Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Using Special Measures

CRIMINAL JUSTICE SYSTEM

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Foreword

The Government is committed to improving the protection for vulnerable and intimidated witnesses during the criminal justice process, especially children. As the Home Office document *Rebalancing the Criminal Justice System in Favour of the Law-abiding Majority* made clear, 'the needs of victims must continue to be at the heart of what the criminal justice system does. They must be treated properly throughout the system – with help, support, advice, and a chance for their voice to be heard.' Vulnerable and intimidated witnesses are in particular need of assistance to ensure that their voice is heard in court.

The first edition of this document was issued in January 2002 as part of Action for Justice, the implementation programme for the *Speaking Up for Justice* report. That report had led to the Special Measures in the Youth Justice and Criminal Evidence Act 1999, such as video-recorded interviews, which are aimed at ensuring that vulnerable and intimidated witnesses give their best-quality evidence to the court. The purpose of the guidance was to assist those conducting video-recorded interviews with such witnesses, as well as giving guidance to those tasked with preparing and supporting these witnesses during the criminal justice process.

A second edition has now become necessary in order to update the guidance as a result of developments of the past five years. These include reform of the law of evidence on bad character and hearsay in the Criminal Justice Act 2003; the Code of Practice for Victims of Crime, which came into force in April 2006 and places statutory obligations on criminal justice service providers; and the national roll-out by 2005 of the police/Crown Prosecution Service Witness Care Units, which aim to ensure that witnesses are better informed, better prepared and better supported throughout court proceedings. Additionally, the Intermediaries Special Measure has been the subject of a pilot in eight pathfinder areas. Finally, a new edition of this guidance allows the experiences of the many practitioners (without whom the best procedures would not succeed) to be taken into consideration, thus ensuring that our understanding – and the quality of this guidance – continues to improve.

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The writing team would like to acknowledge the many individuals and organisations that contributed their time and expertise to the development of this guidance:

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Introduction

This guidance describes good practice in interviewing witnesses, including victims, in order to enable them to give their best evidence in criminal proceedings. It considers preparing and planning for interviews with witnesses, decisions about whether or not 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 taken following the interview. It covers the interviewing of witnesses both for the purposes of making a video-recorded statement and also for taking a written statement, their preparation for court and any subsequent court appearance. It applies to both prosecution and defence witnesses and is intended for all persons involved in relevant investigations, including the police, adults and children's social care workers, and members of the legal profession.

1. Status of the guidance

The first edition of this document (entitled *Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable and Intimidated Witnesses, Including Children* (Home Office, 2002)) replaced the *Memorandum of Good Practice on Video Recorded Interviews for Child Witnesses for Criminal Proceedings* (Home Office, 1992). This second edition builds on and extends the guidance set out in the first edition to include other groups of witnesses (see 'The scope of the guidance' below) and fresh government initiatives that will improve the quality of service provided by the criminal justice system to victims and witnesses (notably the No Witness No Justice programme). The guidance provided in this document is advisory and does not constitute a legally enforceable code of conduct. The guidance is also generic; it cannot ever cater for every possible set of circumstances that might arise. Each witness is unique and the manner in which they are interviewed and subsequently prepared for their court appearance must be tailored to their particular needs and circumstances. However, interviewers and other practitioners should bear in mind that significant departures from the guidance provided in this document may have to be justified in the courts.

This introduction provides information on:

- the origins of the guidance;
- the witnesses to whom this guidance applies;
- its role in training; and
- the structure of the document.

2. The origins of the guidance

The *Memorandum of Good Practice on Video Recorded Interviews for Child Witnesses for Criminal Proceedings* was published to support the implementation of provisions in the Criminal Justice Act 1991 which permitted certain child witnesses to give their evidence-in-chief in the form of a video-recorded statement. Since then, video-recorded interviews conducted according to the *Memorandum* have become the preferred method of hearing children's evidence in criminal proceedings, particularly in cases involving allegations of sexual abuse. Video-recorded interviews conducted according to *Memorandum* guidelines have also frequently been used as evidence in civil proceedings involving the care and custody of children.

In order to take forward the Government's commitment to improve protection for vulnerable or intimidated witnesses, the Home Office in 1998 published *Speaking Up for Justice*, the report of an interdepartmental working group on the treatment of vulnerable or intimidated witnesses (including children) in the criminal justice system. The report recommended extending the existing Special Measures introduced for child witnesses (live closed circuit television links (CCTV) and video-recorded evidence-in-chief) to vulnerable or intimidated adults, together with a range of other measures from the investigation stage, through to the trial and beyond. Provisions to implement those recommendations requiring legislation were included in Part II of the Youth Justice and Criminal Evidence Act 1999. These are subject to phased implementation and are not all available at the present time. An implementation table is attached to Ministry of Justice circular 25/06/07 *Complaints in sexual offence cases in the Crown Court: implementation of Section 27 of the Youth Justice and Criminal Evidence Act 1999* (for current availability please call 020 7035 8490).

A few months after the enactment of the Youth Justice and Criminal Evidence Act 1999, the Lord Chancellor, the Home Secretary and the Attorney General commissioned Sir Robin Auld to inquire into the practices, procedures and rules of evidence of the criminal courts in furtherance of the Government's overall aim of improving the criminal justice system. Sir Robin's report was the *Review of the Criminal Courts of England and Wales* (Lord Chancellor's Department, 2001). Recommendation 257 of the review suggested that consideration be given to extending the provision for video-recorded evidence to **critical** witnesses in cases of serious crime. This recommendation was subsequently reflected in the White Paper *Justice for All*

(Home Office, 2002). Provision was then made for direct witnesses to indictable or prescribed triable either-way offences to make use of video-recorded evidence-in-chief in Section 137 of the Criminal Justice Act (CJA) 2003. This legislation effectively extends the guidance published by the Association of Chief Police Officers (ACPO) in respect of video-recorded interviews with **significant** witnesses (most recent version published in November 2002).

The broader inter-agency recommendations made in *Justice for All* were subsequently reported on by an inter-agency working group in *No Witness No Justice* (Home Office, May 2003). Crucially, the working group recommended that the commitment in *Justice for All* to put victims and witnesses at the heart of the criminal justice system be taken forward as a specific programme of work. It is this commitment that forms the basis of the No Witness No Justice programme.

The guidance set out in this document is intended to support the Government's commitment to improve the quality of treatment for victims and witnesses in the criminal justice system so that they have an opportunity to provide their best evidence. It takes account of the *Code of Practice for Victims of Crime* (Office for Criminal Justice Reform, 2005), which was implemented in April 2006, and should be viewed in the context of other government policies in relation to improving the quality of service to victims and witnesses (see Appendix Q for a list of relevant publications).

3. The scope of the guidance

The guidance set out in this document covers:

- vulnerable witnesses;
- intimidated witnesses;
- Section 137 CJA 2003 witnesses;
- significant witnesses;
- reluctant witnesses;
- hostile witnesses; and
- defence witnesses.

It is accepted that individual witnesses could fall into more than one of the vulnerable, intimidated and Section 137 CJA 2003 categories. In these circumstances, there is no need to be concerned about the eventual designation of the witness at the point of interview provided that the guidance in Chapters 2 to 4 of this document is followed, because each chapter is based on the same general principles. The eventual designation of the witness into a particular category for the purposes of making an application to the court can wait until the case has been considered by lawyers after all the necessary enquiries are complete.

Vulnerable witnesses (Section 16, Youth Justice and Criminal Justice Act 1999)

'Vulnerable' witnesses are defined by Section 16 of the Youth Justice and Criminal Evidence Act 1999 as:

- all child witnesses (under 17); and
- any witness whose quality of evidence is likely to be diminished because they:
  - suffer from a mental disorder (as defined by the Mental Health Act 1983); or
  - have a significant impairment of intelligence and social functioning (e.g. a learning disability); or
  - have a physical disability or are suffering from a physical disorder.

References to 'very young children' in this document mean children of nursery school age (i.e. up to 5 years of age), the term 'young children' refers to children of primary school age (i.e. up to 11 years of age) and 'older children' denotes those of secondary school age (i.e. over 11 years of age). The unqualified terms 'child', 'children' or 'young witnesses' refer generally to children of all ages up to the upper age limit defined in the Youth Justice and Criminal Evidence Act 1999 (i.e. below 17 years of age). This guidance applies to the broad range of children in these age groups and as such will not necessarily apply to an individual child witness. Interviewers and court officials should always take account of the level of cognitive, social and emotional development of the individual child when applying this general guidance.

Not all people with disabilities will necessarily be vulnerable as witnesses and would not wish to be treated as such. It is, therefore, important that the views of individual witnesses who might fall into this category are taken into account.

Further guidance intended to aid the identification of vulnerable witnesses, including some potential physical, behavioural, and social indicators of vulnerability, can be found in *Vulnerable Witnesses: A Police Service Guide* (ACPO and Home Office, 2002).

Intimidated witnesses (Section 17, Youth Justice and Criminal Justice Act 1999)

'Intimidated' witnesses are defined by Section 17 of the Youth Justice and Criminal Evidence Act 1999 as those whose quality of testimony is likely to be diminished by reason of fear or distress at the prospect of giving evidence.

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; and
  - the domestic and employment circumstances of the witness; and
  - any religious beliefs or political opinions of the witness; and
- any behaviour towards the witness by:
  - the accused;
  - members of the accused person's family or associates; and
  - any other person who is likely to be either an accused person or a witness in the proceedings.

Complainants in cases of sexual assault are defined as falling into this category per se by Section 17(4) of the Act. *Vulnerable Witnesses: A Police Service Guide* (ACPO and Home Office, 2002) suggests that victims of domestic violence, racially motivated crime and repeat victimisation and witnesses who self-neglect/self-harm or who are elderly and frail also fall into this category.

A number of prompts intended to aid the identification of intimidated witnesses can be found in *Vulnerable Witnesses: A Police Service Guide* (ACPO and Home Office, 2002).

Section 137 CJA 2003 witnesses

Section 137 CJA witnesses are those who have or claim to have witnessed, visually or otherwise, an indictable or prescribed triable either-way offence, part of such an offence, or events closely connected with it (including any incriminating comments made by the suspected perpetrator either before or after the offence). Video-recordings of interviews with these witnesses can be admitted as evidence-in-chief if the witness's recollection of the events is likely to be significantly better at the time of the interview than at the time of giving evidence. Courts will take account of the length of the interval between the alleged event and the interview when considering this question.

Indictable offences are offences that are so serious that they can only be tried in a Crown Court. They include offences like murder, manslaughter, grievous bodily harm with intent, rape, kidnap, and death by dangerous driving. Prescribed triable either-way offences are offences that can be tried either in a Crown or a magistrates' court that have been specifically designated by the Home Secretary as coming within the scope of Section 137 CJA (no such offences were designated at the time that this document was revised).

Significant witnesses

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) but who are unlikely to have video-recordings of their interviews admitted as evidence-in-chief under Section 137 CJA 2003 as a result of there having been a lengthy interval between the alleged event and the interview; or
- stand in a particular relationship to the victim or have a central position in an investigation into an indictable offence.

In these circumstances, the purpose of the recording is primarily one of demonstrating the integrity of the interview process. **There is no statutory provision for video-recordings of interviews with significant witnesses to be played as evidence-in-chief.** The options for adducing the testimony on the recording as evidence are set out in paragraph 4.8 of this document.

Where significant witnesses are also vulnerable and/or intimidated, they should be treated as being vulnerable and/or intimidated rather than significant if their evidence is likely to be maximised by Special Measures.

Reluctant witnesses

Reluctant witnesses are individuals believed to have witnessed an offence, part of such an offence, or events closely connected with it who are reluctant to become involved in the investigative process. From time to time, investigators and others involved in the criminal justice system will encounter reluctant vulnerable, intimidated, Section 137 CJA, or significant witnesses. There could be a variety of reasons for this, including 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 within which they live, worries about their identity being released or uncertainty about how they fit into the overall process. The initial actions taken in respect of such witnesses should, therefore, include trying to establish the source(s) of their reluctance, since it is only by doing this that an attempt to address the issue can be made.

Hostile witnesses

Hostile witnesses are individuals believed to have witnessed an offence, part of such an offence, or events closely connected with it who are openly hostile about the prospect of getting involved in the investigative process. During some investigations, investigators will encounter hostile vulnerable, intimidated, Section 137 CJA, or significant witnesses. The reasons for such hostility might include their lifestyle or they might have a close relationship with 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, others might choose to provide false information intended to support the alleged perpetrator's account. Whatever the reason for the hostility and regardless of the extent of the co-operation, it is important that records are kept of all interactions with these witnesses. 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.

Defence witnesses

This guidance applies to defence as well as prosecution witnesses and the provisions contained in Part II of the Youth Justice and Criminal Evidence Act 1999 and Section 137 CJA 2003 are available to both groups if the court is satisfied that the witness meets the criteria.

4. The guidance and training

As was the case with the 1992 *Memorandum*, it is recommended that this guidance be used, in conjunction with other relevant guidance, as a key resource in the training of police and adult and children's social care social workers involved in the investigative interviewing of witnesses. The National Assembly for Wales published training resource material on behalf of the Government in April 2004 to assist in such training. It should also be used as a resource by those concerned with providing pre-trial support and preparation and those involved in the trial process. Training should also take account of the curriculum that has been developed in support of ACPO's *Investigative Interviewing Strategy* (ACPO, 2004).

Specialist training should be developed to interview witnesses with particular needs. This should include interviewing young witnesses, traumatised witnesses and witnesses with a mental disorder, learning disability or physical disability impacting on communication. Such training should include working with intermediaries.

Specialist interview training should also be developed in respect of the use of the techniques in the cognitive interview (see paragraph 4.104).

It is important to note, however, that training alone is unlikely to deliver effective performance in the workplace. Training needs to be set in the context of a developmental assessment regime. Such a regime should deliver a means of quality assuring interviews, while developing, maintaining and enhancing the skills of interviewers. The regime should be supported by an agreed assessment protocol. In the case of police interviewers, such a protocol should take account of the National Occupational Standards for interviews with witnesses developed in *Skills for Justice*. 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.

5. The content of the guidance

The guidance in this document is grouped into five major chapters:

Chapter 1 provides a **general introduction** to the 1999 legislation as it relates to interviewing, safeguarding and supporting witnesses. Sufficient background material is provided to give a general orientation to all those who must be familiar with the intentions and provisions of Part II of the Youth Justice and Criminal Evidence Act 1999 and Section 137 CJA 2003 but are not necessarily concerned with their practical implementation.

Chapter 2 gives advice and guidance on how to prepare for (Part A) and how to conduct (Part B) investigative interviews with **children**. It covers the legal knowledge necessary to carry out such interviews in a manner satisfactory to the courts, the requirements for the video-recording of such interviews, and advice on their conduct, including the style, variety and pace of questioning.

Chapter 3 contains advice and guidance on how to prepare for (Part A) and how to conduct (Part B) investigative interviews with **vulnerable adult witnesses**. Again, the legal position as regard these witnesses is outlined and advice given on how witnesses may be most effectively interviewed to obtain best evidence. Specific guidance is provided on interviewing witnesses with sensory impairments, learning disabilities and mental ill health.

Chapter 4 provides advice and guidance on how to prepare for (Part A) and how to conduct (Part B) investigative interviews with **adult intimidated, Section 137 CJA and significant witnesses** (including those who are reluctant or hostile). Specific guidance is provided on the use of the enhanced cognitive interview.

Chapter 5 describes how **witnesses may be supported**, safeguarded and prepared in the interval between a statement being made and a case coming to trial. Topics covered include the nature and type of support that may be offered, access to therapy and the Witness Service, and appropriate procedures to be followed once the outcome of a case is known.

Chapter 6 describes in detail the range of **Special Measures** available to vulnerable and/or intimidated witnesses, including children, at the discretion of the court. It also provides some guidance in respect of applications made under Section 137 CJA 2003. It describes good practice in the examination and cross-examination of witnesses, so as to enable them to give their best evidence.

1 General principles

Aims

By the end of this chapter, those involved with interviewing witnesses and preparing them for court should be able to understand:

- the categories of vulnerable and intimidated witness covered by the Youth Justice and Criminal Evidence Act 1999 legislation (paragraphs 1.1 to 1.8);
- the Special Measures and social support available to assist vulnerable and intimidated witnesses (paragraphs 1.9 to 1.19);
- which witnesses might be eligible for video-recorded evidence-in-chief under Section 137 of the Criminal Justice Act (CJA) 2003 (paragraphs 1.20 to 1.23); and
- which witnesses should have their interviews video-recorded by virtue of them being considered 'significant' (paragraphs 1.24 to 1.26).

Vulnerable witnesses

1.1 The principal areas that require attention if the needs of vulnerable witnesses, whether adults or children, are to be met are:

- the recognition and subsequent reporting of crime;
- the identification of vulnerabilities; and
- putting effective measures to address these in place during investigation and pre-trial preparation, and during and after any criminal trial.

1.2 Vulnerable witnesses are defined by Section 16 of the Youth Justice and Criminal Evidence Act 1999. Children are defined as vulnerable by reason of their age. The Act acknowledges that all children under 17 years of age, appearing as defence or prosecution witnesses in criminal proceedings, are eligible for Special Measures to assist them in providing their evidence and having their evidence heard at court. Since their introduction in the Criminal Justice Acts of 1988 and 1991, the video-recording of interviews as a substitute for the child's live evidence-in-chief at court and the use of the live link facility to enable the child to give evidence from outside the courtroom have been extensively and successfully employed to enable the court to hear best evidence.

1.3 In addition to the witness who is under the age of 17 at the time of the hearing [Section 16(1)(a)(i)] (see Chapter 2), three other types of vulnerable witness are identified in the Youth Justice and Criminal Evidence Act 1999. These are:

- witnesses who have a mental disorder as detailed under the Mental Health Act 1983 [Section 16(2)(a)(i)] (mental disorder is defined in Section 1(2) of the Mental Health Act 1983);
- witnesses significantly impaired in relation to intelligence and social functioning [Section 16(2)(a)(ii)] (learning disabled witnesses); and
- physically disabled witnesses [Section 16(2)(b)].

1.4 Early identification of the individual abilities as well as disabilities of each vulnerable adult is important in order 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. However, such characteristics are not universal and can be ameliorated through appropriate preparation and the use of Special Measures.

Intimidated witnesses

1.5 As with vulnerable witnesses, the principal areas that require attention to meet the needs of intimidated witnesses are:

- the recognition and subsequent reporting of crime;
- the identification of the basis of the intimidation; and
- putting effective measures to address these in place during investigation and pre-trial preparation, and during and after any criminal trial.

1.6 Intimidated witnesses are defined by the Youth Justice and Criminal Evidence Act 1999 as those suffering from fear or distress **in relation to testifying** in the case [Section 17(1)].

1.7 Complainants in cases of sexual assault are defined as falling into this category by Section 17(4) of the Act. *Vulnerable Witnesses: A Police Service Guide* (ACPO and Home Office, 2002) suggests that victims of domestic violence, racially motivated crime and repeat victimisation and witnesses who self-neglect/self-harm or who are elderly and frail also fall into this category. The *Code of Practice for Victims of Crime*

(Office for Criminal Justice Reform, 2005) indicates that the families of homicide victims fall into this category.

1.8 Research suggests that sexual offences and assaults and those offences where the victim knew the offender are particularly likely to lead to the intimidation of witnesses. It seems likely that crimes which involve repeated victimisation, such as stalking and racial harassment, are also particularly likely to lead to intimidation. In addition, some witnesses to other crimes may be suffering from fear and distress and may require safeguarding and support in order 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 again 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

1.9 It has long been recognised that many people who are the victims of or witnesses to crimes experience the ensuing process of investigation and justice as stressful and fear-inducing, to such an extent that the interests of justice in preventing and detecting crime and the needs of witnesses are not adequately met. Certain classes of witness have particular difficulties, either because of age or personal circumstances, or because of their fear of intimidation, or because of their particular needs.

1.10 Stress affects the quantity and quality of communications with witnesses of all ages. The Youth Justice and Criminal Evidence Act 1999 introduced a range of measures that can be used to facilitate the gathering and giving of evidence by vulnerable and intimidated witnesses. It extended the provisions for using video-recorded evidence-in-chief and the use of the live link facility to adult vulnerable or intimidated witnesses and introduced a range of new provisions to facilitate the giving of best evidence. Video-recorded evidence-in-chief, live link and the other provisions contained in the Youth Justice and Criminal Evidence Act 1999 are collectively referred to as 'Special Measures'. These are all subject to the discretion of the court, although different presumptions apply to different categories of witness.

Box 1.1: Special Measures available to vulnerable and intimidated witnesses with the agreement of the court

- Section 23: **Screens** may be made available to shield the witness from the defendant.
- Section 24: The **live link** will enable the witness to give evidence during the trial from outside the court through a televised link to the courtroom. The witness may be accommodated either within the court building or in a suitable location outside the court.
- Section 25: **Evidence given in private**. Exclusion from the court of members of the public and the press (except for one named person to represent the press) will be considered in cases involving sexual offences or intimidation.
- Section 26: **Removal of wigs and gowns** by judges and barristers.
- Section 27: A **video-recorded interview** with the vulnerable witness before the trial may be admitted by the court as the witness's evidence-in-chief. The court can, however, exclude a recording if there is insufficient information about where it was made, or if the recording contains serious violations of the rules of evidence.
- Section 28: **Video-recorded cross-examination** is also to be considered admissible if the witness has already been permitted to give their evidence-in-chief on video prior to the court case. As with evidence-in-chief, the recording can be excluded if any rules have not been complied with.
- Section 29: **Examination of the witness through an intermediary**, who may be appointed by the court to assist the witness to give their evidence at court. This measure is only available to vulnerable witnesses.
- Section 30: **Aids to communication** will be permitted to enable the witness to give best evidence whether through a communicator or interpreter, or through a communication aid or technique, provided that the communication can be independently verified and understood by the court. Again, this measure is only available to vulnerable witnesses.

These Special Measures are briefly outlined in Box 1.1 above and are described in detail in Chapter 6.

1.11 It is important to note that the implementation of these Special Measures is a phased one. Some of these measures were still awaiting implementation at the time this edition of *Achieving Best Evidence* was written. The status of this **phased implementation**

at any given time can be established by checking the most current Home Office circular relating to this matter, at: www.knowledgenetwork.gov.uk/HO/circular.nsf/ViewTemplate%20For%20HOCircularsWeb?OpenForm

1.12 In addition to Special Measures, the Youth Justice and Criminal Evidence Act 1999 also contains the following provisions intended to enable vulnerable or intimidated witnesses to give their best evidence:

- Sections 34 and 35: **Mandatory protection of witness from cross-examination by the accused in person**. An exception has been created which prohibits the unrepresented defendant from cross-examining vulnerable child and adult victims in certain classes of cases involving sexual offences.
- Section 36: **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 crossexamining the victim in person.
- Section 41: **Restrictions on evidence and questions about complainant's sexual behaviour**. The 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.
- Sections 44 to 46: **Reporting restrictions.** The Act provides for restrictions on the reporting by the media of information likely to lead to the identification of children under 18 and certain adult witnesses in criminal proceedings.

1.13 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:

- interview support – 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;
- pre-trial support – provided to the witness in the period between the interview and the start of any trial. Appendix F sets out National Standards for Young Witness Preparation; and
- court witness support – 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. Appendix G sets out National Standards for the Court Witness Supporter in the Live Link Room.

1.14 Support measures are applicable to both defence and prosecution witnesses.

1.15 In reaching a decision on whether the Special Measures should be ordered, the courts must take account of all of the circumstances of the case, including the wishes of the witness and whether or not the Special Measure in question is likely to inhibit the evidence being effectively tested by any party to the proceedings (Section 19(3), Youth Justice and Criminal Evidence Act 1999). It is, therefore, imperative that investigators establish at an early stage whether the witness is likely to qualify for a Special Measures direction and, if so, what particular measures, if any, will assist the witness to maximise the quality of their evidence. This will need to be discussed with the witness to ascertain their views. It is essential that the police, social care agencies, the prosecution and defence, and also court officials, take account of the individual circumstances of each witness, together with their expressed needs and wishes, in order to provide support sufficient to enable all witnesses to give their best evidence.

1.16 While it is important to establish at an early stage whether the witness is likely to qualify for Special Measures, it should be noted that the need for such measures may change from the time of the investigation to the time of the trial. The effect of this is that witnesses might be eligible for more or less support as time goes on, depending on changes in their circumstances. For example, in some circumstances, effective witness preparation might reduce the witness's anxiety, thus reducing the need for some or all of the Special Measures previously thought necessary. In other circumstances, the witness's anxiety might increase as the time of the trial approaches, particularly where intimidation or harassment occurs or is anticipated, thus increasing the need for Special Measures. It is, therefore, important that all those involved in maintaining contact with the witness and preparing them to give evidence continue to liaise with the prosecution or the defence, as appropriate, to ensure that any changes of circumstance are carefully considered and taken into account as necessary.

1.17 Special Measures are available to defence as well as prosecution witnesses, provided that the court is satisfied that the witness meets the qualifying criteria. While some of the notes and recommendations are drafted with the particular needs and concerns of the prosecution in mind, the guidelines in general apply to all those involved in investigating, interviewing, safeguarding and examining vulnerable and intimidated witnesses.

1.18 The Special Measures for use at court are subject to application to the judge or magistrate by the prosecution or defence before the trial. Special Measures are not automatically available and are subject to the discretion of the court.

1.19 The use of Special Measures in relation to child witnesses is described in Chapter 2, to vulnerable adult witnesses in Chapter 3, and to intimidated adult witnesses in Chapter 4. The role of witness

supporters is described in detail in the different phases of the investigation covered in Chapters 2 to 6. Advice on the legal rules and good practice concerning the use of Special Measures at trial are dealt with in detail in Chapters 5 and 6. This is followed by a glossary explaining specialist terms in Appendix A. Further appendices provide detailed guidance or information referred to in the chapters, together with a list of useful sources and further reading.

Section 137 CJA 2003 witnesses

1.20 Section 137 CJA 2003 provides for the admission of video-recorded interviews as evidence-in-chief in circumstances where:

- the alleged offence is triable only on indictment or is a prescribed triable either-way offence;
- the person interviewed on video claims to have witnessed (whether visually or in any other way):
  - events alleged by the prosecution to include conduct constituting the offence or part of the offence; or
  - events closely connected with such events;
- the account given when the person was interviewed on video was given at a time when the alleged events were fresh in their memory; and
- the court makes a direction that the recording or part of it should be admitted as the evidence-in-chief of the witness. The court can only make such a direction if:
  - the witness's recollection of the events in question is likely to have been significantly better when they gave the recorded account than it will be when they give oral evidence in the proceedings; and
  - it is in the interests of justice for the recording to be admitted, having regard in particular to:
    - the interval between the time of the events in question and the time when the recorded account was made;
    - any other factors that might affect the reliability of what the witness said in that account;
    - the quality of the recording; and
    - any views of the witness as to whether their evidence-in-chief should be given orally or by means of the recording.

1.21 In considering whether any part of a recording should not be admitted under Section 137 CJA 2003, the court must consider whether admitting that part would carry a risk of prejudice to the defendant and, if so, whether the interests of justice nevertheless require it to be admitted in view of the desirability of showing all or most of the interview (Section 138, CJA).

1.22 Other than video-recorded interviews as their evidence-in-chief, witnesses who come within the scope of Section 137 CJA 2003 who are not also vulnerable or intimidated (as defined in this chapter) will not qualify for Special Measures under Part II of the Youth Justice and Criminal Evidence Act 1999 (screens, live link, etc.).

1.23 The provisions of Section 137 CJA 2003 were still awaiting implementation at the time this edition of *Achieving Best Evidence* was written. The status of the implementation of this Section at the time of reading can be established by checking Home Office circulars, at: www.knowledgenetwork.gov.uk/HO/circular.nsf/ViewTemplate%20For%20HOCircularsWeb?OpenForm

Significant witnesses

1.24 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) but who are unlikely to have video-recordings of their interviews admitted as evidence-in-chief under Section 137 CJA 2003 as a result of there having been a lengthy interval between the alleged event and the interview; and/or
- have a particular relationship to the victim or have a central position in an investigation into an indictable offence.

1.25 Interviews with significant witnesses should usually be video-recorded because it is likely to:

- increase the amount and quality of information gained from the witness;
- increase the amount of information reported by the witness being recorded;
- safeguard the integrity of the interviewer and the interview process; and
- increase the opportunities for monitoring and for the development of interview skills.

1.26 There is no statutory provision for video-recordings of interviews with significant witnesses to be played as evidence-in-chief. The options for adducing the testimony on the recording as evidence are set out in paragraph 4.8 of this document.

2 Planning and conducting interviews with children

Part 2A: Planning and preparing for interviews

Aims

By the end of Part 2A, the interviewer should be able to consider, with respect to each case:

- the context of the allegation, including competence and compellability (paragraphs 2.1 to 2.28);
- initial action, including consent, medical examinations and assessment (paragraphs 2.29 to 2.36);
- the information needed to plan an interview (paragraphs 2.37 to 2.65);
- preparing children for an interview (paragraphs 2.66 to 2.73); and
- making use of the information needed to plan an interview (paragraphs 2.74 to 2.122), including when to consider whether an assessment by an intermediary is appropriate (paragraphs 2.96 to 2.101).

What follows in this part is a recommended procedure for planning and preparing for interviews with child witnesses. Thorough planning is essential to a successful investigation and interview. Even if concerns about the child's safety necessitate an early interview, an appropriate planning session is required to identify key issues and objectives. Time spent anticipating and covering issues early in the criminal investigation will be rewarded with an improved interview later on. 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 in most cases be lost once the interview(s) have been concluded.

Part 2B covers the interview process itself. While what follows in this part and Part 2B should not be regarded as a checklist to be rigidly worked through, the sound legal framework that it provides should not be departed from by interviewers unless they have discussed and agreed the reasons for doing so with their senior manager or an interview adviser (tier 5 of the Association of Chief Police Officers' (ACPO's) *Investigative Interviewing Strategy* (ACPO, 2004)). Any such agreements and the rationale underpinning them should be recorded. It may subsequently be necessary to explain such departures at court.

The context of the allegation: the intersection of the child protection and criminal justice systems

2.1 Any video-recorded interview serves two primary purposes. These are:

- evidence gathering for use in criminal proceedings; and
- the evidence-in-chief of the child witness.

In addition, 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.

2.2 Some information may be common to both purposes, but there will be issues specific to each to be considered at the planning stage. The video 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 (see paragraphs 2.30 to 2.33 on associated issues of consent).

The criminal investigation and the evidence-in-chief of child witnesses

2.3 As an opportunity to gather evidence in a criminal investigation, interviewers should ensure that they are aware of the types of information necessary to prove any particular charge that may arise. Referral information may give clues to likely charges, but should not be used to drive the interview solely towards confirming earlier suspicions or allegations. **The interviewer should keep an open mind as to what may or may not have happened to the child**, and should not seek only to elicit details that will prove a hypothesis about the child's experience(s) constructed on the basis of the initial information. In abuse investigations, the possibility of gathering additional evidence from a medical examination of the child or from the scene of the alleged abuse should also be considered.

2.4 At this stage it will be helpful (if possible) to determine whether the child is believed to have been a victim of abuse or other crime, or instead a witness to a crime perpetrated upon someone else (this may not always be clear at the outset). The specific information, quality and degree of planning for the interview itself may differ depending on whether the child is a victim or a witness of a crime, or both. The subsequent support and therapeutic help offered to the child (and their family) may also be different depending on whether the child is a victim or witness or both. In addition, some children may need therapeutic help from the local children's services authority, health services or another agency to help them recover from the trauma associated with being a victim of a crime, even where there are no other concerns about their safety or welfare.

2.5 Children in appropriate cases who have witnessed an event and are not alleged victims should also be interviewed in the style advocated by this guidance, and by trained interviewers. This may be particularly important to remember at weekends or other times when normal interviewing personnel or facilities are less available.

2.6 The Special Measures introduced in the Youth Justice and Criminal Evidence Act 1999, together with the rephrasing of the competency requirement contained in the Act (see paragraphs 2.19 to 2.26), emphasise that no child should be precluded from an interview at an initial stage. Consideration of child witnesses should proceed on a case-by-case basis and there should be no automatic exclusion by reason of age or disability.

2.7 The Special Measures, including video-recorded evidence-in-chief, that child witnesses might be given access to at the trial should be outlined and the views of the child and of their carers (unless inappropriate) ascertained in respect of them. When obtaining the views of the child and their carer, it should be explained how the evidence-in-chief will be used and to whom it will be made available, and how the live TV link at court can be seen by the defendant and the public gallery in the courtroom. Their views about the possibility of having a supporter present while they are being interviewed and/or giving evidence should also be solicited (see paragraphs 2.102 to 2.105). While soliciting these views it is essential that the witness/carer 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**. Further details of Special Measures are set out in Chapter 6.

2.8 Although the Crown Prosecution Service (CPS) is not part of the investigating team, and does not direct the investigation, an early meeting between the police and the CPS to discuss Special Measures may be appropriate (separate guidance on CPS–police liaison can be found in *Early Special Measures Meetings between the Police and the Crown Prosecution Service and Meetings between the Crown Prosecution Service and Vulnerable or Intimidated Witnesses: Practice Guidance* (CPS, ACPO and the Home Office, 2001)). The police may also seek advice from the CPS at an early stage about any other evidential issues that may affect the way in which the investigation is conducted. In some exceptional cases the CPS may select suitably qualified counsel for advice at a very early stage.

2.9 The investigating team should consider whether the criminal investigation, and needs of the child, might be better served by obtaining a written statement rather than a video-recorded interview. This may be relevant if the child is older, or there is the possibility that the alleged abuse involved the use of video-recording (e.g. for the production of pornography). Research has shown that giving children the choice of whether or not to avail themselves of technological innovations in giving evidence can be as important as the technology itself. Even if the interview is video-recorded, some children may find it helpful to be able to write things down at certain points in the interview, e.g. if they are too embarrassed to speak about particular details. What is written down can then be read out by the interviewer or exhibited and shown to the jury in any subsequent trial.

Section 47 enquiries

2.10 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 children's services authority. 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 children's services authority, 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).

2.11 Whenever suspicion has arisen that a child has suffered, or is likely to suffer, significant harm, there will be a strategy discussion or meeting involving the local children's services authority, the police and other professionals as appropriate, e.g. paediatrician, child and adolescent mental health services (*Working Together to Safeguard Children* (The Stationery Office, 2006), paragraphs 5.54 to 5.59 and *Safeguarding Children: Working Together for Positive Outcomes* (National Assembly for Wales, 2004), paragraphs 5.29 to 5.39). If enquiries under Section 47 of the Children Act 1989 are pursued following the strategy discussion/meeting, then the core assessment undertaken using the *Framework for the Assessment of Children in Need and their Families* (The Stationery

Office, 2000) will provide considerable information about the child and their carer(s). (The assessment framework is summarised in Appendix C.) 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.

2.12 Where it has been agreed by the police and children's social care, in a strategy discussion/meeting, 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 Climbie 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 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 has an effective role in monitoring the interview (see paragraphs 2.87 and 2.88). Similarly, where a police officer leads the interview, the local authority should retain 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.

2.13 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 has to relate an account of what has happened to them or reducing the frequency of agency visits to the child's home. Investigators should consult Local Safeguarding Children Board safeguarding children procedures 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.

2.14 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 children's services authority, but known to their GP, health visitor or school.
- Some children may not be known to the local children's services authority, 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 children's services authority as open cases or as previously open cases, as well as to health and education services.

2.15 Whatever the child's circumstances, the police officer, 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.

2.16 Children who have previously been unknown to the local children's services authority and the police are likely to have 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 investigating 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.

2.17 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 particular 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 number of possible reasons (e.g. children in need services, services for disabled adults, or adults with mental health problems). 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 initial assessment of the child's needs and their family members will have already been undertaken by the local children's services authority.

2.18 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 *Early Special Measures Meetings between the Police and the Crown Prosecution Service and Meetings between the Crown Prosecution Service and Vulnerable or Intimidated Witnesses: Practice Guidance* (CPS, ACPO and the Home Office, 2001)).

Competence, compellability and availability for cross-examination: the legal position

2.19 Since the video-recorded interview might serve as the child's evidence-in-chief at court, the investigating team must also consider the child's competence, compellability, and availability for cross-examination.

2.20 Section 53 of the Youth Justice and Criminal Evidence Act 1999 provides that in principle 'all persons are (whatever their age) competent to give evidence'. The Section qualifies this principle by saying that persons are 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 Act (for example 'communications aids', available under Section 30, see paragraph 6.25).

2.21 Thus, where children are to give evidence, it is no longer necessary, as it was at one time, to persuade the court that he or she 'is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth'.

2.22 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 Youth Justice and Criminal Evidence Act 1999 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.

2.23 However, just because the witness who was interviewed on video was competent it does not necessarily follow that the court will admit the recording in evidence. By Section 27(2) of the Youth Justice and Criminal Evidence Act 1999 the court may refuse to admit such a statement if, in all the circumstances, it believes it would not be 'in the interests of justice' to do so; and under Section 78 of the Police and Criminal Evidence Act 1984 the court has a more general discretion to exclude any piece of evidence that the prosecution wish to call, where it believes the use of such evidence would make the trial 'unfair'. One circumstance in which a court might decide to exclude such evidence is where the statement is clearly prejudicial to the defendant, but the court feels that it is of very little weight.

2.24 In the light of this, it will usually be wise to explore with a witness who is very young, or who has a learning difficulty, what their understanding is of the difference between truth and lies (see paragraph 2.143). Where, as normal, the recording is admitted in evidence, this would often be of help to the court in assessing the weight to put on the evidence. In exceptional cases where an attempt is made to persuade the court to exclude the evidence, it might help to rebut the argument that the court ought to exclude the evidence because it is seriously unreliable.

2.25 A witness is usually not only competent to give evidence, but also **compellable**. This means that they can be legally required to attend trial (or, where a 'Special Measures direction' has been given to this effect, to be available for a video-recorded pre-trial cross-examination). 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 – even the sort of statement that is made under this guidance.

2.26 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 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 such cases the child witness and their carer must be informed of the implications of this decision). 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 their parents or 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.

2.27 A video-recorded interview is usually only admissible as evidence-in-chief at trial where the person who made it is 'available for cross-examination'. By Section 27(4) of the Youth Justice and Criminal Evidence Act 1999, however, 'available for cross-examination' includes being available for a cross-examination held in private and in advance of trial, subject to the discretion of the court (when implemented, Section 28 of the Youth Justice and Criminal Evidence Act 1999 will make this facility available for all eligible witnesses where an application is granted by the court), while Section 21 makes it the normal procedure for witnesses under 17 years of age when the offence is a sexual one. In this connection, it should also be remembered that where the defendant is unrepresented, Sections 34 to 40 of the Youth Justice and Criminal Evidence Act 1999 now impose serious restrictions on the defendant to cross-examine in person (see Chapter 6 for further information on Special Measures).

2.28 Although a video-recorded interview cannot normally be played at trial if the witness is not 'available for cross-examination' there are some exceptions to this set out in Section 116 of the Criminal Justice Act 2003 that 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. These include the fact that the witness is dead, or 'by reason of his bodily or mental condition unfit to attend as a witness', or does not give evidence at trial 'through fear or because he or she is kept out of the way'. It must be remembered, however, that the judge has the final word on whether or not the statement will be admitted (see also Appendix B of this document).

Initial contact with child witnesses

2.29 The need to consider a video-recorded interview will not always be immediately apparent either to the first police officer who has contact with the child or 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, ensuring the safety of the child (particularly in instances where there is the possibility of 'significant harm' under the Children Act 1989), and making initial decisions about the criminal investigation plan might be such that some initial questioning is necessary. 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 investigative interview takes place as described in Part 2B. Such a brief account should include where and when the event is alleged to have taken place and who was involved or otherwise present. 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.

In these circumstances, any early discussions with the child should, as far as possible, adhere to the following basic principles:

A. ***Listen*** *to the child.*

B. *Do NOT stop a child 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 (see paragraphs 2.160 to 2.174).*

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 child and anybody else present (particularly the actual questions asked of the child).*

F. *Make a note of the demeanour of the child 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.*

Consent

2.30 At all times, interviewers should take steps to explain the purpose of any proposed video-recorded interview to the child, at a level appropriate to the child's age and understanding. Such an explanation should include the following topics:

- 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 or neglecting a child in their care).

2.31 The child 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). 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 (see Chapter 6). The existence of a video-recorded interview does not by itself guarantee that it will be used.

2.32 Written consent to be video-recorded is not necessary from the child, but it is unlikely to be practicable or desirable to video-record an interview with a reluctant or hostile child. 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.

2.33 The investigating team may need to interview a suspected child victim without the knowledge of the parent or carer in certain situations. Relevant circumstances would include the possibility that a child would be threatened or otherwise coerced into silence; a strong likelihood that important evidence would be destroyed; or that the child in question did not wish the parent to be involved at that stage, and is competent to take that decision (see *Working Together to Safeguard Children* (The Stationery Office, 2006), paragraph 5.65 and *Safeguarding Children: Working Together for Positive Outcomes* (National Assembly for

Wales, 2004), paragraph 5.38). Proceeding with the interview in the absence of parental knowledge will need to be carefully managed in interventions with the family by the local children's services authority.

Medical examinations

2.34 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 police surgeon 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.

2.35 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

2.36 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 psychologist prior to the assessment taking place.

Planning and preparing for the interview

2.37 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. The importance of planning cannot be overstated. The success of an interview – and thus an investigation – could hinge on it. Even if the circumstances of the case are such that it is essential that an early interview takes place, a planning session is required that takes account of all the information available about the child at the time and identifies the key issues and objectives. **Attention should be paid at all times to issues of age, gender, race, culture, ethnicity, religion and language.**

2.38 In some cases, it might be advisable for there to be a discussion with the CPS in accordance with the guidance set out in *Early Special Measures Meetings between the Police and the Crown Prosecution Service and Meetings between the Crown Prosecution Service and Vulnerable or Intimidated Witnesses* (CPS, ACPO and the Home Office, 2001). Where such a discussion takes place, there should be a decision about the form in which the statement is to be taken (video-recorded or written). Such decisions must take account of the child's expressed preferences and those of their carers (unless inappropriate).

Planning information

2.39 The planning stage of an interview involves some consideration of three types of information:

- information about the child witness (see paragraphs 2.40 to 2.52);
- information about the alleged offence(s) (see paragraphs 2.53 to 2.55); and
- information important to the investigation (see paragraphs 2.56 to 2.65).

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 child and a little about the alleged offence and information important to the investigation.

Information about the child witness

2.40 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 undertaken as part of the local children's services authority under

Box 2.1: Checklist of desirable information

Factors to be considered at the planning stage include:

- child's age;
- child's race, culture, ethnicity and first language;
- child's religion;
- child's gender;
- 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 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);
- 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 stress(es) recently experienced by the child and/or family (e.g. bereavement, sickness, domestic violence, job loss, moving house, divorce, etc.);
- current or previous contact with public services (including previous contact with the police or the local children's services authority); and
- any other relevant information or intelligence known.

Working Together to Safeguard Children (The Stationery Office, 2006), 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 C a useful guide when considering the child in their family context. The companion practice guidance, *Assessing Children in Need and their Families: Practice Guidance* (Department of Health, 2000) (see the Quality Protects website at www.dfes.gov.uk/qualityprotects and the website of the National Assembly for Wales at: www.wales.gov.uk) provides detailed advice on assessments involving black children and children with disabilities. 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 is practicable.

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

2.41 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 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 disclosure/allegation.

Race, gender, culture and ethnic background

2.42 The child's race, gender, 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 into account the needs and expectations of children from the variety of specific minority groups in their local area. Other useful guidance can be found in the assessment framework (see Appendix C) and companion practice guidance, *Assessing Children in Need and their Families: Practice Guidance* (Department of Health, 2000). The guide *Race and the Courts* (Judicial Studies Board, 1999) (available at www.jsboard.co.uk/publications.htm) provides a helpful summary of different religions and associated holy days and festivals. The chapter by M. Page and G. Precey (see Appendix Q) also includes discussion of related issues. The interviewing team's knowledge about the child's religion, culture, customs and beliefs will have a bearing upon their understanding of the child's account, including the language and allusions the child may make, as well as, for example, the child's beliefs about reward and punishment.

2.43 The investigating team needs to bear in mind that some families and children 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 children and child refugees may have a fear of disclosing abuse because of what may happen to them and their family.

2.44 It is also important that the investigating team considers the complexities of multiple discrimination, for example in the case of a black, female, disabled child, and of individuals' experiences of discrimination. The specific needs and experiences of dual-heritage children need also to be taken into account.

2.45 Some possible relevant considerations include the following – although this list is in no way intended to be exhaustive. Interviewers must avoid ethnocentric, judgemental attitudes towards particular forms of child rearing:

- customs or beliefs which may hinder the child's participation in an interview on certain days (e.g. holy days) or may otherwise affect the child's participation (e.g. if older children are fasting);
- the relationship to authority figures within different minority ethnic groups; for example, children may be expected to show respect to adults and authority figures by not referring to them by their first names, and by not correcting or contradicting them;
- the manner in which love and affection are demonstrated;
- the degree to which extended family members are involved in the parenting of the child. All cultures place a high value on nurturing children, but achieve this through a variety of family structures;
- the degree of emphasis placed on learning skills in independence and self-care; and
- issues of shame; for example, Muslim girls may fear bringing shame upon themselves or their families if they disclose abuse, and this may be further affected by expectations of them with respect to arranged marriages. Parents or carers may inhibit the child from disclosing with talk of shaming the family.

Other life experiences

2.46 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 violence 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 violence

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).

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

2.47 Interviewers may often decide that the needs of the child and the needs of criminal justice are best served by an assessment of the child prior to the interview taking place, particularly if the child has not had previous or current involvement with the local children's services authority or other public services. Such an assessment should be considered for any child, and offers the opportunity to explore the factors listed in Box 2.7.

2.48 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 to 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, children's social care worker or other trained interviewer;
- an explanation to the child of the reason for an interview;
- the ground rules for the interview;
- the opportunity to practise 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 past 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 competency to give consent to interview and medical examination.

2.49 Again, the assessment framework (summarised in Appendix C) 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 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.

2.50 Interviewers should have clear objectives for assessment(s) prior to interview and should apply this guidance on talking with children during such assessment. For example, they should avoid discussing substantive issues (in any detail) and must not lead the child on substantive matters. An interviewer should never stop a child who is freely recalling significant events. Instead, as above (paragraph 2.29), the interviewer must make a full written record of the 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.*'

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 (see paragraph 2.142). If any of the ground rules are introduced at this stage, then they should be repeated in the formal interview to demonstrate that the necessary procedures have been completed.

2.51 The needs of the child may require that this assessment should take place over a number of sessions. No inducements should be offered for complying with the investigative process.

2.52 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.

Information about the alleged offence(s)

2.53 It is preferable (and not always necessary or essential) that the interviewer knows little detail of the alleged offence(s) for the purposes of the interview. However, in order to plan and prepare for the interview, the interviewer will need a little **general** knowledge about:

- the type of alleged offence(s);
- the approximate time and location of the alleged offence(s);
- the scene of the alleged offence(s) (note that this should only be enough **general** knowledge to help the interviewer understand what might be said during the interview); and
- how the alleged offence(s) came to the notice of the police.

2.54 Where the interviewer is also the investigating officer and has been involved in a multi-agency strategy discussion (*Working Together to Safeguard Children* (The Stationery Office, 2006), paragraphs 5.54 to 5.59 and *Safeguarding Children: Working Together for Positive Outcomes* (National Assembly for Wales, 2004), paragraphs 5.29 to 5.39), it is accepted that circumstances and practical resource considerations might be such that they are likely to

know more about the 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.

2.55 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 interviewees, because this could contaminate the witness's account.

Information important to the investigation

2.56 While obtaining an account of the alleged event is essential, other matters might need to be covered during the interview in order to progress the investigation. These matters can be regarded as 'information 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 information necessary to conduct a comprehensive investigation. It could also prove beneficial in discussions with the CPS if the subject of witness assessment is raised. Information important to the investigation falls into two categories: general investigative practice (see paragraph 2.58) and case-specific material (see paragraphs 2.59 to 2.65). Where such information has not already been covered as part of the child's account, interviewers should consider introducing it either in the latter part of the questioning phase (see paragraphs 2.153 to 2.178) or in a subsequent interview session, depending on the complexity of the case and what is alleged to have been witnessed by the interviewee.

2.57 The amount of knowledge that the interviewer has about information important to the investigation prior to the interview depends on what they know about what is alleged to have been witnessed by the child. As noted in paragraph 2.53, it is preferable that the interviewer knows little detail of the alleged offence(s) before the interview. Only a little knowledge that could form the basis of potential questions about information important to the investigation is, therefore, likely to be available to the interviewer at this point in time. However, while planning the interview, the interviewer should apply what they know of the alleged offences to determine the areas of general investigative practice that might need to be covered in the interview. More case-specific material could either be made available to the interviewer (from the investigating officer, interview monitor or recording equipment operator) after an attempt has been made to elicit and clarify the child's account or be included in the planning information for a later interview to avoid potential contamination of the process.

Information important to the investigation relating to general investigative practice

2.58 Information important to the investigation relating to general investigative practice includes:

- points to prove any alleged offence(s);
- 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 (*Practical Guide to Investigative Interviewing* (National Centre for Policing Excellence, most recent edition 2004)):
  - 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.

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.

Information important to the investigation relating to case-specific material

2.59 Information important to the investigation relating to case-specific material includes:

- how and where any items used in the commission of the offence (e.g. clothing, vehicles, weapons, cash, documents, other property) were disposed of, if the child might have some knowledge of this;
- any background information relevant to the child's account (e.g. matters that might enhance or detract from the credibility of the child's evidence, such as the amount of any alcohol consumed);
- any lifestyle information relevant to the child's account;
- where the child 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 risk assessment issues that the child might know about that concern the likely conduct of the alleged perpetrator, family or associates (this should be dealt with after the child's account has been covered, to avoid confusion).

This is not intended to be an exhaustive list. The nature of any case-specific material varies according to the circumstances of the alleged offence, the nature of any relationship between the child and the alleged perpetrator and what is alleged to have been seen, heard or otherwise experienced.

2.60 Significant evidential inconsistencies and significant evidential omissions (case-relevant information) are discrete categories of case-specific material.

Significant evidential inconsistencies

2.61 During the course of an investigation it may be necessary to ask a child to explain a significant evidential inconsistency between what they have said during the interview and other material gathered during the course of the investigation. Such inconsistencies would, for example, include significant differences between the account provided by the child during the interview and:

- what the child is reported to have said on a previous occasion;
- the accounts of other witnesses; and
- injuries sustained by either the alleged victim or the alleged offender.

2.62 There are a number of reasons for significant evidential inconsistencies between what a child says during an interview and other material gathered during the course of an investigation. Many of these reasons are perfectly innocent in their nature (e.g. genuine mistakes by the child or others stemming from a memory-encoding or recall failure, or subconscious contamination of their memory by external influences), but occasions may arise where the child is motivated to either fabricate or exaggerate their account of an event.

2.63 Whatever the reason for the significant evidential inconsistency, occasions may arise where it is necessary to ask the child to explain it. The following principles should be taken into account when considering whether, when and how to solicit such an explanation:

- Explanations for evidential inconsistencies should only be sought where the inconsistency is a significant one.
- Explanations for evidential inconsistencies should only be sought after careful consideration has concluded that there is no obvious explanation for them.
- Explanations for evidential inconsistencies should only be sought after the child'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 child to explain an evidential inconsistency is to pursue the truth in respect of the matter under investigation; it is not to put pressure on a child to alter their account.
- Explanations for evidential inconsistencies should take account of the extent to which the child may be vulnerable to suggestion, compliance or acquiescence.
- Questions intended to elicit an explanation for evidential inconsistencies should be carefully planned, phrased tactfully and presented in a non-confrontational manner.

Significant evidential omissions (case-relevant information)

2.64 During the course of an investigation it may be necessary to ask a child about relevant information that they have not mentioned in their account. This may arise, for example, where others say that the alleged offender was carrying an object, or that the alleged offender's behaviour was unusual or that there was something particular about the alleged offender's description or vehicle, but this is not mentioned by the child. There are a number of reasons why this type of information can be omitted from an account, and situations may arise where it is important to seek an explanation from the child. In these circumstances, it may be necessary to ask a question to establish whether the child has knowledge of the information. Such a question should only be asked after the child's account has been fully explored, at the end of the interview (or in a further interview if necessary).

2.65 When planning such a question, the interviewer should consider:

- whether the information omitted by the child is likely to be important enough to be worthy of explanation;
- the extent to which the child may be vulnerable to suggestion, compliance or acquiescence; and
- which type of question is most likely to elicit the information in a manner least likely to have an adverse effect on the value of any answer.

A plan for soliciting an explanation for the omission of case-relevant information from a child's account must take account of the reliability of any answer. For example, a useful starting point might be to ask the child a specific-closed question, such as: '*What else can you tell me about the incident?*' If the child's answer:

- includes the case-relevant information but lacks sufficient detail, the interviewer should ask the child to provide a more detailed response by means of an open question (e.g. '*Tell me about*…'). When the case-relevant information has been covered,

the child should be tactfully asked to explain its omission from their account, unless the reason for its omission is apparent from the child's response or the circumstances of the case;

- does not include the case-relevant information, 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 case-relevant information, 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 child 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 child's response or the circumstances of the case).

Where the child cannot recall the case-relevant information, this may be due to not attending to the information or to memory loss. Further reading on case-relevant information can be found in *The Evaluation of the Investigation and Legal Process Involving Child Abuse Offences to Establish a Model of Investigation for Investigators* by K.B. Marlow (unpublished MSc thesis, Portsmouth, 2002).

Preparing the child for an interview

2.66 Children should 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 (e.g. where the child can also be considered to be an intimidated witness) and/or for it to take place several hours or days before the interview.

2.67 The preparation of the child 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 child 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 child for an interview.

2.68 The child's non-abusing carer(s) should also be provided with suitable information at this stage. For example, they should be discouraged from discussing the details of the alleged offence(s) with their child or any other individual who may be involved in the investigation, but must be able to reassure the child who wishes to talk or express anxieties. They should be asked to document carefully any discussions they have with their child or other persons regarding the allegation or investigation (e.g. who was present, date/time and setting, what exactly was said). The child should never be offered inducements for complying with the investigative process. Carer(s) should also be encouraged to provide emotional support to the child, 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. In cases where the child may have been abused within the family, concerns may arise as to the non-abusing carer's ability to support the child or to take seriously what the child has said.

2.69 Any issues or concerns raised by the child or their carer(s) should be addressed while preparing them for the interview (e.g. welfare issues or concerns about the possibility of a later court appearance).

2.70 Some children 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 child should be planned to take place prior to the interview because this familiarisation process may take some time.

2.71 Assistance should be sought if necessary from interview supervisors and interview advisers concerning the issues that might arise during the preparation of a child witness for an interview.

2.72 Full written notes must be kept of the preparation of a child for an interview and must be revealed to the CPS on request.

2.73 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 child witness for the interview.

Using the planning information

2.74 The planning information should be used to:

- set aims and objectives for the interview;
- determine the techniques used within the phased interview (see Part 2B); 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 care support for the child);
  - if anybody should monitor the interview (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
- what is likely to happen after the interview.

Aims and objectives

2.75 Setting clear aims and objectives is important because they give direction to the interview and contribute to its structure. The interview aims and objectives should focus on trying to establish what happened prior to, during and after the alleged event(s), including the details of all the physical and verbal interactions that took place between the child and the alleged perpetrator(s) and between the child and anybody else. The interview aims and objectives should also take account of any suspected attempt to stop the child from talking to the police or any other agency or person.

Techniques

2.76 The kind of techniques used within the phased structure set out in Part 2B will vary according to what is known about both the child and the offence when planning the interview, as well as how the child behaves and what emerges during the interview itself. For example, it might be productive to make use of some of the cognitive procedures referred to in paragraphs 2.192 to 2.195 within the phased interview approach with a direct witness who is able and willing to participate in the process, whereas such techniques are unlikely to be productive while a witness remains less co-operative and hostile and a more managed communication is necessary.

How the interview is to be recorded

2.77 Section 21 of the Youth Justice and Criminal Evidence Act 1999 distinguishes three categories of child witness:

(i) children giving evidence in sexual offence cases;

(ii) children giving evidence in cases involving an offence of violence, abduction or neglect; and

(iii) children giving evidence in all other cases.

Video-recorded interviews should take place in all category (i) and (ii) child witness cases, unless the child objects and/or there are insurmountable difficulties which prevent the recording taking place (e.g. if the child has been involved in abuse involving video-recording or photography).

2.78 In all other cases (category (iii) above), the decision whether or not to video-record an interview should take into account:

- whether the measure is likely to maximise the quality of that particular child's evidence;
- the type and severity of offence;
- the circumstances of the offence (e.g. relationship of the child to the alleged abuser);
- the child's state of mind (e.g. likely distress and/or shock); and
- perceived fears about intimidation and recrimination.

2.79 Given the variety of children's backgrounds and the different circumstances leading to suspicion of abuse, there are no hard and fast rules or unequivocal criteria that apply to the video-recording of interviews. Among the considerations to be taken into account before proceeding with any video-recorded interview with a child are the following:

- the individual child's circumstances; current or previous contact with public services; previous concerns around parenting, neglect or abuse; and history of the current allegation;
- the purpose and likely value of a video-recorded interview on this occasion;
- competency, compellability and availability of the child for cross-examination;
- the child's ability and willingness to talk in a formal interview setting;
- the use of an intermediary and/or aids to communication (interviews involving intermediaries and/or aids to communication should be video-recorded unless the child does not consent or there are exceptional circumstances for not doing so); and
- preparation of the child before interview.

2.80 Discussions at the planning stage about category (iii) cases will thus enable the investigating team to decide whether a video-recorded interview or an interview for the purposes of taking a written statement is appropriate for any particular individual. It is likely that a video-recorded interview will be considered if a child has already made a clear allegation of abuse or if someone has witnessed the child being abused. A video-recorded interview may also be appropriate, subject to the deliberations of the investigating team, if the child is emotionally distressed or has a psychiatric disorder. Where the child has made no verbal allegation of abuse, then the interviewing team may decide that other specialist help or assessment of the child is more appropriate to the needs of the child than a video-recorded interview.

2.81 Regardless of how the interview is recorded, notes should always be taken which are sufficiently detailed to assist 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 perpetrator 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 to the recording equipment operator. While interviewers should consider taking **brief** notes to assist them during the free narrative phase of the interview where appropriate, they should not be responsible for taking notes for the purposes of briefing others because it 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

2.82 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 or is likely to be able to establish rapport with the child, who understands how to communicate effectively with interviewees 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 information important to the investigation (see paragraphs 2.56 to 2.59 above), including the points needed to prove particular offences, and must be prepared to testify about the interview in court if called upon to do so.

2.83 In addition to taking account of the prospective interviewer's skills, the following factors should be taken into consideration when considering who should conduct the interview:

- the experience of the prospective interviewer in talking to children 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 child is likely to either inhibit rapport building or give rise to challenges of coaching, prompting or offering inducements.

2.84 The child's gender, race, culture and ethnicity must always be given due consideration and advice sought where necessary, but stereotypic conclusions about who is to conduct the interview should be avoided. Where the child expresses a preference for an interviewer of a particular 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.

2.85 The interviewer should consider the appropriate mode of dress for the particular interviewee. For example, research shows that a person's perceived authority can have an adverse effect on the interviewee, especially with respect to suggestibility.

2.86 Exceptionally, it may be in the interests of the child 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

2.87 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 gaps that emerge in the child's account, and can ensure that the child's needs are kept paramount. Careful consideration needs to be given to whether the interview monitor is present in the interview 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 an 'observer'). The possibility that the child 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 if an interview supporter and interpreter are also to be present in the interview room.

2.88 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 child's demeanour. The interview monitor should be alert to interviewer errors and apparent confusion in communication between the lead interviewer and the child. 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 at court.

Equipment operators

2.89 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 child 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 not being discovered until the end of the interview (see also Appendix H).

Interpreters

2.90 A child should always be interviewed in the language of their choice, unless exceptional circumstances prevail (e.g. with regard to the availability of interpreters). This will normally be the child's first language, unless specific circumstances result in the child's second language being more appropriate. Interviewers should be aware that some children will be perfectly fluent in English, but will use their family language for intimate parts of the body, for example. Preparation needs to take account of this. If the child is bilingual, then this may require the use of an interpreter. Some children might have very strong views on the preferred gender or ethnicity of interpreters, and these should be accommodated wherever possible.

2.91 Interpreters should be appropriately accredited and trained so that they understand the need to avoid altering the meaning of questions and replies. They should normally be selected from the National Register of Public Service Interpreters or the Council for the Advancement of Communication with Deaf People's (CACDP's) National Directory of Sign Language Interpreters. If it is not possible to select an interpreter from these registers then the interpreter may be chosen from some other list, provided that the interpreter meets standards at least equal to those required for entry onto the aforementioned registers, in terms of academic qualifications and proven experience of interpreting within the criminal justice system. While the familiarity of the interpreter to the child is not a bar to employment and may indeed facilitate communication, all interpreters need to be independent, impartial and unbiased. Family members or other close relatives should not be employed.

2.92 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). 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.

2.93 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 child. If the child is communicating via an interpreter, the lead interviewer should identify themself as such while maintaining appropriate eye contact with the child, so that the child understands that they should address the interviewer, not the interpreter. If, however, a signer is being used to communicate with a child who has a hearing impairment, it may be more important for the signer to maintain the direct communication with the child.

2.94 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.

2.95 Where a signer is being used to communicate with a child with a hearing impairment, a camera should be used to record the signer's hand movements as well as those of the child. 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.

Intermediaries

2.96 The information provided here is intended to summarise the role of the intermediary and general principles that need to be considered in criminal investigations. Detailed procedural guidance and a case checklist can be found in the *Intermediary Procedural Guidance Manual* (Office for Criminal Justice Reform, 2005). While the services of an intermediary are likely to be particularly helpful where the child is very young, is traumatised or uses a specialised system of communication, it is important to note that an intermediary may be able to help improve the quality of evidence of a child of **any** age who is unable to detect and cope with misunderstanding or to clearly express their answers to questions, especially in the context of an interview or while giving evidence in court.

2.97 Even though Section 29 of the Youth Justice and Criminal Evidence Act 1999 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 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 will vary from witness to witness depending on the witness's particular needs and communication style. It will also depend on the degree of compliance with the intermediary's recommendations by the interviewer. 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.

2.98 An Intermediary Registration Board (IRB) has been established by the Office for Criminal Justice Reform (OCJR). The IRB oversees registration of intermediaries and their standards. Registered Intermediaries are accredited by the IRB and the OCJR following a selection and training process assessed against a set of core competencies required for the intermediary role. Registered Intermediaries are checked periodically at the Criminal Records

Bureau enhanced disclosure level. Details of how to access the intermediary register are set out in the *Intermediary Procedural Guidance Manual* (Office for Criminal Justice Reform, 2005).

2.99 Before an 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 for how 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 act as an intermediary for that witness. Intermediaries should never be alone with a witness; a responsible third party, as defined by procedural guidelines (Section 2 of the *Intermediary Procedural Guidance Manual* (Office for Criminal Justice Reform, 2005)) must be present. This should usually be a police officer at the investigation stage.

2.100 Registered Intermediaries should be used. The use of an unregistered person as an intermediary can only be considered once the options for using a Registered Intermediary have been exhausted. When this is the case, an unregistered intermediary has the same responsibility to the court. They must be independent of the case being investigated (i.e. not witnesses or suspects). There is a preference for unregistered intermediaries to be professional people rather than family members, friends or associates. In the 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. A briefing pack to be used by unregistered intermediaries setting out the role of an intermediary is available from the OCJR.

2.101 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).

Interviewer supporters

2.102 Deliberations at the planning stage might lead to a decision to include a support person in the interview (termed an 'interview supporter' – see also Chapter 5 for the role of the pre-trial and court witness supporter). Although it is important to guard against undue influence of the child by another adult, it may be helpful to the child (and to the process of securing an account) if someone is present to offer support, especially if the child is very young or upset. It is possible that such a person could withdraw once rapport has been established and the child has settled. Parent(s)/carer(s) should not be automatically excluded from this role, but their appropriateness will very much depend on the circumstances and nature of the case, together with any issues arising from the allegations made by the child. There are also good reasons why their presence may not be in the best interests of the child (see paragraph 2.104). Having a parent or carer close by in another room may be sufficient. Other possibilities might include a teacher, nursery helper or other family member.

2.103 The supporter must be clearly instructed not to participate in the interview itself, whether by instructing or correcting the child, answering the interviewer's questions, head nodding or facial expressions. It may be helpful for the interview supporter to refer to the guidance in the *Young Witness Pack* (NSPCC, 1998). Interview supporters should never offer the child inducements such as a toy or trip in return for general co-operation or answering particular questions. Persons involved as witnesses in the case in any capacity (i.e. not just someone who has seen the incident in question) cannot take on the role of witness supporter. This includes a parent to whom the child first disclosed abuse, or a parent whose partner or former partner is the subject of the allegation of abuse. It is important to ensure that the interview supporter has not been involved in the alleged offence, nor will be perceived by the child as being involved (this may be particularly relevant to parent(s) acting as supporters). Carers can, however, wait in an adjacent room if it is thought that physical proximity might be helpful to the child.

2.104 Research suggests that the presence of a carer or parent at the time of the interview can actually be an additional source of stress if the child is concerned about them hearing unpleasant details. Also, the child might feel uncomfortable about someone they see on a daily basis, or in a particular relationship (e.g. their teacher), knowing intimate details of their personal life. For this reason, interviewers are strongly advised, wherever possible, to seek the views of the child on interview support as part of the planning for the interview. The interviewer needs to explain all the options for support and make it very clear that the child has a real choice and that whatever they choose is acceptable. Some children might agree for their parent or carer to be present just to please the interviewer or parent.

2.105 Any interview supporter(s) must be clearly identified at the beginning of the video-recorded interview. Whenever possible, they should also be visible in one of the shots recorded. Best practice is for the supporter to make sure they are outside the child's line of vision (e.g. by sitting behind the child). The interview supporter should consider carefully how they could best comfort the particular child, should they become distressed. The child should be

reassured, but it may not be appropriate to touch the child physically, as this might be perceived as an invasion of personal space or even as abusive by some children.

Location of the interview

2.106 Active consideration should be given to the location of the interview and the layout of the room in which it is to take place. 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 should be free from interruptions, distractions, and fear and intimidation, so that the interviewer and the child can concentrate fully on the task in hand: the interview. The interviewer should ensure that sufficient pens and paper are available for use where a child's recall could be assisted by drawing a sketch plan.

2.107 Where the interview is conducted in a purpose-built interview suite (preferred option), the room decor should be welcoming and friendly (e.g. pictures on the wall which will appeal to children and young people of all ages, races and cultures, and indicate that other children visit the interview suite). Appendix H provides guidance on the selection and placement of furniture in the interview room. Food and drinks provided for comfort breaks should be appropriate for children from different ethnic groups.

2.108 Toys and other play materials should be located out of immediate view of the child, so that any not introduced by the interviewer do not act as a distraction to the child during the interview. A limited range of gender- and age-appropriate playthings should be available. Suitable items are likely to include pens/crayons and paper. Dolls, puppets, puzzles and toys could also be considered where they appear likely to make the child's experience more positive (e.g. in rapport) and/or help the child to give their account more effectively. Interviewers should be alert to the possibility that toys will distract a restless or young child, or possibly patronise an older child.

2.109 In the event of it being necessary to interview a child 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 (the use of background screens should be considered if necessary).

Timing of the interview

2.110 The investigating team should pay particular attention to when the interview takes place, as research has shown this to be one of the main concerns of child witnesses. Although the interview will normally take place as soon after an allegation or referral emerges as is practicable, rushing to conduct an interview without properly considering the child's needs and consulting them as far as possible and without proper planning can undo any of the benefits of obtaining an early account from the child. The child's normal daytime routine and general needs should be considered, as well as those of the adult(s) who care for the child. Interviewers should avoid starting an interview just before a mealtime or bedtime (or at any other time when the child is likely to be suffering from the effects of fatigue).

2.111 The decision about when to conduct an interview should also take account of the potential effects of trauma and/or stress. Trauma and stress can interfere with the process of recall, but this should be determined by asking the child rather than by the imposition of an arbitrary period of time. Some child 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.

2.112 Children are very sensitive to being taken out of school classes, and on the rare occasions when it is unavoidable, the interviewer should liaise with the child's teachers to ensure it is effected as discreetly as possible.

Duration of the interview (including pace, breaks and the possibility of more than one session)

2.113 The interviewing team should anticipate the likely number and length of the video-recorded interview(s) as part of the planning process. It will help both the interviewer and the child to have an idea of approximately how long each interview is likely to last.

2.114 The pace of the interview should be dictated by the age and circumstances of the individual child. Interviews should proceed at the pace of the child, not at that of the interviewer. Professionals whose experience of interviewing has been mostly with adults may be tempted to adopt too fast a pace for the child, while those with only childcare experience may adopt an overcautious approach and spend too long in the rapport phase, when the child is ready to proceed with their account. Whenever possible, the interviewer should seek advice from people who know the child about the likely length of time that they can be interviewed and whether a pause or break is desirable.

2.115 The interviewer should allow comfort breaks during the interview for refreshment, use of the toilet or to have a break from the task if this is requested or felt necessary. The reason for any breaks should always be explained by the interviewer on the video-recording. Where comfort breaks are necessary to enable the child to go to the toilet, the child should always be accompanied by one of the interviewers and discouraged from talking to others. If interactions with others do occur, they should be fully documented. When a break is less than 15 minutes, the recording should be allowed to run; if a break exceeds 15 minutes, then a new analogue tape or digital disk should be used. At no time should breaks or refreshments appear to be offered as a reward for co-operation or withheld from the child in the

absence of co-operation with the interviewer or making a disclosure.

2.116 The absolute length of the interview will depend on a range of factors, including:

- the developmental age of the child;
- the number of alleged incidents to be described;
- how forthcoming the child is; and
- how much time is required to establish rapport.

It is not possible or desirable to put forward an ideal duration for an interview. However, shorter times may be necessary for developmentally younger children with limited attention spans, while older children may be comfortable with an interview that lasts longer. If a child is becoming distressed or if their attention is beginning to wander, then a break may be advisable. If the distress continues, then the interview should be curtailed at that point and resumed, if possible, on a later occasion. Interviewers should not persist in interviewing a reluctant child: not only is this damaging to the child, but such interviews are unlikely to be accepted by the courts.

2.117 In some circumstances it might be necessary to conduct the interview over more than one session (e.g. in complicated cases, where allegations of multiple offences are involved or where the child has a short attention span), and the interviewer must plan appropriately for each interview/session, in a focused way that is differentiated from the strategic planning of the overall investigation. It is not appropriate to neglect such planning or to leave preparation for the interview itself to the last minute. 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, because these could lead to unreliable or inconsistent responses from some children and interviews thus being ruled inadmissible by the courts.

Planning for immediately after the interview

2.118 Although the interviewer cannot predict the course of an interview, planning discussions should cover the possible outcomes and consider the implications for the child and family, taking account of knowledge about the child's circumstances and previous or current involvement with social care or other public services. Research has shown that children and their carers are often left unsupported subsequent to an interview (especially if the alleged abuser is outside the immediate family), which can be a source of great stress. The interviewing team itself is unlikely to be responsible for the child and family's continuing support needs; nevertheless, early consideration by the wider professional team may alleviate some of the child's and carers' anxieties.

For instance, various outcomes of the video interview can be anticipated:

- Interviewers are satisfied that something untoward has happened to the child, for example a clear disclosure is obtained or other forensic evidence is available.
- Interviewers are satisfied that nothing untoward has happened to the child.
- Interviewers remain uncertain as to whether anything has happened to the child or not.

Planning should anticipate these various eventualities. Where a child is a witness but not the victim of an alleged crime, different sets of outcomes exist, and these too should be considered at the planning stage.

2.119 For each possible outcome, the interviewer should prepare explanations of what may happen next for the child and their carer(s). Answers can be prepared to commonly asked questions such as '*What is the likelihood of a prosecution?*' and '*Will [perpetrator] go to prison?*' A contact person should be identified to whom the child and carer(s) can subsequently direct any queries or further information.

2.120 It must be remembered that non-disclosure of abuse is an acceptable outcome of an interview, either because the child has not experienced or witnessed any maltreatment or because the child was not ready, able or willing to tell at the time of the interview. Differences in how and when children disclose abuse are described in Box 2.8.

Box 2.8: How and when children talk about abuse

- Statements may be 'accidental' or deliberate, verbal or non-verbal.
- Suspicion may arise from one or more sources: medical query, witness reports, confession, photographic evidence, children's behaviour or verbal statements.
- Children may not report all the details of their abuse at once – they may minimise or withhold information.
- Disclosure may be immediate, but is very often delayed for long periods.
- Children may deny or retract such statements, even if other evidence exists, and this may be symptomatic of the abuse itself.
- The presence of an earlier informal statement does not guarantee an allegation will be repeated in a formal interview.
- Age, culture and many other factors may affect children's willingness and ability to make such statements.

Child witnesses who might become suspects

2.121 So far as is practicable, consideration should be given in the planning stage as to how the interviewer will deal with any confessions to criminal offences made by the child in the course of the interview. Any decision on an appropriate course of action will involve taking into account the seriousness of the crime admitted and weighing it against the seriousness of the crime under investigation.

2.122 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 child during the course of the interview (see paragraphs 2.226 to 2.229 in Part 2B for guidance in respect of incriminating statements made by child witnesses during interviews).

Recording the planning process

2.123 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 Section 9 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.

Victim Personal Statements

2.124 Interviewers should plan to give children who are victims the opportunity to make a Victim Personal Statement (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. It may also provide additional information, from the victim's perspective, which will be helpful to the criminal justice agencies subsequently dealing with the case. Victims can have a supporter present while they make a VPS if they wish to do so. Details of the scheme are set out in *Guidance on the Victim Personal Statement Scheme,* issued on 14 August 2001 in Home Office Circular No. 35/2001 (Home Office, 2001).

2.125 Child witnesses who are victims should be given the opportunity to make a VPS after completing either a video-recorded interview or a written statement. In such cases, the VPS should be given in the same format as their witness statement; that is, where the evidential witness statement is video-recorded, the VPS should also be video-recorded.

2.126 Providing a VPS (video-recorded or written) is entirely voluntary. Child witnesses and their parents/carers should be provided with an age-appropriate explanation about what a VPS is and how it can/cannot be used, to help them to make an informed choice as to whether they provide it or not. In the first instance, young witnesses should be given the opportunity to make the VPS themselves, but in some circumstances it may be appropriate for the parent/carer to provide the VPS on the victim's behalf. In some cases it may be necessary to take a VPS from the victim and the parent/carer, in order to establish a full picture of the impact of their experience.

2.127 Young witnesses over 16 years of age are able to consent to making a VPS. In the case of very young and young children or those with a learning disability, the interviewer should consider consulting the parent/carer as to whether the child or the parent/carer or both should make the VPS. Children have the right to privacy, including the right to choose to provide information that they do not wish to share with their parent/carer. Thus, while children should be invited to make a VPS, account needs to be taken of their age and ability to understand when considering whether the parent/carer also needs to be consulted. The same considerations apply in relation to seeking further information from the parent/carer after the older child has made their own VPS.

2.128 In cases where the witness statement has been taken in the form of a video-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 in addition, the interviewer may make a statement on the recording, acknowledging the change from the evidential interview to the VPS.

2.129 There is always the possibility that at a later time the victim or their parent/carer may 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 in line with *Guidance on the Victim Personal Statement Scheme,* issued on 14 August 2001 in Home Office Circular No. 35/2001 (Home Office, 2001).

Part 2B: Interviewing child witnesses

Aims

By the end of Part 2B, the interviewer should have knowledge of:

- the four main phases of the video-recorded interview and the functions of each (paragraphs 2.130 to 2.132);
- the importance of ground rules and truth and lies (paragraphs 2.142 and 2.143);
- how to elicit and support a free narrative account (paragraphs 2.147 to 2.152);
- the strengths and weaknesses of different types of question (paragraphs 2.154 to 2.174);
- guidance on misleading statements (paragraphs 2.177 and 2.178);
- closing the interview (paragraphs 2.179 to 2.182);
- evaluating the interview (paragraphs 2.183 to 2.185);
- further interviews (paragraph 2.188);
- the cognitive interview (paragraphs 2.192 to 2.195);
- special interviewing techniques and the use of props (paragraphs 2.196 to 2.201);
- considerations when interviewing children with disabilities or very young children (paragraphs 2.202 to 2.225); and
- what to do if the child makes a self-incriminating statement (paragraphs 2.226 to 2.229).

General principles

2.130 The basic goal of an interview with a witness of any age is to obtain an accurate and truthful account in a way which is fair, is in the witness's interests and is acceptable to the court. What follows is a recommended procedure for interviewing a child which is based on a phased approach. Much professional experience and published research now exist on the conduct of the phased interview with children and have found that it produces a good balance between quality and quantity of information elicited from an interviewee. The phased interview normally consists of the following four phases:

- establishing rapport;
- asking for free narrative recall;
- asking questions; and
- closure.

Each phase will be described in greater detail below. These phases are compatible with and underpin the PEACE (Planning and Preparation; Engage and Explain; Account, Clarification and Challenge; Closure; Evaluation) interview framework advocated by the Association of Chief Police Officers (ACPO).

2.131 The phased approach acknowledges that all interviews contain a **social** as well as a **cognitive** element. As regards the **social** element, witnesses, especially the young and the vulnerable, will only divulge information to persons with whom they feel at ease and whom they trust. Hence the first stage of any interview involves establishing rapport with the witness, and the final or closure phase requires the interviewer to try to ensure that the witness leaves the interview feeling that they have been given the fullest opportunity to be heard. As regards the **cognitive** element, the phased interview attempts to elicit evidence from the witness in a way which is compatible with what is known about the way human memory operates and the way it develops through childhood. A variety of interviewing techniques are deployed, proceeding from free narrative to open and then specific-closed questions, where a hierarchy of reliability of the information is obtained. The technique is designed to ensure that, as far as possible, witnesses of all ages provide their own account, rather than the interviewer putting suggestions to them with which they are invited to agree. The techniques of the phased interview are not those of casual conversation: they must be learned and then practised to ensure that they are applied consistently and correctly.

2.132 The emphasis on the phased approach should not be taken to imply that all other interview techniques are necessarily unacceptable or preclude their development. Nor should what follows be thought of as a checklist that must be rigidly adhered to: every interview is a unique event, which requires the interviewer to adapt procedures to the developmental age and temperament of the child and the nature of the alleged offence(s). Flexibility is the key to skilful interviewing. A good interviewer is someone who can adapt their interviewing style in accordance with the interviewee sitting in front of them. However, the sound legal framework provided by the principles of the phased interview should not readily be departed from by the interviewer unless they have fully discussed and agreed the reasons with their senior manager or an interview adviser (tier 5 of ACPO's *Investigative Interviewing Strategy* (ACPO, 2004)). It may subsequently be necessary to explain such deviations at court.

Preliminaries

2.133 The investigating team will first have to decide whether a video interview is appropriate or whether, in the circumstances of the investigation, the option of a written statement is preferable. The police may wish to hold an early meeting with CPS at this point, if such a meeting has not already taken place. The decision will be based on the nature and circumstances of the alleged offence and the age and preference of the child (see Chapter 5). If a video-recorded interview is the

preferred option, then normally one person, the lead interviewer, will be responsible for interviewing the child. An interview monitor may be present, in the room or outside (see paragraphs 2.87 and 2.88). In addition, it may also be appropriate for the child to have an interview supporter (see paragraphs 2.102 to 2.105).

2.134 The interviewing team will have decided at the planning meeting who will be the lead interviewer, taking into account any strong gender or ethnic preferences expressed by the child. It is essential that the interviewing team allows sufficient time prior to the interview to check that all equipment is working satisfactorily. To have to stop and restart the interview places additional stress on the child. Decisions should also be taken about where the child and interviewer will be placed so as to ensure that they are within clear view of the cameras. For the benefit of the court, the interviewer should begin an interview by:

- introducing all those present to the child, using the name by which the child prefers to be known;
- explaining in terminology appropriate to the developmental age of the child the role and function of police officers and/or children's social care workers involved in the investigation;
- announcing where the interview is taking place and the time and date of the interview; and
- pointing out the presence and location of cameras in the room and their function as a permanent record of the interview.

2.135 Research confirms that many children believe that being interviewed by the police is an indication of their wrongdoing, and any misperceptions need to be corrected at this early stage. The type of explanation offered for the purpose of the interview will vary with the developmental age of the child. Younger children may be told that other people need to view what they have to say in order for them to decide how best to help them if they have any problems. Older children can be reassured that making a recording of the interview will result in fewer requests to repeat their account to others.

Phase one: establishing rapport (including engaging and explaining)

Explaining the formalities

2.136 Firstly, it is necessary when video-recording the interview to check that the equipment is turned on and that all of the people in the room can be clearly seen on the monitor through the camera with the wide-angle lens where two cameras are in use (see Appendix H). Next, the interviewer should say out loud the day, date, time and place (not the detailed address) of the interview and give the relevant details of all those present.

Building rapport

2.137 All interviews should have a rapport phase, where relationships are established between the child and the interviewing team and, towards the end of this phase, the aims and conventions of the interview are explained. Some interviewers prefer to deal with elements of rapport in the interview preparation phase (ground rules, reassurance). If so, such procedures need to be properly documented and reiterated during rapport. More formally, the rapport phase should normally encompass the following:

- initially discussing neutral topics and, where appropriate, playing with toys and reassuring the child that they have done nothing wrong;
- explaining the ground rules;
- exploring the child's understanding of truth and lies and establishing the purpose of the interview; and
- supplementing the interviewer's knowledge of the child's social, emotional and cognitive development.

2.138 Most children 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 rapport period to build up trust and mutual understanding with the child and to help them to relax as far as possible in the novel environment. Remember, children are often taught not to talk to strangers. In addition, research has shown that anxiety hinders the reporting of detailed information. Initial discussions should 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 child and the interviewer have had some previous contact, this aspect of the rapport phase can be quite brief. At other times, especially when the child is nervous or has been subject to threats from the alleged abuser, a much longer period of the rapport phase may be warranted.

2.139 Rapport also gives the interviewer the opportunity to build on their knowledge of the child which they will have gathered from the planning meeting. In particular they will learn more about the child'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 child's responses. Research has shown that recall is hindered if adult-appropriate (as opposed to age-appropriate) language is used.

2.140 Rapport also serves to set the tone for the style of questions to be used by the interviewer for the main part of the interview. It is important that the child be encouraged in the rapport phase to talk freely through the extensive use of open-ended questions (see paragraphs 2.160 to 2.163). A stream of

questions that the child can answer '*yes*' or '*no*' to or make an equally brief response should be avoided. This not only helps the interviewer to assess the child's level of language, as the child should be talking at length relative to answering more specific-closed questions, but also teaches the child to talk (i.e. give detailed accounts). An interview is a learning experience even from the outset of the interview.

2.141 In some instances, it might be helpful to conduct a practice interview during the rapport phase of the interview during which the child is 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 child with an example of the kind of detail that will be required in relation to the issue of concern and to practise extended verbal responses. Such practice interviews might be particularly useful with younger witnesses who do not appreciate the demands of a witness interview for detailed and context information.

Ground rules

2.142 Children, especially young children, will perceive interviewers as figures of authority. Research suggests that when such authority figures ask questions, however misinformed, some children will endeavour to provide answers. Likewise, when authority figures offer interpretations of events or actions, however misleading, some children will agree with them and even elaborate upon them in an effort to please the interviewer. It is necessary for the interviewer not to overemphasise their authority in relation to the child. They should also use the rapport phase actively to combat any tendency towards answers from the child which reflect an eagerness to please. This can be done by stating explicitly at the outset that:

- the interviewer was not present when the events under investigation allegedly took place and that therefore they are relying on the child's account;
- if the interviewer asks a question that the child doesn't understand, the child should feel free to say so;
- if the interviewer asks a question to which the child does not know the answer, the child should say, '*I don't know*'; and
- if the interviewer misunderstands what the child has said or summarises incorrectly what has been said, then the child should point this out.

These points are best put across in the context of concrete examples. It is recommended that the interviewer gives the child the chance to practise saying '*I don't know*' or '*I don't understand*' (see Box 2.9 for sample material).

Box 2.9: Establishing the ground rules for the interview

'Today, I am going to be asking you to tell me about things that have happened to you. Now, I wasn't there when these things happened so I need you to help me understand everything. Have I explained that properly?'

[Pause]

'One of the rules for me today is that I listen hard and try to understand everything you tell me. So, I might have to ask you some questions later. But, it's not like school – you know if the teacher asks you a question and you say you don't know – what does your teacher say to you?'

[Child's response, e.g. 'Miss Jackson tells you off, but Miss Smith is okay', or 'I have to try and answer', or 'I have to guess the answer.']

'Well, today, it's really okay for you to say you don't know. Because I'm a grown up, I might also ask you a question that you don't understand. I'll try hard not to, but if I do, I want you to tell me, so that I can try and put it another way.'

[Pause]

'And the last rule on me is if I get something wrong, I need you to tell me to make sure I get it right.'

After Robinson Howes (2000).

Truth and lies

2.143 Toward the end of the rapport phase, when ground rules have been explained to the child, the interviewer should advise the witness to give a truthful and accurate account of any incident they describe. There is no legal requirement to administer the oath or admonish the child, but since the video may be used as evidence in court, 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 this might run the risk of the child concluding that the interviewer had not believed what they had said up to that point. 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 an **intent** to deceive another person. An example of one approach is shown in Box 2.10. Different examples are suggested for different ages of children. If a child shows a proper appreciation of the difference

between truth and lies, it is important to conclude by emphasising the importance of being truthful and accurate in everything they say in the interview and the possible adverse consequences for another person of telling lies. How this is put across will again vary with the age of the child. If a child shows no proper appreciation of the distinction between truth and lies, then this may seriously jeopardise the evidential value of the interview.

Box 2.10: Exploring the difference between truth and lies

'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.'

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?'

[Pause]

[Child responds]

'What should he have said?'

[Pause]

[Child responds]

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?'

[Pause]

[Child responds]

'What should he have said?'

[Pause]

[Child responds]

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

[Pause]

[Child responds]

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

Explaining the outline of the interview

2.144 The interviewer should provide an explanation of the outline of the interview appropriate to the child's age and abilities. Typically the outline will take the form of the interviewer asking the child to give a free narrative account of what they remember and follow this with a few questions in order to clarify what has been said. It should also be explained that the interviewer might take a few **brief** notes.

Establishing the purpose of the interview

2.145 The reason for the interview needs to be explained in a way that makes the focus of the interview clear but does not specify the nature of the offence: to do so would be regarded as unnecessarily leading. Where a child has made an explicit complaint against a named individual, and especially when this has been repeated in a pre-interview assessment (see paragraphs 2.47 to 2.52), it should be possible to raise the issue by referring to previous conversations. The law permits the interviewer to raise an earlier complaint by the child to a third party, though the substance of the complaint should not be raised by the interviewer. It is also important to stress that what the interviewer wants to discuss with the child is their memory of the incident(s) which gave rise to the complaint, not the complaint itself (i.e. what the child remembers about the incident, not what they remember telling someone else). The situation is less straightforward where the child has made no previous complaint, but where there are legitimate reasons for the interview (e.g. the results of medical examinations, allegations by a sibling or confessions by an alleged abuser).

2.146 The child should be given every opportunity to raise the issue spontaneously with the minimum of prompting (see Box 2.11 for examples of acceptable prompts). Where such prompts fail, the interviewer can initiate discussion of the particular groups from which they are drawn (home, school, etc.). If this too is unsuccessful then the interviewer can consider asking which persons among a given group the child likes or dislikes and their reasons. Again, on no account must the explicit allegation be raised directly with the child because this might jeopardise any legal proceedings and could lead to a false allegation.

Box 2.11: Raising issues of concern

'Tell me why you are here today.'

[If no response]

'If there is something troubling you, it is important for me to understand.'

[If no response]

'I heard you said something to your teacher/friend/ mummy last week. Tell me what you talked about.'

[If no previous allegation]

'I heard that something may have been bothering you. Tell me everything you can about that.'

[If no response]

'As I told you, my job is to talk to children about things which may be troubling them. It is very important I understand what may be troubling you. Tell me why you think [carer] has brought you here today.'

[If no response]

'I heard that someone may have done something that wasn't right. Tell me everything you know about that. Everything you can remember.'

(Adapted from *The NICHD Protocol for Investigative Interviews of Alleged Sex-abuse Victims* by M.E. Lamb, K.J. Sternberg, P.W. Esplin, I. Hershkowitz and Y. Orbach (unpublished manuscript, NICHD, Maryland, 1999).

Phase two: initiating and supporting a free narrative account

2.147 If it is deemed appropriate, having established rapport, to continue with the interview, then the child should be asked to provide in their own words an account of the relevant event(s). The free narrative phase is the core of the interview and the most reliable source of accurate information. During this phase, the interviewer's role is that of a facilitator, not an interrogator. Every effort should be made to obtain information from the child that is spontaneous and free from the interviewer's influence.

2.148 The aim of the free narrative phase is to secure a full and comprehensive account from the child of the alleged incident, in the child's own words. The child should not at this stage be interrupted to ask for additional details or to clarify ambiguities: this can be done in the questioning phase. The free narrative phase should never be curtailed by jumping into questions too soon. Instead, the interviewer should adopt a posture of 'active listening': letting the child know that what they are saying has been heard by the interviewer. The interviewer can offer prompts and encouragement if the child's account falters. The use of affirmative responses '*ah huh*', '*OK*', and head nods helps to maintain the child's account. Interviewers should be careful to ensure that affirmative responses are provided throughout the interview and do not relate solely to those sections of the interview dealing with allegations. Reflecting back what the child has just said also assists in eliciting more information (e.g. Child: *'so we went round to his house...'* [pause] Interviewer: *'I see, so you went round to his house...'*). Such prompts should relate only to the child's account and should not include relevant information not so far provided by the child. Children vary in their speed of delivery and the child, not the interviewer, should dictate the pace of the interview.

2.149 In many interviews, particularly those relating to allegations of child sexual abuse, children may be reluctant to talk openly and freely about incidents. Sometimes this can be overcome simply 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 child by their first or preferred name, but the use of terms of endearment ('dear', 'sweetheart'), verbal reinforcement (telling the child they are 'doing really well') and physical contact between the interviewer and the child (hugging, holding a hand) are inappropriate. However, this should not preclude physical reassurance being offered by an interview supporter to a distressed child. Another cause of reticence could be that the child has been taught that the use of certain terms is 'rude' or otherwise improper. If the interviewer believes this to be a problem, they can tell the child:

> *'Perhaps you have been taught that you shouldn't say certain words. Don't worry, in this room you can use what words you like. We have heard all of these words before. It's all right to use them here.'*

The interviewer should not assume that when the child uses a sexual term, they attach the same meaning to it as the interviewer. Any ambiguities can be clarified in the questioning phase.

2.150 Some children provide more information spontaneously than others. In general, developmentally younger children provide less free narrative than older children. This should not prevent the interviewer doing as much as possible to elicit a clear and full account from such children: bear in mind that research has consistently demonstrated that young children's accounts are the most likely to be tainted through inappropriate questioning. Pauses and silences may be tolerated by the interviewer, but need careful handling where a child has been traumatised. Too long a silence can be oppressive and conversational pace can be lost. Tolerance should also be extended to what might appear irrelevant or repetitious information. Prompting is quite in order provided it is neutral ('*and then what happened?*') and does not imply positive evaluation ('right', 'good'). The interviewer needs also to be aware of the danger

of intentionally or unintentionally communicating approval or disapproval, through inflexions of the voice or facial expressions.

2.151 Sometimes reticence can reflect the fact that an abuser has told the child that what has occurred is a secret between them or has made physical threats against the child or their loved ones. Where this is suspected, an appeal to the child's wish to stop the abuse is often effective. The child can be asked directly whether they have been asked to keep a secret. If the child gives a positive indication, it is in order to say: *'So, you've been told to keep a secret. Tell me what would happen if you told me this secret.*' The interviewer can then address or debunk the threat, stressing that: *'We need to know what the secret is so that we can try to help you.'* Sometimes children will be happier communicating secret information through indirect means, such as using a toy telephone or writing down information on a piece of paper. If such methods are used, it is important that the interviewer refers to such devices on the recording and that any written material is properly preserved and documented.

2.152 If the child has said nothing at all relevant to the alleged offences, the interviewer should consider, in the light of the plans made for the interview and in consultation with the interview monitor, if present, whether to proceed with the next phase of the interview. Nothing untoward may have happened to the child or the child may be unwilling or reluctant to speak about these events at this time. The needs of the child and of justice should both be considered. It may be necessary and proper to proceed to the closure phase if nothing of significance has emerged from free narrative or if a satisfactory, verifiable explanation has emerged for the original cause for concern.

Phase three: questioning

Prior to the questioning phase of the interview

2.153 Prior to entering the questioning phase of the interview it may be beneficial to reiterate some of the ground rules noted at the start of the interview. This is especially the case if the child has given a long free narrative account and/or there has been a break in the interview. In particular, consideration should be given to stating explicitly that:

- the interviewer was not present when the events under investigation allegedly took place and that therefore they are relying on the child's account;
- if the interviewer asks a question that the child doesn't understand, the child should feel free to say so;
- if the interviewer asks a question that to which the child does not know the answer, the child should say, *'I don't know'*; and
- if the interviewer misunderstands what the child has said or summarises incorrectly what has been said, then the child should point this out.

Style of questions

2.154 Children vary in how much relevant information they provide in free narrative. However, in nearly all cases it will be necessary to expand on the child's initial account through questions. It is important that the interviewer asks only one question at a time, and allows the child sufficient time to complete their answer before asking a further question. Patience is always required when asking questions, particularly with developmentally younger children; they will need time to respond. Do 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 child when they are still speaking. Interrupting the child may disempower the witness and also suggests that only short answers are required.

2.155 There are different types of question, which vary in the amount of information they are likely to provide and their susceptibility to produce inaccurate responses from children. The most important types are:

- open-ended;
- specific-closed;
- forced-choice; and
- leading questions.

Content of questions

2.156 Questions should be kept as short and simple in construction as possible. Each question should contain only one point (see Chapter 4, paragraphs 4.168 and 4.169 for more information about multiple questions). The younger the child, the shorter and more simply phrased the question should be. Interviewers should avoid complex questions, with witnesses of all ages, such as those involving double negatives (*'Did John not say later that he had not meant to hurt you?'*) and double questions (*'Did you go next door and was Jim waiting for you?'*). It is also important that questions do not involve vocabulary with which the child is unfamiliar. Very young children, for instance, have particular problems with words denoting location ('behind', 'in front of', 'beneath' and 'above'), and in the event of ambiguity it may be necessary to ask the child to demonstrate what they mean. Merely asking a child whether they understand a given word is insufficient; they may be familiar with a word but still not understand its real meaning (for instance, they may think of 'the defendant' as someone who defends themself against assault).

2.157 Vocabulary can be particularly important in dealing with allegations of sexual abuse, where

children may use terms that are personal to themselves or their families. Also, they may use terms like 'front bottom' which are vague and non-specific. It is always advisable for the interviewer to ensure that they understand what the child means. The use of a doll or diagrams (see paragraph 2.196) is always preferable to children referring to their own bodies when reference needs to be made to the location of sexual acts. Where a young child uses the appropriate adult terminology, it may still be necessary to check their understanding.

2.158 The information requested in questions should always take account of the 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 a number of 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.

2.159 When posing questions, the interviewer should try to make use of information that the child has already provided and words/concepts that the child is familiar with (e.g. for time, location, persons). Some children have difficulty understanding pronouns (e.g. he, she, they). In these circumstances it is better for the interviewer to use people's names wherever possible.

Open-ended questions

2.160 An open-ended question is one that is worded in such a way as to enable the child to provide more information about an event in a way that is not leading, suggestive or putting them under pressure. Open-ended questions allow the witness to control the flow of information and minimise the risk that the interviewer will impose their view of what happened.

The temptation for the interviewer of a child who has disclosed relevant information in the free narrative phase is for the interviewer to immediately ask a series of very focused or even leading questions to 'get to the heart of the matter'. This should be resisted: such a procedure may upset the child and risk producing misleading information, and may cause difficulties if the recording is played at court. Research and practice shows that the most reliable and detailed answers from children of all ages are secured from open-ended questions. **It is important, therefore, that the questioning phase should begin with open-ended questions and that this type of question should be widely employed throughout the interview.**

2.161 Questions beginning with the phrases 'Tell me', or the words 'describe' or 'explain' are useful examples of this type of question. Examples of open-ended questions are:

> *'You said you were... Tell me everything that you remember.'*

2.162 Open-ended questions can provide the child with the opportunity to expand on relevant issues raised in their free narrative account. Thus, if the child has said that her stepfather had hit her with a cricket bat, the interviewer might say: *'Tell me about him hitting you with the bat.'* This type of question can be used to try to expand on any other salient or relevant parts of the child's narrative. There will be children who have said very little in the free narrative phase. Here, an open-ended question can still be asked to prompt any further information. If such open-ended questions cause the child to become distressed, it may be necessary for the interviewer to move away from the topic onto a neutral theme of the kind explored in the rapport phase and then to return to the topic again when the child has regained their composure.

2.163 It is rarely possible to use only open-ended questions with children. For instance, research suggests that children who have been threatened or sworn to secrecy about abuse may only respond to more specific questions. Even when children are prepared to provide information in response to open-ended prompts, further specific-closed questions may be necessary to obtain enough evidence to proffer detailed charges. Young children too may be unable to access material in memory through open-ended questions alone (see paragraph 2.166). Where it is necessary to ask more specific questions, it is advisable to follow them with an open-ended question to return the initiative to the child.

Specific-closed questions

2.164 A closed question is a question that closes down an interviewee's response and thus allows only a relatively narrow range of responses to be obtained, where the response usually consists of one word or a short phrase. Closed questions can, therefore, be appropriate or inappropriate in nature, depending on the quality of the information likely to be obtained

from the interviewee. Specific-closed questions are appropriate and serve to ask in a non-suggestive way for extension or clarification of information previously supplied by the witness. Specific-closed questions vary in their degree of explicitness and it is always best to begin with the least explicit version of the question. Thus, a child in a sexual abuse investigation may have responded to an open-ended prompt by mentioning that a named man had climbed into her bed. A specific-closed but non-leading follow-up question might be: *'What was he wearing at the time?'* If this yielded no clear answer, a further, more explicit question might be: *'Was he wearing any clothes?'*

2.165 Examples of specific-closed questions are the questions that begin Who, What, Where, When, Why. 'Why' questions should be used with special care in abuse investigations as they may be interpreted by children as implying blame or guilt to them (e.g. *'Why didn't you tell anyone?'*). Such 'why' questions can often usefully be replaced with 'what' questions (*'What stopped you telling anyone?'*). Specific-closed questions should not be repeated in the same form when the first answer is deemed unsatisfactory or incomplete. Children may interpret this as a criticism of their earlier response and sometimes change their response as a consequence, perhaps to one that they believe is closer to the answer the interviewer wants to hear.

2.166 For some young witnesses, open-ended questions may not assist them in accessing their memories because their abilities to search their memory systematically are insufficiently developed. However, they may well respond accurately to specific-closed questions that target information they know. Thus a young child may provide little information to an open-ended prompt such as: *'Can you describe what he was wearing?'* but respond readily to a specific-closed question such as: *'What did his clothes look like?'* Care must be taken in framing such questions in that the more focused and narrow the specific-closed question becomes, the more likely it is to provoke suggestive responding and may then be labelled leading (see paragraphs 2.171 to 2.174).

2.167 If the child has alleged in their free narrative that they have been the victim of repeated abuse, but have not described specific incidents in any or sufficient detail, specific-closed questions can be employed to try to clarify the point. In considering how best to assist the child to be more specific, the interviewer should bear in mind the difficulties children have in isolating events in time, especially when the individual events follow a similar pattern. A good strategy in isolating such specific events is to enquire about whether there were any which were particularly memorable or exceptional. The questioner can then use this event as a label in asking questions about other incidents (*'You told me that you had bruises on your leg after he hit you at Skegness. Did you have any bruises after he hit you the second time?'*). Alternatively, they can enquire about the first or last time an event occurred, or about events that occurred at atypical times or locations, because such incidents are likely to more accessible in memory. When questioning a child about repeated events, it is always better to ask all questions about one event before moving on to the next.

2.168 Another use of specific-closed questions is to explore whether the child is giving an account of an incident for the first time or whether they have told others beforehand. A classic pattern in abuse disclosures is for incidents to come to the attention of investigating agencies after the child has first confided in a trusted person, typically a close friend, teacher or relative. This information is valuable in establishing the consistency of any statements made by the child and tracing the development of the allegation. Where a significant delay has occurred between an alleged incident and the child reporting it, the interviewer should take care in probing the reasons for this as such enquiries can be construed as blaming.

2.169 A closed-specific question may be seen to be inappropriate if it is asked too early in the interview (e.g. in the free narrative account phase) or it is asked when an open-ended question could have been asked instead.

Forced-choice questions

2.170 If a specific-closed question proves unproductive, it may be necessary as a last resort to ask a forced-choice or selection question. This type of question is one that poses fixed alternatives and the child is invited to choose between them (e.g. '*Were you in the bedroom or in the living room when this happened?*'). The dangers of using such questions is that children respond with one or other choice without enlarging on their answer and that in the absence of a genuine memory, or if the correct alternative is missing, children tend to guess and pick an option given, rather than saying 'I don't know' or giving the correct (but missing) alternative. The latter may be countered by prefacing the question with a reminder to the child that 'don't know' is an acceptable response and that the interviewer does not know what happened. Alternatively, 'don't know' can be included as an option in the question ('*Were you in the bedroom, the living room, or can't you remember?*'). Forced-choice questions should never be used for probing central events in the child's account that are likely to be disputed at court, as information obtained by such questions may be seen to have limited evidential value.

Leading questions

2.171 Put simply, a leading question is one which implies the answer or assumes facts that are likely to be in dispute. Whether a question is 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, is not possible 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 may be ruled inadmissible (see Appendix D).

2.172 In addition to legal objections, research indicates that interviewees' 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 child's answer, but may also significantly distort the child'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. On occasions, a leading question can produce relevant information that has not been led by the question. **If this does occur, the interviewer 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.**

2.173 A leading question that prompts a child into spontaneously providing information going beyond that implied by the question will normally be acceptable to the courts. However, unless there is absolutely no alternative, the interviewer should never be the first to suggest to the witness that a particular offence has been committed, or that a particular person was responsible. Once such a step has been taken it will extremely difficult to counter the argument that the interviewer 'put the idea into the witness's head' and that the account is therefore tainted.

2.174 Of course, there may be circumstances in the interview where the use of leading questions is unlikely to result in any legal challenge; for instance, during the rapport phase when a witness is being taken through their name and address or is being asked for agreed factual information, such as members of the family and their names. However, good interviewing practice should discourage leading questions with all but the youngest and most reticent witnesses. The use of leading questions in the rapport phase may inhibit the child from responding in their own words later in the interview and it is not always possible at the time to anticipate what facts might subsequently be in dispute. Moreover, the use of inappropriate leading questions may produce nonsensical or inconsistent replies, which may damage the child's credibility as a witness.

Topic selection

2.175 Within the questioning phase of the interview, the interviewer should subdivide the interviewee's account into manageable topics or episodes and seek elaboration on each area using open-ended and then specific-closed questions as outlined above. Each topic/episode should be systematically dealt with until the child is unable to provide any more information. 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 child's remembering processes and may confuse them.

2.176 Good questioning should also avoid the asking of a series of predetermined questions. Instead the sequence of questions should be adjusted according to the child's own retrieval processes. This is what 'witness-compatible questioning' means. Each individual will memorise information concerning the event in a unique way. Thus, for maximum retrieval/information gain, the order of the questioning should resemble the structure of the child'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 child (via the free narrative account) and to organise the order of questions accordingly.

Misleading statements

2.177 Children can on occasion provide misleading accounts of events, but these are often the result of misunderstandings or misremembering rather than deliberate fabrication. The most common cause of such misunderstandings is the interviewer failing to ask appropriate types of question or reaching a premature conclusion that the interviewer then presses the child to confirm. Like adult witnesses, children can on occasion be misleading in their statements, either by fabricating allegations or by omitting evidentially important information from their answers. Where inconsistencies in the child's account give rise to suspicion, the interviewer should explore these inconsistencies with the child after they have completed their basic account. Children should only be challenged directly over an inconsistency in exceptional circumstances and even then only when it is essential to do so. Rather such inconsistencies should be presented in the context of puzzlement by the interviewer and the need to be quite clear what the child has said. On no account should the interviewer voice their suspicions to the child or call them a liar: there may be a perfectly innocuous explanation for any inconsistency.

2.178 In evaluating accounts, the interviewer should not rely upon cues from the child's behaviour as guides to the reliability or otherwise of children's statements. Where a child uses language or knowledge, particularly of sexual matters, that is believed to be inappropriate for a child of that age, specific questions can be asked to try to locate the source of that knowledge. Likewise, if it is suspected that children alleging sexual abuse may have been exposed to sexually explicit films, videos, internet sites or magazines, specific questions can be employed to explore whether parts of the child's account could conceivably be derived from such sources. It is important that all such questions should be reserved for the end of the formal questioning so as not to disrupt the child's narrative.

Phase four: closing the interview

2.179 Every interview should have a closure phase. Closure should occur irrespective of whether an interview has been completed or been terminated prematurely. Closure can be brief, but should normally involve the following features:

- check with the second interviewer, if present;
- summarise the evidentially important statements made by the child, as much as possible in the child's own words, having told the child to intervene if any of the summarising is incorrect;
- answer any questions from the child;
- thank the child for their time and effort;
- provide advice on seeking help and a contact number;
- return to rapport or neutral topics; and
- report the end-time of the interview.

2.180 The lead interviewer should first consult with the interview monitor, if present, as to whether there are any additional questions that need to be raised or ambiguities or apparent contradictions that could usefully be resolved. Where the child has provided significant evidence, the lead interviewer should check with the child that they have correctly understood the important parts of the child's account. This should be done as much as possible using the child's own language and terms, not as a summary provided by the interviewer in adult language. There is a danger that any summary may include statements or assumptions at variance with the child's account, so it is useful if the child is reminded that they should correct any errors made by the interviewer. The opportunity should also be taken to check that the child has nothing further they wish to add.

2.181 Where nothing of evidential value has emerged from the interview, it is important that the child should not be made to feel that they have failed or have somehow disappointed the interviewer.

2.182 The aim of closure should be that, as far as possible, the child 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. It is normal to complete a video-recorded interview by stating the end-time.

Evaluation

2.183 Evaluation should take two primary forms:

(i) evaluation of the information obtained; and

(ii) evaluation of the interviewer's performance.

Evaluation of the information obtained

2.184 After the interview has concluded, the interviewing 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?

Evaluation of interviewer performance

2.185 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. The interview could also be assessed by a supervisor and/or someone who is qualified to examine the interview and give good constructive feedback to the interviewer, highlighting areas for improvement. This should form part of a staff appraisal system (see tier 4 of ACPO's *Investigative Interviewing Strategy* (ACPO, 2004)).

Post-interview documentation and storage of recordings

2.186 The interviewer should complete the relevant paperwork as soon as possible after the interview is completed, including the Record of Video Interview (ROVI) referred to in Appendix K. 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. Responsibility for transcription and the stage at which transcription should take place is set out in Appendix L.

2.187 Recordings should be stored as recommended in Appendix J.

Further interviews

2.188 One of the key aims of video-recording early investigative interviews is to reduce the number of times on which children need to provide 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, an additional interview may be necessary in some circumstances. These include:

- where children indicate to a third party 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 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 in the preparation of their defence, an accused raises matters not covered in the initial interview; or
- where significant new information emerges from other witnesses or sources.

In such circumstances, a supplementary interview may be necessary and this too should be video-recorded. Consideration should always be given as to whether holding such an interview would be in the child's interests. Supplementary interviews should **not** be

conducted in an attempt to retrieve a situation in which the child's evidence is likely to have been compromised by the use of inappropriate techniques or questioning styles by the interviewer during a previous evidential interview. Supplementary interviews for evidential purposes should only be conducted by members of joint investigation teams when they are fully satisfied, if necessary after consultation with the CPS, that such an interview is necessary. The reasons for the decision should be fully recorded in writing.

Identification procedures

2.189 Where a video-recorded interview has been conducted by virtue of this chapter, the production of facial composites using E-FIT (electronic facial identification) 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 child 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 child to give additional evidence-in-chief in the witness box or by live link. Staff carrying out these procedures should be suitably trained to interview and record the evidence in line with this document (see Appendix E for more detailed advice on identification parades, with witnesses interviewed in accordance with this guidance).

Therapeutic help for the child

2.190 A child witness may be judged by the investigating team, and/or by those professionals responsible for the welfare of the child, to require therapeutic help prior to giving evidence in criminal proceedings. It is vital that professionals undertaking therapy with prospective child witnesses prior to a criminal trial adhere to the official guidance: *Provision of Therapy for Child Witnesses Prior to a Criminal Trial: Practical Guidance* (CPS and the Department of Health with the Home Office, 2001).

2.191 The CPS and 'those involved in the prosecution of an alleged abuser have no authority to prevent a child from receiving therapy' (p.24, paragraph 6.1) and 'whether a child should receive therapy before the criminal trial is not a decision for the police or the Crown Prosecution Service' (p.16, paragraph 4.3). However, the police and the CPS must be made aware that therapy is proposed, is being undertaken, or has been undertaken (p.24, paragraph 6.2) so that consideration can be given to whether or not the provision of such therapy is likely to impact on the criminal case (p.24, paragraph 6.3). At all times the importance of not coaching the child or rehearsing the child in matters of direct evidential value must be borne in mind by the professional undertaking therapeutic work with the child. (For further discussion about coaching see R v Momodou and Limani [2005] EWCA Crim 177; [2005] 2 All ER 571; [2005] 2 Cr App R 6).

The cognitive interview (CI)

2.192 This interviewing procedure was developed by cognitive psychologists and it contains, as well as procedures based on good communication skills (many of which have been described above), a number of procedures specifically designed to assist witnesses access their memories. These procedures are usually referred to as:

- mental reinstatement of context;
- report everything;
- change the temporal order of recall; and
- change perspective.

2.193 A number of professionals who have worked with children recommend use of the CI, though it is not advised for children below a developmental age of seven. In addition, research has found that unless the training of interviewers who attempt to use the CI has been appropriate, they will fail to use this technique effectively and could confuse the witness. 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). See *Investigative Interviewing: Psychology and Practice* by R. Milne and R. Bull (Wiley, 1999), for more detailed information.

2.194 Interviewers, and their senior managers, need to be aware that techniques that assist witnesses to produce more recall will result in interviews that last longer. Surveys of those who use the CI have found that they often report it to be effective. However, their workloads and their supervisors put them under pressure not to conduct interviews that are time consuming. Such pressures should be resisted for interviews with all vulnerable witnesses, including children.

2.195 Further information on the techniques that make up the CI can be found in Part 4B of this document.

Special interviewing techniques

Props

2.196 The use of conventional dolls, drawings and small figures can function as very useful communication aids, but interviewers need to be aware of their pitfalls as well as advantages. Young children or those with communication difficulties may be able to provide clearer accounts when such props are used, compared with purely verbal approaches. For example, drawings or dolls may allow a child to demonstrate body parts or an abusive incident, while a doll's house may help the child to describe the environment in which an incident took place. Very young (i.e. pre-school) children can have difficulty relating props to the real-life objects they are meant to represent, so the use of props with this age group is not recommended. All props should be used with caution and not combined with leading questions.

Confusion can arise if an object or toy is introduced into the interview which was not in fact part of the event. The need for the use of props should be carefully considered during the planning phase of the interview.

2.197 Where anatomically accurate dolls are to be employed, 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.

Other interviewing techniques

2.198 There are a number of specialised interview techniques that have been developed for interviewing children and these 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 child'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. The investigative team should discuss with senior managers or an interview adviser (tier 5 of ACPO's *Investigative Interviewing Strategy* (ACPO, 2004)), and if necessary consult with CPS, before undertaking these alternative procedures. It is essential that the interviewers involved are specially trained in techniques concerned. Each procedure is described only briefly and further information can be obtained by consulting the relevant sources (see Appendix Q).

2.199 Among these specialised interviewing techniques are those for children who are particularly reticent or who may be under duress not to divulge information relevant to the investigation and who thus may not respond to conventional questioning. In the **facilitative interview**, children are asked about pleasant and unpleasant experiences, 'okay' and 'not okay' actions, what the child would like to change in their life, and there may be an open-ended discussion about secrets. In the **systematic approach to gathering evidence** (SAGE) interview, the child is encouraged over a number of separate sessions to talk about significant persons and places in the child's life and their attitude toward them. Systematic comparison of the child's responses enables the trained interviewer to identify areas of particular concern which can then be explored more thoroughly using open-ended questions (see *A Guide to Interviewing Children: Essential Skills for Counsellors, Police, Lawyers and Social Workers* by C. Wilson and M. Powell (Routledge, 2001), for more detailed information).

2.200 The **structured investigative protocol** is a variant on the phased approach to the interview recommended in this guidance. This has been developed by the National Institute of Child Health and Human Development (NICHD) as a result of concern over insufficient use of open-ended questions by practitioners. Interviewers use a learned series of open-ended prompts rather than following their own pattern of questioning to elaborate upon the child's initial free narrative account (see *The NICHD Protocol for Investigative Interviews of Alleged Sex-abuse Victims* by M.E. Lamb et al (unpublished manuscript, 1999) and Using a Scripted Protocol in Investigative Interviews: A Pilot Study by J.K. Sternberg and M.E. Lamb in *Applied Developmental Science* (1999) for more detailed information).

2.201 Statement validity assessment (SVA) is a technique widely used in Germany, Canada and the USA to interview and assess the statements of children in sexual abuse investigations. It shares with this guidance an emphasis on obtaining a free narrative linked to open-ended questioning. A key feature of SVA is criteria-based content analysis (CBCA), where a child's statement is examined for the presence of certain features, which are believed to characterise truthful accounts. The technique relies upon an extended narrative being available for analysis and so it is inappropriate for witnesses who provide only limited narratives, such as the very young, children with communication difficulties or depressed children. A number of issues concerning the reliability and validity of CBCA and its use in criminal proceedings in England and Wales are as yet unresolved (see *Detecting Lies and Deceit: The Psychology of Lying and its Implications for Professional Practice* by A. Vrij (Wiley, 2000) for more detailed information).

Interviewing children with disabilities

Planning and preparation

2.202 The phrase 'children with disabilities' encompasses a wide range of abilities and disabilities. Interviewers need to be aware of the extensive differences between potential interviewees 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 (see paragraphs 2.90 to 2.101).

2.203 There is rarely any reason in principle why children with disabilities 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 need to be taken 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. Children with disabilities are likely to have already come to the attention of professionals, as a result of which, 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 disability 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.

2.204 It is important to find out what impact the child's disability is likely to have 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.

2.205 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.

2.206 For some children, a number of shorter sessions may be preferable to a single interview. For example, children with learning disabilities often have shorter attention spans, giving rise to a need for regular and frequent breaks. In addition to this, some children with physical or learning disabilities might find communicating to be quite demanding and this is also likely to heighten the need for breaks and a slow pace, thus lengthening the duration of the interview(s).

2.207 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.

2.208 Children with learning disabilities tend to be easily distracted. Interview rooms should, therefore, be organised so as to minimise the opportunity for distraction.

2.209 The possibility that children with learning disabilities might have difficulty with time concepts should be taken into account while planning the interview.

2.210 The procedures that make up the cognitive interview (see paragraphs 2.192 to 2.195) can be used in respect of children with mild learning disabilities over the age of seven, although the change perspective technique is not recommended.

The interview

Phase one: rapport (see also paragraphs 2.137 to 2.146)

2.211 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 children with disabilities. These are to:

- relax the interviewer;
- educate the viewer of the video about the child and their disabilities;
- dispel common myths and prejudices (e.g. physical impairments affect a child's intelligence); and
- allow the child to demonstrate communication and understanding.

2.212 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.

2.213 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 with disabilities 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 ensues.

2.214 The experience of some children with disabilities 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.

2.215 Children with disabilities 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.

Phase two: free narrative account (see also paragraphs 2.147 to 2.152)

2.216 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 makes it difficult to discuss certain topics; or
- where a child has not reached the developmental stage of being able to tell a story.

In these circumstances, the services of an intermediary should be secured to assist communication.

2.217 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.

2.218 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.

Phase three: questioning (see also paragraphs 2.153 to 2.178)

2.219 A clear and informed plan for questioning is essential to ensure that a child with disabilities 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:

- Children with disabilities 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 are likely to affect the sensations a child can feel.
- A child with a sensory impairment may be restricted in some of the information they can provide about the identity of the alleged suspect or details of the alleged offence(s).

2.220 Questions should be simple and concrete. The use of abstract concepts, double negatives and other inappropriate questions should be avoided.

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

Phase four: closing the interview (see also paragraphs 2.179 to 2.182)

2.222 Given the relative lack of knowledge of investigative interviewing of children with disabilities, it would 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. As long as 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.

Interviewing very young or psychologically disturbed children

2.223 When a child is very young or known to be psychologically disturbed, the planning phase for the interview needs to be undertaken with great care. Consideration should be given to the use of an intermediary in the planning process and during such interviews.

2.224 Thought should be given to the venue for the interview. Young children may find the unfamiliar surroundings of an interview suite intimidating. Adequate time should be allowed for rapport, and age-appropriate toys and colouring materials should be provided to settle the child. Consideration should be given to seeking specialist advice or bringing in an interviewer with particular skills and experience in the area. It may not be possible to conduct a conventional interview: such children may say very little in the free narrative phase and not respond well to open-ended questions. However, the use of purely focused questions carries with it the risk that the child will say what they believe the interviewer wants to hear. Such risks are further increased through the use of leading questions. Children of this age often lack social experience and do not feel at ease with strangers. This may require interviewers to seek social support from an independent adult known to the child.

2.225 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.

The child who becomes a suspect

2.226 It may happen that a child who is being interviewed comes under suspicion of involvement in a criminal offence, perhaps by uttering a self-incriminating statement. Although this is not a frequent occurrence, interviewers should bear in mind that victims and witnesses could also on occasion be perpetrators.

2.227 If it is concluded that the evidence of the child as a suspect is also highly relevant to a particular case, the interview should be terminated and the child 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 child should be allowed to complete any statement they wish to make. Any admission by a child in the course of an investigative interview may not be admissible as evidence in criminal procedures. Normally, a further interview would need to be carried out in accordance with the relevant provisions of the Code for the Detention, Treatment and Questioning of Persons by Police Officers (Police and Criminal Evidence Act 1984, Code C). The Code provides, among other matters, for the cautioning of a suspect and for the presence of an appropriate adult during questioning.

2.228 A child 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 to a child over the age of criminal responsibility (10 years), however remote the prospect of criminal proceedings against the child might seem. Nor should the interviewer give any kind of undertaking regarding the child's future care arrangements. If the child is to be interviewed in accordance with Code C, they will be cautioned and the purpose of the interview made clear.

2.229 Where the priority is to obtain evidence from the child as a victim or a witness, the interview can proceed and should follow this guidance. So far as is practicable, consideration should be given in the planning stage as to how interviewers will deal with any confessions of criminal offences made by the child in the course of the interview. Any decision on an appropriate course of action will involve taking into account the seriousness of the crime admitted and weighing it against the seriousness of the crime perpetrated against the witness. 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.

3 Planning and conducting interviews with vulnerable adult witnesses

Part 3A: Planning and preparing for interviews

Aims

By the end of Part 3A, those involved in planning interviews with vulnerable adult witnesses should be able to consider, with respect to each case:

- the different types of vulnerable adult witness (paragraph 3.1);
- information that might assist in the recognition of vulnerable adult witnesses (paragraphs 3.2 to 3.16);
- initial contact with vulnerable adult witnesses (paragraphs 3.17 and 3.18);
- how different types of vulnerable adult witnesses may be supported and safeguarded at interview (paragraphs 3.19 to 3.41);
- issues of consent and competence (paragraphs 3.42 to 3.53);
- information on planning interviews with vulnerable adult witnesses (paragraphs 3.54 to 3.91);
- using the planning information to plan interviews with vulnerable adult witnesses (paragraphs 3.92 to 3.137), including when to consider whether an assessment by an intermediary is appropriate (paragraphs 3.115 to 3.120); and
- preparing vulnerable adult witnesses for an interview (paragraphs 3.138 to 3.144).

What follows is a recommended procedure for planning and preparing for interviews with the witnesses referred to in this chapter. Chapter 3B covers the interview itself and treats the interview as a process in which a variety of interviewing techniques are deployed in the framework of a phased approach. While what follows in this chapter and Chapter 3B should not be regarded as a checklist to be rigidly worked through, the sound legal framework that it provides should not be departed from by interviewers unless they have discussed and agreed the reasons for doing so with their senior manager or an interview advisor (tier 5 of the Association of Chief Police Officers' *Investigative Interviewing Strategy*, ACPO 2004). Any such agreements and the rationale underpinning them should be recorded. It may subsequently be necessary to explain such departures at court.

Who are vulnerable adult witnesses?

3.1 As described in Chapter 1, the Youth Justice and Criminal Evidence Act 1999 recognises four categories of vulnerable witness. The first of these is young witnesses under the age of 17 and interviewing procedures for these witnesses are dealt with in detail in Chapter 2. The other three categories of vulnerable witness, which are the subject of this chapter, can be summarised as follows:

- witnesses with a learning disability;
- witnesses with a physical disability; and
- witnesses with a mental disorder.

In addition to considering the provisions of the Youth Justice and Criminal Evidence Act 1999, it should be noted that the Disability Discrimination Act 1995 may apply to these vulnerable groups where discrimination occurs in respect of the services provided to them.

Recognising vulnerable adult witnesses

3.2 Recognition of vulnerability may be particularly difficult when interviewing takes place at a police station shortly after an alleged offence, due to the stress and immediacy of the action. The guidance provided here is in accord with the separate guidance to the police contained in *Vulnerable Witnesses: A Police Service Guide* (Association of Chief Police Officers (ACPO) and Home Office, 2002), which can be consulted for additional information.

3.3 If a witness exhibits confusion, some initial clarification may also be necessary to establish whether it could be due to:

- intoxication through intake of alcohol and/or drugs;
- withdrawal from drugs;
- mental disorder;
- impairment of intelligence and social functioning (learning disability);
- a physical disability or disorder;

- incapacity through age;
- trauma; and/or
- fear or distress.

All of these factors may affect cognition and the ability to give a clear statement. Witnesses may be affected by more than one vulnerable condition: for example, a witness with a mental disorder may also be subjected to fear and distress. When in doubt, and where practicable, the police officer should consider an early assessment by an expert, such as a clinical psychologist, a speech and language therapist or a psychiatrist, to avoid compromising any evidence obtained during the interview.

Significant impairment of intelligence and social functioning (learning disability)

3.4 Learning disability is not a description of **one** disability, but a collection of many different factors that might affect a person's ability in relation to learning and social functioning to greatly varying degrees. While some 200 causes of learning disability have been identified, most diagnoses are still 'unspecified learning disabilities'. People with high support needs may be easily identified but people with mild or moderate learning disabilities may be more difficult to identify.

3.5 It is impossible to give a single description of competence 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.

3.6 A police officer or adult social care social worker in the community may know the witness, so an initial request should be made for any local information. If the witness is not known to the services, some early discussion/questioning by a specially trained member of the investigating team might be helpful in identifying possible disabilities. Relevant questions include:

- *Where did the witness go to school?*
  Was the school designated as a 'special school'?
- *If the school was not designated as a 'special school' but was 'mainstream', did the witness have a designated support teacher?*
  Does the witness have any reading or writing difficulties?
- *What does the witness do during the day?*
  Does the witness attend a college that makes particular provision for students with learning disabilities?
- *Where does the witness spend their leisure time?*
  At a day centre or Gateway Club?
- *Where does the witness live?*
  Is this a group home or sheltered housing?
- *Does the witness have an adult social care social worker or care assistant?*
  Would the witness like this person to be contacted for interview or pre-trial support? (This question is not appropriate where the adult social care social worker or care assistant is suspected of having abused the person.)
- *Does the witness receive any benefits relating to disability?*

Behavioural indications of learning disability

3.7 These are indications only and by themselves do not **necessarily** indicate that the witness has a learning disability:

- a slow and/or confused response to questions;
- difficulty in understanding simple questions;
- speech difficulties;
- difficulty/inability with reading and writing;
- limited understanding of a wide range of concepts, for example:
  - time and place;
  - sequences (before, after, first, last, etc.);
  - spatial position (in, on, under, above, etc.);
  - relationships; and
- difficulty in remembering personal details or events.

3.8 Though generalisations 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.

3.9 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

3.10 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 statement. Most witnesses will be able to give evidence with support.

3.11 Some physical disabilities may require support. Hearing or speech difficulties may require the attendance of a skilled interpreter and/or speech and language therapist.

Mental disorder

3.12 Mental disorder is legally defined in Section 1(2) of the Mental Health Act 1983 as mental illness, arrested or incomplete development of the mind, psychopathic disorder and any other disorder or disability of the mind.

3.13 This may be the most difficult category to identify for support through 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.

3.14 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, then these should take account of any emotional difficulties, so as to enable the witness to give evidence with the least possible distress.

3.15 Currently there is no accepted and consistent approach to the assessment of witness competence. It is likely that varying criteria may be used by experts called to make assessments.

3.16 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.

Initial contact with vulnerable adult witnesses

3.17 The need to consider holding a video-recorded interview will not always be immediately apparent to either the first police officer who has contact with the witness or 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. 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 as described in Part 3B. Such a brief account should include where and when the event is alleged to have taken 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.

3.18 In these circumstances, any early discussions with the witness should, as far as possible, adhere to the following basic principles:

- **Listen** to the witness.
- Do **not** stop a witness who is freely recalling significant events.
- 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 (see paragraphs 3.206 to 3.227).
- Ask no more questions than are necessary in the circumstances to take immediate action.
- 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).
- 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.
- 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.

Support for vulnerable adult witnesses

Witnesses with a significant impairment of intelligence and social functioning (learning disability)

3.19 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.

3.20 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.

3.21 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 to be relatively mild, it is essential that a great deal of care is taken in framing questions and evaluating the witness's response to them.

3.22 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 an 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 communicates using a mixture of words and gestures.

3.23 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 an 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.

3.24 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.

3.25 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

3.26 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).

3.27 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.

3.28 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.

3.29 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. In one case, a young woman who used single words along with expressive gestures which were clearly understood by those close to her gave a good account of events. Those interviewing her were made aware of her mode of communication prior to the interview.

3.30 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. It is important that witnesses move or point to the letters or symbols themselves; the involvement of a third party is likely to lead to the evidence being ruled as inadmissible.

3.31 The witness may have some associated health or mobility difficulties and would benefit from short interviews, spaced out with periods of rest and refreshment.

3.32 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 mental disorder

3.33 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 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.

3.34 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.

3.35 Witnesses may suffer from various forms of anxiety through fear of authority, exposure or retribution. Extreme fear may result in phobias or 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 traits 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.

3.36 Witnesses, particularly some older witnesses, may also have dementia, which can cause cognitive impairment. A psychiatrist or 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.

3.37 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.

3.38 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.

3.39 The witness may wish to please the person in authority. They may be suspicious of the person, or 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.

3.40 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.

3.41 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).

Consent

3.42 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 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).

3.43 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.

3.44 Obtaining consent for a video-recorded interview may raise difficulties with regard to 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.

3.45 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 for 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. An intermediary may be of use in these circumstances (see Section 29, Youth Justice and Criminal Evidence Act 1999) .

3.46 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 particular account should be taken of the matters set out in Box 3.1.

Box 3.1: Matters to be taken into account when considering best interests

The matters to be taken into account (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.

In seeking to determine the matters set out in Box 3.1, particular account should be taken of the views of those referred to in Box 3.2.

Box 3.2: Views to be taken into account 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.

3.47 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.

3.48 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.

3.49 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 changes 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.

3.50 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 in reaching that decision.

Competence

3.51 Competency may be an issue with some vulnerable witnesses. A person is deemed competent to give evidence in criminal proceedings unless it appears to the court that they are not able to understand questions put to them as a witness and give answers to them which can be understood (Section 53(3), Youth Justice and Criminal Evidence Act 1999). At the court's discretion, the evidence of an expert and/or a non-expert may be called to give advice as to the competence of the witness.

3.52 The defence as well as the prosecution may have an interest in having the witness declared competent. The party calling the witness is required to satisfy the court that, on a balance of probabilities, the witness is competent to give evidence in the proceedings. It is, therefore, important that the prosecution (or the defence) ensure that applications have been made for any Special Measures that will maximise the competence of the vulnerable witness.

3.53 In cases where competence requires definition, the court, following existing procedures, will also decide whether the witness is competent to take the oath. There may be occasions when the court will decide that a person may not be permitted to give evidence on oath in the proceedings; this will not, however, debar the witness from giving evidence. Where a conviction results from unsworn evidence, it is not in itself grounds for appeal. However, if the witness is deemed unable to take the oath, a test of competence to tell the truth should be considered.

Planning and preparing for the interview

3.54 Having identified the type of vulnerability and the effect this will have on the evidence that the witness can give in terms of reliability, careful attention must be paid to planning the interview. Time spent at the planning stage will enhance the delivery of best evidence and minimise errors and inconsistencies at a later stage.

3.55 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. The importance of planning cannot, therefore, be overstated; the success of an interview and thus an investigation could hinge on it. Even if the circumstances of the case are such that it is essential that an early interview takes place, a planning session is required that takes account of all the information

available about the witness at the time and identifies the key issues and objectives.

3.56 Planning should take account of the abilities and needs of vulnerable witnesses. Additional time is likely to be required to ensure that witnesses are able to understand and respond to the difficulties and pressures placed upon them by the need to make a statement which will be acceptable to the court. **Attention should be paid at all times to issues of age, disability, gender, race, culture, religion and language**.

3.57 Where vulnerability is likely to be an issue, early individual assessment by an expert of the **abilities** and **disabilities** of the witness may be desirable to identify any particular difficulties that the witness may experience in producing a satisfactory statement at interview.

3.58 In some cases, it might be advisable for there to be a discussion with the Crown Prosecution Service (CPS) in accordance with the guidance set out in *Early Special Measures Meetings between the Police and the Crown Prosecution Service and Meetings between the Crown Prosecution Service and Vulnerable or Intimidated Witnesses* (CPS, ACPO and the Home Office, 2001). Where such a discussion takes place, there should be a decision about the form in which the statement is to be taken (video-recorded or written). Such decisions must take account of the witness's own expressed preferences.

3.59 At the court's discretion, a responsible person who knows the witness well or an expert with generic knowledge of the witness's condition might subsequently be called to provide advice on whether the witness would benefit from Special Measures. An early request for Special Measures can be made by either the prosecution or the defence (see Chapter 6 for details of Special Measures and their applicability to different types of vulnerable witness).

Planning information

3.60 The planning stage of an interview involves some consideration of three types of information:

- information about the witness (see paragraphs 3.61 to 3.79);
- information about the alleged offence(s) (see paragraphs 3.80 and 3.81); and
- information important to the investigation (see paragraphs 3.82 to 3.91).

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 alleged offence and information important to the investigation.

Information about the witness

3.61 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 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.

Race, gender, culture and ethnic background

3.62 The witness's race, gender, culture, ethnicity and first language should be given due consideration by the interviewing team. They have a responsibility to be informed about and take into account 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.

3.63 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 (see also Box 3.4). Asylum-seeking witnesses and refugees may have a fear of disclosing abuse because of what may happen to them and their family.

3.64 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.

3.65 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 manner in which 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.

3.66 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 (see paragraph 3.109).

Other life experiences

3.67 Where the witness may have experienced abuse, neglect, domestic violence 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 3.3 to 3.6. 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 3.3: 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 3.4: 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 3.5: Some possible effects of discrimination based on disability

These include:

- decreased autonomy;
- increased dependency:
- difficulty in establishing positive self-identity;
- experience of being isolated (geographical, physical, social);
- experience of being patronised by people who do not have a disability;
- experience of being treated as a 'voiceless object';
- feelings of being perceived as 'asexual'; and
- increased vulnerability to abuse.

Box 3.6: Some possible effects of domestic violence

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).

3.68 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)

3.69 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 that they know that their contribution is valued, whatever the outcome.

3.70 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 disorder (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.

3.71 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 would also apply to the courtroom situation if they have to appear on more than one day.

3.72 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).

3.73 All witnesses with learning disabilities are eligible for an intermediary where the use of an intermediary would maximise the quality of their evidence (see paragraphs 3.115 to 3.120). 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.

3.74 There is also the possibility of additional physical disabilities, which might contribute to intellectual impairment and add to the difficulty of giving evidence.

3.75 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

3.76 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

3.77 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.

3.78 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.

3.79 Witnesses with a mental disorder are eligible for an intermediary where the use of an intermediary would maximise the quality of their evidence.

Information about the alleged offence(s)

3.80 It is preferable (but not always necessary or essential) that interviewers know little detail of the alleged offence(s) for the purposes of the interview. However, in order to plan and prepare for the interview, interviewers will need a little **general** knowledge about:

- the type of alleged offence(s);
- the approximate time and location of the alleged offence(s);
- the scene of the alleged offence(s) (note: this should only be enough **general** knowledge to help the interviewer understand what might be said during the interview); and
- how the alleged offences came to the notice of the police.

3.81 Where the interviewer is also the investigating officer and has been involved in a multi-agency strategy meeting/discussion (see *No Secrets – Guidance on Developing and Implementing Multi-agency Procedures to Protect Vulnerable Adults from Abuse* (Department of Health, 2000), paragraph 6.13 and *In Safe Hands: Implementing Adult Protection Procedures in Wales* (National Assembly for Wales, 2000), paragraphs 5.1 and 8.11) or has been interviewing other witnesses during the course of an investigation, it is accepted that circumstances and practical resource considerations might be such that they are likely to know more about the alleged offence(s) than is set out in paragraph 3.80. In this situation, interviewers should try to avoid contaminating the interview process with such knowledge as far as possible.

Information important to the investigation

3.82 While obtaining an account of the alleged event is essential, other matters might need to be covered during the interview in order to progress the investigation. These matters can be regarded as 'information 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 information necessary to conduct a comprehensive investigation. It could also prove beneficial in discussions with the CPS if the subject of witness assessment is raised. Information important to the investigation falls into two categories: **general investigative practice** (see paragraph 3.84) and **case-specific material** (see paragraphs 3.85 to 3.91). Where such information important to the investigation has not already been covered as part of the witness's account, interviewers should consider introducing it either in the latter part of the questioning phase (see paragraphs 3.194 to 3.235) or in a subsequent interview session, depending on the complexity of the case and what is alleged to have been witnessed by the interviewee.

3.83 The amount of knowledge that interviewers have about information important to the investigation prior to the interview depends on what they know about what is alleged to have been witnessed by the interviewee. As noted in paragraph 3.80, it is preferable that interviewers know little detail of the alleged offence(s) before the interview. Therefore only a little knowledge that could form the basis of potential questions about information important to the investigation is likely to be available to the interviewer at this point in time. However, while planning the interview, interviewers should apply what they know of the alleged offences to determine the areas of general investigative practice that might need to be covered in the interview. More case-specific material could be either made available to the interviewer (from the investigating officer, interview monitor or recording equipment operator), after an attempt has been made to elicit and clarify the witness's account, or included in the planning information for a later interview to avoid potential contamination of the process.

Information important to the investigation relating to general investigative practice

3.84 Information important to the investigation relating to general investigative practice includes:

- points to prove any alleged offence(s);
- 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 (*Practical Guide to Investigative Interviewing* (National Centre for Policing Excellence, most recent edition 2004)):
  - 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.

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.

Information important to the investigation relating to case-specific material

3.85 Information important to the investigation relating to case-specific material includes:

- how and where any items used in the commission of the offence (e.g. clothing, vehicles, weapons, cash, documents or other property) were disposed of, if the vulnerable adult witness might have some knowledge of this;
- 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, such as the amount of any alcohol consumed);
- 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 risk assessment issues that the witness might know about that concern the likely conduct of the alleged perpetrator, their family or associates (this should be dealt with after the witness's account has been covered to avoid confusion).

This is not intended to be an exhaustive list. The nature of any case-specific material varies according to the circumstances of the 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.

3.86 Significant evidential inconsistencies and significant evidential omissions (case-relevant information) are discrete categories of case-specific material.

Significant evidential inconsistencies

3.87 During the course of an investigation it may be necessary to ask a vulnerable adult witness to explain a significant evidential inconsistency between what they have said during the interview and other material gathered during the course of the investigation. Such inconsistencies would, for example, include significant differences between the account provided by the witness during the interview and:

- what the witness is reported to have said on a previous occasion;
- the accounts of other witnesses; and
- injuries sustained by either the alleged victim or the alleged offender.

3.88 There are a number of reasons for significant evidential inconsistencies between what a witness says during an interview and other material gathered during the course of an investigation. Many of these reasons are perfectly innocent in their nature (e.g. genuine mistakes by the witness or others stemming from a memory-encoding or recall failure, or subconscious contamination of their memory by external influences) but occasions may arise where the witness is motivated to either fabricate or exaggerate their account of an event.

3.89 Whatever the reason for the significant evidential 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 evidential inconsistencies should only be sought where the inconsistency is a significant one.
- Explanations for evidential inconsistencies should only be sought after careful consideration has concluded that there is no obvious explanation for them.
- Explanations for evidential 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 evidential inconsistency is to pursue the truth in respect of the matter under investigation, it is not to put pressure on a witness to alter their account.
- Explanations for evidential 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 evidential inconsistencies should be carefully planned, phrased tactfully and presented in a non-confrontational manner.

Significant evidential omissions (case-relevant information)

3.90 During the course of an investigation it may be necessary to ask a vulnerable adult witness about relevant information that they have not mentioned in their account. This may arise, for example, where others say that the alleged offender was carrying an object, or that the alleged offender's behaviour was unusual or that there was something particular about the alleged offender's description or vehicle 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, and situations may arise where it is important to seek an explanation from the witness. In these circumstances, it may be necessary to ask a question to establish whether the witness has knowledge of the information. Such a question should

only be asked after the witness's account has been fully explored, at the end of the interview (or in a further interview if necessary).

3.91 When planning such a question, the interviewer should consider:

- whether the information omitted by the witness is likely to be important enough to be worthy of explanation;
- the extent to which the witness may be vulnerable to suggestion, compliance or acquiescence; and
- which type of question is most likely to elicit the information in a manner that will not have an adverse effect on the value of any answer.

A plan for soliciting an explanation for the omission of case-relevant information from a witness's account must consider 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 case-relevant information 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 case-relevant information 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; or
- does not include the case-relevant information, 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 case-relevant information, 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).

Where the witness cannot recall the case-relevant information, this may be due to not attending to the information or to memory loss. Further reading on case-relevant information can be found in *The Evaluation of the Investigation and Legal Process Involving Child Abuse Offences to Establish a Model of Investigation for Investigators* by K.B. Marlow (unpublished MSc thesis, Portsmouth, 2002).

Using the planning information

3.92 The planning information should then be used to:

- set aims and objectives for the interview;
- determine the techniques 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 interviewee);
  - 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
  - what is likely to happen after the interview.

Aims and objectives

3.93 Setting clear aims and objectives is important because they give direction to the interview and contribute to its structure. The interview aims and objectives should focus on trying to establish what happened prior to, during and after the alleged event(s), including the details of all the physical and verbal interactions that took place between the witness and the alleged perpetrator(s) and between the witness and anybody else. The interview aims and objectives should also take account of any suspected attempt to stop the witness from talking to the police or any other agency or person.

Techniques

3.94 The kind of techniques used within the phased structure set out in Part 3B 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. For example, it might be productive to make use of some of the cognitive mnemonics referred to in paragraph 3.253 within the phased interview approach with a direct witness who is able and willing to participate in the process, whereas such techniques are unlikely to be productive while a witness remains hostile and less co-operative and where a more managed communication is necessary.

How the interview is to be recorded

3.95 Any decision as to the form of the witness's statement, whether as a video-recorded interview or a written statement, will need to be taken on an individual basis, taking into account information and any expert opinion that is available. One important factor would be the presence of any memory disabilities. If the witness has unusual difficulties in retrieving past events readily, then an early video-recorded interview may be advisable. Likewise, if a witness is likely to suffer undue stress in giving evidence-in-chief live in the courtroom, a video-recorded statement may again be preferable.

3.96 All decisions need to take account of the witness's own expressed preferences as to the form of their statement.

3.97 Regardless of how the interview is recorded, notes should always be taken that are sufficiently detailed to assist 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 perpetrator 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 it 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

3.98 The investigating team should consider who is best qualified to conduct the interview and whether there should be an interview monitor present to support that interviewer.

3.99 The witness's gender, race, culture and ethnicity must always be given due consideration and advice sought where necessary, but stereotypic conclusions about who is to conduct the interview should be avoided. Where the witness expresses a particular 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.

3.100 A special blend of skills is required to lead video-recorded interviews. The lead interviewer should be a person who has, or is likely to be able to establish, rapport with the interviewee and who understands how to communicate effectively with those with disabilities or disorder, including in disturbed periods. The lead interviewer should also have a proper grasp of the rules of evidence and investigatively important information, including the points needed to prove particular offences, and be willing to attend court to give evidence.

3.101 In addition to taking account of the prospective interviewer's skills, the following factors should be taken into consideration 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.

3.102 The decision as to who will lead the interview should only be made after a full discussion of the issues raised above. If assessment prior to the interview or other contact with the interviewee has already taken place, it may be clear who in the investigation team has established a better rapport with the interviewee; provided that person has been adequately trained in interviewing adults with disabilities or disorders, this should help decide the lead interviewer.

3.103 The interviewer should consider the appropriate mode of dress for the particular interviewee. For example, research shows that a person's perceived authority can have an adverse effect on the interviewee, especially with respect to suggestibility.

3.104 Exceptionally, it may be in the interests of the witness to be interviewed by somebody that they are already confident with 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

3.105 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 gaps that emerge in the witness's account, 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 which event 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 where an interview supporter and interpreter are also to be present in the interview room.

3.106 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 interviewer errors and to 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 at court.

Equipment operators

3.107 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 (see also Appendix H).

Interpreters

3.108 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.

3.109 Interpreters should be appropriately accredited and trained so that they understand the need to avoid altering the meaning of questions and replies. They should normally be selected from the National Register of Public Service Interpreters or the Council for the Advancement of Communication with Deaf People (CACDP) National Directory of Sign Language Interpreters. If it is not possible to select an interpreter from these registers then the interpreter may be chosen from some other list, provided that the interpreter meets standards at least equal to those required for entry onto the National or CACDP registers, in terms of academic qualification and proven experience of interpreting within the criminal justice system. All interpreters need to be independent, impartial and unbiased. Family members or other close relatives should not be used either during the interview or when preparing the witness for it.

3.110 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). 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.

3.111 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, the lead interviewer should identify themself as such while maintaining appropriate eye contact with the witness so that the witness understands that they should address the interviewer, not the interpreter. However, if 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.

3.112 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.

3.113 Where a signer is being used to interpret for a witness with a hearing impairment, a camera should be used to record the signer's 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.

3.114 Where a signer is to be used, it is important to remember that the energy involved in signing is such that the hands of the signer and the witness are likely to get tired. The interview plan should therefore take account of the need for breaks to give the signer and the witness an opportunity to rest their hands.

Intermediaries

3.115 An intermediary may be able to help improve the quality of evidence of **any** vulnerable adult witness who is unable to detect and cope with misunderstanding, or to clearly express their answers to questions, especially in the context of an interview or while giving evidence in court. The information provided here is intended to summarise the role of the 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 *Intermediary Procedural Guidance Manual* (Office for Criminal Justice Reform, 2005).

3.116 Even though Section 29 of the Youth Justice and Criminal Evidence Act 1999 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 happens rarely in practice. It is more common for 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 will vary from witness to witness depending on the witness's particular needs and communication style. It will also depend 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.

3.117 An Intermediary Registration Board (IRB) has been established by the OCJR. The IRB oversees registration of intermediaries and their standards. Registered Intermediaries are accredited by the IRB and OCJR following a selection and training process assessed against a set of core competencies required for the intermediary role. Registered Intermediaries are checked periodically at the Criminal Records Bureau enhanced disclosure level. Details of how to access the intermediary register are set out in the *Intermediary Procedural Guidance Manual* (Office for Criminal Justice Reform, 2005).

3.118. Before an 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 for how 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 act as an intermediary for that witness. Intermediaries should never be alone with a witness; a responsible third party, as defined by procedural guidelines (Section 2 of the *Intermediary Procedural Guidance Manual* (Office for Criminal Justice Reform, 2005)) must be present. This should usually be a police officer at the investigation stage.

3.119 Registered Intermediaries should be used. The use of an unregistered person as intermediary can only be considered once the options for using a Registered Intermediary have been exhausted. When this is the case, an unregistered intermediary has the same responsibility to the court. They must be independent of the case being investigated (i.e. not witnesses or suspects). There is a preference for unregistered intermediaries to be professional people rather than family members, friends or associates. In the 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. A briefing pack to be used by unregistered intermediaries, setting out the role of the intermediary, is available from the OCJR.

3.120 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).

Interview supporters

3.121 It may often be helpful for a person who is **known** to the witness to be present during the interview to provide emotional support (the 'interview supporter'). They may also be able to offer extra information regarding the particular communication needs of the witness. However, in some circumstances it has been found that the use of a person who is **well-known** to the witness as an interview supporter can prove counterproductive by inhibiting the disclosure of information (e.g. as a result of embarrassment arising from sensitive information being disclosed in the presence of a person seen by the witness on a day-to-day basis). For this reason, discussions as to the identity of any potential interview supporter should take account of the nature of their relationship with the witness and its potential impact on the interview process. Wherever possible, the views of the witness should be established prior to the interview as to whether they wish another person to be present and, if so, who this should be.

3.122 Other witnesses in the case, including those giving evidence of an early complaint, cannot act as interview supporters.

3.123 If an interpreter or intermediary is included, then they will need to be distinct from the interview supporter and these different functions should not be vested in one person.

3.124 Interview 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.

3.125 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 interview supporter to make sure they are outside of the witness's line of vision, for example by sitting on the opposite side of the witness to the interviewer.

Location of the interview

3.126 Active consideration should be given to the location of the interview and to the layout of the room in which it is to take place. In the planning phase the interviewer should attempt to determine where the witness would prefer to be interviewed. Some witnesses may be happy to be interviewed in an interview suite, while others might prefer to be interviewed in a setting familiar and comfortable to them. Whatever the decision, 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, free from interruptions, free from distractions, and free from fear and intimidation so the interviewer and interviewee can concentrate fully on the task in hand: the interview.

3.127 Interviewers should ensure that sufficient pens and paper are available for use where a witness's recall could be assisted by drawing sketches/plans (NB: it is important to remember that any sketches/plans, etc. drawn in the interview will need to be retained so that they can either be adduced as evidence or disclosed as unused material under the terms of the Criminal Procedure and Investigations Act 1996).

3.128 In the event of a witness being interviewed at their home address, care should be taken to avoid saying anything or video-recording any background material that might lead to the location being identified (the use of background screens should be considered if necessary).

Timing of the interview

3.129 The decision 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. Trauma and stress can interfere with the process of remembering, but this should be determined 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.

3.130 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 mentioned in paragraph 3.131). The effect of 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.

3.131 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 paragraph 3.18 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)

3.132 Whenever possible, the interviewer should in the preparation and planning stage 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, and breaks should be offered or taken during the interview in accordance with this information. If there is an accompanying interviewer, this person can share responsibility with the lead interviewer concerning the active use of pauses and breaks. For some vulnerable witnesses there will be a need to plan for several pauses/breaks and for the interview to be spread over more than one day. 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.

3.133 As well as being less able to concentrate for as long as other witnesses, some vulnerable witnesses may find that the experience of being interviewed is 'too much' for them, especially if emotional matters are being dealt with. Ways of assisting such witnesses may include planning for breaks in the interview and/or pauses in which the interviewer moves the conversation on to more neutral topics (e.g. those mentioned in the rapport phase – see paragraph 3.164) before returning to the matter under investigation.

Planning for immediately after the interview

3.134 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 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.

Witnesses who might become suspects

3.135 So far as is practicable, consideration should be given in the planning stage as to how interviewers will deal with any confessions to criminal offences made by the witness in the course of the interview. Any decision on an appropriate course of action will involve taking into account the seriousness of the crime admitted and weighing it against the seriousness of the crime under investigation.

3.136 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 3.263 to 3.267 for guidance in respect of incriminating statements made by witnesses during interviews).

Recording the planning process

3.137 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 Section 9 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.

Preparing the witness for an interview

3.138 Witnesses should always be prepared for an interview. In some cases this preparation might be fairly brief, but some vulnerable witnesses may be very unused to speaking to strangers and may well need to spend time getting to know the interviewer before they are ready and/or willing to take part in an investigative interview. This familiarisation process may take some time (e.g. hours in some cases) and therefore, in their preparation, interviewers need to consider whether one (or more) meetings with a witness should be planned to take place prior to the investigative interview.

3.139 In some instances it may be helpful to arrange a familiarisation visit to the interview suite for the witness as part of the preparation process.

3.140 The preparation of the witness should include an explanation of the purpose of the interview and the reason for video-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.

3.141 Any issues or concerns raised by the witness should be addressed while preparing them for the interview (for example, welfare issues or concerns about the possibility of a later court appearance).

3.142 Assistance should be sought if necessary from interview supervisors and interview advisers (tiers 4 and 5 of the Association of Chief Police Officers' (ACPO's) *Investigative Interviewing Strategy* (ACPO, 2004)) with the issues that might arise during the preparation of a witness for an interview.

3.143 Full written notes must be kept of the preparation of a witness for an interview and must be revealed to the CPS.

3.144 The plan for 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.

Sharing information with carers

3.145 Adult witnesses have the right to privacy, including the right to choose to provide information that they do not wish to share with their carer. Thus, account needs to be taken of their understanding when considering whether their carer also needs to be consulted. The same considerations apply in relation to seeking further information from the carer after a vulnerable adult has made their own statement.

Victim Personal Statements

3.146 Interviewers should plan to give vulnerable witnesses who are victims the opportunity to make a Victim Personal Statement (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: for example where a video-recorded interview has taken place the VPS should also be video-recorded. For further details of the scheme see Home Office Circular 35/2001.

3.147 Providing a VPS (video-recorded or written) is entirely voluntary. Witnesses should be provided with an explanation about what a VPS is and how it can be used/cannot be used, to help them make an informed choice as to whether they provide a VPS or not.

3.148. In the first instance, vulnerable witnesses should be given the opportunity to make the statement themselves, but in some circumstances, for example those with a learning disability, it may be appropriate for their carer to provide the statement on the victim's behalf. In some cases it may be necessary to take a statement from both the victim and the carer, in order to establish a full picture of the impact of their experience.

3.149 In cases where the witness statement has been taken in the form of a video-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, for example the police force logo. Alternatively or additionally, the interviewer may make a statement on the recording acknowledging the change from the evidential interview to the VPS.

3.150 There is always the possibility that, at a later time, the victim or their carer may 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 according to the Home Office guidance on Victim Personal Statements.

Part 3B: Interviewing vulnerable adult witnesses

Aims

By the end of Part 3B those involved in conducting interviews with vulnerable witnesses should be able to consider, with respect to each individual case:

- interviewer behaviour (paragraphs 3.157 to 3.160);
- pace of interviews and the need for breaks (paragraphs 3.161 and 3.162);
- establishing rapport (paragraphs 3.163 to 3.174);
- oaths and the importance of telling the truth (paragraphs 3.175 to 3.177);
- free narrative (paragraphs 3.178 to 3.183);
- compliance and acquiescence (paragraphs 3.184 to 3.193);
- styles of questioning (paragraphs 3.194 to 3.227);
- understanding what the witness is trying to convey (paragraphs 3.228 and 3.229);
- topic selection (paragraphs 3.230 and 3.231);
- misleading statements (paragraphs 3.232 to 3.235);
- closing the interview (paragraphs 3.236 to 3.243);
- evaluating the interview (paragraphs 3.244 to 3.246);
- post-interview documentation and storage of recordings (paragraphs 3.247 and 3.248);
- further interviews (paragraph 3.250);
- identification procedures (paragraph 3.251);
- therapeutic help for vulnerable adult witnesses (paragraph 3.252);
- the cognitive interview (paragraphs 3.253 to 3.256); and
- special interviewing techniques (paragraphs 3.257 to 3.259).

General advice on interviewing vulnerable adult witnesses

3.151 What follows is a recommended procedure for interviewing based on a phased approach. This treats the interview as a process in which a variety of interviewing techniques are deployed in relatively specific and discrete phases, proceeding from free narrative to open and then to more closed forms of questioning. It is suggested that this approach is likely to achieve the basic aim of allowing the witness to provide an account. This structure should also result in a hierarchy of reliability of the information elicited. However, inclusion of a phased approach in this guidance should not be taken to imply that all other techniques are necessarily unacceptable or to preclude their development. Neither should what follows be regarded as a checklist to be rigidly worked through. 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 (tier 5 of the Association of Chief Police Officers' (ACPO's) *Investigative Interviewing Strategy* (ACPO, 2004)).

3.152 Much more professional experience and published research now exist on the topic of conducting appropriate investigative interviews with children than with other vulnerable groups. Nevertheless, as for all witnesses, interviews with vulnerable people should normally consist of the following four main phases:

- establish rapport;
- seek free narrative recall;
- ask questions; and
- closure.

Each phase will be described in greater detail below. These phases are compatible with and underpin the PEACE interview framework advocated by ACPO.

3.153 The additional planning phase, which will have occurred prior to the actual interview and which will often need to be extensive, should provide guidance to the interviewer about what might be achieved in each of the four main phases of the interview (e.g. 'Is the witness able to communicate via free recall?'). No interview should be conducted without there having been prior, proper planning.

3.154 Although currently our knowledge is limited concerning how best to interview vulnerable witnesses, some of the difficulties that research and best practice have noted for vulnerable interviewees illustrate the less obvious difficulties that ordinary witnesses experience. Interviewing practices and procedures that diminish difficulties for ordinary witnesses are likely to do so for vulnerable witnesses and vice versa.

3.155 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. A fundamental consideration when interviewing vulnerable witnesses is to determine whether the necessary communication aids are in place. Otherwise, it may be wrongly decided that the person does not have the communication skills necessary to proceed.

3.156 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**.

Interviewer behaviour

3.157 Many interviewers will not be very familiar with the various types of vulnerable witnesses. Research has made it clear that when people meet others with whom they are unfamiliar their own behaviour becomes abnormal. This unusual behaviour is often noted by vulnerable people, who may view it as a sign of our discomfort. When planning an interview, interviewers should always plan to monitor their own behaviour throughout the interview and to try to keep it as normal as circumstances allow. The planning should, in this regard, especially focus on how the interviewer will manage the opening minutes of the interview. The planning should also have dealt with the issue of the interviewer being conversant with the appropriate terms to use with interviewees for various vulnerabilities/disabilities so that interviewers will not be uneasy/tense about using such terminology (when necessary) in the presence of the interviewee and so that the interviewee will not be caused unease by inappropriate use of terminology.

3.158 Interviewers must be aware that in order to gather accurate information from a vulnerable witness they have to be sensitive not only to the communication needs of the witness but also to their own **impact** on the interview. **They should try to focus on the witness as a person rather than on the vulnerability**. For many people with disabilities the disability is not central to their self-concept. Interviewers should try to avoid being uncomfortable or unsure how to behave with someone who has a disability that they have not encountered before. Interviewers will often need to behave in a reassuring and sympathetic way but they should avoid behaving in ways that vulnerable witnesses may find demeaning or insincere or patronising.

3.159 Some vulnerable witnesses may choose to place themselves nearer to or further away from the interviewer than do other witnesses, and interviewers need to be aware of their own reactions to this. They also need to be aware that while they may intentionally try to act in a friendly and helpful way to vulnerable witnesses, they may at the same time unwittingly be giving off contradictory signals of unease and/or embarrassment, anxiety, insecurity, and so on, including feelings about their own incompetence. Furthermore, some vulnerable witnesses may present circumstances in which the interviewer's usual methods of social interaction are likely to fail.

3.160 Consideration should be given to the different forms of bodily expression and communication that many vulnerable witnesses will have. A proportion of vulnerable witnesses will be experienced at communicating with strangers. Interviewers can benefit from this expertise by asking such witnesses for advice concerning how they (i.e. the interviewers) should behave. Doing so will also allow the witness to feel empowered by their exerting some control in the interview. Feelings of empowerment by the witness may have the added benefit of reducing over-compliance during questioning (see paragraphs 3.184 to 3.189).

Pace and breaks

Pace

3.161 Many vulnerable witnesses will require that their interviewers go at a slower pace than do other witnesses. This is because many of them will have a slower rate of understanding and/or thinking and/or replying than other witnesses. Both research and best practice have found that interviewers will need to:

- slow down their speech rate;
- allow extra time for the witness to take in what has just been said;
- provide time for the witness to prepare a response;
- be patient if the witness replies slowly, especially if an intermediary is being used;
- avoid immediately posing the next question;
- avoid filling in the answers to questions for the interviewee; and
- avoid interrupting.

The interview should go at the pace of the witness.

Breaks

3.162 Not only will interviews with vulnerable witnesses typically be conducted at a slower pace than with other witnesses, these interviews will usually involve more breaks and pauses. Many vulnerable witnesses will not be able to concentrate for as long a time as can other witnesses, and some of them will also require regular comfort breaks. Where appropriate, the interviewer should agree with the witness a simple sign (e.g. the use of a special card) that the witness can use to request a break. This will also help to empower the witness and might help to reduce any power differential that they perceive in the interaction.

Phase one: establishing rapport (including engaging and explaining)

Explaining the formalities

3.163 Firstly, it is necessary when video-recording the interview to check that the equipment is turned on and that all people in the room can be clearly seen on the monitor through the camera with the wide-angle lens where two cameras are in use (see Appendix H). Next, the interviewer should say out loud the day, date, time and place (not the detailed address) of the interview and give the relevant details of all those present.

Building rapport

3.164 A substantial rapport phase will allow the interviewer to become more familiar with the witness's preferred method of communicating and to become more competent with this method. **The focus should be on the witness's ability rather than disability**. This phase should allow earlier decisions made during the planning phase to be revised as necessary. Explanation can be provided as to the nature of a video-recorded interview and the role of the interpreter or intermediary if they are to be present.

3.165 Another major aim of the rapport phase is to help the witness, and indeed the interviewer, to relax and feel as comfortable as possible. Typically, the witness should be invited to discuss 'neutral' events in their life (for example, interests or hobbies where this is appropriate for that witness). The use of open-ended questions at this stage, if appropriate, should train the interviewee at the outset that detail is required. It will as it were 'teach them to talk at length'. It is at this stage in the interview that the interviewer can supplement their knowledge of the interviewee's social, emotional and cognitive development. This should help an interviewer to adapt their style (questions and use of language) of interviewing to the needs of the interviewee. As interviewers become more familiar with interviewing vulnerable witnesses, they may become tempted to shorten their rapport phases. This temptation should be resisted since while the interviewer may now be more familiar with such interviews, the witnesses will not be.

3.166 At an early point in the rapport phase the interviewer should briefly mention the reason for the interview in a way that does not refer directly to an alleged offence. For example, it could be appropriate for the interviewer to say that they would like to talk about something that the witness has already told someone else or because something seems to have been making the witness unhappy. Interviewers should be aware that while some interviewees will, from the outset, be very clear concerning what the interview is about, other interviewees will not.

3.167 Some witnesses may feel that their initial, lawful co-operation with a person who subsequently committed an offence may make them blameworthy. The interviewer should also bear in mind that some vulnerable witnesses will assume that because they are being interviewed they must have done something wrong. The interviewer might need to reassure the witness on this point, 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.

3.168 Being interviewed is an unusual occurrence for most people who, in addition, are probably unused to conversing with someone who could be questioning what they are communicating. This is particularly so in an interview with a stranger who is also in authority. A witness could enter the interview confused about its purpose, anxious about its process and outcome, and possibly distressed by prior events. Also, some witnesses may not comprehend why they are being interviewed about embarrassing, painful experiences they may have been told to keep quiet about.

3.169 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.

3.170 It may be that some vulnerable witnesses do not perceive the need to produce full and detailed accounts of their experiences since this may not normally be required by the people around them in their normal environment. Thus the need for a full account should be explained without putting undue pressure on the witness. When discussing 'neutral' events the interviewee can be encouraged, if appropriate, to provide free recall and to appreciate that it is the interviewee who has the information. It may well prove problematic to attempt to proceed with an interview until rapport has been established. Some witnesses are not used to relating to strangers. Indeed, many are taught not to do so. Should establishing rapport prove difficult, it may be preferable to postpone the interview rather than proceeding with an interview that may well turn out to be of no benefit.

Ground rules

3.171 The interviewer should provide an explanation of the outline of the interview that is appropriate to the abilities of the witness. 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 has been 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 summarises what has been said incorrectly, then they should point this out.

3.172 It should be explained that the interviewer might take a few **brief** notes.

3.173 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. Practice suggests that 20 minutes is likely to be the maximum period that most witnesses with learning disabilities are able to concentrate. In order for 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.

3.174 Interviewers should be aware that asking someone to provide information frankly and in detail about personal matters (e.g. involving sex) is asking the person to discuss something in a manner they have learned to avoid. The interviewer should inform the witness why they are being asked to give a detailed account and that doing so, in that situation, is not breaking with convention. Interviewers should also be aware that some interviewees may prefer, initially, to write rather than say aloud sensitive words or phrases.

Oaths and the importance of telling the truth

3.175 Where a decision is taken to record an interview with a vulnerable 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 (see Chapter 6).

3.176 Where there is an issue as to whether the vulnerable witness understands the value and importance of telling the truth, the interviewer can obtain assurances from the witness on these points, as is current practice for child witnesses (see Part 2B). Note that these procedures should only be employed where questions regarding witness competency might be raised at trial. This is **not** an issue for **all** adult witnesses who have disabilities or a mental disorder.

3.177 In those 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 an **intent** to deceive rather than mere mistakes (NB: where the use of the examples set out in Chapter 2, Box 2.10 is contemplated, they should be modified in a way appropriate to the witness's communication). 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.*'

Phase two: initiating and supporting a free narrative account

3.178 Witnesses will normally expect the interviewer, who is usually an authority figure to them, to control the interview. However, a witness interview requires that information flows from the witness to the interviewer. Some vulnerable witnesses will be under the false impression that the interviewer already knows much or all that happened and that their role, being eager to please, is merely to confirm this. It is crucial that interviewers inform witnesses, in ways that the latter understand, that (i) they were not present at the event(s), (ii) they do not yet know what occurred, and (iii) supplying detail is important.

3.179 If it is deemed appropriate, having established rapport, to continue with the interview then the witness should be asked when possible to provide in their own words an account of the relevant event(s) (note that the purpose of the interview should have been appropriately explained to the witness during the rapport phase). Only the most general open-ended questions should be asked in this phase as guidance to the witness concerning the general area of life experience relevant to the investigation (e.g. '*Do you know why you are here today?*'; '*Is there anything that you would like to tell me?*'). This type of question is one that enquires in a non-specific manner. If the witness responds in a positive way to such questions then the interviewer can encourage the witness to give a free narrative account of events. During this phase the interviewer's role is to act as a facilitator, not an interrogator. Research findings consistently have shown that improper questioning of vulnerable people is a greater source of distortion of their accounts than are memory deficits. Therefore, it is essential to avoid using imperfect questioning in the early parts of an interview. Every effort must be made to obtain information from the witness that is spontaneous and uncontaminated by the interviewer (appropriate methods for questioning witnesses are described in paragraphs 3.195 to 3.227).

3.180 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. Research has found that in their free narrative accounts vulnerable witnesses usually provide less information than do other people. Nevertheless, this information may be no less accurate. However, it is vulnerable people whose accounts are likely to be most tainted by inappropriate questioning.

3.181 Many witnesses when recalling negative 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. Therefore, interviewers should resist the temptation prematurely to 'get to the heart of the matter'. 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 interviewee witnessed anything untoward.

3.182 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 back to the witness what they have just communicated, for example: '*I didn't like it when he did that*' (witness); '*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.

3.183 If the witness has communicated nothing of relevance regarding the purpose of the interview, the interviewer should consider, in the light of the plans made for the interview, whether to proceed to the next phase of the interview (i.e. questioning). The needs of the witness and of justice must both be considered. Exceptionally, consideration may be given to now concluding the interview by moving directly to the closure phase.

Compliance

3.184 Some vulnerable interviewees 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.

3.185 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. Given that some vulnerable witnesses will prefer to avoid these implications, it is appropriate to reassure them by re-emphasising the ground rules set out in paragraph 3.171 at appropriate points during the interview.

3.186 An emerging finding is that interviewees who feel empowered may well have less of a need to demonstrate compliance. This is one reason why allowing the witness some control of the interview is likely to be beneficial.

3.187 Interviewers should clearly explain in the rapport phase that because they were not present at the event(s) they may unwittingly ask questions that witnesses do not understand or questions that they cannot answer. They should explain that if they do ask such questions they would be very happy for witnesses to indicate (perhaps by the use of a red card) that they don't understand, don't remember or don't know the answer. Vulnerable witnesses may benefit from practice at this before the interview commences. Interviewers should also make it clear that if the witness does not know the answer to a question, 'I don't know' responses are welcome. This will also help to avoid witnesses feeling under pressure to confabulate (i.e. to fill in parts of the event that they did not witness or cannot remember), which is otherwise likely to be the case for some vulnerable people.

3.188 If communication becomes difficult it may be helpful, where appropriate, for the interviewer to say '*Can you think of a way to tell me more?*' or '*Can you think of a way to show me what you mean?*' or '*Is there a way I can make this easier for you?*'

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

Acquiescence

3.190 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 but this time with the opposite meaning. This tendency to respond positively to every question occurs particularly frequently with some people with a learning disability. However, it is not solely due to interviewee 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) will also influence the extent of unconditional positive responding.

3.191 Sometimes 'nay-saying' (repeatedly responding with 'No') will occur, particularly for questions dealing with matters that are socially disapproved of or are social taboos.

3.192 Acquiescence is one of the major reasons why interviewers should do their very best to avoid using 'yes/no' questions, even though they are used frequently in everyday conversations. Questions that have a 'yes/no' format can very often be transformed into questions that have an 'either/or' format. Research has found that 'either/or' questions, by avoiding 'yea-saying' or 'nay-saying', more frequently

elicit reliable responses from vulnerable people than do 'yes/no' questions. Even so, a small proportion of people seem always to choose the latter of the two alternatives offered by 'either/or' questions. If an interviewee appears to be doing this, the interviewer should phrase some of the 'either/or' questions so that the first alternative is the one that is more likely to fit in with the account the witness is giving.

3.193 Similarly, if some 'yes/no' questions have to be used, they should be phrased so that sometimes '*Yes*' and sometimes '*No*' would be the response that fits in better with the account the witness is giving.

Phase three: questioning

Prior to the questioning phase of the interview

3.194 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 tell the witness that they will now 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 is also beneficial to reiterate a number of the ground rules outlined in the rapport phase of the interview (see paragraph 3.171), 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.

General approach

3.195 During the free narrative phase of an interview most witnesses will not be able to recall everything relevant that is in their memory. Many vulnerable people because, for example, they are frightened or stressed, or have a learning disability, will not be that skilled at accessing their own memory as is required by the free narrative phase. Therefore, their accounts could greatly benefit from the asking of appropriate questions that assist further recall. However, both research and best practice have found that vulnerable interviewees may well have great difficulty with questions unless these:

- are simple;
- do not contain jargon;
- do not contain abstract words and/or abstract ideas;
- contain only one point per question (see Chapter 4, paragraphs 4.168 and 4.169 for more information about multiple questions);
- are not too directive/suggestive; and
- do not contain double negatives.

3.196 In addition, interviewers need fully to appreciate that there are various types of question which 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. Forced-choice questions and leading questions should only be used as a last resort. When questioning a witness, interviewers may wish to ask the various types of question about one issue, before proceeding to ask questions about another. This would be good practice in terms of how memory storage is organised. When this occurs, the questioning on each issue should normally begin with an open-ended question, although some particularly vulnerable witnesses may not be able to cope with such questions and specific-closed questions might be necessary.

3.197 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, they); in these circumstances it is better for interviewers to use people's names wherever possible.

3.198 Some vulnerable 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.*'

3.199 Many 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 themself against an assault.

3.200 It is important that interviewers 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 vulnerable people will nevertheless attempt to answer it to the best of their ability by guessing at what is meant, possibly producing a inappropriate reply.

3.201 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.

3.202 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 vulnerable witnesses may believe that the questions are being repeated solely because their earlier responses were incorrect or inappropriate or that they were not believed.

3.203 Some vulnerable witnesses may also have a limited understanding of the relationship between negative events, their causation, and who is responsible.

3.204 Even if an event was an unforeseeable accident or 'an act of God', some vulnerable people 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.

3.205 The questioning of vulnerable witnesses requires extensive skill and understanding on the part of interviewers. Incompetent interviewers can cause vulnerable 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.

Open-ended questions

3.206 Open-ended questions are ones that are worded in such a way as to enable the witness to provide an unrestricted response. These also allow the witness to control the flow of information. This type of questioning minimises the risk that interviewers will impose their view of what happened. Such questions usually specify a general topic which allows the witness considerable freedom in determining what to reply. Research and practice show that the most reliable and detailed answers from interviewees of all ages are secured from open-ended questions. **It is important, therefore, that the questioning phase should begin with open-ended questions and that this type of question should be widely employed throughout the interview**.

3.207 Questions beginning with the phrase 'Tell me' or the words 'Describe' or 'Explain' are useful examples of this type of question. '*You said you were… Tell me everything that you remember*' is an example of an open-ended question.

3.208 Open-ended questions can also be used to invite the witness to elaborate upon incomplete information provided in the preceding free narrative phase. For example, '*You've already told me that the person who hit you was a man. Describe him for me.*' For a witness who has communicated very little in the free narrative phase, a helpful question could be of the form '*Are there some things you are not very happy about?*'

3.209 If the witness responds to open-ended questions, the interviewer should try to avoid interrupting even if the witness is not providing the expected type(s) of information. Interrupting the witness disempowers them and suggests that only short answers are required. If a witness is communicating information that the interviewer does not understand, this should be returned to only when the witness has finished responding to that question.

3.210 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.

3.211 Some vulnerable witnesses may not have the usual understanding of time. Wherever possible, the planning phase should have focused on the witness's likely grasp of time, for example in terms of times of day, days of the week, the length of a week or a month or a year. Interviewers can assist witnesses by using words/phrases for time that they understand. If a relevant event may have occurred repeatedly, some witnesses might find it easier to describe the general pattern of these events before recalling in detail specific episodes. Their account of the general pattern may well facilitate recall of specific episodes. Therefore, interviewers should not prematurely ask questions about specific episodes. Most witnesses, whether vulnerable or not, will recall correct information about events that is not in the same time order as things actually happened. Some vulnerable people may not have needed to rely in their everyday lives on a good sense of time and thus questions about time will need to be put to them in ways they can understand, for instance by reference to fixed points in their own lives such as meal breaks or public festivals or holidays.

Specific-closed questions

3.212 A closed question is a question that closes down an interviewee's response and thus allows only a relatively narrow range of responses to be obtained, where the response usually consists of one word or a short phrase. Closed questions can, therefore, be appropriate or inappropriate in nature, depending on the quality of the information likely to be obtained from the interviewee. Specific-closed questions are appropriate and serve to ask in a non-suggestive way for extension or clarification of information previously supplied by the witness. Specific-closed questions vary in their degree of explicitness and it is always best to begin with the least explicit version of the question. Thus, a vulnerable adult witness in a sexual assault investigation may have responded to an open-ended prompt by mentioning that a named man had climbed into his bed. A specific-closed, but non-leading, follow-up question might be '*What clothes was he wearing at the time?*' If this yielded no clear answer, a

further, more explicit question might be '*Was he wearing any clothes?*'

3.213 Specific-closed questions can ask in a non-suggestive way for extension and/or clarification of information previously provided by the witness. For example, for a witness who has already provided information that a young man in the high street was wearing a jacket, a specific yet non-suggestive question could be '*What colour was the man's jacket?*'

3.214 Examples of specific-closed questions are those that begin 'Who', 'What', 'Where', 'When', and 'Why'. Questions involving the word 'why' (or similar utterances, e.g. '*So how come...?*') may be interpreted by vulnerable people as attributing blame to them and should therefore be avoided wherever possible. Also to be avoided is repeating a question soon after the witness has provided an answer to it (including '*Don't know*'). Witnesses may well interpret this as a criticism of their original response and accordingly they may provide a different response closer to what they believe the interviewer wants them to give.

3.215 Although some particularly vulnerable witnesses may not be able to provide information in a free narrative phase nor be able to respond to open-ended questions, they may be able to respond to more specific questions. However, interviewers must be aware that specific-closed questions should not unduly suggest answers to the witness. An example of a specific-closed, yet non-leading, question for an institutionalised witness who has, as yet, provided no relevant information could be '*What happens at bath time?*'

3.216 For some vulnerable witnesses, open-ended questions will not assist them that much to access their memory, whereas specific-closed questions may well do so. One problem here is that the more narrow and focused specific-closed questions become, the easier it is for them to be suggestive.

Forced-choice questions

(See also discussion at paragraphs 3.184 to 3.193 with regard to acquiescence and compliance.)

3.217 Forced-choice questions are ones that provide the interviewee with a limited number of alternative responses. For example, '*Was the man's jacket black, another colour, or can't you remember?*' As long as the question provides a number of sensible and equally likely alternatives it would not be deemed suggestive. Some vulnerable witnesses may find such closed questions particularly helpful. However, at the beginning of the use of forced-choice questions interviewers should try to avoid using ones that contain only two alternatives (especially yes/no questions) unless these two alternatives contain all possibilities (e.g. '*Was it daytime or night-time?*'). If questions containing only two alternatives are used, these should be phrased so that they sometimes result in the first alternative being chosen and sometimes in the second alternative.

3.218 Some vulnerable witnesses may only be able to respond to forced-choice questions that contain two alternatives. Even in such circumstances it should still be possible for interviewers to avoid an investigative interview being made up largely of such questions. However, such interviews are likely to require special expertise and extensive planning, especially regarding the questions to be asked.

3.219 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.

Leading questions

3.220 Put simply, a leading question is one that implies the answer or assumes facts that are likely to be in dispute. Of course, whether a question is leading depends not only on the nature of the question (where the answer is implicit in the way the question is worded) but also on what the witness has already communicated in the interview. An example of a question that is leading by virtue of the very nature of the words used would include '*I bet that hurt, didn't it?*' An example of a leading question that depends on what the witness has already communicated in the interview would include '*Where did he punch you?*' when the witness said previously in the interview that a male assailant '*hit*' them, without using the word 'punch'.

3.221 When a leading question is improperly put to a witness giving evidence at court, opposing counsel can make an objection to it before the witness replies. This is not usually possible during video- or audio-recorded interviews, but subsequent objections could be made which may result in parts of the recording being edited out.

3.222 In addition to the legal objections, psychological research indicates strongly that interviewees' responses to leading questions tend to be determined more by the manner of questioning than by valid remembering. Some vulnerable witnesses may be more willing to respond to 'yes/no' questions with a 'yes' response. Therefore, if questions permitting only a 'yes' or 'no' response are asked, these should be phrased so that those on the same issue sometimes result in a 'yes' response and sometimes a 'no' response.

3.223 It cannot be overemphasised that responses to leading questions referring to central facts of the case that have not already been described by the witness in an earlier phase of the interview are likely to be of very limited evidential value in criminal proceedings. If a leading question produces an evidentially relevant

response, particularly one that contains relevant information not led by the question, interviewers should take care not to follow this up with further questions that might have the effect of leading the witness. Instead, they should revert to the 'neutral' modes of questioning described above.

3.224 There are circumstances in criminal proceedings where leading questions are permissible. For example, a witness is often led into their testimony by being asked to confirm their name 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. However, at the interview stage it may not be known which facts will be in dispute.

3.225 Courts also accept that it may be impractical to ban leading questions. This may be because the witness does not understand what they are expected to tell the court without some prompting, as may be the case for a witness with a learning disability.

3.226 As the courts become more aware of the difficulties of obtaining evidence from vulnerable witnesses, and of counteracting the pressures on witnesses to keep silent, a sympathetic attitude may be taken towards leading questions deemed necessary. A leading question that succeeds in prompting a witness into spontaneously providing information beyond that led by the question will normally 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.

3.227 However inappropriately leading or suggestive some questions might be, some vulnerable witnesses will go along with them and may produce nonsensical replies. Such incompetence by the interviewer will inappropriately call into question the competency of the witness.

Understanding what the witness is trying to convey

3.228 Some vulnerable witnesses will have speech or other means of communication that other people find difficult to understand. At appropriate points in the interview, and especially in the closure phase (see paragraphs 3.237 to 3.243), the interviewer should provide the witness with a recap of what the interviewer believes the witness to have communicated. When the meaning of a witness's communication is unclear, they could be asked, for example, to '*Put it another way*', or '*Can you think of another way of telling me?*'

3.229 Interviewers need to be aware that the common human frailty of ignoring information contrary to one's own view may be even more likely to affect their interviews with vulnerable people whom they are having difficulty understanding and/or may believe to be less competent than other people. Research on interviewing has consistently found that interviewers ignore information that fails to fit in with their assumptions about what may have happened. One important role for the interview monitor is to check that the lead interviewer does not ignore important information provided by the witness.

Topic selection

3.230 Within the questioning phase of the interview the interviewer should subdivide the vulnerable witness's account into manageable topics or episodes and seek elaboration on each area using open-ended and then specific-closed questions as outlined in paragraphs 3.207 to 3.217. Each topic/episode should be systematically dealt with until the witness is unable to provide any more information. 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.

3.231 Good questioning should also avoid the asking of a series of predetermined questions. Instead, the sequence of questions should be adjusted according to the witness's own retrieval processes. This is what 'witness-compatible questioning' means. Each individual will store information concerning the event in memory in a unique way. Thus, for maximum retrieval/information gain, 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.

Misleading statements

3.232 Vulnerable witnesses can on occasion provide misleading accounts of events; these are often the result of misunderstandings or misremembering rather than deliberate fabrication. The most common cause of these misunderstandings is the interviewer failing to ask appropriate types of question or reaching a premature conclusion that the interviewer then presses the witness to confirm.

3.233 Vulnerable witnesses, like any other witness, can on occasion be misleading in their statements, either by fabricating allegations or by omitting evidentially important information from their answers. Where inconsistencies in the witness's account give rise to suspicion, interviewers should explore these inconsistencies with the witness after they have completed their basic account. Witnesses should only be challenged directly over an inconsistency in exceptional circumstances and even then only when it is essential to do so. Rather, such inconsistencies should be presented in the context of puzzlement by

the interviewer and the need to be quite clear what the witness has said. On no account should the interviewer voice their suspicions to the witness or label a witness as a liar: there may be a perfectly innocuous explanation for any inconsistency.

3.234 In evaluating the witness's account, interviewers should not rely upon cues from the witness's behaviour as guides to the reliability or otherwise of the witness's statements.

3.235 Where a witness with a learning disability uses language or knowledge, particularly of sexual matters, that appears to be inappropriate for them, specific questions can be asked to try to locate the source of that knowledge. Similarly, if it is suspected that a witness alleging sexual abuse may have been exposed to sexually explicit films, videos, internet sites or magazines, specific questions should be used to explore whether parts of the witness's account could conceivably be derived from such sources. It is important that all such questions should be reserved for the end of the formal questioning so as not to disrupt the witness's narrative.

Phase four: closing the interview

3.236 In this final main phase, interviewers should provide an account of what the witness has said during the interview. This should be done as much as possible in the witness's own words. This allows the witness to check the interviewer's recall of what they have said for accuracy. Care should be taken not to convey any impression of disbelief. The interviewer must explicitly tell the witness to correct them if they have missed anything out or have got something wrong.

Closure

3.237 The interviewer should always try to ensure that the interview ends appropriately. Although it may not always be necessary to pass through each of the above phases before going on to the next, there should be good reason for not doing so. Every interview must have a closure phase. In this phase it may be a useful idea to discuss again some of the 'neutral' topics mentioned in the rapport phase.

3.238 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.

3.239 The witness should be thanked for their time and effort and asked if there is anything more they wish to communicate (e.g. by saying to the witness '*Is there anything else you want to say?*' or '*Is there anything you think you've missed out?*' or '*Is there anything else you think I should know?*').

3.240 An explanation should be given to the witness of what, if anything, might happen next, but promises that cannot be kept should not be made about future developments.

3.241 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 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.

3.242 Not only in closing the interview, but also throughout its duration, the interviewer must be prepared to assist the witness to cope with the effects upon themself of giving an account of what may well have been greatly distressing events (and about which the witness may feel some guilt).

3.243 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. It is normal to complete a video-recorded interview by stating the end time.

Evaluation

3.244 Evaluation should take two primary forms:
(i) evaluation of the information obtained and
(ii) evaluation of the interviewer's performance.

Evaluation of the information obtained

3.245 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?

Evaluation of interviewer performance

3.246 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. The interview could also be assessed by a supervisor and/or someone who is qualified to examine the interview and give good constructive feedback to the interviewer, highlighting areas for improvement. This should form part of a staff appraisal system (see tier 4 of ACPO's *Investigative Interviewing Strategy* (ACPO, 2004)).

Post-interview documentation and storage of recordings

3.247 The interviewer should complete the relevant paperwork as soon as possible after the interview is completed, including the Record of Video Interview (ROVI) referred to in Appendix K. 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. Responsibility for transcription and the stage at which a transcription should take place are set out in Appendix L.

3.248 Recordings should be stored as recommended in Appendix J.

Further interviews

3.249 One of the key aims of video-recording early investigative interviews is to reduce the number of times a witness is asked to tell their account. However, it may be the case that even with an experienced and skilful interviewer, the witness may provide less information than they are capable of divulging. A supplementary interview may therefore be necessary and this, too, should be video-recorded, if possible. Consideration should always be given to whether holding such an interview would be in the witness's interest. The reasons for conducting supplementary interviews should be clearly articulated and recorded in writing. The CPS should be consulted if necessary.

3.250 With particularly vulnerable 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.

Identification procedures

3.251 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. Staff carrying out these procedures should be suitably trained to interview and record the evidence in line with this document (see Appendix E for more detailed advice on identification parades with witnesses interviewed in accordance with this guidance).

Therapeutic help for vulnerable adult witnesses

3.252 While vulnerable adult witnesses may be judged by the investigating team, and/or by those professionals responsible for their welfare, to require therapeutic help prior to giving evidence in criminal proceedings, it is important to recognise the individual's right to exercise choice. It is vital that professionals undertaking therapy with prospective vulnerable adult witnesses prior to a criminal trial adhere to the official guidance: *Provision of Therapy for Vulnerable or Intimidated Adult Witnesses Prior to a Criminal Trial: Practical Guidance* (CPS and the Department of Health with the Home Office, 2001).

The cognitive interview (CI)

3.253 This interviewing procedure was developed by cognitive psychologists and it contains, as well as procedures based on good communication skills (many of which have been described above), a number of procedures specifically designed to assist witnesses to access their memories. These procedures are usually referred to as:

- mental reinstatement of context;
- report everything;
- change the temporal order of recall; and
- change perspective.

3.254 A number of professionals who have worked with vulnerable adult witnesses recommend use of the CI. However, research has found that unless the training of interviewers who attempt to use the CI has been appropriate they will fail to use this technique effectively and could confuse the witness. Some witnesses may not be able to benefit from all of the CI procedures (e.g. witnesses with autism may well not be able to 'change perspective').

3.255 Interviewers and their managers need to be aware that techniques that assist witnesses to produce more recall will result in interviews that last longer. Surveys of those who use the CI have found that they often report it to be effective. However, their workloads and their supervisors put them under pressure not to conduct interviews that are time-consuming. Such pressures should be resisted for interviews with vulnerable witnesses.

3.256 Further information about the procedures contained in the CI can be found in Part 4B of this document.

Special interviewing techniques

3.257 At present, not a lot is known about techniques other than those described in this document that may further assist vulnerable witnesses. Witnesses who find verbal communication difficult may sometimes benefit from acting out or drawing the information that they wish to convey. However, in such instances it is very important that the interviewer checks in an appropriate way with the witness that the interviewer has correctly understood what the witness was trying to convey.

3.258 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 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.

3.259 Whichever special techniques are being considered for use in an interview, the emphasis must be on assisting witnesses to retrieve information from their own memories rather than on suggesting things to them. Research has found that the CI procedure does seem to assist people with **mild** learning disabilities to recall more correct information. However, this procedure should only be conducted by those who have been appropriately trained in its use, including what to do if the person's recall is so vivid and powerful as to cause them (and possibly others present) distress.

Other interview techniques

3.260 Other techniques to assist witnesses to give accounts are being developed. These could be used in interviews carried out for the purposes of this guidance provided that evidential considerations are borne in mind, interviewers have been specifically trained to use them, and agreement is given by senior managers or an interview adviser (tier 5 of ACPO's *Investigative Interviewing Strategy* (ACPO, 2004)) after discussion of the issues involved.

3.261 A process of supportive reconstruction may be very helpful in assisting some witnesses with mental disorder to recall situations and memories. This involves working through repeatedly the context of the memory, reflecting back what has been established so far, and cueing witnesses to relate what happened next (the phenomenological approach, i.e. events perceptible to the senses and relating to remarked phenomena or events). If this technique is employed, it is essential that the interviewer **follow** and **not lead** the witness.

3.262 When free narrative and questioning have produced little information of relevance but suspicion remains high, a facilitative style of questioning could be used with witnesses who are particularly reticent. This can involve asking about nice/nasty things, good/bad people, what the witness would like to change in their life, or similar techniques. For those who have been put under pressure not to disclose certain matters, an open-ended discussion of secrets may be introduced. Such methods may be very successful for those trained in these styles of questioning. If the interviewer avoids any suggestive questioning and succeeds in encouraging the witness to give an account, there should be no reason why evidence gained in this way should not be considered by the courts.

Witnesses who become suspects during the interview

3.263 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.

3.264 Where the priority is to obtain evidence from the person as a witness, the interview can proceed.

3.265 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.

3.266 Any admission by a witness in the course of an investigative interview may not be admissible as evidence in criminal proceedings against them. Normally, a further interview would need to be carried out 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.

3.267 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.

4 Planning and conducting interviews with intimidated witnesses, Section 137 Criminal Justice Act 2003 witnesses and significant witnesses, including 'reluctant' and 'hostile' witnesses

Part 4A: Planning and preparing for interviews

Aims

By the end of Part 4A, those involved in planning and preparing for interviews with intimidated, Section 137 Criminal Justice Act (CJA) 2003 and significant witnesses, including reluctant and hostile witnesses, should be able to:

- identify:
  - intimidated witnesses (paragraphs 4.1 and 4.2);
  - Section 137 CJA 2003 witnesses (paragraphs 4.3 to 4.6);
  - significant or key witnesses (paragraphs 4.7 to 4.10);
  - reluctant witnesses (paragraphs 4.11 to 4.14); and
  - hostile witnesses (paragraph 4.15);
- describe the initial action to be taken in respect of the witnesses referred to in this chapter (paragraphs 4.16 and 4.17);
- explain how the witnesses referred to in this chapter could be supported and safeguarded at interview (paragraphs 4.18 to 4.23);
- consider the issue of consent (paragraphs 4.24 to 4.26);
- identify the information required to plan interviews with the witnesses referred to in this chapter (paragraphs 4.27 to 4.48);
- use the planning information to plan interviews with the witnesses referred to in this chapter (paragraphs 4.49 to 4.76); and
- prepare the witnesses referred to in this chapter for an interview (paragraphs 4.90 to 4.96).

What follows is a recommended procedure for planning and preparing for interviews with the witnesses referred to in this chapter. Part 4B covers the interview itself and treats the interview as a process in which a variety of interviewing techniques are deployed in the framework of a phased approach. While what follows in this chapter and Part 4B should not be regarded as a checklist to be rigidly worked through, the sound legal framework that it provides should not be departed from by interviewers unless they have discussed and agreed the reasons for doing so with their senior manager or an interview adviser (tier 5 of the Association of Chief Police Officers' (ACPO's) *Investigative Interviewing Strategy* (ACPO, 2004)). Any such agreements and the rationale underpinning them should be recorded. It may subsequently be necessary to explain such departures in court.

Who are intimidated witnesses?

4.1 Intimidated witnesses are those likely to experience fear or distress **about testifying** to such an extent that special measures are necessary to maximise the quality of their evidence. Cases that are likely to give rise to intimidated witnesses include:

- sexual offences;
- domestic violence;
- murder and other serious assaults;
- road deaths;
- racially motivated crime;
- homophobic crime;
- crime motivated by the perceived religious or political views of the victim;
- offences where the alleged perpetrator has a relationship of care to or authority over the witness;
- offences where the witness is related to the alleged perpetrator;
- offences where the witness lives in close proximity to the alleged perpetrator or their family or associates;
- offences where the witness is elderly and/or frail;
- offences that form part of a series of incidents in which there is evidence of repeat victimisation;
- offences where the alleged perpetrator is influential in the criminal fraternity (this should not be based solely on anecdotal evidence);
- offences where the violent nature of the alleged perpetrator or their family or associates suggests an increased likelihood of intimidation;
- offences where the alleged perpetrator or their family or associates have the intention and the ability to influence or interfere with the witness; and
- offences where witnesses have been or are likely to be subject to intimidation as a result of the behaviour of the alleged perpetrator or their family or associates or anyone else who is likely to be a defendant or a witness in the proceedings.

Sexual offences include those alleged by adults in relation to events said to have taken place in their childhood. This is not intended to be an exhaustive list; each case should be judged on its merits.

4.2 While being the victim of an offence is in itself likely to increase the witness's fear and distress, it is unlikely to be sufficient on its own to categorise a witness as 'intimidated'. However, that a witness is also the victim of the alleged offence should be taken into account along with the other circumstances of the case (such as those listed above).

Who are Section 137 CJA 2003 witnesses?

4.3 Section 137 CJA 2003 witnesses are those who have or claim to have witnessed, visually or otherwise, an indictable or prescribed triable either-way offence, part of such an offence, or events closely connected with it (including any incriminating comments made by the suspected perpetrator either before or after the offence). Video-recordings of interviews with these witnesses can only be admitted as evidence-in-chief if their recollection of the events is likely to be significantly better at the time of the interview than at the time of giving evidence. Courts will take account of the length of the interval between the alleged event and the interview when considering this question.

4.4 Indictable offences are offences that are so serious that they can only be tried in a Crown Court. They include offences like murder, manslaughter, grievous bodily harm with intent, rape, kidnap and causing death by dangerous driving. Prescribed triable either-way offences are offences that can be tried either in a Crown or a magistrates' court and that have been specifically designated by the Home Secretary as coming within the scope of Section 137 CJA 2003 (no such offences were designated at the time that this document was revised).

4.5 Other than video-recorded interviews as their evidence-in-chief, Section 137 CJA 2003 witnesses will not qualify for the Special Measures (screens, live TV link, etc.) set out in the Youth Justice and Criminal Evidence Act 1999 unless they also fall into the category of 'vulnerable' as defined in Chapters 2 and 3 of this document or 'intimidated' as defined in this chapter.

4.6 In circumstances where multiple witnesses are involved, it might be necessary to limit the number of interviewees who are visually recorded according to the resources that are available. Such a decision should be made by the senior police officer in charge of the investigation, and a record should be made of the rationale underpinning it, including the criteria used for determining which interviewees were and, by implication, which interviewees were not visually recorded (this might include factors such as proximity to the event, line of sight, etc.).

Who are significant witnesses?

4.7 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), but who are unlikely to have video-recordings of their interviews admitted as evidence-in-chief under Section 137 CJA 2003 as a result of there having been a lengthy interval between the alleged event and the interview; or
- stand in a particular relationship to the victim or have a central position in an investigation into an indictable offence.

In these circumstances, the purpose of the recording is primarily one of demonstrating the integrity of the interview process. **There is no statutory provision for video-recordings of interviews with significant witnesses to be played as evidence-in-chief.**

4.8 There are two ways in which the testimony on a video-recorded interview with a significant witness may be adduced as evidence:

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.

Option 1 represents the preferred method, although it is accepted that it will be necessary to adopt option 2 where the resources needed to transcribe a recording are limited.

4.9 Adults making allegations of abuse said to have taken place in their childhood should be treated as significant witnesses in circumstances where they do not meet the necessary qualifying criteria to be considered intimidated witnesses (i.e. experiencing fear or distress **about testifying** to such an extent that Special Measures are necessary to maximise the quality of their evidence).

4.10 As with Section 137 CJA 2003 witnesses, in circumstances where multiple witnesses are involved, it might be necessary to limit the number of interviewees who are visually recorded according to the resources that are available. Such a decision should be made by the senior police officer in charge of the investigation and a record should be made of the rationale underpinning it, including the criteria used for determining which interviewees were visually recorded.

Who are reluctant witnesses?

4.11 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 become involved in the investigative process. At times within an investigation, interviewers will encounter reluctant intimidated, Section 137 CJA 2003 or significant witnesses. There could be a number of 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.

4.12 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.

4.13 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, although the guidance set out in paragraphs 4.16 and 4.17 should be adhered to. 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.

4.14 Interviewers should seek advice from a supervisor, the senior officer in charge of the investigation or an interview adviser (tier 5 of ACPO's *Investigative Interviewing Strategy* (ACPO, 2004)) wherever necessary.

Who are hostile witnesses?

4.15 Hostile witnesses are people believed to have witnessed an offence, part of an offence, or events closely connected with it, but who are opposed to the investigative process. During some investigations, interviewers will encounter hostile intimidated, Section 137 CJA 2003 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. 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.

Initial contact with intimidated, Section 137 CJA 2003 and significant witnesses

4.16 The need to consider a visually recorded interview will not always be immediately apparent, either to the first police officer 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. 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 as described in Part 4B. Such a brief account should include where and when the event is alleged to have taken 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.

4.17 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 (see paragraphs 4.153 to 4.174).

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.

Support for intimidated, Section 137 CJA 2003 and significant witnesses prior to the interview

4.18 Intimidated, Section 137 CJA 2003 and significant witnesses need to feel safe and may require support and encouragement to participate in an interview. Such witnesses should be appraised at an early stage about the possibility of having a supporter present during the interview where this is appropriate (see paragraphs 4.72 to 4.76) and about the pre-trial support that can be made available to them (see Chapter 5).

4.19 Intimidated witnesses should also be informed about the protection that might be available to them, including witness protection schemes where appropriate.

4.20 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.

4.21 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 solicited. **While interviewers are soliciting these views, 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. Further details of Special Measures are set out in Chapter 6.

4.22 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 on in the criminal process that would qualify the witness for consideration for Special Measures.

4.23 Intimidated, Section 137 CJA 2003 and significant witnesses should be prepared for an interview as appropriate (see paragraphs 4.90 to 4.96).

Consent

4.24 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).

4.25 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.

4.26 The witness should be told that, should the case proceed, whether a video-recording is made or not, they may be required to attend court to answer further questions (i.e. cross-examination). Where an application is granted by the court, cross-examination may take place using a live link facility.

Planning and preparing for the interview

4.27 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. The importance of planning cannot, therefore, be overstated; the success of an interview and thus an investigation could hinge on it. Even if the circumstances of the case are such that it is essential that an early interview takes place, a 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. **Attention should be paid at all times to issues of age, gender, race, culture, religion and language.**

4.28 In some cases, it might be advisable for there to be a discussion with the CPS in accordance with the guidance set out in *Early Special Measures Meetings between the Police and the Crown Prosecution Service and Meetings between the Crown Prosecution Service and Vulnerable or Intimidated Witnesses* (CPS, ACPO and the Home Office, 2001). Where such a discussion takes place, there should be a decision about the form in which the statement is to be taken (visually recorded or written). Such decisions must take account of the witness's own expressed preferences as to the form of their statement.

Planning information

4.29 The planning stage of an interview involves some consideration of three types of information:

- information about the witness (see paragraphs 4.31 to 4.36);
- information about the alleged offence(s) (see paragraphs 4.37 and 4.38); and
- investigatively important information (see paragraphs 4.39 to 4.48).

4.30 At this stage, interviewers need to have differing amounts of knowledge about each kind 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 alleged offence and investigatively important information.

Information about the witness

4.31 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 is possible:

- age;
- gender;
- sexuality (where the alleged offence might contain a homophobic element);
- preferred name/mode of address;
- any physical and/or learning disabilities or mental health issues (**see Chapter 3 if this is suspected**);
- 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); and
- any other relevant information or intelligence known.

Race and cultural factors

4.32 The witness's race, gender, culture, ethnicity and first language should be given due consideration by the interviewing team. They have a responsibility to be informed about and take into account 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 to, for example, reward and punishment.

4.33 The investigating team needs to bear in mind that some witnesses 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.

4.34 It is also important that the investigating team considers the complexities of multiple discrimination, e.g. as might be the case with a homosexual witness from a minority ethnic community, and of individuals' experiences of discrimination. The specific needs and experiences of dual-heritage witnesses must also be taken into account.

4.35 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 manner in which love and affection are demonstrated; and
- issues of shame. For example, witnesses from some cultures may be inhibited from talking about a sexual assault for fear of shaming their family.

4.36 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 Interpreters (see paragraph 4.67).

Information about the alleged offence(s)

4.37 It is preferable (though not always necessary or essential) that interviewers know little detail of the alleged offence(s) for the purposes of the interview. However, in order to plan and prepare for the interview, interviewers will need a little **general** knowledge about:

- the type of alleged offence(s);
- the approximate time and location of the alleged offence(s);
- the scene of the alleged offence(s) (note: this should only be enough **general** knowledge to help the interviewer understand what might be said during the interview);
- how the alleged offence came to the notice of police; and
- the nature of any intimidation.

4.38 Where the interviewer is also the investigating officer or has been interviewing other witnesses during the course of an investigation, it is accepted that circumstances and practical resource considerations might be such that they are likely to know more about the alleged offence(s) than is set out above. In this situation, interviewers should try to avoid contaminating the interview process with such knowledge as far as possible.

Information important to the investigation

4.39 While obtaining an account of the alleged event is essential, other matters might need to be covered during the interview in order to progress the investigation. These matters can be regarded as 'information 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 information necessary to conduct a comprehensive investigation. It could also prove beneficial in discussions with the CPS if the subject of witness assessment is raised. Information important to the investigation falls into two categories: **general investigative practice** (see paragraph 4.41) and **case-specific material** (see paragraphs 4.42 to 4.48). Where such information important to the investigation has not already been covered as part of the witness's account, interviewers should consider introducing it either in the latter part of the questioning phase (see paragraphs 4.150 to 4.188) or in a subsequent interview session, depending on the complexity of the case and what is alleged to have been witnessed by the interviewee.

4.40 The amount of knowledge that interviewers have about information important to the investigation prior to the interview depends on what they know about what is alleged to have been witnessed by the interviewee. As noted in paragraph 4.37, it is preferable that interviewers know little detail of the alleged offence(s) before the interview. Only a little knowledge that could form the basis of potential questions about information important to the

investigation is, therefore, likely to be available to the interviewer at this point in time. However, while planning the interview, interviewers should apply what they know of the alleged offences to determine the areas of general investigative practice that might need to be covered in the interview. More case-specific material could either be made available to the interviewer (from the investigating officer, interview monitor or recording equipment operator) after an attempt has been made to elicit and clarify the witness's account, or be included in the planning information for a later interview to avoid potential contamination of the process.

Information important to the investigation relating to general investigative practice

4.41 Information important to the investigation relating to general investigative practice includes:

- points to prove any offence(s) alleged;
- 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 (*Practical Guide to Investigative Interviewing* (National Centre for Policing Excellence, most recent edition 2004)):
  - 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.

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.

Information important to the investigation relating to case-specific material

4.42 Information important to the investigation relating to case-specific material includes:

- how and where any items used in the commission of the offence (e.g. clothing, vehicles, weapons, cash, documents, other property) were disposed of, if the witness might have some knowledge of this;
- 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, such as the amount of any alcohol consumed);
- 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 risk assessment issues that the witness might know about that concern the likely conduct of the alleged perpetrator, their family or associates (this should be dealt with after the witness's account has been covered to avoid confusion).

This is not intended to be an exhaustive list. The nature of any case-specific material varies according to the circumstances of the 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.

4.43 Significant evidential inconsistencies and significant evidential omissions (case-relevant information) are discrete categories of case-specific material.

Significant evidential inconsistencies

4.44 During the course of an investigation, it may be necessary to ask a witness to explain a significant evidential inconsistency between what they have said during the interview and other material gathered during the course of the investigation. Such inconsistencies would, for example, include significant differences between the account provided by the witness during the interview and:

- what the witness is reported to have said on a previous occasion;
- the accounts of other witnesses; and
- injuries sustained either by the alleged victim or the alleged offender.

4.45 There are a number of reasons for significant evidential inconsistencies between what a witness says during an interview and other material gathered during the course of an investigation. Many of these reasons are perfectly innocent in their nature (e.g. genuine mistakes by the witness or others stemming from a memory-encoding or recall failure, or sub-conscious contamination of their memory by external influences), but occasions may arise where the witness is motivated either to fabricate or exaggerate their account of an event.

4.46 Whatever the reason for the significant evidential 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 evidential inconsistencies should only be sought where the inconsistency is a significant one.
- Explanations for evidential inconsistencies should only be sought after careful consideration has concluded that there is no obvious explanation for them.
- Explanations for evidential 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 evidential inconsistency is to pursue the truth in respect of the matter under investigation; it is not to put pressure on a witness to alter their account.
- Explanations for an evidential inconsistency 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 an evidential inconsistency should be carefully planned, phrased tactfully and presented in a non-confrontational manner.

Significant evidential omissions (case-relevant information)

4.47 During the course of an investigation, it may be necessary to ask a witness about relevant information that they have not mentioned in their account. This may arise, for example, where others say that the alleged offender was carrying an object, or that the alleged offender's behaviour was unusual or that there was something particular about the alleged offender's description or vehicle, 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, and situations may arise where it is important to seek an explanation from the witness. In these circumstances it may be necessary to ask a question to establish if the witness has knowledge of the information. Such a question should only be asked after the witness's account has been fully explored, at the end of the interview (or in a further interview if necessary).

4.48 When planning such a question, the interviewer should consider:

- whether the information omitted by the witness is likely to be important enough to be worthy of explanation;
- the extent to which the witness may be vulnerable to suggestion, compliance or acquiescence; and
- which type of question is most likely to elicit the information in a manner that will not have an adverse effect on the value of any answer.

A plan for soliciting an explanation for the omission of case-relevant information from a witness's account must consider 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 case-relevant information 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 case-relevant information 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; or
- does not include the case relevant information, 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 case-relevant information, 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).

Where the witness cannot recall the case-relevant information, this may be due to not attending to the information or to memory loss. Further reading on case-relevant information can be found in *The Evaluation of the Investigation and Legal Process Involving Child Abuse Offences to Establish a Model of Investigation for Investigators* by K.B. Marlow (unpublished MSc thesis, Portsmouth, 2002).

Use of planning information

4.49 The planning information should then be used to:

- set aims and objectives for the interview;
- determine the techniques 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 interviewee);

- 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
- what is likely to happen after the interview.

Aims and objectives

4.50 Setting clear aims and objectives is important because they give direction to the interview and contribute to its structure. The interview aims and objectives should focus on trying to establish what happened prior to, during and after the alleged event(s), including the details of all the physical and verbal interactions that took place between the witness and the alleged perpetrator(s) and between the witness and anybody else. The interview aims and objectives should also take account of any suspected attempt to stop the witness from talking to the police or any other agency or person.

Techniques

4.51 The kind of techniques used within the phased structure set out in Part 4B 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. For example, it is likely to be productive to make use of some of the cognitive mnemonics referred to in paragraph 4.104 within the phased interview approach with an eyewitness who is able and willing to participate in the process, whereas such techniques are unlikely to be productive while a witness remains hostile and less co-operative and where a more managed communication is necessary.

How the interview is to be recorded

4.52 To make an application for the record of an interview with an intimidated or Section 137 CJA 2003 witness to be played as evidence-in-chief, the interview **must** be visually recorded. In the event of such a witness being reluctant to have their interview visually recorded, the possibility of an application being made to the court for the recording to be edited in such a way as to minimise the identification of the witness (for example, by pixilation of the witness's face and by adjusting the tone of the witness's voice) should be considered. Where this possibility is discussed, it should be made clear to the witness that such anonymity cannot be guaranteed but that it is rather a matter to be determined by the court.

4.53 Interviews with significant witnesses should usually be visually recorded because this is likely to:

- increase the amount and quality of information gained from the witness;
- increase the amount of information reported by the witness being recorded;
- safeguard the integrity of the interviewer and the interview process; and
- increase the opportunities for monitoring and for the development of interview skills.

4.54 Where a significant witness withholds consent for the interview to be visually 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 compiled from the visual/audio-recording or notes. The statement should then be adduced as evidence and the visual/audio-recording or notes revealed to the CPS.

4.55 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. In most circumstances, unless there is some doubt about the subsequent availability of the witness, it will be appropriate 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. A further visual/audio-recording should be made of the statement being reviewed and signed unless the circumstances are such that it is impractical to do so; this recording should also be revealed to the CPS.

4.56 Regardless of how the interview is recorded, notes should always be taken that are sufficiently detailed to assist 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 perpetrator 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 (see paragraph 4.123), 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

4.57 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 interviewees 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 **information important to the investigation** (see paragraphs 4.39 to 4.48), including the points needed to prove particular offences.

4.58 In addition to taking account of the prospective interviewer's skills, the following factors should be taken into consideration 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.

4.59 The witness's gender, race, culture and ethnicity must always be given due consideration, and advice sought where necessary, but stereotypic conclusions about who is to conduct the interview should be avoided.

4.60 Where the witness expresses a particular 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.

4.61 The interviewer should consider the appropriate mode of dress for the particular interviewee. For example, research shows that a person's perceived authority can have an adverse effect on the interviewee, especially with respect to suggestibility.

4.62 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

4.63 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 gaps 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.

4.64 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 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

4.65 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 (see also Appendix H).

Interpreters

4.66 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.

4.67 Interpreters should be appropriately accredited and trained so that they understand the need to avoid altering the meaning of questions and replies. They should normally be selected from the National Register of Public Service Interpreters or the Council for the Advancement of Communication with Deaf People (CACDP) National Directory of Sign Language Interpreters. If it is not possible to select an interpreter from these registers then the interpreter may be chosen from some other list, providing the interpreter meets standards at least equal to those required for entry onto the National or CACDP Registers, in terms of academic qualifications and proven experience of interpreting within the criminal justice system. All interpreters need to be independent, impartial and unbiased. Family members or other close relatives should not be used either during the interview or when preparing the witness for it.

4.68 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). 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.

4.69 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, the lead interviewer should identify themself 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.

4.70 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.

4.71 Where a signer is being used to interpret for a witness with a hearing impairment, a camera should be used to record the signer's 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.

Interview supporters

4.72 It may be helpful for a support person who is known to the witness to be present during the interview to provide emotional support (the 'interview supporter'). Where this is appropriate and practical, the views of the witness should be established prior to the interview as to whether they wish another person to be present and, if so, who this should be.

4.73 Other witnesses in the case, including those giving evidence of an early complaint, cannot act as interview supporters.

4.74 If an interpreter is included, then they will need to be distinct from the supporter; these different functions should not be vested in one person.

4.75 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.

4.76 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

4.77 Active consideration should be given to the location of the interview and the layout of the room in which it is to take place. In the planning phase, the interviewer should attempt to determine where the witness would prefer to be interviewed. Some witnesses may be happy to be interviewed in an interview suite, while others might prefer to be interviewed in a setting familiar and comfortable to them. Whatever the decision, 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 interviewee can concentrate fully on the task in hand – the interview.

4.78 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.

4.79 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 (the use of background screens should be considered if necessary).

Timing of the interview

4.80 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. Trauma and stress can interfere with the process of remembering, but this should be determined by asking the interviewee rather than by the application of an arbitrary period of time. Some

interviewees 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.

4.81 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 mentioned in paragraph 4.82). 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.

4.82 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 paragraph 4.16 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)

4.83 The interview should go at the pace of the witness. Some witnesses will require regular comfort breaks (for example, 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.

4.84 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 such as those mentioned in the rapport phase (see paragraphs 4.113 to 4.120) before returning to the matter under investigation.

4.85 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; 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.

Planning for immediately after the interview

4.86 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 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.

Witnesses who might become suspects

4.87 So far as is practicable, consideration should be given in the planning stage as to how interviewers will deal with any confessions to criminal offences made by the witness in the course of the interview. Any decision on an appropriate course of action will involve taking into account the seriousness of the crime admitted and weighing it against the seriousness of the crime under investigation.

4.88 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 4.214 to 4.218 for guidance in respect of incriminating statements made by witnesses during interviews).

Recording the planning process

4.89 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.

Preparing the witness for an interview

4.90 Witnesses should always be prepared for an interview. In some cases, this might be fairly brief and take place immediately prior to the interview, while in other instances it might be necessary to take more time and/or for it to take place several hours or days before the interview.

4.91 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.

4.92 Any issues or concerns raised by the witness should be addressed while preparing them for the interview (for example, welfare issues or concerns about the possibility of a later court appearance).

4.93 Witnesses who are intimidated, reluctant or hostile might need to spend more time getting to know the interviewer before they are ready and/or willing to take part in an investigative interview. Interviewers should consider whether one (or more) meetings with a witness should take place prior to the interview, because this familiarisation process may take some time.

4.94 Assistance should be sought if necessary from interview supervisors and interview advisers (see tiers 4 and 5 of ACPO's I*nvestigative Interviewing Strategy* (ACPO, 2004)) with the issues that might arise during the preparation of a witness for an interview.

4.95 Full written notes must be kept of the preparation of a witness for an interview and revealed to the CPS.

4.96 The plan for 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.

Victim Personal Statements

4.97 Interviewers should plan to give witnesses who are victims the opportunity to make a Victim Personal Statement (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 Home Office guidance issued on 14 August 2001 under cover of Home Office Circular No. 35/2001 *Guidance on the Victim Personal Statement Scheme* (Home Office, 2001).

4.98 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.

4.99 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 evidential interview to the VPS.

4.100 There is always the possibility that at a later time the victim or their carer may 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 according to the Home Office guidance on VPSs.

Part 4B: Interviewing intimidated witnesses, Section 137 Criminal Justice Act 2003 witnesses and significant witnesses, including 'reluctant' and 'hostile' witnesses

Aims

By the end of Part 4B, those involved in conducting interviews with intimidated witnesses, Section 137 Criminal Justice Act (CJA) 2003 witnesses and significant witnesses should be able to understand, with respect to each individual case:

- establishing rapport, including the importance of ground rules (paragraphs 4.107 to 4.130);
- how to elicit and support a free narrative account (paragraphs 4.131 to 4.149);
- styles of questioning (paragraphs 4.150 to 4.188);
- closing the interview (paragraphs 4.189 to 4.198);
- evaluating the interview (paragraphs 4.199 to 4.201);
- further interviews (paragraph 4.204); and
- safeguarding intimidated witnesses (paragraphs 4.207 to 4.213).

General advice on interviewing intimidated witnesses, Section 137 CJA 2003 witnesses and significant witnesses

4.101 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. This structure results in what is termed a 'hierarchy of reliability' of information, with the opening phases resulting in good quality recall, but as the interview becomes more specific the quality of information elicited may reduce. Research has shown that the free narrative phase of the interview typically is incomplete but more accurate. When interviewees are questioned about a 'to-be-remembered' event, more information is elicited but the accuracy tends to be lower, with the more direct questions resulting in higher error. Thus interviewers have to be particularly careful about the **types** of questions used and **where** in the interview to use particular questions (see paragraphs 4.153 to 4.188).

4.102 However, inclusion of a phased approach in this guidance should not be taken to imply that all other techniques are necessarily unacceptable or to preclude their development. Neither should what follows be regarded as a checklist to be rigidly worked through. Flexibility is the key to successful interviewing. 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 (tier 5 of the Association of Chief Police Officers' (ACPO's) *Investigative Interviewing Strategy* (ACPO, 2004)).

4.103 For all witnesses, interviews should normally consist of the following four main phases:

- establish rapport;
- seek free narrative recall;
- ask questions; and
- closure.

Each phase will be described in greater detail below. These phases are compatible with and underpin the PEACE interview framework advocated by ACPO.

4.104 The phased approach 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 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. The original CI comprised a set of four instructions given by the interviewer to the interviewee: (i) report everything; (ii) mentally reinstate 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).

4.105 Thus the following discussion will also describe the 'special' cognitive mnemonics that aim to help elicit specific details that witnesses may have difficulty remembering. Some interviewers think that use of the ECI is an all-or-nothing affair – that they have to use all the techniques or none at all. Instead it would be preferable to use one technique well rather than all of 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 interviewee. This is not an easy task. As a result, interviewers should be trained and be competent to the appropriate tier (2 or 3) of ACPO's *Investigative Interviewing Strategy* (ACPO, 2004) in order to do this appropriately.

4.106 The CI/ECI mnemonics typically can only be used with co-operative interviewees. 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.

Phase one: establishing rapport (including engaging and explaining)

Opening the interview: explaining the formalities

4.107 Firstly, it is necessary when video-recording the interview to check the equipment is still turned on and that all people in the room can be clearly seen on the monitor through the camera with the wide-angle lens where two cameras are in use (see Appendix H). Next, the interviewer should say out loud the day, date, time and place (not the detailed address) of the interview and give the relevant details of all those present.

Opening the interview: personalising the interview, building rapport and engaging the interviewee

Personalising the interview

4.108 The opening phase of an interview will often determine the success of the interview as a whole. 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 interviewee and thus, in order to reduce possible tension and insecurity felt by the interviewee, it is essential that the interviewer should introduce themself by name and greet the interviewee 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.

4.109 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 interviewee, so that interviewees are less likely to comply with leading questions (see paragraphs 4.170 to 4.174 for a description of a leading question and examples). 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.

4.110 The interviewer needs to treat the interviewee as an individual with a unique set of needs as opposed to being 'just another interviewee'. Obtaining maximum retrieval is a difficult task requiring deep concentration. An interviewee therefore needs to feel that they are an integral part of the interview in order to be motivated to work hard.

4.111 As noted above, the interviewer needs to present themself 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 interviewee 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.

4.112 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 interviewee

4.113 Rapport is essential, and good rapport between interviewer and interviewee 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. There are a number of reasons why rapport is so important and these will now be examined.

4.114 The interviewee'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 interviewee'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 interviewee feel secure and confident both with the interviewer and with the interview situation. One way to achieve this is to start by asking some neutral questions not related to the event which can be answered positively and, therefore, create a positive mood.

4.115 Rapport requires that the interviewer interacts meaningfully with the interviewee, 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 interviewee that they are 'just another interviewee', which is likely to depersonalise the interview. It is a good idea for the interviewer to talk about themself too, as this openness can serve as a model to demonstrate what is required of the interviewee and help to further personalise the interview by making the interviewer more identifiable.

4.116 The use of open-ended questions (see paragraphs 4.154 and 4.155) in the developing of rapport will teach the interviewee at the earliest phase in the interview what will be required later, i.e. elaborated responses. The interviewer should encourage the interviewee 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 interviewee what to expect later (i.e. that detailed responses are required).

4.117 Interviewees have different levels of language, and skilful interviewers tailor their own communication level to that of the interviewee. It is in this rapport phase of the interview that the interviewer can assess the interviewee'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 interviewee. This is easier to do when examining the interviewee's responses to open-ended questions. For example, it is often useful to count how many words on average an interviewee uses per sentence, and use this figure as a guide to the length of sentences/questions the interviewer should use.

4.118 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 interviewee'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.

4.119 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 interviewee for the interview, they should be addressed during this phase if they emerge again.

4.120 At the start of the interview the interviewer could allow the interviewee 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

4.121 It is important to explain to the interviewee what is to be expected from them, as for most interviewees 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 a number of factors that need to be explained to the interviewee at this stage in the interview, and these will be examined in turn.

Interview factors

4.122 There are some details concerning the interview itself that need to be explained to the interviewee. 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 interviewee. Questions such as '*Do you know why you are here today?*' have been found to help at this stage of the interview.

4.123 The interviewer needs to give an explanation of the outline of the interview. Typically the outline will take the form of the interviewer asking the interviewee to give a free narrative account of what they remember and following this with a few questions in order to clarify what the interviewee has said. Interviewees 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.

4.124 There should 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 (see paragraphs 6.19 to 6.24).

Focused retrieval

4.125 Memory recall at the most detailed level requires focused attention and intense concentration. If there are too many distractions then the interviewee will find it very difficult to retrieve from the detailed level of memory. The interviewer should inform the interviewee that the task is not an easy one, but one that will require considerable concentration. Interviewees 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, interviewees may shorten their responses accordingly, and shorter responses are usually less detailed.

Transfer of control

4.126 This instruction is an ECI technique which would be helpful in almost all interviews. The interviewee may expect the interviewer, usually an authority figure, to control the interview. Therefore an interviewee may well be expecting an active interviewer asking a series of questions to a more or less passive interviewee 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 interviewee remember, to facilitate retrieval and to help the interviewee, as and when they require it, to recall as much information as possible. It is the interviewee who has been witness to the event and who has all the information. Consequently, the main person in this exercise is the interviewee, and not the interviewer.

4.127 The interviewer should therefore pass the control of the information flow to the interviewee. After all, it is the interviewee who holds the necessary information. Thus, at the start of the interview the interviewee needs to be informed explicitly of this. It is the interviewee who should do most of the mental work and most of the communicating throughout the course of the interview.

4.128 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 actually 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 interviewee needs to give extensive detail and should do most of the communicating. Unless directly told this, the interviewee 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

4.129 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, interviewees 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 interviewees to report **everything** they remember without any editing, even if the interviewees think the details are not important or trivial, or cannot remember completely a particular aspect of the event.

4.130 There are a number of reasons thought to be responsible for the effectiveness of this instruction. Many interviewees may believe that the interviewer already knows a lot about the event in question. As a result, interviewees may not mention things they think are unimportant or which seem obvious, as interviewees 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 interviewees 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 interviewee. Interviewees 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).

Phase two: initiating and supporting a free narrative account

4.131 In this phase of the interview the interviewer should initiate an uninterrupted free narrative account from the interviewee through the use of 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 interviewee holds the information about the event in **their** memory. Thus, **brief** note-taking is recommended at this stage. However, if the interviewer takes too many notes, this may well distract the interviewee, hindering the flow of recall. In addition, if the interviewer slows the interviewee down in order to take detailed notes, this again hinders maximum retrieval.

4.132 It is **essential** not to interrupt the interviewee during their narration to ask questions – these should be kept for later.

4.133 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.

4.134 Many 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. Therefore, 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 interviewee witnessed anything untoward.

4.135 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 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.

Context effects, memory and the mental reinstatement of context

Context effects and memory

4.136 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 in order to jog people's memories of the event itself.

4.137 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.

4.138 In a practical sense, physically reinstating the context of the event (i.e. taking an interviewee 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 a number of 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 actually 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).

4.139 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.

4.140 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

4.141 The context reinstatement instruction is part of the ECI and it asks interviewees 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 interviewee:

> '*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 interviewee.

4.142 The use of sketch plans may also be helpful here. The interviewee could be asked to draw the layout of the event and describe who was where, etc. This will also help the interviewee reinstate the context and could be a useful tool for the questioning phase of the interview to help focus the interviewee and structure topic selection (see paragraphs 4.175 and 4.176). In addition, this is a useful investigative tool in ensuring that the R v Turnbull and Camelo rules are comprehensively covered.

4.143 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 interviewee.

Active listening and appropriate non-verbal behaviour

4.144 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

4.145 Proxemics refers to the physical distance between individuals (e.g. interviewer and interviewee) 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 interviewee.

Posture and orientation

4.146 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

4.147 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 interviewee'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 interviewee to do so as well. The interviewer should encourage the interviewee to speak slowly, as rapid speech (which is common in anxious interviewees) 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 interviewee. If an interviewer sits and speaks in a relaxed manner, the interviewee is more likely to demonstrate relaxed behaviour as well.

Pauses and interruptions

4.148 The interviewer also needs to give the interviewee time to give an elaborate answer and should use pauses so that the witness can conduct a thorough search of their memory. Interviewees pause during a free narrative account for a variety of reasons. The interviewee may be seeking feedback from the interviewer on the quality of the response. For example, the interviewee may be thinking '*Have I given enough information or do I need to continue?*' or '*Have I been talking too long?*' The interviewee may also pause in order 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.

4.149 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 interviewee 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 interviewee 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 interviewees that they have only a limited time to reply and this often leads to shortened responses to future questions.

Phase three: questioning

4.150 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.

4.151 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

4.152 Before asking the interviewee 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 interviewee that they will now be asking them some questions based on what they have already communicated in the free narrative phase, in order to expand on and clarify what they have said. It is also beneficial to reiterate a number of the ground rules outlined in the rapport phase of the interview (see paragraph 4.121). For example, it is helpful to explain to the interviewee

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.

Types of question

4.153 Different types of question produce different types of answer with respect to quality and quantity, and it is essential that particular classes of question are used in the correct order. There are some types of question that have a tendency to produce erroneous information. Although there are a number of classes (and sub-classes) of question, we shall deal with only the most important: open-ended, specific-closed, forced-choice, multiple and leading questions.

Open-ended questions

4.154 An open-ended question is the best kind of question from the point of view of information-gathering (i.e. gaining good quality information). Therefore, this type of question should be used predominantly during the interview. Open-ended questions are framed in such a way that the interviewee is able to give an unrestricted answer, which in turn enables the interviewee 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 interviewee. Open-ended questions elicit responses similar to those obtained by the free narrative account, which has been found to be the most accurate form of remembering. Open-ended questions can also be used to elaborate upon incomplete information provided in the free narrative account.

4.155 Questions beginning with the phrase 'Tell me' or the word 'Describe' are useful examples of this type of question. Examples of open-ended questions are:

> '*You said you were at the scene of the incident this morning. Tell me everything you remember.*'

> '*You said that there was a man with a knife. Describe him for me.*'

Specific-closed questions

4.156 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 minimise irrelevant information being provided. However, they may cause interviewees to be passive and decrease their concentration, and therefore can result in less recall. Also, specific-closed questions can produce more incorrect responses than open-ended questions. Open-ended questions are therefore preferable because they elicit more elaborate and more accurate responses.

4.157 In answering the open-ended question given above that requested a description of the perpetrator, the interviewee may have omitted hair colour; thus a subsequent specific-closed question could be:

> '*What colour was his hair?*'

4.158 An interview is a learning experience, especially if the interviewee has limited or no knowledge of the interview situation. As a consequence any interviewer behaviour is likely to have an immediate effect on the interview process (e.g. on an answer given). The interviewee will also learn from this behaviour what is to be expected 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 interviewee to give full answers, the interviewee will expect this to occur throughout the interview. As a result, the interviewee will give short answers, even if the interviewer may request long responses from the interviewee later in the interview, using open-ended questions. This is the reason why open-ended questions should be used first, with specific-closed questions as a back-up option.

4.159 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 much more commonly used as specific-closed questions. For example:

> Q. '*Who said that?*'
> A. '*John Smith.*'
>
> Q. '*What did he say?*'
> A. '*He said...*'
>
> Q. '*Where were you standing?*'
> A. '*Outside the bedroom.*'
>
> Q. '*When was that?*'
> A. '*About 11.*'

4.160 An example of such a question framed as an open-ended question is '*What happened next?*' However, its effect depends on where in the interview this question is asked. If '*What happened next?*' is used within predominately open-ended questions, it should elicit an open-ended response from the interviewee. However, if it is embedded among a large number of specific-closed questions, it is unlikely to elicit a lengthy response because the interviewee is not used to giving detail.

4.161 A 'Why' question, 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 interviewee cannot possibly answer with 100 per cent 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 interviewee or the remembering process.

Wording of specific-closed questions

4.162 The interviewer needs to tailor the language of each individual question to each witness/victim 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.

4.163 If the interviewer is seeking elaboration on what the interviewee mentioned in their free narrative account, the interviewer should as far as possible try to use the same words that the interviewee 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?*').

4.164 In addition, jargon and technical terminology should not be used as these reduce the interviewee's confidence and may alienate them. Moreover, an interviewee may just respond in the affirmative, to avoid embarrassment, if they do not understand.

4.165 Specific-closed questions should not be repeated 'word for word' because the interviewee 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 instead of repeated. Also, if the interviewee 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 interviewee may lose self-confidence.

Forced-choice questions

4.166 This and the following are further types of question that should be avoided if at all possible and only be used as a last resort.

4.167 This type of question can also be termed a selection question: it gives interviewees 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 interviewees 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.

Multiple questions

4.168 A multiple question is one that asks about several things at once. For example:

> '*Did you see him? Where was he? What was he wearing?*'

The main problem with this type of question is that people do not know which part of it to answer. The interviewee has to remember all the sub-questions asked while trying to retrieve the information required to answer each sub-question. Moreover, when an interviewee responds to such a question, misunderstandings can occur as the interviewer may wrongly assume that the interviewee is responding to sub-question one, when actually they are responding to sub-question two.

4.169 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 interviewee to describe two or more people, and thus may not only limit the amount of retrieval per person but also may confuse the interviewer as to who the interviewee is currently describing. Misunderstandings could therefore occur.

Leading questions

4.170 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 (see Appendix D).

4.171 In addition to legal objections, research indicates that interviewees' 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 interviewee'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. 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**.

4.172 A leading question that prompts an interviewee into spontaneously providing information which goes

beyond that implied by the question will normally be acceptable to the courts.

4.173 Furthermore, interviewees who do not provide distorted information in response to such questions are nevertheless likely to become irritated by questions that imply the anticipated answer, especially if they know that answer to be incorrect.

4.174 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. It should be noted that interviewees may be more likely to succumb to suggestive questioning when they see the interviewer as an authority figure. The way that interviewers structure questions can have a marked influence on the responses given by the interviewee. It is imperative to understand the nature of questioning in order to conduct the most effective and non-biased interview. (See also issues of suggestibility, acquiescence and compliance in Chapter 3.)

Asking questions

Topic selection

4.175 Within the questioning phase of the interview the interviewer should subdivide the interviewee's account into manageable topics or episodes and seek elaboration on each area using open-ended and then specific-closed questions as outlined above in paragraphs 4.156 to 4.165. Each topic or episode should be systematically dealt with until the interviewee is unable to provide any more information. Interviewers can also summarise what the interviewee 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.

4.176 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 back 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

4.177 Good questioning should avoid asking a series of predetermined questions. Instead, the sequence of questions should be adjusted according to the interviewee'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 interviewee (via the free narrative account) and to organise the order of questions accordingly.

Activating and probing images (mini-context reinstatement)

4.178 This has been used as part of the ECI. This technique is similar to the mental reinstatement of context described above in paragraph 4.104. However, it is now used to help the interviewee 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 interviewee 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 interviewee 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

4.179 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 interviewee. Thus, in addition to searching extensively, using concentration, the interviewee should be encouraged to use a variety of memory search strategies. One way of doing this is to get the interviewee to use **varied retrieval strategies**, such as the ECI techniques of 'change the temporal order of recall' and 'change perspective' (see paragraphs 4.182 to 4.186). However, it is vital at this phase in the interview to allay any fears that this is being done because the interviewee is not believed.

Different senses

4.180 Retrieval may also be varied by probing different senses. Typically interviewers concentrate on

what the interviewee saw and as a consequence what they heard, smelt, felt and tasted are often ignored. Valuable information may therefore go unreported. For example, if the interviewee 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.*'

4.181 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

4.182 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 interviewee to examine the actual memory record, which in turn can result in the reporting of additional information which is unusual and unique.

4.183 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).

4.184 Thus, once interviewees have (using free narrative account) recounted the event in their own order, the interviewer could encourage the interviewee 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

4.185 People have a tendency to report events from their own psychological perspective. The change perspective instruction, from the ECI, asks the interviewee 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 of the men'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?*'

4.186 Care must be taken with this technique, as interviewees 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 interviewee 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

4.187 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 interviewee 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.

4.188 Interviewees 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 interviewee to report all types of information and not just action information. In addition, interviewees 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.

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 interviewee may not necessarily be thinking of a Scottish accent. Thus asking '*Why?*' is imperative.

Phase four: closing the interview

Recapitulation

4.189 Interviewers should in this final main phase provide an account of the interviewee's description of the event in the interviewee's own words. This allows the interviewee to check the interviewer's recall for accuracy. The interviewer must explicitly tell the interviewee to correct them if they have missed anything out or have got something wrong.

4.190 This phase also functions as a further retrieval phase. The interviewee, 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.

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

4.192 Care should be taken not to convey disbelief.

Closure

4.193 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.

4.194 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.

4.195 The witness should be thanked for their time and effort and asked if there is anything more 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.

4.196 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).

4.197 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 interviewees will tell friends, family, etc. about the skill of the interviewer and their feelings about the interview process as a whole.

4.198 Report the end time of the interview on the video/audio-recording.

Evaluation

4.199 Evaluation should take two primary forms: evaluation of the information obtained and evaluation of the interviewer's performance.

Evaluation of the information obtained

4.200 After the interview has concluded, the interview team will need to make an objective assessment of the information obtained and evaluate this in light of the whole case. Are there any further actions and/or enquiries required? What direction should the case take?

Evaluation of interviewer performance

4.201 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. The interview could also be assessed by a supervisor and/or someone who is qualified to examine the interview and give good constructive feedback to the interviewer, highlighting areas for improvement. This should form part of a staff appraisal system (see tier 4 of ACPO's *Investigative Interviewing Strategy* (ACPO, 2004)).

Post-interview documentation and storage of recordings

4.202 The interviewer should complete the relevant paperwork as soon as possible after the interview is completed, including the Record of Video Interview

(ROVI) referred to in Appendix K. 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. Responsibility for transcription and the stage at which a transcription should take place are set out in Appendix L.

4.203 Recordings should be stored as recommended in Appendix J.

Supplementary interviews

4.204 One of the key aims of video-recording early investigative interviews is to reduce the number of times a witness is asked to tell their account. However, it may be the case that even with an experienced and skilful interviewer, the witness may provide less information than they are capable of divulging. A supplementary interview may therefore be necessary and this, too, should be video-recorded. Consideration should always be given to whether holding such an interview would be in the witness's interest and the CPS should be consulted if necessary. The reasons for conducting supplementary interviews should be clearly articulated and recorded in writing.

Identification procedures

4.205 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. Staff carrying out these procedures should be suitably trained to interview and record the evidence in line with this document (see Appendix E for more detailed advice on identification parades with witnesses interviewed in accordance with this guidance).

Therapeutic help for intimidated adult witnesses

4.206 An intimidated adult witness may be judged by the investigating team, and/or by the witness, to require therapeutic help prior to giving evidence in criminal proceedings. It is vital that professionals undertaking therapy with prospective intimidated adult witnesses prior to a criminal trial adhere to the official guidance: *Provision of Therapy for Vulnerable or Intimidated Adult Witnesses Prior to a Criminal Trial: Practical Guidance* (CPS, 2001).

Safeguarding intimidated witnesses

4.207 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.

4.208 Some offences are more likely than others to give rise to the intimidation of witnesses. Research has shown that sexual offences, assaults, domestic violence, 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.

4.209 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.

4.210 In some instances intimidation may occur only later in the investigative process. If this happens, the intimidated witness should still qualify for Special Measures.

4.211 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.

4.212 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;
- 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.

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.

4.213 Additional guidance in respect of the treatment of intimidated witnesses is available in *Working with Intimidated Witnesses: A Manual for Police and Practitioners Responsible for Identifying and Supporting Intimidated Witnesses* (Office for Criminal Justice Reform, 2006).

Witnesses who become suspects during the interview

4.214 It may happen that a witness who is being interviewed comes under suspicion of involvement in a criminal offence, perhaps by giving 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.

4.215 Where the priority is to obtain evidence from the person as a witness, the interview can proceed.

4.216 If it is concluded that the evidence of the witness is highly relevant to the case in which they are suspect, 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.

4.217 Any admission by a witness in the course of an investigative interview may not be admissible as evidence in criminal proceedings against them. Normally, a further interview would need to be carried out 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.

4.218 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.

Useful sources

4.219 This chapter 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. (2004) *The Cognitive Interview: A Step-by-Step Guide*. Unpublished.

Milne, R. and Bull, R. (1999*) Investigative Interviewing: Psychology and Practice*. Chichester: Wiley.

National Assembly for Wales (2004) *Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses, Including Children: A Training Pack*. Cardiff: National Assembly for Wales.

5 Witness support and preparation

Aims

By the end of this chapter, those involved in preparing vulnerable and/or intimidated witnesses for court should be able to understand, for each individual case:

- the benefits of preparation and support of witnesses (paragraphs 5.1 to 5.11);
- who should receive preparation, what form this preparation should take and who should provide it (paragraphs 5.12 to 5.30);
- how to identify and respond to the needs and wishes of witnesses (paragraphs 5.31 to 5.35);
- preparation, support and liaison throughout the court process (paragraphs 5.36 to 5.72);
- specific concerns and provisions for children giving evidence in court (paragraphs 5.73 to 5.82); and
- special provisions for vulnerable and intimidated adults (paragraphs 5.83 to 5.91).

The benefits of preparation and support

5.1 Support and preparation, by providing information about the court process, helps all witnesses to produce better evidence and can influence the witness's 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.

5.2 Substantial improvements have recently been introduced to improve information provision to victims and witnesses and the identification of their support needs. The statutory Code of Practice for Victims of Crime entitles vulnerable and intimidated victims to an enhanced level of service. This guidance 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 will build on and complement the Code of Practice 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/or intimidated witnesses, action on intimidation and the application and use of Special Measures in court. The Office for Criminal Justice Reform (OCJR) plans to implement the Witness Charter nationally by April 2008.

5.3 Vulnerable and intimidated witnesses will 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.

5.4 Vulnerable witnesses are defined by Section 16 of the Youth Justice and Criminal Evidence Act 1999 ('the 1999 Act') as:

- all child witnesses (under 17 years old); and/or
- all witnesses whose quality of evidence is likely to be diminished because they:
  - suffer from a mental disorder (as defined by the Mental Health Act 1983);
  - otherwise have a significant impairment of intelligence and social functioning (learning disability); or
  - have a physical disability or are suffering from a physical disorder.

5.5 Intimidated witnesses are defined by Section 17 of the 1999 Act as those whose quality of testimony is likely to be diminished by fear or distress in connection with testifying.

5.6 In determining whether a witness is intimidated, 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; and
  - 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.

Complainants in sexual offence cases are defined as falling into this category automatically by Section 17(4) of the 1999 Act. In addition, *Vulnerable Witnesses: A Police Service Guide* (ACPO and the Home Office, 2002) specifically refers to victims of domestic violence, racially motivated crime and repeat victimisation, and witnesses who self neglect/self harm or who are elderly and frail as groups that fall into this category.

5.7 Children and 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 may be beneficial to use an intermediary who will assess the witness's level of communication and make recommendations about how their needs can be met. 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. National Standards have been prepared for those involved in young witness preparation, and these are reproduced as Appendix F.

5.8 Adults or children who have been victimised may have special difficulties as witnesses in criminal proceedings. They may need help to overcome the feeling that it is they, rather than the accused, who is on trial. 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.

5.9 People with mental health issues can also find the criminal justice system especially stressful. Those with post-traumatic anxiety disorders can have special problems prior to and during the trial, particularly if their problem is related to the alleged offence.

5.10 Where a victim who is to be called as a witness in the relevant criminal proceedings has been identified as potentially vulnerable or intimidated, the Code of Practice for Victims of Crime requires the police to explain to the victim the provision about Special Measures, and the Crown Prosecution Service (CPS) to have systems in place to help prosecutors to decide whether to make an application to the court for Special Measures. At the earliest stage in the process the police and the prosecutor should clearly explain the 'menu' of Special Measures available and the advantages and disadvantages of each (see paragraphs 6.25 to 6.106 and in particular the section 'Choosing between live links and screens' from 6.57 to 6.59).

5.11 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 young witnesses and preparing them to give evidence and to those planning and co-ordinating the attendance of such witnesses at court. Paragraphs 5.31 to 5.72 refer to all vulnerable and/or intimidated witnesses, whether adult or child, while particular issues relevant either to children or to vulnerable and/or intimidated adults are noted in paragraphs 5.61 to 5.79.

Overview of support and preparation work

Who is entitled to support and preparation?

5.12 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 are able to 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 themself 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 R 6).

What does support and preparation consist of?

5.13 The first task is the identification of children and those vulnerable and intimidated adults who need special consideration during their involvement with the criminal justice process. To ensure timely access to support, the police must take all reasonable steps to identify vulnerable or intimidated victims, and to record relevant information on either the reverse of the MG11 statement form or on the MG2 – standard forms used by the police to transmit confidential information to the CPS. In practice, this statutory responsibility to victims will also be extended to the identification of vulnerable and intimidated witnesses. While it is usually the police who first identify witnesses' vulnerability, it can be highlighted by anyone with knowledge of the witness. Once a witness has been identified as either vulnerable or intimidated, 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 (*Speaking Up For Justice* (Home Office, 1998), paragraph 6.1). Providing the witness with information about the investigation and court case 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 will probably occur over many months.

5.14 Witness Care Units have been established in all areas throughout England and Wales to provide information to all victims and witnesses whose case is proceeding to court. In addition they will seek to ensure that individually tailored support is provided to all victims and witnesses. The Code of Practice for Victims of Crime places obligations on the Witness Care Unit to update vulnerable or intimidated victims 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.

5.15 Box 5.1 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 young witness preparation are described in the National Standards for Young Witness Preparation (see Appendix F) and *Preparing Young Witnesses for Court – A Handbook for Child Witness Supporters* (NSPCC, 1998).

5.16 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. In those areas where there is an ISVA, they should normally be responsible for the provision of pre-trial (non-therapeutic) support and support at court. Where local protocols can be agreed, they are also well placed to relay information about a case's progress to the victim on behalf of the police and CPS.

5.17 There are also 64 court systems that now specialise in dealing with domestic violence 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 violence 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 5.1(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;
- 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 5.1(b): Different types of supporter

- Victim Support volunteer
- Witness Service volunteer
- Witness care officer
- Pre-trial child witness supporter
- Independent sexual violence adviser
- Independent domestic violence adviser
- Intermediary
- Domestic violence officer, family liaison officer, child protection officer

5.18 Usually interests of the witness and of consistent information provision will be best served if the same supporter is involved throughout. However, in many cases a supporter's role may not allow them to be the sole provider of information throughout the criminal justice 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.

5.19 Different support functions may be provided at different stages. The same supporter will not normally be used throughout the entire criminal justice process, since this can lead to allegations that the witness is being coached, and also because family members and friends are unlikely to have an experience of the courtroom, while the pre-trial supporter must have knowledge of the court process. However, in exceptional circumstances (such as a witness finding it difficult to adapt to change), the same supporter may be used at more than one stage of the process. When this happens, great care needs to be taken to brief the supporter about the limitations of their role. You would also need to be certain that the supporter was not going to be called as a witness either by the defence or the prosecution.

At the investigative interview

5.20 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.

Pre-trial

5.21 Support from a trained person with knowledge of the court process can assist the witness through information provision and preparation for giving evidence. The witness care officer appointed to a witness will ensure that they get timely information about the progress of the case, and support requirements in preparation for court will be discussed and agreed with the witness. 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. Generally, any supporter present 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 case management hearing (PCMH) (see paragraph 5.45).

5.22 Victim Support's Witness Service can also arrange pre-trial visits for both prosecution and defence witnesses. These visits should, where practicable, involve giving vulnerable or intimidated witnesses the opportunity to practise using the live link facility, providing the use of the measure has been granted by the court.

While giving evidence

5.23 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. There are evidential constraints that apply to the person providing support (see the summary in paragraphs 5.24 to 5.26 and Appendix G). The identity of a supporter in the live link room or at the remote location must be the subject of an application to the court (see paragraph 5.69). A practice direction issued by the Lord Chief Justice outlines who can act as a supporter in the live link room. 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 (Consolidated Criminal Practice Direction, Part III. 29, *Support for Witnesses Giving Evidence by Live Television Link*, is available at www.justice.gov.uk/criminal/procrules_fin/contents/practice_direction/pd_consolidated.htm).

Evidential boundaries

5.24 The 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.

5.25 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 (with the exception of 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.

5.26 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 – in the witness's words – of what was said, 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 intermediaries and court witness supporters has been developed and is described in Appendix G.

Who can provide support?

5.27 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.

5.28 Assistance and support is available from Witness Care Units, Victim Support and the Witness Service (see paragraphs 5.58, 5.59 and 5.64) 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.

5.29 In certain cases, no support and preparation work with a prosecution witness should be undertaken without informing the police officer in charge of the case (subject to any confidentiality requirements). 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 a difficult experience. 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. Supporters working with child witnesses should have current enhanced Criminal Records Bureau clearance. The social worker or police officer who conducted the investigative interview is excluded from the role of supporter in the same case (see 'Government Policy on the Child Witness Supporter' *in Preparing Young Witnesses for Court – A Handbook for Child Witness Supporters* (NSPCC, 1998)).

What skills are involved?

5.30 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, relevant legislation and 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.

Working with young witnesses requires additional qualities and skills and these are described in the National Standards for Young Witness Preparation (see Appendix F) and in *Preparing Young Witnesses for Court – A Handbook for Child Witness Supporters* (NSPCC, 1998). There must be proper documentation of any support work (see Box 5.2).

Box 5.2: 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

5.31 The Code of Practice for Victims of Crime places a statutory obligation on the police to take all reasonable steps to identify vulnerable or intimidated victims. In practice, and through new requirements contained within the MG11 statement, the police will extend this identification to all witnesses. This obligation is applied to all witnesses in the Witness Charter, 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 co-ordinated and delivered on a local basis. Witness Care Units, jointly run by the police and the CPS, 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.

5.32 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 in giving evidence, and explain how the different Special Measures might assist them (this is an obligation under the Code of Practice for Victims of Crime). Young 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. Research concerning young witnesses suggests that giving them the choice of how they give their evidence has a beneficial effect on their emotional state, their experience of court and their performance as a witness. While a child's views are obviously important, the emphasis in the House of Lords judgment in the Camberwell Green case (2006) is that it is the norm for child witnesses to give evidence via video/live link.

5.33 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. Under the Code of Practice for Victims of Crime, Witness Care Units are required to conduct a full needs assessment with all victims where a 'not guilty' plea is entered, during which issues relevant to the application for Special Measures and other support will be explored. The Witness Charter applies this to all witnesses.

5.34 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. The CPS or legal representative should seek such information if it is not provided, as this will be necessary for pre-trial planning and decision-making at the PCMH. 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.

5.35 The witness support, preparation and profiling model developed by the Investigations Support Unit (ISU) of Liverpool City Council has been adopted in many areas and considers the understanding, information and skills acquisition required of the witness, while avoiding any discussion of or reference to their evidence. At the pre-trial stage, an assessment by ISU staff of the individual's potential to be a credible and competent witness in the trial is carried out bearing in mind the improvement effected by the support and preparation process. This is in order to ensure informed consideration of any appropriate

measures to assist, not just Special Measures. The witness support and preparation element of the scheme leads to the production of a witness profile which will identify individual arrangements and measures specific to the witness concerned; this information is used by counsel in support of any applications for Special Measures. The profile is served on the court and both prosecution and defence counsel, in accordance with an agreed protocol. The witness profile not only includes such details as the witness's functional skills and powers of concentration in relation to giving evidence and withstanding cross-examination, but also identifies probable barriers to their giving best evidence and advises how best to reduce or overcome them. This model was endorsed nationally in a joint HM Crown Prosecution Service Inspectorate and HM Inspectorate of Constabulary thematic inspection report into the investigation and prosecution of cases involving allegations of rape in April 2002. The Director of Public Prosecutions and Deputy Lord Chief Justice have also endorsed the scheme and as a consequence of this the CPS has promoted the adoption of this service throughout England and Wales.

Preparation, support and liaison throughout the court process

5.36 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. The police investigators are responsible for calling an early Special Measures meeting during the investigation; these meetings can, in practice, be a telephone discussion. Where there is any doubt as to whether an interview should be video-recorded, where an intermediary or aids to communication are involved, or where there might be an issue about the use of a supporter during an interview, the police investigator should normally undertake an early Special Measures meeting. The CPS can subsequently call an early Special Measures meeting if they consider it necessary after reviewing a case file. 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. In some cases, separate pre-trial therapy or counselling work will be necessary to meet the needs of the witness (refer to paragraphs 5.60 and 5.61; see also *Provision of Therapy for Child Witnesses Prior to a Criminal Trial: Practical Guidance* (CPS and the Department of Health with the Home Office, 2001) and *Provision of Therapy for Vulnerable or Intimidated Adult Witnesses Prior to a Criminal Trial: Practical Guidance* (CPS and the Department of Health with the Home Office, 2001)). 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

5.37 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. Not all vulnerable witnesses will necessarily be video-interviewed – the majority of adult witnesses will probably 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.

5.38 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 an intermediary (see paragraph 5.72).

Special requirements

5.39 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 in forms MG2, MG3, MG6 and the back of MG11 (see paragraph 5.42). Members of the witness's family or friends or their carer will often be 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 in order 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, 2007, available at www.police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/national-agreement-interpret.pdf) should be adhered to. This was published in January 2007 and endorsed by the Association of Chief Police Officers.

5.40 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

5.41 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 (for example, therapy) 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 5.3 opposite.

Box 5.3: 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.
- Provide information about the criminal process and their role within it.
- 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.
- Provide therapy (including counselling).

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

5.42 Police officers should have undertaken an initial needs assessment for every witness and recorded relevant information on the rear of the MG11 statement form. Information relevant to vulnerability and intimidation should then be recorded in a Victim Personal Statement, or on the MG2, MG3 or MG6 for consideration by the CPS. The initial witness assessment form MG2, case file information form

MG6 and the back of witness statement form MG11 are confidential documents that are 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 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 meeting 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.

5.43 An early Special Measures meeting between the investigating officer and the CPS may be of assistance in determining what measures could assist the witness before and during the trial, taking into account the witness's own views and preferences. This may require no more than a telephone call. Where appropriate, a second early Special Measures meeting involving the witness should be considered so that these issues can be discussed further and the needs of the witness fully assessed and appreciated (for additional guidance, see *Early Special Measures Meetings between the Police and the Crown Prosecution Service and Meetings between the Crown Prosecution Service and Vulnerable or Intimidated Witnesses* (CPS, ACPO and the Home Office, 2001)).

5.44 In addition, 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 (see Chapter 6, paragraph 6.4). It may also be appropriate for the legal representatives and/or the judge to meet the witness before the trial (see paragraphs 5.67 and 5.68). 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 case management hearing (PCMH)

5.45 In Crown Court cases, the PCMH 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 and applications made under Section 137 of the Criminal Justice Act 2003. At those PCMHs that involve young witnesses, the judge completes the supplementary checklist, informed by the legal representatives, with full instructions and having seen any video-recordings of the child's evidence, so that all relevant issues can be co-ordinated and planned in readiness for the trial. It is vital that there is clear communication between the legal representative and those providing support for the child witness, both before and after the PCMH. The checklist covers the following areas:

- video-recorded evidence;
- television links;
- screens around the witness box;
- proposals for any support persons;
- arrangements for the young witness to refresh their memory;
- the young witness's preparation for court (including meeting the legal representatives);
- breaks for the young witness;
- special circumstances (such as learning difficulties, hearing problems or English not being the first language) and the arrangements made to accommodate these;
- the views of the witness about court dress;
- scheduling and standby arrangements; and
- disclosure of third party records.

Preparation for going to court

5.46 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 also help secure better post-trial adjustment.

5.47 The pre-trial supporter can provide the witness with information about the court process (or can direct their carer or specialist service to it). For example, there is a witness pack available for supporters and child witnesses to use (NSPCC, 1998), including a video for 11–15-year-olds, *Giving Evidence – What's it Really Like?* A video serving a similar purpose has also been made by Barnardo's (*So You're Going to Be a Witness*, 1996). A video for witnesses with learning disabilities has been made by Voice UK. A range of materials in different formats is available (see Appendix Q).

A pre-trial visit to the court

5.48 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 are able to 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; and
- demonstration of any Special Measures applied for and/or granted, for example practising 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).

5.49 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 (see Chapter 6 and Appendix F). A new facility designed to give witnesses the opportunity to 'walk through' the process of giving evidence is also able at www.cjsonline.gov.uk.

Refreshing the memory of the witness

5.50 Witnesses are entitled to see a copy of their statement before giving evidence (this is included in 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 young witnesses is one of the items on the PCMH supplementary pre-trial checklist for young witnesses (see Box 5.3 and paragraph 5.45).

5.51 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 PCMH 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.

5.52 The issues involved in planning for refreshment of a witness's memory will be raised at the PCMH 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. Consideration will need to be given to any competing requirements for the witness supporter during the remainder of the criminal justice process.

5.53 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.

5.54 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.

5.55 The time interval between showing the video for the purpose of refreshment and actually giving evidence should take account of the witness's needs and concentration span. Minimising delay should be balanced against the difficulty experienced by some witnesses in concentrating through two viewings on the same day. Many child witnesses may prefer to watch the video at least a day before the trial to help prepare them and reduce the stress of giving evidence on the day. The CPS recommends that the first viewing of the video-recording should not be on the morning of the trial, in order to avoid the child having to view the recording twice in one day. If the witness loses concentration or becomes distressed during the viewing, a break will be necessary.

Communication with the witness

5.56 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 after the date has been set. Under the Code of Practice for Victims for Crime this is statutory 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. The Witness Care Unit will seek to do this by the end of the working day following the hearing at which the trial date was set, and certainly within four working days of receipt of the list of witnesses to attend court to comply with the No Witness No Justice minimum requirements (2004, unpublished). 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.

5.57 While continuing efforts are made to minimise 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.

5.58 Witnesses should be told who is responsible for keeping them informed of significant developments in their case. In most cases this will be done by the Witness Care Unit or through an alternative supporter. The Code of Practice for Victims of Crime places a statutory 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 will achieve this by appointing each witness with a single point of contact, 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.

5.59 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

5.60 There is a concern that some witnesses are denied therapy pending the outcome of a criminal trial for fear that their evidence could be considered tainted and the prosecution lost. This may conflict with ensuring that a witness is able to have immediate and effective treatment to assist recovery. Delay in seeking treatment may worsen the prognosis. Hence, witnesses should not be denied access to any therapeutic help prior to any criminal trial, in particular if they have a mental illness. Pre-trial therapy for child witnesses is the subject of joint guidance in *Provision of Therapy for Child Witnesses Prior to a Criminal Trial: Practical Guidance* (CPS, 2001). Pre-trial therapy for vulnerable and intimidated adult witnesses is the subject of joint guidance in *Provision of Therapy for Vulnerable or Intimidated Witnesses Prior to a Criminal Trial: Practical Guidance* (CPS, 2001).

5.61 Pre-trial therapy should be kept separate from preparation and support. Therapy includes both counselling and psychotherapy. The Practical Guidance has been prepared for childcare professionals as well as lawyers involved in making decisions about the provision of therapeutic help for child witnesses. It emphasises that the best interests of the child are paramount when deciding whether, and in what form, therapeutic help is given. Records of any therapeutic work should be kept because they may become relevant material at a forthcoming trial. Whenever possible before any therapeutic work is undertaken, there should be full discussion between the various agencies and professionals, as well as clear communication and named contact points within each agency. It is recommended that a locally agreed protocol is established within each area, so that the different issues involved in providing pre-trial therapy can be jointly co-ordinated, and the best interests of the child held central. Updated guidance on pre-trial therapy for vulnerable or intimidated adult witnesses is in preparation.

Plans and communication concerning the trial

5.62 Applications for Special Measures can, however, be made at any stage up to and including the trial itself (see also Chapter 6, paragraphs 6.25 to 6.47), and procedures for making applications are set out in Part 29 of the Criminal Procedure Rules. If the court rules that a witness is eligible for one or more Special Measures then this 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 1999 Act; see Chapter 6, paragraphs 6.48 and 6.49). This enables the pre-trial supporter to plan ahead with greater certainty. Frequent communication and co-ordinated planning is needed if more than one person is undertaking the pre-trial support for the witness and support within the court hearing.

5.63 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, MG6 and the back of MG11 (see paragraph 5.32), 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

5.64 The Witness Service is run by the national charity Victim Support. It provides a service in some 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, 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

5.65 In all courts there is a Witness Liaison Officer who will assist in co-ordinating the provision of facilities and providing a focal point for liaison with other agencies. Local practices vary but duties may include 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.

5.66 Courts should consider the order and timing of witness attendance so as to minimise inconvenience. Such an approach will benefit vulnerable or intimidated witnesses (see also the Statement of National Standards of Witness Care, paragraphs 1.3.2–4.).

Meeting the legal representative

5.67 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. The Code of Practice for Victims of Crime, in support of the Prosecutor's Pledge, now places an obligation on the CPS to ensure, where circumstances permit, that prosecutors (or, if prosecutors are unavailable, other representatives of the CPS) introduce themselves to victims at court. This is applied 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.

Meeting the judge

5.68 An increasing number of judges, accompanied by the prosecution and defence legal representatives, meet young witnesses before they give evidence. Experience suggests that this can assist in demystifying the court process. Putting young witnesses more at ease helps them to give their best evidence.

Support at the hearing

5.69 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 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. 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. 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 G). 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

5.70 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' (see Chapter 3). 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. 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. The joint CPS/Liverpool City Council witness profiling scheme provides a good example of a joint agency approach that has been set up to aid this process.

Interpreters and intermediaries

5.71 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.

5.72 Similarly, the court may have approved the use of an 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. That report should highlight matters such as limited concentration spans and particular types of questioning that should be avoided.

Special provisions for children

5.73 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.

5.74 The general points concerning pre-trial support and preparation apply to all young witnesses. Additional guidance is provided in the National Standards for Young Witness Preparation (see Appendix F), and the advice below should be read in conjunction with that document. Some additional points are made below because of the particular needs of young witnesses. The majority of these special or added 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.

5.75 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, young 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.

5.76 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.

5.77 These particular 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 5.4 and 5.5 and Chapter 6).

5.78 Most of the issues covered in Boxes 5.4 and 5.5 figure in the supplementary checklist which is completed at the PCMH (see paragraph 5.45). Completion of the checklist 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 PCMH. It is important that the prosecution is given information from home or school about the young 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 young witness's testimony.

5.79 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 F).

5.80 All information on prosecution witness preparation needs to be communicated to the CPS in sufficient 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 an early Special Measures meeting 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. *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 Code of Practice for Victims of Crime and the draft Witness Charter, and applies them to children.

5.81 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 National Standards of Witness Care (to be replaced by the Witness Charter in April 2008) promote 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. Some judges have issued a practice direction that no child witness should be brought to court before 12 noon on the first day of a trial. 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. It may be preferable for young children to give evidence in the morning.

5.82 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 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. The Crown Prosecution Service's *Criminal Case Management Framework* (Annex A: Section 14 of the Crown Court Manual – Listing of cases) states that child witness cases are to be given the earliest available fixed date and that trial dates must only be changed in exceptional circumstances. The Courts Charter emphasises the need to assign the earliest possible date for a trial involving a child witness.

Box 5.4: Measures to assist child witnesses at the hearing, prior to giving evidence

- Minimising waiting time at court.
- Standby arrangements for vulnerable witnesses who can be on call in another location nearby.
- Waiting areas appropriate to the age of the child, equipped with children's toys, books etc.
- Secure waiting areas, separate from the defendant and defence witnesses.
- Entrance to the courtroom to give evidence by a side door, or other arrangements so as to avoid inappropriate contact with relatives or friends of the accused.
- Presence of a support person throughout the waiting arrangements.

Box 5.5: 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;
- 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;
- evidence given in private – clearing the court of most people in sexual offence or witness intimidation cases (legal representatives and certain others must be allowed to remain);
- removal of wigs and gowns by judges and advocates;
- intermediary – allowing an approved intermediary (a communications specialist) to help a witness to communicate with the police, legal representatives and the court (initially available in eight pathfinder areas; phased national roll out is to be completed by 1 April 2008. The courts, under their inherent jurisdiction, can grant the use of an intermediary in non-pathfinder areas);
- aids to communication – allowing a witness to use communication aids such as a symbol book or alphabet boards; and
- video-recorded pre-trial cross-examination – this measure has not yet been implemented.

Other arrangements:

- a support person;
- an interpreter;
- a pre-trial familiarisation visit;
- adjustments to the layout of the witness area with respect to the height of seating arrangements;
- appropriate arrangements for breaks to take into account 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

5.83 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. The Code of Practice for Victims of Crime places obligations on the police to take all reasonable steps to identify vulnerable or intimidated victims. Under the Code, these witnesses are entitled to an enhanced level of service. Social support can be received by the witness 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.

5.84 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.

5.85 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.

5.86 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.

Box 5.6: 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

5.87 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 violence, 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 (see *No Secrets – Guidance on Developing and Implementing Multi-agency Procedures to Protect Vulnerable Adults from Abuse* (The Stationery Office, 2000) and *Living Without Fear – An Integrated Approach to Tackling Violence against Women* (Cabinet Office, 1999)).

5.88 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 violence cases, specific risk assessments will be made. In domestic violence, MARACs may be held, especially in areas with specialist domestic violence courts. Support for victims of domestic violence 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 recently published 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), available at www.homeoffice.gov.uk).

5.89 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

5.90 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 co-ordinated through the local criminal justice boards.

5.91 The discussion after the hearing also provides a useful opportunity for the supporter to identify and make arrangements 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.

6 Witnesses in court

Aims

By the end of this chapter, those involved with witnesses in court should understand the law and best practice in relation to:

- pre-trial planning (paragraphs 6.1 to 6.7);
- the court's responsibility towards witnesses (paragraphs 6.8 to 6.12);
- the responsibilities of legal representatives towards witnesses (paragraphs 6.13 to 6.18);
- competence and the capacity to be sworn (paragraphs 6.19 to 6.24);
- Special Measures directions under the Youth Justice and Criminal Evidence Act 1999 (the 1999 Act) (paragraphs 6.25 to 6.106); and
- applications for video-recorded evidence-in-chief under Section 137 of the Criminal Justice Act (CJA) 2003 (paragraphs 6.107 to 6.109).

Pre-trial planning

6.1 Full and accurate information about Special Measures and other arrangements (on which see Chapter 5, Box 5.5) 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 case management hearing (PCMH). 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, and directions under Section 137 CJA 2003. 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.

6.2 Where the guidance in Chapter 5 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 PCMH 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. Issues addressed in the questionnaire include the mental or medical condition of the witness and witness attendance times. A copy of the plea and case management form, completed as far as possible with the agreement of both advocates, is handed in to the court prior to the start of the PCMH. Judges may be expected to ask for information about witnesses if it is not provided.

6.3 Other matters raised on the plea and case management form include applications for live link, screens, pre-recorded evidence-in-chief and the use of video playback equipment at trial. The legal representatives need to have seen any video-recorded evidence in advance of the PCMH 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 Chapter 5, paragraphs 5.50 to 5.55), can then be the subject of a decision by the judge in advance of trial.

6.4 New information about a vulnerable or intimidated witness may become available after the PCMH 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 become more apprehensive about confronting the defendant as the trial approaches. 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.

6.5 Where an 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 maximise the quality of the witness's evidence.

6.6 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.

6.7 In magistrates' courts and the youth court there is a pre-trial review (PTR) hearing rather than a PCMH. 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 petty sessional division 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

6.8 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 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 (see the videos *A Case for Balance – Demonstrating Good Practice when Children are Witnesses* (NSPCC, 1997) and *A Case for Special Measures* (NSPCC, 2003)).

6.9 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 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 Measures 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.

6.10 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 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 (see Chapter 5, paragraph 5.70).

6.11 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 young 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 (see Chapter 2, paragraphs 2.153 to 2.178 for general guidance on questioning techniques). Where an intermediary is used, their report will contain recommendations about what types of question are likely to lead to misunderstanding on the part of the witness.

6.12 In some cases a witness, particularly a young 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 young 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 responsibilities of legal representatives towards witnesses

6.13 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 (see Chapter 5, paragraph 5.67).

6.14 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.

6.15 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.

6.16 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 young 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 an 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 (in the sense described in paragraph 6.11). 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.

6.17 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. 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 6.11). 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.

6.18 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 J).

Competence and capacity to be sworn

6.19 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 (Section 53 of the 1999 Act).

6.20 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.

6.21 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 into account 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).

6.22 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.

6.23 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.

6.24 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

6.25 Special Measures which may be available to assist eligible witnesses in the preparation and delivery of their evidence are as follows:

- screening a witness from the accused (Section 23);
- evidence by live link (Section 24);
- evidence given in private (Section 25);
- removal of wigs and gowns (Section 26);
- video-recorded evidence-in-chief (Section 27);
- video-recorded cross-examination or re-examination (Section 28) (note: this special measure is not yet available);
- examination of a witness through an intermediary (Section 29); and
- communication aids (Section 30).

6.26 In addition, the 1999 Act affords:

- protection of witnesses in certain cases from cross-examination by the accused in person (Sections 34 to 38);
- restriction on evidence and questions about the complainant's sexual behaviour (Section 41); and
- restrictions on the reporting by the media of information likely to lead to the identification of children under 18 and certain adult witnesses in criminal proceedings (Sections 44 to 46).

Witness eligibility (Sections 16 and 17)

6.27 Witnesses are eligible for Special Measures to help them give evidence on one or more of the following grounds.

Vulnerable witnesses

6.28 These are people who:

- are under 17; or
- suffer from a mental disorder, or have a significant impairment of intelligence and social functioning, that the court considers likely to diminish the quality of their evidence. This might cover, for example, autistic spectrum disorders; or
- have a physical disorder or disability, including deafness, that the court considers likely to diminish the quality of their evidence.

Intimidated witnesses

6.29 These are people whom the court is satisfied are likely to suffer fear or distress at the prospect of giving evidence, because of their own circumstances and those of the case, to an extent that is expected to diminish the quality of their evidence.

6.30 In relation to intimidated witnesses, the 1999 Act lists a number of factors that the court must, or should, take into account when assessing whether the witness qualifies for any of the Special Measures. These include:

- the nature and alleged circumstances of the offence;
- the age of the witness;
- the social and cultural background and ethnic origins of the witness;
- any religious beliefs or political opinions of the witness;
- the domestic and employment circumstances of the witness; and
- any behaviour towards the witness on the part of the accused, their family or associates, or any other witness or co-accused (this may be particularly relevant in cases of domestic violence).

Those eligible for Special Measures may include a wide range of witnesses, including victims of sexual offences and of domestic violence, as well as victims of racially motivated offences.

6.31 A witness under the age of 17 is always eligible for assistance. In the case of complainants in sexual offences cases, there is a presumption that they are eligible for assistance unless they inform the court otherwise (Section 17(4) of the 1999 Act). In addition, there is a very strong presumption that children who are 'in need of special protection' (defined in the 1999 Act as child witnesses to sexual or violent offences, including neglect) will give their evidence-in-chief by means of video and be cross-examined by way of a live link (Section 21 of the 1999 Act). Otherwise, in deciding eligibility courts must consider witnesses' own views about the need for Special Measures. Figure 6.1 shows the factors relevant to eligibility in the case of witnesses under 17, and Figure 6.2 the factors relevant to eligibility for adult witnesses.

6.32 The examination of a witness through an intermediary (initially available in eight pathfinder areas; phased national roll out is to be completed by 1 April 2008. The courts, under their inherent jurisdiction, can grant the use of an intermediary in non-pathfinder areas) and the use of communication aids Special Measures are not available under the 1999 Act to intimidated witnesses (unless they are also vulnerable).

6.33 The Crown Court has some limited inherent powers to make measures available to assist witnesses who do not qualify as eligible or who need measures for reasons other than age, incapacity, fear or distress. These powers pre-date the 1999 Act and are untouched by it. They extend, for example, to the provision of screens and aids to interpretation, the removal of wigs and gowns, and the provision of a foreign language interpreter.

6.34 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. Again, 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 of particular importance when the court considers that a fair trial under Article 6 of the European Convention on Human Rights (incorporated into UK law by the Human Rights Act 1998) can be ensured only if the accused is given assistance comparable to the Special Measures available to other witnesses when testifying.

6.35 Defendants cannot give evidence by way of a live link, and the courts do not have inherent powers to order the use of this particular Special Measure. However, for a limited class of defendants – those with a significant impairment of intelligence and social functioning for whom the use of a live link would enable them to participate effectively in their trial – the court may now order the use of a live link (Section 33A of the 1999 Act, as inserted by Section 47 of the Police and Justice Act 2006).

6.36 Special Measures for most vulnerable or intimidated witnesses can be authorised only if they are likely to improve the quality of a witness's evidence. The single exception to this general rule is that this requirement is not applicable to children 'in need of special protection' (see paragraph 6.30). 'Quality' encompasses coherence, completeness and accuracy in the case of vulnerable witnesses. 'Coherence' in this sense means that the witness is able to address the questions put and give answers that can be understood, both as separate answers and when taken together as a complete statement of the witness's evidence.

6.37 The circumstances in which Special Measures may be invoked can, therefore, 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.

Special provisions relating to young witnesses (Section 21)

6.38 A special set of provisions applies where courts are dealing with witnesses under the age of 17 (child witnesses). These provisions include the 'primary rule' which directs a court to start from an assumption, when deciding whether a child witness needs Special Measures, that a child will normally benefit from the admission of a video-recording as their evidence-in-chief, provided that the measure is available in the area where the proceedings take place and provided also that the recording is not excluded on the grounds that it is not in the interests of justice to admit it. Such a child would normally give the rest of their evidence by live link. Courts do not have first to decide that these measures will improve the quality of the child's evidence: that requirement is treated as being satisfied. **This is the minimum level of protection currently afforded to such children.**

6.39 The primary rule, as it applies to children in non-sexual or non-violent cases (see paragraph 6.40), also requires the court to consider whether the child's evidence will be improved by the use of such measures.

6.40 Two groups of children are considered to be 'in need of special protection' over and above that normally offered by the primary rule. These are:

- children giving evidence regarding a sexual offence; and
- children giving evidence in a case involving an offence of violence (actual or threatened), abduction, cruelty or neglect.

Children 'in need of special protection' benefit from stronger presumptions about how they will give evidence.

6.41 Children 'in need of special protection' will have a video-recording of their evidence-in-chief admitted, unless it is excluded on the grounds that it is not in the interests of justice to admit it. Young witnesses giving evidence in sexual offences cases may go on to be cross-examined at a pre-trial hearing recorded on video (when available), unless they inform the court that they do not want this measure to apply to them (this Special Measure is not yet available). Those giving evidence in violent offences cases are cross-examined through live link at trial, **(again, this is a minimum level of protection: for example, the court will be able, when the measure is available, to order that the cross-examination of witnesses giving evidence in relation to offences involving violence can be pre-recorded if to do so would enable them to give their best evidence)**.

The use of Special Measures for children 'in need of special protection' is dealt with in Figure 6.1.

Witnesses over 17 (Sections 21 and 22)

6.42 If a court makes a Special Measures direction in respect of a child witness who is eligible on grounds of youth only and the witness turns 17 before beginning to give evidence, the direction no longer has effect. If such a witness turns 17 after beginning to give evidence, the Special Measures direction continues to apply (Section 21(9) of the 1999 Act).

6.43 If a witness is under 17 when evidence-in-chief or cross-examination (when available) is video-recorded before the trial but has since turned 17, the video-recording is still capable of being used as evidence.

6.44 A witness who is over 17 at the beginning of the trial, but who made a video-recording as their evidence-in-chief when they were under 17, is eligible for Special Measures in the same way that they would be if they were under 17, and the same presumptions apply to them. That includes being considered 'in need of special protection' if they are giving evidence in a sexual offences case, or one involving violence, neglect or abduction (see Figure 6.2).

Special Measures directions (Sections 16 to 19)

6.45 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 6.1) 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.

6.46 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 (see paragraphs 6.27 to 6.31);
- except in the case of a witness to whom the primary rule applies, 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);

Figure 6.1: Special Measures directions (SMDs) for young witnesses

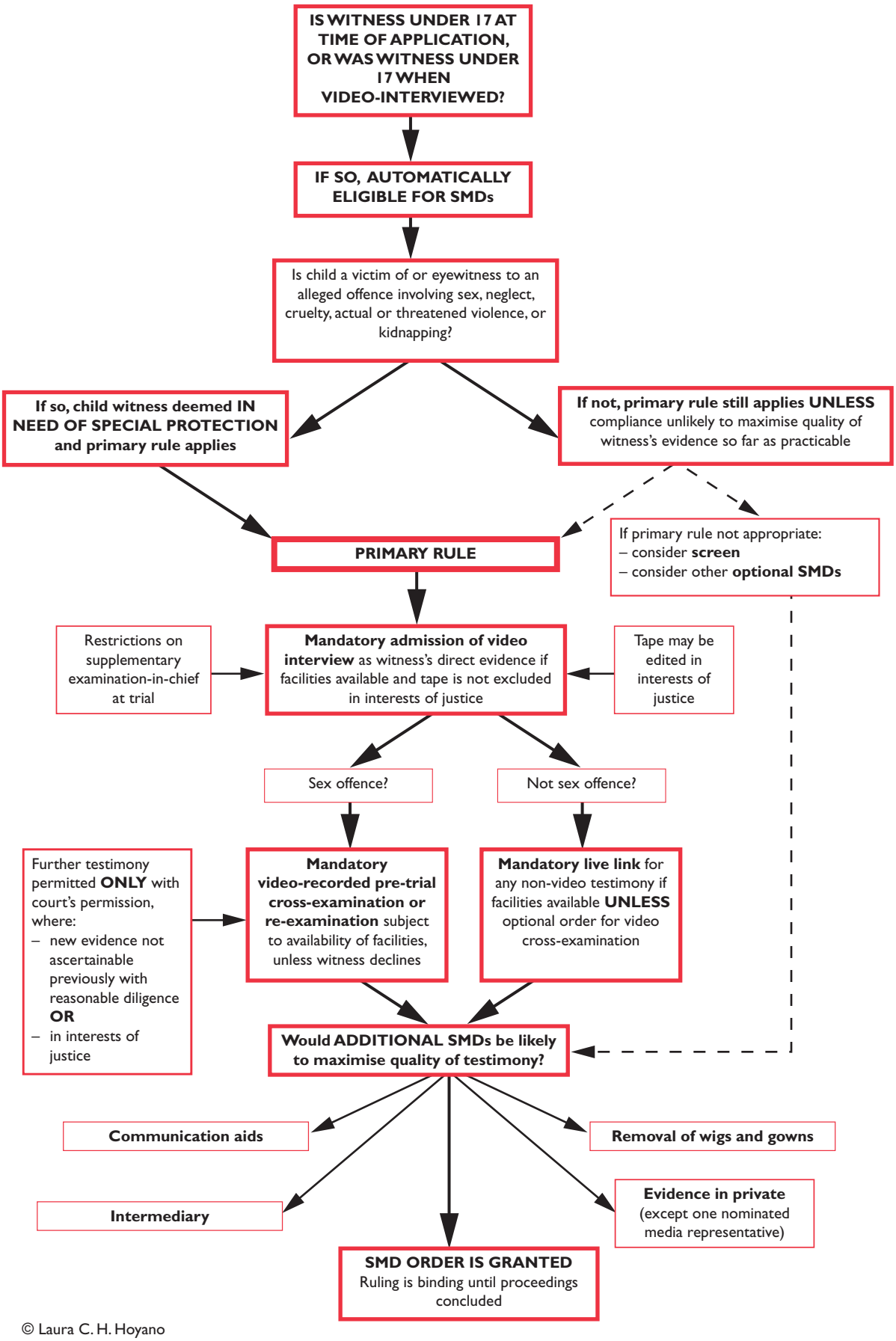
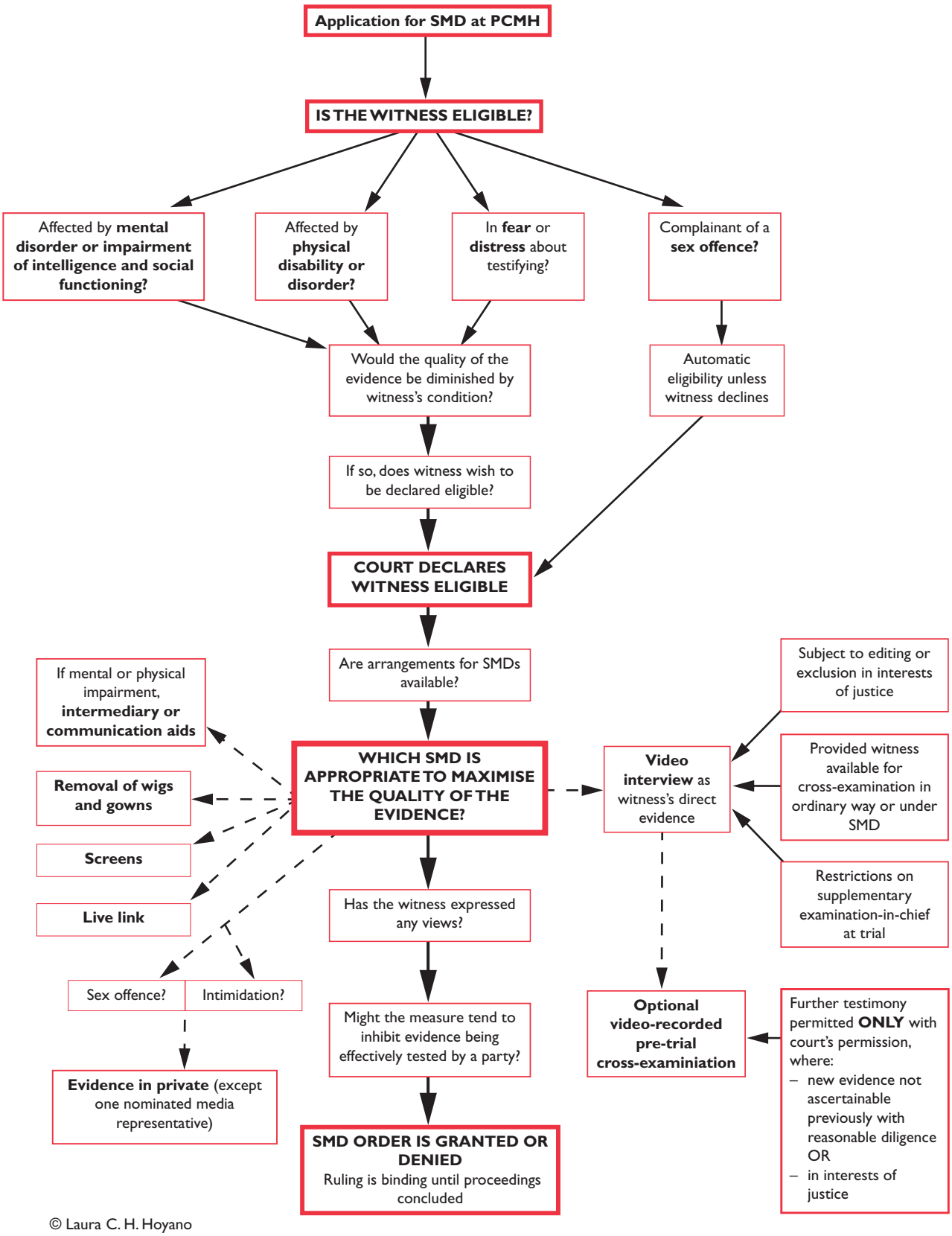


Figure 6.2: Special Measures directions (SMDs) for adult witnesses



- (except in the case of a witness to whom the primary rule applies) if Special Measures would improve the quality of the witness's evidence, **which of the measures**, alone or in combination, would be most likely to maximise the quality of the witness's evidence (again, the court has to bear in mind the views of the witness and the possibility that the Special 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.

6.47 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 6.2 and Chapter 5, paragraph 5.63). The considerations applicable when making a Special Measures direction for adult witnesses are shown in Figure 6.2.

Binding directions (Section 20)

6.48 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.

6.49 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.

The Special Measures and other provisions

Screening a witness from the accused (Section 23)

6.50 Screens may be authorised to shield a witness from seeing 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.

6.51 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 was to require 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.

6.52 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)

6.53 '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 (see Chapter 5, paragraphs 5.48 and 5.49).

6.54 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.

6.55 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. A young witness who is required by Section 21 or Section 22 of the 1999 Act to give all or part of their evidence by live link must do so.

6.56 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 (see paragraph 6.41), 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 court house 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.

Choosing between live link and screens

6.57 Where the witness who is eligible for Special Measures is not a young witness to whom the special presumptions in Section 21 or Section 22 apply, the court making a Special Measures direction will be able to choose between a screen and a live link as a means of assisting the witness to give their best evidence. The live link has the advantage that the witness does not have to be physically present in the courtroom. It may also be more accessible for some witnesses with physical disabilities, including wheelchair users. But the screen is not necessarily an inferior alternative to the live link. Screens are flexible, easy to use and permit the witness to stay in court. It is also easier for the jury or magistrates to gain an impression of some physical attributes of the witness where this is relevant, for example in a case where the issue is whether the accused used reasonable force to restrain the witness.

6.58 The views of the witness are likely to be of great importance in deciding which of the two very similar measures is most suitable. A witness who is greatly distressed at the prospect of being in the same room as the accused is likely to give better evidence if permitted to use the live link. However, it should be carefully explained to the witness that the defendant will be able to see them on the television screen in the court (which may be a large plasma screen). This should be pointed out during the pre-trial visit to enable the witness to make an early and informed choice.

6.59 Where the witness is a child witness, or a witness over 17 to whom Sections 21 or 22 apply, there is normally no choice to be made between live link and screening, as live link is taken to be the more appropriate measure. The court does retain discretion to allow a child to use a screen instead, where the interests of justice would be best served by so ordering.

Evidence given in private (Section 25)

6.60 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.

6.61 In sexual offences cases 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. 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.

6.62 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)

6.63 The courts have traditionally exercised a direction 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)

6.64 A video-recorded interview can take the place of a witness's evidence-in-chief. References in this chapter to an 'interview' should be taken to include, where appropriate, any case where a court is also asked to receive a supplementary interview or interviews.

6.65 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.

6.66 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. 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.

6.67 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 themself with the views expressed in it.

6.68 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 6.1 and 6.2). Such a recording might be admissible under Section 116 of the CJA 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 B).

6.69 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 (see Chapter 5, paragraphs 5.50 to 5.55). Some witnesses may require breaks when watching the recording.

6.70 Where the court considers that a witness has adequately given evidence on a matter on video, the witness may not give further evidence-in-chief on that matter. Where a matter has not been dealt with adequately on video, the court may give permission for a witness to give supplementary evidence on it.

6.71 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 provided, the 1999 Act allows temporary facilities to be authorised for magistrates' courts. In the case of witnesses who are not subject to the special rules that apply to young witnesses (see paragraphs 6.38 to 6.41), the court may decide that the witness can give the further evidence in the courtroom, protected if necessary by a screen.

6.72 Witnesses aged 14 or over who make a video-recording that is intended to be their evidence-in-chief are not expected to take the oath before making the recording, although they will be required to do so before cross-examination or any supplementary evidence-in-chief. The one exception to this is if it has been decided that they will give unsworn evidence instead. The most convenient point to administer the oath may be as part of an introductory exchange between the judge and the witness. Under the 1999 Act a witness's evidence may be received unsworn even though they are capable of giving evidence on oath, so the absence of an oath at the time of the recording does not render it inadmissible. If the witness is to be cross-examined on oath, however, it might be helpful for them to be asked, before cross-examination begins, whether what they said in the recording was true.

6.73 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 which 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.

6.74 Where a witness who has had a video-recorded interview subsequently attends an identification parade or a similar procedure under the Code of Practice for the Identification of Persons by Police Officers (Police and Criminal Evidence Act 1984, Code D), it may be necessary to supplement the witness's video-recorded evidence in order to include the outcome of such a procedure. A positive identification of a defendant by a prosecution witness may be important evidence in the case, and a witness

who gives evidence-in-chief in the normal fashion at trial would normally be asked to confirm that such identification took place. Although it is possible to prove that the identification was made by relying on evidence other than the testimony of the witness, in a case where the correctness of the identification of the defendant is contested, it is helpful if there is evidence on the point from the witness. Appendix E outlines some of the special considerations for identification parades involving vulnerable and/or intimidated witnesses.

6.75 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 witness should not be asked to make a Section 9 Criminal Justice Act 1967 statement instead because their memory of the events alleged to have been witnessed is likely to be less fresh than it was at the time of the interview. In these circumstances a transcript of the recording should be used to lead the witness through their evidence-in-chief.

Video-recorded cross-examination or re-examination (Section 28) (NB: this Special Measure was NOT implemented and was being reviewed at the time this document was written)

6.76 Where the court has already decided that a video-recording can be used as the witness's main evidence, it may also decide that the witness should be cross-examined before trial, and the cross-examination, and any re-examination, recorded on video for use at trial.

6.77 The cross-examination is not recorded in the physical presence of the defendant, although they have to be able to see and hear the cross-examination and be able to communicate with their legal representative. This can be achieved through a live link or earpiece receiver, for example.

6.78 The video-recorded cross-examination may, but need not, take place in the physical presence of the judge or magistrates and the defence and prosecution legal representatives. However, a judge or magistrate has to control the proceedings. It is intended that the judge or magistrate in charge of this process will normally be the trial judge. All the people mentioned in this paragraph have to be able to see and hear the witness being cross-examined and communicate with anyone who is in the room with the witness (such as an intermediary).

6.79 As with video-recorded evidence-in-chief, a video-recording of cross-examination may afterwards be excluded if there have been serious departures from the rules of evidence governing the cross-examination.

6.80 Witnesses who have been cross-examined on video are not to be cross-examined again unless the court makes a direction permitting another video-recorded cross-examination. It may do so if the subject of the proposed cross-examination is relevant to the trial and something which the party seeking to cross-examine did not know about at the time of the original cross-examination (and could not reasonably have found out about by then) or if it is otherwise in the interests of justice to do so. Information that has not yet been disclosed to the other party would usually count as information that the party could not reasonably have known. It is envisaged that a direction permitting further cross-examination will occur only in exceptional cases, and that the cross-examiner will make all reasonable efforts to be ready to deal with all the issues at the first attempt. The likelihood of further cross-examination will need to be taken into account if therapy is offered subsequent to the recorded cross-examination.

Choosing between video-recorded and live cross-examination

6.81 The 1999 Act introduces video-recorded cross-examination for the first time. Its advantages include reducing the stress involved when a witness has to come to court to give evidence, and minimising the delay between examination-in-chief and cross-examination. The witness is also not affected by postponement or adjournments in the trial itself. The matters with which the witness will be expected to deal will be the same as those dealth with in cross-examination at trial in the normal way. Witnesses who have had their cross-examination video-recorded will (other than in exceptional cases where it is necessary to put further questions at a later stage) be able to put the experience behind them and take advantage of therapy without the risk of a claim being made that this will distort their evidence.

6.82 Although procedural constraints such as the rules governing disclosure of material to the defence may lead to the cross-examination being conducted some time after the examination-in-chief was recorded, research in other jurisdictions suggests that the availability of pre-recorded cross-examination may still have the advantage that the witness's evidence is completed significantly earlier than if it were given at trial. This measure may therefore hold worthwhile advantages for those vulnerable and intimidated witnesses for whom it is an option, as well as for child witnesses in cases involving sexual offences for whom the 1999 Act provides that as the normal method of undergoing cross-examination (further rules and guidance on video-recorded pre-trial cross-examination are forthcoming).

Examination of a witness through an intermediary (Section 29)

6.83 Certain vulnerable witnesses may give evidence through an intermediary:

- when a video-recorded statement is being made which may be admitted as the witness's evidence-in-chief;

- during evidence-in-chief and cross-examination in court or via the live link; and
- during any pre-trial familiarisation visit.

6.84 The intermediary communicates to the witness questions asked by the court, defence and prosecution, and then communicates the answers the witness gives in reply. 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.

6.85 Intermediaries must be approved by the court 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.

6.86 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 breakdowns. An Intermediary Registration Board (IRB) has been established by the Office for Criminal Justice Reform (OCJR). The IRB oversees registration of intermediaries and their standards. Registered Intermediaries are accredited by the IRB and OCJR following a selection and training process assessed against a set of core competencies required for the intermediary role.

6.87 The use of an intermediary is not available to witnesses eligible for Special Measures on the grounds of fear or distress alone. Deaf witnesses can choose to rely on administrative arrangements for the provision in court of interpreters for deaf people or, if it is more appropriate to their particular needs, to apply for an intermediary or communication aid under the 1999 Act provisions. 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.

6.88 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. Also, the jury have to be able to see and hear the witness unless the evidence is being video-recorded, in which case they will see the recording when it is shown to them later.

6.89 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.

6.90 Detailed procedural guidance and a case checklist can be found in the Intermediary Procedural Guidance Manual (OCJR, 2005, available at www.homeoffice.gov.uk/about-us/organisation/directorate-search/ocjr/ccm/btu/?version=1).

Communication aids (Section 30)

6.91 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.

The presence of a court witness supporter

6.92 The presence of a court witness supporter is designed 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, or 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. Consolidated Criminal Practice Direction, Part III.29 makes it clear that this person does not need to be an usher or other court official (see Chapter 5, paragraph 5.19). The identity of this person should be discussed and agreed as part of the preparation for trial, but it is often someone from the Witness Service.

The address of the witness

6.93 Witnesses should not be asked to give their address aloud in court unless for a specific reason. This change in practice was approved by the Lord Chief Justice in 1996, following a recommendation by the Trial Issues Group. 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 use of a sign language interpreter

6.94 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.

6.95 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.

Protection of witnesses from cross-examination by the accused in person (Sections 34 to 38)

6.96 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. The 1999 Act builds on the foundations laid by the Criminal Justice Act 1988, which restricted the right to cross-examine child witnesses in certain types of case. 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).

Complainants in proceedings for sexual offences

6.97 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

6.98 Section 35 of the 1999 Act replaces and extends the provision made by Section 34A of the Criminal Justice Act 1988, which prohibited unrepresented defendants from cross-examining child witnesses in cases involving sexual offences as well as cases involving allegations of violence or cruelty. Unrepresented defendants are now also prohibited from cross-examining in person any child who is a complainant of, or a witness to, an offence of kidnapping, false imprisonment or abduction.

6.99 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 under 17 in the case of sexual offences, and if under 14 in the case of the other offences to which the provision applies.

Other cases

6.100 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 6.97 to 6.99. 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.

6.101 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)

6.102 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.

6.103 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.

6.104 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:

  – 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.

  – 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.

  – 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 some time 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.

  – 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.

6.105 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.

6.106 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 fairly clearly defined, it is highly unlikely that any assurances can be given to a complainant that their sexual history will not 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.

Applications to admit video-recorded evidence-in-chief under Section 137 CJA 2003

6.107 Section 137 CJA 2003 witnesses are those who have witnessed or claim to have witnessed, visually or otherwise, an indictable or prescribed triable either-way offence, part of such an offence or events closely connected with it (including any incriminating comments made by the suspected perpetrator either before or after the offence). Video-recordings of interviews with these witnesses can only be admitted as evidence-in-chief if their recollection of the events is likely to be significantly better at the time of the interview than at the time of giving evidence. Courts will take account of the length of the interval between the alleged event and the interview when considering this question.

6.108 Other than having their video-recorded interviews admitted as their evidence-in-chief, Section 137 CJA 2003 witnesses will not qualify for the Special Measures (screens, live link etc.) set out in the 1999 Act unless they also fall into the categories of 'vulnerable' or 'intimidated' (see paragraphs 6.27 to 6.31).

6.109 Where an application to admit a video-recording as evidence-in-chief is made under Section 137 CJA 2003, but is rejected by the court, the witness should not be asked to make a Section 9 Criminal Justice Act 1967 statement instead because their memory of the events alleged to have been witnessed is likely to be less fresh than it was at the time of the interview. In these circumstances, a transcript of the recording should be used to lead the witness through their evidence-in-chief.

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 Youth Justice and Criminal Evidence Act 1999, 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 – There are several definitions of 'child' for legal purposes. For the purposes of the Special Measures directions that may be made under the Youth Justice and Criminal Evidence Act 1999 to assist eligible witnesses to give evidence, a child witness is a witness who is eligible because they are under 17 when the direction is made. Unless child witnesses are in need of special protection, there is a presumption that their evidence-in-chief will normally be received in the form of a video-recording, with live link being used for cross-examination and any re-examination (see **examination-in-chief**). A child witness is in need of special protection if the offence consists of one of a number of violent offences such as assault or kidnapping, or if it is sexual. In such cases there are further presumptions steering the court towards the use of video-recorded evidence-in-chief and, in the case of sexual offences, pre-recorded cross-examination too. Another relevant definition of 'child' for the purposes of the Youth Justice and Criminal Evidence Act 1999 relates to the giving of unsworn evidence. A child under the age of 14 who is competent to give evidence does so without taking an oath or making an equivalent solemn affirmation (i.e. unsworn). (See also **competence**.)

Civil proceedings – A case at civil law is normally one between private persons and/or private organisations. Typically it will be about defining the rights and relations between individuals (e.g. matrimonial proceedings and disputes about where the child of separated parents should live).

Committal proceedings – Offences that are triable only on indictment are sent immediately for trial in the Crown Court after a preliminary hearing by magistrates, at which the evidence is not considered. Where an offence may be tried either in the Crown Court or the magistrates' court (an either-way offence), the magistrates determine first whether the case is to be sent to the Crown Court for trial (mode-of-trial proceedings). If the case is to be tried in the Crown Court, the magistrates also hold committal proceedings in order to give the defence an opportunity to argue that the evidence is insufficient to justify sending the case to trial. In practice this is rarely done and committal proceedings are often a formality. Witnesses are not called at committal proceedings.

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 Youth Justice and Criminal Evidence Act 1999 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 Youth Justice and Criminal Evidence Act 1999, '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 Youth Justice and Criminal Evidence Act 1999 allows for eligible witnesses is that they may be cross-examined by means of a live link or (where examination-in-chief is so conducted) by means of a video-recording. 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. Under the Youth Justice and Criminal Evidence Act 1999, a defendant is not eligible for Special Measures, even though they would be so eligible if they gave evidence as a witness at the trial of another person.

Eligible (of a witness) – The term used in the Youth Justice and Criminal Evidence Act 1999 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 17 when the direction is made; (ii) on the grounds of incapacity if they have a physical or mental condition specified by Section 16 (see Chapter 5, paragraph 5.4) 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. A witness who is a complainant in relation to a sexual offence is automatically eligible unless they tell the court that they wish not to be. The accused is not an eligible witness.

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 (see examination-in-chief). 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 Youth Justice and Criminal Evidence Act 1999, 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 Youth Justice and Criminal Evidence Act 1999 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 (see Parts 34 and 35 at www.justice.gov.uk/criminal/procrules_fin/rulesmenn.htm). 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 Youth Justice and Criminal Evidence Act 1999, 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, including a child witness in need of special protection, 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 which the Youth Justice and Criminal Evidence Act 1999 (Section 29) allows for certain eligible witnesses is that they may 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 defined by Section 17 of the Youth Justice and Criminal Evidence Act 1999 as those whose quality of testimony is likely to be diminished by reason of fear or distress. 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 Youth Justice and Criminal Evidence Act 1999, 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 Youth Justice and Criminal Evidence Act 1999 allows for eligible witnesses is 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 Youth Justice and Criminal Evidence Act 1999, '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 and any interpreter appointed to assist the witness. 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, the main exception being where the alleged crime is a sexual offence, when the cross-examination is normally pre-recorded.

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 case management hearing (PCMH) – As a preliminary to a trial in the Crown Court, a PCMH 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 PCMH is to ensure that all necessary steps have been taken in preparation for trial, and to provide sufficient information for a trial date to be arranged. Because it is envisaged that Special Measures directions will be made at the PCMH 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 PCMH 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.

Primary rule – Under the Youth Justice and Criminal Evidence Act 1999, witnesses under the age of 17 at the time of the relevant hearing are subject to the primary rule when the court decides which of the Special Measures to assign. The primary rule states that the court must provide for any relevant video-recording to be admitted as evidence-in-chief, and for any evidence that is not given by the witness by video-recording to be given by means of a live link. The limitations on the rule are: first, that the measure in question must be available in the area; second, that the video-recording must not be one which, in the interests of justice, falls to be excluded; and finally, that the rule does not apply to the extent that the court is satisfied that compliance with it would not be likely to maximise the quality of the child's evidence. The primary rule is modified in the case of child witnesses in need of special protection so as further to limit the options of the court.

Quality (of an eligible witness's evidence) – According to Section 16(5) of the Youth Justice and Criminal Evidence Act 1999, 'quality' means quality in terms of completeness, coherence and accuracy, and 'coherence' for this purpose refers to a witness's ability where giving evidence to give answers that address the questions put to them and can be understood both individually and collectively.

Section 137 Criminal Justice Act (CJA) 2003 witness – Section 137 CJA 2003 witnesses are those who have witnessed or claim to have witnessed, visually or otherwise, an indictable or prescribed triable either-way offence, part of such an offence or events closely connected with it (including any incriminating comments made by the suspected perpetrator either before or after the offence). Video-recordings of interviews with these witnesses can only be admitted as evidence-in-chief if their recollection of the events is likely to be significantly better at the time of the interview than at the time of giving evidence. Courts will take account of the length of the interval between the alleged event and the interview when considering this question.

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 closely connected with it (including any incriminating comments made by the suspected perpetrator either before or after the offence) but who are unlikely to have video-recordings of their interviews admitted as evidence-in-chief under Section 137 of the Criminal Justice Act 2003 as a result of there having been a lengthy interval between the alleged event and the interview. Interviews with significant witnesses should usually be video-recorded.

Special Measures – The measures specified in the Youth Justice and Criminal Evidence Act 1999 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, cross-examination and re-examination; and the use of intermediaries and aids to communication.

Special Measures direction – The order by which the court states which, if any, of the measures specified in the Youth Justice and Criminal Evidence Act 1999 will be used to assist a particular 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. In the case of child witnesses, the court's powers of choice are more limited. (See child witnesses, primary rule, special protection.)

Special protection – The Youth Justice and Criminal Evidence Act 1999 provides that a child witness is in need of special protection where the crime is a sexual offence, as defined by Section 35(3)(a), or an offence of assault or a related offence, as defined by Section 35(3)(b). Where an offence of either sort is involved, the primary rule is qualified to the extent that the court cannot elect to disapply the rule on the grounds that it believes that to apply it will not maximise the quality of the child's evidence.

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 Youth Justice and Criminal Evidence Act 1999, '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*'. For this reason, analogue tapes or digital recordings are equally acceptable.

Vulnerable witness – The Youth Justice and Criminal Evidence Act 1999 provides for the making of Special Measures directions to assist certain vulnerable witnesses in giving evidence. Vulnerability is effectively defined in two ways. In the narrow sense it can be confined to witnesses defined as 'vulnerable' under Section 16 of the 1999 Act because they are under 17 or have a mental disorder, significant impairment of intelligence and social functioning, or a physical disorder/disability; when the term 'vulnerable witness' is used in this way, 'intimidated' witnesses (see above) tend to form a separate category. However, some of the literature (e.g. *Vulnerable Witnesses: A Police Service Guide* (Association of Police Officers and Home Office, 2002)) takes a broader view and includes 'intimidated' witnesses as another sub-group under the umbrella term 'vulnerable witness'. Witnesses who qualify for Special Measures under the 1999 Act are termed 'eligible' witnesses.

Witness – According to Section 63 of the Youth Justice and Criminal Evidence Act 1999, 'witness', in relation to any criminal proceedings, means any person called, or to be called, to give evidence in the proceedings.

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.

B Admissibility of video-recordings under other provisions of the Criminal Justice Act 2003

B1 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.

B2 The hearsay provisions set out in the 2003 Act (which came into force on 4 April 2005) 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:

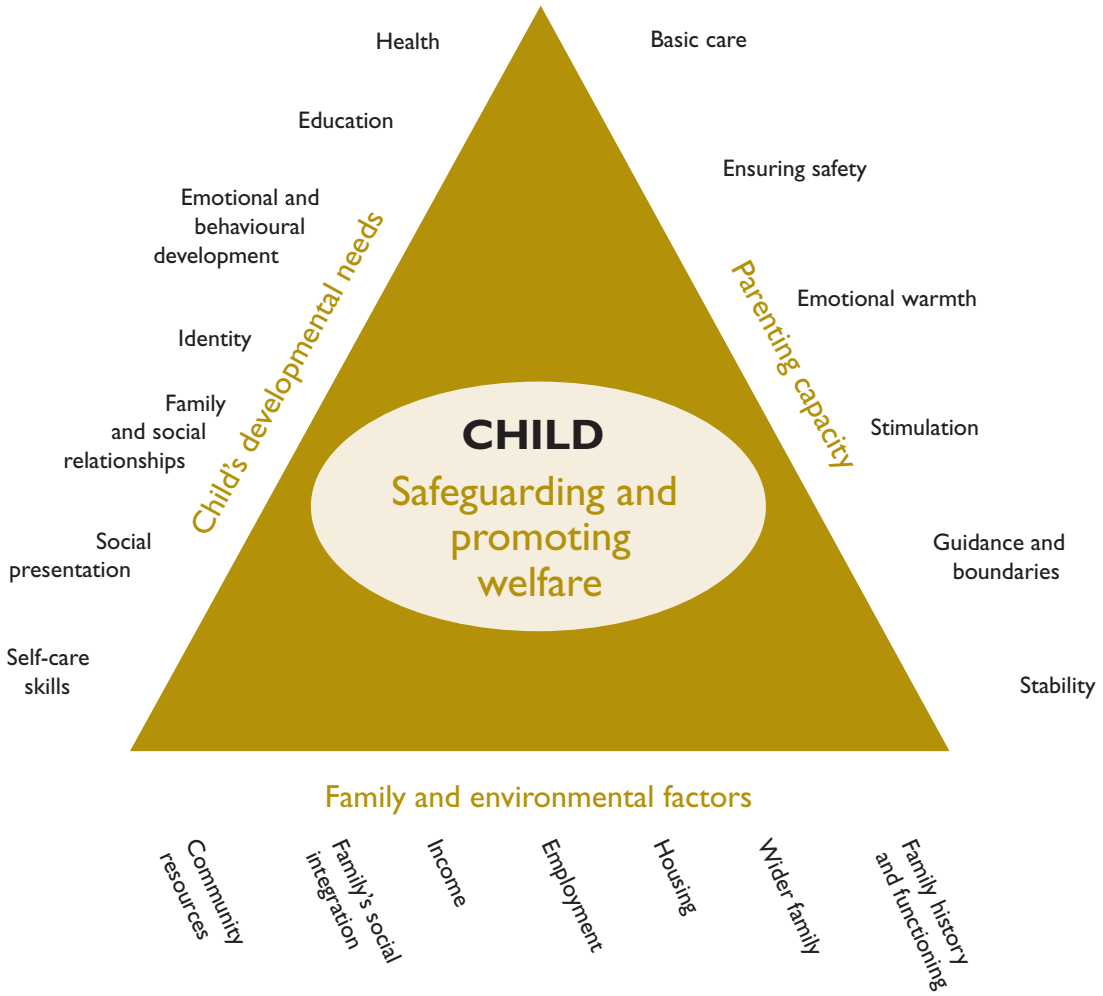
- death;
- 'unfitness' because of a bodily or mental condition (the availability of Special Measures under the Youth Justice and Criminal Evidence Act 1999 will be considered in determining this);
- being outside the UK and it not being reasonably practicable to secure their attendance; or
- not being found despite such steps as are reasonably practicable to take having been taken.

B3 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.

B4 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.

B5 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 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.

C The assessment framework



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D Conducting a video-recorded interview – the legal constraints

D1 Introduction

D1.1 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.

D1.2 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.

D1.3 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.

D1.4 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 Youth Justice and Criminal Evidence Act 1999 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.

D1.5 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.

D2 Leading questions

D2.1 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.

D2.2 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.

D2.3 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.

D2.4 An interviewer who follows the provisions in the guidance as to the conduct of an interview (see Part 2B) 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 difficulty, 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 absolutely 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 false.

D2.5 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 (see Part 2B).

D3 Previous statements

D3.1 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' 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.

D3.1 Previous statements showing consistency

D3.1.1 Although 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**. A complaint of buggery made by a boy six months after the incident upon being forcefully questioned by his mother would not be admissible, but the details of a spontaneous allegation of buggery made by the boy on the day of the incident could be mentioned; 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.

D3.1.2 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. (See Appendix E for further information and advice in conducting identification parades with vulnerable witnesses.)

D3.2 Previous statements showing truth

D3.2.1 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.

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 (see Appendix B).

D3.2.2 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.

D3.2.3 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.

D4 Character of the accused

D4.1 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.

D4.2 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, does the defendant have a propensity to commit offences of the type with which they are charged or to be untruthful?).

D4.3 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 (see paragraph D7.2).

D4.4 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.

D4.5 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 in order for them to consider an application for the evidence to be admitted.

D5 The court's discretion to exclude evidence

D5.1 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 in order to preserve their flexibility.

D5.2 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 (see paragraph D4.2) 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.

D5.3 It is unlikely that the powers described above will be invoked with regard to 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.

E Identification parades involving vulnerable and/or intimidated witnesses

E1 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. 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.

E2 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.

E3 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.

E4 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.

E5 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 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.

F National Standards for Young Witness Preparation

F1 Purpose of preparation

- To help the young witness feel more confident and better equipped to give evidence at court.
- To help the young witness understand the legal process and their role within it.
- To encourage the young 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.

F2 Key characteristics required by person undertaking witness preparation

- Ability to communicate with young children and young people in age-appropriate language.
- 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 received basic training from local agencies.

F3 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 young witness, including whether consideration has been given as to who accompanies the young 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 young 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 *Young Witness Pack* (NSPCC, 1998) and, if appropriate, viewing the *Young Witness* video 'Giving Evidence – What's it Like?' with the young witness and their parent or carer.
- Helping the young 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 the truth and the nature of cross-examination.
- 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 young 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 young 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, thee CPS or the defence representative (if called by the defence).
- If Special Measures have not previously been identified and the young witness may be entitled to them, bringing this to the attention of the person who has called the young witness, for example the prosecution or defence representative.
- If the young witness demonstrates a strong desire for alternative Special Measures (e.g. to give evidence behind screens as opposed to via a live link), drawing this to the attention of the appropriate agency.
- 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 young witness and parent or carer and arranging for any follow-up support, including the need for specialist help.
- Ensuring that the work with the young person is fully documented.

G National Standards for the Court Witness Supporter in the Live Link Room

G1 Role of the supporter

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. The role of any accompanying member of the court staff includes ensuring that the equipment in the live link room is working correctly.

G2 Identity of the supporter

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 judge 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.

Once the decision has been reached 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 themself. Additionally, the Witness Service (if they are not the preparer), the CPS and the police should also be informed.

G3 Skills required by the supporter of a child or vulnerable or intimidated adult witness

Required skills include:

- impartiality/lack of emotional involvement;
- 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 effects 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.

G4 The court witness supporter's conduct

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 judge to any problem arising while the witness is giving evidence. The suggested behaviour to be observed in this role is as follows.

G4.1 Before the witness gives evidence

- Accept and follow the instructions of the judge with regard to 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.*
- Remain with the witness at all times 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 by the judge.
- Escort the witness to the live link room.

G4.2 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.
- As directed by the judge, swear in the witness by enabling them to repeat the oath or promise, as appropriate.
- Communicate relevant concerns (via the usher or agreed procedure) to the court.
- Be present throughout the time the witness is in the room.
- Ensure that the witness can 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.
- Prevent any unauthorised person entering the room.
- Ensure that there is no attempt to interrupt, intervene or intimidate the witness by any other person present in the live link room.

G4.3 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 judge 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, in order 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.

G4.4 In case of difficulties

- In the event of a problem, ask the usher to contact the court by telephone.
- If necessary, speak to the judge via the live link (according to the procedure previously agreed with the court).

G4.5 After the evidence has been given

- After completion of the evidence, return with the witness to a safe place.

* Tasks which could be carried out by the court witness supporter, but which would be more appropriate for a member of the court staff, if one is present.

H Technical guidance

Preliminaries

H1 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. The general specifications for such equipment can be found in *Visual Recording of Evidence within the Criminal Justice System – Equipment Specification Private Standard* (2004). **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. When this equipment has to be used, follow the guidance in paragraphs H17 to H20.

H2 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 Youth Justice and Criminal Evidence Act 1999. 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.

H3 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.

H4 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 themself 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 in order to avoid a cluttered image on the screen. The furniture should be set out in advance in relation to camera angles and thee light source and to obtain the best view possible.

H5 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.

Equipment operator

H6 The equipment operator must remain in control of the recording equipment at all times 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 paragraphs H7 to H16. 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 M). The equipment operator's role should, therefore, be independent from that of the interviewer.

Vision

H7 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 young witnesses who are more likely to move around the room (see paragraph H8).

H8 If a two-camera system is adopted, 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)). Alternatively, each camera can record to independent tapes or disks, showing the images on separate screens on the recording unit: this option has the advantage of producing an unobscured recording of the witness. 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.

H9 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 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.

H10 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 with regard to 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 (in accordance with the guidance in Chapter 2, paragraphs 2.196 to 2.197) where the information being conveyed would otherwise be obscured. The second camera should maintain the overall view of the room**.

H11 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.

H12 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.

Acoustics

H13 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 (see paragraphs H4 and H5) 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**.

H14 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.

H15 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.

H16 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.

Portable equipment

H17 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. VHS and digital portable units with hi-fi sound are available, and 8mm VHS recorders have digital sound recording that allows for high-quality sound reproduction.

H18 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.

H19 As with all interviews, before they begin, a short test recording should be made and replayed to ensure that there are no technical difficulties. Where the recording is made in locations other than the interview room, there may be particular problems with poor lighting or extraneous sounds which should be resolved, if possible. The camera(s) should ideally be mounted on a tripod as close to the witness as possible, and the picture composed to include the witness and the interviewer. Some portable equipment may, however, utilise a two-camera system, with one PTZ camera and one wide-angle lens camera. This will enable the PTZ camera to record the image of the witness and the wide-angle lens camera to record the whole room. The use of external microphones may be beneficial, but great care will be needed in their placement to avoid noise pick-up from contact with the microphone or its support.

H20 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.

Recorders and tapes

H21 The format of the equipment should be such as to produce recordings of suitable quality which can be played in court. The video playback equipment being installed in Crown Courts as part of the *Speaking Up for Justice* (Home Office, 1998) implementation programme is in VHS hi-fi format, with standard and long play and freeze-frame facility. The specification also requires the equipment to 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.

H22 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 made at the beginning and at the close of the interview to confirm that the device is accurate.

H23 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 J, paragraph J4). 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 (see Appendix J, paragraphs J10 to J15).

H24 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.

H25 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.

J Storage, custody and destruction of video-recordings

J1 Introduction

J1.1 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.

J2 Ownership

J2.1 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.

J2.2 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.

J3 Tape/disk registration, storage, management and disposal

J3.1 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 of 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.

J4 After the interview

J4.1 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 interviewee. The seal should then be signed by all those present.

J4.2 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 interviewee. The seal should then be signed by all those present.

J4.3 It is recommended that during the course of 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.

J4.4 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 P.

J5 Storage

J5.1 Video-recordings will inevitably suffer deterioration and loss over time; video-tape 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.

J5.2 Tapes should be stored on edge, that is 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.

J5.3 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.

J6 Copies and access

J6.1 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.

J6.2 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.

J6.3 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 of the case against the accused, or because it is unused material which 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, based on a model developed by the Law Society, is reproduced in Appendix M of this guidance.

J6.4 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.

J6.5 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.

J6.6 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.

J7 Disposal of recordings

J7.1 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.

J7.2 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.

J7.3 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.

J7.4 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.

J8 Recordings in legal proceedings

J8.1 Recordings and transcripts

Video-recorded interviews are the primary medium by which vulnerable, intimidated and Section 137 Criminal Justice Act 2003 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.

J8.2 Collection and delivery

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 safeguarded at all times. 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.

J8.3 Recordings at court

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.

J9 After the court hearing

J9.1 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.

J10 Use of recordings for training and other purposes

J10.1 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 themself. Alternatively, if the witness is not in a position 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.

J11 Lost or mislaid recordings

J11.1 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.

K Guidance on the completion of a Record of Video Interview (ROVI)

K1 Introduction

K1.1 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.

K1.2 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.

K1.3 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.

K1.4 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 or not a transcript is subsequently created. A ROVI should also be compiled in instances where an interview with a significant witness is audio-recorded.

K2 Functions of a ROVI

K2.1 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.

K2.2 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.

K2.3 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.

K3 Content of a ROVI

K3.1 General content

K3.1.1 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.

K3.2 Descriptive content

K3.2.1 Although each interview is unique, as a general 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.

K3.2.2 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;
- 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.

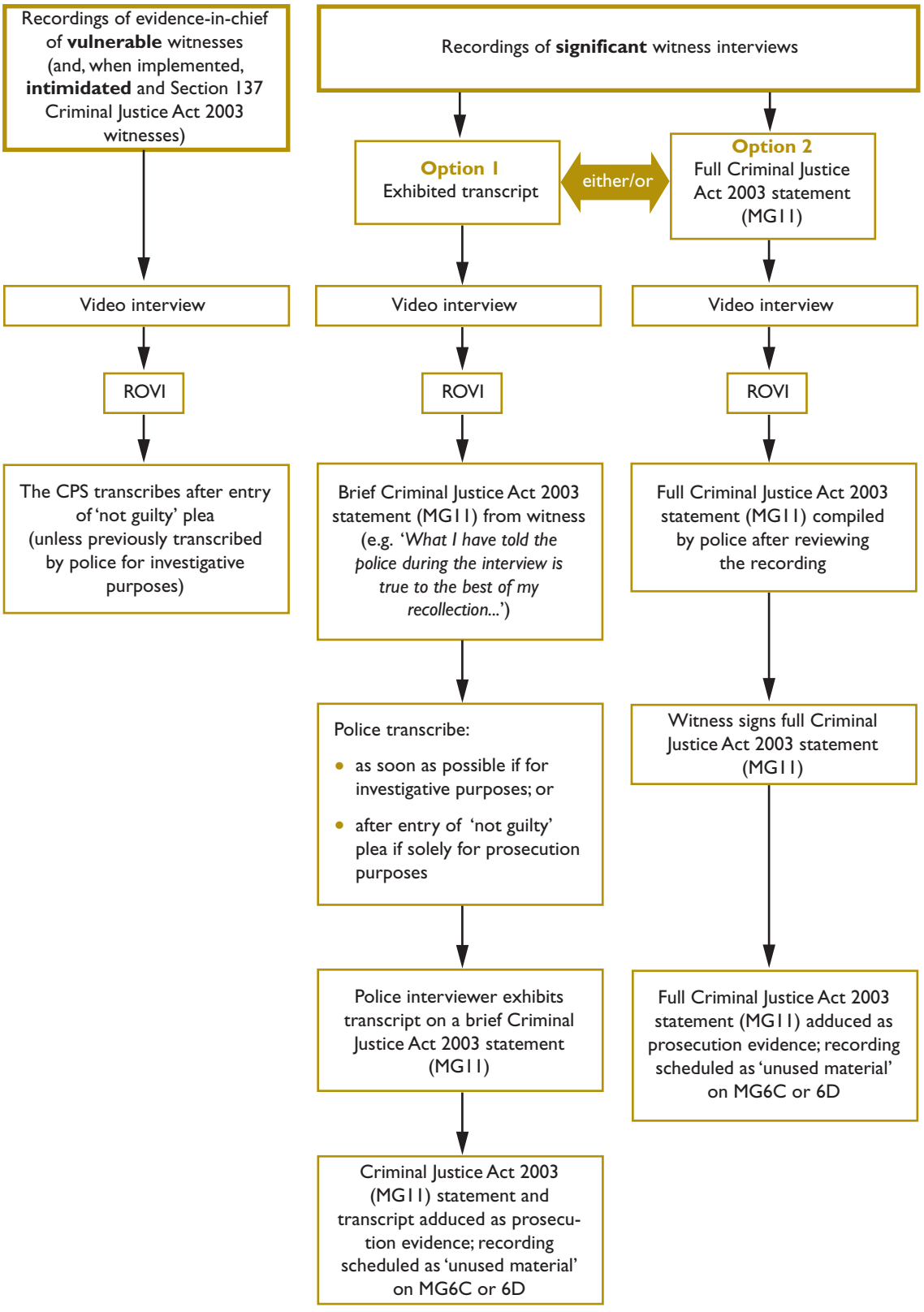
K3.2.3 Where a Victim Personal Statement has been made on the same tape/disk, reference to that fact should be made on the ROVI, and a short summary included.

K3.2.4 Background material of no apparent relevance should be summarised in general terms as far as possible.

K4 Distribution of a ROVI

K4.1 Copies of the ROVI should be provided to all parties in the proceedings, including prosecution and defence counsel and the judge.

L The use of transcripts of video-recorded interviews



M Specimen form of receipt and undertaking for video-recorded evidence

Form of undertaking recommended when receiving recorded evidence of witnesses prepared to be admitted in evidence at criminal trials in accordance with Section 27 of the Youth Justice and Criminal Evidence Act 1999, Section 137 of the Criminal Justice Act 2003 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 .....

N 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, in line with the Home Office guidelines. 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 .....

P Warning label for video-recordings

This video-recording is the property of [PRINT NAME AND ADDRESS OF CONSTABULARY]. 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 LEAD TO A FINE OR A PERIOD OF IMPRISONMENT OR BOTH.

Q Useful sources

Information for interviewers and court professionals

Aldridge, M. and Wood, J. (1998) *Interviewing Children: A Guide for Child Care and Forensic Practitioners*. Chichester: Wiley.

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Information for witnesses and their carers

The NSPCC (1998) *Young Witness Pack* series includes:

For young witnesses:

- *Let's Get Ready for Court*: an activity booklet for child witnesses aged 5–9
- *Tell Me More about Court*: a book for young witnesses aged 10–15
- *Inside a Courtroom*: a card model of a courtroom with slot-in characters, for use with younger witnesses
- *Going to Court:* information and advice for Crown Court witnesses aged 13–17
- *Young Witnesses at the Magistrates' Court and the Youth Court*: for 9–17-year-olds
- *Screens in Court*: an information sheet for 9–17-year-olds

For parents and carers:

- *Your Child is a Witness*

For child witness supporters:

- *Preparing Young Witnesses for Court*

For witnesses with learning difficulties:

Picture books without words published by St George's Hospital Mental Health Library in association with Voice UK, available from the Royal College of Psychiatrists' publication department:

- *Going to Court*
- *I Can Get Through It*

Videos:

- *Giving Evidence – What's it Really Like?*: a video addition to the *Young Witness Pack* for 11–15-year-olds
- Barnardo's, *So You're Going to Be a Witness:* for younger witnesses

General information for witnesses:

Home Office (1999) *Victims of Crime*. London: Home Office Communication Directorate (available in Braille, audio tape, large-print format and also in a wide range of languages). This leaflet explains what will happen now you have reported a crime to the police.

Home Office (1997) *Witness in Court*. London: Home Office Communication Directorate (available in a wide range of languages). This leaflet tells you what to expect.

Additional material aimed at vulnerable or intimidated witnesses is in preparation.

Relevant government publications

Association of Chief Police Officers and Home Office (2002) *Vulnerable Witnesses: A Police Service Guide*. London: ACPO and Home Office.

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Useful websites

Better Trials Unit – Office for Criminal Justice Reform: www.homeoffice.gov.uk/about-us/organisation/directorate-search/ocjr/ccm/btu/?version=1

Criminal Justice System: www.cjsonline.gov.uk

Crown Prosecution Service: www.cps.gov.uk

Department of Health: www.dh.gov.uk

Home Office: www.homeoffice.gov.uk

Judicial Studies Board: www.jsboard.co.uk

Ministry of Justice: www.justice.gov.uk

NSPCC: www.nspcc.org.uk

Victim Support: www.victimsupport.org.uk/vs_england_wales/services/witness_services.php

department for
children, schools and families

Department of Health

Llywodraeth Cynulliad Cymru
Welsh Assembly Government

CJS

Ministry of JUSTICE

Home Office

CPS

Criminal Justice System: working together for the public

Also available at www.cps.gov.uk and www.homeoffice.gov.uk
Reference: 280518