is more common for Registered Intermediaries to assist during the planning phase of an interview by providing advice on how questions should be asked and then to intervene during

the interview where miscommunication is likely, by assisting the interviewer to rephrase the question or by repeating the witness's answers where they might otherwise be inaudible or unclear on the recording. The extent to which the intermediary is actively involved in the communication of questions and answers varies from witness to witness depending on the witness's needs and communication style. It also depends on the degree of compliance with the intermediary's recommendations by the questioner. It is very important to remember that the intermediary is there only to assist communication and understanding – they are not allowed to take on the function of investigator.

- 2.216 The Intermediaries Registration Board (IRB) oversees registration of intermediaries and their standards. Registered Intermediaries are approved by the IRB and the Ministry of Justice following a selection and training process assessed against a set of core competencies required for the intermediary role. Registered Intermediaries are subject to periodic criminal record checks through the Disclosure and Barring Service. The services of a Registered Intermediary may be obtained by contacting Major Crime Investigative Support at the National Crime Agency on 0345 000 5463.
- 2.217 Before a Registered Intermediary can assist with communication, they need to conduct one or more assessment meetings with the witness. The criminal case is not discussed during assessment meetings. These meetings enable the intermediary to consider the witness's communication needs and devise strategies and recommendations to maximise understanding. The meetings also enable the intermediary to build the necessary rapport with the witness and to determine whether they (the intermediary) are the right person to facilitate communication with the witness. Intermediaries should never be alone with a witness. A responsible third party must always be present. At the investigation stage the responsible third party should be a police officer or member of police staff so that any unsolicited comments of relevance that are made by the witness can be identified and acted upon if necessary. The police officer or member of police staff who is present should, ideally, be the interviewer to begin the process of rapport building between them and the witness. Anybody other than a police officer who acts as a responsible third party should be informed that they may have to attend court to give evidence.
- 2.218 Registered Intermediaries should help interviewers to plan interviews after they have assessed a witness's communication needs. For this reason and because the assessment process is a demanding one that can result in vulnerable witnesses getting tired, there should usually be a break between an assessment and an interview. It is accepted that there will, however, be occasions when it is essential that an interview takes place immediately after an assessment (e.g., where a suspect has been arrested and cannot be bailed) but such occasions should be the exception rather than the rule.

- 2.219 Wherever possible Registered Intermediaries should be used. The use of an intermediary not registered to work under the Witness Intermediary Scheme should only be considered once the options for using a Registered Intermediary have been fully exhausted. However, when this does occur an intermediary has the same responsibility to the court as one who is registered. These intermediaries must be independent of the case being investigated (i.e., not witnesses or suspects) and will need to be briefed on the requirements of the role. There is a preference for such intermediaries to be professional people rather than family members, friends or associates. Advice can be obtained from Major Crime Investigative Support at the National Crime Agency on 0345 000 5463 as to the skills that the intermediary may require. In the rare event that the particular circumstances of the case are such that it appears that only a non-professional person can perform the function of an intermediary, it is important that the witness is assessed by a Registered Intermediary before proceeding, in order to confirm that the role can only be performed by the non-professional.
- 2.220 Discussions with the intermediary at the planning stage should include the arrangements for leading the interview, legal and confidentiality requirements, and the exact role that the intermediary will take. The potentially explicit nature of the topics to be covered should be addressed. The intermediary should be provided with information that is relevant to their role and will help them to maximise communication/understanding (e.g., the specific vocabulary used by the witness and relevant relationships). There should be a short break towards the end of the interview so that a discussion can take place between the interviewer and the intermediary to ensure that any identified areas of miscommunication have been addressed before the recording is switched off.

### *Interview Supporters*

- 2.221 Right 2 of the statutory [Code of Practice for Victims of Crime](#) (Ministry of Justice, 2020) makes it clear that victims have the right to bring a person of their choice to the interview unless that is not possible, in which case victims should be told why. The guidance for service providers that accompanies the Code says that interview plans should take account of the need for an interview supporter.
- 2.222 Some witnesses may find that it is helpful for a support person who is known to them to be present during the interview to provide emotional support (the 'interview supporter'). The witness's views as to the presence of such a supporter should be established prior to the interview unless it is impractical to do so.
- 2.223 It should be noted that interview supporters are not the same as 'appropriate adults'. Appropriate adults have not been required in witness interviews since the revised edition of the Codes of Practice to the Police and Criminal Evidence Act 1984 came into force on 1st April 2003 ('witness statements' are no longer included

among in the circumstances in which an appropriate adult is needed during interviews with suspected offenders in [Code C](#) paragraph 11.15).

- 2.224 Other witnesses in the case, including those giving evidence of an early complaint, cannot act as interview supporters. Interpreters and intermediaries should also not act as supporters; these different functions should not be vested in one person.
- 2.225 Supporters must be clearly told that their role is limited to providing emotional support and that they must not prompt or speak for the witness, especially on any matters relevant to the investigation.
- 2.226 Where an interview supporter is present, they must be clearly identified at the beginning of the interview. Whenever possible, they should also be visible in one of the angles recorded. Best practice would be for the supporter to make sure they are outside the witness's line of vision, for example by sitting on the opposite side of the witness to the interviewer.

#### *Location of the Interview*

- 2.227 The police must try to ensure that the interview takes place in premises designed or adapted for that purpose. If that is not possible, victims must be told why (Right 2 of the statutory [Code of Practice for Victims of Crime](#), Ministry of Justice, 2020).
- 2.228 Where the witness prefers to be interviewed in a setting familiar and comfortable to them, the location should be quiet enough to avoid a situation in which background noise is likely to interfere with the quality of the sound on any visual or audio record, and free from interruptions, distractions, and fear and intimidation, so the interviewer and witness can concentrate fully on the task in hand – the interview.
- 2.229 In the event of a witness being interviewed at their home address, care should be taken to avoid saying anything or visually recording any background material that might lead to the location being identified. In addition, interviewers should be cautious of interviewing witnesses about traumatic experiences in their home because when someone recounts a traumatic experience in a place that they would usually regard as a safe haven they may come to associate the trauma with it.
- 2.230 Interviewers should ensure that sufficient pens and paper are available for use where a witness's recall could be assisted by drawing a sketch/plan.

#### *Timing of the Interview*

- 2.231 The decision on when to conduct an interview needs to take account of the demands of the investigation (e.g., a suspected perpetrator being in custody) as well as the potential effects of trauma and/or stress. While trauma and stress can interfere with the process of remembering, its potential impact should be assessed by asking the witness rather than by the application of an arbitrary period of time.

Some witnesses will want to be interviewed relatively quickly, while others might wish to be interviewed at a later date. It should always be borne in mind that the potential for memory contamination taking place increases with the delay.

- 2.232 Interviews should not take place at a time when the witness is likely to be suffering from the effects of fatigue (other than in the exceptional circumstances – see next paragraph). The effect on the witness's routine and the potential impact of any medication, as well as their views, must be taken into account in determining the best time to conduct the interview.
- 2.233 In the event of circumstances being such that it is absolutely essential for a witness to be interviewed at a time when they are likely to be suffering the effects of fatigue (for example, where an alleged offender is in police custody for a serious offence and an interview is necessary to secure potentially vital evidence), consideration may be given to conducting a brief interview in the first instance which sets out the witness's account and addresses any issues on which immediate action needs to be taken. Where it is necessary to conduct a brief interview, the principles set out in [paragraphs 2.4 to 2.7](#) should be adhered to. A more substantial interview can then be arranged at an appropriate time.

*Duration of the Interview (including Pace, Breaks and the Possibility of more than One Session)*

- 2.234 The interview should go at the pace of the witness. Some witnesses will require regular comfort breaks (for example, young children, elderly and frail witnesses). Whenever possible, the interviewer should seek advice from people who know the witness about the likely length of time that the witness can be interviewed before a pause or break is offered while planning the interview.
- 2.235 Some witnesses who have experienced a traumatic event may find that the interview is 'too much' for them, especially if emotional matters are being discussed. Ways of assisting these witnesses may include planning for breaks in the interview and/or pauses in which the interviewer moves the conversation on to more neutral topics before returning to the matter under investigation.
- 2.236 In some circumstances it might be necessary to conduct the interview over more than one session (for example: in complicated cases; where allegations of multiple offences are involved; where the witness is elderly and frail; where the witness is traumatised or where the witness is taking medication likely to make them sleepy). These sessions might be separated by a matter of hours or, if necessary, could take place over a number of days. When this occurs, care must be taken to avoid repetition of the same focused questions over time, which could lead to unreliable or inconsistent responding in some witnesses and interviews being ruled inadmissible by the court.

## **Victim Personal Statements**

- 2.237 Victims have the right to make a Victim Personal Statement (Right 7 of the statutory [Code of Practice for Victims of Crime](#), Ministry of Justice, 2020).
- 2.238 Interviewers should plan to give witnesses who are victims the opportunity to make a VPS at the end of the interview. The purpose of a VPS is to give a victim of crime the chance to say what effect the crime has had on them and to help identify their need for information and support. The statement should be taken in the same format as the witness statement – e.g., where a visually-recorded interview has taken place, the VPS should also be visually-recorded. For further details of the scheme see [Joint Agency Guide to the Victim Personal Statement](#).
- 2.239 Providing a VPS (visually-recorded or written) is entirely voluntary. Witnesses should be provided with an explanation about what a VPS is and how it can/cannot be used, to help them to make an informed choice as to whether to provide a VPS or not.
- 2.240 In cases where the witness statement has been taken in the form of a visually-recorded interview, it is preferable for the VPS to follow on the same recording, but there must be a clear break between the two. This can be achieved by dividing the two statements with a still image, e.g., the police force logo. Alternatively, or additionally, the interviewer may make a statement on the recording acknowledging the change from the investigative interview to the VPS.
- 2.241 There is always the possibility that the victim or their carer may subsequently feel that the impact of the experience has been such that a second statement is needed. Unless there are exceptional circumstances, a second statement should be taken in a written format.

## **Planning for Immediately after the Interview**

- 2.242 Although interviewers cannot predict the course of an interview, planning discussions should cover the different possible outcomes and consider the implications for the witness. This should include the possibility of a referral to support services, the possibility of a medical examination (where this has not taken place before the interview), the possible need for alternative accommodation and any other steps necessary to protect the witness or reduce the possibility of harassment.
- 2.243 Whatever the outcome, consideration should always be given to how victims and witnesses are to be supported in the hours immediately following an interview. Such support could come from family and friends or professionals who are in routine

contact with the victim or witness (e.g., social workers, community psychiatric nurses).

## **Recording the Planning Process**

- 2.244 A full written record should be kept of the decisions made during the planning process and of the information and rationale underpinning them. This record should be referred to in the body of the Criminal Justice Act 1967 statement subsequently made by the interviewer in relation to the planning, preparation and conduct of the interview, and should be revealed to the CPS under the requirements of the [Criminal Procedure and Investigations Act 1996](#).
- 2.245 Supervisors should monitor and review the planning process appropriately. In particular, they should, ideally, be involved in the development of interview plans for complex investigations.

## **Preparing the Witness for an Interview**

- 2.246 Witnesses must always be prepared for an interview. In some cases, this might be fairly brief and take place immediately prior to the interview. In other instances, it might be necessary to take more time and for it to take place several hours or days before the interview.
- 2.247 The preparation of the witness should include an explanation of the purpose of the interview and the reason for visually recording it (including who might subsequently view it), the role of the interviewer(s) and anybody else to be present, the location of the interview and roughly how long it is likely to take. The interviewer(s) should also outline the general structure of the interview and provide some explanation of the ground rules that apply to it (including the witness not making any assumptions about the interviewer's knowledge of the event). Substantive issues relating to the evidence should not be discussed while preparing a witness for an interview.
- 2.248 Where appropriate, the witness's carer(s) should also be provided with suitable information at this stage. In particular, they should be discouraged from discussing the details of the alleged offence(s) with the witness or any other individual who may be involved in the investigation but must be able to reassure the witness if they want to talk or express anxieties. They should be asked to document carefully any discussions they have with the witness or other persons regarding the allegation or investigation (e.g., who was present, date/time and setting, what exactly was said). The witness should never be offered inducements for complying with the investigative process.



- 2.249 Carer(s) should also be encouraged to provide emotional support to the witness, such as physical comfort and reassurance. They should be given information about what further role, if any, they may have in planning the interview or in being present while it is conducted (or given reasons why the interviewer(s) would prefer them not to be present). Where possible, any support needs of the carer(s) that are identified should be brought to the attention of the relevant authorities/agencies.
- 2.250 Any issues or concerns raised by witnesses, or their carers, should be addressed while preparing them for the interview (e.g., welfare issues or concerns about the possibility of a later court appearance).
- 2.251 Most witnesses will be anxious prior to an investigative interview, and few will be familiar with the formal aspects of this procedure. It is therefore important that the interviewer uses the time spent preparing a witness for an interview to build up a rapport with the witness. The nature and the extent of rapport building required very much depends on what has been established about the witness during the planning phase of the interview.
- 2.252 Some witnesses, particularly younger children, witnesses with learning disabilities and witnesses who have been traumatised, might need to spend more time getting to know the interviewer(s) before they are ready and/or willing to take part in an investigative interview. The interviewer(s) should consider whether one or more meetings with a witness should be planned to take place prior to the interview because this familiarisation process may take some time.
- 2.253 Some witnesses may feel that their initial, lawful co-operation with a person who subsequently commits an offence may make them blame-worthy and some children and vulnerable witnesses may assume that they must have done something wrong simply because they are being interviewed. The interviewer might need to try to reassure the witness on these points but promises or predictions should not be made about the likely outcome of the interview. So far as possible, the interview should be conducted in a 'neutral' atmosphere, with the interviewer taking care not to assume, or appear to assume, the guilt of an individual whose alleged conduct may be the subject of the interview.
- 2.254 Some witnesses may be unhappy or feel shame or resentment about being questioned, especially on personal matters. In the rapport phase, and throughout the interview, the interviewer should convey to the witness that they have respect and sympathy for how the witness feels. A witness may be apprehensive about what may happen after the interview if they do provide an account of what happened. Such worries should be addressed.
- 2.255 Initial discussions with the witness could focus on events and interests not thematically related to the investigation: sport, television programmes, favourite



games, school curriculum, the journey to the interview suite, and so on. Sometimes, where the witness and the interviewer have had some previous contact this can be quite brief. At other times, especially when the witness is nervous or has been subject to threats from the alleged abuser, a much longer period of rapport-building when the witness is prepared for the interview may be warranted.

- 2.256 Rapport-building while the witness is prepared for the interview can also serve to set the tone for the style of questions to be used by the interviewer during the interview. It is, therefore, important that the witness is encouraged to talk freely through the extensive use of open-ended questions because this can help to encourage the witness to give detailed accounts; a style of communication wholly consistent with the guidance set out in this document.
- 2.257 In some instances, it might be helpful to conduct a practice interview while preparing the witness for the interview. In these circumstances the witness could be asked to recall a personal event unrelated to the issue of concern (e.g., a birthday celebration or a holiday treat). This serves to provide the witness with an example of the kind of detail that will be required in relation to the issue of concern and to practice extended verbal responses. Such practice interviews might be particularly useful with younger witnesses and witnesses with learning disabilities who might not appreciate the demands of a witness interview for detailed and context information.
- 2.258 Rapport-building while the witness is prepared for the interview also gives the interviewer the opportunity to build on their knowledge of the witness's communication skills and degree of understanding of vocabulary. The interviewer can then adjust their language use and the complexity of their questions in the light of the witness's responses.
- 2.259 It may prove problematic to attempt to proceed with an interview until rapport has been established. If establishing rapport proves difficult when the witness is prepared for the interview, it may be preferable to postpone it rather than proceeding with an interview that may well turn out to be of no benefit.
- 2.260 If necessary, assistance should be sought from interview supervisors and interview advisers concerning the issues that might arise during the preparation of a witness for an interview.
- 2.261 Full written notes must be kept of the preparation of a witness for an interview and must be revealed to the CPS on request. The information obtained to plan the interview should be reviewed and revised, if necessary, in the light of any additional information that arises from preparing the witness for the interview.

## Complex Cases

- 2.262 The interview process can be complicated for a variety of reasons, including the communication needs of the witness and the scale of the investigation (e.g., multiple witnesses, multiple allegations). Consideration should be given to the appointment of an interview adviser in these circumstances (see [National Investigate interviewing Strategy](#), Association of Chief Police Officers, 2009).
- 2.263 Interview strategies in complex cases should always include an effective and trauma-informed survivor/victim/witness engagement strategy. Such a strategy is particularly important where the investigation team intend to contact survivors/victims/witnesses who are not expecting to be contacted by the police.
- 2.264 The assistance of a Registered Intermediary should be sought where the complexity of the case stems from the communication needs of the witness. Given the extensive trauma often experienced by survivors/victims/witnesses of child sexual abuse and exploitation and critical incidents such as terrorist attacks, it is important to remember that Post-Traumatic Stress Disorder (PTSD) may be regarded as a “mental disorder” within the meaning of section 1 Mental Health Act, 1983 (Department of Health, 2015<sup>5</sup>) and that people experiencing PTSD are eligible for the support of a Registered Intermediary as such. The services of a Registered Intermediary can be obtained by contacting Major Crime Investigative Support at the National Crime Agency on 0345 000 5463 or [mcis@nca.pnn.police.uk](mailto:mcis@nca.pnn.police.uk)
- 2.265 Where the complexity of the case relates to a large number of witnesses at a major incident such as a terrorist attack, a Witness Interview Strategy for a Critical Incident (WISCI) should be considered (see Smith K. and Milne R. [2018] "Witness Interview Strategy for Critical Incidents (WISCI)", Journal of Forensic Practice, Vol. 20 Issue: 4, pp.268-278, <https://doi.org/10.1108/JFP-03-2018-0007> Permanent link to this document: <https://doi.org/10.1108/JFP-03-2018-0007> ).
- 2.266 Where the complexity of the case relates to the volume of allegations, as is often the situation in investigations into allegations of child sexual abuse and exploitation, an interview strategy appropriate to that type of investigation should be developed. Advice on the development of such a strategy is available from Major Crime Investigative Support at the National Crime Agency on 0345 000 5463 or [mcis@nca.pnn.police.uk](mailto:mcis@nca.pnn.police.uk)
- 2.267 The research on recurring memories should be considered when multiple allegations are made by the same witness (see, for example, chapter 7 of

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<sup>5</sup> Department of Health (2015) “Mental Health Act 1983: Code of Practice”, Norwich, The Stationery Office, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/435512/MHA\\_Code\\_of\\_Practice.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF)

Goodman-Delahunty J., Nolan M.A. and van Gijn-Grosvenor E.L. [2017] *Empirical Guidance on the Effects of Child Sexual Abuse on Memory and Complainants' Evidence*. Sydney, Australia, Royal Commission into Institutional Responses to Child Sexual Abuse, available at <https://nla.gov.au/nla.obj-543017146/view>).

Interview strategies in these circumstances should take account of the need to structure the interview process appropriately. Such a structure could include an overview account followed by a review and further interviews as necessary.

- 2.268 Where multiple offences are alleged, it is imperative that interviewers are aware of when the witness is reporting the details of script relating to what usually happened and when they referring to a specific incident. The invariant features of scripts can be highly accurate in a general sense but errors can occur when they are mistaken for and applied to memories of specific instances (see Goodman-Delahunty et al, as referred to above). While the particular details of an incident can certainly be useful in formulating a charge, it is not absolutely essential. Advice from the Crown Prosecution Service should, therefore, be sought where a witness is unable to delineate a specific incident from a multitude of similar instances.
- 2.269 Further advice on the management of complex cases can be obtained from Major Crime Investigative Support at the National Crime Agency on 0345 000 5463 or [mcis@nca.pnn.police.uk](mailto:mcis@nca.pnn.police.uk)

## **Pre-Interview Rapport Building in Complex Cases**

- 2.270 The lifestyle of and the trauma experienced by some victims of and witnesses to complex cases such as child sexual exploitation and abuse is such that extensive rapport building might be needed before they develop enough trust and confidence in the investigation team to participate in an investigative interview.
- 2.271 Whatever the extent of the pre-interview rapport building, it is essential that all contact with a potential victim/witness, regardless of who initiated it, and any attempt to contact a potential victim/witness by the investigation team is properly documented and that care is taken to avoid any suggestion of coaching or the offer of an inducement. It is ultimately a matter for the court to decide whether it was reasonable for investigators to purchase a meal for a potential victim/ witness, pay their travel expenses or accommodation costs or supply them with a mobile telephone to replace one taken from them for forensic analysis. To assist the court to reach a decision it is essential that the decision-making process is fully documented.
- 2.272 It is important that records relating to pre-interview rapport building are regularly supervised.

## **Witnesses who might become Suspects**

- 2.273 So far as is practicable, consideration should be given in the planning stage as to how interviewers will deal with anything that the witness might say during the interview that could implicate them in the commission of a criminal offence. Any decision on an appropriate course of action will involve taking account of the seriousness of the crime implicated and weighing it against the seriousness of the crime under investigation.
- 2.274 It is preferable to anticipate and plan for such an eventuality, while recognising that any decisions on a particular course of action are likely to depend upon what has been disclosed by the witness during the course of the interview (see [paragraphs 3.162 to 3.165](#) for guidance in respect of incriminating statements made by witnesses during interviews).

## 3. Conducting the Interview

The overall purpose of an interview with a witness is to obtain an accurate and reliable account in a way that is fair, is in the witness's interests and is acceptable to the court. Over the years, many professionals have recommended the use of a phased approach of interviewing that starts with a free-narrative account before gradually becoming more and more specific in the nature of the questioning in order to elicit further detail. The approach recommended in this guidance consists of the following four phases:

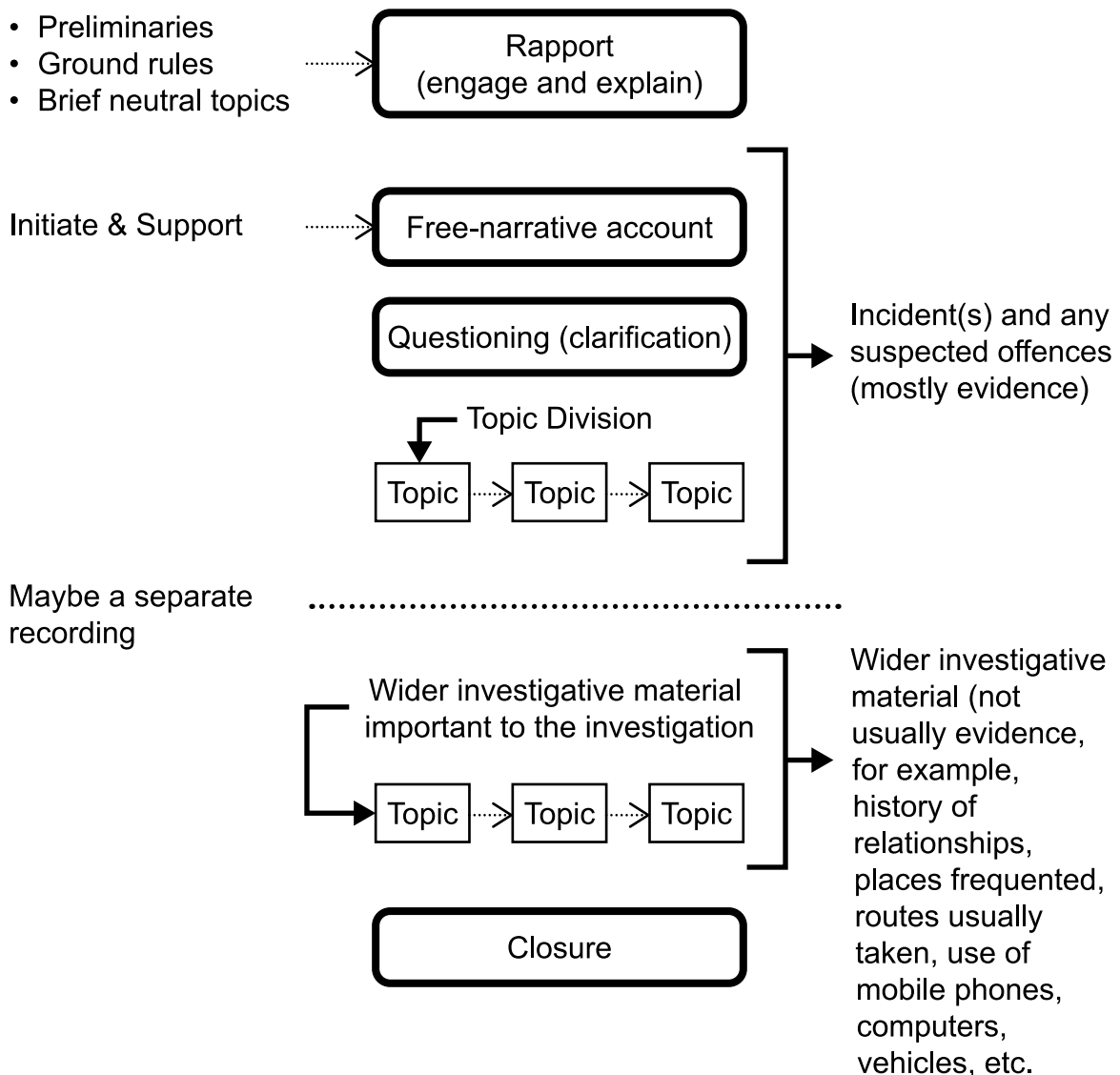
1. Rapport
2. Free-narrative account
- 3(a) Topic division followed by clarification and development of the account
- 3(b) Systematic introduction and probing of any wider investigative material that may be important to the investigation
4. Closure

### Introduction

- 3.1 The basic goal of an interview with a witness is to obtain an accurate and reliable account in a way that is fair, is in the witness's interests and is acceptable to the court. Over the years, many professionals have recommended the use of the phased approach of interviewing, starting with a free narrative phase and then gradually becoming more and more specific in the nature of the questioning in order to elicit further detail.
- 3.2 The inclusion of a phased approach in this guidance, however, should not be taken to imply that all other techniques are necessarily unacceptable or to preclude their development. Nevertheless, the sound legal framework it provides should not be departed from by interviewers unless they have discussed and agreed the reasons for doing so with their senior manager(s) or an interview adviser (see National Investigative Interviewing Strategy, Association of Chief Police Officers, 2009).
- 3.3 It is important to remember that the phased interview was primarily developed for interviewing witnesses who are reasonably articulate. The fact that the phased approach may not be appropriate for interviewing some witnesses with the most challenging communication skills (e.g., those only able to respond 'yes' or 'no' to a question) should not mean that the most vulnerable of witnesses are denied access to justice. Neither should what follows be regarded as a checklist to be rigidly worked through. Flexibility is the key to successful interviewing.

- 3.4 For witnesses, interviews should normally consist of the following four main phases:
- Establishing rapport;
  - Initiating and supporting a free narrative account;
  - Questioning; and
  - Closure.
- 3.5 The typical structure of phased interviews conducted in accordance with this guidance is set out in figure 3.1 below.

**Figure 3.1: Typical interview structure**



- 3.6 The planning phase, which will have occurred prior to the interview, should provide guidance to the interviewer about what might be achieved in each of the four main phases of the interview (e.g., 'whether the witness able to communicate via free recall').

- 3.7 While research has found that the accounts of some types of vulnerable witnesses are less complete than those of other witnesses, these are not necessarily less accurate if the interviewing is conducted appropriately.
- 3.8 The interviewer will need to pitch the language and concepts used (see below) to a level that the witness can clearly understand, while the focus should be on recognising and working with the witness's capabilities rather than limitations.

## **Phase One: Establishing Rapport**

### **Preliminaries**

- 3.9 After confirming that the equipment is working and has been set up correctly, the interviewer should say out loud the day, date, time and place (not the detailed address) of the interview and the names all those present. The interviewer should not ask for or refer to any other personal details of those present, or anybody else mentioned during the interview, other than where it is essential to do so for evidential or procedural reasons, since to do so might mean that the recording will need to be edited. The interviewer should then briefly mention the reason for the interview in a way that does not refer directly to an alleged offence. Interviewers should be aware that while some witnesses will, from the outset, be clear concerning what the interview is about, other witnesses will not.

### **Neutral Topics**

- 3.10 Rapport is essential, and good rapport between the interviewer and the witness can improve both the quantity and quality of information gained in the interview. One of the reasons for rapport being so important is that the witness's anxiety, regardless of whether it is induced by the crime and/or the interview situation or by something else, needs to be reduced for maximum recollection. This is because people only have a limited amount of processing capacity and the aim is to have the witness's full power devoted to retrieving as much information as possible. One way to achieve this is to start by briefly asking some neutral questions not related to the event which can be answered positively and, therefore, create a positive mood. It is important that the style of any questions used during this phase are consistent with those to be used during the rest of the interview (i.e., predominantly open) so that the witness get used to the kind of elaborated responses that will be required later.
- 3.11 It is important that any discussion of neutral topics in the rapport phase is completed within a relatively short space of time. Interviewers should remember that a lengthy rapport phase may result in:
- Some witnesses getting tired before they are asked to provide an account, this could have an adverse impact on the quality of their evidence;

- Some witnesses getting confused about the purpose of the interview, this could increase in their anxiety.

- 3.12 If the witness assessment and interview plan suggests that discussing neutral topics for a lengthy period of time may be beneficial (e.g., with very young witnesses, witnesses with a learning disability, some traumatised witnesses) it should take place as part of witness preparation before the interview commences (see [paragraphs 2.246 to 2.261](#)).
- 3.13 Interviewers should be aware that it is neither desirable nor essential to discuss neutral topics in every interview. Where a witness is anxious to begin their account of the alleged incident(s) as soon as possible a discussion of neutral topics could be counterproductive by needlessly prolonging the rapport phase thus increasing their anxiety levels. In any event, rapport should not be regarded as something that is confined to the first phase of an interview; it begins when the interviewer first meets the witness and continues throughout the interview.

### **Ground Rules**

- 3.14 It is important to explain to the witness what is to be expected from them, as for most witnesses an investigative interview is an alien situation. People typically fear the unexpected and this fear can be reduced by describing the interview process. The interviewer needs, therefore, to explain the outline of the interview. Typically, the outline will take the form of the interviewer asking the witness to give a free narrative account of what they remember and following this with a few questions in order to clarify what the witness has said. Witnesses should also be told that:
- If the interviewer asks a question they do not understand or asks a question that they do not know the answer to, they should say so; and
  - If the interviewer misunderstands what they have said or incorrectly summarises what has been said, they should point this out.
- 3.15 Some vulnerable witnesses may be under the false impression that the interviewer already knows much or all that happened and that, being eager to please, their role, is merely to confirm this. It is crucial that interviewers inform witnesses, in ways that the latter understand, that:
- They were not present at the event(s);
  - They do not yet know what occurred; and
  - Supplying detail is important.
- 3.16 It should be made clear that the witness can ask for a break at any time. These may be required more frequently than with other witnesses. In order for some vulnerable witnesses to have some control over a request for a break and yet not have to make a verbal request, a 'touch card' can be useful; that is, a card is placed beside witnesses which they can touch when they want a break. The break can provide an



opportunity for refreshment. Such breaks should never be used as an inducement to witnesses.

### **Oaths and the Importance of Telling the Truth**

- 3.17 Where a decision is taken to record an interview with a witness on video, there should be no attempt to get the witness to swear an oath, either before or after an interview. If the witness goes on to give evidence at court, the court will decide whether an oath should be administered retrospectively or whether the witness is to give evidence unsworn.
- 3.18 Witnesses should not be asked to read out the declaration at the beginning of section 9 Criminal Justice Act 1967 statements (MG11). Section 9 Criminal Justice Act 1967 only applies to the admissibility of written statements in lieu of oral testimony. Section 27 of the 1999 Act deals with video-recorded evidence-in-chief and section 19 of the 1999 Act deals with special measures more generally.
- 3.19 Most adult witnesses should not be asked to demonstrate their understanding of truth and lies during the interview; truth and lies is only applicable to child witnesses and to some vulnerable adult witnesses.

### *Child Witnesses*

- 3.20 Toward the end of the rapport phase of an interview with a child witness, when ground rules have been explained to the child, the interviewer should advise them to give a truthful and accurate account of any incident that they describe. There is no legal requirement to do this, but since the video may be used as evidence, it is helpful to the court to know that the child was made aware of the importance of telling the truth. This should be done in the rapport phase and not later in the interview because doing so risks the child concluding that the interviewer does not believe what they said up to that point.
- 3.21 It is inadvisable to ask children to provide general definitions of what is the truth or a lie (a task that would tax an adult); rather, they should be asked to judge from examples. The interviewer should use examples suitable to the child's age, experience and understanding. Secondary school-age children can be asked to give examples of truthful statements and lies, while younger children can be offered examples and be asked to say which are true and which are lies. It is important that the examples chosen really are lies, not merely incorrect statements: lies must include the intent to deceive another person. An example of one approach is shown in [Appendix G](#). Different examples are suggested for different ages of children.
- 3.22 If a child shows a proper appreciation of the difference between truth and lies, the interviewer should conclude by emphasizing the importance of being truthful and as accurate as possible in everything they say in the interview. How this is put across will again vary with the age of the child.

- 3.23 Consideration could be given to commissioning a suitably qualified professional (e.g., a psychologist) to conduct a comprehensive assessment of the child's understanding of truth and lies in circumstances where their communication skills are such that it is not practical for them to demonstrate their understanding of truth and lies within the time-constraints of an investigative interview (i.e., within a few minutes). If such an assessment is considered necessary, it should take place after the interview when it has been established that the witness has something of significance to report in consultation with the CPS. Even though it is not essential that witnesses "understand the special importance that the truth should be told in court" to be considered as competent (*R v B* [2010] EWCA Crim 4), a lack of understanding of truth and lies by a witness during an interview and/or any subsequent clinical assessment could have an impact on the weight given to their evidence by the court.
- 3.24 If truth and lies has been dealt with in an interview, it is not necessary to ask the child to demonstrate their understanding of it again in a further interview for the same investigation. In these circumstances, the child should simply be reminded about the importance of telling the truth.

#### *Certain Vulnerable Adult Witnesses*

- 3.25 Vulnerable or intimidated adult witnesses should not normally be asked about truth and lies. Its use should be limited to vulnerable adult witnesses where there is likely to be an issue as to whether they understand the value and importance of telling the truth in court. Questions about truth and lies are not an issue for all vulnerable adult witnesses.
- 3.26 In cases where discussion of truth and lies is appropriate, it is important to demonstrate that the witness understands the difference between the two. The witness could be asked to give examples of truth and lies. If this is not possible, the interviewer can ask some questions about this difference. If such questions are asked, they should follow the guidance set out elsewhere on styles of questioning and focus on the intention to deceive rather than mere mistakes. After such questions, it is appropriate to conclude with a statement like: 'Please tell me all you can remember about what happened. Don't make anything up or leave anything out. It is very important to tell the truth.'
- 3.27 Consideration could be given to commissioning a suitably qualified professional (e.g., a psychologist) to conduct a comprehensive assessment of the witness's understanding of truth and lies in circumstances where the nature and extent of the witness's disabilities are such that it is not practical for them to demonstrate their understanding of truth and lies within the time-constraints of an investigative interview (i.e., within a few minutes). Where such an assessment is considered necessary, it should take place after the interview when it has been established that

the witness has something of significance to report and in consultation with the CPS as appropriate.

- 3.28 If truth and lies has been dealt with in an interview, it is not necessary to ask the witness to demonstrate their understanding of it again in a further interview for the same investigation. In these circumstances, the witness should simply be reminded about the importance of telling the truth.

## **Phase Two: Free Narrative Account**

### **Initiating a Free-Narrative Account**

- 3.29 In this phase of the interview the interviewer should initiate an uninterrupted free-narrative account of the incident/event(s) from the witness by means of an open-ended invitation. Interviewers may find it helpful to have planned a means of prompting a free-narrative account together with some supplementary options in the event that the primary method of prompting the account is not successful.
- 3.30 Interviewers should not usually try to initiate an account by focusing on the witness's background or the general background to the incident. In the most instances interviewers should initiate a free narrative account by simply asking the witness to concentrate on the matter in issue; the incident that is the subject of the investigation.
- 3.31 It is essential not to interrupt the witness during their narration to ask questions; these should be kept for later.
- 3.32 In the free narrative phase, the interviewer should encourage witnesses to provide an account in their own words by the use of non-specific prompts such as 'did anything else happen?', 'is there more you can tell me?' and 'can you put it another way to help me understand better?' Verbs like 'tell' and 'explain' are likely to be useful. The prompts used at this stage should not include information known to the interviewer concerning relevant events that have not yet been communicated by the witness if such information could be disputed in any subsequent legal proceedings.

### **Supporting a Free-Narrative Account**

- 3.33 Some form of active listening is necessary, letting the witness know that what they have communicated has been received by the interviewer. This can be achieved by reflecting back to the witness what they have just communicated; for example, 'I didn't like it when he did that' (witness) then 'You didn't like it' (interviewer). The interviewer should be aware of the danger of subconsciously or consciously indicating approval or disapproval of the information just given.

### **Compliance**

- 3.34 Some vulnerable witnesses may be particularly compliant in that they will try to be helpful by going along with much of what they believe the interviewer ‘wants to hear’ and/or is suggesting to them. This is particularly so for witnesses who believe the interviewer to be an authority figure. Some witnesses may also be frightened of authority figures. The interviewer should, therefore, try not to appear too authoritative, but should be confident and competent as a means of reassuring the witness that they can be relied on.
- 3.35 Many vulnerable people are very concerned to present themselves in the best possible light, and many might try to appear as ‘normal’ as possible by, for example, pretending to understand when they do not. This is something we all do. Even though they may not understand a question, vulnerable witnesses may prefer to answer it than to say that they don’t understand. Saying that one doesn’t understand a question can be taken to be implying that the interviewer or witness is at fault.
- 3.36 Witnesses who feel empowered may be less inclined to demonstrate compliance. This is one reason why allowing the witness some control of the interview is likely to be beneficial.

### **Acquiescence**

- 3.37 Research has consistently found that many vulnerable witnesses acquiesce to ‘yes/no’ questions. That is, they answer such questions affirmatively with ‘yes’ regardless of content. This can occur even when an almost identical ‘yes/no’ question is asked subsequently with the opposite meaning. This tendency to respond positively to every question occurs particularly frequently with some people with a learning disability. It is not, however, solely due to witness vulnerability; the way that the interview is conducted (e.g., in an overly authoritative way) and the nature of the questions asked (e.g., suggestive or too complex) can also influence the extent of unconditional positive responding.

### **Reticence**

- 3.38 In many interviews, particularly those relating to allegations of sexual offences, witnesses may be reluctant to talk openly and freely about incidents. This can sometimes be overcome by the interviewer offering reassurance, for example: ‘I know this must be difficult for you. Is there anything I can do to make it easier?’ It is quite in order for the interviewer to refer to a witness by their first or preferred name, but the use of terms of endearment, verbal reinforcement and physical contact between the interviewer and the witness are inappropriate. However, this should not preclude physical reassurance being offered by an interview supporter to a distressed witness.

- 3.39 If the witness has communicated something that the interviewer feels needs to be clarified, but the witness seems reluctant or unable to do so at that point, it may be better that the interviewer return to it later in the interview rather than to press on.

## **Phase Three: Questioning**

### **General Approach**

- 3.40 During the free narrative phase of an interview most witnesses will not be able to recall everything relevant that is in their memory. Their accounts could, therefore, greatly benefit from the interviewer asking questions relevant to the case that might prompt further recall.
- 3.41 Before asking the witness any questions it may be beneficial to outline for them what is expected in this phase of the interview. It is helpful for the interviewer to tell the witness that they will be asking them some questions, based on what they have already communicated in the free narrative phase, in order to expand and clarify upon what they have said. It can also be beneficial to reiterate a number of the ground rules outlined in the rapport phase of the interview, for example to explain to the witness that detail is required, to explain that this is a difficult task which requires a lot of concentration and to point out that it is acceptable to say 'I don't know' or 'I don't understand' to a question.
- 3.42 When being questioned some witnesses may become distressed. If this occurs, the interviewer should consider moving away from the topic for a while and, if necessary, reverting to an earlier phase of the interview (e.g., the rapport phase). Shifting away from and then back to a topic the witness finds distressing and/or difficult may need to occur several times within an interview.
- 3.43 Questions should be phrased in the past tense; they should not be phrased in the present tense because doing so risks confusing the witness and mentally reinstating any trauma that they have experienced.

### **Interview Structure**

- 3.44 Having elicited an account from the witness during the free narrative phase of an interview, the interviewer should divide it into manageable topics. Each relevant topic not adequately covered in the witness's account should then be:
- Introduced by means of an appropriate technique (e.g. an open-ended invitation to the witness to focus on and recall the subject matter of the topic-area in detail or one of the techniques that make up the Enhanced Cognitive Interview [see [Appendix H](#)]); and
  - Systematically probed using open-ended and specific-closed questions until all the relevant material relating to it has been obtained.

- 3.45 Interviewers should try to avoid topic-hopping (i.e., rapidly moving from one topic to another and back again) as this is not helpful for the witness's remembering processes and may confuse them.
- 3.46 After the witness's account of the incident has been probed, the interviewer should move on to deal with any wider investigative material that has been identified as being important to the investigation. Such wider investigative material should be organised into topic-areas; each topic-area should then be systematically probed in a similar way to the witness's account of the incident(s). Overall, the structure of the interview recommended by this guidance should be as follows:

**Figure 3.2: Summary of Interview Structure**

<b>Phase One</b>	Rapport
<b>Phase Two</b>	Witness's free-narrative account of incident(s)
<b>Phase Three</b>	Topic division and probing of witness's account of incident(s)  Topic division and probing of wider investigative material important to the investigation
<b>Phase Four</b>	Closure

- 3.47 Interviewers should try to keep the wider investigative material that is important to the investigation as separate as possible from the witness's account of the incident(s) because:
- While wider investigative material that is important to the investigation could certainly help to bring the enquiry to a successful conclusion, it is not usually evidence relevant to a trial;
  - The inclusion of wider investigative material that is important to the investigation at an earlier point in the interview might distract the witness while they focus on their recollection of the incident.
- 3.48 For both these reasons, interviewers should not attempt to elicit wider investigative material at the same time as covering the witness's account. If wider investigative material important to the investigation is mentioned spontaneously by the witness when they are talking about the incident it should be acknowledged but not discussed in any depth until coverage of the incident is complete.
- 3.49 Keeping the account of the incident separate from the wider investigative material important to the investigation should have the added benefit of making it easier to edit the recording should this become necessary.

- 3.50 In complex cases it may be appropriate to have a break in the interview for refreshments after the witness's account and before the wider investigative material is covered. If there is a break consideration should be given to inserting a fresh tape or disk into the recording equipment since doing so might prevent a situation arising in which it is necessary to interrupt the interview later on to do so and could reduce the need for editing.

### **Types of Questions**

- 3.51 Interviewers need fully to appreciate that there are various types of question that vary in how directive they are. Questioning should, whenever possible, commence with open-ended questions (paragraphs 3.52 to 3.53) and then proceed, if necessary, to specific-closed questions (paragraphs 3.54 to 3.61). Forced-choice questions (paragraphs 3.62 to 3.65) and leading questions (paragraphs 3.68 to 3.71) should only be used as a last resort, and multiple questions (paragraphs 3.66 to 3.67) should be avoided. Whatever questions are used they should be phrased in the past tense, questions about the matter under investigation that contain statements in the present tense should be avoided, particularly in cases where the witness may be experiencing trauma. Merged event questioning (e.g., "What does he do, what happened next?") should also be avoided because they could confuse the witness.

#### *Open-Ended Questions*

- 3.52 An open-ended question is the best kind of question for gaining good quality information. This type of question should, therefore, be used predominantly during the interview. Open-ended questions are framed in such a way that the witness is able to give an unrestricted answer, which in turn enables the witness to control the flow of information in the interview. This questioning style also minimises the risk that the interviewer will impose their view of what happened on the witness.
- 3.53 Questions beginning with the phrase 'Tell me' or the word 'Describe' are useful examples of this type of question, e.g. 'You said you were in the shopping centre this morning when something happened, tell me everything that you can remember.'

#### *Specific-Closed Questions*

- 3.54 A specific-closed question is one that allows only a relatively narrow range of responses. Specific-closed questions are the second-best type of question and should be used to obtain information not provided by the witness in the free narrative account and not elicited through the use of open-ended questions. This is because the use of specific-closed questions allows the interviewer to control the interview and minimize irrelevant information being provided. They may, however, cause some witnesses to be passive and decrease their concentration, and can, consequently, result in less recall.

- 3.55 An interview is a learning experience, especially if the witness has limited or no knowledge of the interview situation. Any interviewer behaviour is likely to have an immediate effect on the interview process (e.g., on an answer given) as a consequence. The witness will also learn what is to be expected from this behaviour and will try to adjust their behaviour accordingly. Thus, if an interviewer opens an interview by using a succession of specific-closed questions, which do not allow the witness to give full answers, the witness will expect this to occur throughout the interview. As a result, the witness might give short answers, even when the interviewer requests long responses from the witness later in the interview, using open-ended questions. This is the reason why open-ended questions should be used first, with specific-closed questions being used as a back-up option.
- 3.56 Some authors define open-ended questions by their opening word: 'Who', 'What', 'Where', 'When' and 'Why'. Although these questions can be framed as open-ended questions, they are more commonly used as specific-closed questions.
- 3.57 A question beginning with 'why', although it may produce a response, can create more problems than it solves, particularly if the question seeks an explanation of behaviour. This is because people often do not know, with any degree of accuracy, what their own motivation is, let alone what motivates others. 'Why did he do that?' may well be a closed question but it is also a question that the witness cannot possibly answer with absolute accuracy. In addition, 'why' questions also tend to promote the feeling of blame. Victims often partly blame themselves for what happened and so 'why' questions may strengthen this belief. This will not help the witness or the remembering process.

#### *Wording of Specific-Closed Questions*

- 3.58 The interviewer needs to tailor the language of each individual question to each witness and should avoid using grammatically complex questions. Interviewers should also avoid using questions that include double negatives. The key is to keep questions as short and simple as possible, including only one point per question.
- 3.59 If the interviewer is seeking elaboration on what the witness mentioned in their free narrative account, the interviewer should as far as possible try to use the same words that the witness used. Negative phrasing should also be avoided as this suggests a negative response, which it often receives (for example 'You can't remember any more, can you?').
- 3.60 In addition, jargon and technical terminology should not be used as these reduce the witness's confidence and may alienate them. Moreover, a witness may just respond in the affirmative, to avoid embarrassment, if they do not understand.
- 3.61 Specific-closed questions should not be repeated 'word for word' because the witness may feel that their first answer was incorrect and change their response



accordingly. When a question is not answered or the answer is not understood it should be reworded rather than repeated. Also, if the witness has been unable to answer a number of questions in succession, the interviewer should explicitly change to an easier line of questioning, with a short break in the interim; otherwise the witness may lose self-confidence.

### *Forced-Choice Questions*

- 3.62 Forced-choice questions should be avoided if at all possible and only be used as a last resort or where the witness is capable only of responding reliably in a ‘yes’/‘no’ format (e.g., as a result of a physical or a learning disability).
- 3.63 This type of question can also be termed a selection question: it gives witnesses only a small number of alternatives from which they must choose and which may, in fact, not include the correct option (e.g., ‘would you like tea or coffee?’). The result of asking this type of question is that witnesses may guess the answer by selecting one of the options given. People may also answer in the affirmative, and the interviewer must then either assume to which part of the question this reply corresponds (which may be an incorrect assumption) or rephrase the question.
- 3.64 Some vulnerable witnesses may only be able to respond to forced-choice questions that contain two alternatives. Such interviews are likely to require the expertise of an interview adviser (see [National Investigative Interviewing Strategy](#), Association of Chief Police Officers, 2009), a Registered Intermediary and extensive planning, especially regarding the questions to be asked.
- 3.65 If forced-choice questions are to be used, it is particularly important to remind the witness that ‘don’t know’ or ‘don’t understand’ or ‘don’t remember’ responses are welcome and that the interviewer does not know what happened. If a witness replies ‘I don’t know’ to an ‘either/or’ question (e.g., ‘was the car large or small?’), interviewers should try to avoid then offering a compromise ‘yes/no’ question (e.g., ‘If it wasn’t large or small, would you say it was medium size?’) that the witness may merely acquiesce to.

### *Multiple Questions*

- 3.66 Multiple questions should be avoided. A multiple question is one that asks about several things at once. For example: “did he come into the park, go on the swings with you, and give you some vodka”. The main problem with this type of question is that people do not know which part of it to answer. Many witnesses find it hard to remember all the sub-questions asked while trying to retrieve the information required to answer each sub-question and could simply address their response to the last part of the question. In these circumstances, misunderstandings can occur as the interviewer may wrongly assume that the witness is responding to sub-questions one or two, or even all three sub-questions, when they are only

responding to sub-question three. Such questions should be broken down into a series of short questions that cover one topic only.

- 3.67 Less obvious examples of this type of question include those questions that refer to multiple concepts, for example ‘What did they look like?’ This question asks the witness to describe two or more people at the same time and could, therefore, confuse the interviewer and, indeed, the witness about who is being referred to in the account.

### *Leading Questions*

- 3.68 A leading question is one that implies the answer or assumes facts that are likely to be in dispute. For a question to be construed as leading will depend not only on the nature of the question but also on what the witness has already said in the interview. When a leading question is put improperly to a witness giving evidence at court, opposing counsel can make an objection before the witness replies. This, of course, does not apply during recorded interviews, but it is likely that, should the interview be submitted as evidence in court proceedings, portions might be edited out or, in the worst case, the whole recording ruled inadmissible.
- 3.69 In addition to legal objections, research indicates that witnesses’ responses to leading questions tend to be determined more by the manner of questioning than by valid remembering. Leading questions can serve not merely to influence the answer given but may also significantly distort the witness’s memory in the direction implied by the leading question. For these reasons, leading questions should only be used as a last resort, where all other questioning strategies have failed to elicit any kind of response. Where a decision is taken to use a leading question in these circumstances, it should be carefully phrased in the least-leading form possible. On occasion, a leading question can produce relevant information which has not been led by the question. If this does occur, interviewers should take care not to follow up this question with further leading questions. Rather, they should revert to open-ended questions in the first instance or specific-closed questions.
- 3.70 Leading questions come in a number of different forms, some being more suggestive than others. The leading questions thought to be the most suggestive are tag questions such as ‘You did see the gun, didn’t you?’ It has also been found that questions worded using ‘the’ compared with ‘a’ result in greater levels of erroneous responses. This is because ‘the’ presupposes the existence of an item.
- 3.71 A leading question that succeeds in prompting a witness into spontaneously providing information beyond that led by the question may sometimes be acceptable. However, unless there is absolutely no alternative, the interviewer should never be the first to suggest to the witness that a particular offence was committed, or that a particular person was responsible. Once such a step has been

taken, it will be extremely difficult to counter the argument that the interviewer 'put the idea into the witness's head' and that their account is, therefore, tainted.

### *Summaries*

- 3.72 Interviewers should only summarise what the witness has said at the end of each topic if it is appropriate to do so (i.e., if what the witness has said appears somewhat disjointed or it may be open to ambiguous interpretation). Interviewers should not simply summarise as a matter of routine.
- 3.73 Where a summary is appropriate the words and phrases used by the witness should be used as far as possible.

### **Special Considerations: Children and Vulnerable Adult Witnesses**

- 3.74 It is important that the interviewer asks only one question at a time and allows the witness enough time to complete their answer before asking a further question. Patience is always required when asking questions, particularly with developmentally younger children and some vulnerable adult witnesses; they will need time to respond. Interviewers should not be tempted to fill pauses by asking additional questions or making irrelevant comments. Sometimes, silence is the best cue for eliciting further information; but it can also be oppressive, and care needs to be taken in the use of this technique. It is important also that the interviewer does not interrupt the witness when they are still speaking. Interrupting the witness may suggest to them that only short answers are required.
- 3.75 When posing questions, interviewers should try to make use of information that the witness has already provided and words/concepts that the witness is familiar with (e.g., for time, location, persons). Some vulnerable witnesses have difficulty understanding pronouns (e.g., he, she, and they); in these circumstances it is better for interviewers to use people's names wherever possible.
- 3.76 Some children and vulnerable adult witnesses will experience difficulty if, without warning, the interviewer switches the questioning to a new topic. To help witnesses, interviewers should indicate a topic change by saying, for example, 'I'd now like to ask you about something else.'
- 3.77 Many children and vulnerable witnesses will have difficulty with questions unless they are simple, contain only one point per question, do not contain abstract words or double negatives, and lack suggestion and jargon. Some vulnerable witnesses may well misinterpret terms that the interviewer is familiar with. For example, they may think that someone 'being charged' involves payment or that 'defendant' means a person who defended themselves against an assault.
- 3.78 It is important for interviewers to check that witnesses understand what has just been said to them by asking the witness to convey back to the interviewer (where

this is possible) what they understand the interviewer to have just said. Merely asking the witness ‘do you understand?’ may result simply in an automatic positive response. If they do not understand a question some children and vulnerable adult witnesses will nevertheless attempt to answer it to the best of their ability by guessing at what is meant, possibly producing an inappropriate reply.

- 3.79 The information requested in questions should always take account of a child’s stage of development. Many concepts that are taken for granted in adult conversation are only acquired gradually as children develop. Therefore, questions that rely upon the grasp of such concepts may produce misleading and unreliable responses from children, which can damage the overall credibility of their statements in the interview. Concepts with which children have difficulty include:
- Dates and times;
  - Length and frequency of events; and
  - Weight, height and age estimates.
- Such concepts are only gradually mastered. For the concept of time, for instance, telling the time is learned by the average child at around seven years of age, but an awareness of the days of the week and the seasons does not occur until at least a year later. Age norms are only a guide, and it should be anticipated in the planning phase whether a particular child is likely to perform above or below such norms. There are several techniques for overcoming difficulties of measurement. Height, weight and age can be specified relative to another person known to the child (e.g., the interviewer or a member of the child’s family). Time and date estimates can also be made by reference to markers in the child’s life (e.g., festive seasons, holidays, birthday celebrations, or their class at school). Time of day and the duration of events can sometimes be assisted by questions that refer to television programmes watched by the child or to home or school routine.
- 3.80 Some vulnerable witnesses will respond to a question from, or a comment made by, an interviewer by repeating the last few words in the utterance (echolalia). Appropriate methods for managing this depend on the individual. Interviewers should take appropriate advice (e.g., from a carer) on how to manage it while planning the interview.
- 3.81 If, for the sake of clarity, interviewers decide to repeat one or more questions later on in the interview, even with changed wording, they should explain that it does not indicate that they were unhappy with the witness’s initial responses but that they just want to check their understanding of what the witness said (for example, ‘I just want to make sure that I’ve understood what you said about the man’s jacket. What colour did you say it was?’). Otherwise, some children and vulnerable adult witnesses may believe that the questions are being repeated solely because their earlier responses were incorrect or inappropriate or that they were not believed.

- 3.82 Some vulnerable witnesses may also have a limited understanding of the relationship between negative events, their causation, and who is responsible.
- 3.83 Even if an event was an unforeseeable accident or ‘an act of God’, some younger children and vulnerable adults will believe that someone must be held responsible. Some may even take the blame, thinking that the interviewer (an authority figure) will like them more if they do.
- 3.84 The questioning of children and vulnerable adult witnesses requires extensive skill and understanding on the part of interviewers. Poor interviewers can cause children and vulnerable adult witnesses to provide unreliable accounts. However, interviewers who are able to put into practice the guidance on questioning contained in this document will provide witnesses with much better opportunities to present their own accounts of what really happened.
- 3.85 For further information about communicating with children and vulnerable adult witnesses go to the toolkits on the Advocate’s Gateway internet site at:  
<http://www.theadvocatesgateway.org/toolkits>

## **Phase Four: Closing the Interview**

### **Recapitulation**

- 3.86 Interviewers should not attempt to summarise what the witness has said where the witness is fatigued, in an emotional condition or otherwise distracted because they may not be in position to listen properly to the summary. Similar issues may arise where the witness appears to have a short attention span (as may be the case, for example, with young children and some adults with a learning disability and trauma).
- 3.87 If necessary and appropriate, interviewers can consider briefly summarising what the witness has said in this final main phase of the interview. Where such a summary is used it should use the words and phrases used by the witness as far as possible and the interviewer must explicitly tell the witness to correct them if they have missed anything out or have got something wrong.
- 3.88 Summarising the interview can lead to further retrieval. The witness should be told that they can add new information at this point in the interview, otherwise they are unlikely to stop an interviewer in the full flow of recapitulating.
- 3.89 If there is a second interviewer/monitor present, the lead interviewer should also check with them whether they have missed anything.

## **Closure**

- 3.90 The interviewer should always try to ensure that the interview ends appropriately. Every interview must have a closing phase. In this phase it may be useful to discuss again some of the 'neutral' topics mentioned in the rapport phase.
- 3.91 In this phase, regardless of the outcome of the interview, every effort should be made to ensure that the witness is not distressed but is in a positive frame of mind. Even if the witness has provided little or no information, they should not be made to feel that they have failed or disappointed the interviewer. However, praise or congratulations for providing information should not be given.
- 3.92 The witness should be thanked for their time and effort and asked if there is anything else that they wish to communicate. An explanation should be given to the witness of what, if anything, may happen next, but promises that cannot be kept should not be made about future developments. The witness should always be asked if they have any questions, and these should be answered as appropriately as possible. It is good practice to give to the witness (or, if more appropriate, an accompanying person) a contact name and telephone number in case the witness later decides that they have further matters they wish to discuss with the interviewer. It is natural for witnesses to think about the event after the interview and this may elicit further valuable information. Advice on seeking help and support should also be given.
- 3.93 Finally, the interviewer should report the end time of the interview on the video/ audio-recording.

## **Evaluation**

- 3.94 Evaluation should take two forms:
- Evaluation of the information obtained; and
  - Evaluation of the interviewer's performance.

### **Evaluation of the Information Obtained**

- 3.95 In evaluating an account, interviewers should not rely upon cues from the witness's behaviour as guides to the reliability or otherwise of their statements.
- 3.96 Urgent actions should be identified during the interview and passed without delay to the investigating officer or their nominee. In the case of live investigations, the interview monitor or the camera operator should maintain a record of urgent lines of enquiry during the interview to expedite this process.
- 3.97 After the interview has concluded, the interview team will need to make an objective assessment as to the information obtained and evaluate this in light of the whole

case. Are there any further actions and/or enquires required? What direction should the case take?

### **Investigative Opportunities: Clarifying and Developing the Account**

- 3.98 Investigative opportunities in the context of this guidance relate to aspects of a witness's account that might benefit an investigation by being clarified or developed. They can arise during an interview or come to light after an interview or between interview sessions when the account is considered in conjunction with other material gathered by the investigation.
- 3.99 The aspects of the witness's account that might benefit from being clarified can include inconsistencies. When inconsistencies arise it is important to remember that when witnesses providing misleading accounts of events they are often the result of misunderstandings or misremembering rather than deliberate fabrication.
- 3.100 Whatever the reason for the inconsistency, occasions may arise where it is necessary to ask the witness to explain it. The following principles should be taken into account when considering whether, when and how to solicit such an explanation:
- Explanations for investigative inconsistencies should only be sought where the inconsistency is a significant one;
  - Explanations for investigative inconsistencies should only be sought after any potential explanations for them have been considered;
  - Explanations for investigative inconsistencies should only be sought after the witness's account has been fully explored, either at the end of the interview or in a further interview, as appropriate;
  - Interviewers should always be aware that the purpose of asking a witness to explain an investigative inconsistency is to obtain an accurate and reliable account in respect of the matter under investigation, it is not to put pressure on a witness to alter their account;
  - Explanations for investigative inconsistencies should take account of the extent to which the witness may be vulnerable to suggestion, compliance or acquiescence;
  - Questions intended to elicit an explanation for investigative inconsistencies should be carefully planned, phrased tactfully and presented in a non-confrontational manner.
- 3.101 The aspects of the witness's account that might benefit from being developed can include omissions. Omissions can arise, for example, where others say that a relevant person in the investigation was carrying an object, that there was something particular about the description of a relevant person or vehicle in the investigation or, that the alleged offender's behaviour was unusual but this is not mentioned by the witness. There are a number of reasons why this type of

information can be omitted from an account, including the witness not having attended to the information or to memory loss.

- 3.102 When thinking about how best to proceed with an omission the interviewer should consider:
- Whether the material omitted by the witness is likely to be important enough to be worthy of explanation; and
  - The extent to which the witness may be vulnerable to suggestion, compliance or acquiescence.
- 3.103 Where it is considered necessary to ask a witness whether they have knowledge of the material not included in their account, interviewers should only do after the witness's account has been fully explored, at the end of the interview (or in a further interview if appropriate).
- 3.104 A plan for addressing an evidentially significant omission must take account of the reliability of any answer. For example, a useful starting point might be to ask the witness a specific-closed question, such as: 'What else can you tell me about the incident?' If the witness's answer:
- Includes the material but lacks sufficient detail, the interviewer should ask the witness to provide a more detailed response by means of an open question (e.g., 'tell me about...'). When the material has been covered, the witness should be tactfully asked to explain its omission from their account, unless the reason for its omission is apparent from the witness's response or the circumstances of the case;
  - Does not include the material, a further decision will need to be made as to whether it is necessary to ask a question that might be regarded as leading (e.g., 'Do you recall seeing/hearing...?'). It should be noted that if the answer to such a leading question contains the material, it is likely to be of limited evidential value. The evidential value of such an answer may, however, be enhanced if the interviewer then asks the witness to provide a more detailed response by means of an open question (e.g., 'Tell me about...'), followed by questions intended tactfully to elicit an explanation for its omission from their account (unless the reason for the omission is apparent from the witness's response or the circumstances of the case).

### **Evaluation of Interviewer Performance**

- 3.105 The interviewer's skills should be evaluated. This can take the form of self-evaluation, with the interviewer examining the interview for areas of good performance and poor performance. This should result in a development plan.
- 3.106 It is important that supervisors review video-recorded interviews and associated plans prior to any trial where they are intended to be played as evidence-in-chief.



- 3.107 The supervision of interviews should form part of a staff appraisal system (see [National Investigative Interviewing Strategy](#), Association of Chief Police Officers 2009).

## Post-Interview Documentation

### ROVI

- 3.108 Where the interview has been video-recorded a Record of the Visual Interview (ROVI) should be prepared for use as a guide to the interview. A ROVI amounts to a summary of the incident in the order in it was recalled during the interview; in this sense it serves as a guide to the recording. [Appendix P](#) provides a detailed account of what should be included in a ROVI.

### Chronological Investigative Summary

- 3.109 Some witnesses will provide a great deal of information during the interview, with key details having been obtained at different points of their account. It may be impractical for others involved in the investigation to view the video-recording but it could be essential that they have a clear understanding of what information has been provided. Once the interview has been completed, therefore, consideration should be given to the preparation of an accurate chronological 'investigative summary'. Such a summary differs from the ROVI (see below) in that its chronology is determined by the alleged incident, not the order of recall during the interview.
- 3.110 An investigative summary should assist the officer responsible for investigating the alleged offence to make decisions about further lines of inquiry. It should also help the interviewers of the suspected offender when they make decisions around interview plans and pre-interview briefings with legal representatives. Investigative summaries can also assist in discussions about special measures with the CPS and with any later special measures' applications. They may also help to ensure that there are no unnecessary later requests to convert transcripts of the interview into written statements.

### Certification

- 3.111 Except where circumstances are such that an application to play the recording as evidence-in-chief may be considered a foregone conclusion, a brief written statement should be prepared for the witness immediately after the interview pointing out that the information they have given is accurate. In the event of the witness subsequently being unavailable to sign a full statement, the brief statement can be included in a discussion with the CPS as to how best to proceed (e.g., by means of exhibited transcript as set out in [paragraph 2.155](#) of this guidance).

### **Written Statement: Interviewers**

3.112 A statement dealing with the preparation and conduct of the interview should be made while the events are still fresh in the interviewer's mind.

### **Written Statement: Significant Witnesses**

3.113 In most instances involving significant witnesses a full statement should be prepared as soon after the interview as possible as a means of minimising the potential effects of a lengthy delay on memory. It is, however, important to set enough time aside to properly review the recording together with any written notes prior to transferring the relevant material onto a written statement in order to ensure that the witness's testimony is as accurate a reflection of what was said during the interview as possible.

3.114 At the opening of the statement it may be useful to those subsequently reviewing the case to refer to the date and duration of any visually recorded interview.

### **Storage**

3.115 Recordings should be stored as recommended in [Appendix N](#).

### **The Flow of Information about Special Measures between the CPS and the Police**

3.116 Where a witness is 'vulnerable' or 'intimidated' within the meaning of sections 16 and 17 YJCEA, there should be a smooth flow of information from the police to the CPS about the witness's needs, their eligibility for special measures and the most appropriate special measure(s) for them. The exchange of information with the police regarding special measures should begin as early as possible. The circumstances of the case should determine the format of the provision of information about the witness's needs to the prosecutor. In some cases, for example a case involving a complaint of rape, the police officer and the prosecutor should arrange a telephone conversation or meeting to discuss the witness's needs (see the "Special Measures Discussions with the Police" section on the [Special Measures page of the CPS website](#)). In other cases, it will be appropriate for the witness's needs to be communicated to the prosecutor by way of the routine submission of correspondence and adequately completed forms, or during regular dialogue between the police officer and the prosecutor about case issues.

3.117 Where an interview with a witness has been video-recorded for the purposes of section 27 YJCEA, the CPS will consider whether an application should be made to admit it as evidence-in-chief. If a decision is made to apply to play the recording as evidence-in-chief, consideration will then need to be given as to the necessity or otherwise for editing. If a decision is made not to apply to play the recording as evidence-in-chief consideration should be given either to the witness giving live evidence-in-chief with the assistance of other special measures (e.g. via live television link or from behind screens) or to conducting a summary interview as

recommended in paragraph 250 of Lord Justice Leveson's Review of Efficiency in Criminal Proceedings (Judiciary of England and Wales 2015) with a view to applying to admit it as evidence-in-chief.

### **Pre-Trial Discussions with Witnesses about Special Measures**

3.118 Discussions between the witness and the prosecution team about the arrangements for the trial should also reconsider the desirability of special measures because some witnesses may, on reflection, prefer to give live evidence-in-chief rather than have the video -recorded interview played.

## **General Guidance on using Drawings, Pictures, Photographs, Symbols, Dolls, Figures and Props with Children**

3.119 Drawings, pictures, photographs, symbols, dolls, figures and props may be used for different reasons:

- To assess a child's language or understanding;
- To keep a child calm and settled and in one place;
- To explain the 'rules' of communication at interview
- To support a child's recall of events;
- To enable a child to give an account of events.

It is with these last two categories that the most controversy tends to arise.

3.120 In some circumstances, young children and children with communication difficulties may be able to provide clearer accounts when drawings, pictures, photographs, symbols, dolls, figures and props are used, compared with purely verbal approaches. For example, drawings or dolls may allow a child to clarify body parts or demonstrate an abusive act, while props may help the child to describe the environment in which an incident took place. Visual aids may help a child separate out events, locate events in time or put them in sequence.

3.121 Drawings or props can also enable children to demonstrate an understanding of truth and lies at a younger age than previously thought possible.

3.122 Drawings, pictures, photographs, symbols, dolls, figures and props can, therefore, function as very useful communication aids, but when considering whether their use is appropriate in any given circumstances, interviewers need to be aware of the risks and pitfalls as well as the advantages associated with their use.

3.123 The risks and pitfalls of using drawings, pictures, photographs, symbols, dolls, figures and props include:

- Some props, e.g., anatomical dolls or drawings, can result in distortions or inaccuracies;

- Some props, e.g., teddies, animals, dolls houses, may engender play or fantasy;
- Many props, poorly used, can create confusion or miscommunication
- Children aged three and under are usually not able to use dolls, models or anatomical drawings as representational objects.

(Adapted from Hewitt 1999, Everson & Boat 2002, Faller 2007 and Lamb 2008, Poole & Bruck 2012.)

3.124 The advantages of using drawings, pictures, photographs, symbols, dolls, figures and props include:

- Children may be more competent to demonstrate what happened rather than explain in words;
- Allows two modes of communication, so children can both show and tell;
- May mean detailed information can be collected with fewer questions;
- Can provide retrieval cues or memory triggers;
- Can overcome reluctance or fear, e.g., children who take 'don't tell' literally; it can be less traumatic for children to show with a prop rather than on their own body;
- May provide an organisational framework for children to give a fuller account.

(Adapted from Doherty-Sneddon 2003, Marchant 2010, Marchant 2013 and Mattison et al 2015)

3.125 Drawings, pictures, photographs, symbols, dolls, figures and props should be used with caution and never combined with leading questions. An essential safeguard is to let the child assign meaning to any props used, to check that this meaning is stable over time, and to work with their own words or labels.

3.126 Interviewers should try to ensure that the child's facial expressions, gestures and body language, as well as any drawings, pictures, photographs, symbols, dolls, figures and props, are visible to the interviewer and to the camera. This will require at least two cameras and an operator. The interviewer should pause if the child moves outside an agreed area to allow the camera operator time to re-focus on them.

3.127 Where necessary, verbal attention should be drawn to the child's unspoken communication. One way to do this is to comment to the child without offering an interpretation, e.g., 'you're pointing'. This can assist the viewer and ensure the transcript includes unspoken communication.

- 3.128 Interviewers should make sure that drawings, pictures, photographs, symbols, dolls, figures and props don't prevent children gesturing<sup>6</sup>. It may help to have a table at appropriate height for the child to work at and place them on.
- 3.129 Any drawings, pictures, photographs, symbols, dolls, figures and props used should be preserved for production at court if required.

### **Using Drawings**

- 3.130 Interviewers may use the child's own drawings. Such drawings may be either produced live during the interview or prepared by the child prior to it. Drawing at assessment should be unconnected with the facts of the case.
- 3.131 Drawings can be used in different ways to help with communication and drawing has significant benefits<sup>7</sup>. In addition, the symbolic nature of pictures and drawings is more easily understood by young children than dolls and models.
- 3.132 It may be useful to check whether the child can represent themselves symbolically<sup>8</sup> at assessment (e.g., by saying 'draw a picture of you').
- 3.133 If possible, the child should label the drawings themselves. If they cannot, the interviewer should let them dictate the names of any people drawn to them and write down any other features identified by the child.
- 3.134 It is important to think about the visibility of the drawings to both child and camera: colour, size, medium. It does not matter if a drawing is unrecognisable to the interviewer; the key issue is that the child recognises the drawing, and if it is to be used to aid recall or communication, that the child assigns a stable identity to the drawing. Interviewers can check this by asking 'who's this?' and by making at least one deliberate identity error 'so this is X?'
- 3.135 Research suggests that asking children to draw what happened after an initial interview can help them to focus, retrieve more information and reduce their anxiety and that 96% of children who draw in these circumstances recall more information

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<sup>6</sup> Gesture allows children to articulate information they cannot yet put into words. Gesture helps us plan what we're going to say and find the words to say it. Even adults pause more if not allowed to gesture – fluency is affected (Doherty-Sneddon 2003).

<sup>7</sup> No speech required, immediate, easy to apply and check, tells you more than speech because unanticipated and unpractised. Unlike speech, drawing forces people to take a position (Vrij 2009).

<sup>8</sup> Representation of self emerges between the age of 3:2 and 3:6 in white middle-class children (DeLoache et al 1995).

in a second interview<sup>9</sup>. Recent research demonstrates that drawing can assist with the recall for children with autism who face additional developmental and neurological challenges, which impact on their free recall abilities<sup>10</sup>.

- 3.136 Human figure drawings can help children of all ages to provide clearer information about body parts but not necessarily about touch-related actions<sup>11</sup>.

### **Using Pictures, Photographs, and Symbols**

- 3.137 Pre-prepared pictures, photographs and/or symbols may be used if appropriate<sup>12</sup>.
- 3.138 If the child has an existing communication system of pictures or symbols, it is important to explore any potential gaps in their vocabulary during a pre-interview assessment. Introducing new vocabulary prior to interview must be carefully done and can create difficulties but may be unavoidable.

### **Using Dolls, Figures and Props**

- 3.139 Dolls and human figures are particularly risky with under fives (Poole and Bruck 2012). The use of items similar to those involved in the to-be-remembered event may assist recollection. However, they may also cause the witness distress. Furthermore, it may not be certain which items were actually involved and the introduction of incorrect items may mislead and/or confuse the witness. Similarly, models or toy items may be misleading and confusing if the objects they represent were not, in fact, part of the event. Some vulnerable witnesses may not realise the link between a toy or model and the real-life object it is supposed to represent; this is particularly so for very young children and children with learning disabilities.

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<sup>9</sup> 'Draw me what happened' looked at the effects of event drawing on children's accounts of sexual abuse. 125 children aged 4-14 in real NICHD protocol interviews. Looked at the impact of using drawing to prompt a second retrieval. Blind trial: interviewers opened the envelope with the condition (drawing or no drawing) only after first interview completed. Children instructed to draw 'what happened' for seven minutes, children in the control group had a seven-minute break. Both sets of children then re-interviewed using open ended questions, interviewers were instructed to ignore the drawing and focus only on the child's verbal account (Katz and Hershkowitz 2009).

<sup>10</sup> 'Sketching to Remember' compared sketch reinstatement of context with mental reinstatement of context and a no support control. Ninety children aged 8 to 16 (45 with ASD; 45 matched typically developing) viewed a stimulus film and were interviewed using one of the aforementioned techniques. The Sketch-RC technique was most effective, improving ASD participants' remembering and enabling them to perform on par with typically developing children (Mattison, M. L. A., Dando, C. J., & Ormerod, T. (2015) "Sketching to remember: Episodic free recall task support for child witnesses and victims with autism spectrum disorder". *Journal of Autism and Developmental Disorders*, 45(6), 1751-1765 and Mattison, M., Dando, C. J., & Ormerod, T. C. (2018) "Drawing the answers: Sketching to support free and probed recall by child witnesses and victims with autism spectrum disorder", *Autism*, 22(2), 181-194).

<sup>11</sup> The usefulness of human figure diagrams in clarifying accounts of touch. 88 children aged 4-13 interviewed within NICHD protocol then asked a series of questions using unclothed gender-neutral outline diagrams of human body (Yang et al 2009).

<sup>12</sup> Symbols for abusive acts, feelings and private body parts are available without charge at [www.howitis.org.uk](http://www.howitis.org.uk). Some of these are now incorporated into generic symbol sets, e.g., see [www.widgit.com](http://www.widgit.com).

3.140 Where anatomically accurate dolls are to be used, it is particularly important that the interviewer is trained in their use and understands how they might be misused: a combination of these dolls and leading questions can elicit misleading statements from children. Children's interactions with such dolls alone are unlikely to produce evidence that could be used in criminal proceedings. In the main, anatomically accurate dolls should only be used as an adjunct to the interview to allow the child to demonstrate the meaning of terms used by them or to clarify verbal statements. Anatomically accurate dolls can be used very effectively to clarify body parts, position of bodies and so on, as can conventional dolls. However, they should only be used following verbal disclosure of a criminal offence by the child or where there is a very high suspicion that an offence has been committed which the child is unable to put into words.

## Special Interviewing Techniques

### The Cognitive Interview

3.141 The cognitive interview (CI) was initially developed in an attempt to improve witness memory performance by using various techniques derived from cognitive psychology to gain as much correct information as possible without jeopardising the quality of the information reported.

3.142 Interviewers who use the ECI should be trained and be competent to do so, including in what to do if the witness's recall is so vivid and powerful as to cause them distress (see [National Investigative Interviewing Strategy](#), Association of Chief Police Officers 2009).

3.143 A number of professionals who have worked with children and vulnerable adults with a mild learning disability have recommend use of the CI, although some witnesses may not be able to benefit from all of the CI procedures (e.g., young child witnesses and witnesses with autism may well not be able to 'change perspective' and thus this component is not recommended). Children with autism may benefit from the use of sketches to support free recall and to probe their accounts (for more detailed information see, for example, [Mattison M., Dando C.J. and Ormerod T.C. \(2018\) "Drawing the Answers: Sketching to Support Free and Probed Recall by Child Witnesses and Victims with Autism Spectrum Disorder"](#), *Autism*, vol. 22, issue 2, pp 181-194).

3.144 Further information on the techniques that make up the ECI can be found in [Appendix H](#).

### The Structured Investigative Interview Protocol

3.145 The structured investigative protocol was developed to provide additional support to child witness interviewers following the general recommendations outlined in this

guidance. The structured Investigative Interview Protocol was developed by researchers and practitioners working with the National Institute of Child Health and Human Development (NICHD) in response to evidence that interviewers around the world consistently make insufficient use of open-ended questions. The Protocol provides a structure for the entire interview and suggests exemplary open-ended prompts that interviewers can use and adapt in response to the children's initial free narrative accounts. The NICHD Protocol and the relevant literature is described by Lamb, Brown, Hershkowitz, Orbach and Esplin (2018) in "[Tell Me What Happened: Questioning Children About Abuse](#)" (2<sup>nd</sup> Edition).

### **Other Interviewing Techniques**

- 3.146 There are a number of specialised interview techniques that may be acceptable to the courts as an alternative to the method recommended in this guidance, provided evidential considerations are borne in mind and the witness's well-being is safeguarded. Provided the interviewer avoids suggestive questions and succeeds in eliciting a spontaneous account of the substance of the allegation, there is no reason why such evidence should not be acceptable to the courts.
- 3.147 The investigative team should discuss with managers or an interview adviser [see National Investigative Interviewing Strategy](#), Association of Chief Police Officers 2009), and, if necessary, consult with CPS, before undertaking these alternative procedures. It is essential that the interviewers involved are specially trained in techniques concerned.

### **Further Interviews**

- 3.148 One of the key aims of video-recording investigative interviews is to reduce the number of times that witnesses need to report their account. Good pre-interview planning will often ensure that all the salient points are covered within a single interview. However, even with an experienced interviewer and good planning, a further interview may be necessary in some circumstances. These include:
- Where the initial interview opens up new lines of enquiry or wider allegations that cannot be satisfactorily explored within the time available for the interview;
  - Where significant new information emerges from other witnesses or sources;
  - Where the witness indicates to a third party (e.g., a carer) that they have significant new information that was not disclosed at the initial interview, but which they now wish to share with the interviewing team;
  - Where in the preparation of their defence, an accused raises matters not covered in the initial interview.
- 3.149 In these circumstances, a further interview may be necessary and this should be video-recorded as well. Consideration should always be given as to whether holding



such an interview would be in the witness's interests. Further interviews should only be conducted if the investigation team is sure that it is necessary, after consultation with the CPS if appropriate. The reasons for the decision should be fully recorded in writing.

- 3.150 With particularly vulnerable child and adult witnesses, a decision could be made at the planning stage to divide the interview into a number of sections to be conducted by the same interviewer on different days, or at different times on the same day, with rapport and closure being achieved each time.
- 3.151 If, after having completed the interview, the evaluation identifies that further investigative opportunities may arise from clarifying or developing the witness's account consideration can be given to conducting a further interview. The scope of any interview conducted in these circumstances should usually be limited to the topics identified for clarification and development; the material covered in the earlier interview(s) should not normally be covered again further than necessary to set the context for the further information.

## Identification Procedures

- 3.152 Where a video-recorded interview has been conducted by virtue of this chapter, the production of facial composites using E-FIT or other systems or the production of an artist's impression should also be video-recorded. This will enable the court to hear the evidence from the witness in the same medium as the main evidence-in-chief and show how any new evidence has come about, giving confidence to the evidence-gathering process and reducing the need for the witness to give additional evidence-in-chief in the witness box or by live link. Ideally, staff carrying out these procedures should be aware of the guidance set out in this document (see [Appendix J](#) for more detailed advice on identification parades with witnesses interviewed in accordance with this guidance).
- 3.153 Video-recorded identification parades present particular challenges to children and careful planning is essential.

## Therapeutic help for Victims and Witnesses

- 3.154 The best interests of victims and witnesses are paramount when therapy is required. They should never be denied or discouraged from getting the emotional support, therapy or counselling that they may need at any time, either before or after the trial.

- 3.155 Where a victim's needs suggest that it is appropriate, the police must explain how they can access pre-trial therapy and counselling (Right 3 of the statutory [Code of Practice for Victims of Crime](#), Ministry of Justice, 2020).
- 3.156 It is important that police officers conducting investigations in which victims and/or witnesses need therapeutic assistance and that the professionals undertaking pre-trial therapy are aware of and adhere to the guidance published by the Crown Prosecution Service on their website at:  
<https://www.cps.gov.uk/publication/guidance-pre-trial-therapy>

## **Safeguarding Intimidated Witnesses**

- 3.157 Although witnesses may be willing to report or give information about an offence, this does not mean that they do not fear reprisals. Intimidated witnesses may be reluctant to provide a formal statement, preferring instead to merely tell the police about the offence they have witnessed. Some witnesses may explicitly claim that they have been or are likely to be intimidated, but others will not.
- 3.158 Some offences are more likely than others to give rise to the intimidation of witnesses. Research has shown that sexual offences, assaults, domestic abuse, stalking (which by its nature involves repeated victimisation) and racially motivated crimes are particularly likely to lead to intimidation. When the witness is also the victim, the risks may increase further. It is not only the nature of the offence, however, that may indicate the possibility of intimidation. Investigators need to be aware of the culture and the lifestyles of not only the witness but those who live with and around them. On some medium- and high-density housing estates, for instance, there may be a history of drug problems and/or anti-police feeling. A culture of fear and silence as regards criminal behaviour may exist in these areas. Equally, those who live in small, close-knit communities may have an increased risk of intimidation. Extended family networks may mean that the witness lives, shops and works near relatives and associates of the offender.
- 3.159 More specific factors might give risk to actual or perceived intimidation risks for the witness, such as the witness's age, gender, cultural or ethnic background. Vulnerable witnesses, particularly those with mental impairment or ill health (paranoia or chronic anxiety, for instance) may perceive that they are at risk. More substantive indicators of risk may concern the nature of the relationship between the witness and the accused. For example, it may be that the alleged perpetrator is in a position of authority over the witness (such as a carer in a residential home), or that the alleged perpetrator is the witness's violent ex-partner. Interviewers need to be aware of whether the witness has been intimidated in the past, and whether the alleged perpetrator or their relatives and associates have a history of intimidation

and violent behaviour. The local influence of the alleged perpetrator, whether this is in terms of their position within the criminal fraternity or their socio-economic status, is a further issue that requires investigation.

- 3.160 In some instances, intimidation may occur only later in the investigative process. If this happens, the intimidated witness should still qualify for special measures.
- 3.161 There are a number of steps that may be taken to provide protection, reassurance or assistance to intimidated witnesses at the interview stage. A police visit to the witness's home should be avoided as far as possible. Instead, the police should consider following alternative procedures, while leaving the choice of arrangements, within reason, to the witness. Interviews could take place on 'neutral ground', such as a relative's home out of the locality, or the witness's place of work, where appropriate.
- 3.162 Procedures that may serve to alleviate the witness's fears when an offence has first been reported include:
- Inviting the witness, by telephone (or, if no telephone is available, by letter) to visit the police station to make a statement; where the witness feels safe enough to do so;
  - Delaying the visit to the witness's home until the next day, preferably sending a plain clothes officer; and
  - Conducting a number of house-to-house calls at adjacent properties, so that the witness is not singled out.
- 3.163 It is important that the witness's visits to the police station are planned to avoid encounters between the witness and the suspect and their associates.
- 3.164 While witnesses should be assured that their details will be kept confidential during the investigation, investigators must be honest in letting them know that the suspected offender is likely to find out their name (not their address) when their statement is served on the defence after charge. Where a witness expresses concern about the prospect of a suspected offender discovering their identity consideration should be given to:
- The various options for action described in [Working with Intimidated Witnesses: A Manual for Police and Practitioners Responsible for Supporting Intimidated Witnesses](#) (Office for Criminal Justice Reform 2006);
  - Explaining the appropriate special measures to the witness;
  - In certain specified exceptional cases, applying for an investigation anonymity order and/or a witness anonymity order (see sections 74 to 95 Coroners and Justice Act 2009).

## **Witnesses who become Suspects during the Interview**

- 3.165 It may happen that a witness who is being interviewed comes under suspicion of involvement in a criminal offence, perhaps by uttering a self-incriminating statement. Any decision on an appropriate course of action in these circumstances should involve taking into account the seriousness of the crime admitted and weighing it against the seriousness of the crime under investigation.
- 3.166 Where the priority is to obtain evidence from the person as a witness, the interview can proceed.
- 3.167 If it is concluded that the evidence of the witness as suspect is highly relevant to a particular case, the interview should be terminated and the witness told that it is possible that they may be interviewed concerning these matters at a later time. Care should be taken not to close the interview abruptly in these circumstances. Instead, the witness should be allowed to complete any statement that they wish to make.
- 3.168 Whether an admission by a witness in the course of an investigative interview is admissible as evidence in criminal proceedings against them or not depends on the context. Regardless of whether it is admissible, however, a further interview to clarify any admission may be necessary. Any such further interview should take place in accordance with the relevant provisions of the Code for the Detention, Treatment and Questioning of Persons by Police Officers (Code C of the Police and Criminal Evidence Act 1984). The Code provides, among other matters, for the cautioning of a suspect.
- 3.169 A witness who confesses to a criminal offence during the course of an interview may ask the interviewer for some guarantee of immunity. On no account should any such guarantee be given, however remote the prospect of criminal proceedings against the witness might seem. If the witness is to be interviewed in accordance with Code C of the Police and Criminal Evidence Act 1984, they must be cautioned and the purpose of the interview made clear.

## **Pre-Trial Witness Interviews (PTWIs)**

- 3.170 The CPS may conduct a pre-trial interview with a witness in order to assess the reliability of their testimony or to understand complex evidence. The purpose of a pre-trial interview (PTWI) is to help the prosecutor to reach a better informed decision about a particular aspect of the case. A PTWI may take place at any stage of the proceedings (including pre-charge) until the witness starts to give evidence at trial. A PTWI should not, however, be conducted until the witness has provided to the police a signed witness statement or has taken part in a visually recorded

evidential interview. Once a prosecutor has decided that a PTWI is appropriate it should be conducted as soon as reasonably practicable. PTWIs are governed by a Code of Practice available on the CPS internet site at:

[http://www.cps.gov.uk/victims\\_witnesses/resources/interviews.html](http://www.cps.gov.uk/victims_witnesses/resources/interviews.html)

## **Ongoing Communication about the Progress of the Investigation**

3.171 Right 6 of the statutory [Code of Practice for Victims of Crime](#) (Ministry of Justice, 2020) and its associated service provider guidance, obliges the police to engage in a discussion with victims of crime about the frequency with which they would like to receive updates about the progress of the case. In addition, the police are obliged to inform victims about certain developments in the case including where a suspected offender is arrested, interviewed under caution, released without charge, released on police bail, charged or cautioned as well as the decision to take no further action (see the Code for further details of the developments that victims must be informed of). Depending on local arrangements, Witness Care Units usually inform victims of developments in the case after charge. Most victims should be informed of these developments with five working days, priority victims, including vulnerable or intimidated victims, must be informed within one working day.

## 4. Witness Support and Preparation

The stress of having to cope with an unfamiliar situation is likely to detract from a witness's ability to give their best evidence. It is, therefore, in the interests of justice that victims and witnesses should be properly supported and prepared prior to giving evidence. This should include providing them with information about the court process, explaining special measures to them, and giving them an opportunity to express their wishes.

This chapter provides guidance on preparation and support that is intended fit the needs of individual victims and witnesses to help them to give their best evidence.

### Introduction

- 4.1 Support and preparation by providing victims and witnesses information about the court process, explaining special measures to them, and giving them an opportunity to express their wishes (including identifying who they would like to accompany them in the live television room when they are giving evidence if appropriate) helps them to give better evidence and can influence their decision to proceed with the case in the first place. The additional stress of coping with an unfamiliar situation is likely to reduce the ability of witnesses to participate and to respond to questioning, or to effectively recall events in order to assist the fact-finding process of the criminal justice system. Preparation and support that are planned to fit the needs of individual witnesses can help to prevent and alleviate this problem.
- 4.2 The statutory [Code of Practice for Victims of Crime](#) (Ministry of Justice, 2020) entitles vulnerable and intimidated victims to an enhanced level of service. The guidance in this chapter should be read in conjunction with the Code and agencies should ensure that they deliver their minimum statutory requirements as set out in the Code. The non-statutory [Witness Charter](#) (Ministry of Justice 2013) builds on and complements the Code of Practice for Victims of Crime and sets out the standards of service that all witnesses can expect to receive at every stage in the criminal justice process, with specific standards on the identification of vulnerable and intimidated witnesses, action on intimidation and the application and use of special measures in court.
- 4.3 Vulnerable and intimidated witnesses need greater consideration and it will be necessary to identify appropriate additional support and preparation to help them to give the best evidence they can. Vulnerable and intimidated witnesses are described by sections 16 and 17 of the 1999 Act respectively (see [paragraphs 1.5 to 1.13](#)).

- 4.4 Adults with learning disabilities might have problems with memory, vocabulary, level of understanding and suggestibility to leading questions. Some people with learning disabilities are acquiescent, or compliant with the demands of those in positions of power or authority. In these cases, it is likely that the use of an intermediary to assist in communicating with the witness will be beneficial. A Registered Intermediary will assess the witness's level of communication and make recommendations about how their needs can be met. The services of a Registered Intermediary can be obtained by contacting the intermediary matching service from Major Crime Investigative Support at the National Crime Agency on 0345 000 5463. In addition to these difficulties, such witnesses often lack knowledge or understanding of the criminal justice system. The [Witness Charter](#) says that the defence or prosecution will ask court staff to make provision for any special needs a witness may have as a result of disability, medical condition or age. Such difficulties can be helped by provision of appropriate information and support.
- 4.5 Children with learning disabilities have different needs to adults with learning disabilities though they may also have problems with memory, vocabulary, level of understanding and suggestibility to leading questions. Consideration should always be given to using a Registered Intermediary to assist in communicating with children with learning disabilities. National Standards have been prepared for those involved in young witness preparation, and these are reproduced as [Appendix K](#).
- 4.6 Adults or children who have been victimised may have special difficulties as witnesses in criminal proceedings. They may need some help to overcome the feeling that they are on trial rather than the accused. The context and process of the trial itself may also bring back old memories and patterns of reaction and response for vulnerable witnesses. They may be especially sensitive to suggestions of their own guilt or responsibility for the alleged actions of the accused.
- 4.7 People with mental health issues can also find the criminal justice system especially stressful. Those with post-traumatic stress disorders can have special problems prior to and during the trial, particularly if their problem is related to the alleged offence.
- 4.8 Where a victim who is to be called as a witness in criminal proceedings has been identified as potentially vulnerable or intimidated, "Right 4" of the statutory [Code of Practice for Victims of Crime](#) (Ministry of Justice, 2020) requires the police to explain appropriate special measures to them and to their parent or carer if the witness is under 18. Such an explanation should include the relative strengths and potential weaknesses of each special measure (see [Appendix B](#)). The police should also explain the role of the supporter in accordance with National Standards on Witness Supporters and make it clear to the witness that the granting of special



measures and a witness supporter is for the court to decide after taking their views into account.

- 4.9 The views of the victim or witness about which if any special measure(s) would be likely to assist them, including the identity of any supporter that they would like to accompany them in the live television link room while they give evidence if applicable, should be carefully recorded and passed to the CPS on an MG2 form. Under the charging guidance issued by the Director of Public Prosecutions in December 2020 ([Director's Guidance on Charging, sixth edition, DG6](#)), the police must provide the CPS with details about the witness's needs to meet the new file standards (as shown in annexes 4 and 5 of DG6).
- 4.10 Preparation and support are, therefore, necessary, to enable many witnesses to give their best evidence as well as to safeguard their welfare. This chapter provides guidance to those supporting all vulnerable, intimidated and/or child witnesses and preparing them to give evidence and to those planning and coordinating the attendance of such witnesses at court.

## Overview of Support and Preparation Work

### Entitlement to Support and Preparation

- 4.11 All witnesses, including those who may be vulnerable or intimidated, may require support before the trial. Witnesses, whether giving evidence for the prosecution or defence, are entitled to an explanation of their role at court and assistance to ensure that they can give their best evidence. Support is appropriate at all stages of the case. This will not involve discussing or rehearsing the witness's evidence or otherwise coaching them before the trial – witness 'training' for criminal trials is prohibited. That does not prohibit pre-trial familiarisation visits provided that broad guidance is followed – the witness can be shown the courtroom and the live link room to familiarise themselves before their day in court, but there can be no discussion of the evidence (see also *R v Momodou & Limani* [2005] EWCA Crim 177; [2005] 2 All ER 571; [2005] 2 Cr App R6).

### Nature of Support and Preparation

- 4.12 The first task is the identification of victims in any of the three priority categories outlined in the statutory [Code of Practice for Victims of Crime](#) (Ministry of Justice, 2020) and any child or vulnerable and intimidated adult witness who needs special consideration during their involvement with the criminal justice process and to record relevant information on the MG2 (standard form used by the police to transmit confidential information to the CPS). While it is usually the police who first identify witness's vulnerability, it can be highlighted by anyone with knowledge of the witness.



- 4.13 Once a victim or a witness has been identified as either vulnerable or intimidated or as otherwise falling into any of the three priority categories set out in the statutory Code of Practice for Victims of Crime, there is potentially a long period of time before a court hearing takes place. During this time, preparation and support needs to focus on arrangements surrounding any interviews with the witness, pre-trial arrangements, and preparation for any court hearing. Providing the witness with information about the investigation and court case and obtaining their views on which special measures they feel is most appropriate for their needs, and who they would want to accompany them into the live link room, if that is their preferred special measure, is crucial. If the case goes ahead, support will also be required during the court hearing and in the immediate aftermath. In the typical criminal case, these activities may well occur over many months.
- 4.14 Witness Care Units have been established in all areas throughout England and Wales in order to provide information to victims and witnesses whose case is proceeding to court. The statutory Code of Practice for Victims of Crime places obligations on the Witness Care Unit to update victims falling into any of the three priority categories who are witnesses of any requirement to give live evidence; of the outcomes of all pre-trial hearings; of the dates of all criminal court hearings; and of any subsequent amendments within one working day of receiving the information from the courts. Victims who do not fall into any of the three priority categories should be informed of these developments within five working days of the information being received from the courts.
- 4.15 Box 4.1(a) illustrates some of the range of possible activities that can be undertaken with vulnerable witnesses by pre-trial and court witness supporters. The key tasks for child witness preparation are described in the National Standards for Young Witness Preparation (see [Appendix K](#)).
- 4.16 Victims of sexual violence and abuse may have multiple support and safety needs because of the nature of these crimes. These may include therapeutic support, housing, treatment of injuries and infection, drugs and alcohol treatment, risk assessment and support through the criminal justice process. In some areas there are now specialist [Independent Sexual Violence Advisers \(ISVAs\)](#) to co-ordinate support and risk management for victims of these crimes. ISVAs are generally based in voluntary sector organisations such as Rape Crisis or Sexual Assault Referral Centres, which provide medical care, counselling and a forensic examination for victims of sexual violence in some areas. However, they work closely with statutory organisations such as the police, the CPS and health services as part of a virtual multi-agency team. Victims of Sexual Violence can access ISVAs locally via an internet search for the relevant telephone contact numbers.

- 4.17 There are also court systems that now specialise in dealing with domestic abuse cases following a successful pilot programme. The Specialist Domestic Violence Court Programme, which involves prosecutors, police, courts, probation and support systems for victims, aims to bring more offenders to justice and place the victim at the heart of the process. The new courts provide Independent Domestic Violence Advisers (IDVAs) for victims, as well as dedicated prosecutors, magistrates, legal advisers and police officers who specialise in domestic abuse cases. The IDVAs provide support to victims both within and outside the criminal justice system, supporting victims with housing, benefits, social services, counselling and children's issues. Within the criminal justice system, the IDVAs link with the Witness Care Units and ensure victims have access to pre-court visits and risk assessments through Multi-Agency Risk Assessment Conferences (MARACs) and attend court with victims.

**Box 4.1(a): Activities undertaken by pre-trial supporters and court witness supporters**

Depending on the supporter's role, they can:

- Provide emotional support,
- Educate and give information;
- Understand the witness's views, wishes, concerns, and any particular vulnerabilities that might affect them during the criminal process (including the witness's views on Special Measures), and convey these to the relevant criminal justice system agency;
- Agree the manner and frequency of the provision of information;
- Familiarise the witness with the court and its procedures, and with the responsibilities of the criminal justice system;
- Support the witness through interviews and court hearings;
- Explore with the witness their preferences in respect of Special Measures and if it is relevant who they would want to accompany them into the live link room and relay that information to the Witness Care Unit or CPS Prosecutor;
- Undertake court preparation and pass on information about the forthcoming trial;
- Accompany the witness on a pre-trial visit to court;
- Accompany the witness when their memory is to be refreshed (this should not be undertaken by a supporter who will accompany the witness while giving evidence);
- Accompany the witness while they give evidence in court or the live link room (where the court approves this);
- Liaise with family members and friends of the witness;
- Liaise with legal, health, educational, social work and other professionals and act as an advocate on behalf of the witness;

- Liaise with those offering therapy and counselling prior to a criminal trial; and
- Arrange links with experts in any of the witness's specific vulnerabilities or difficulties, e.g., communication problems, learning disabilities, specific cultural or minority ethnic group concerns or religious priorities.

#### **Box 4.1(b): Different types of supporters**

- Victim Support volunteer;
- Witness Service volunteer;
- Witness care officer;
- Specialist child witness supporter;
- Independent sexual violence adviser;
- Independent domestic violence adviser;
- Domestic abuse officer, family liaison officer, child abuse investigator.

4.18 The interests of the witness and of consistent information provision will be best served if the same supporter is involved in both pre-trial preparation and support at the trial (provided that the supporter was not involved in the investigative interview). However, in some cases a supporter's role may not allow them to be the sole provider of information throughout this process and it will be necessary to involve more than one person in assisting the witness. Where this occurs, the witness will be best served if supporters and information providers complement each other's roles.

### **Support at the Investigative Interview**

4.19 Accompanying and supporting children and vulnerable witnesses can be helpful during investigative interviews. The supporter may be a friend or relative provided they are not party to the proceedings and they are not involved in pre-trial support or in the role of supporter at trial.

### **Pre-Trial Support**

4.20 Support from a trained person with knowledge of the court process in both magistrates' courts and the Crown Court can assist the witness through information provision and preparation for giving evidence. A supporter may be present when the witness views their video-recorded statement for the purpose of memory refreshment before the trial. However, careful consideration must be given as to

who this supporter should be, in order to guard against future allegations of coaching the witness. A discussion should take place with the witness that explores their preferences in respect of special measures and, if it is relevant, who they would want to accompany them into the live link room. The witness's views in respect of special measures and support during the trial should then be to the CPS. Generally, any person present either during the investigative interview or during the witness's memory refreshment would not be the same person who has supported the witness pre-trial and/or is expected to accompany the witness when giving evidence. This issue should be raised at the Plea and Trial Preparation Hearing (PTPH) (see [paragraph 4.49](#)).

- 4.21 Pre-trial visits for both prosecution and defence witnesses can be arranged via [Victim Support](#) if they live in London or the [Citizen's Advice Witness Service](#) if they live outside London. Pre-Trial visits should, where practicable, involve giving vulnerable or intimidated witnesses information about special measures, including the opportunity to practice using the live link facility.

## Support while Giving Evidence

- 4.22 Support during the court process itself, in the live link room or when giving remote live link evidence, is to be provided when it is necessary. [Appendix L](#) sets out the factors that should be taken account of when considering if a person needs support and, if they do, who the supporter should be. The need for a supporter in the live link room or at the remote location and their identity must be the subject of an application to the court as part of a live link application (sections 24 [1A], [1B] and 27[9A] of the 1999 Act) unless the court makes the decision on its own motion. The procedures are set out in [Criminal Procedure Rules](#) (CrimPR). A practice direction issued by the Lord Chief Justice outlines who can act as a supporter in the live link room.
- 4.23 Reference is made to 'an increased degree of flexibility' being appropriate, and as long as the supporter is completely independent of the witness and is not involved in the case (for example, as a witness), they do not need to be the usher or another court official. A reduction in the stress of giving live evidence could also be supportive when a pre-recorded is admitted as evidence-in-chief under section 27 of the 1999 Act.

## Evidential Boundaries

- 4.24 The pre-trial and/or court supporter must not be a witness in the case and must not be given details of the case or the evidence of the witness. However, the supporter needs to know:
- The charges against the defendant;
  - The relationship between the defendant and the witness or whether the charges involve an abuse of trust;
  - The defendant's custody status and any change in this during the pre-trial period; and
  - Matters which may affect how preparation is conducted or how the witness gives evidence (e.g., the age of the witness, whether an intermediary has been applied for or not, and any medical, health or religious needs).
- An exception to this is a witness care officer, who may get details of risk assessments to help them provide ongoing risk management.
- 4.25 Supporters must not discuss with the witness the details of the case or the evidence the witness is to give or has given. In their initial contact with witnesses, supporters (except Witness Care Officers who are acting on behalf of the prosecution) must explain that they are independent of both the prosecution and the defence and that there will be no discussion of the evidence, in order to avoid allegations that the supporter has told the witness what to say. Supporters need to distinguish between providing practical emotional help and support to the witness generally which is a key part of their role, and on the other hand expressing their own views and beliefs concerning the evidence of the witness, which is not permitted.
- 4.26 Supporters must also explain that preparation work cannot be guaranteed to be confidential. For example, if the witness begins to talk about the evidence, the supporter must make a note of what was said in the witness's words, notify the police and ask the witness to speak to the person who conducted the investigative interview. Such a written record is disclosable. Further guidance on court witness supporters has been developed and is described in [Appendix L](#).

## Who Can Provide Support?

- 4.27 Who undertakes the range of support and preparation functions will depend upon the needs of the individual witness, the availability of resources and the court's directions. In addition to general considerations, including the views of the witness, it may be appropriate to secure the assistance of a supporter who has a particular understanding of the needs of the witness, for example from the point of view of ethnic or cultural background or disability awareness. However, it is important to distinguish the co-ordination role from the role of provider of the relevant services.

Witness Care Units in particular have been set up to establish information and support the needs of every witness whose case is proceeding to trial, and then to make arrangements for support to be provided through referral or contact with other agencies.

- 4.28 Assistance and support is available from Witness Care Units, Victim Support, Citizens Advice and the Witness Service as well as a range of other organisations. In the case of child witnesses, various local arrangements exist which may involve local authorities or organisations such as the NSPCC and Barnardo's. Agreement should be reached on a local basis as to who is responsible for pre-trial preparation and also for ensuring that the necessary preparation has been or is being undertaken. Regardless of which profession is identified as best placed to co-ordinate pre-trial preparation and support, it is vitally important that it begins as soon as the witness's vulnerability is identified and the police and/or the CPS become aware that they may need to attend court. The police should assess the witness's support needs and refer them to the relevant locally commissioned support organisation, with their consent, in accordance with local procedures.
- 4.29 In certain cases, no support and preparation work with a prosecution witness should be undertaken without informing the police officer or member of police staff in charge of the case (subject to any confidentiality requirements).
- 4.30 Different individuals carry out child witness preparation and support across the country. Regardless of professional background, the work should be carried out by someone who is independent and focuses purely on preparing the witness for the experience of giving evidence. They must also not have been involved in the detailed preparation of the case, nor must they discuss details of the prosecution case or the evidence of the witness. It is recognised that support personnel could be police officers or other professionals, or volunteers. However, all must have received basic training, which may include additional information from the CPS on the criminal justice system and court processes.

## **What Skills are Involved?**

- 4.31 Witness support requires training. The skills involved in pre-trial preparation and support include the following:
- Knowledge about, and aptitude for, working with vulnerable individuals;
  - An ability to prepare witnesses to go to court without discussing their evidence or coaching them in any way;
  - Knowledge and understanding of court procedures and relevant legislation/policy;

- Knowledge about the information and support requirements of vulnerable and intimidated witnesses, as well as the support that is available; and
- An ability to liaise with other professionals and with family members.

4.32 Working with child witnesses requires additional qualities and skills and these are described in the National Standards for Young Witness Preparation (see [Appendix K](#)). There must be proper documentation of any support work (see Box 4.2).

#### **Box 4.2: Documenting support work**

Supporters should:

- Make concise and factual records summarising all activities undertaken with witnesses, including a record of all phone contacts (these should be suitable to produce to the court if required). Ideally, for witness care officers, this will be on the national Witness Management System (WMS);
- Make the records as soon as possible after the event;
- Make a record of all liaison contacts with other professionals and the voluntary sector;
- Distinguish fact from opinion when it is necessary to record opinion;
- Note, in the witness's own words, any reference by the witness to the evidence, and notify the police accordingly; and
- Keep records securely in a locked room or filing cabinet.

## **Identifying and Responding to the Needs and Wishes of Witnesses**

4.33 The statutory [Code of Practice for Victims of Crime](#) (Ministry of Justice, 2020) places an obligation on the police to take all reasonable steps to identify priority victims (victims of serious crime, persistently targeted victims and vulnerable or intimidated victims). This obligation is applied to all witnesses in the [Witness Charter](#) (Ministry of Justice 2013), which says that the police will complete an initial assessment of the needs of witnesses as well as an assessment of whether they may be vulnerable or intimidated. As such the police will often be the first to identify the needs and wishes of the witness and will activate the system for witness support in their area. That service is then coordinated and delivered on a local basis. Victims should be asked if they would like to be referred either to Victim Support or to Citizens Advice, depending on local commissioning. Witness Care Units, run by the police, are available in all criminal justice system areas to provide information and explore the need for practical support for all witnesses who are



called to give evidence. Witness Care Units provide a single point of contact for witnesses after charge and will contact all witnesses after the first hearing. Where a 'not guilty' plea has been entered they will carry out a needs assessment of all witnesses and agree how and when information about the case will be provided. When a witness has support needs the witness care officer will seek to ensure that support is arranged, and they will liaise with the Witness Service to arrange pre-trial visits to courts for witnesses. They also provide practical help for witnesses, such as help with transport to get to court and liaison with the courts over any disabilities or other special needs. They also facilitate effective communication with the police, the CPS and legal representatives as required.

- 4.34 The police and the prosecutor and/or defence legal representatives require information about the needs and the wishes of the witness for the purpose of pre-trial preparation, planning how the witness should give evidence and in making related applications to the court. At the outset, the police should ask witnesses for details of any difficulties they might have when giving evidence and explain how the different special measures might assist them (this is an obligation under the statutory Code of Practice for Victims of Crime). Child witnesses will automatically be eligible for consideration for special measures. Witnesses can then express an informed view on their preference for particular measures, which will be included in any application.
- 4.35 Through the charging programme the police should provide the CPS with information relevant to vulnerability and intimidation by completing the MG2 and the MG3. Provision of this information at this stage allows for active consideration of the steps necessary to secure the giving of a witness's best evidence as early as possible.
- 4.36 Under the statutory [Code of Practice for Victims of Crime](#), Witness Care Units are obliged to offer a full needs assessment to victims who are required to attend court to give evidence to assess what support they may require, at which time issues relevant to the application for special measures and other support will be explored. The [Witness Charter](#) applies this to all witnesses.
- 4.37 The police may also seek indirect information about the needs of the witness from their court witness supporter, relatives, friends or carers (provided that they are not party to the crime under investigation) or other agencies. Under the charging guidance issued by the Director of Public Prosecutions in December 2020 ([Director's Guidance on Charging, sixth edition, DG6](#)), the police must provide the CPS with details about the witness's needs to meet the new file standards and the CPS or legal representative will seek that information if it is not provided because it is necessary for pre-trial planning and decision-making at the PTPH. In the case of defence witnesses, it is the responsibility of the defence lawyer to enquire about the



witness's needs, refer them to appropriate support services (e.g., the Witness Service) and make appropriate special measures applications.

## **Preparation, Support and Liaison throughout the Court Process**

- 4.38 Pre-trial support and preparation should begin as soon as possible, particularly if the witness has been identified as vulnerable or liable to intimidation. Vulnerability will normally have been highlighted before the first investigative interview. In the case of video-recorded interviews, a pre-interview planning meeting should be scheduled, at which any special difficulties are identified and plans made for relevant special measures to be taken at the interview. This can take place before or after the interview, or indeed at both stages. Where there is any doubt as to whether an interview should be video-recorded, where there are concerns about the need for a Registered Intermediary or about the use of communication aids or special communication techniques, or where there might be an issue about the use of a supporter during an interview, the police should ask the CPS for a discussion about special measures (see the “Special Measures Discussions with the Police” section on the [Special Measures page of the CPS website](#)). The CPS can also ask for a special measures discussion if they consider it necessary after reviewing a case file.
- 4.39 After the interview, the next stage involves support, further assessment of needs and liaison with others. As pre-trial hearings and the trial hearing come closer, specific preparatory work for these witnesses will be necessary. A variety of support needs must be met at the hearing itself. The period after the hearing is an important one for ensuring continuing support or treatment, through debriefing and arranging for further work with the vulnerable witness to be carried out by other professionals. Hence, opportunities for support occur throughout the witness's involvement with the legal process. These activities can be summarised under four categories:
- Support during the investigation;
  - Pre-trial support, preparation and liaison;
  - Support at the hearing; and
  - Support after the hearing.

### **Support during the investigation**

- 4.40 Information collected during the planning phase prior to a video-recorded investigative interview, and that emerging during the interview itself, is highly relevant to later decisions concerning how witnesses may give their best evidence. It is important that the views of the victim or witness concerned are sought. Not all vulnerable and intimidated witnesses will be interviewed on video, many will give a written statement. During the investigation, information about the witness will have

been gathered from contact with the witness directly, as well as from those providing care, education or specific services. The effective undertaking of the initial needs assessment by the police, prior to the statement being recorded or the video-interview undertaken, will also have established critical information relevant to the investigation and about support needs up to and including the trial.

- 4.41 During the course of the investigation, for example in an interview, further information may emerge that may be relevant to decisions about how the witness might give their best evidence. It may become clear that further expert advice is needed in order to determine the best method of communicating with the witness, any special support or assistance which might be required and in what form the witness's evidence might best be taken. For example, it may be identified that the witness requires a Registered Intermediary.

#### *Special Requirements*

- 4.42 For witnesses whose specific needs include culture and language, consultation should take place with appropriate advisers, interpreters and intermediaries. During the course of a pre-interview planning meeting for a video-recorded interview, or immediately after the interview, the police may have discovered special needs of the witness with respect to culture or communication. Some of these issues will have been identified during the undertaking of the initial needs assessment and recorded on form MG2. Members of the witness's family or friends or their carer are often a good source of information about these needs or requirements. They can include communication difficulties, but also differences connected with cultural and minority ethnic values and, sometimes, religious practices that are likely to have an influence on the investigative and pre-trial support and preparation phases. The police should consult with the witness and those who know the witness well to seek their advice on these matters, provided that they are not a party to the crime under investigation or likely to undermine or interfere with the investigation. One example is those witnesses whose first language is not English, but who at first meeting appear to communicate relatively easily using English. Appropriate advice and interpretation may be needed during the interview, when providing information about the court process and when giving evidence at trial, in order to prevent the witness becoming confused and to enable them to give their best evidence. The national guidance embodied in the National Agreement on Arrangements for the Use of Interpreters, Translators and Language Service Professionals in Investigations and Proceedings within the Criminal Justice System (Home Office, 2008, available at:

[http://webarchive.nationalarchives.gov.uk/20100920143552/http://frontline.cjonline.gov.uk/includes/downloads/guidance/race-confidence-justice/National Agreement on Use of Interpreters-August 2008.pdf](http://webarchive.nationalarchives.gov.uk/20100920143552/http://frontline.cjonline.gov.uk/includes/downloads/guidance/race-confidence-justice/National%20Agreement%20on%20Use%20of%20Interpreters-August%202008.pdf)

- 4.43 As the hearing approaches, witness support work will become more specifically focused upon preparing the witness for giving evidence at court. In some cases, therapy prior to trial will be organised as well. These different tasks are described in more detail below.

#### **Pre-Trial Support, Preparation and Liaison**

- 4.44 The interval between the investigative interview and the final trial hearing can often be lengthy. Over the months the tasks range from initially assessing needs, either by direct enquiry or observation by the police, through gathering information from others, to providing continuing support. The pre-trial supporter may not take on all these roles and different components may be carried out by a different person. Unless a witness has been appointed a specialist supporter, the Witness Care Unit will provide a witness with updates on all court hearings in their case and will continually assess their information and support needs. This is because a witness's needs may change and require ongoing re-assessment by the supporter. The role of a pre-trial support person is considered in Box 4.3.

#### **Box 4.3: Components of pre-trial preparation**

##### **Assess the needs of the witness:**

- Directly; or
- By obtaining information from others

##### **Support:**

- Seek the witness's views about giving their evidence and being at court,
- including who they want to accompany them into the live link room if that is relevant;
- Provide information about the criminal process and their role within it, including the relevant Young Witness Pack for child witnesses (ages 5 to 11 [or 12 to 17](#)) and the [parents or guardians of young witnesses](#);
- Provide support and general assistance to the witness to enable them to give their best evidence;
- Liaise with others as appropriate, particularly in respect of any pre-trial court familiarisation visit;
- Provide general emotional support to the witness;
- Manage anxiety connected with the court process.

##### **Liaise and communicate:**

- With the witness;
- With other professionals in connection with the legal case;
- With the witness's family and friends;

- With the witness's circle of professionals; and
- With those providing therapy and counselling to the witness.

**Preparing for the trial:**

- Provide information concerning courts (personnel and what will happen during the trial);
- Explain the options for giving evidence;
- Consider any practical needs;
- Discuss the victim's wishes;
- Arrange the pre-trial visits;
- Refresh memory;
- Meet the legal representative.

*Communication between the Police and the CPS*

- 4.45 Police officers should have undertaken an initial needs assessment for every witness and recorded the relevant information. Information relevant to vulnerability and intimidation could then be recorded in a Victim Personal Statement, if the victim has chosen to make one, or on the MG2 for consideration by the CPS. The initial witness assessment form, MG2, is a confidential document that is completed to inform the prosecutor of relevant background information so that there can be an effective case review. In line with the new charging requirements, the police officer or member of police staff must also complete form MG3, which includes information relevant to vulnerability or intimidation. The MG2, MG3 and MG6 forms are confidential documents and are there to assist the duty prosecutor when considering the evidential and public interest criteria of cases. Although the forms are designed for any type of case, they contain a number of specific questions that relate to children and vulnerable adult witnesses. The standard forms cover issues such as: whether a special measures discussion is required; whether key support workers are needed; whether an application is required for video link evidence; information about strengths and weaknesses of the evidence and the witness; the views of the witness; and other information designed to assist rapid communication. These considerations, where relevant, should be recorded by the duty prosecutor on the MG3 form, and used to inform subsequent considerations in the case.
- 4.46 A discussion involving the witness and/or anybody with responsibility for their care should be considered so that their views and preferences can be ascertained, and their needs fully assessed and appreciated.
- 4.47 A discussion between the investigating officer and the CPS may be of assistance in determining which special measures could assist the witness before and during the trial (see the "Special Measures Discussions with the Police" section on the

[Special Measures page of the CPS website](#)). Such discussions should take account of the witness's views on special measures and any preference that they might have for a particular person to act as a supporter. This may require no more than a telephone call.

- 4.48 Both the prosecution and defence have a responsibility to communicate any special needs of the witness to the court, including the presence of a court witness support person while evidence is given, either at the time the case file is reviewed or at a pre-trial hearing. The court should be made aware of what special measures will be needed at court to enable the witness to give their best evidence. It is also helpful if the court can be told in advance about any special arrangements that they can make for the witness to make them feel safer, e.g., entering and leaving the court by a separate entrance or arranging separate seating in the court. It may also be appropriate for the legal representatives and/or the judge to meet the witness before the trial. The Witness Care Unit should ensure that witnesses discussed at any such hearing (or their supporters) are informed about these hearings and the outcome.

### **Support before the Trial/Hearing**

#### *Plea and Trial Preparation Hearing (PTPH)*

- 4.49 In Crown Court cases, the PTPH provides the opportunity for pre-trial planning and for initial decisions to be taken about the special measures available to vulnerable witnesses under the 1999 Act. Applications to the court for special measures are made on a prescribed form by the defence or prosecution in advance of the trial under procedures set out in Criminal Procedure Rules (CrimPR).

#### *Preparation for going to Court*

- 4.50 The aim of preparing witnesses for court is to make them feel more confident and better equipped to give evidence, to help them understand the legal process and their role within it and to encourage them to reveal their fears and misapprehensions. For many witnesses, the court environment may increase their stress and reduce their ability to provide accurate testimony. Effective preparation can assist the witness to give a more accurate and complete account and help secure better post-trial adjustment.
- 4.51 The pre-trial supporter can provide the witness with information about the court process (or can direct their carer or specialist service to it). The Witness Care Unit should give adult and older child witnesses, or the parents/carers of younger child witnesses, a copy of the DVD 'Going to Court: a step by step guide to being a witness's, direct the witness to <https://www.gov.uk/going-to-court-victim-witness> and/or provide children and their [carers](#) with information about the criminal process and their role within it, including the relevant Young Witness Pack (ages [5 to 11](#) or

[12 to 17](#)). Additional support for preparing children to go to court can be found on Victim Support's website at <https://www.youandco.org.uk/going-court/support-court>.

### *A Pre-Trial Visit to the Court*

4.52 Witnesses are likely to benefit considerably from a pre-trial court visit. As part of the undertaking of the detailed needs assessment, Witness Care Units will explore with every witness whether they would benefit from a pre-court familiarisation visit. A full explanation of this service, usually undertaken by the Witness Service, is given to ensure that witnesses can make an informed decision. Where a pre-court familiarisation is requested, the Witness Care Unit will refer the witness to the Witness Service in accordance with an agreed protocol. Where an intermediary is being used to help the witness to communicate at court, the intermediary should accompany the witness on their pre-trial visit. The visit will enable witnesses to familiarise themselves with the layout of the court, and may cover the following:

- The location of the defendant in the dock;
- Court officials (what their roles are and where they sit);
- Who else might be in the court, for example those in the public gallery and press box;
- The location of the witness box;
- A run-through of basic court procedure;
- The facilities available in the court;
- Discussion of any particular fears or concerns;
- An outline of the services offered by the Crown Court Witness Service or Magistrates' Court Witness Service, as appropriate, on the day of trial;
- Demonstration of any special measures applied for and/or granted, for example practicing on the live link and explaining who will be able to see them in the courtroom, and
- Showing the use of screens (where it is practical and convenient to do so).
- A pre-trial court visit will also make witnesses better informed about the particular special measures ordered by the court to assist them to give evidence.

### *Refreshing the Memory of the Witness*

4.53 Witnesses are entitled to see a copy of their statement before giving evidence (Right 8 of the statutory [Code of Practice for Victims of Crime](#) and the [Witness Charter](#)) Where the investigative interview of the witness has been video-recorded, the recording is often used to refresh the witness's memory before the trial – the equivalent of reading the statement beforehand. Viewing the video ahead of time in more informal surroundings helps some witnesses familiarise themselves with seeing their own image on the screen and makes it more likely that they will concentrate on the task of giving evidence. The arranging of memory refreshment for child witnesses is one of the items for the PTPH. For further information from case law relevant to memory refreshment see R v B [2011] Crim.L.R. 233, R v R



[2010] EWCA Crim 2469 and Criminal Practice Directions - see the [Courts and Tribunals Judiciary](#) website).

- 4.54 It is CPS policy that a video-recorded interview may be shown to the witness before the trial for the purpose of refreshing memory unless the video has been ruled inadmissible. If such a ruling is made, the court will need to give guidance at the PTPH or pre-trial hearing on an acceptable alternative method of refreshing the witness's memory. Decisions about admissibility should be made in sufficient time to allow other steps to be taken. If the witness is to give live evidence-in-chief, the prosecutor should consider seeking a ruling on whether it is appropriate to allow the witness to see the video before evidence is given. Supporters should be informed promptly about any decisions on video admissibility and editing.
- 4.55 Any issues involved in planning for refreshment of a witness's memory will be raised at the PTPH by the legal representatives. If memory refreshment is to proceed, the hearing will allow a decision to be made as to how the vulnerable witness should be supported during the process, and the implications for the supporter's role in any subsequent trial. A decision can be reached about the person who is best placed to support the witness while their memory is refreshed (see Pre-Trial Support above). Consideration will need to be given to any competing requirements for the witness supporter during the remainder of the criminal justice process.
- 4.56 It is the responsibility of the police to arrange for prosecution witnesses to read their statements or view video-recorded interviews. They should consult the prosecution about where this should take place and who should be present and keep a record of anything said at the viewing. In exceptional cases, such as those involving very young children or children with learning disabilities, consideration could be given to video-recording the witness when they refresh their memory from the video-recorded interview.
- 4.57 Witnesses need to receive appropriate explanations about the purpose of watching the video before the trial and their views about this must be taken into account. Sometimes videos will be edited for legal reasons, for example if the video contains irrelevant material or inadmissible matters of fact or law. Witnesses need to be alerted to any editing so that they will not be surprised, suspicious or confused when the recording does not match precisely their recollection of the interview.
- 4.58 Witnesses are entitled to refresh their memory from their statement or visually recorded interview. The court should enquire at the PTPH or other case management hearing about arrangements for memory refreshing. The witness's first viewing of the visually recorded interview can be distressing or distracting. It should not be seen for the first time immediately before giving evidence. Depending

upon the age and vulnerability of the witness several competing issues have to be considered and it may be that the assistance of the intermediary is needed to establish exactly how memory refreshing should be managed (Criminal Practice Directions see the [Courts and Tribunals Judiciary](#) website).

#### *Communication with the Witness*

- 4.59 Witnesses are likely to be anxious about the progress of the case and decisions about whether and how they will give evidence. Once a trial date has been arranged, the Witness Care Unit should notify all victims and witnesses of the trial date within one working day of receiving the date from the court. Under the statutory [Code of Practice for Victims for Crime](#) this is a responsibility in relation to all victims of crime. The Witness Care Unit or defence solicitor (in respect of defence witnesses) should provide their respective witnesses with as much notice as possible of the date and the time they are required to give evidence. If it becomes apparent that the trial will not proceed, witnesses and their supporters should be told as soon as possible, with the Witness Care Units seeking to do this within one working day.
- 4.60 While continuing efforts are made to minimize delays in the criminal justice system, witnesses should be forewarned at an early stage that some cases take a long time to reach trial or may be discontinued pre-trial, and that some trials may need to be adjourned. They should also be advised beforehand of the possibility of waiting to give evidence on the day of trial. Witnesses may be put on 'standby' and asked to wait at locations away from the court, to be summoned by pager when their evidence is to be heard. The [Witness Charter](#) states that vulnerable or intimidated witnesses may be able to wait somewhere near to the court until the time they need to give evidence.
- 4.61 Witnesses should be told who is responsible for keeping them informed pre-trial of significant developments in their case. In most cases this will be done by the Witness Care Unit or through an alternative supporter. The statutory Code of Practice for Victims of Crime places an obligation on some criminal justice agencies to keep victims, especially those who are vulnerable or intimidated victims, informed at key stages in their case, but the Witness Care Units will seek to achieve this standard for all witnesses. They endeavour to achieve this by appointing each witness with a single point of contact wherever possible, but where the updates are given outside the Witness Care Unit environment it is good practice for the same individual to communicate this information to the witness.
- 4.62 The police or Witness Care Unit must keep the supporter informed about key decisions, for example about how the witness is to give evidence. Where an intermediary is to be used, the police should inform them that they have been appointed.



### *Provision of Therapy prior to a Criminal Trial*

- 4.63 The best interests of victims and witnesses are paramount when therapy is required. They should never be denied the emotional support, therapy or counselling that they may need at any time, either before or after the trial.
- 4.64 Where a victim's needs suggest that it is appropriate, the police must explain how they can access pre-trial therapy and counselling (Right 3 of the statutory [Code of Practice for Victims of Crime](#), Ministry of Justice, 2020).
- 4.65 It is important that prosecutors and counsel involved in cases in which victims and/or witnesses need therapeutic assistance and that the professionals undertaking pre-trial therapy are aware of and adhere to the guidance published by the Crown Prosecution Service on their website at:  
<https://www.cps.gov.uk/publication/guidance-pre-trial-therapy>

### *Plans and Communication Concerning the Trial*

- 4.66 Applications for special measures, however, can be made at any stage up to and including the trial itself and procedures for making applications are set out in Criminal Procedure Rules (CrimPR). If the court rules that a witness is eligible for one or more special measures, the ruling and the details of the measures to be provided are binding on the trial court. Details of where, when, and how these are to be provided are set out in the form of binding directions (section 20 of the Act) that can only be varied or discharged on application or by the court on its own if it is in interests of justice to do so. This enables the pre-trial supporter to plan with greater certainty. Frequent communication and coordinated planning are needed if more than one person is undertaking the pre-trial support for the witness and support within the court hearing.
- 4.67 Information about the witness's needs and wishes should be available to the person preparing the witness for court. Depending on who the supporter is, this may include the items listed in forms MG2 and MG6, together with additional information that the pre-trial supporter has gained during the preparation for court and the pre-trial visit.

### *Role of the Witness Service*

- 4.68 The Witness Service provides a service in Crown and magistrates' courts for witnesses who are vulnerable or intimidated. It provides a free, independent, impartial and confidential service, adapted to individual needs. The Witness Service supports victims, prosecution and defence witnesses and their families and friends. The Witness Service also supports and works alongside other people who may accompany a witness, for example a carer, social worker, expert witness, interpreter, Registered Intermediary or specialist witness supporter. They also provide:

- Someone to talk to (but not about the evidence);
- Information about court and legal processes;
- Emotional support in dealing with the impact and experience of attending court;
- Pre-trial visits for witnesses so that they are familiar with the courtroom and the roles of court personnel;
- Support in the courtroom if necessary and on the day of the trial;
- Practical help with completing expenses forms;
- Support and information during and following sentencing;
- Special support for vulnerable and/or intimidated witnesses;
- Arrangements for defence and prosecution witnesses to be kept separate;
- Liaison with other statutory and voluntary agencies;
- Referral to victim support's community service or other services; and
- Other arrangements such as baby changing, prayer facilities, etc.

### *Role of the Courts*

- 4.69 All courts have staff who can assist in coordinating the provision of facilities and liaising with other agencies. Local practices vary but they may be able to assist with pre-trial familiarisation visits, liaising with the judge to ensure that the cases progress speedily and undertaking the practical arrangements on the day of trial, for example ensuring that the video and TV link equipment is set up and working effectively, meeting the witness and arranging separate waiting areas where possible.
- 4.70 Courts should consider the order and timing of witness attendance so as to minimise inconvenience. Such an approach will benefit vulnerable or intimidated witnesses.

### *Meeting the Legal Representative*

- 4.71 The Bar Code of Conduct allows legal representatives to introduce themselves to witnesses and assist with procedural questions provided the evidence is not discussed. It is [CPS policy under the Prosecutor's Pledge for the CPS to meet witnesses](#) (including children) who are potentially entitled to special measures when they first attend court. Right 8 of the statutory [Code of Practice for Victims of Crime](#), gives victims the right to be offered a meeting with the prosecutor or advocate who is presenting the case at court. This also applies to all witnesses in the [Witness Charter](#). It is the policy of the Law Society and the Criminal Bar Association that the defence legal representative should meet defence witnesses. Supporters should ask witnesses whether they wish to meet their legal representative prior to giving their evidence.
- 4.72 At the time of writing, the CPS were exploring [more innovative ways to communicate with victims](#) and improve the victim experience of the system under [Operation Soteria](#).

### *Meeting the Judge*

- 4.73 It is considered best practice for the trial judge to meet witnesses before they are cross-examined on video during a hearing convened for the purposes of [section 28 Youth Justice and Criminal Evidence Act, 1999](#).
- 4.74 In other cases, it is a matter for the trial judge or magistrates to decide whether it is appropriate for them to meet a witness before they give evidence. Where it is considered appropriate for such a meeting to take place experience suggests that it can assist in demystifying the court process and that putting child witnesses more at ease helps them to give their best evidence.

### *Support at the Hearing*

- 4.75 The court witness supporter's role during the court hearing is principally to provide emotional support for the witness in order to reduce anxiety or stress, and therefore enable the witness to give their best evidence. If the court agrees, such a supporter could be an Independent Sexual Violence Adviser (ISVA) or an Independent Domestic Violence Adviser (IDVA). If the court has approved the use of an intermediary to assist the witness, then that intermediary will be present to assist the witness in communicating their evidence to the court, but not as a supporter. Research has demonstrated that the presence of a support person known to the witness may reduce the witness's anxiety and improve the accuracy of their recall. As is the case for all support functions, the witness supporter during the hearing must be someone who has only basic information about the witness's evidence, and the supporter must avoid discussing the witness's testimony with them. In addition, the court witness supporter will not be a party to the case but will have received appropriate training, and where possible will have a relationship of trust with the witness. It is likely that the court witness supporter will work alongside a specially trained court usher.
- 4.76 At court the supporter will be with the witness while they are waiting to give evidence and will then accompany the witness to the court. The supporter will sit beside the witness and provide emotional support in a neutral but sympathetic manner; they cannot influence the court proceedings in any direct way. The court witness supporter should also be able to comfort the witness should they become distressed and should have prior arrangements agreed to enable the supporter to alert the judge in the event of problems arising while the witness gives evidence (see [Appendix L](#)). This applies equally to witnesses in the live link room, where an usher will also be present to look after any technical difficulties and to administer the oath. In April 2001, the Justices' Clerks' Society and the Magistrates' Association jointly issued guidance on the presence of Victim Support volunteers in the youth court.

### *Planning for Breaks in the Testimony*

4.77 The court witness supporter will need to make prior arrangements to enable the court to be alerted to a vulnerable witness's need for a break in proceedings. This may either be direct or indirect, such as through a 'touch card'. Although judges and lawyers should invite vulnerable witnesses to tell the court when they need a break, the witness's ability to identify when this is necessary should not be relied upon. Where an intermediary is used they may be able to assist in bringing the witness's need for a break to the attention of the court. Supporters should ensure that information is passed to the CPS or, in the case of a witness called by the defence, to the defendant's legal representative. This will enable the judge and legal representatives to plan breaks in the witness's testimony. Scheduled breaks are also less likely to occur at a time that would favour one side over another.

### *Interpreters and Intermediaries*

- 4.78 In some circumstances, arrangements will have been made for an interpreter to be present during the hearing. Interpreters might be required for those with limited or no understanding of English, or to assist with the use of communication devices or a form of sign language. The role of the interpreter is to facilitate communication with the witness at court and is distinct from that of the court supporter.
- 4.79 Similarly, the court may have approved the use of a Registered Intermediary to help the witness to give evidence. The role of an intermediary is also separate from that of the court supporter and they should be available during pre-trial preparation to improve the witness's understanding. An intermediary will usually have undertaken an assessment of the witness at an early stage in the proceedings and will have produced a written report for the judge, the prosecution and the defence. This report should highlight matters such as limited concentration spans and particular types of questioning that should be avoided. Further information on intermediaries is available in the Advocate's Gateway toolkit on the subject at:  
<http://www.theadvocatesgateway.org/toolkits>

### *Special Provisions for Children*

- 4.80 The UN Convention on the Rights of the Child and a number of Directives from the European Union emphasise the need for adults and organisations, when making decisions that affect children, to consider their best interests and their views. Reports to the CPS should always include clear information about the wishes of the child – and those of their parents or carers – about going to court. The CPS may in any event need to seek additional information from the joint investigating team.
- 4.81 The [Young Witness Protocol](#) was introduced in 2015 following recognition by the Chief Magistrate of the need to expediate cases involving very young witnesses. Despite the use of special measures to assist, the time lapse from police investigation to the conclusion of court proceedings was often too slow to afford

very young witnesses the opportunity to provide their best evidence. Following engagement with the Chief Magistrate, President of the Queen's Bench Division and Director of Public Prosecutions, the Protocol was reviewed and updated in 2018 to incorporate the introduction of pre-trial cross examination (s.28 of the Youth Justice and Criminal Evidence Act 1999).

- 4.82 The general points concerning pre-trial support and preparation apply to all child witnesses. Additional guidance is provided in the National Standards for Child Witness Preparation (see [Appendix K](#)), and the advice below should be read in conjunction with that document. Some additional points are made below about the particular needs of children. The majority of these points derive from the developmental immaturity of children and the need to take this into consideration so that they can give their best evidence. Central among these developmental issues are the following:
- Children's understanding and appreciation of the world around them is not fully developed;
  - Children's language and communication skills are not as developed as those of adults;
  - Children are dependent on adult carers to varying degrees during childhood;
  - Children are used to adults being in charge of their lives, and may not appreciate or be familiar with the fact that their own views, perspectives and wishes are important;
  - Children's ability to delay, postpone or inhibit their reactions to discomfort or distress may be underdeveloped.
- 4.83 Other vulnerabilities or disadvantages may compound these developmental issues, for example learning disabilities, psychological or psychiatric problems, sensory or communication difficulties, issues deriving from cultural or ethnic group differences, or extreme poverty. Furthermore, child witnesses, in addition to being developmentally immature, can be intimidated and may be subject to fear through threat, whether imagined or real. Such situations often occur in sexual abuse cases.
- 4.84 There may be a special vulnerability in children who have suffered maltreatment that affects their attitudes towards adults in positions of authority or power, and which might raise additional sensitivity to questions such as those which imply guilt or suggest that responsibility resides with the victim, or questions relating to a requirement to demonstrate alleged sexual activities on themselves. Child witnesses may be particularly distressed when asked to show on their own body where they were touched, or to mimic sexual actions, and this should be avoided. The pre-trial supporter should discuss with the police and legal representatives whether the child may be asked to demonstrate intimate touching at court. If this is a possibility, consideration should be given to providing a doll, model or drawing to

which the child can point. The judge's agreement should be sought on the use of an alternative method before the question arises.

- 4.85 These issues render children more vulnerable to adult influences in questioning. There are a number of measures that can be implemented at different stages in order to reduce the effect of these developmental issues and enable children to give their best evidence (see Boxes 4.4 and 4.5 and [Chapter 5](#)).
- 4.86 Most of the issues covered in Boxes 4.4 and 4.5 figure in the questionnaire that is completed at the PTPH. Completion of the questionnaire requires prior consultation with the witness, carer and pre-trial and/or court witness supporter and the forwarding of information to the prosecution, before the PTPH. It is important that the prosecution is given information from home or school about the child witness's attention span, bearing in mind that it is likely to be shorter in the stressful atmosphere of the court. This will enable the judge and legal representatives to plan breaks in the child witness's testimony.
- 4.87 It is important to have professionals with an aptitude and skill in being able to communicate effectively with children of different ages. The skills required include an ability to prepare the child witness to give their evidence without coaching them in any way, familiarity with court procedures and the relevant legal processes, an ability to work with children of different ages and abilities, and communication skills (see also [Appendix K](#)).
- 4.88 All information on prosecution witness preparation needs to be communicated to the CPS in enough time to enable the necessary action to be taken. The CPS would only expect the preparer to disclose information that is directly relevant to the witness giving their best evidence (e.g., the need for an intermediary). Such information can be provided separately by the police with the case file, by a special measures discussion or through a court witness support person and should include the child's views on issues such as the gender and identity of a court witness supporter to accompany the child in the live link room; the wearing of wigs and gowns by judges and legal representatives; meeting the prosecution legal representative; and viewing the video statement before the trial. The CPS has published a policy document on prosecuting criminal cases involving children and young people. The policy document, Children and Young People (CPS 2006) is available at [www.cps.gov.uk](http://www.cps.gov.uk). Children and Young People is a public statement of the CPS's commitment to working together with others to safeguard children in the spirit of the cross-government initiative 'Every Child Matters: Change for Children'. It brings together the principles of the Prosecutors' Pledge, the statutory [Code of Practice for Victims of Crime](#) and the [Witness Charter](#), and applies them to children.



- 4.89 The child's stress is likely to increase with the length of time that the child waits to give evidence on the day of the trial. The [Witness Charter](#) promotes the idea of 'standby' arrangements for vulnerable witnesses who are available on call at another location. The [Witness Charter](#) states that if a witness is vulnerable, or if the case involves a vulnerable witness, the prosecution or defence lawyer will ask the court to give the case priority in respect of times and dates of hearings. Many judges will agree to arrangements designed to ensure that children do not spend any longer in the court building than necessary by, for example, arranging to take their evidence at a fixed time at the start of a court session. Others require preliminary matters to be dealt with on the first day of the trial, with the child called as first witness on the second day as they can give their evidence more effectively if they are fresh in the morning. This may well be the preferable option for children.
- 4.90 Cases need to be managed robustly to ensure that the case is ready for trial. The commitment to give high priority to child abuse cases is contained in many policy documents, including the young witness initiative and the statutory Code of Practice for Victims of Crime issued under section 32 of the Domestic Violence, Crime and Victims Act 2004. It is CPS policy to give priority to child witness cases. Section 51 of the Crime and Disorder Act 1998 gives magistrates' courts the authority to transfer cases involving certain offences against children direct to the Crown Court.

**Box 4.5: Special Measures and other arrangements for children at court Special Measures:**

- Screens – so that the witness does not have to see the defendant;
- Live link – allowing a witness to give evidence from outside the courtroom, including from a live link away from the trial court to reduce the fear of seeing the defendant;
- Supporter in the live link room;
- Evidence given in private – this special measure is limited to sexual offences, offences contrary to sections 1 and 2 of the [Modern Slavery Act 2015](#) and offences involving intimidation. Victims of offences involving domestic abuse will also be eligible when [section 62 of the Domestic Abuse Act 2021](#) comes into force;
- Removal of wigs and gowns by judges and advocates;
- Video-recorded evidence-in-chief – allowing an interview with the witness, which has been video recorded before the trial, to be shown as the witness's evidence-in-chief;

- Video-recorded cross-examination – this special measure is available in all crown courts in England and Wales for [section 16 Youth Justice and Criminal Evidence Act “vulnerable” witnesses](#). It has also been commenced for adult complainants to sexual offences and offences contrary to section 1 or section 2, [Modern Slavery Act, 2015](#) in the crown courts at Durham, Harrow, Isleworth, Kingston-upon-Thames, Leeds, Liverpool and Wood Green (further roll out anticipated in due course, with commencement to all crown courts planned).
- Intermediary – allowing an approved intermediary (a communications specialist) to help a vulnerable adult or child witness to communicate with the police, legal representatives and the court; and
- Aids to communication – allowing a witness to use communication aids such as a symbol book or alphabet boards.

**Other arrangements:**

- An interpreter;
- A pre-trial court familiarisation visit;
- Adjustments to the layout of the witness area with respect to the height of seating arrangements;
- Appropriate arrangements for breaks to take account of children’s greater tendency to tire and their reduced concentration span compared with adults; and
- Arrangements for children with physical disabilities.

**Special Provisions for Vulnerable and Intimidated Adult Witnesses**

*Vulnerable Adults*

- 4.91 Vulnerable adult witnesses might be provided with various special measures to maximise the quality of their evidence, as well as appropriate pre- and post-trial support. It is important that vulnerable witnesses are identified at an early stage so that investigators can establish whether they are likely to qualify for a special measures’ direction under the 1999 Act, taking account of the circumstances, the expressed wishes of the witness and the observations of anybody involved in the witness’s care. Right 4 of the statutory [Code of Practice for Victims of Crime](#) places an obligation on the police to conduct a needs assessment to decide whether victims fall into one of the three priority categories (victims of the most serious crime, persistently targeted victims, and vulnerable or intimidated victims). Under the Code, these victims are entitled to an enhanced level of service. Social support can be received by the victim in addition to the special measures that might be available. This support can be provided at the interview, during the pre- trial period and in court.
- 4.92 Personal qualities of vulnerable adults may put them at particular disadvantage during the investigation and court proceedings. For example, some persons with a



mental disorder can be particularly sensitive to perceived challenge or criticism or may fear recurrence of traumatic events. Similarly, people with learning disabilities might have a relative lack of adaptability. These and similar differences and vulnerabilities might lead such witnesses to require longer and more extensive support and preparation. The precise type and amount will vary according to the alleged offence, the witness's character, level of understanding and their life experience. It will also vary according to the purpose of the support; for example, whether it is designed to encourage the most reliable testimony or to reduce the trauma of proceedings on the witness, or both.

- 4.93 Delay within the criminal justice process can add disproportionately to the stress upon witnesses who are deemed vulnerable. For example, people with learning disabilities might have particular difficulty understanding the basis and reasons for a delay. For this reason, and because delay is likely to adversely affect the memory of a person with a learning disability, decision-makers should be reminded of the need to treat such cases as a priority.
- 4.94 Witnesses have been found to give better evidence when they have a choice about the way in which it is given. This especially applies to vulnerable witnesses, many of whom need preparation and support in order to be able to make an informed choice. Wherever possible, vulnerable witnesses should have an active role in choosing how to give their evidence. The most appropriate method of doing so will depend not only on the individual's objective capacity but also on what they wish to do, taking into account the options that are available for them.
- 4.95 The UN Principles for Older Persons and the UN Convention on the Rights of Disabled People also make special provision for vulnerable adults.

**Box 4.6: Issues of special importance for those planning support for vulnerable adult witnesses**

- Taking account of a witness's choices and views.
- The use of an intermediary.
- The amount of time needed to give evidence.
- The time of day when they will give their best evidence.
- Designing appropriate breaks.
- Considering the best method of asking for a break.
- The witness's level of understanding concerning courts and any prejudices they may have, such as a belief that it is the witness who is on trial.
- Familiarisation with the venue for the hearings.
- Explanations about the video and live link.

- Short attention spans while giving evidence (especially for witnesses with learning disabilities).
- Speech and communication aids.
- Planning approach to the oath and/or admonishing the witness.

### *Intimidated Adults*

- 4.96 As with vulnerable witnesses, intimidated adult witnesses might be provided with special measures to maximise the quality of their evidence, including appropriate pre- and post-trial support. Witnesses could suffer excessive fear or distress in a number of situations, such as domestic abuse, assaults, sexual offences and crimes involving racism. They might also be intimidated because the alleged offence occurred over a long period of time, or in the context of a close relationship with the accused. Government policy to respect the human rights of vulnerable adults is important to take into consideration when considering those adults who are specifically intimidated as a result of their position as witnesses.
- 4.97 In the period leading up to the trial, there are a number of precautions that officers can take when dealing with intimidated witnesses. Throughout the course of the case, the police should develop coping strategies to enable the witness to handle the threat of possible reprisals and should give the witness appropriate information and advice. Some forces issue a small booklet to all police officers outlining measures for witness support. Others use a pre-printed tear-off sheet as part of the statement form, and this is handed to the witness. For some victims, such as those within domestic abuse cases, specific risk assessments will be made. In domestic abuse, MARACs may be held, especially in areas with specialist domestic abuse courts. Support for victims of domestic abuse and sexual assault may be provided by IDVAs or ISVAs. This level of consideration, identification of risk and implementation of measures to manage risk should be undertaken by the Witness Care Unit throughout the pre-trial period. Where appropriate, intervention should be arranged, and the national guidance on dealing with intimidation provides advice on what action could be taken ([Working with Intimidated Witnesses: A Manual for Police and Practitioners Responsible for Identifying and Supporting Intimidated Witnesses](#) [Office for Criminal Justice Reform, 2006]).
- 4.98 The identification of suspects should involve the use of identification suites with screens; face-to-face identification should be avoided. Video identification procedures (see Police and Criminal Evidence Act (PACE) 1984, Code D) can serve to reduce stress on the witness. Witnesses should be kept informed of the progress of their case in accordance with the [Code of Practice for Victims of Crime](#), as lack of knowledge (e.g. concerning the offender's whereabouts) can add to feelings of fear and uncertainty.

## **Afterwards – Dealing with the Outcome**

- 4.99 Experience has shown that witnesses appreciate support given after the close of proceedings, a time when they may otherwise feel isolated and may have difficulty coming to terms with the court verdict. Whether or not the witness gave evidence, the Witness Care Unit will provide details of the case outcome to all victims and witnesses either directly or through the relevant contact. This result should be provided within one working day of the result being given to the Witness Care Unit. In cases of heightened risk, particularly where the victim is vulnerable or has been intimidated, Witness Care Units will try to make arrangements to get this information to the victim or witness immediately, and post-court support and safety will be considered. The [Witness Charter](#) states that Witness Care Units will notify prosecution witnesses of the outcome and the sentence, if relevant, by the end of the working day following receipt of this information from the court, and that the defence lawyers or court staff will inform defence witnesses. Completion of anonymous post-trial questionnaires by the witness and the supporter will enable important feedback to be obtained for the management of future cases, and for the effectiveness and acceptability of support and preparation arrangements to be evaluated. The witness's own views, opinions and responses to the measures taken will be of great value in the refinement of local procedures. Such feedback can be coordinated through the local criminal justice boards.
- 4.100 The discussion after the hearing also provides a useful opportunity for the supporter to identify and arrange for continuing support, counselling and treatment in the light of the witness's needs. The pre-trial and/or court witness supporter can then liaise with the appropriate agency or professional to ensure that these needs are met. These tasks apply as much to those witnesses who are in the end not called to give evidence as it does to those who have provided evidence at trial.

## 5. Witnesses in Court

It is essential that the court is provided with accurate and complete information about special measures and any other arrangements to inform pre-trial planning and decision making. Where the guidance in this document has been followed, this information will have initially been identified by the police during the investigation and will have subsequently been developed and, if necessary, modified during pre-trial preparation.

This chapter describes the issues associated with special measures and the other arrangements that the court might like to consider when planning a trial.

The guidance in this document is not intended to operate as guidance for the judiciary. Judges will apply the [Criminal Practice Directions](#) (including Criminal Practice Directions, V para 18E) and [Criminal Procedure Rules](#) as they are required to do, and further information on how this will be done can be found in the [Crown Court Compendium Appendix IV](#) which will be updated from time to time.

### Introduction

- 5.1 Full and accurate information about special measures and other arrangements is required to assist vulnerable and intimidated witnesses is needed to inform decision-making and pre-trial planning. In the Crown Court, it is preferable for issues to be raised and resolved as far as possible at the Plea and Trial Preparation Hearing (PTPH). At this hearing initial decisions will be taken, or a date fixed for rulings to be made, about the special measures directions that are possible under the 1999 Act. It is important to achieve as much certainty as possible about how the witness will give evidence and the arrangements for court attendance, preferably at an early stage in the proceedings.
- 5.2 Where the guidance in this document has been followed, the needs and wishes of vulnerable and intimidated witnesses will have been identified as part of the pre-trial preparation. It is vital that legal representatives taking part in the PTPH in the Crown Court are given full instructions prior to the hearing, including up-to-date information from and about the witness, so that the judge will be in a position to complete the plea and case management form. Judges may be expected to ask for information about witnesses if it is not provided.
- 5.3 The legal representatives need to have seen any video-recorded evidence in advance of the PTPH so that decisions can be made about the admissibility of the recording and any issues, such as the need for editing, can be resolved in good

time. Other issues that may depend on the admissibility of the recording, such as the steps which may be taken to refresh the witness's memory (see [paragraphs 4.53 to 4.58](#)), can then be the subject of a decision by the judge in advance of the trial.

- 5.4 New information about a vulnerable or intimidated witness may become available after the PTPH and before the trial. Such information may concern, among other matters, the condition of the witness (for example an improvement in or a degeneration of the witness's health) or the occurrence of relevant events (for example, an act of intimidation directed at the witness, or the fact that the witness has had a birthday which is relevant to the age limits for eligibility for special measures). A witness's views may also change over time, for example a witness may change their views about who they wish to accompany them in the live link room, or special measures generally. The steps taken by the court to enable witnesses to give their best evidence may have to be reassessed in the light of changes of this sort, and legal representatives have a responsibility to keep the court informed about them. This means that procedures must be in place for channelling relevant information to the legal representatives.
- 5.5 Where a Registered Intermediary is appointed, a pre-trial hearing with the trial judge is needed to discuss the ground rules for intermediary use and how the examination of the witness is to be dealt with. This should cover issues such as how the intermediary will signal to the court that the witness has not understood a question or needs a break in proceedings, and how questions should be phrased in order to maximize the quality of the witness's evidence. Further information on ground rules hearings is available in the Advocate's Gateway toolkit on the subject at: <http://www.theadvocatesgateway.org/toolkits>
- 5.6 Where a video-recording has been edited prior to trial, it is most important that the legal representatives should have viewed the edited version of the recording before the trial. Information can only be withheld from the defence if the court accepts an application on the basis of Public Interest Immunity (PII). This is likely to apply only where either the defendant does not know the identity of the witness and there are reasonable grounds to believe that the witness could be at risk of serious intimidation, or the witness reveals something in interview that could undermine undercover police operations or reveal private addresses not known to the defendant. If an application for PII is to be made, the police and the Crown Prosecution Service (CPS) will need to discuss any editing requirements at an early stage.
- 5.7 In magistrates' courts and the youth court all the arrangements and applications are usually made and decided at the first hearing, rather than in a PTPH. There is a similar need for information to be available in advance of the trial so that

appropriate arrangements can be made for vulnerable or intimidated witnesses, and decisions taken about what special measures directions, if any, require to be made. These issues should be dealt with at a PTR hearing or at a special hearing convened for the purpose. It is as important for magistrates who try cases in these courts to be aware of all relevant information regarding vulnerable and intimidated witnesses as it is for the judges of the Crown Court, although the period of preparation before a trial by magistrates may not be as lengthy. Magistrates may be faced with particular issues, such as the need to transfer a trial to another court in their local justice area in order to take advantage of live link if no such facilities are available in their court. Such matters require a degree of forward planning if trials are not to be unreasonably delayed.

## **The Court's Responsibilities towards Witnesses**

- 5.8 Judges have a duty to protect the interests of the defendant at trial, who is presumed 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 best evidence. Magistrates bear the same responsibility: lay magistrates have the assistance of a clerk on matters of law, including the appropriate use of the court's powers and responsibilities. Both judges and magistrates have to strike a balance under Article 6 of the European Convention on Human Rights between protecting the defendant's right to a fair trial and ensuring that witnesses who give evidence in the case are enabled to do so to the best of their ability.
- 5.9 Judges and magistrates are expected to take an active role in the management of cases involving vulnerable and intimidated witnesses, and to ensure that elements of the court process that cause undue distress to such witnesses are minimised. The 1999 Act created an expectation that the court will be concerned that witnesses are enabled to give their best evidence and imposes an obligation on judges and magistrates to raise of their own motion the question of whether special measures should be used if the party has not applied for them (section 19[1] of the 1999 Act). It is therefore important that they are alert to the possibility that a particular witness's evidence may be adversely affected not just by the distress of giving evidence, but by circumstances, such as the witness's age, physical or mental health, that may affect the witness's ability to recall relevant matters and to deal with questions about them. The existence of such circumstances may trigger the need for a special measure's direction under the 1999 Act. Such a direction may also be required in respect of a witness, the quality of whose evidence is likely to be diminished by reason of fear in connection with testifying in the proceedings. Information relating to intimidation may be potentially prejudicial to a defendant but must be made known to a court if it is relevant to the making of a special measures'

direction (even if, as is likely, it is inadmissible as proof of the offence to be tried). In a magistrates' court, because a special measures direction would normally be sought in advance of the trial date, it would be considered by different magistrates to those who hear the trial. If a direction is sought on the day of the trial, the magistrates might still be able to hear the trial, subject to representations from the parties involved in the case.

- 5.10 The responsibilities of judges and magistrates to protect the interests of vulnerable or intimidated witnesses may require the making of special measures directions in appropriate cases but may also be discharged in other ways. Some witnesses may need breaks while giving their evidence, whether because they are giving distressing evidence or because they have a limited span of concentration. Such breaks can often be planned in advance if the court has been given the relevant information (for example, from the Registered Intermediary's assessment report). Although judges and legal representatives should invite young and vulnerable witnesses to tell the court when they need a break, they should not rely on the witness's ability to identify when this is necessary. Planned breaks are less likely to occur at a time that would favour one side over another.
- 5.11 The responsibilities of judges and magistrates also extend to the prevention of improper or inappropriate questioning by legal representatives (or the defendant if they are conducting their own defence). Judges and magistrates should have regard to the reasonable interests of witnesses, particularly those who are in court to give distressing evidence, as they are entitled to be protected from avoidable distress in doing so. The sort of questioning likely to be ruled out is anything that lacks relevance, or is repetitive, oppressive or intimidating. Questioning may be intimidating because of its content, or because of the tone of voice employed. An advocate may be asked to rephrase a question if it is in a form or manner likely to lead to misunderstanding on the part of the witness. A child witness, or a witness with learning disabilities, for example, may easily be confused by questions that contain double negatives ('Is it not true that you were not there?'), or that ask two questions at the same time ('Is it true that you were there and you heard what was said?'). Judges and magistrates should be alert to the possibility that a witness might be experiencing difficulty in understanding a question which, if not corrected, might lead to the giving of evidence that is not of the best quality that the witness could provide. Where an intermediary is used, their report will contain recommendations about what types of questions are likely to lead to misunderstanding on the part of the witness.
- 5.12 In some cases a witness, particularly a child witness, may benefit from meeting the judge or magistrates before the case commences so that the witness can be put at ease. Some judges are prepared to meet child witnesses before they give evidence, provided that they are satisfied that this will not create an impression of bias in



favour of the witness, as their experience suggests that this can assist in demystifying the court process. However, it is essential that the prosecution and defence legal representatives should be aware of the meeting and have the right to attend if they so wish in order to avoid any subsequent legal challenges.

### **The Address of the Witness**

- 5.13 Witnesses should not be asked to give their address aloud in court unless for a specific reason. Witnesses who are nervous about the possibility of retaliation should be advised of this rule. If the witness's address is necessary for evidential purposes, it should be possible for it to be written down rather than read out in open court.

## **The Responsibilities of Legal Representatives towards Witnesses**

- 5.14 Legal representatives have a responsibility, when dealing with a witness who is nervous, vulnerable or apparently the victim of criminal or similar conduct, to ensure that those facing unfamiliar court procedures are put at their ease as much as possible. Meeting with the legal representative who is to call the witness to give evidence-in-chief in a calm environment may be an effective way of preparing a witness (for further information, please see <https://www.cps.gov.uk/legal-guidance/speaking-witnesses-court>).
- 5.15 Legal representatives must assist the court, at any hearing where the matter arises, to make informed decisions about any special measures' directions 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 or requirements of any vulnerable or intimidated witnesses they intend to call.
- 5.16 Where applications are to be made for disclosure of relevant records held by third parties concerning the witness, they should be made at an early stage to avoid delay.
- 5.17 The legal representatives of the defendant have a duty to promote the best interests of the defendant by all proper and lawful means. This may include cross-examining vulnerable and intimidated witnesses about matters they may find extremely distressing. Such questioning is necessary, provided that it relates to matters that are relevant to the case and is not done merely to insult or annoy the witness. Allegations of misconduct by a witness may not be made unless the legal representative has reasonable grounds for making them. Some legal representatives routinely ask child witnesses 'Do you tell lies?' but this is a practice

that ought to be avoided unless the legal representative has grounds for thinking that the witness is a habitual liar (other than the fact that the witness's evidence contradicts that of the defendant). The manner in which the legal representative cross-examines a witness must not be improper or inappropriate. This may involve taking account of information about a witness's special needs. Both the legal representative calling the witness to give evidence-in-chief and the legal representative cross-examining the witness should strive to avoid being the cause of a misunderstanding as a result of which the witness gives evidence that is not of the best quality that they could provide. The strategies necessary to avoid such a misunderstanding may include, for example, avoiding the use of a tone of voice which is intended only to sound firm but which might be intimidating to a vulnerable witness, and following a systematic and logical sequence of questioning. Criminal Practice Directions highlight the value of the Advocate's Gateway toolkits as a source of assistance to advocates when preparing to question vulnerable people in court. These toolkits are all available at <http://www.theadvocatesgateway.org/toolkits>

- 5.18 The legal representatives of the prosecution have a duty to bear in mind the needs of a vulnerable or intimidated witness who is giving evidence for the prosecution (see the CPS commitment to support witnesses at <https://www.cps.gov.uk/legal-guidance/victims-and-witnesses-cps-commitments-support>). If the defence seeks an adjournment, the legal representative for the prosecution should draw to the attention of the court any adverse effect this may have on the witness, particularly where the witness is a child or has a learning disability. The legal representative of the prosecution should also be alert to a witness's need for regular breaks, and to the possibility that questioning in cross-examination of the witness may be improper or inappropriate (in the sense described in paragraph 5.11). The prosecution legal representative should seek to protect the witness from such questioning by drawing it to the judge's or the magistrates' attention. In the same way, a defence legal representative should seek to ensure that the court bears in mind the needs of a defence witness while they are giving evidence.
- 5.19 Legal representatives also have particular duties with regard to the proper handling of video-recordings that are to be used in court as the evidence-in-chief of a vulnerable or intimidated witness. The object of these special duties is to ensure that the recording does not fall into the wrong hands and is seen only by those who have a proper interest in doing so (see [Appendix N](#)).

## **Competence and Capacity to be Sworn**

- 5.20 All people, whatever their age, are competent to act as witnesses unless they cannot understand questions asked of them in court or cannot answer them in a

way that can be understood with, if necessary, the assistance of special measures (sections 53 and 54 of the 1999 Act and R v B [2010] EWCA Crim 4).

- 5.21 A person who has been judged not to be competent to give evidence may not appear as a witness in criminal proceedings, and cannot, therefore, be eligible for special measures under the 1999 Act. Where a witness's competence is called into question, a decision will normally be required before the trial begins, about whether they may give evidence at all, and, if so, whether it should be sworn or unsworn.
- 5.22 It is the responsibility of the party calling the witness to satisfy the court that the witness is competent on a balance of probabilities. If the witness's competence is challenged and they need to be questioned to determine competence, questions must be asked by the court and in the absence of the jury, not by the legal representative calling or cross-examining the witness. Any such questioning must, however, be conducted in the presence of both the prosecution and the defence. When the court assesses the witness's competence, it must take account of any special measures it could grant including, for example, communication aids or the giving of evidence through an intermediary. This is to avoid a potential witness being judged not to be competent if the use of special measures would make them competent. Courts may ask for expert advice about the witness's competence, for example from a psychologist who has examined the witness, or from a lay person who has special knowledge of the witness's abilities (section 54 of the 1999 Act).
- 5.23 The question of whether a witness is eligible to swear an oath or to affirm may be raised by the prosecution, the defence or the court. The procedure used to determine this question is the same as the procedure outlined above for determining competence (i.e., in the absence of the jury, with the help of any necessary expert evidence, and through questions from the court in the presence of the parties). No witness under the age of 14 is to be sworn. Witnesses of 14 and over are eligible to be sworn if they understand the solemnity of a criminal trial and that taking an oath places a particular responsibility on them to tell the truth. There is a presumption that witnesses of 14 and over are to be sworn unless evidence is offered suggesting that they do not understand those two matters (section 55 of the 1999 Act). If a witness's capacity to give sworn evidence is challenged, it will be for the party calling the witness to prove on a balance of probabilities that they should give sworn evidence.
- 5.24 Anyone competent to be a witness but not allowed to give evidence on oath may give evidence unsworn (section 56 of the 1999 Act). Where a witness gives unsworn evidence in the courtroom, the judge or magistrates may 'admonish' the witness to tell the truth. A convenient form of words which may be used is: 'Tell us all you can remember of what happened. Do not make anything up or leave anything out. This is very important.' This admonition may be best given by the

judge in the introductory exchange with the witness and prior to any examination-in-chief or cross-examination.

- 5.25 Where the court decides a witness to whom section 27 of the 1999 Act applies is competent to take the oath, and their evidence-in-chief has been given in the form of a video-recorded interview, there is no legal necessity for the witness to be sworn prior to the playing of the video at court. However, if the witness goes on to provide further evidence in person to the court, either in cross-examination or as supplementary evidence-in-chief, the oath must be administered before the evidence is heard. Again, any introductory exchange between the judge and witness provides an opportune moment for the administering of the oath. Failure to administer the oath does not render the witness's evidence inadmissible. However, the fact that it has been received unsworn may lead to it being accorded less weight than if it had been given on oath.

## Special Measures Directions under the 1999 Act

- 5.26 Special measures which may be available to assist eligible witnesses in the preparation and delivery of their evidence are as follows:
- Screening the witness from the accused so that the witness does not have to see or be seen by them ([section 23](#));
  - Evidence by live link ([section 24](#));
  - Giving evidence in private ([section 25](#)) (limited to sexual offences, offences contrary to sections 1 and 2 of the [Modern Slavery Act 2015](#) and offences involving intimidation. Victims of offences involving domestic abuse will also be eligible when [section 62 of the Domestic Abuse Act 2021](#) comes into force);
  - Removal of wigs and gowns ([section 26](#));
  - Video-recorded evidence-in-chief ([section 27](#));
  - Video-recorded cross-examination ([section 28](#)) (available in all crown courts in England and Wales for section 16 Youth Justice and Criminal Evidence Act "vulnerable" witnesses. Also commenced for adult complainants to sexual offences and offences contrary to section 1 or section 2, [Modern Slavery Act, 2015](#) in the crown courts at Durham, Harrow, Isleworth, Kingston-upon-Thames, Leeds, Liverpool and Wood Green, with commencement to all crown courts planned).
  - Examination of a witness through an intermediary ([section 29](#)) (only available to section 16 witnesses); and
  - Communication aids ([section 30](#)) (only available to section 16 witnesses).
- 5.27 [Appendix B](#) explains in detail the eligibility requirements and the individual special measures.

- 5.28 Applications for special measures directions should be made to the court in accordance with Part 18 of the Criminal Procedure Rules (CrimPR).
- 5.29 Special measures directions can be made at a pre-trial hearing, before the beginning of the trial or before a ‘Newton’ hearing to which witnesses are called to settle the factual basis upon which sentence will be passed or on an appeal. While it is important that directions be made in advance of trial where possible (see [paragraph 5.1](#)) it may be necessary for a court to react to a situation at a later stage of proceedings by making a direction to assist a witness to give evidence. New directions are needed for a retrial or appeal.
- 5.30 When courts decide, on application from the prosecution or defence or of their own accord, that special measures might be appropriate for a witness, they must consider:
- Whether the witness is eligible (i.e., falls within the scope of sections 16 or 17 of the Act);
  - Whether special measures would improve the quality (meaning the completeness, coherence and accuracy) of the evidence of an eligible witness in the circumstances of the case (which take account of the witness’s views and the possibility that the measures might tend to inhibit the evidence being tested effectively); and
  - The details of where, when and how the special measures specified should be provided.
- 5.31 The need to take account of any views expressed by the witness when resolving the issues identified in the previous paragraph underlines the need for the court to be provided with up-to-date information about the witness’s preferences (see [paragraph 5.2](#)).
- 5.32 It is, therefore, important that the police ensure the CPS are made aware of any views about special measures expressed by the witness.

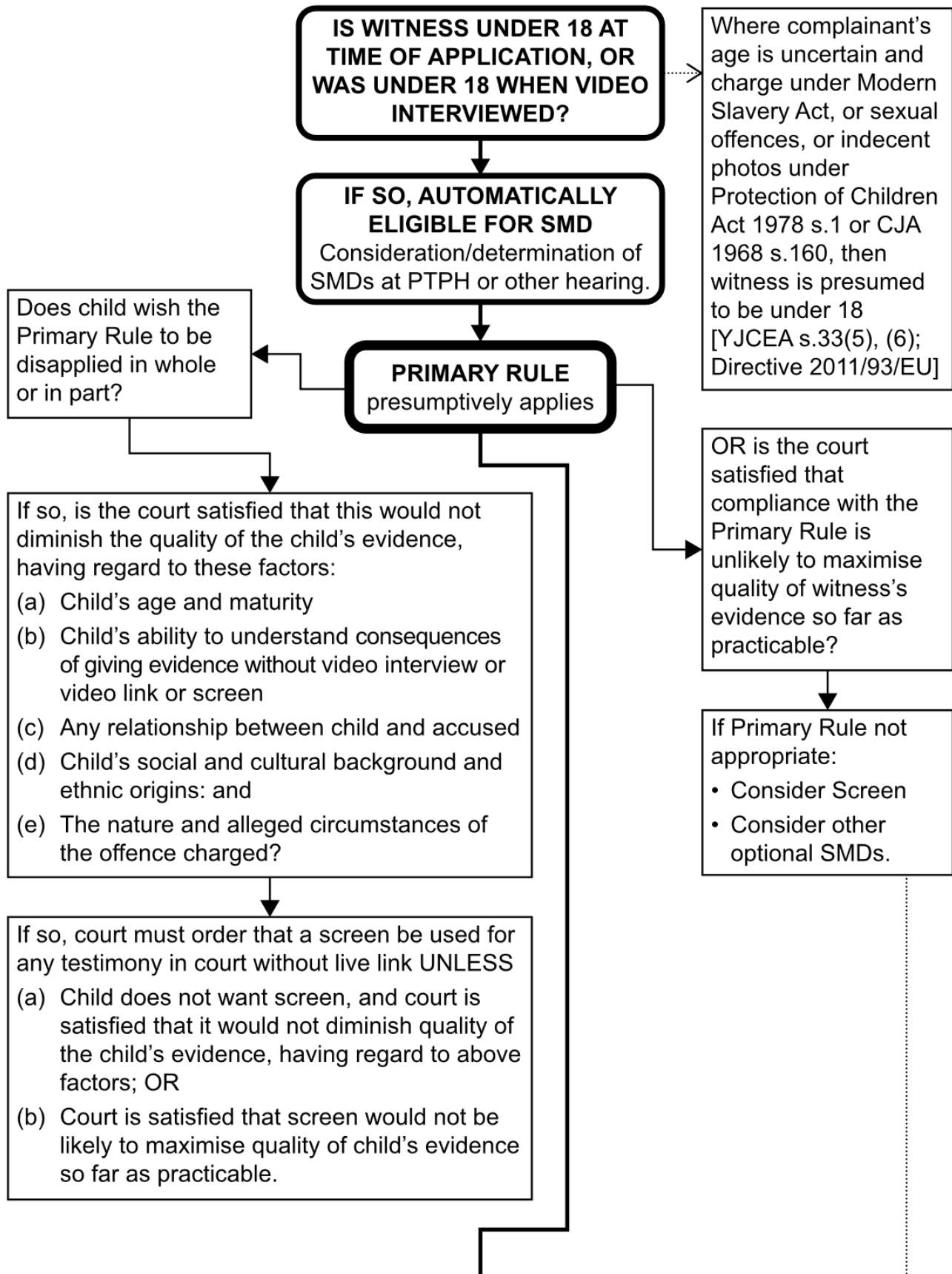
## **Binding Directions**

- 5.33 Section 20 of the 1999 Act provides that special measures directions are binding until the end of the trial, although courts can alter or discharge a direction if it seems to be in the interests of justice to do so. Either party can apply for the direction to be altered or discharged (or the court may do so of its own motion) but must show that there has been a significant change of circumstances since the court made the direction or since an application for it to be altered was last made. This provision is intended to create some certainty for witnesses, by encouraging the party calling the witness to make applications for special measures as early as possible and by

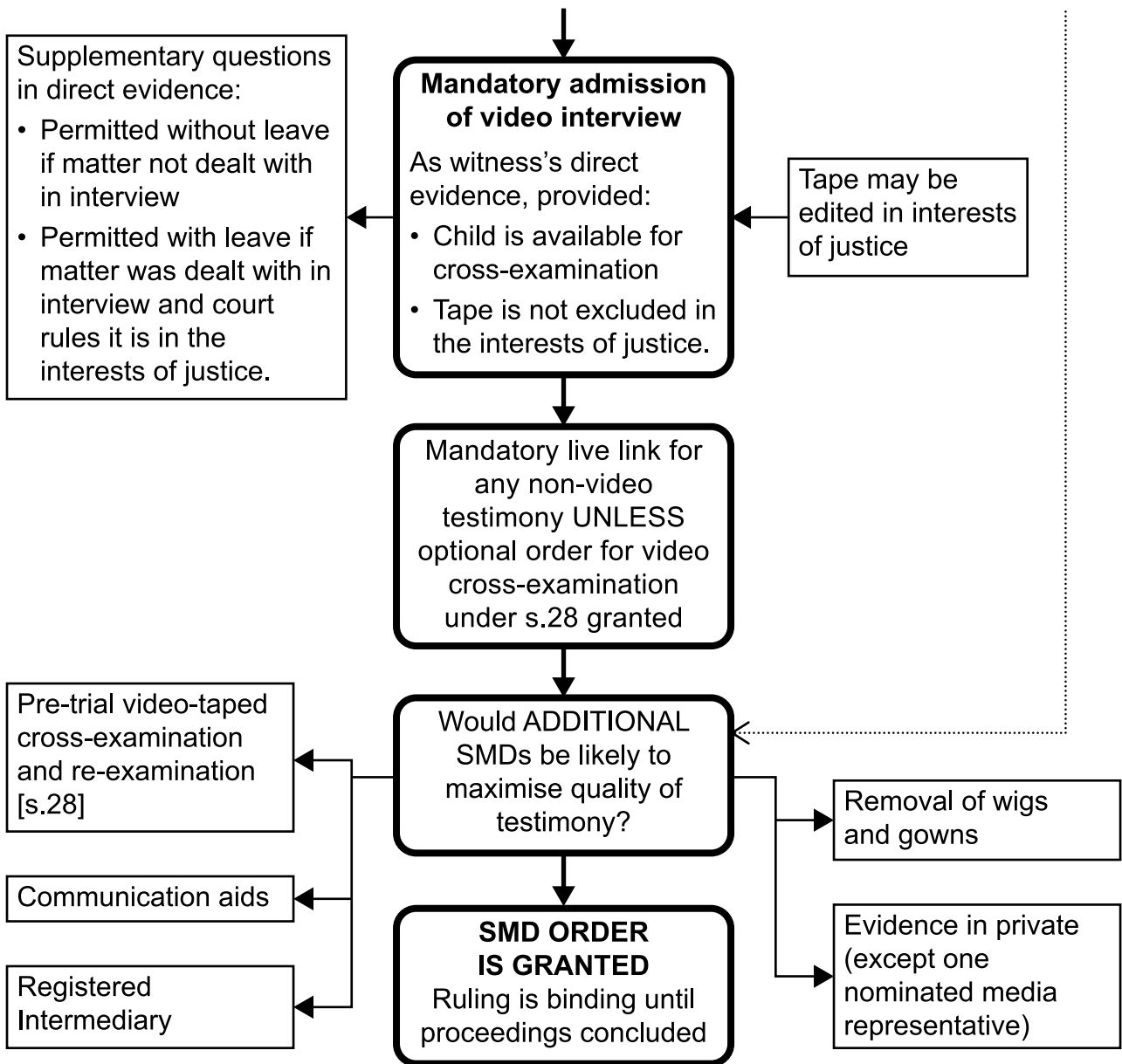
preventing repeat applications on grounds the court has already found unpersuasive.

- 5.34 The court must state in open court its reasons for giving, altering or discharging a special measures direction or refusing an application, so that it is clear to everyone involved in the case what decision has been made and why it was made. This is intended to include, for example, the court's reasons for deciding that a witness is ineligible for help.
- 5.35 The issues that apply when child or vulnerable or intimidated adult witnesses are considered for special measures are summarised in figures 5.1 and 5.2 respectively.

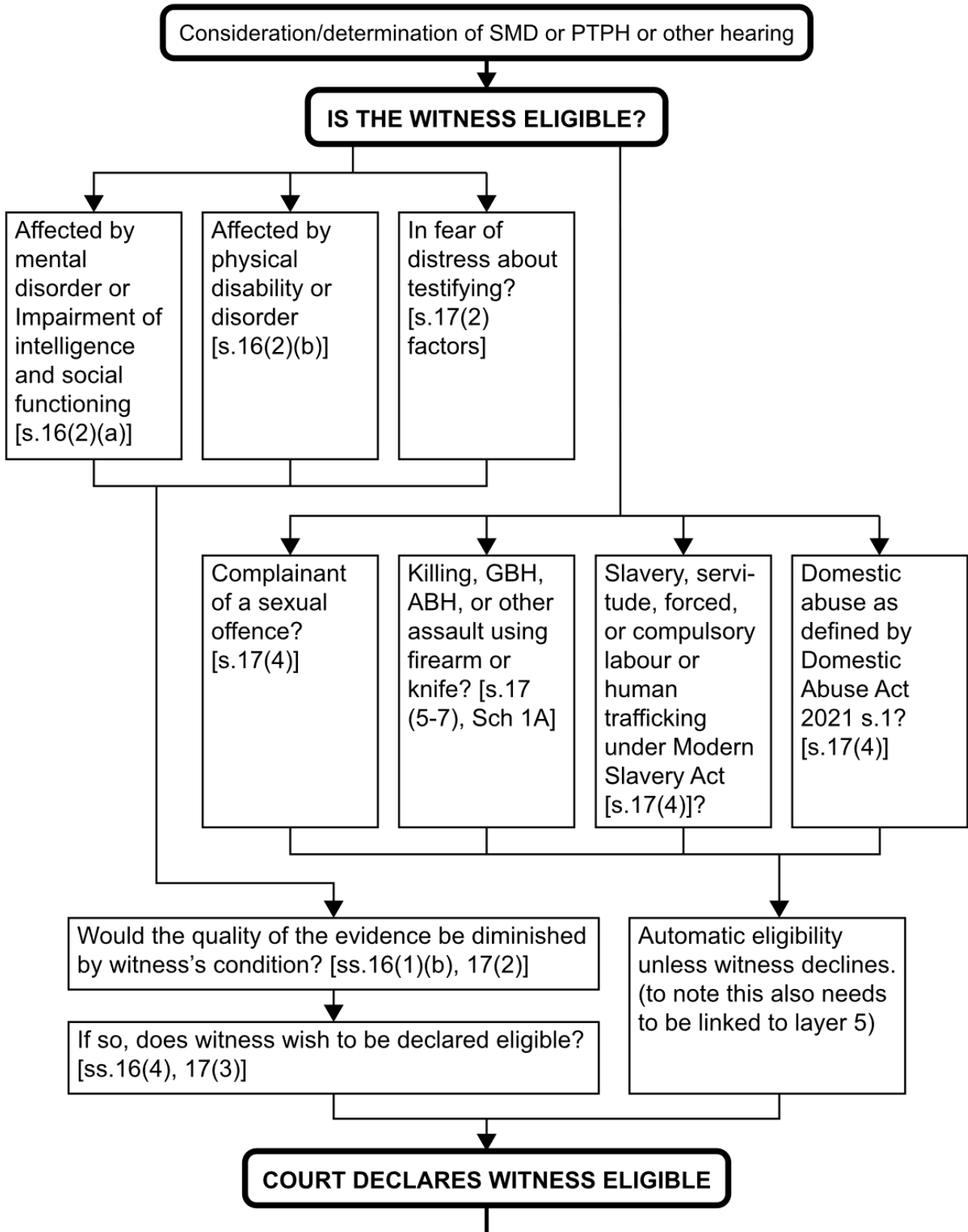
**Figure 5.1: Special Measures Directions [SMDs] for Young Witnesses**

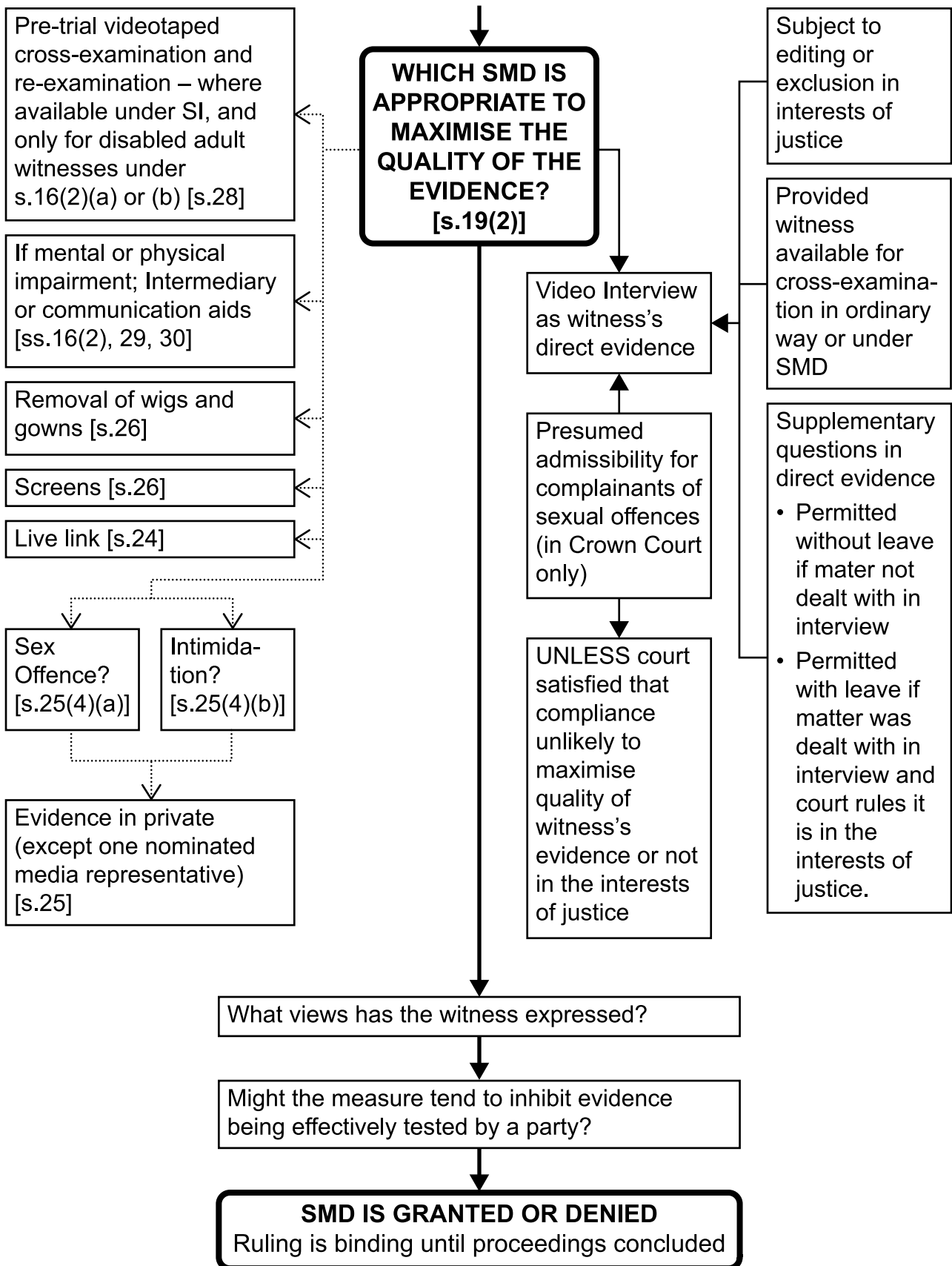






**Figure 5.2: Special Measures Directions [SMDs] for adult witnesses age 18 or over under the Youth Justice and Criminal Evidence Act 1999, as amended 2009, 2015, 2021**





## **Court Witness Supporter**

- 5.36 The presence of a court witness supporter is intended to provide emotional support and helps reduce the witness's anxiety and stress and contributes to the witness's ability to give their best evidence. A court witness supporter can be anyone known to the witness who is not a party to the proceedings and has no detailed knowledge of the evidence in the case. If evidence is to be given by live link an application for a supporter should be made to the court at the same time as the live link application.
- 5.37 If it is proposed that a supporter sit near the witness in court, it is a matter for the judge to determine who should accompany the witness. The identity of this person should be discussed and agreed, if possible, in advance of the application for special measures and certainly as part of the preparation for trial. See [Chapter 4](#) and [Appendix L](#) for further information about the court witness supporter.

## **Other Protections for Witnesses**

- 5.38 In addition to the special measures' provisions for vulnerable and intimidated witnesses, the 1999 Act affords:
- Protection of witnesses in certain cases from cross-examination by the accused in person (sections 34 to 38);
  - Restrictions on evidence and questions about the complainant's sexual behaviour (section 41);
  - Restrictions on the reporting of criminal proceedings involving people under 18 (sections 45 and 45A); and
  - Restrictions on the reporting by the media of information likely to lead to the identification of certain adult witnesses in criminal proceedings (section 46).
  - Reporting restrictions on the identification of children under 18 are provided by sections 39 and 49 of the Children and Young Persons Act 1933.

## **Protection of Witnesses from Cross-Examination by the Accused in Person (Sections 34 to 38)**

- 5.39 It is a general rule in criminal trials that a defendant may choose to conduct their own defence and may cross-examine the witnesses for the prosecution. The 1999 Act created new exceptions to the principle that the unrepresented defendant (as such a defendant is called) may cross-examine prosecution witnesses. If the defendant fails to appoint a legal representative, then the court is empowered to appoint a representative to act for the defendant, so that the witness's evidence will not go untested (section 38 of the 1999 Act).

5.40 Section 34 of the 1999 Act prevents defendants charged with rape or other sexual offences from personally cross-examining the complainant of the offence. The ban is absolute in order to provide a measure of reassurance to complainants that in no circumstances will they be required to undergo cross-examination by the alleged offender. It extends to any other offences with which the defendant is charged in the proceedings. It was brought about by cases in which defendants sought to abuse their position as cross-examiner by, for example, dressing in the clothes which were worn at the time of the rape to intimidate the witness.

## **Complainants and other Witnesses who are Children**

5.41 Under section 35 of the 1999 Act unrepresented defendants are prohibited from cross-examining in person any child who is a complainant of, or a witness to sexual offences, offences of violence, cruelty, kidnapping, false imprisonment or abduction. The prohibition on cross-examining child witnesses extends to witnesses who were children when they gave their evidence-in-chief, even if they have passed that age by the time of cross-examination. For the purposes of this provision, witnesses count as children if they are under 18 in the case of sexual offences, and if they are under 14 in the case of the other offences to which the provision applies.

## **Other Cases**

5.42 Section 36 of the 1999 Act gives courts the power to prohibit unrepresented defendants from cross-examining witnesses in any case, other than those already covered by the mandatory ban described in paragraphs 5.36 to 5.38. Before exercising the power, the court must be satisfied that the circumstances of the witness and the case merit the prohibition, and that it would not be contrary to the interests of justice to impose it.

5.43 Section 37 of the 1999 Act provides that directions made under section 36 are binding unless and until the court considers that the direction should be discharged in the interests of justice. Courts will have to record their reasons for making, refusing or discharging directions.

## **Restrictions on Evidence and Questions about the Complainant's Sexual Behaviour (Sections 41 to 43)**

5.44 Section 41 of the 1999 Act restricts the circumstances in which the defence can bring evidence about the sexual behaviour of a complainant in cases of rape and other sexual offences. A House of Lords' judgment (in [R v A \[2001\] UKHL 25](#);

[2002] 1 AC 45; [2001] 2 Cr App R 21) has subsequently qualified these restrictions. Restricting the use of such evidence serves two functions: it protects the complainant from humiliation and the unnecessary invasion of their privacy, and it prevents the jury from being prejudiced by information that might divert them from the real issues they have to consider. Their Lordships accepted the need for such restrictions but acknowledged that in some cases the evidence of a complainant's sexual behaviour might be so relevant that to exclude it would endanger the fairness of the defendant's trial. This may be particularly so where the previous sexual behaviour is with the defendant. In such a case it would be the duty of the court to interpret section 41 so as to admit the evidence. The courts have to find a balance between protecting the interests of the complainant and ensuring that the trial is fair.

- 5.45 The restrictions in section 41 apply to all complainants in cases involving sexual offences, whether male or female, adult or child. The defence may not normally ask any questions or bring any evidence about the complainant's sexual behaviour on occasions other than those that are the subject of the charges at trial, and this includes questions and evidence about the complainant's previous relationships with the defendant. Section 41 does not restrict the provision of relevant information by the prosecution about a complainant: for example, where it is the prosecution's case that the defendant raped his own wife, and his defence is consent, there would be no difficulty about informing the jury of the previous relationship between the defendant and the complainant as it would be relevant to the background of the case.
- 5.46 If the defence wishes to introduce evidence or ask questions about the complainant's sexual behaviour, they will have to make an application to the court. The court may grant leave in a case where:
- The evidence/question relates to a specific instance of alleged sexual behaviour by the complainant; and
  - To refuse it might have the result of rendering unsafe a conclusion on a relevant issue (such as a conviction by a jury arrived at in ignorance of the complainant's sexual behaviour); and
  - One of the following four conditions is also satisfied
    1. The evidence/question is relevant to an issue in the case that is not an issue of consent (such as whether intercourse took place). The defendant's honest but mistaken belief in consent, which is currently a defence to a crime such as rape where lack of consent is an element of the offence, falls into this category, as it is not an issue of consent as such
    2. The issue is whether the complainant consented and the evidence/question relates to sexual behaviour that took place at or about the same time as the event which has given rise to the charge. This might cover cases where a couple were seen in an intimate embrace shortly before or after one is

alleged to have sexually assaulted the other. 'At or about the same time' is unlikely to cover behaviour occurring more than a day before the incident which is the subject of the charges

3. The issue is whether the complainant consented and the evidence/question relates to behaviour which is so similar to the defendant's version of events at or about the time of the alleged offence that it cannot reasonably be dismissed as coincidence. The House of Lords in *R v A* decided that this exception would have to be given a broad interpretation to cover any case where the evidence is so relevant to the issue of consent that to exclude it would endanger the fairness of the defendant's trial. It was accepted that this might involve stretching the language of the Act. The particular concern of the House in *R v A* was whether the defence should be able to allude to a previous sexual relationship between the complainant and the defendant where consensual intercourse had taken place sometime before the alleged rape. It was thought that there were cases where this would be necessary to ensure a fair trial even though it could not strictly be said that the previous behaviour was so similar that it could not be dismissed as coincidence. It does not follow that in every case where the defendant and the complainant have had such a relationship that it will fall within this exception, but the House of Lords accepted that it is more likely that the court will need to be told about a previous relationship between the complainant and the defendant than between the complainant and a different person
4. The evidence/question is intended to rebut or explain evidence advanced by the prosecution about the complainant's sexual behaviour. This might include a case where the prosecution adduce evidence to show that the complainant was a virgin before the defendant allegedly raped her, and the evidence the defence wishes to bring shows that she was not.

5.47 An application to ask questions/bring evidence about the complainant's sexual behaviour is made in private, and the complainant is not allowed to be present, although the defendant may attend. The court must give reasons in open court for allowing or refusing an application and specify the extent to which they are allowing any evidence to be brought in or questions to be put. This makes it clear to the complainant, as well as to the legal representatives, how far the questioning can go, and in relation to which issues.

5.48 Because the issue of whether evidence or questions relating to sexual behaviour can only be resolved by a court and at a stage of proceedings where the defence case is defined fairly clearly, it is highly unlikely that any assurances can be given to a complainant that their sexual history will be subject to cross-examination at trial. In the light of the decision in *R v A* it is advisable that a complainant should be warned to expect that any claims by the defendant that they have had a sexual relationship with the complainant are likely to be scrutinised by the court.

## Reporting Restrictions

- 5.49 The general rule is that the administration of justice must be done in public but this may be disapplied in two ways. Firstly, the public (including the media) may be excluded from the court with proceedings taking place in camera. Secondly, the public and media may be allowed to remain in court subject to permanent or temporary restrictions on their ability to report the proceedings, including bans on reporting information likely to lead to the identification of the witness.
- 5.50 [Section 45 of the 1999 Act](#) and [section 49 Children and Young Persons Act 1933](#) allows courts to impose restrictions on the reporting of criminal proceedings involving a person under 18 (witness and accused) unless it is in the public interest to do so. Section 45A of the 1999 Act (in respect of under 18s) and section 46 (in respect of adults) allows courts to impose lifetime restrictions on reporting information leading to the identification of a witnesses (not the accused) involved in criminal proceedings, if the court considers that the measure is needed because the witness's fear of, or distress at, giving evidence or co-operating with the party calling him is strongly linked to the likelihood of publicity.
- 5.51 [Section 39 of the Children and Young Person's Act 1933](#) permits the court to make a reporting restriction in relation to the identity of a child involved in the proceedings.
- 5.52 Section 49 of the Children and Young Person's Act 1933 applies to defendants, witnesses and victims in youth court proceedings and imposes automatic reporting restrictions in relation to the identity of the child or young person.
- 5.53 [Section 1 of the Sexual Offences \(Amendment\) Act 1992](#) imposes an automatic ban on the reporting of the identity of complainants in sex offence cases from the point of report.

## The use of a Sign Language Interpreter

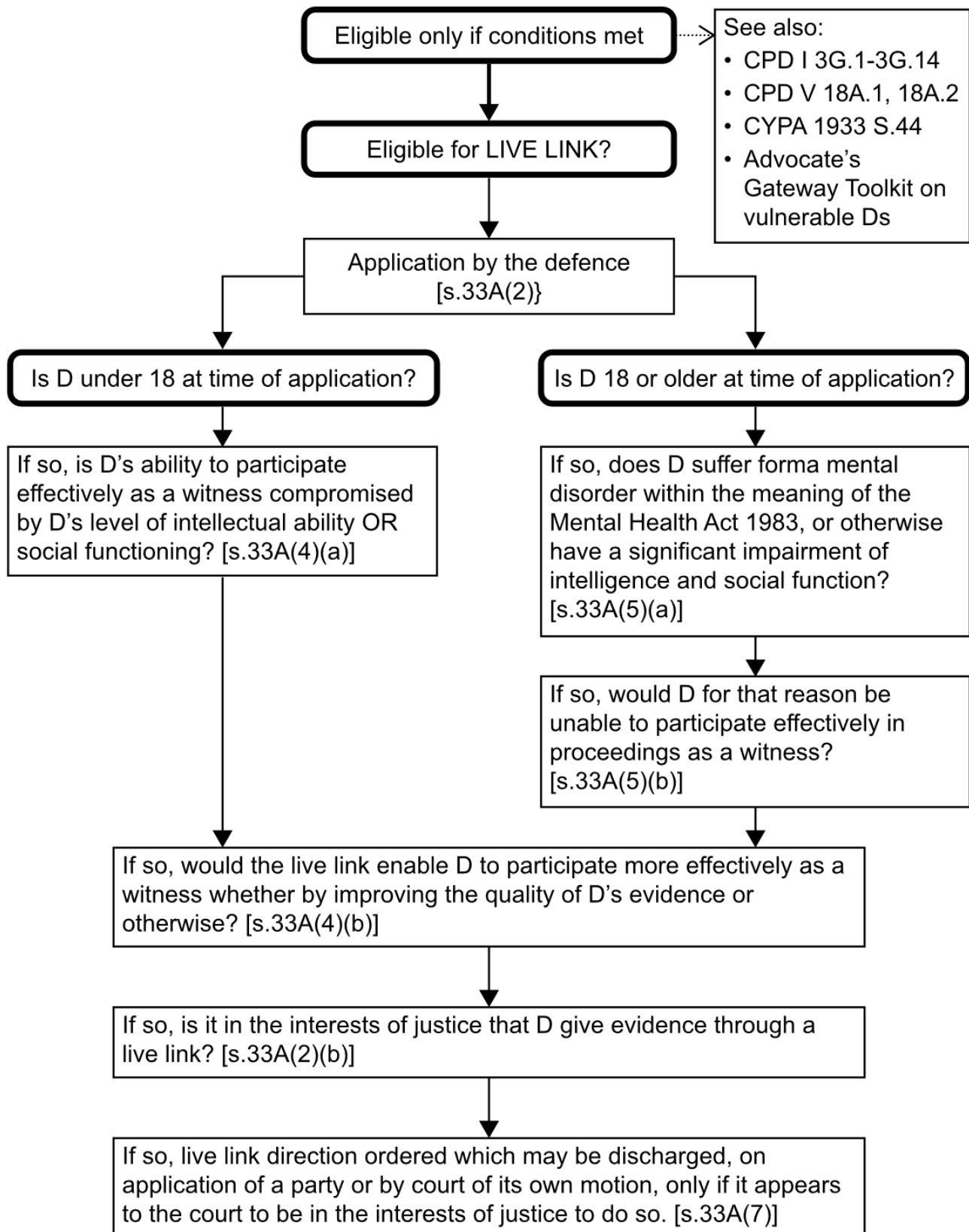
- 5.54 When a witness gives evidence assisted by a sign language interpreter, all persons present in the courtroom (including the defence representative) should be able to see the witness and the interpreter. If it is decided that such a witness should not give evidence in open court, either the TV link should be used, ensuring the picture includes a view of the witness's hands, or screens should be used in combination with a video camera giving the defence representative a view of the witness.
- 5.55 Allowance should be made for proceedings to take longer than usual. Sign language interpretation is very tiring. Depending on the length of testimony and the number of witnesses using the interpreter, it will be necessary to take frequent breaks or to have more than one interpreter available.



## **Defendants who give Evidence**

- 5.56 Although a defendant may be a witness for the defence, the special measures provisions of the 1999 Act do not apply to a person who is on trial. The Crown Court may use its inherent discretion to offer measures that were available before the 1999 Act. These inherent powers, preserved by section 19(6) of the 1999 Act, may be particularly important when the court considers that a fair trial under Article 6 of the European Convention on Human Rights can be ensured only if the accused is given assistance comparable to the special measures available to other witnesses when testifying.
- 5.57 Defendants in general cannot give evidence by way of a live link, and the courts do not have inherent powers to order the use of this means of giving evidence. However, for a limited class of vulnerable defendants where the use of a live link would enable them to participate effectively in their trial – the court may order the use of a live link (sections 33A and 33B of the 1999 Act, as inserted by section 47 of the Police and Justice Act 2006). This provision is limited to those accused who are under 18 where their ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by their level of intellectual ability or social functioning. In the case of an accused over 18 years the court may direct the use of a live link if he is unable to participate effectively in the proceedings as a witness because he suffers from a mental disorder or has a significant impairment of intelligence and social functioning.
- 5.58 The issues that apply when consideration is given to allowing child or vulnerable or adult defendants to give evidence by live link are summarised in figure 5.3. Please note that the processes outlined in this diagram are likely to be substantially changed when the Police, Crime, Sentencing and Courts Bill is enacted and commenced.
- 5.59 At present, the court may use its inherent powers to direct that a defendant be given the assistance of an intermediary, under procedures laid out in the Criminal Procedure Rules and the Criminal Procedure Directions, and case law. A statutory framework for intermediaries for vulnerable defendants (sections 33BA and 33BB of the 1999 Act, as inserted by section 104 of the Coroners and Justice Act 2009) would be more restrictive and has never been implemented through a Commencement Order, as the inherent jurisdiction is widely considered to be more appropriate. Users of ABE 2021 should always consider whether an intermediary should facilitate an interview of a defendant who is vulnerable, and especially one who has communication difficulties.

**Figure 5.3: Provisions for testimony of child and vulnerable defendants**



# Appendices

## Appendix A: Glossary

**Admissible evidence:** evidence which is relevant to a matter that the court is deciding and which is not excluded by rules established by the courts and statute law. Under the 1999 Act, video-recorded evidence may be admissible even though the normal rules of evidence require witnesses to attend and give their evidence at the time of the trial (see also inadmissible evidence).

**Burden of proof:** in proceedings for a criminal offence, the defendant is generally presumed to be innocent. This means that in order for the court to convict them, the prosecution must discharge the burden of proving that the defendant committed the offence alleged and must do so beyond reasonable doubt. In civil proceedings, it is generally for the party bringing the proceedings to prove its case on the balance of probabilities.

**Child witness:** for the purposes of the special measures directions that may be made under the 1999 Act to assist eligible witnesses to give evidence, a child witness is a witness who is eligible because they are under 18 at the time of the hearing.

**Civil proceedings:** a case at civil law can either be one of private law between people and/or organisations when it is typically about defining the rights and relations between individuals (e.g., matrimonial proceedings and disputes about where the child of separated parents should live) or it can be one of public law, where the local authority brings proceedings for example in order to remove a child from the care of its parents.

**Compellability (of a witness):** the general rule is that if a witness is competent to give evidence, they are also compellable. This means that the court can insist on them giving evidence.

**Competence or competent (of a witness):** in criminal proceedings, a person who is not competent may not give evidence. Section 53 of the 1999 Act provides that 'all persons are (whatever their age) competent to give evidence'. An exception applies where a person is not able to understand questions put to them as a witness and give answers which can be understood. If the question of competence is raised, it is for the trial judge (or, in a magistrates' court, the magistrates) to decide whether a particular witness falls within the exception, and the party who wishes to call the witness to give evidence must prove that they do not. A person over 14 years who is competent but who does not

appreciate the significance of an oath gives evidence unsworn, as do children under the age of 14. A second kind of exception applies to a person who is on trial (the defendant). A defendant in a criminal trial is not permitted (and in that sense is not competent) to be called to give evidence for the prosecution. Provided that a defendant is not within the first exception, however, they may give evidence for the defence. Any evidence that the defendant does give on their own behalf may count in favour of the prosecution if it is incriminating.

**Complainant:** according to section 63 of the 1999 Act, 'complainant', in relation to any offence or alleged offence, means a person against or in relation to whom the offence was (or is alleged to have been) committed. Thus, a person may be a complainant even where they did not actually make the initial complaint. The 1999 Act makes special provision for complainants in sexual cases in relation to their status as eligible witnesses and in relation to the prohibition on the accused from cross-examination in person.

**Cross-examination:** the procedure in the trial after examination-in-chief where the lawyer representing the side that did not call the witness seeks to establish its own case by questioning the other side's witnesses. Among the special measures that the 1999 Act allows for eligible witnesses is that they may be cross-examined by means of a live-link, where examination in chief is pre-recorded. The making of such a recording normally precludes any further cross-examination. Sections 34 and 35 of the 1999 Act prevent the accused from cross-examining in person a witness who is the complainant in a case involving sexual offences, or a child witness where the offence is of a violent or sexual nature. Section 36 gives the court power to prevent the accused from cross-examining a witness in person in any other criminal case where to do so is justified in the circumstances of the case.

**Crown Court:** the criminal court that tries those charged with offences which are generally too serious for the magistrates' court to deal with. This includes the most serious offences which are triable only on indictment, such as rape. Trial at the Crown Court is by judge and jury. The Crown Court also hears appeals against convictions or sentences imposed in the magistrates' courts, as well as those from findings of guilt and orders made upon such findings by youth courts.

**Defendant:** a person who is on trial in criminal proceedings.

**Eligible (of a witness):** the term used in the 1999 Act to describe a witness in respect of whom a special measures direction may be made. A witness may be eligible (i) on the grounds of age if under 18 when the direction is made; (ii) on the grounds of incapacity if they have a physical or mental condition and the quality of the witness's evidence is likely to be diminished as a result; and (iii) on the grounds that the quality of the witness's evidence is likely to be diminished by reason of fear or distress on their part in connection with testifying in the proceedings. In deciding eligibility, the court must take account of the

views expressed by any witness who is said to have an incapacity or to be likely to suffer fear or distress.

**Evidence-in-chief:** the evidence that a witness gives in response to examination on behalf of the party who has brought the person forward as a witness. Once evidence-in-chief has been completed, the witness is normally made available for cross-examination by the other party or parties to the proceedings. Under the 1999 Act, it is possible for a video-recording to be used as a witness's evidence-in-chief even where they are not available for cross-examination, provided that the parties to the proceedings have agreed that cross-examination is not necessary or where a special measures direction provides for the witness's evidence on cross-examination to be given other than by means of testimony in court.

**Examination-in-chief:** the procedure in the trial where, normally, the lawyer representing the side that has called the witness takes that person through their evidence (see evidence-in-chief). The 1999 Act allows a video-recording of an interview with an eligible witness to be played as the witness's evidence-in-chief. When such a recording is admitted, the witness is not normally examined-in-chief by the lawyer at the trial. Depending on the matters raised in cross-examination, the party who called the witness in the first place may choose to conduct a further examination-in-chief, or re-examination, as it is called. Thus, for example, where the prosecution calls a woman to give evidence that she has been raped by two men, she will give evidence-in-chief on behalf of the prosecution and will be open to cross-examination on behalf of both defendants, with the prosecution having the option to re-examine. Where cross-examination is pre-recorded (see cross-examination), re-examination will take place at the same time.

**Inadmissible evidence:** evidence which, though it may be logically relevant to some disputed matter, may not legally be used to prove or disprove it. In criminal cases, the main categories of inadmissible evidence are (i) the fact that the defendant has a criminal record or is otherwise of bad character and (ii) hearsay. Broadly speaking, 'hearsay' means any statement relating to the disputed facts which is put before the court other than by means of direct oral evidence from the person who personally experienced them. Neither category of inadmissible evidence is absolute: there are a number of exceptions to both rules. In addition, section 78 of the Police and Criminal Evidence Act 1984 gives a criminal court the power to exclude any item of normally admissible prosecution evidence where the court thinks that its use would make the trial unfair. Under this provision, the courts sometimes exclude evidence that was illegally obtained. In civil proceedings, the rules of evidence are more relaxed, and matters are frequently admissible which would be inadmissible in a criminal case. Indictment: a formal document containing the charges against the accused. Trials on indictment take place in the Crown Court. The most serious offences are triable on indictment only, while either-way offences, as their name suggests, may be tried on indictment or summarily in the magistrates' court. Interests of justice: those interests which, according to section 27 of the 1999 Act, may preclude a court from

making a special measures direction for a video-recording to be admitted as a witness's evidence-in-chief. The 1999 Act does not define 'interests of justice': it is for the court to determine in the light of all the circumstances. The court is unlikely to reject the recording on these grounds unless it considers that to use it would be in some way unfairly prejudicial to the accused person (or, if there is more than one, to any of the accused). Another example of a case where it might not be in the interests of justice to admit a recording is where the witness has subsequently retracted the statement and it is known that they intend to give evidence that contradicts it. In relation to adult witnesses who are eligible for special measures, the court has a wide discretion as to whether to make a special measures direction in favour of video-recording, which is limited only in the circumstances stated above. Where a child witness is involved the strong preference that the 1999 Act expresses for evidence-in-chief to be video-recorded is still subject to the 'interests of justice' test. If only part of the recording is objected to, the 1999 Act expressly states that the court must weigh any prejudice to an accused which might result from showing that part of the recording against the desirability of showing the whole, or substantially the whole, of it.

**Intermediary:** one of the special measures in the 1999 Act (section 29) allows witnesses who fall within the scope of section 16 of the 1999 Act to give evidence (both examination-in-chief and cross-examination) through an intermediary. An intermediary must be approved by the court and assists by communicating to the witness the questions which are put to them, and to anyone asking such questions the answer given by the witness in reply to them. The intermediary may explain the questions or answers to the extent necessary to enable them to be understood. An intermediary may also be called on to assist in the making of a video-recording with a view to making it the witness's evidence-in-chief. In such a case the court will decide whether it was appropriate to use the intermediary when deciding whether to admit the recording in evidence. Only witnesses eligible on grounds of age or incapacity may receive the assistance of an intermediary under the Act, although the court also has inherent powers to call on an intermediary in other cases. The 1999 Act does not deal with the court's powers to call on the assistance of signed or spoken language interpreters, but it recognises that all courts have such powers.

**Intimidated witness:** 'intimidated' witnesses are those whose quality of testimony is likely to be diminished by reason of fear or distress (section 17 of the 1999 Act). In determining whether or not a witness falls into this category the court will take account of a number of factors, including the nature and circumstances of the offence, the age and circumstances of the witness and the behaviour of the accused or their family/ associates. Intimidated witnesses are sometimes included under the umbrella term 'vulnerable' witness and are sometimes excluded from it, depending on whether a narrow or broad definition of 'vulnerability' is applied.

**Key witness:** significant witnesses are sometimes referred to as ‘key’ witnesses by the police (see significant witness).

**Legal representative:** in this guidance, the term ‘legal representative’ is used both generally, to cover all legal advisers to any party to the proceedings, and more specifically, to refer to advocates appearing in court on their behalf. A legal representative will normally be a qualified solicitor or barrister. In the 1999 Act, the term is used in a narrower sense to mean ‘any authorised advocate or authorised litigator ‘and is particularly concerned with the role of a representative in court.

**Live link:** one of the special measures that the 1999 Act allows for eligible witnesses so that they may give evidence (both examination-in-chief and cross-examination) by means of a live link. According to section 24(8) of the 1999 Act, ‘live link’ means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there, and to be seen and heard by the judge and/or magistrates, the jury (if there is one), legal representatives acting in the proceedings, any interpreter appointed to assist the witness and the defendant. The link enables the witness to give evidence from another room, without appearing in open court in the presence of the accused, the jury and the public. The witness sits in front of a television monitor and can see the faces of those who put questions to them. The witness’s demeanour can be observed in court, and all proper questions can be put, so that the use of the live link does not detract from the right to cross-examine. The judge or magistrates are also able to monitor the conduct of any other person who is in the room with the witness in the role of supporter. Child witnesses are normally cross-examined using live link. Live link can also be provided to vulnerable defendants under section 33A of the 1999 Act.

**Magistrates’ court:** the criminal court that tries most offences, specifically non-serious cases that are triable summarily only, and offences triable either on indictment or summarily (either-way offences) which are judged to be suitable for summary trial. Most magistrates are lay people, although a minority are legally qualified district judges (magistrates’ court). District judges (magistrates’ court) may try cases alone, while lay magistrates sit in groups of at least two, usually three, and are assisted on matters of law by the magistrates’ clerk. Some cases that are tried in the Crown Court commence in the magistrates’ courts with committal proceedings.

**Newton hearing:** where a defendant pleads guilty to a charge, it may still be necessary to hold a hearing to establish the facts that are relevant to sentencing, particularly where there is a conflict between the prosecution and the defence as to what actually occurred. The hearing at which evidence is called to establish a factual basis for sentencing is called a ‘Newton’ hearing after the case in which the procedure was established.

**Plea and Trial Preparation Hearing (PTPH):** is a preliminary to a trial in the Crown Court, a PTPH may be held. At the hearing, pleas are taken and, in contested cases, both the prosecution and the defence are expected to assist the judge in identifying the key issues and to provide any additional information required in connection with the case. The purpose of a PTPH is to ensure that all necessary steps have been taken in preparation for trial, and to provide enough information for a trial date to be arranged. Because it is envisaged that special measures directions will be made at the PTPH stage wherever possible, the court will need to have full information on all matters that bear on the provision of special measures for witnesses appearing for the prosecution or the defence. The PTPH will also seek to identify any points of law or issues as to the admissibility of evidence which may arise at the trial and, where possible, to resolve them by making rulings in advance of the trial.

**Quality (of an eligible witness's evidence):** according to section 16(5) of the 1999 Act, 'quality' means quality in terms of completeness, coherence and accuracy, and 'coherence' for this purpose refers to a witness's ability when giving evidence to give answers that address the questions put to them and can be understood both individually and collectively.

**Significant witness:** significant witnesses, sometimes referred to as 'key' witnesses, are those who have witnessed or claim to have witnessed, visually or otherwise, an indictable offence, part of such an offence or events that are connected closely with it (including any incriminating comments made by the suspected perpetrator either before or after the offence). Interviews with significant witnesses should usually be video-recorded.

**Special measures:** the measures specified in the 1999 Act which may be ordered in respect of some or all categories of eligible witness by means of a special measures' direction. The special measures are the use of screens; the giving of evidence by live link; the giving of evidence in private; the removal of wigs and gowns; the showing of video-recorded evidence-in-chief; and the use of intermediaries and aids to communication. Video-recorded cross-examination is currently available in all crown courts in England and Wales for section 16 Youth Justice and Criminal Evidence Act "vulnerable" witnesses. It has also been commenced for adult complainants to sexual offences and offences contrary to section 1 or section 2, Modern Slavery Act, 2015 in the crown courts at Durham, Harrow, Isleworth, Kingston-upon-Thames, Leeds, Liverpool and Wood Green, with commencement to all crown courts planned).

**Special measures direction:** the order by which the court states which, if any, of the measures specified in the 1999 Act will be used to assist an eligible witness. Directions may be discharged or varied during the proceedings, but normally continue in effect until the proceedings are concluded, thus enabling the witness to know what assistance to expect. In deciding which measures to employ, the court is aiming to maximise the quality



of the witness's evidence so far as practicable, while still allowing the party challenging the evidence to test it effectively. The witness's own views are also considered.

**Trial:** unless the defendant pleads guilty the prosecution must establish their guilt by calling evidence, the truth of which is then assessed (tried). In the Crown Court, the body that decides the disputed issue of guilt or innocence is the jury. In the magistrates' court it is the magistrates.

**Video-recording:** according to section 63 of the 1999 Act, 'video-recording' means 'any recording, on any medium, from which a moving image may by any means be produced and includes the accompanying sound-track'.

**Vulnerable witness:** Vulnerable witnesses are those considered eligible for assistance by virtue of age or incapacity under section 16 of the 1999 Act.

**Youth court:** the youth court deals with most young people aged between 10 and 17 who are prosecuted for criminal offences. However, young people who are accused of homicide and rape are heard in the Crown Court. The youth court can also send young people accused of very serious crimes, such as indecent assault or cases where an adult could be sent for prison for 14 years or more, to the Crown Court if it thinks its own powers are not sufficient. Magistrates who sit in the youth court receive specialised training.

## Appendix B: Special Measures

### Circumstances in which Special Measures may be invoked

- B.1 The circumstances in which special measures may be invoked can range from a case where the witness's evidence would otherwise be unintelligible to cases where their evidence, though intelligible, would otherwise be of poorer quality than it could be.

### Eligibility

- B.2.1 Vulnerable and intimidated witnesses are eligible for assistance under sections 16 and 17 of the 1999 Act.
- B.2.2 Significant witnesses are not eligible unless they are also vulnerable or intimidated witnesses.

### Vulnerable Witnesses

- B.2.3 Vulnerable witnesses are eligible for assistance by virtue of age or incapacity under section 16 of the 1999 Act.

### Children

- B.2.4 Section 16(1) of the 1999 Act makes all children under the age of 18 years at the time of the hearing, appearing as defence or prosecution witnesses in criminal proceedings, eligible for special measures to assist them to give their evidence in court.
- B.2.5 If a witness is under 18 when evidence-in-chief or cross-examination (when available) is video-recorded before the trial but has since turned 18, the video-recording is still capable of being used as evidence (section 21[9] of the 1999 Act) and, by virtue of section 22 of the 1999 Act, the witness is eligible for special measures in the same way that they would be if they were under 18, and the same presumptions apply to them.
- B.2.6 If a court makes a special measures direction in respect of a child witness who is eligible on grounds of youth only (and who has not recorded video evidence before

the trial) and the witness turns 18 before beginning to give evidence, the direction no longer has effect.

B.2.7 If such a witness turns 18 after beginning to give evidence, the special measures direction continues to apply (section 21[8]).

## Adults

B.2.8 Section 16(2) of the 1999 Act identifies the following as vulnerable witnesses also:

- Witnesses who have a mental disorder as defined by the Mental Health Act 1983 (as amended by the Mental Health Act 2007);
- Witnesses significantly impaired in relation to intelligence and social functioning (witnesses who have a learning disability); and
- Witnesses who have a physical disability.

B.2.9 These witnesses are only eligible for special measures if the quality of evidence that is given by them is likely to be diminished by reason of the disorder or disability (section 16[1][b]).

B.2.10 The court must take account of the views of the witness in determining whether a witness may be regarded as vulnerable by virtue of a disorder or disability (section 16[4]).

## Intimidated Witnesses

B.2.11 Intimidated witnesses are those whose quality of evidence is likely to be diminished reason of fear or distress (section 17 of the 1999 Act). In determining whether a witness falls into this category, the court should take account of:

- The nature and alleged circumstances of the offence;
- The age of the witness;
- Where relevant
  - The social and cultural background and ethnic origins of the witness
  - The domestic and employment circumstances of the witness
  - Any religious beliefs or political opinions of the witness;
  - Any behaviour towards the witness by the accused
  - Members of the accused person's family or associates
  - Any other person who is likely to be either an accused person or a witness in the proceedings.

B.2.12 Complainants in cases of sexual assault and sections 1 and 2 of the Modern Slavery Act 2015 fall into this category by virtue of section 17(4) of the 1999 Act.

Witnesses to specified gun and knife offences fall into this category by virtue of section 17(5) of the 1999 Act (as inserted by the Coroners and Justice Act 2009).

- B.2.13 **Vulnerable and Intimidated Witnesses: A Police Service Guide** (Ministry of Justice 2011) suggests victims of and witnesses to domestic abuse, racially motivated crime, crime motivated by reasons relating to religion, homophobic crime, gang related violence and repeat victimisation, and those who are elderly and frail could also fall into this category.
- B.2.14 Research suggests that the intimidation of witnesses is likely to arise in sexual offences, assaults and those offences where the victim knew the offender and also crimes that involve repeated victimisation, such as stalking and racial harassment. In addition, some witnesses to other crimes may be suffering from fear and distress and may require safeguarding and support to give their best evidence.

## **Vulnerable and Intimidated Witnesses**

- B.2.15 Wherever a reference is made in the legislation to the ‘quality of a witness’s evidence’ for the purposes of defining a witness as vulnerable or intimidated, and in terms of access to special measures, it refers to the “completeness, coherence and accuracy” of the evidence and “coherence” refers to a witness’s ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively (section 16[5]).
- B.2.16 While the legislation distinguishes between vulnerable and intimidated witnesses, in respect of the criteria for their eligibility for special measures, it is important to recognise that:
- Some witnesses may be vulnerable as well as intimidated (e.g., an elderly victim of vandalism, who has dementia, living on an inner-city estate);
  - Others may be vulnerable but not subject to intimidation (e.g., a child who witnesses a theft in the street); and
  - Others may not be vulnerable but may be subject to possible intimidation (e.g., a young woman who fears violence from her current or former partner or someone who has been the subject of a racial attack).
- B.2.17 While these examples provide illustrations of the application of the legislation, it is important not to attempt to categorise witnesses too generally.

## Special Measures

- B.3.1 The special measures that are available to both vulnerable and intimidated witnesses, with the agreement of the court are:
- Screening the witness from the accused so that the witness does not have to see or be seen by them (section 23);
  - The use of live TV link (section 24);
  - Giving evidence in private ([section 25](#)) (limited to sexual offences, offences contrary to sections 1 and 2 of the [Modern Slavery Act 2015](#) and offences involving intimidation. Victims of offences involving domestic abuse will also be eligible when [section 62 of the Domestic Abuse Act 2021](#) comes into force);
  - The removal of wigs and gowns (section 26);
  - The use of video recorded interviews as evidence-in-chief (section 27);
  - Video-recorded cross-examination ([section 28](#)) (available in all crown courts in England and Wales for section 16 Youth Justice and Criminal Evidence Act “vulnerable” witnesses. Also commenced for adult complainants to sexual offences and offences contrary to section 1 or section 2, [Modern Slavery Act, 2015](#) in the crown courts at Durham, Harrow, Isleworth, Kingston-upon-Thames, Leeds, Liverpool and Wood Green, with commencement to all crown courts planned).
- B.3.2 Vulnerable witnesses are also eligible for the following special measures:
- Communication through intermediaries (section 29); and
  - The use of special communication aids (section 30).
- B.3.3 The special measures listed above have now all been fully implemented, except for video-recorded cross-examination (section 28), as shown in paragraph B.3.1 above, and the measures for defendants (section 33A and 33B).
- B.3.4 Even though a witness may be eligible for special measures, it is important to consider the specific needs of that particular witness to ensure that any special measures applied for are appropriate for that witness.

## Tests

- B.4.1 Access to special measures is a matter for the court that is contingent on:
- Whether the witness falls within the scope of sections 16 or 17 of the 1999 Act; and
  - Whether special measures would improve the quality (meaning the completeness, coherence and accuracy) of the evidence of an eligible witness in the circumstances of the case (which take account of the witness’s views

and the possibility that the measures might tend to inhibit the evidence being tested effectively).

- B.4.2 The practical effect of these tests is that even where a witness may be eligible for special measures it does not necessarily follow, for example, that playing a video-recorded interview as evidence-in-chief will enable them to give their best evidence; in some cases other special measures such as live evidence-in-chief from behind a screen or via a television link may be of more assistance to them.
- B.4.3 The court has to take account of the interests of justice when considering an application for video-recorded evidence-in-chief (section 27[2]).

## Special Measures Discussions

- B.5.1 The guidance on special measures discussions between the police and the CPS is available on the [Special Measures page of the CPS website](#).
- B.5.2 The police can ask the CPS for a special measures discussion during an investigation. Where there is any doubt as to whether an interview should be video-recorded, where there are any concerns about the need for a Registered Intermediary, the use of aids to communication or other special interview techniques, or where there might be an issue about the use of a supporter during an interview, the police investigator should usually request such a discussion. The CPS can call a special measures discussion if they consider it necessary after reviewing a case file.
- B.5.3 Applications to the court for special measures are made by the defence or prosecution, on a prescribed form, in advance of the trial, under the procedures set out in Criminal Procedure Rules (CrimPR).

## Special Measures Directions (Sections 16 to 19)

- B.6.1 Judges and magistrates are expected to take an active role in the management of cases involving vulnerable and intimidated witnesses, and to ensure that elements of the court process that cause undue distress to such witnesses are minimised.
- B.6.2 Special measures directions can be made at a pre-trial hearing before the beginning of the trial or before a 'Newton' hearing to which witnesses are called to settle the factual basis upon which sentence will be passed or on an appeal. While it is important that directions be made in advance of trial where possible, it may be necessary for a court to react to a situation at a later stage of proceedings by

making a direction to assist a witness to give evidence. New directions are needed for a retrial or appeal.

- B.6.3 In a magistrates' court, because a special measures direction would normally be sought in advance of the trial date, it would be considered by different magistrates to those who hear the trial. If a direction is sought on the day of the trial, the magistrates might still be able to hear the trial, subject to representations from the parties involved in the case.
- B.6.4 The 1999 Act created an expectation that the court will be concerned that witnesses are enabled to give their best evidence and imposes an obligation on judges and magistrates to raise of their own motion the question of whether special measures should be used if the party has not applied for them (section 19[1]). It is therefore important that they are alert to the possibility that the quality of a particular witness's evidence may be adversely affected not just by the distress of giving evidence, but by circumstances, such as fear in connection with testifying in the proceedings or the witness's physical or mental health, which may affect the witness's ability to recall relevant matters and to deal with questions about them.
- B.6.5 Information relating to intimidation may be potentially prejudicial to a defendant but must be made known to a court if it is relevant to the making of a special measures' direction (even if, as is likely, such information is not admissible as proof of the offence to be tried).

## **Binding Directions (Section 20)**

- B.7.1 Special measures directions are binding until the end of the trial, although courts can alter or discharge a direction if it seems to be in the interests of justice to do so. Either party can apply for the direction to be altered or discharged (or the court may do so of its own motion) but must show that there has been a significant change of circumstances since the court made the direction or since an application for it to be altered was last made. This provision is intended to create some certainty for witnesses, by encouraging the party calling the witness to make applications for special measures as early as possible and by preventing repeat applications on grounds the court has already found unpersuasive.
- B.7.2 The court must state in open court its reasons for giving, altering or discharging a special measures direction or refusing an application, so that it is clear to everyone involved in the case what decision has been made and why it was made. This is intended to include, for example, the court's reasons for deciding that a witness is ineligible for help. Applications for special measures are subject to the Rules of Court under Part 29 of the Criminal Procedure Rules 2010.

## Defendants who give Evidence

- B.8.1 Although a defendant may be a witness for the defence, the special measures provisions of the 1999 Act do not apply to a person who is on trial (section 19[1] [a]). See [paragraph 5.56](#) for provisions relating to live links, intended to assist certain young or vulnerable defendants giving oral evidence.

## The Special Measures

### Screening a Witness from the Accused (Section 23)

- B.9.1 Screens may be authorised so that the witness does not have to see or be seen by the defendant. The screen is normally erected around the witness rather than the defendant. It must not prevent the judge, magistrates or jury and at least one legal representative of each party to the case (i.e., the prosecution and each defence representative) from seeing the witness, or the witness from seeing them. If an intermediary or an interpreter is appointed to assist the witness, they too must be able to see the witness and be seen by the witness. The 1999 Act does not specifically provide for the witness's need to see the court witness support person (if there is one) but the court should ensure that this need is met where a screen is erected.
- B.9.2 The court is also authorised to provide for an 'arrangement' which is not a screen, but which has the same effect of preventing a witness from seeing the defendant. An arrangement used in some older cases required defendants to move from the dock to a position in court where they could not be seen by the witness. Such an arrangement might have the undesirable effect of making it more difficult for the defendant to communicate with their legal representatives, which could become a factor in determining whether they were accorded a fair trial within the meaning of Article 6 of the European Convention on Human Rights. Screens, if erected around the defendant, could also have this unintended effect. If such an arrangement or screens are adopted, therefore, careful consideration must be given to ensuring that the rights of the defendant are properly preserved, for example by ensuring that a break in the witness's evidence is taken in order to afford the defendant an opportunity to consult with their legal representative about any further questions which should be put in the light of what the witness has said.
- B.9.3 Where the trial involves a jury, the judge may warn them not to be prejudiced against the defendant as a consequence. This is done as part of the judge's duty to protect the accused from the unfairness that would ensue if, for instance, the jury were to assume that the defendant must have done something wrong to merit the erection of a screen.



### **Evidence by Live Link (Section 24)**

- B.9.4 'Live link' usually means a closed-circuit television link, but also applies to any technology with the same effect. The essential element of a live link is that it enables the witness to be absent from the courtroom where the proceedings are being held, but at the same time to see and hear, and be seen and heard by, the judge, the magistrates or jury, at least one legal representative of each party to the case, and any intermediary or an interpreter appointed to assist the witness. The judge, magistrates, court clerk or justices' clerk control the equipment, and should be comfortable with it and familiar with any likely difficulties, such as the distorted image which may appear on the witness's monitor if those in court lean too close to the camera. Judges and magistrates must also ensure that the witness understands what is happening. This is most obviously of importance for a child witness or a witness who has learning disabilities, but it should not be assumed that any witness is conversant with the equipment. It may be useful for the judge or magistrate to inquire as to whether the witness has paid a pre-trial visit to the court at which the facility has been explained and/or demonstrated.
- B.9.5 There is a presumption that a witness who gives evidence by live link for a part of the proceedings will continue to give evidence by this means throughout. Where a party to the proceedings argues that the method of receiving the witness's evidence should change, the court can make a direction to this effect if the interests of justice so require.
- B.9.6 If there are no live link facilities at the magistrates' court where the proceedings would normally be held, the proceedings may be transferred to another court where a live link is available. Alternatively, if the witness is an adult and screening them is considered to be equally likely to enable them to give their best evidence, then the court may choose to screen the witness instead. Particular care will need to be given to making a decision in such circumstances, where the witness is a child.
- B.9.7 The 1999 Act makes the live link available to vulnerable and intimidated witnesses whether or not their evidence-in-chief is presented in the form of a video-recording, and there may be some witnesses for whom the live link is the only special measure required to enable them to give their best evidence. Even in the case of a child witness who is subject to a presumption that a recording will be used as evidence-in-chief, it may be necessary to resort to the use of the live link alone if no recording is available or an available recording has been ruled inadmissible. Consideration should be given to whether use of a live link away from the courthouse where the trial is taking place could be used for a witness. This could be at another court or a separate 'remote' facility which has live link capability.

### **Evidence given in Private (Section 25)**

- B.9.8 The principle of open justice normally requires that evidence is given in open court; in other words, in the presence of representatives of the press and of members of the public who wish to attend. There are statutory restrictions on attendance and reporting in the youth court for the protection of children and young people.
- B.9.9 In cases involving sexual offences, offences contrary to sections 1 and 2 of the [Modern Slavery Act 2015](#) and offences involving domestic abuse within the meaning of section 1 of the [Domestic Abuse Act 2021](#) (when section 62 of the Domestic Abuse Act 2021 is brought into force) a further exception is justified, partly because the evidence may be of an intimate nature, and partly because the presence of the defendant's supporters or of members of the public with a prurient interest in the proceedings may make the giving of evidence exceptionally difficult. Another exception is made in cases where the court believes that someone, other than the accused, may take advantage of their entitlement to attend the proceedings in order to intimidate the witness.
- B.9.10 In such cases, section 25 permits the courtroom to be cleared of everyone apart from the accused, legal representatives and anyone appointed to assist the witness. The special measures direction will describe individuals or groups of people who are excluded. The court has to allow at least one member of the press to remain if one has been nominated by the press. The freedom of any member of the press excluded from the courtroom under this section to report the case will be unaffected unless a reporting restriction is imposed separately.
- B.9.11 The court also has the power under section 37 of the Children and Young Persons Act 1933 to clear the public gallery when a person under 18 gives evidence in proceedings relating to conduct that is indecent or immoral.

### **Removal of Wigs and Gowns (Section 26)**

- B.9.12 The Crown Courts have traditionally exercised their discretion to dispense with the wearing of wigs and gowns by the judge and by legal representatives in cases where child witnesses are concerned. The inclusion of this power as a special measure in the 1999 Act makes it clear that the same dispensation can be made in the case of vulnerable and intimidated adult witnesses. Not all witnesses want the court to depart from its traditional way of dressing: some feel more comfortable if the judge and legal representatives are dressed in the way which is most familiar to them, perhaps from watching television drama.

### **Video-Recorded Evidence-in-Chief (Section 27)**

- B.9.13 A video-recorded interview can take the place of a witness's evidence-in-chief. Video-recordings can be excluded and edited if the interests of justice so require.

In deciding whether any part of a recording should not be admitted, the court must weigh the prejudice to the accused of admitting that part against the desirability of showing the whole video.

- B.9.14 It may be contrary to the interests of justice to use a video, or part of a video in evidence where the interviewer has neglected to follow the instructions on interviewing in this guidance.
- B.9.15 It should not be supposed that courts will exclude or edit recordings as a sanction for non-compliance with a minor detail. Before making a decision to exclude or edit a recording, a court will consider the nature and extent of any breaches which have occurred, and the extent to which the evidence affected by the breaches is supported by other evidence in the recording, which is not so affected, or by other evidence in the case as a whole. If there has been a substantial failure to comply with the guidance, the consequence may well be that video evidence is excluded altogether, or the relevant parts edited out. If substantial editing has occurred, the witness should be informed of this, so that they are not surprised when they view the video again to refresh their memory.
- B.9.16 An interview with a witness which is conducted entirely properly may still be excluded in the interests of justice, for example where the witness subsequently retracts the statements made in the video and it is clear that they no longer associate themselves with the views expressed in it.
- B.9.17 Where a special measures direction has been made for a recording to be shown to the court, the court can later exclude the recording if there is not enough information available about how and where the recording was made or if the witness who made the recording is not available for further questioning (whether by video, in court or by live link) and the parties to the case have not agreed that this is unnecessary (see figures 5.1 and 5.2). Such a recording might be admissible under the hearsay provisions in section 116 of the Criminal Justice Act 2003, depending on the reason for not calling the witness (for example, if they have become too ill to attend as a witness – see [Appendix C](#)).
- B.9.18 The video-recording (as edited, where that is required) normally forms the whole of a witness's evidence-in-chief and will be watched by the witness before cross-examination takes place. The witness will usually have had an opportunity to see the recording on a previous occasion too, in order to refresh their memory in preparation for the trial. Some witnesses may require breaks when watching the recording.
- B.9.19 Where a witness gives their evidence in chief through a video-recorded statement, the witness may be asked additional questions both about matters not covered in the video recorded statement and matters that are covered in the recorded

statement, provided that the court gives permission (section 27 of the 1999 Act, as amended by section 103 of the Coroners and Justice Act 2009).

- B.9.20 If a witness is asked to give further evidence, then the court can direct that the evidence will be given by the live link. As in other circumstances where a live link is directed, the 1999 Act allows temporary facilities to be authorized for magistrates' courts. In the case of witnesses who are not subject to the special rules that apply to child witnesses the court may decide that the witness can give the further evidence in the courtroom, protected, if necessary, by a screen.
- B.9.21 A recording of an interview with a witness which is not used as evidence-in-chief may be used for other purposes, primarily by the other side. If a witness gives evidence at trial and has previously made a video containing statements that are inconsistent with the evidence given at trial, the video-recording may be used in cross-examination to detract from the credit to be given to the evidence at trial.
- B.9.22 Where an application to admit a video-recording as evidence-in-chief is made under section 27 of the 1999 Act but is refused by the court, the police should draft a section 9 Criminal Justice Act 1967 statement (MG11) for the witness.
- B.9.23 It is essential that the video is properly reviewed as part of the drafting process to ensure consistency between what was said during the interview and what is recorded on the draft statement. The witness need not be present while the statement is drafted. After the statement has been drafted the witness should be invited to check and sign it. The video should be readily accessible in case the witness questions whether the draft written statement correctly reflects what was said in the video interview. Where minor amendments are required, they may be incorporated into the draft statement before it is signed. If changes of a more substantial nature are required, the CPS should be consulted with a view to considering a further interview.
- B.9.24 Where intermediaries are used at an early stage of an investigation or proceedings and an application is subsequently made to admit as evidence-in-chief a video-recorded interview in which they were involved, then a special measures direction to admit the recording can be given despite the judge, magistrates or legal representatives not having been present. Before the recording can be admitted, however, the intermediary must be approved by the court retrospectively. See further below.

### **Video-Recorded Cross-Examination or Re-Examination (Section 28)**

- B.9.25 Video-recorded cross-examination ([section 28](#)) (available in all crown courts in England and Wales for section 16 Youth Justice and Criminal Evidence Act "vulnerable" witnesses. Also commenced for adult complainants to sexual offences and offences contrary to section 1 or section 2, [Modern Slavery Act, 2015](#) in the

crown courts at Durham, Harrow, Isleworth, Kingston-upon-Thames, Leeds, Liverpool and Wood Green, with commencement to all crown courts planned).

### **Examination of a Witness through an Intermediary (Section 29)**

- B.9.26 Intermediaries may be used to help a witness to communicate who has difficulty understanding questions or framing evidence in order to coherently communicate with the court. They are specialists in assessing communication needs and facilitating communication.
- B.9.27 Certain vulnerable witnesses may give evidence through an intermediary: during an investigative interview; during evidence-in-chief and cross-examination in court or via the live link; and during any pre-trial familiarisation visit.
- B.9.28 The intermediary will provide a written report to the court explaining any difficulties the witness may have with certain types of questioning, to assist those putting questions to the witness. The intermediary can communicate to the witness questions asked by the court, defence and prosecution, and then communicate the answers the witness gives in reply.
- B.9.29 The intermediary is allowed to explain questions and answers, if that is necessary, to enable the witness and the court to communicate. The intermediary does not decide what questions to put. The use of an intermediary does not reduce the responsibility of the judge or magistrates, or of the legal representative, to ensure that the questions put to a witness are proper and appropriate to the level of understanding of the witness.
- B.9.30 Intermediaries must be approved by the court (retrospectively if they have assisted with the video recorded interview that is being played as the witness's evidence in chief) and declare that they will perform their function faithfully. They have the same obligation as interpreters to refrain from wilfully making false or misleading statements to the witness or the court.
- B.9.31 When an intermediary is used at trial, the judge or magistrates and at least one legal representative for both the prosecution and the defence must be able to see and hear the witness giving evidence and be able to communicate with the intermediary. The jury will also have to be able to see and hear the witness.
- B.9.32 The use of an intermediary is not available to witnesses who are eligible for special measures on the grounds of fear or distress alone.
- B.9.33 Deaf witnesses can choose to rely on administrative arrangements for the provision in court of interpreters for deaf people and/or, if it is more appropriate to their particular needs, to apply for an intermediary or communication aid under the 1999 Act special measures provisions.

B.9.34 Pending implementation of section 104 Coroners and Justice Act 2009 (which will enable the court to direct that certain vulnerable defendants maybe assisted by an intermediary when they give evidence in court, if this is necessary to ensure that the accused receives a fair trial) the court may use its inherent powers to direct that a defendant be given the assistance of an intermediary.

**Communication Aids (Section 30)**

B.9.35 The use of communication aids, such as sign and symbol boards, can be authorised to overcome physical difficulties with understanding or answering questions. Communication aids can be used in conjunction with an intermediary. The use of a communication device is not available to witnesses eligible for special measures on the ground of fear or distress alone.

## Appendix C: Admissibility of Video-Recordings under other Provisions of the Criminal Justice Act 2003

- C.1 Even in circumstances where it is thought that a vulnerable or intimidated witness may not give evidence at trial, there may still be value in video-recording their interview. Under section 116 of the Criminal Justice Act 2003 (the 2003 Act) a video-recorded statement will be admissible provided that the witness is unavailable to testify for a specified reason.
- C.2 The hearsay provisions set out in the 2003 Act allow for certain assertions made by a person outside the courtroom to prove the facts alleged in those assertions. A statement (whether written or oral) can be put in evidence provided that it was made by an identifiable person and that the evidence would have been admissible if they had been available to give evidence. Certain further conditions must be met. Firstly, the witness cannot simply be unwilling to give oral evidence. They would have to be unavailable owing to:
- Death;
  - 'Unfitness' because of a bodily or mental condition (the availability of special measures under the 1999 Act will be considered in determining this);
  - Being outside the UK and it not being reasonably practicable to secure their attendance; or
  - Not being found despite such steps as are reasonably practicable to take having been taken.
- C.3 Another ground of admissibility is where the witness does not give or (once proceedings have commenced) does not continue to give oral evidence through fear. The court must give leave and can only do so if it is in the interests of justice. Fear is to be construed widely and includes fear of the death or injury of another person or of financial loss.
- C.4 If the above conditions are met, the evidence will not be allowed if a party (or someone acting on their behalf) is the cause of that person not being available to give evidence.
- C.5 Article 6 of the European Convention on Human Rights provides that, as part of a fair trial, a defendant has a right to cross-examine all witnesses called against them, and that includes the right to obtain the attendance of witnesses. Section 124 of the 2003 Act preserves the right of a defendant to challenge the credibility

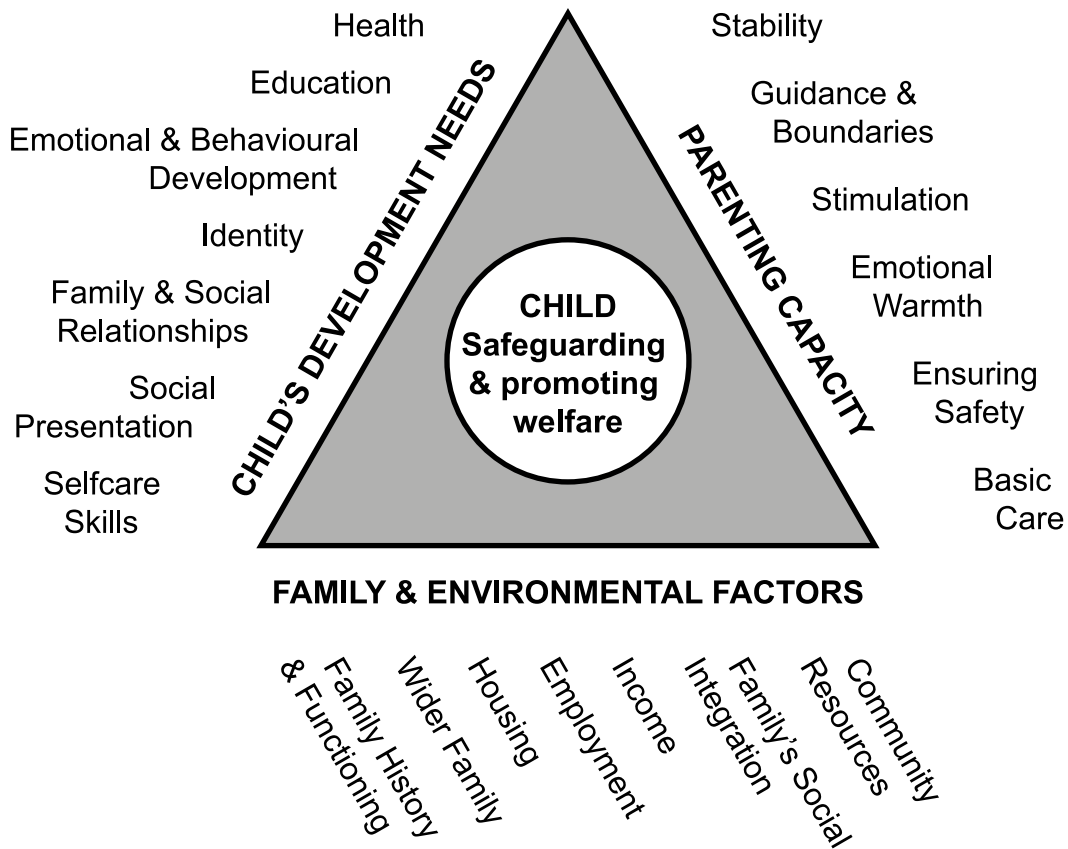
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of the maker of a statement who does not give oral evidence in the proceedings. Furthermore, section 126 provides a discretion for the court to exclude 'superfluous' statements that may waste time and substantially outweigh the case for admitting them. The court can also exclude evidence that is otherwise unfair under section 78 of the Police and Criminal Evidence Act 1984.



## Appendix D: The Assessment Framework



# Appendix E: Interviewing Disabled Children and Children with Communication Difficulties

## E.1 Planning and Preparation

- E.1.1 Disabled children are not all the same and have a wide range of abilities and needs. Interviewers need to be aware of the extensive differences between potential witnesses in their social, emotional and cognitive development, and in their communication skills, the degree of their understanding and in their particular needs. It will nearly always be necessary to seek specialist advice on what special procedures are appropriate and to consider if the services of an intermediary or an interpreter are required.
- E.1.2 There is rarely any reason in principle why disabled children should not take part in a video-recorded interview, provided the interview is tailored to the particular needs and circumstances of the child. This will require additional planning and preparation by the interviewing team and a degree of flexibility in scheduling the interview. Particular attention will be needed to ensure that a safe and accessible environment is created for the child and that the interview suite is adapted to the child's particular needs. Disabled children are likely to have already come to the attention of professionals and therefore information is likely to be available from existing assessments and from workers who know the child well. Such information should enable the interviewing team to make an assessment of the likely impact, if any, of a child's impairment on communication. Where children have specific communication difficulties, aids such as drawings or photographs may need to be prepared to facilitate questioning. All such aids should be preserved for possible production at court.
- E.1.3 It is important to find out what impact the child's condition is likely to have on the interview or on the communication process, and to adopt a positive approach that focuses on the child's abilities when trying to find out how they can be helped to communicate.
- E.1.4 The impact of any medication being taken by the child on the interview, including the most appropriate timing for it, should be taken into account.
- E.1.5 For some children, a number of shorter sessions may be preferable to a single interview. For example, some children (e.g., with learning disability or ADHD) have

shorter attention spans, giving rise to a need for regular and frequent breaks. Other children (e.g., with physical or learning disabilities) might find communicating to be quite demanding and this is also likely to lengthen the interview(s). This said, some disabled children need faster paced or shorter interviews.

- E.1.6 Children with learning disabilities tend to adapt more slowly to unusual situations than their peers. It is, therefore, likely that more time will be needed to prepare the child for the interview, and extra time might be needed for the rapport phase.
- E.1.7 Children with learning disabilities tend to be easily distracted. Interview rooms should, therefore, be organised so as to minimise the opportunity for distraction.
- E.1.8 The possibility that children with learning disabilities might have difficulty with time concepts should be taken into account while planning the interview.

## **E.2 The interview**

### **E.2.1 Phase One: Rapport**

- E.2.1.1 It is important that adequate time is allowed for this phase. Establishing rapport between the interviewer and the child will in itself require more time and attention, especially if an intermediary or an interpreter is needed to assist communication. There are also additional functions of the rapport phase for disabled children. These are to:
  - Relax the interviewer;
  - Educate the viewer of the video about the child and their communication;
  - Dispel common myths and prejudices (e.g., that physical impairments affect a child's intelligence); and
  - Allow the child to demonstrate communication and understanding.
- E.2.1.2 It is important for the child to sense the importance of communicating clearly, and for the interviewer to develop as much skill as possible in talking with and understanding the child. Any difficulty that the interviewer or the interview monitor has in understanding the child's account at the time is likely to be magnified for any person subsequently viewing the video-recording. The interviewer needs to be comfortable about referring to this and asking the child to repeat, rephrase or clarify as necessary, and the interview monitor needs to ensure that the recording can demonstrate the child's communication method.
- E.2.1.3 The child needs to be given an opportunity to explain their world, especially where this might be unusual and relevant for the interview (e.g., if the child stays away from their family, if there are different adults involved with their care at home or elsewhere, if the child needs intimate care or other 'unusual' help in day-to-day

life). It is important to establish the context at this stage to give meaning to what may follow, as it is often harder to do so later. If, for example, a child has a number of adults involved in their care, it will be important to demonstrate their ability to distinguish reliably between these different people. Alternatively, if a child needs very invasive care procedures (e.g., intermittent catheterisation) it will be helpful to establish the child's comprehension of this as a process before any discussion of possible sexual abuse.

- E.2.1.4 The experiences of some disabled children might make them more compliant and eager to please or to see themselves as devalued. Some children with learning disabilities could have problems understanding the concept of truth, and interpreted communication may lead to additional confusion. Some children may need explicit permission to refute adult suggestions. Even with this permission, some children may find this impossible to do. It can help if everyone in the room makes a commitment to tell the truth (including the interviewer and any additional adults). It is important to convey that the child and the interviewer and any additional adults (including any interpreter or intermediary) should say 'I don't know', 'I don't know how to say that' (where the child's understanding has sufficiently developed), or 'I don't understand', and not to guess if they are unsure.
- E.2.1.5 Disabled children might need very explicit permission to request breaks, and a clear, simple sign, gesture or word with which to do so. Given the concentration required by all parties, it is important to establish that the adults can request breaks as well as the child.

## **E.2.2 Phase Two: Free Narrative Account**

E.2.2.1 Communication impairments do not necessarily prevent a child from giving a spontaneous account. Exceptions to this include when a child is:

- Relying heavily on yes/no signalling;
- Using a communication board with a vocabulary that does not include the necessary words; or
- Where a child has not reached the developmental stage of being able to give an account.
- In these circumstances, the services of an intermediary should be secured to assist communication.

E.2.2.2 Children with learning disabilities are capable of providing accurate free narrative accounts, although such accounts are likely to be less complete than those provided by their peers. While some omissions are likely to be the result of the child remembering less, some will probably be due to an assumption by the child that the interviewer already knows about the alleged event. It might, therefore, be advisable to repeat that the interviewer was not present and to reiterate the need

for the child to report as much as they can remember, at a number of points in the interview, including the free narrative phase.

E.2.2.3 Children with learning disabilities may often require a greater degree of facilitation before it is clear whether an offence has occurred and, if so, what form it took. Open-ended prompts should be used as far as possible. Reflecting back to the child in an open, non-directive manner what they have told the interviewer helps to ensure accuracy as well as facilitating the production of further details. Another strategy that can enable children to extend their account is to reflect back the information the child has given you in unfinished sentences (e.g., you were in the bed with the man and then ...).

### **E.2.3 Phase Three: Questioning**

E.2.3.1 A clear and informed plan for questioning is essential to ensure that a child is not expected to respond to questions they cannot answer, or questions that are inherently confusing. This is important not just in terms of the child's emotional welfare, but also in order to avoid undermining the child's credibility. For example:

- Disabled children might be dependent on others for intimate care; interviewers will need to be able to distinguish between necessary caring or medical procedures and abusive or criminal actions.
- Children may be receiving orthopaedic treatment or using postural management equipment that might cause pain or discomfort but should never cause injury.
- A child's condition may restrict the positions they can get into or be placed into, and some positions might in themselves be dangerous.
- Certain physical or neurological conditions will affect the sensations a child can feel.
- A child with a sensory impairment will be restricted in some of the information they can provide about the identity of the alleged suspect or details of the alleged offence(s).

E.2.3.2 Questions should be simple and concrete. Abstract concepts, double negatives and other inappropriate questions should be avoided.

E.2.3.3 With some methods of communication, such as communication boards, questions can only be asked in a closed form which demands a yes or no response.

Techniques that can increase the evidential validity of closed questions include:

- Avoiding a series of 'yes' responses by suggesting less likely alternatives first;
- Completing any series of related questions, rather than halting at the first 'yes'; and
- Reverting to open questions wherever possible.

When the child is offered a range of alternatives, consistent wording is needed for each, particularly if the child has a learning disability or poor short-term memory.

## **E.2.4 Phase Four: Closing the Interview**

E.2.4.1 Given the relative lack of knowledge of investigative interviewing of disabled children, it is helpful for developing practice to obtain feedback from the child on their experience of the interview, and perhaps also to acknowledge again additional barriers to communication that discussion of sensitive issues such as abuse can provide. Provided that there is no discussion of the evidence itself, such debriefing need not take place on camera, though a note should be kept of the points raised.

## **E.3 Interviewing Very Young or Psychologically Disturbed Children**

- E.3.1 The planning phase for the interview needs to be undertaken with great care when a child is very young (under six) or known to be psychologically disturbed. Consideration should always be given to the use of a registered intermediary in the planning process and during such interviews.
- E.3.2 Thought should be given to the venue for the interview, which needs to take account of the child's needs. Young children are much more likely to move around while communicating, so it is essential to have a minimum of two cameras and a skilled operator.
- E.3.3 Adequate time should be allowed for rapport, and age-appropriate play materials should be provided to settle the child and possibly to assist communication (see chapter 3, [paragraphs 3.119 to 3.140](#) for more on using props, figures, dolls or drawings).
- E.3.4 Consideration should be given to seeking specialist advice or bringing in an interviewer with particular skills and experience in the area, because young children and psychologically disturbed children present particular challenges at interview. Young children are more vulnerable to suggestive or leading questioning and give briefer responses to open questions. Psychologically disturbed and traumatised children may present as very reluctant interviewees.
- E.3.5 Developmentally appropriate questioning is essential: the interview needs to be carefully planned with a range of questioning strategies, especially as the pace of questioning may need to be quite rapid. Young children may need more prompting to increase the amount of information they provide: for example, scaffolding ('What do you do with daddy?') or cued invitations ('you said he touched you there. Tell me about the touching') rather than open invitations ('Tell me everything that happened').

- E.3.6 Young children may assume that adults know everything and that adults are always right: it is essential that they are given the opportunity to correct the interviewer at assessment and during the rapport phase.
- E.3.7 Young and psychologically disturbed children may find the interview situation very daunting: A warm demeanour from the interviewer and social support from a familiar adult can help.
- E.3.8 One response to these difficulties may be to make a decision to distribute the interview over a number of short sessions, conducted by the same interviewer, and spread over a number of days. When this occurs, care must be taken to avoid repetition of the same focused questions over time, which could lead to unreliable or inconsistent responding in some children and interviews being ruled inadmissible by the court. Rapport and closure should be included in each session.

## **Useful Sources**

Faller, K, 2007 'Special considerations for young children' in *Interviewing Children about Sexual Abuse: Controversies and Best Practice*, ed K Faller Oxford University Press, Oxford.

Lamb, M, et al 2008 'Interviewing suspected victims under six years of age' in *Tell Me What Happened: Structured investigative interviews of child victims and witnesses*, ed M Lamb et al Wiley, Chichester.

# Appendix F: Conducting a Video-Recorded Interview – The Legal Constraints

## F.1 Introduction

- F.1.1 As explained in the introduction to this guidance, a video-recorded interview may replace the first stage of a vulnerable or intimidated witness's evidence in court in a criminal case. The video-recording will count as evidence of any fact stated by the witness which could have been given in evidence in court. This means that, in principle, the rules that govern procedure in court may be applied to the video-recorded interview.
- F.1.2 There are rules that can render certain matters inadmissible irrespective of their truth, so that they cannot form part of the case. A criminal court has no power to depart from such rules. However, there are also conventions of the court which the court may relax where the need arises. The most obvious example of such a convention is the avoidance of leading questions.
- F.1.3 The court will not expect video-recorded interviews exactly to mimic examination of a witness by counsel in court. But rules of evidence have been created in order to ensure a fair trial for the defendant, and they cannot be ignored. Where the recording that is being made is likely to form part of the prosecution's case, early consultation with the Crown Prosecution Service should assist in identifying potential areas of difficulty. If the recording may be tendered in evidence for the defence, the defendant's legal representative should be consulted.
- F.1.4 It is therefore good practice to conduct an interview as far as possible in accordance with the rules that would apply in court. Interviewers who ignore these rules are likely to produce video-recordings that are unacceptable to a criminal court. They will thus fail to spare the witness from having to give the first stage of their evidence in person. Because the provisions for video-recording cross-examination and re-examination under the 1999 Act will, when available, apply only to cases in which a video-recording has been given in evidence as the witness's evidence-in-chief, the rejection by the court of a video-recording as evidence-in-chief means that these further provisions will also be unavailable at trial.



F.1.5 This appendix explains the rationale behind those rules most likely to affect a video-recorded interview – leading questions, previous statements showing consistency or truth, and statements about the bad character of the accused. As with most rules, there are circumstances in which they need not be applied. This is easier to determine when a child is being questioned in court and the legal representatives can agree at the time with the judge or magistrates what is acceptable. The interviewer has no such opportunity and should therefore err on the side of caution but, as this appendix goes on to describe, there are circumstances when the rules can properly be disregarded.

## **F.2 Leading Questions**

- F.2.1 It is not generally permissible to put leading questions to a witness. A leading question is one which either suggests the required answer, or which is based on an assumption of facts that have yet to be proved. Thus ‘Daddy hurt you, didn’t he?’ is an example of the first type of leading question, and ‘When did you first tell anyone about what Daddy did?’, put to a child who has not yet alleged that Daddy did anything, is an example of the second type.
- F.2.2 Where a leading question is improperly put to a witness in court, the answer is not inadmissible but may be accorded little or no weight because of the manner in which it was obtained. When witnesses testify live in court, a leading question can be objected to before a witness replies. The party objecting to such a question in a video-recorded interview has no such opportunity and so may ask for part of the video-recording to be edited out.
- F.2.3 However, there are circumstances where leading questions are permissible:
- A witness is often led into their testimony by being asked to confirm their name and address or some other introductory matter, because these matters are unlikely to be in dispute. More central issues may also be the subject of leading questions if there is no dispute about them. For example, where it is common ground that a person, X, has been killed at a particular time, it is not inappropriate to ask a witness ‘What were you doing when X was killed?’ However, at the interview stage it may not be known what facts will be in dispute at the trial, and so it will be safer to assume that most matters are still in dispute;
  - The courts also accept that in certain cases other than the above it is impractical to ban leading questions. This may be because the subject matter of the question is such that it cannot be put to the witness without leading, as for example when the witness is to be asked to identify the person who hurt them. Or it may be because the witness does not understand what they are

expected to tell the court without some prompting, as in the case of a very young child or a person with a learning difficulty.

- F.2.4 An interviewer who follows the provisions in the guidance as to the conduct of an interview will avoid leading questions. As the courts become more aware of the difficulties of obtaining evidence in an interview with a vulnerable or intimidated witness, particularly from witnesses who are very young or who have a learning disability, and of counteracting the pressure on some witnesses to keep silent, a sympathetic attitude may develop towards necessary leading questions. A leading question that succeeds in prompting a witness into providing information spontaneously beyond that led by the question will normally be acceptable. However, unless there is no alternative, the interviewer should never be the first to suggest to a witness that a particular offence was committed or that a particular person was responsible. Once this step has been taken, it will be extremely difficult to counter the argument that the interviewer put the idea into a suggestible witness's head and that the witness's account is therefore tainted.
- F.2.5 If leading questions are judged by the court to have been improperly used during the interview, it may well be decided not to show the whole or that part of the recording to the court, so that the witness's answers will be lost. Alternatively, the whole interview may be played, leaving the judge to comment to the jury, where appropriate, on the weight to be given to that part of the evidence that was led. Neither outcome is desirable and both can be avoided if interviewers avoid leading questions.

### **F.3 Previous Statements**

- F.3.1 A witness in court is likely to be prevented by the court from giving evidence of what they have previously said or what was said to them by another person. If allowed in evidence, previous statements might have two functions. First, in the case of the witness's own statement, the court might be asked to take account of the fact that the witness has consistently said the same thing in deciding whether they are to be trusted. Secondly, in the case both of the witness's own statements and of statements made to them by others, the court might be asked to take the further step of deciding that what was said out of court was true. In a criminal trial, both functions are frowned upon; the first because, in law, it says little for the reliability of a witness to show that they have been consistent, and the second because courts are reluctant to accept statements as true unless made in court and subject to the test of cross-examination.

### **F.3.1 Previous Statements Showing Consistency**

F.3.1.1 Even though consistency adds little to the credibility of the witness, it will always be proper for the interviewer to ask the witness if they have told anyone about the alleged incident(s), who they told, when they told them and why. But the interviewer must not ask the witness details of what was said except in certain circumstances. These circumstances are as follows:

- When a witness has voluntarily given details of an alleged sexual offence soon after that offence took place; and
- When a witness has previously made a positive identification of the accused. Identification may be formal (in the course of an identification parade) or informal, for example where a child points out the defendant to a teacher and says 'this man tried to push me into his car.' Where such a prior identification has been made, it may be referred to in the video-recorded interview.

F.3.1.2 A case that may give rise to difficulty is where there is some doubt as to the fairness of admitting the identification. If, for example, a child tells her father that she has just been sexually assaulted by a man in a leather jacket and the father apprehends the first leather-clad man he sees and demands 'Is this him?', a court might be understandably reluctant to admit the child's positive answer as a positive identification, and therefore it should not be mentioned in the video-recorded interview. The interviewer must be aware of the circumstances of any identification made by the child before the interview.

### **F.3.2 Previous Statements Showing Truth**

F.3.2.1 The technical name for an out-of-court statement that is used in court to prove that what was said is true is 'hearsay'. The admissibility of hearsay is now governed by the Criminal Justice Act 2003. Section 114 of the Act provides that hearsay statements are generally inadmissible, unless:

- It can be brought under a statutory provision;
- It is admissible under common law – which is set out in section 118;
- The parties agree; or
- The interests of justice require it to be admitted.

F.3.2.2 The statutory grounds of admissible hearsay statements in section 118 cover business or professional documents, where it is a specific previous statement of a witness or where the witness is unavailable.

F.3.2.3 Words (and conduct – e.g., nodding in agreement) are only hearsay if used to prove their truth. There may be other reasons for proving that words were spoken, in which case the hearsay rule is not broken. For example, a witness's report of a child's statement 'Dad taught me to fuck' would be admissible to demonstrate a child's use of age-inappropriate language but inadmissible as evidence that the child's father had had intercourse with her.

F.3.2.4 The use of a video-recording of an interview with a witness as part of the witness's evidence is itself an example of a statutory exception to the rule against admitting hearsay evidence. Without a detailed appreciation of the scope of the provisions, it will be difficult for an interviewer to gauge the chances of a hearsay statement being regarded as admissible in court, and it is best to aim to avoid the inclusion of previous statements in the interview so far as possible. There are a couple of rules of thumb which should assist:

- With the exception of inconsistent statements, or statements of identification or complaint that are respectively referred to in sections 119 and 120 of the Criminal Justice Act 2003, most statements made by the witness about the alleged offence prior to the interview are likely to be hearsay and should not be deliberately elicited from the witness during a video-recorded interview. If the witness spontaneously begins an account of what has been said to them, the interviewer may decide that it is best not to interrupt. If so, it should be remembered that this section of the recording is likely to be edited so it will be necessary to go over any relevant non-hearsay information gleaned at this point at a later stage of the interview.
- The video-recording should capture the witness's responses directly, as the interviewer's description of the witness's response is itself hearsay. For example, if a child is asked where she was touched by an abuser and in response she points to her genitals, that action should be captured by the camera. It will not be enough for the interviewer to say 'She is pointing to her genitals', as this is a statement of the interviewer, not the child. Once this is understood, it should be relatively easy to ensure that the relevant evidence comes from the witness.

## **F.4 Character of the Accused**

F.4.1 An important rule of evidence concerns the previous bad character of the accused. The Criminal Justice Act 2003 significantly expanded the circumstances in which the bad character of the accused may be admissible at trial. 'Bad character' is defined as evidence of or of a disposition towards misconduct. 'Misconduct' means the commission of an offence or 'other reprehensible conduct' and includes previous convictions, previous charges and other trials pending and may include evidence of bullying or racism.

F.4.2 A basic understanding of the expanded circumstances should assist interviewers in deciding what evidence may be admissible at trial. Section 101 of the 2003 Act sets out the circumstances in which bad character evidence that is relevant to the issues in the case may be admissible. There are seven 'gateways' to admissibility. These include evidence that is 'important explanatory' evidence (e.g., evidence about motive) and evidence relevant to an important matter in issue (for section

101 purposes, whether the defendant has a propensity to commit offences of the type with which they are charged or to be untruthful).

- F.4.3 Despite the change in the law, the interviewer should be cautious when witnesses mention such discreditable facts. It is important to remember that the admission of evidence of bad character in these circumstances is very much a matter for the court and should not be taken for granted at the time of the interview. The court will not, in particular, admit bad character evidence relevant to an important matter in issue if it thinks it would have an adverse effect on the fairness of the proceedings.
- F.4.4 In many cases, the line between admissibility and inadmissibility is a difficult one to draw. Complex legal considerations are involved. All that can be done before the trial when making a video-recording that may be put in evidence by the prosecution is to estimate the chances that the court will be prepared, say, to hear that a schoolteacher has been accused of buggery by four of his pupils, or a father of incest by two daughters. This presents no difficulty for the interviewer if the evidence of one witness is quite separate from that of another. But it may be that the complainant of one offence claims to have witnessed the occurrence of another offence against a different complainant. In such cases it might be advisable, following consultation with the Crown Prosecution Service, to record separately the witness's account of (i) offences allegedly committed against them, and (ii) what they know about offences involving other complainants.
- F.4.5 The MG16 form should be used to record any details of previous convictions of the accused, including (where possible) details of defences and pleas. If information on other misconduct is known, this should also be included on the MG16. This form should be completed as early as possible and sent to the prosecutor for them to consider an application for the evidence to be admitted.

## **F.5 The Court's Discretion to Exclude Evidence**

- F.5.1 A court trying a criminal case has a general power to exclude evidence tendered on behalf of the prosecution, even if the evidence complies with the strict rules of admissibility. Under section 78 of the Police and Criminal Evidence Act 1984, the court may exclude evidence on the grounds that, because of the way in which it was obtained or for any other reason, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it. Courts may also exercise a common law power (i.e., one supported by previous decisions of the courts) to exclude evidence, the prejudicial effect of which outweighs its probative value. The definition of these powers is deliberately broad to preserve their flexibility.

- F.5.2 Specifically in relation to out-of-court statements (hearsay), section 126 of the Criminal Justice Act 2003 provides the courts with a discretion to exclude 'superfluous' statements if they are satisfied that the value of the evidence is substantially outweighed by the undue waste of time that its admission would cause. Where the prosecution wishes to adduce evidence of the defendant's bad character either under the gateways relating to an important matter in issue or when the defendant attacks another's character, and the defendant applies to exclude it, the court must exclude that evidence if it would have an unfair effect on the proceedings.
- F.5.3 It is unlikely that the powers described above will be invoked regarding video-recorded evidence, as the court has the duty, under section 27(2) of the 1999 Act, to exclude a recording that in the interests of justice ought not to be admitted. This duty applies equally to video-recordings tendered in evidence by the prosecution and those tendered by the defence. It also empowers a court to exclude part of a recording only. The court is likely to refer to section 27(2) first when ruling on whether a video-recording should be received in evidence, and it is unlikely that a recording that the court decided to admit under section 27(2) would be found to be objectionable by applying either the common law power or the power in section 78 of the Police and Criminal Evidence Act 1984 described above. A court might, however, invoke its discretion under section 78 or common law to exclude other evidence, for example the evidence of what occurred when a witness attended an identification parade that was adjudged to have been unfair.

## Appendix G: Truth and Lies

### Examples intended to explore the Difference between Truth and Lies

G.1 Preamble

'Now [name], it is very important that you tell me the truth about things that have happened to you. So, before we begin, I want to make sure you understand the difference between the truth and a lie.'

G.2 Example for Younger Children

'Let me tell you a story about John. John was playing with his ball in the kitchen and he hit the ball against the window. The window broke and John ran upstairs into his bedroom. John's mummy saw the broken window, and asked John if he had broken the window. John said, 'No mummy.'

'Did John tell a lie or the truth, or don't you know?'

[Child responds]

'What should he have said?'

[Child responds]

G.3 Example for Older Children

'So, for example, Tony was having a smoke in his bedroom, after his mum had told him not to. He heard his mum coming and hid the cigarette. His mum said 'Have you been smoking?' Tony said, 'No mum.'

'Did Tony tell a lie or the truth, or don't you know?'

[Child responds]

'What should he have said?'

[Child responds]

'Why do you think he said 'no mum'?''

[Child responds]

Adapted from A. Williams and S. Ridgeway (2000).

# Appendix H: The Enhanced Cognitive Interview

## H.1 Introduction

H.1.1 The phased approach to interviewing is at the heart of the cognitive interview (CI)/enhanced cognitive interview (ECI). Essentially, if all the cognitive ‘special’ instructions are taken away and not used, what is left is the phased interview. The CI was initially developed to improve witness memory performance by using various techniques derived from cognitive psychology to gain as much correct information as possible without jeopardising the quality of the information reported. The original CI comprised a set of four instructions given by the interviewer to the witness:

- (i) Report everything;
- (ii) Mentally reinstate the context;
- (iii) Recall events in a variety of different temporal orders; and
- (iv) Change perspective.

Subsequently, the originators found that real-life police interviewing of witnesses lacked much that the psychology of interpersonal communication deemed important. They, therefore, developed the ECI, which incorporated several new principles from memory research and the social psychology of communication. The ECI therefore consists of the original CI techniques noted above plus some additional techniques (e.g., transfer of control and witness-compatible questioning).

H.1.2 The ‘special’ cognitive mnemonics that make up the CI/ECI aim to help elicit specific details that witnesses may have difficulty remembering. The discussion that follows will describe these mnemonics in the context of the 4-phased approach that is described in this document. Some interviewers think that use of the ECI is an all-or-nothing affair; that they must use all the techniques or none at all. Instead, it would be preferable to use one technique well rather than all its techniques poorly. As noted above, if you take away all the ‘special’ techniques of the ECI you are left with the phased interview. So rather than it being a decision to use the ECI or not, the questions are: ‘Which ECI technique(s) should I use?’, ‘With whom should I use each?’, ‘When should I use each?’ and ‘How should I present each?’ It is important, therefore, for interviewers to use the appropriate technique at the appropriate time with the appropriate witness. This is not an easy task. As a result, interviewers should be trained and be competent to do this



appropriately (see National Investigative Interviewing Strategy, Association of Chief Police Officers 2009)

- H.1.3 The CI/ECI mnemonics typically can only be used with co-operative witnesses. If the witness is not co-operative, then the interviewer should resort to either the phased interview or, as the next step, a more managed communication.
- H.1.4 The CI/ECI mnemonics are only intended for use in respect of the memory for an event, they were not developed for use in remembering the kind of background material that usually makes up the case-specific information important to an investigation.

## **H.2 Phase One: Establishing Rapport**

### **Opening the Interview: Personalising the Interview, Building Rapport and Engaging the Witness**

#### *Personalising the Interview*

- H.2.1.1 The opening phase of an interview will often determine the success of the interview. At the outset it is necessary to establish trust and lay the foundations for successful communication. The interviewer is often a person who is unfamiliar to the witness and thus, to reduce possible tension and insecurity felt by the witness, it is essential that the interviewer should introduce themselves by name and greet the witness by name (i.e., personalise the interview). Greeting should occur because it is at the heart of effective rapport development, the next step of the interview process.
- H.2.1.2 Paying attention to the appropriate form of address at this initial greeting phase can help send a message of equality both now and throughout the interview. This is essential as it reduces the perceived authority differential between interviewer and witness, so that witnesses are less likely to comply with leading questions. As no interview can be perfect, it is essential to build resistance against inappropriate questions, which may unwittingly be used by an interviewer later in the interview.
- H.2.1.3 The interviewer needs to treat the witness as an individual with a unique set of needs as opposed to being 'just another witness'. Obtaining maximum retrieval is a difficult task requiring deep concentration. A witness therefore needs to feel that they are an integral part of the interview to be motivated to work hard.
- H.2.1.4 As noted above, interviewers need to present themselves as an identifiable person. This is because people dislike the unknown and prior to the interview may draw upon past experiences and knowledge about the police and interviews to help them think about what to expect. This information may be obtained from media representation and as a result may not be particularly favourable. Thus, it is

the job of the interviewer at the outset, and throughout the interview, to lessen any 'stereotypes' the witness may have. This can start through personalising the interview. Interviewers who are in uniform may have to spend more time on this and the next phase of the interview to overcome any barriers set up by their clothing.

- H.2.1.5 First impressions count, and the clothing an interviewer wears is a matter that can be considered before an interview. For example, interviewers in too formal attire may have more difficulty in personalising the interview and developing rapport, especially when interviewing younger individuals.

### *Building Rapport and Engaging the Witness*

- H.2.2.1 Rapport is essential and good rapport between interviewer and witness can improve both the quantity and quality of information gained in the interview. Rapport therefore has a direct impact on the interview process itself. Rapport is especially important where the type of information required is highly personal. Rapport should not be regarded as something that is confined to the first phase of an interview; it begins when the interviewer first meets the witness and continues throughout the interview. There are several reasons why rapport is so important and these will now be examined.
- H.2.2.2 The witness's anxiety, whether induced by the crime and/or the interview situation (or otherwise), needs to be reduced for maximum remembering. This is because people only have a limited amount of processing power available and the aim is to have the witness's full power devoted to retrieving as much information as possible. Anxiety may detract from this. The interviewer therefore needs to start to create a relaxing atmosphere and to make the witness feel secure and confident both with the interviewer and with the interview situation. One way to achieve this is to start by briefly asking some neutral questions not related to the event which can be answered positively and, therefore, create a positive mood. However, if the interview plan suggests that discussing neutral topics for more than a few minutes may be beneficial it should take place as part of witness preparation before the interview commences.
- H.2.2.3 Rapport requires that the interviewer interacts meaningfully with the witness, contributing as an interested party and not simply asking a list of predetermined short-answer questions. Standardised phrases should be avoided as their use will convey to the witness that they are 'just another witness's, which is likely to depersonalise the interview. It is a good idea for interviewers to talk about themselves too, as this openness can serve as a model to demonstrate what is required of the witness and help to further personalise the interview by making the interviewer more identifiable.

- H.2.2.4 The use of open-ended questions in the developing of rapport will teach the witness at the earliest phase in the interview what will be required later, i.e., elaborated responses. The interviewer should encourage the witness to speak without interruptions when they are describing a familiar event (e.g., a recent holiday). Thus, rapport is also a 'training' phase of the interview, training the witness what to expect later (i.e., that detailed responses are required).
- H.2.2.5 Witnesses have different levels of language, and skilful interviewers tailor their own communication level to that of the witness. It is in this rapport phase of the interview that the interviewer can assess the witness's communication abilities (this should also occur in planning and preparation) and this will allow the interviewer to develop an interactive model of interviewing determined and defined by the witness. This is easier to do when examining the witness's responses to open-ended questions. For example, it is often useful to count how many words on average a witness uses per sentence and use this figure as a guide to the length of sentences/questions the interviewer should use.
- H.2.2.6 A guiding principle for developing rapport is to communicate empathy. Here the interviewer needs to demonstrate a willingness to try to understand the situation from the witness's perspective. Some witnesses may be unhappy or feel shame or resentment about being questioned, especially on personal matters. In the rapport phase, and throughout the interview, the interviewer should convey to the witness that they have respect and sympathy for how the witness feels.
- H.2.2.7 A witness may be apprehensive about what may happen after the interview if they provide an account of what happened. While every effort should have been made to address these concerns while preparing the witness for the interview, they should be addressed during this phase if they emerge again.
- H.2.2.8 At the start of the interview the interviewer could allow the witness to vent their concerns and emotions about the incident(s) in question. These in turn can be used to explain the interviewer's needs. This can help to initiate the next phase of describing the aims of the interview (i.e., setting the ground rules).

### **Opening the Interview: Explaining the Ground Rules**

- H.2.3.1 It is important to explain to the witness what is to be expected from them, as for most witnesses an investigative interview is an alien situation. People typically fear the unexpected, and by describing the interview process this fear can be reduced. There are several factors that need to be explained to the witness at this stage in the interview, and these will be examined in turn.

#### *Interview Factors*

- H.2.3.2 There are some details concerning the interview itself that need to be explained to the witness. The reason for the interview needs to be given, which in turn will

make its focus clearer. The interviewer, however, needs to be careful not to comment on the nature of the offence, as this can be seen as leading the witness. Questions such as 'Do you know why you are here today?' have been found to help at this stage of the interview.

H.2.3.3 The interviewer needs to explain the outline of the interview. Typically, the outline will take the form of the interviewer asking the witness to give a free narrative account of what they remember and following this with a few questions to clarify what the witness has said. Witnesses should also be told that:

- If the interviewer asks a question that the witness does not understand or asks a question that the witness does not know the answer to, they should say so; and
- If the interviewer misunderstands what the witness has said or summarises what has been said incorrectly, then they should point this out. In addition, it should be explained that the interviewer might take a few brief notes.

H.2.3.4 The witness should not be asked to demonstrate their understanding of truth and lies during the interview nor should they be asked to read out the declaration at the beginning of section 9 Criminal Justice Act 1967 written statements. There should also be no attempt to get the witness to swear an oath during an interview. If the witness goes on to give evidence at court, the court will administer an oath retrospectively.

### *Focused Retrieval*

H.2.4.1 Memory recall at the most detailed level requires focused attention and intense concentration. If there are too many distractions then the witness will find it very difficult to retrieve from the detailed level of memory. The interviewer should inform the witness that the task is not an easy one, but one that will require considerable concentration. Witnesses also need to feel that they have an unlimited time for recall, so that they can search their memory effectively at their own pace and provide elaborate, detailed responses. If there is a restricted time, witnesses may shorten their responses accordingly, and shorter responses are usually less detailed.

### *Transfer of Control*

H.2.5.1 This instruction is an ECI technique which would be helpful in almost all interviews. The witness may expect the interviewer, usually an authority figure, to control the interview. Therefore, a witness may well be expecting an active interviewer asking a series of questions to a passive witness whose only task is to answer these questions and wait for the next one. This is not the typical behaviour of a skilful interviewer. Instead, their role is as a facilitator, a person to help the witness remember, to facilitate retrieval and to help the witness, as and when they require it, to recall as much information as possible. It is the witness who has been

witness to the event and who has all the information. Consequently, the main person in this exercise is the witness, and not the interviewer

- H.2.5.2 The interviewer should therefore pass the control of the information flow to the witness. After all, it is the witness who holds the necessary information. Thus, at the start of the interview the witness needs to be informed explicitly of this. It is the witness who should do most of the mental work and most of the communicating throughout the course of the interview.
- H.2.5.3 Another reason why this instruction is so important is because detail is not often required in everyday communication. For example, when asking a colleague who has just returned from holiday 'Did you have a good time?', only limited detail from them is sought. The reason for asking this question is generally a polite, common courtesy. This is because we learn from a young age what is termed the 'maxim of quantity', which states that detail in general communication is not required and may even be seen as rude. However, in an investigative interview the witness needs to give extensive detail and should do most of the communicating. Unless directly told this, the witness will not give such detail automatically as they will have learned from years of experience of communicating that to give detail is not necessary and to dominate the conversation is rude.

### *Report Everything*

- H.2.6.1 This final instruction in this sub-phase of the interview is also an ECI instruction that would be useful in almost all interviews. As noted above, witnesses are unlikely to volunteer a great amount of detailed information unless told to do so. Interviewers therefore should explicitly state their need for detail. Thus, as with the transfer of control instruction, the 'report everything' instruction encourages witnesses to report everything they remember without any editing, even if the witnesses think the details are not important or trivial or cannot remember completely a particular aspect of the event.
- H.2.6.2 There are several reasons thought to be responsible for the effectiveness of this instruction. Many witnesses may believe that the interviewer already knows a lot about the event in question. As a result, witnesses may not mention things they think are unimportant or which seem obvious, as witnesses do not want to be seen to be wasting interviewer time. Some witnesses may (erroneously) believe that they themselves know what types of information are of value and therefore may only report what they believe to be important. In some cases, this may result in witnesses mistakenly withholding relevant information. Thus, the instruction to report everything is likely to result in the reporting of information which otherwise may be held back by the witness. Witnesses may also withhold information if they cannot remember it completely. However, the recall of partial information may help the interviewer gain a more complete picture of the incident (for example, if a

witness recalls a few characters of a number plate and other witnesses each recall one other character).

### **H.3 Phase Two: Initiating and Supporting a Free Narrative Account**

- H.3.1.1 In this phase of the interview the interviewer should initiate an uninterrupted free narrative account from the witness using an open-ended invitation. The interviewer can also use this phase as the planning stage for the forthcoming questioning phase of the interview. This is because the free narrative account allows the interviewer an insight into the way in which the witness holds the information about the event in their memory. Thus, brief notetaking is recommended at this stage. However, if the interviewer takes too many notes, this may well distract the witness, hindering the flow of recall. In addition, if the interviewer slows the witness down to take detailed notes, this again hinders maximum retrieval.
- H.3.1.2 It is essential not to interrupt the witness during their narration to ask questions – these should be kept for later.
- H.3.1.3 In the free narrative phase, the interviewer should encourage witnesses to provide an account in their own words using non-specific prompts such as ‘Did anything else happen?’, ‘Is there more you can tell me?’ and ‘Can you put it another way to help me understand better?’ Verbs like ‘tell’ and ‘explain’ are likely to be useful. The prompts used at this stage should not include information known to the interviewer concerning relevant events that have not yet been communicated by the witness.
- H.3.1.4 Some witnesses when recalling negative and emotional events may initially be more comfortable with peripheral matters and may only want to move on to more central matters when they feel this to be appropriate. In these instances, interviewers should resist the temptation to ‘get to the heart of the matter’ prematurely. They should also resist the temptation to speak as soon as the witness appears to stop doing so, and should be tolerant of pauses, including long ones, and silences. They should also be tolerant of what may appear to be repetitious or irrelevant information from the witness. Above all, interviewers must try to curb their eagerness to determine whether the witness witnessed anything untoward.
- H.3.1.5 A form of active listening is needed, letting the witness know that what they have communicated has been received by the interviewer. This can be achieved by reflecting to the witness what they have just communicated; for example, ‘I didn’t like it when he did that’ (witness) then ‘You didn’t like it’ (interviewer). The

interviewer should be aware of the danger of subconsciously or consciously indicating approval or disapproval of the information just given.

### **Context Effects, Memory and the Mental Reinstatement of Context**

- H.3.2.1 Research has demonstrated that context can have a powerful effect on memory. It is sometimes easier to recall information if you are in the same place or context as that in which the encoding of the information took place. This helps us to explain why we are overcome with a surge of memories about our past life when we visit a place we once knew (e.g., a school you used to attend). The context in which an event was encoded is itself thought by some to be one of the most powerful retrieval aids. For example, Crimewatch reconstructions attempt to reinstate the physical context of the event to jog people's memories of the event itself.
- H.3.2.2 Research has demonstrated the effects physical context can have on memory. For example, participants learned a list of words either on land or 20 feet under water. Later the participants had to recall the previously learned list of words either on land or under water, i.e., in the same context where they learned the list or in a different context. It was found that those who learned the words on land recalled more of the words when they were also on land and those who learned the words under water recalled more of the words under water. Recall was approximately 50 per cent higher when the learning and recalling contexts were the same.
- H.3.2.3 In a practical sense, physically reinstating the context of the event (i.e., taking a witness back to the scene of a crime) may not be possible or advisable (though sometimes this is a strategy that can be used in the correct circumstances). There are several reasons why taking someone back physically to the incident scene is inappropriate. From a police operational perspective, if it is a recent crime, the scenes of crime officers may still be present, and taking someone back to the scene could contaminate the crime scene itself. Also, the witness/victim may become too traumatised and anxiety may interfere with the process of remembering. Furthermore, the crime scene may have changed. For example, the weather may be different or people and objects which were at the crime scene are unlikely to have remained the same. Thus, taking someone back may be counterproductive if the scene is drastically different. In addition, physically taking someone back to the scene is expensive and time-consuming, and if the interview is being video-recorded the logistics of doing this at the scene may be problematic (e.g., if the scene is outside and it is raining).
- H.3.2.4 Context, however, need not be external to the rememberer. Our internal state can also act as a contextual cue. For example, a person who was feeling happy when experiencing an event may be better placed to remember the event in that state. Recollection of an experience is likely to be most successful when a retrieval cue

reinstates a person's subjective state at the time of an event, including thoughts and feelings.

H.3.2.5 Research has shown that the mental reinstatement of the context of the event, both the physical and the internal context, can be as effective as taking someone back physically.

#### *The Mental Reinstatement of Context*

H.3.3.1 The context reinstatement instruction is part of the ECI and it asks witnesses to reconstruct in their minds the context, both physical (environmental) and internal (i.e., how they felt at the time), of the witnessed event. Any aspect of an environment in which an event is encoded can, in theory, serve as a contextual cue. For example, the interviewer could say to the witness: 'Put yourself back to the same place where you saw the assault. Think of where you were. How were you feeling at the time? What could you hear? What could you smell? Think of any people who were present. Think about the objects there. Now tell me everything you can remember without leaving anything out.' The statements should be given using the past tense and should not be leading. This instruction can be used before obtaining the first free narrative account, or to obtain a second free narrative. Again, this will depend on the witness.

H.3.3.2 The use of sketch plans may also be helpful here. The witness could be asked to draw the layout of the event and describe who was where, etc. This will also help the witness reinstate the context and could be a useful tool for the questioning phase of the interview to help focus the witness and structure topic selection. In addition, this is a useful investigative tool in ensuring that the R v Turnbull and Camelo rules are comprehensively covered.

H.3.3.3 Context reinstatement can be a useful technique and, like any procedure that enhances recall, it can recreate feelings associated with the event. Interviewers therefore need to be appropriately trained in the use of this instruction and what to do if the recalling of a negative event upsets the witness.

#### *Active Listening and Appropriate Non-Verbal Behaviour*

H.3.4.1 Appropriate non-verbal behaviour during the interview is just as important for a successful interview as are the verbal instructions. Here are some guidelines for good interviewer non-verbal behaviour.

#### *Proxemics*

H.3.4.2 Proxemics refers to the physical distance between individuals (e.g., interviewer and witness) and the effects of this on them. Everyone has around them a personal 'bubble' of space, which usually extends to about an outstretched arm's length around them, though cultural differences in this do occur. It has been found that an invasion of a person's personal space, especially by a stranger, can be



emotionally disturbing and may well result in gestures indicative of stress. Thus, it is imperative to be aware that an interviewer's own behaviour can affect the behaviour of the witness.

#### *Posture and Orientation*

H.3.4.3 The angle or orientation at which people stand or sit in relation to one another can convey information about attitude, status and affiliation. Although cultural differences do occur, positive conversation tends to take place most comfortably at a 120-degree angle (or a 'ten-to-two' position). Confrontation tends to occur in a face-to-face orientation. Therefore, positions in an interview room can affect the interview outcome even before any verbal interaction has taken place. If the interviewer sits in a non-confrontational orientation (e.g., a 'ten-to-two' position) this can start to promote a relaxed atmosphere in the interview.

#### *The Principle of Synchrony*

H.3.4.4 In a two-person interaction, which is progressing well, each person's behaviour will tend over time to mirror that of the other person – the principle of synchrony. Interviewers can make use of this to influence the witness's behaviour, simply by displaying the desired behaviour themselves. Thus, by speaking slowly in a calm, even voice and behaving in a relaxed way, the interviewer can guide the witness to do so as well. The interviewer should encourage the witness to speak slowly, as rapid speech (which is common in anxious witnesses) becomes a problem for memory retrieval. 'Mirroring' can also help build and maintain rapport in that intended behaviours can be demonstrated by the interviewer and may in turn be mirrored by the witness. If an interviewer sits and speaks in a relaxed manner, the witness is more likely to demonstrate relaxed behaviour as well.

#### *Pauses and Interruptions*

H.3.4.5 The interviewer also needs to give the witness time to give an elaborate answer and should use pauses so that the witness can conduct a thorough search of their memory. Witnesses pause during a free narrative account for a variety of reasons. The witness may be seeking feedback from the interviewer on the quality of the response. For example, the witness may be thinking 'Have I given enough information or do I need to continue?' or 'Have I been talking too long?' The witness may also pause to organise the rest of the narration or when trying to access information. Any interruption during these pauses may preclude further information being produced and this information may be lost.

H.3.4.6 Interviewers can promote extensive answers during these pauses by remaining silent or by expressing simple utterances (gurgles) conveying their expectation that the witness should carry on (e.g., 'mm hmm'). This non-verbal behavioural feedback should not be qualitative (e.g., saying 'right') as this may give the witness the impression that the information they have already given is the type of

information required, and may thus be judged by the courts as inappropriately rewarding certain types of utterance. Instead, interviewers should praise the witness for their efforts in general and do so between interview phases. Similarly, the interviewer should not display surprise at information as this could be taken as a sign that the information is incorrect. Repeated interruptions soon teach witnesses that they only have a limited time to reply and this often leads to shortened responses to future questions.

## **H.4 Phase Three: Questioning**

H.4.1.1 During the free narrative phase of an interview most witnesses will not be able to recall everything relevant that is in their memory. Therefore, their accounts could greatly benefit from the interviewer asking appropriate questions that assist further recall.

H.4.1.2 Interviewers need to appreciate fully that there are various types of questions that vary in how directive they are. The questioning phase should, whenever possible, commence with open-ended questions and then proceed, if necessary, to specific-closed questions.

### **Prior to the Questioning Phase of the Interview**

H.4.2.1 Before asking the witness any questions, it may be beneficial to outline for them what is expected of them in this phase of the interview. It is helpful for the interviewer to inform the witness that they will now be asking them some questions based on what they have already communicated in the free narrative phase, to expand on and clarify what they have said. It is also beneficial to reiterate several the ground rules outlined in the rapport phase of the interview. For example, it is helpful to explain to the witness that detail is required, to explain that this is a difficult task which requires a lot of concentration and to point out that it is acceptable to reply 'I don't know' or 'I don't understand' to a question.

### **Asking Questions**

#### *Topic Selection*

H.4.3.1 Within the questioning phase of the interview the interviewer should subdivide the witness's account into manageable topics or episodes and seek elaboration on each area using open-ended and then specific-closed questions. Each topic or episode should be systematically dealt with until the witness is unable to provide any more information. Interviewers can also summarise what the witness has said, using their own words, in relation to each topic or episode. Topic-hopping (i.e., rapidly moving from one topic to another and back again) should be avoided as this is not conducive to maximum retrieval.

H.4.3.2 When being questioned, some witnesses may become distressed. If this occurs the interviewer should consider moving away from the topic for a while and, if necessary, reverting to an earlier phase of the interview (e.g., the rapport phase). Such shifting away from and then back to a topic the witness finds distressing and/or difficult may need to occur several times within an interview.

#### *Witness-Compatible Questioning*

H.4.3.3 Good questioning should avoid asking a series of predetermined questions. Instead, the sequence of questions should be adjusted according to the witness's own memory processes. This is what 'witness-compatible questioning' means. Each witness will store information concerning the event in a unique way. Thus, for maximum retrieval, the order of the questioning should resemble the structure of the witness's knowledge of the event and should not be based on the interviewer's notion or a set protocol. It is the interviewer's task to deduce how the relevant information is stored by the witness (via the free narrative account) and to organise the order of questions accordingly.

#### *Activating and Probing images (Mini-Context Reinstatement)*

H.4.4.1 This has been used as part of the ECI. This technique is similar to the mental reinstatement of context described above ([paragraph H.3.3.1](#)). However, it is now used to help the witness to recall more specific details of the event (a mini-context reinstatement). This begins by recreating/activating the psychological and environmental context. The context here is very specific in that it refers to a particular moment or aspect of the incident. For example, if the first aspect of the event that the witness reported in their free narrative account was the man with a knife, they can now be asked the following: 'You mentioned the man with the knife. I want you to focus on him. When did you get the best view of him? [Sketch plans can be useful here.] Think of what he looked like, his overall appearance. What was he wearing? What could you smell? What could you hear? What were you feeling? Tell me everything you can about him in as much detail as you can.' For each aspect the interviewer should start by probing with open-ended questions to enable the witness to supply an extensive answer. The interviewer should follow up with specific-closed questions, but only when the open-ended questions do not result in the desired information. Avoid using leading questions.

#### *Extensive Retrieval*

H.4.5.1 This is an element of the ECI. The more attempts the witness makes to remember a particular event, the more information will be recalled. Some witnesses should therefore be encouraged to conduct as many retrieval attempts as possible, because many witnesses terminate their memory search after the first attempt. However, simply asking the witness to repeat the same search strategy is unlikely to lead to much new information and may be de-motivating for the witness. Thus, in addition to searching extensively, using concentration, the witness should be

encouraged to use a variety of memory search strategies. One way of doing this is to get the witness to use varied retrieval strategies, such as the ECI techniques of 'change the temporal order of recall' and 'change perspective' (see below). However, it is vital at this phase in the interview to allay any fears that this is being done because the witness is not believed.

### *Different Senses*

- H.4.6.1 Retrieval may also be varied by probing different senses. Typically, interviewers concentrate on what the witness saw and consequently what they heard, smelt, felt and tasted are often ignored. Valuable information may therefore go unreported. For example, if the witness has so far not mentioned much about sounds in the event, such as conversations, an interviewer could use sound as a retrieval cue: 'What I want you to do now is to go through the event again, but this time think of all the sounds [use any sounds they have mentioned earlier in the interview as an example] and tell me what you can remember.'
- H.4.6.2 At the time of the offence, victims of serious violence sometimes dissociate themselves from the attack and may close their eyes or focus on something else to help themselves do this. As a result, they may later have limited information attained from sight, and therefore interviewers need to probe their memory of the event using other senses.

### *Recall in a Variety of Temporal Orders*

- H.4.7.1 When an event is freely recalled, most people report the event in real time (i.e., in the order in which it took place, though not completely chronological; there is usually some jumping about). When recalling in this way people use their knowledge of such events in the past to help them recall this particular event (e.g., what typically happens on a Friday night will help them remember the assault on a particular Friday night). This results in the recall of information that is in line with their general knowledge (in this case of 'typical Friday nights'). However, unusual information or occurrences may not be so readily recalled. The 'change order' instruction invites the witness to examine the actual memory record, which in turn can result in the reporting of additional information which is unusual and unique.
- H.4.7.2 Research has shown that people who were instructed to recall an event in forward order and in reverse order remembered more total correct information than those who recalled the event twice in forward order. The additional information gained tended to concern action information (i.e., what people did), which can distinguish the event (what happened on the Friday night the assault happened) from similar events (what typically happens on Friday nights).
- H.4.7.3 Thus, once witnesses have (using free narrative account) recounted the event in their own order, the interviewer could encourage the witness to recall the event

using a different order; for example, from the end to the beginning of the event (i.e., reverse order recall) and/or working backwards and forwards in time from the most memorable aspect of the event.

### *Change Perspective Technique*

H.4.8.1 People tend to report events from their own psychological perspective. The change perspective instruction, from the ECI, asks the witness to recall the event from a different personal perspective (not a change in location). For example, in one police investigation a secretary saw what she thought was a scuffle between two men across the road from her office as she walked to work. When initially questioned by the police, about what was in fact a murder, all she could remember about one man's hair was that it was blond. The victim had dark hair but another witness had also said that one of the men had blond hair. Therefore, the murderer may well have had blond hair and the secretary may have seen his hair. In her subsequent interview the interviewer said 'So far you have said you are having difficulties retrieving details of his hair style. What could a hair stylist remember about his hair?'

H.4.8.2 Care must be taken with this technique, as witnesses may misinterpret the instruction to adopt a different perspective as an invitation to fabricate an answer. Thus, witnesses should be explicitly told not to guess at this stage of the interview and this instruction needs to be explained clearly. It is imperative when using this instruction to tell the witness explicitly that they must only report details that they actually witnessed themselves. Note that this technique should only be used by well-trained interviewers.

### *Memory Prompts*

H.4.9.1 There are also additional memory aids used in the ECI to help the reporting of specific details concerning people (e.g., names, faces, voices, clothing, appearance) and objects (e.g., vehicles, number sequences, weapons). For example, people are often unable to remember names. To assist with this the interviewer could request the witness to think about name frequency (common or unusual name), name length (short or long, number of syllables), and the beginning letter of the name by conducting an alphabetical search. Similar techniques can help in the remembering of vehicle licence plate characters.

H.4.9.2 Witnesses tend not to realise that the interviewer requires detailed descriptions, specifically of the perpetrator, and instead tend to focus on the actions in the event. As a result, descriptions tend to be short and incomplete. Therefore, interviewers need to instruct the witness to report all types of information and not just action information. In addition, witnesses often have difficulty reporting information about people. When 'people information' does exist in the witness's memory, reporting such information from that mental image often involves a

translation process from a visual to a verbal medium. This is a difficult task that requires concentration and assistance from the interviewer. The following techniques may help in eliciting specific details about people involved in the event:

- Physical appearance
  - Did the person remind you of someone you know?
  - Why?
  - Any peculiarities?
- Clothing
  - Did the clothing remind you of anyone?
  - Why?
  - What was the general impression?
- Speech characteristics and conversation
  - Did the voice remind you of anyone?
  - Why?
  - Think of your reactions to the conversation.

H.4.9.3 It is important to remember when using the above three techniques to always back up the question with 'why'. This is because the response to 'did the voice remind you of anyone?' may for example be Sean Connery, but the witness may not necessarily be thinking of a Scottish accent. Thus asking 'why?' is imperative.

## **H.5 Phase Four: Closing the Interview**

### **Recapitulation**

H.5.1.1 Interviewers should in this final main phase consider briefly summarising what the witness has said, using the words and phrases used by the witness as far as possible. This allows the witness to check the interviewer's recall for accuracy. The interviewer must explicitly tell the witness to correct them if they have missed anything out or have got something wrong.

H.5.1.2 This phase also functions as a further retrieval phase. The witness, however, should be instructed that they can add new information at this point in the interview, otherwise they are unlikely to stop an interviewer in the full flow of recapitulating.

H.5.1.3 Interviewers should not attempt to summarise what the witness has said where the witness is fatigued, in an emotional condition or otherwise distracted because they may not be in position to listen properly to the summary. Similar issues may arise where the witness appears to have a short attention span (as may be the case, for example, with young children and some adults with a learning disability).

H.5.1.4 If there is a second interviewer/monitor present, the lead interviewer should also check with them whether they have missed anything.

H.5.1.5 Care should be taken not to convey disbelief.

### **Closure**

H.5.2.1 The interviewer should always try to ensure that the interview ends appropriately. Every interview must have a closing phase. In this phase it may be useful to discuss again some of the 'neutral' topics mentioned in the rapport phase.

H.5.2.2 In this phase, regardless of the outcome of the interview, every effort should be made to ensure that the witness is not distressed but is in a positive frame of mind. Even if the witness has provided little or no information, they should not be made to feel that they have failed or disappointed the interviewer. However, praise or congratulations for providing information should not be given.

H.5.2.3 The witness should be thanked for their time and effort and asked if there is anything else that they wish to communicate. An explanation should be given to the witness of what, if anything, may happen next, but promises that cannot be kept should not be made about future developments. The witness should always be asked if they have any questions and these should be answered as appropriately as possible. It is good practice to give to the witness (or, if more appropriate, an accompanying person) a contact name and telephone number in case the witness later decides that they have further matters they wish to discuss with the interviewer. It is natural for witnesses to think about the event after the interview and this may elicit further valuable information. Advice on seeking help and support should also be given.

H.5.2.4 When closing the interview, and throughout its duration, the interviewer must be prepared to assist the witness to cope with the effects of giving an account of what may well have been greatly distressing events (and about which the witness may feel some guilt).

H.5.2.5 The aim of closure should be that, as far as possible, the witness should leave the interview in a positive frame of mind. In addition to the formal elements, it will be useful to revert to neutral topics discussed in the rapport phase to assist this. This point has important repercussions, one of which is that a well-managed interview can positively influence organisation–community relations. Many witnesses will tell friends, family, etc. about the skill of the interviewer and their feelings about the interview process as a whole.

## Useful Sources

- H.6 This appendix has, in part, been based on the following useful sources:
- ACPO (2002) Guidance on the Recording of Interviews with Vulnerable and Significant (Key) Witnesses. London: National Strategic Steering Group on Investigative Interviewing, ACPO.
  - Fisher, R.P. and Geiselman, R.E. (1992) Memory-Enhancing Techniques for Investigative Interviewing: The Cognitive Interview. Illinois: Charles Thomas.
  - Köhnken, G. (1993) The Cognitive Interview: A Step-by- Step Introduction. Unpublished.
  - Milne, R. (2017) The Cognitive Interview: A Step-by-Step Guide. Unpublished.
  - Milne, R. and Bull, R. (1999) Investigative Interviewing: Psychology and Practice. Chichester: Wiley.
  - Welsh Assembly Government (2004) Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses, Including Children: A Training Pack.



## Appendix J: Identification Parades involving Vulnerable and/or Intimidated Witnesses

- J.1 The attendance of a vulnerable or intimidated witness at an identification parade or video identification (in which the witness sees a series of video clips of different people, including the suspect) requires advance planning and liaison between the officer responsible for the identification procedure and the officer with knowledge of the witness. A pre-trial support person who is not, or is not likely to be, a witness in the investigation should accompany the witness unless the witness states that they do not want a support person to be present. Officers responsible for identification procedures should consider measures to accommodate the needs of the witness but must take care to ensure that the procedure remains fair to the accused
- J.2 The assessment of the witness's ability is relevant. Explanations to the witness about the purpose of the identification procedure and the wording of instructions during the procedure itself should be considered ahead of time and tailored to the witness's level of understanding.
- J.3 If the witness has particular communication difficulties, or requires an interpreter, someone who can communicate with the witness must attend. If the witness does not recognise numbers, consideration should be given to the use of symbols to distinguish participants. The symbols must not have any special meaning for the witness. The best evidence is a verbal identification, but if the witness is unable or is likely to be unable to speak, they should be advised that it is acceptable to point. If the witness wears spectacles or contact lenses or uses a hearing aid, these must be worn or used at the identification procedure.
- J.4 At identification parades, a one-way screen should always be used and should be demonstrated to witnesses before the parade itself. They should be encouraged to say if they do not understand any part of the procedure. Arrangements should be made to escort vulnerable or intimidated witnesses to and from the location where the parade is held. They should be reassured that they will not encounter anyone who took part in the line-up on leaving the building.
- J.5 Code D of the Police and Criminal Evidence Act 1984 provides for the identification of persons by the police. Annex A of Code D sets out the procedures for identification parades and provides that either a colour photograph or a video

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film should be taken of the parade. Code D provides for other forms of identification procedure such as video identification, group identification and confrontation, which may be video-recorded. The Association of Chief Police Officers/Association of Chief Police Officers in Scotland National Working Practices on Facial Imaging deal with the construction of composite images such as E-FIT (electronic facial identification) and artist's impressions. A witness giving video-recorded evidence or testifying over a live link will be unable to point out the accused in court. In the absence of a requirement in the code to video-record the procedure, it is good practice to video any identification procedure where the witness subsequently may not be physically present in the courtroom.

# Appendix K: National Standards for Child Witness Preparation

## K.1 Purpose of preparation

- To help the child witness feel more confident and better equipped to give evidence at court;
- To help the child witness understand the legal process and their role within it;
- To encourage the child witness to share their fears and apprehensions about the court process and thus assist the young person in giving their best evidence in court.

Preparation must not involve rehearsing the evidence or coaching the witness.

## K.2 Key characteristics required by person undertaking witness preparation

- Ability to communicate with young children and young people in age-appropriate language;
- Have experience and training in child development;
- Have experience of direct work with children;
- Ability to demonstrate a caring, mature and supporting attitude to both the young person and their parent or carer;
- Ability to deal with difficult feelings and emotions;
- Willingness and ability to offer continuity of support throughout the trial;
- Willingness and ability to work within a framework of equal opportunities;
- Willingness and ability to work within a framework of confidentiality.
- In addition to the above, the person undertaking witness preparation must:
- Be seen to be independent and focusing entirely on the young person's welfare in preparing for the experience of giving evidence;
- Not have been involved in the preparation of the case;
- Not discuss the details of the case or the evidence that the young person has given or is to give; and
- Have undertaken Local Safeguarding Children Board training.

## K.3 Key tasks

- Obtaining information on which special measures have been ordered by the court at the plea and case management hearing or pre-trial hearing to assist the child witness, including whether consideration has been given as to who accompanies the child witness while they give evidence.
- Liaising with police and the Crown Prosecution Service (CPS) if there are any changes in circumstances which might require a variation in the court measures to be provided;
- Liaising with any other agencies that may be involved with the child witness and/or the family;
- Undertaking an assessment of the young person's needs in general in relation to a court appearance, taking account of their developmental status;
- Deciding when the witness preparation should begin, bearing in mind the trial date and who the young person wishes to be present when this takes place;
- Ensuring that the young person and parent or carer has the correct age-appropriate information from the Young Witness Pack materials for the age/development of the witness and type of court and, if appropriate and available, viewing the Young Witness DVD 'Giving Evidence – What's it Really Like?' with the child witness and their parent or carer;
- Helping the child witness to understand the court process and their role in it. This will include discussion of the roles of the participants in the case, the importance of telling their truth and the nature of cross-examination. Question and answer role play on non-evidential subjects is likely to help the young witness understand the rules for answering questions at court;
- Preparing the young person for any possible outcomes of the trial such as a late change of plea, adjournments or acquittal;
- Liaising with the Witness Service to arrange a familiarisation visit to the court before the trial and ensuring that the child witness, and their parent or carer, if appropriate, are shown whatever special measures have been ordered by the court in their case;
- Providing the young person with stress reduction and anxiety management techniques;
- Involving the young person's parent or carer, if appropriate;
- Checking with the child witness that they have had the opportunity to refresh their memory by viewing the video-recorded police interview and, if not, bringing this to the attention of the police, the CPS or the defence representative (if called by the defence);
- If special measures have not previously been identified and the child witness may be entitled to them, bringing this to the attention of the person who has called the child witness, for example the prosecution or defence representative;

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- Checking that the young witness has the preferred and most appropriate special measure in place to allow them to give their evidence, for example: to give evidence in court but behind screens as opposed to via live link;
- In conjunction with the Witness Service, communicating information (including the young person's wishes) to and from the police, the CPS and the courts, keeping the young person, parent or carer informed and ensuring that practical arrangements are made for the young person;
- Co-ordinating arrangements with the Witness Service co-ordinator or the court liaison officer to ensure that the waiting time at the court is kept to a minimum;
- De-briefing the child witness and parent or carer and arranging for any follow-up support, including the need for specialist help;
- Informing the Witness Care Unit if they identify the need for an intermediary in circumstances where the need has not already been identified;
- Ensuring that the work with the young person is fully documented.

# Appendix L: National Standards for the Court Witness Supporter in the Live Link Room

## **L.1 Role of the Supporter**

L.1.1 The role of the court witness supporter is, by their presence, to provide emotional support to the witness and to reduce their anxiety and stress when giving evidence, thereby ensuring that the witness has the opportunity to give their best evidence. It is the responsibility of court staff to ensure that the equipment in the live link room is working correctly.

## **L.2 Identity of the supporter**

L.2.1 If the witness expresses a wish to be supported in the live link room, there can be benefits, both in reducing the stress suffered by the child and in the quality of the witness's evidence, if this wish is granted. However, in each individual case, it is a matter for the court to determine who should accompany a witness in a remote live link room. 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 the plea and case management hearing. The key characteristics of anyone acting in this capacity should be as follows:

- Someone not involved in the case, who has 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); and
- Someone with whom the witness has a relationship of trust. Ideally, this should be the person preparing the witness for court, but others may be appropriate.

L.2.2 When the court has decided 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 themselves. Additionally, the Witness Service (if they are not the preparer), the CPS and the police should also be informed.

### **L.3 Skills required by the supporter of a child or vulnerable or intimidated adult witness**

#### L.3.1 Required skills include:

- Impartiality;
- Communication skills (including with parents/carers, professionals and young people) particularly listening skills;
- Awareness of the needs of abused children and adults, the effects of crime and the impact of the court appearance on child witnesses and vulnerable adults;
- Flexibility;
- Knowledge of the criminal justice system;
- Confidence of the police, the CPS and the court;
- Ability to liaise and work with other agencies; and
- Familiarity with the basic rules of evidence and awareness of the danger of contaminating or discrediting the evidence of the witness.

### **L.4 The Court Witness Supporter's Conduct**

L.4.1 The court witness supporter will need to act according to agreed standards of conduct, covering communication with the witness, both within and outside the live link room, ensuring the witness's comfort, and alerting the court to any problem arising while the witness is giving evidence. The suggested behaviour to be observed in this role is as follows.

#### L.4.2 Before the witness gives evidence:

- Accept and follow the instructions of the court regarding witnesses and procedures to be observed;
- Liaise with the Witness Service (where the court witness supporter is not from the Witness Service);
- Ensure that the room is ready for the witness;
- Take the witness and carer to the waiting room and ensure that they are comfortable;
- Always remain with the witness while in non-public areas of the court building;
- Settle the witness into accommodation in the waiting room;
- Be present in court to take the oath as required;
- Escort the witness to the live link room.

#### L.4.3 In the live link room:

- Sit the witness in the chair and fix the microphone to their clothing;
- Place the warning notice in the corridor and close the door;
- Sit beside the witness and in view of the camera;

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- Communicate relevant concerns (via the usher or agreed procedure) to the court;
- Be present throughout the time the witness is in the room;
- Communicate if the witness cannot 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 the defendant during evidence;
- Hand any exhibits to the witness without comment;
- Remain with the witness in the event of failure of the equipment;
- Communicate any interruption in the live link room to the court.

### **L.4.4 Contact with the witness:**

- Do not speak to the witness about the case, or about their 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 court to a problem;
- Do not prompt or seek to influence the witness in any way;
- Ensure that any other person in the room observes these prohibitions;
- Maintain a neutral but sympathetic manner, to provide comfort and reassurance, and help the witness to give their evidence clearly, with a minimum of stress;
- If the witness becomes distressed and the proceedings are interrupted, the supporter may listen if the witness talks about the case, and may make comforting gestures to ease the witness's distress;
- When requested by the judge, direct the attention of the witness to the questioner.

### **L.4.5 In case of difficulties:**

- In the event of a problem, ask the usher to contact the court by telephone;
- If necessary, speak to the court via the live link (according to the procedure previously agreed with the court).

### **L.4.6 After the evidence has been given:**

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

## **L.5 Key steps, responsibilities and considerations for the witness supporter in the live link room**

L.5.1 The six steps below set out some of the key roles and responsibilities involved for agencies and organisations responsible for assisting witnesses make an informed



decision about the witness supporter where there is a likelihood that a live link special measures application will be made – supporters in the live link room. This should be seen as best practice however; it is recognised that there will be local variations for which separate agreements may need to be reached.

**(1) Police Investigation**

L.5.2.1 The role of the witness supporter in court and views of the witness should be discussed initially with the witness (and their parent or carer if the witness is a young witness, i.e., under 18) during the explanation of special measures during the police investigation. The police should ensure that their explanation covers the following key points:

- That the role of the witness supporter is to provide emotional support and not to discuss the evidence with the witness;
- The supporter cannot be a party to the case, and must have no detailed knowledge of the case;
- The supporter should have a relationship of trust with the witness;
- It is a matter for the court to make the decision on the witness supporter after considering the views of the witness and the presence of a preferred supporter cannot be guaranteed.

L.5.2.2 Where possible and in appropriate circumstances the police should provide examples about who the witness may consider might act as their supporter.

L.5.2.3 The police should also provide the witness with information about pre-trial support and any local support organisations.

L.5.2.4 **It is acknowledged that in view of the early stage of the case, some witnesses may not be able to express a view about the identity of a witness supporter in court during the police investigation; nevertheless, the police should endeavour to provide the witness with basic information about the role of the witness supporter so that the issue can be pursued later.**

**(2) Communicating the Information**

L.5.3.1 Once the views of the witness have been obtained by the police, this information should be recorded on the MG 2 form as part of any information to be passed to the CPS for the purposes of a special measures' application, should a charge be preferred and there is a contested trial. This information should include the name of any individual nominated by the witness, together with their contact details.

L.5.3.2 If necessary, the police should have a special measures discussion with the CPS to discuss the views of the witness in further detail.

L.5.3.3 If the witness's views have not been obtained at the interview or statement taking stage, the police should discuss the issue with the witness (and their parent or

carer if a young witness) at a suitable time after charge and pass the information to the CPS copying the Witness Care Unit or support organisation for information. Where there is an organisation offering pre-trial support, the witness supporter should be discussed as part of the pre-trial preparation or at the pre-trial court familiarisation visit.

L.5.3.4 If the views of the witness change about special measures or the witness supporter after initial discussions during the police investigation, the CPS should be informed by [the police, support organisation or WCU] as soon as practicable, ideally before submission of a special measures' application.

### **(3) Special Measures Application**

L.5.4.1 The CPS or defence submits a special measures application to the court in accordance with the Criminal Procedure Rules (CrimPR) for determination at the PTPH or other hearing.

L.5.4.2 In the event that the witness is unable to provide the name of an individual or has no views on the matter, with prior agreement, the Witness Service or name of local support organisation should be submitted on the special measures' application form.

### **(4) Court Determination of Application**

L.5.5.1 The Court considers the special measure application taking into account the views of the witness and determines who will accompany the witness as a supporter in the live link room.

L.5.5.2 In the event that the special measures application is not determined at the PTPH or other hearing, the investigating police officer, WCU, defence practitioner support organisation, or pre-trial supporter should continue to review and ascertain the views of the witness about the supporter in the live link in case they have changed by the time the special measures application is determined.

### **(5) Communicating the Court's Decision**

L.5.6.1 The Court notifies the WCU or defence practitioner no later than 1 working day after the day on which the decision was made.

L.5.6.2 If the court decides that the witness supporter should be a member of the Witness Service or other support organisation, necessary pre-trial arrangements should follow which will be subject to local practices.

L.5.6.3 The witness is informed by the WCU, defence practitioner or other specialist officer no later than 1 working day after the day on which the decision was received from the court.

- L.5.6.4 If the court directs that the witness supporter should be the individual submitted on the special measures' application form, that individual should be informed by the witness, their parent/carers, support organisation, or defence practitioner (who should have been given the necessary contact details)
  - L.5.6.5 That individual should be given relevant guidance by Victim Support or other support organisation on the role of a supporter which should cover the court process in the magistrates' courts, Crown Court and Youth Court.
  - L.5.6.6 There should be a Continuation of pre-trial support/witness preparation for giving evidence in court.
- (6) Informing the Supporter of the Trial Date and Arrangements on the Day**
- L.5.7.1 The witness, their parents/carers or defence practitioner will notify their supporter of trial dates and any arrangements on the day. Supporters should ensure they have a basic knowledge of any local protocols.

## Appendix M: Technical Guidance

### M.1 Preliminaries

- M.1.1 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 is likely to meet the requirements of the court rules. Basic hand-held equipment should not be used, and more reliable tripod-mounted portable equipment should only be used in exceptional circumstances, for example when the witness has severely limited mobility and is in hospital or residential care. Preference should always be given to the use of a fixed interview suite over the use of portable equipment. It should also be noted that if the use of portable recording equipment is decided upon, then the rationale for such deployment must be clearly recorded by the investigating officer.
- M.1.2 For the purposes of this guidance, visually recorded interviews may be carried out using either analogue (VHS tape) or digital (currently DVD disk; however, this may change with the development of digital technology) recording equipment. This is permissible by virtue of the meaning ascribed to 'video-recording' in section 63 of the 1999 Act. The use of two cameras is recommended: one pan, tilt, zoom (PTZ) camera to record the picture of the witness, and one wide-angle lens camera to capture the view of the whole room.
- M.1.3 Whatever equipment is chosen, it must only be operated by properly trained staff (equipment operators). The equipment operator has the overall responsibility for the quality of the captured image and for the smooth and effective running of the recording equipment. The recording equipment should be properly maintained and regularly tested. 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. Testing should be the responsibility of a local technician or other suitably trained person and should be governed by local procedures.
- M.1.4 Interviews should not normally be conducted in an operational police station, but in a specifically equipped interview room. However, where it is impractical to locate the interview room in a building other than a police station, consideration should be given to having a separate entrance for victims attending the interview suite. If this is not possible, then care should be taken to avoid operational areas such as custody suites and suspect interview rooms, and the interviewing officer should arrange to meet the witness so that the witness can be escorted straight to the interview suite without any undue delay or any need to explain themselves to station reception officers or other police staff. 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 for the interview, consideration should be given to simplicity to avoid a cluttered image on the screen. The furniture should be set out in advance in relation to camera angles and the light source and to obtain the best view possible.

- M.1.5 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 or distraction. Furniture filled with polystyrene chips (such as beanbags) should not be used, and care should be taken to avoid intrusive noise from other sources, such as rustling papers.

## **M.2 Equipment Operator**

- M.2.1 The equipment operator must always remain in control of the recording equipment during the interview process until the final recorded media (DVD or VHS) is ejected. It is their responsibility to ensure that the quality of the recorded media is acceptable. Guidance for this can be found in [Appendix N, paragraphs N.4.1 and N.4.2](#). The equipment operator's role may also include the completion of evidential statements as to the reliability and function of the equipment and the preparation of a Record of Video Interview (ROVI) using form MG15 (see [Appendix P](#)). The equipment operator's role should, therefore, be independent from that of the interviewer.

## **M.3 Vision**

- M.3.1 For the purposes of this guidance, video-recorded interviews may be carried out using one or two cameras. However, while 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 was present in the room throughout the interview. This requirement can most easily be satisfied by the use of two cameras: one PTZ camera that is focused on the witness, and one wide-angle lens camera giving a general view of the room. If only one camera is to be used, the requirement of the rules may need to be satisfied by evidence from those who were present at the interview. A single-camera system is unlikely to be suitable for very child witnesses who are more likely to move around the room.
- M.3.2 If a two-camera system is adopted, each camera should record to independent tapes, disks, or video streams: this option has the advantage of producing an unobscured recording of the witness. Alternatively, a vision-mixing unit can be used to allow the image from the camera that is recording the whole room to be

inset within a corner of the screen that is relaying the image from the camera focused on the witness (picture-in-picture (PIP)). When operating with a PIP system, mounting the cameras close together may avoid a disorientating effect when the 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.

- M.3.3 As far as it is technically feasible, the first camera (PTZ) should aim to show the witness's head, face and upper body clearly. If this camera is fixed, care should be taken to ensure that it is not set too high or so low that the view of the witness is obstructed. A good, clear picture of the witness's face may help the court to 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's face throughout the interview. The second camera (wide-angle lens) should provide as full a picture as possible of the whole room. The court may need to be reassured that any part of the interview room that 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.
- M.3.4 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 interview. However, some children might find it more difficult to remain in one place. This problem might be overcome by the first camera having PTZ facilities, but using these features requires considerable skill. Although the equipment operator has no editorial function regarding what the witness is saying or doing, 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 (PTZ), however, can be useful if the child is drawing a plan or picture or is 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.
- M.3.5 A different two-camera system to that described above has been found useful in clinical applications dealing with young and psychologically disturbed children. This system comprises two colour cameras mounted on the wall diagonally opposite each other, at eye level. The effective use of such a system is likely to require specialised, skilled resources; and, for criminal proceedings, particular care will be needed to ensure that any decisions about the editing or selection of the camera images are fully consistent with evidential objectives and do not distort or detract from the testimony in any way.

M.3.6 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, tungsten and fluorescent light should be avoided. This can cause unnatural effects when colour equipment is used.

## **M.4 Acoustics**

M.4.1 The evidential value of the video-recorded interview will depend very much on the court being able to discern clearly what was said, both by the interviewer and the witness. Provided that a room of the dimensions and furnishings recommended above 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.

M.4.2 The video-recorder should preferably be capable of two-track sound recording. 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 there should be a sound-level meter.

M.4.3 Microphones of the type normally used for recording interviews with suspects (i.e., boundary layer microphones) will also be suitable for the purpose of this guidance, provided that the system is correctly installed. Preferably, a minimum of two microphones should be used, with the aim of locating one close to the conversation (within two metres) to provide the main sound recording. The use of ceiling-mounted microphones is inappropriate and must be avoided. A small pre-amplifier should be used with each microphone to bring the signals up to normal audio line input levels.

M.4.4 Care is also needed in the placing of remote microphones if they are not to obtrude, distract or otherwise impede the witness's communication. Witnesses may find them inhibiting and some children may be drawn to them as playthings. A further problem is that some witnesses (e.g., children) might move around the room and away from the intended location for which the equipment has been installed. A recommended solution is to mount further microphones unobtrusively on the wall to provide better recording. The use of multiple microphones will also ensure that some sound is recorded if one microphone should fail.

## **M.5 Portable Equipment**

- M.5.1 In the event that exceptional circumstances dictate that the recording is made with a portable system, a good-quality recording may still be possible if sufficient care is taken. Digital portable units with hi-fi sound are available, and 8mm VHS recorders have digital sound recording that allows for high-quality sound reproduction.
- M.5.2 Some portable cameras will have built-in microphones and normally these will have to be used, although separate microphones should be used if they are available. The composition of the visual image that is recorded might not be ideal where the built-in microphone is used because the camera will probably need to be located near the witness to get a clear sound recording. In these circumstances, some compromise on picture content may be necessary to meet the paramount aim of obtaining a clear recording of the witness's speech. This problem can be eliminated with the use of separate microphones on long leads so that the camera(s) can be placed in an optimum recording position.
- M.5.3 Where the recording is made in locations other than the interview room there may be particular problems with poor lighting, extraneous sounds or electromagnetic interference which should be resolved, if possible.
- M.5.4 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 should therefore be allowed time to warm up before it is used. Another cause of difficulty can be lack of familiarity with the controls. Again, only a properly trained equipment operator should operate this equipment. Batteries should not be relied on, but care must be taken with trailing cables to ensure that they do not present a hazard.

## **M.6 Recorders**

- M.6.1 The format of the equipment should be such as to produce recordings of suitable quality which can be played in court. The equipment should also have the facility for either of the hi-fi audio tracks of the video recording to be selected and must have sufficient quality of sound for videos recorded on single-channel and two-sound-channel recording.
- M.6.2 Use of a generator to insert the 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 time and date should still be



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made at the beginning and at the close of the interview to confirm that the device is accurate

- M.6.3 The equipment should ideally be capable of making two simultaneous recordings during the interview: the master copy that should be sealed after the interview and the working copy (see [Appendix N, paragraphs N.4.1 and N.4.2](#)). The master copy should be played only once to check its quality before its submission for criminal proceedings. If two recordings are not made during the interview, 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.
- M.6.4 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.
- M.6.5 Only good-quality video tapes and digital disks from a reputable manufacturer which are consistent with the specifications issued by the supplier of the recording equipment should be used. No more than one interview should be recorded on a new, unused, sealed tape/disk. Ideally, the working copy should also be recorded on a blank tape/disk.

## Appendix N: Storage, Custody and Destruction of Video-Recordings

N.1.1 A video-recording made in accordance with this guidance can be a highly valuable piece of evidence in any investigation. 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 in a steel cabinet, and that access to it or to any official copies is restricted to those authorised to view the recording.

### **N.2 Ownership**

N.2.1 The video-recording will be treated as a document for the purposes of criminal proceedings, and the statements in it will not belong to anybody except that 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 police or social services (as the case may be) and the fact of ownership of the recording itself conveys certain rights and responsibilities which, if properly exercised, will help to ensure that it is appropriately safeguarded.

N.2.2 It is essential that all recordings (analogue tape or digital disk), whether master or working copies, containing interviews prepared under joint police/ social services or NSPCC investigative arrangements, and conducted under this guidance, should be kept under optimal conditions. Decisions regarding access to any recording should be taken by the principal agency or agencies involved in their preparation. Once the case has passed to the Crown Prosecution Service (CPS), decisions as to disclosure of information will be made by them. In taking such decisions, all agencies should have regard to the provisions in this appendix.

### **N.3 Tape/Disk Registration, Storage, Management and Disposal**

N.3.1 It is essential that local guidelines are developed by the police in conjunction with other relevant agencies covering the registration, storage and management, and disposal of recordings and any associated audio material. Such guidelines should cover all the issues reviewed in this appendix. Wherever practicable, one named person should be responsible for supervision of these functions. They must keep a

movement log in which the details of all interviews are registered, as well as a record of the history of the recordings. The initial entry in the logbook should record the serial number of the recording, the names of the witness and the interviewer(s) and all others present, as well as the date and time of the interview. Any subsequent copying, transporting, viewing or editing of recordings must be registered against the relevant entry in the movement log. The movement log should be regularly supervised by a manager who has been specifically given responsibility for it.

## **N.4 After the Interview**

- N.4.1 Once a recording is completed, in the case of VHS, the tape 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 tape should be checked for the quality of the recording and the master copy should be sealed in the presence of the witness. The seal should then be signed by all those present.
- N.4.2 In the case of a digital recording, the disk should be removed from the recorder, the label completed and the disk checked for audio and visual quality. It should then be placed in a box to minimise the risk of damaging the recorded surface of the disk and the master copy or copies should be sealed in the presence of the witness. The seal should then be signed by all those present.
- N.4.3 It is recommended that during the interview the equipment operator prepares a brief index of the recording so that the most relevant passages regarding the alleged offence can be readily located later. The index is not a précis of the tape, but it should serve a similar purpose, enhanced by the video-recording itself. The index should be carefully preserved and safeguarded along with other papers on the case. If a summary of the interview has also been prepared, a copy should be kept with the index. Paper documents should never be placed within the recording box itself because of potential damage to the recorded media.
- N.4.4 The master tape of the 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 copy readily identified. The seal should not be broken except with the authority of the court or the CPS, in the presence of a representative of the CPS and for the purposes of copying or editing. The ownership of the master tape and any copies must 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 S](#).

## **N.5 Storage**

- N.5.1 Video-recordings will inevitably suffer deterioration and loss over time; video-tape and DVD should not be considered a permanent archiving medium. New technologies, such as digital recording, may solve these problems. However, rates of deterioration can be greatly reduced by proper storage arrangements and periodic inspection.
- N.5.2 Tapes should be stored on edge 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 should not be left in video-recorders unnecessarily, particularly when switched off. Excessive use of the pause facility can damage or even rupture a tape. Digital disks must be kept in their box when not in use and should not be placed face-side down on any surface, as this could inadvertently cause damage to the recorded surface by scratching. Recordings (tape or disk) must never be left lying about on desks or in players, where unauthorised persons can gain access to them.
- N.5.3 Before long-term storage, tapes should be first wound and then rewound and checked for damage. All recordings must be kept in locked, secure containers. They should not be subjected to extremes of temperature or humidity and should be stored away from any devices that cause a strong electrical or magnetic field, such as electric motors or loudspeakers.

## **N.6 Copies and Access**

- N.6.1 Decisions about copying and access to recordings prepared under this guidance should be taken on an individual basis and with careful regard to the following principles:
- Copying of 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 guidance;
  - No persons accused or implicated in the alleged offences should have custody of, or unsupervised access to, any recording made in connection with the investigation.
- N.6.2 Production of copies should be minimised and carried out in a secure manner in accordance with locally 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.

- N.6.3 In most criminal cases, access to a recording will be needed by the joint investigating team, the CPS and the court. A further copy will be required, for disclosure to the defendant's legal representative, either because it is part or all the case against the accused, or because it is unused material that is disclosable under the Criminal Procedure and Investigations Act 1996. When the defendant is unrepresented, access should be under strict police supervision. Applications from other individuals or agencies to view or borrow a recording must be scrutinised carefully. Any access should be authorised only in respect of named individuals. If such individuals wish to borrow a recording, they must sign a written undertaking concerning protection and safeguarding of the recording and confirm that it will be returned to the police or local authority at the end of the proceedings. A form of undertaking is reproduced in [Appendix Q](#) of this guidance.
- N.6.4 Applications from other individuals or agencies to view or borrow a recording should be scrutinised carefully. Claims to be acting in the interests of the witness 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.
- N.6.5 Any persons borrowing recordings must have their attention drawn to:
- The precise ownership of the recording;
  - The likelihood that such recordings will form part of a criminal trial; and
  - The fact that misuse or unauthorised retention of such recordings may constitute contempt of court or other criminal offence.
- N.6.6 An entry must be made in the police movement log every time a recording is borrowed. The entry should include the names 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.

## **N.7 Disposal of Recordings**

- N.7.1 The Code of Practice made under the Criminal Procedure and Investigations Act 1996 lays down that the minimum period for the retention of interview records should be six months from the date of any conviction or from the date on which a convicted person was released from custody, whichever is the 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.

- N.7.2 However, for video-recorded interviews with witnesses, there are good reasons for extending the retention period well beyond the minimum laid down by the Code. In addition to their use in criminal investigations and applications to the Criminal Cases Review Commission, recordings of interviews with witnesses may be used in civil proceedings and for criminal injury compensation claims, 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 interview(s) 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.
- N.7.3 Duplicate material may be destroyed early. Once any proceedings are completed or after five years have elapsed since the interview took place, working copies of interviews can be disposed of. However, for the reasons outlined above, it is recommended that the master copy of any analogue, digital or audio recording should be retained for a period of six years where the witness was an adult at the time of the interview, or six years after the witness has attained the age of 18 years where they were a child at the time of the interview. A witness who was a child at the time of the interview may request the destruction of a recording prior to this date, when they reach the age of 18 years.
- N.7.4 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 tapes are destroyed, and a certificate must be supplied to this effect by the organisation responsible. Tapes or disks must never be reused: there is a risk of incomplete erasure of the original recording and deterioration in tape quality and reliability.

## **N.8 Recordings in Legal Proceedings**

### **Recordings and Transcripts**

- N.8.1 Video-recorded interviews are the primary medium by which vulnerable, intimidated witnesses will give their evidence-in-chief in court. However, it can assist the court to have a typewritten transcript 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 checking of the transcript against the recording. The preparation of transcripts of such interviews for use in criminal proceedings is the responsibility of the CPS and should not be prepared by officers as a matter course. Local guidelines should be established to

effectively monitor and control the preparation of any transcripts initiated by the police. The checking of transcripts of interviews is an essential step in the production of the evidence and is best conducted by the person who conducted the interview.

### **Collection and Delivery**

N.8.2 Care should be taken in the packaging, delivery and collection of recordings by court officials and legal representatives to ensure that the security of recordings is always safeguarded. Recordings should be sent in tamper-proof packaging and must be signed for when collected and received, to ensure an audit trail while in transit. Wherever possible, interviews containing sensitive information or relating to evidence from children should be delivered to the CPS by hand. However, other acceptable methods for delivery of recordings can include delivery by recognised security couriers that are governed by local policies and procedures.

### **Recordings at Court**

N.8.3 Detailed procedures for the management of video-recorded evidence in court are provided in a memorandum circulated to all Crown Courts in 1993 by the Lord Chancellor's Department. When a recording is delivered to court, a note should be made on the court file and the recording checked to ensure that it is adequately labelled. Recordings should be kept in a secure, locked cupboard. A logbook must be kept with any recordings, in which the movements of the recording can be detailed. The Child Liaison Officer or another nominated officer is responsible for ensuring that recordings are returned to the lockable cupboard during adjournments and overnight. After the trial, the recording must be returned in its box to the representative of the CPS, who will sign alongside the appropriate entry in the logbook.

## **N.9 After the Court Hearing**

N.9.1 At the conclusion of the case, the Officer-in-Case will be responsible for the collection from the CPS of all master tapes/disks and copies that have been produced as a result of the criminal proceedings. The movement log must then be updated to reflect the return of such recordings.

## **N.10 Use of Recordings for Training and Other Purposes**

N.10.1 Video-recorded interviews may be used for training or for other official purposes such as audit or research, provided that specific and informed consent has been secured, preferably from the witness. Alternatively, if the witness is not able to provide informed consent, the adult who discharges the principal duty of care for the witness must be consulted. The witness should be reassured that granting

consent does not mean that anyone who wishes to see the recording will be able to do so. Consent must not be sought before the interview, nor will it always be right to do so immediately afterwards. If consent is granted, this should be recorded in a logbook or by completing a form designated for this purpose and should only be done at the conclusion of any criminal or civil proceedings, or when no proceedings are to be instigated.

## **N.11 Lost or Mislaid Recordings**

- N11.1 Should any recording become lost or mislaid, an internal investigation must be instigated by the last recorded agency to have possession of the recording (this should be governed by local guidance and procedures). Further copies of the recording(s) must not be routinely made to replace any lost recording(s) until the whereabouts of the lost recording(s) have been established and steps taken to recover them.



# **Appendix P: Guidance on the Completion of a Record of Video Interview (ROVI)**

## **P.1 Introduction**

- P.1.1 The purpose of this guidance is to identify the functions served by the compilation of a Record of Video Interview (ROVI) with a vulnerable or significant witness and to assist those completing ROVIs to include all the relevant points and details.
- P.1.2 A ROVI is distinct from a ROTI, which is a Record of Taped Interview with a suspect. It is not:
- A statement;
  - A transcript;
  - A replacement for the video; or
  - An exhibit
- P.1.3 A ROVI should not be confused with any notes that might be taken by an interview monitor during an interview for the purpose of determining any immediate investigative action that might be necessary.
- P.1.4 The functions served by a ROVI are such that one should be compiled in every case where a vulnerable or significant witness is interviewed on video, irrespective of whether a transcript is subsequently created. A ROVI should also be compiled in instances where an interview with a significant witness is audio-recorded.

## **P.2 Functions of a ROVI**

- P.2.1 The overall function of a ROVI is to contribute towards the effective investigation and management of a case, by guiding investigating officers and prosecutors through their viewing of the interview.
- P.2.2 During the pre-charge investigation, a ROVI should assist informed decision-making as to:
- Whether the witness should be re-interviewed;
  - What further enquiries should be conducted;
  - Planning interviews with alleged offender(s); and
  - Pre-charge advice/charging decisions.

P.2.3 Following a decision to charge, a ROVI should assist:

- Prosecutors to make decisions about editing;
- Prosecutors to prepare for a pre-trial interview with the witness;
- Prosecutors at bail applications and guilty pleas;
- Transcribers at the CPS Video Transcription Unit (VTU); and
- Prosecuting and defence advocates in the preparation of their case.

## **P.3 Content of a ROVI**

### **P.3.1 General Content**

P3.1.1 ROVIs must always be an MG15 form, typed where possible, and should meet the following specifications:

- All fields at the top of the form should be completed or deleted as appropriate (e.g., the exhibit box should be deleted or marked 'not applicable');
- All time entries should be recorded in hours, minutes and seconds using the clock shown on the video;
- Speakers should be identified against the relevant time entry and text.

### **P.3.2 Descriptive Content**

P.3.2.1 Although each interview is unique, as a rule a ROVI should be as succinct as possible. Most of what is reported should be in indirect speech, but direct speech should be used where local, idiosyncratic or potentially ambiguous language is reported.

P.3.2.2 The finished ROVI should, as far as possible, give a chronological account of the conduct of the interview and include the following:

- Rapport (engage and explain), including ground rules and, where appropriate, truth and lies. Simply identifying that a rapport stage took place will usually be all that is required in a ROVI. However, there may be occasions when further information needs to be included, for example where the witness's appreciation of distance, colour, number and times are relevant;
- Identification issues, such as detailed descriptions or identifying features of suspects. This should include the identification points raised in the *R v Turnbull and Camelo (1976)* case;
- Details of the location of the event witnessed;
- Points to prove the offences;
- Details of the time, frequency, dates, locations and those present when the offence(s) occurred;
- The extent of any injuries;
- Any threats and admissions made;
- Key statements made by the witness, the suspect or other witnesses;

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- Anything that negates a potential defence (e.g., consent);
- Any aggravating factors (including racial, homophobic, gender, etc.);
- Any corroborative evidence identified (witnesses, CCTV, forensic, etc.); and
- Any issue that undermines the prosecution case or supports the defence case.

P.3.2.3 Where a Victim Personal Statement has been made on the same tape/disk, reference to that fact should be made on the ROVI, and a short summary included.

P.3.2.4 Background material of no apparent relevance should be summarised in general terms as far as possible.

## **P.4 Distribution of a ROVI**

P.4.1 Copies of the ROVI should be provided to all parties in the proceedings, including prosecution and defence counsel and the judge.

## Appendix Q: Specimen Form of Receipt and Undertaking for Video-Recorded Evidence

Form of undertaking recommended when receiving recorded evidence of witnesses in sexual offences and other sensitive cases prepared to be admitted in evidence at criminal trials in accordance with section 27 of the Youth Justice and Criminal Evidence Act 1999 or prepared in accordance with the guidance set out in respect of significant witnesses in “Achieving Best Evidence in Criminal Proceedings”.

.....  
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 witness 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) 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 R: Specimen Information Sheet: Video-Recorded Interview

Name of witness .....

Expected time, date and place of interview(s) .....

.....

I intend to make a video recording of my interview with .....

..... because I think it will spare him/her from having to go over the same ground with my colleagues. If there are any legal proceedings, it could be played in court to spare him/her some of the ordeal of criminal proceedings.

If there is any information about .....

that you think we should know to make the interview as comfortable as possible for him/her, please let me know. I would be particularly interested to hear about any special medical or dietary problems.

The video recording will be kept under lock and key and access will be very strictly controlled. It will not be given to the accused although he/she will be entitled to supervised access for legal purposes only. We will make sure we ask permission first if it is wanted for training or any other professional purpose.

Name of interviewer .....

Contact telephone number .....

## **Appendix S: Warning Label for Video-Recordings**

This video recording is the property of [PRINT NAME AND ADDRESS OF POLICE FORCE].

It has been prepared pursuant to the Youth Justice and Criminal Evidence Act 1999 and must NOT be copied or shown to unauthorised persons.

**UNAUTHORISED USE OR RETENTION MAY LED TO A FINE OR A PERIOD OF IMPRISONMENT OR BOTH.**



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