



The Attorney General Falkland Islands

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The Attorney General's Guidance on Achieving Best Evidence in Criminal Proceedings

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1. Introduction

1. This guidance describes good practice for the video recording of the accounts of victims and witnesses in order to enable them to give their best evidence in criminal proceedings. The guidance is intended to benefit all persons involved in the criminal justice process, including the police, health and social care workers, legal professionals and victim support organisations.
2. Significant departures from the practice set out in this document may have to be justified to senior officers or to a court but conversely the guidance is not a set of rigid rules that must be applied to all cases because as the guidance highlights each witness is different and requires a tailored approach to meet their individual needs.
3. When considering best practice in relation to video recording interviews with witnesses it is important to remember why video recorded interviews are admissible as evidence in criminal proceedings. The reason is that research has shown that witnesses, especially children and vulnerable people, struggle to give their evidence in the courtroom in the best way that they can because they are adversely affected by the courtroom environment. As a result the fairness of proceedings suffers disproportionately because witnesses are not able to give their best evidence.
4. Capturing the best possible account that the witness can give is the sole aim of a video recorded interview in criminal proceedings; nothing else. Interviews must therefore be conducted to a standard that would be acceptable as the examination in chief of the witness at a trial because that is what the video recorded interview is designed to replace.
5. If police officers and other agencies focus on this aim then decisions made in relation to interviews and the conduct of interviews will be of a high quality and meet the standard necessary to allow witnesses to achieve their best evidence.

2. Pre-Interview

Planning the interview

6. The purpose of an investigative interview is to ascertain the witness's account of the alleged event(s). A well-conducted interview will only occur if appropriate planning has taken place. The importance of planning cannot be overstated because the success of criminal proceedings could hinge on it. An advocate preparing to examine a witness at a trial will plan that examination extensively. A video recorded interview is designed to replace the giving of evidence in chief and as such it requires the same level of detailed planning.
7. Even if the circumstances are considered urgent and necessitate an early interview, an appropriate planning session that takes account of all the information available about the witness at the time and identifies the key issues and objectives is still required.

**There is no situation in which it will not
be possible to plan appropriately**

8. 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 begins 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 has been concluded.
9. Although the Attorney General and prosecutors are not part of the investigating team and do not direct the investigation, an early meeting between the police and prosecutors to discuss special measures may be appropriate. In serious, sensitive and complex cases early consultation with a prosecutor **must** take place.

Initial questioning

10. 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 witness or to other professionals involved prior to the police being informed; for example a person may have a mental disorder that is not easily identifiable. Even where it is apparent that a video recorded interview will likely take place, such as in cases involving a child witness, 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.

11. Any initial questioning should be intended to elicit a brief account of what is alleged to have taken place. A more detailed account should not be pursued at this stage but should be left until the formal interview takes place. Such a brief account should include where and when the alleged incident took place and who was involved or otherwise present. This is because this information is likely to influence decisions made in respect of the following aspects of the criminal investigation plan:
 - (a) forensic and medical examination of the victim;
 - (b) scene of crime examination;
 - (c) interviewing of other witnesses;
 - (d) arrest of alleged offender(s); and
 - (e) witness support.
12. 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.
13. 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 or leading questions. No more questions than are necessary in the circumstances to take immediate action should be asked.

**The person taking an initial account must
make a comprehensive note of the discussion.**

14. Care must be taken 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). The person must 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; and 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.
15. The duty to make a full and accurate record is a duty on police, social and health workers, educational staff and any other person in authority who may receive an initial account of criminal offending from a witness.

Effective planning

16. The planning phase of an interview with a witness involves some consideration of three types of information:
 - (a) information about the witness;
 - (b) information about the alleged offence(s); and
 - (c) information important to the investigation.
17. 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.
18. A consideration of child protection issues (where the witness is a child), consent, medical examinations and psychiatric/psychological assessments necessarily informs the planning process as it applies to witnesses.

Specific considerations relating to children

19. Where the witness is a child there are often child safeguarding considerations and investigating officers will be working alongside social workers. An interview of a child may elicit information which can also be used in relation to any subsequent actions to safeguard and promote a child's welfare and, in some cases, the welfare of other children. It is important to remember that the sole aim of the interview is to capture the best account of the witness for the purpose of criminal proceedings. Other matters should not be pursued in the interview if they are to the detriment of that aim.
20. At a minimum, such as instances in which a child witness has had no previous contact with the public services, the investigating team in child protection cases should include representatives from both the police and health and social work. It may also be important to involve educational professionals who know the child.
21. For children who have had past or current involvement with health and social work, 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.

22. 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 health and social workers, the police and other professionals as appropriate, e.g. mental health services. The investigative interview and criminal investigation will run alongside such enquiries and the interviewing team may, therefore, have access to detailed information about the child which can be drawn on when planning and conducting the interview, depending on the exact timing of the video interview in relation to the other enquiries.
23. Where it is in the best interests of the child that a full criminal investigation is carried out, the police are responsible for that investigation. The video recorded interview is a method by which the police capture the best account that a child is able to give about the event(s). Important information which will assist other agencies, particularly health and social workers, is likely to be elicited during the interview but it is crucial to remember that the interview is not a method by which wider circumstances should be explored where it is detrimental to eliciting an account of the event(s) relevant to the criminal investigation.
24. For example the police may determine that the situation is such that only one person, a police officer, should be present in the interview room and that a health or social worker should watch the interview over the video equipment from another room. Such decisions will vary from case to case but they are decisions that are ultimately for police officers to make. The important factor is that appropriate information sharing is taking place.
25. Each case being different it therefore follows that it 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.
26. The decision as to who leads the interview should depend on who is able to establish the best rapport with the child and who can help the child achieve their best evidence through appropriate questioning.
27. In circumstances where a social worker leads the interview, the police 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. Similarly, where a police officer leads the interview, health and social workers retain the duty to promote the best interests of the child by ensuring that the interview is properly planned and that the social worker has an effective role in monitoring the interview and accessing appropriate information for the purposes of safeguarding the child.

Taking into account the wishes of the witness

28. Research has shown that too often the views and opinions of witnesses are ignored or marginalised in the planning process. Wherever possible, and where practicable, witnesses should be consulted about matters in a manner appropriate to their age and understanding, and contribute to the planning and preparation for interview (e.g. when and where the interview takes place, who is present, who conducts the interview) and it is important to honour any commitments made to the witness. The strategy agreed for interviewing a witness should be noted in writing by the investigators concerned.
29. Enquiries should be carried out in such a way as to minimise distress to the witness, and to ensure that their families are treated sympathetically and with respect. Where appropriate joint approaches by police and health and social workers are to be encouraged as they limit the amount of intrusion into family life and ensure that there is no conflict in the information being given.
30. Different circumstances experienced by the witness prior to the interview will have implications both for the amount of knowledge that may already be available about them and for the manner in which any investigative interview is planned and proceeds. For example an adult witness with a mental health disorder may be known to adult social workers and health workers and assistance can be derived by including those professionals in the planning phase to help plan the interview so that it can be conducted in the most appropriate manner.
31. Whatever the witness's circumstances, the police officer, social workers and any other members of the investigating team should give a proper explanation of their roles to the witness and any carer(s). The witness's knowledge and understanding should be monitored throughout the investigation. Witnesses who have previously been unknown to health and social workers and the police are likely to have the least understanding of the interviewing process and of the nature of the roles of different professionals. The way in which the purpose of the interview and the roles of the investigating team are explained to the witness and any carer(s) will need to take account of the fact that they have had no previous contact with public services.
32. Witnesses 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, assumptions should not be made about a particular witnesses level of knowledge of public service personnel, especially social 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). Full explanations should always be given.
33. It should also be borne in mind that witnesses and their families experiences and perceptions, both positive and negative, of any previous interventions may influence how receptive they are to the investigative process and may also affect the response in an interview.

3. General Principles

34. When assessing how a witness's evidence should be obtained it is important that interviewers consider each witness as an individual. This will always include assessing the witnesses individual needs whatever the offence and will take into account:
- (a) age;
 - (b) gender;
 - (c) culture;
 - (d) religion;
 - (e) physical and/or learning disability;
 - (f) confidence and developmental level; and
 - (g) consider any views expressed by the witness and/or their carer.
35. When considering the needs of child witnesses in particular interviewers should **NOT**:
- (a) assume that an older child will necessarily be more confident than a younger one;
 - (b) assume that an older child will always want to give evidence live in the court room; and
 - (c) make assumptions based on the child's demeanour (for example, some children may behave with a degree of bravado even though they are actually experiencing a great deal of angst at the prospect of giving evidence).
36. It is important that the special measures proposed are tailored to meet the individual needs of the witness rather than being based on the nature of the offence. In no circumstances should it be assumed that all witnesses are the same and they will all want to give evidence by video recorded statement and live link (see opting out below).
37. It is not uncommon for a witness to change their views about giving evidence using particular special measures. Therefore, special measures discussions should be ongoing and discussed at the police interview stage, before submission of a special measures application and reviewed again after a pre-court familiarisation visit.

Opting out of video recorded interviews

38. The law presumes that child witnesses under 18 will normally give their evidence outside the courtroom by playing a video recorded interview as evidence in chief and cross-examination via live link unless this will not improve the quality of their evidence.
39. There is also an assumption that vulnerable adults and victims in cases involving sexual offending will also give evidence in chief by virtue of a video recorded interview being played. The witness may then also give the remainder of their evidence via a live link or be present in court but screened from the defendant.
40. The type of special measure that is applied for is ultimately a choice that the witness makes but it is a choice that should be guided by investigating officers after consultation with the prosecutor. The reason for this is that witnesses do not normally have experience of giving evidence and need assistance to understand the options that are most likely to assist them. Nonetheless witnesses may opt out of giving their evidence by either a video recorded interview as evidence in chief or by means of live link, or both.
41. Where a witness expresses a wish not to provide a video recorded statement then the wishes of the witness must be listened to carefully. However, experience has shown that the expression of such a view is often the result of nervousness, concern about who may see the video (particularly in cases involving sexual offending) and a lack of understanding about how the recording will ultimately assist the witness by being played in court.
42. A stark choice between giving a video recorded statement and a written statement should never be presented to a witness without full explanation, and even where there appears to be a firm expression by the witness that they do not wish to provide a video recorded statement every care should be taken to ensure that the witness is fully informed about the decision they are making. Where a witness makes an informed choice not to provide a video recorded statement the reasons for this and the steps taken to ensure that the choice was a fully informed choice must be fully recorded in writing by the investigating officers.

Written consent

Adults

43. It is not necessary to obtain the written consent of an adult or their carer, where they have one, prior to a video recorded interview taking place. It will, of course, not be practical or desirable to attempt a video recorded interview with a hostile or reluctant witness and where this is the case further planning will be required and this is likely to include consultation with a prosecutor.

Children

44. Written consent to be video recorded is not necessary from the child. The investigating officers must be satisfied that the child is freely participating in the interview and not merely complying with instructions from an authority figure. Written parental/guardian consent is also not required so long as the child is freely participating.
45. It is generally presumed that the parents or carers of a child witness will be informed of any interview before it takes place. In exceptional circumstances it may be necessary to interview a suspected child victim without the knowledge of the parent or carer. Such circumstances 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.
46. Outside of these scenarios it is unlikely to be desirable, practicable or in the best interests of the child not to have parental/guardian support for the interview process freely given.

Investigator's decision not to video record an interview

47. If, after having considered the circumstances of the witness, an interviewer comes to the conclusion that a video recorded interview is not the best way of presenting the witnesses evidence to a court they should explain this to the witness and/or their carer. It is important that the explanation is based on a consideration of the circumstances.
48. A full written record should be made of any such explanation and it should be borne in mind that a situation where the witness is willing to give a video recorded interview but investigating officers believe that it is not the best course to take is likely to be rare but should not be completely discounted. If such a situation arises then it would be best practice to contact a prosecutor to discuss the issue before reaching a final decision.

Medical examinations

49. Consideration must be given to the timing, purpose and content of any medical examination or medical evaluation in relation to the interview. Sometimes the medical examination will have preceded the interview, e.g. after 'acute' abuse or if the examination needs to take place before a laboratory closes (e.g. identification of sexually transmitted diseases). The medical practitioner may be aware of problems that might be making the witness uncomfortable, such as soreness or vaginal discharge, and/or may suggest the significance of any symptoms reported by the witness at the time of the abuse or later.

50. When examining witnesses, the medical practitioner should take care to avoid asking leading questions or anticipating the investigative interview. It is not appropriate to seek to explore how injuries or a condition came about save for eliciting that information which is necessary for the medical examination and any treatment.
51. The medical practitioner **must** make contemporaneous notes of any spontaneous comments by the witness concerning the origins or circumstances giving rise to the evaluation or examination.
52. In cases where a medical examination is a possibility, a discussion should take place with the medical practitioner to ensure that they understand the care that must be taken to avoid influencing the witness in relation to any subsequent interview that they give.
53. 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.
54. 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 assumed areas of interest. A thorough examination must take place.
55. Examinations should take into account that adult witnesses may be able to answer medical related questions with a greater degree of accuracy than an adult with a learning disability or a child; but assumptions as to ability must never be made without an assessment being made of the individual's ability. This can be done by 'test' questions about uncontroversial matters to assess how accurately a witness is able to be descriptive.
56. It should also not be assumed that examinations are necessarily detrimental to a witness's general sense of comfort and wellbeing. A witness who is concerned that abuse may have damaged them in some way can feel reassured by a sensitive examination. Parents of children will usually require similar reassurance.
57. Care must be taken to ensure that witnesses do not receive unnecessary medical examinations but this must be balanced against the possibility that a limited examination may fail to discover important evidence and that such evidence may then be lost. That is not in the best interests of the witness and a slightly longer and thorough examination can be justified to ensure that all possible medical evidence that may assist an investigation has been looked for.

Psychiatric and psychological assessment interviews

58. The role of 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 planning process.
59. 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.

Sexual exploitation cases

60. Particular care and preparation needs to be taken in the planning of the investigation and interview of people who may have been subject to sexual exploitation, especially young people. Few young people will ever make a disclosure or statement to this effect. Their reluctance to do so may be for various reasons including being fearful of what might happen to them should they disclose; misplaced loyalty towards those abusing or exploiting them; or failure to view this as abuse given the grooming techniques frequently employed by the perpetrators or their often traumatic early childhood experiences. It is often only after a number of months or years have elapsed before a young person can see the abusive intent behind their experiences.
61. Many witnesses are reluctant to come forward and go through a period of turmoil before deciding if they should disclose the abuse. If they do, then it is crucial that this window of opportunity is taken immediately as experience has shown that when this has not happened this opportunity can often be lost because of the witnesses' fear of their abusers and/or mistrust of authorities. Specialist training and support should be sought for interviewers working with witnesses who may have had these experiences.
62. Agencies should be aware that, even where the witness makes a complaint, they may retract their statement, claiming that they have been lying. Sometimes witnesses may appear compliant in the abuse and may actually defend the alleged abuser. This can be a result of both the sophisticated grooming techniques used by abusers and the level of dependency created by the abuser.
63. In such cases the investigating officers must be prepared to act swiftly to capture the witnesses account within the window of opportunity but it remains especially important to follow this guidance in relation to planning the interview process as there is likely to be only one opportunity to interview the witness and the interview must therefore be conducted to the highest possible standard.

Taking into account previous experiences

64. The interviewing team needs to bear in mind that some witnesses and their families may have experienced discrimination and/or oppression through their contact with Government agencies. Their experiences of racism, for example, may result in them distrusting the professionals involved in an investigative interview. Witnesses who have issues with their immigration status may have a fear of disclosing abuse because of what may happen to them and their family.

Interpreters

65. A witness should be interviewed in the language of their choice. If the witness is bilingual then this may require the use of an interpreter. The interpreter should have no connection with the witness and be a person suitable for taking part in an interview procedure and understand the absolute duty of confidentiality that is required of them.

4. Indicators of Abuse

66. There is no single 'diagnostic' symptom of abuse but studies have shown that some possible effects of abuse include:
- (a) Fear;
 - (b) behavioural problems;
 - (c) sexualised behaviours;
 - (d) poor self-esteem;
 - (e) post-traumatic stress disorder;
 - (f) self-injury and suicidal behaviour;
 - (g) increased emotional problems, e.g. anxiety and depression;
 - (h) decreased cognitive functioning;
 - (i) negative social behaviour, e.g. increased aggression, non-compliance;
 - (j) anti-social behaviour and criminal activity; and
 - (k) lower intellectual functioning and academic achievement.

5. Assessment Prior to Interview

67. An assessment of a child or vulnerable adult who has not had previous or current involvement with social services or other public services will need to take place in order to establish the information necessary for the effective planning of the interview. Factors to be explored include:
- (a) preferred name/form of address;
 - (b) ability and willingness to talk within a formal interview setting to a police officer, social worker or other trained interviewer;
 - (c) an explanation of the reason for an interview;
 - (d) the ground rules for the interview;
 - (e) the opportunity to practise answering open questions;
 - (f) the cognitive, social and emotional development (e.g. does the witness appear 'streetwise' yet in reality have limited understanding?);
 - (g) the 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 witness who is unable to detect and cope with misunderstanding, particularly in the court context, i.e. if a witness 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.);
 - (h) any special requirements the witness 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?);
 - (i) any apparent clinical or psychiatric problems (e.g. panic attacks, depression) which may impact on the interview, and for which the witness may require referral for a formal assessment; and
 - (j) an assessment of competency to freely give consent to interview and medical examination.
68. Interviewers must be careful to balance the need to ensure that the witness is ready and informed about the interview process against the possibility of allegations at trial of coaching or collusion. It is important to remember the aim of the process is to obtain the best possible account of events from the witness and the assessment stage is focused on obtaining information necessary to plan and conduct the best possible interview.

69. The assessment is not an opportunity to explore wider issues or gain information for social care work; this can come at a later stage. It is important to remember that the quality of the assessment is not necessarily measured in terms of the time taken to conduct it but the focused evidence based conclusions that are reached.
70. In some cases it will be appropriate for the witness to be given a break after an assessment whilst investigating officers plan the interview and then the interview can take place. If the overall objective is borne in mind then a focused process can strike the balance between the need to obtain the account of the witness in an appropriate time frame and the need for careful planning.
71. Witnesses with more complex needs will require longer assessment and planning phases, and each approach must be tailored based on the information available rather than the application of a one size fits all procedure.
72. A full written record of any assessment(s) must be kept and interviewers should have clear objectives for assessment(s) prior to interview and should apply this guidance on talking with witnesses during such an assessment. For example, they should avoid discussing substantive issues (in any detail) and must not lead the witness on substantive matters.
73. However, interviewers should never stop a witness who is freely recalling significant events because any such account may be the only time the witness gives an account. Instead, the interviewers 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.
74. The interviewers should make the purpose of the assessment clear to the witness and begin by explaining, in clear language, what is going to happen. For example:

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

75. The interviewer can also use the opportunity to answer any questions the witness may 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 witness while others do so exclusively on the tape as part of the rapport phase of the interviews. 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.
76. No inducements should be offered for complying with the investigative process. This is especially important in cases involving young children. Inducements are often offered by mistake, not because the interviewer is purposefully seeking to induce the witness but from a desire to offer a young child some comfort in a stressful situation. For example: *“Once we have finished talking we can have some chocolate biscuits”*

Information about the alleged offence(s)

77. In order to plan and prepare for the interview, the interviewer will need a little general knowledge about:
- (a) the type of alleged offence(s);
 - (b) the approximate time and location of the alleged offence(s);
 - (c) 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
 - (d) how the alleged offence(s) came to the notice of the police.
78. However, the interviewer must not allow any knowledge that they have to contaminate the interview and should not use that knowledge to lead the witness.

6. Evidential Considerations

Significant Evidential Inconsistencies

79. 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:
- (a) 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;
 - (b) the accounts of other witnesses; and
 - (c) injuries sustained by either the alleged victim or the alleged offender.
80. 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.
81. Many of these reasons are innocent in 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.
82. 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:
- (a) where the inconsistency is a significant one;
 - (b) after careful consideration has concluded that there is no obvious explanation for them;
 - (c) after the witnesses account has been fully explored, either at the end of the interview or in a further interview, as appropriate;
 - (d) 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;

- (e) explanations for evidential inconsistencies should take account of the extent to which the witness may be vulnerable to suggestion, compliance or acquiescence; and
- (f) 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

83. 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.
84. This may arise, for example, where others say that the alleged offender was carrying an object, or 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 witnesses account has been fully explored at the end of the interview (or in a further interview if necessary).
85. When planning such a question, the interviewer should consider:
 - (a) whether the information omitted by the witness is likely to be important enough to be worthy of explanation;
 - (b) the extent to which the witness may be vulnerable to suggestion, compliance or acquiescence; and
 - (c) 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.
86. A plan for soliciting an explanation for the omission of case-relevant information from a witnesses account must take account of the reliability of any answer. For example, a useful starting point might be to ask the witness a specific-closed question such as: 'What else can you tell me about the incident?' If the witnesses 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...').

87. 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 witnesses 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.

88. 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 witnesses response or the circumstances of the case).

7. Interview

Using the planning information

89. The planning information should be used to:
- (a) set aims and objectives for the interview;
 - (b) determine the techniques used within the phased interview;
 - (c) decide the means by which the interview is to be recorded;
 - (d) who should conduct the interview and if anybody else should be present (including social care support for the witness);
 - (e) if anybody should monitor the interview (investigating officer, supervising officer, specialist/interview adviser, etc.);
 - (f) who will operate the equipment;
 - (g) the location of the interview;
 - (h) the timing of the interview;
 - (i) the duration of the interview (including pace, breaks and the possibility of more than one session); and
 - (j) what is likely to happen after the interview.

The interviewer

90. 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 witness, who understands how to communicate effectively with witnesses who might become distressed, and who has a proper grasp of the rules of evidence and criminal offences. The lead interviewer must have good knowledge of information important to the investigation, including the points needed to prove particular offences.

91. 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:
 - (a) 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;
 - (b) any personal or domestic issues that the prospective interviewer has that might have an adverse impact on the interview; and
 - (c) 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.
92. The witnesses 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.
93. Where the witness 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.
94. The interviewer should consider the appropriate mode of dress for the particular witness. For example, research shows that a person's perceived authority can have an adverse effect on the witness especially with respect to suggestibility.

The second interviewer

95. Regardless of who takes the lead, the interviewing team should have a clear and shared remit for the role of the second interviewer and where they will be located. Too often this role is subjugated to the need for someone to operate the video equipment, when, in reality, the second interviewer has a vital role in observing the lead interviewer's questioning and the witnesses demeanour.
96. The second interviewer should be alert to identifying gaps in the witnesses account, interviewer errors, and apparent confusions in the communication between lead interviewer and witness.
97. The second interviewer 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.

98. Whether the second interviewer is physically present in the room or watching over the video link will need to be decided on a case by case basis. Research with witnesses has reported that they often do not understand why the second interviewer was present in the interview and especially so where the second interviewer had no recognisable role to play. Some witnesses may feel uncomfortable in a one on one situation or conversely be pressured by having more than one person present in the interview room.
99. The identity of the second interviewer must also be decided. Sometimes it will be desirable that the second interviewer is a social or health worker; the decision in respect of this is ultimately for the police to make. In any event where the witness is a child and there are wider child safeguarding considerations the interview can be watched over a link from another location by a social or health worker so that information is shared appropriately.

Equipment operators

100. The lead interviewer, or designated member of the interviewing team, should take responsibility for checking the availability and working order of the video equipment ahead of the interview. In particular, if interviewers intend to communicate with each other, or with the equipment operator via an earpiece, then this equipment should be tested in situ to ensure its effectiveness.
101. Problems with earpieces are highly distracting to the interviewer and witness, and can be very destructive to the interview itself.
102. Where an intermittent fault is suspected in the equipment, it may be better to stop and reschedule the interview rather than stop and restart the interview which places additional stress on the witness. Interviewers should also consider the possibility that earpieces can be viewed as 'intrusive' by witnesses. It can seem that the interviewer is receiving 'secret' instructions which, in fact, can often be heard by the witness.
103. 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. Video recordings are often arranged so that there are multiple cameras that capture both the witness and the wider room in which the interview is taking place. If this is the case then it is important that the main display shows a close up of the witness.
104. The close view of the witness should not be relegated to a smaller view within the main camera screen. It is important that when viewed back the witness is displayed on the main viewing screen.

Timing of the interview

105. 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 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 witnesses 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 witness.
106. The witnesses normal daytime routine and general needs should be considered as well as those of the adult(s) who care for the witness where the witness is a child or vulnerable adult. Interviewers should avoid starting an interview just before a mealtime or at night (or at any other time when the witness is likely to be suffering from the effects of fatigue).
107. 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 witness rather than by the imposition 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 delay and a balance must therefore be carefully struck.
108. Children are very sensitive to being taken out of school classes and adult witnesses may have concerns about work or other commitments. Wherever possible an interview should not conflict with a witness's daily routine so as to cause the witness distress. On the rare occasions when it is unavoidable, the interviewer should liaise appropriately to ensure that disruption is as discreet and minimal as possible.
109. 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. A more substantial interview can then be arranged at an appropriate time.

Duration of the interview

110. 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 witness to have an idea of approximately how long each interview is likely to last.

111. The pace of the interview should be dictated by the age and circumstances of the individual witness. Interviews should proceed at the pace of the witness 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 a child while those with only child witness experience may adopt an overcautious approach and spend too long in the rapport phase when an adult witness is ready to proceed with their account.
112. Whenever possible, the interviewer should seek advice from people who know the witness about the likely length of time that they can be interviewed, and whether a pause or break is desirable. This is especially the case where the witness is a child or adult with a vulnerability or mental disorder.
113. The absolute length of the interview will depend on a range of factors, including:
 - (a) the developmental age of the witness;
 - (b) any disability the witness may have;
 - (c) the number of alleged incidents to be described;
 - (d) how forthcoming the witness is; and
 - (e) how much time is required to establish rapport.
114. It is not possible or desirable to put forward an ideal duration for an interview. However, shorter times may be necessary for developmentally younger witnesses with limited attention spans while adult witnesses may be comfortable with an interview that lasts longer. If a witness 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 witness: not only is this damaging to the witness but such interviews are unlikely to be accepted by the courts.
115. 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 witness has a short attention span). 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.
116. 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 witnesses and interviews therefore being ruled inadmissible by the courts.

Planning for immediately after the interview

117. Although the interviewer cannot predict the course of an interview, planning discussions should cover the possible outcomes and consider the implications for the witness and their family taking account of knowledge about the witness's circumstances, and previous or current involvement with social care or other public services. 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.
118. Research has shown that witnesses 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. A contact person should be identified to whom the witness can direct any subsequent queries or further information.

Witnesses who might become suspects

119. So far as is practicable, consideration should be given in the planning phase as to how the interviewer 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.
120. 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 on what has been disclosed by the witness during the course of the interview

Recording the planning process

121. 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 statement of evidence subsequently made by the interviewer in relation to the planning, preparation and conduct of the interview, and should be revealed to the prosecutor

Preparing the witness for an interview

122. Witnesses 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 a child has complex needs) and/or for it to take place several hours or days before the interview.

123. 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.
124. A witnesses carer(s) should also be provided with suitable information at this stage unless one or both are suspected of involvement in the offences under investigation. For example, they should be discouraged from discussing the details of the alleged offence(s) with their charge or any other individual who may be involved in the investigation but must be able to reassure the witness who wishes to talk or expresses anxieties. They should be asked to document carefully any discussions they have with their charge or other persons regarding the allegation or investigation (e.g. who was present, date/time and setting, what exactly was said). The witness should never be offered inducements for complying with the investigative process.
125. Carer(s) should also be encouraged to provide emotional support to the witness such as physical comfort and reassurance. They should be given information about what further role, if any, they may have in planning the interview or in being present while it is conducted (or given reasons why the interviewer(s) would prefer them not to be present). Where possible, any support needs of the carer(s) that are identified should be brought to the attention of the relevant authorities/agencies. In cases where the witness may have been abused within the family, concerns may arise as to the non-abusing carer's ability to support the witness or to take seriously what the witness has said.
126. Any issues or concerns raised by the witness 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).
127. Most witnesses will be anxious prior to an investigative interview, and few will be familiar with the formal aspects of this procedure. It is, therefore, important that the interviewer uses the time spent preparing a witness for an interview to build up a rapport with them. The nature and the extent of rapport building required very much depends on what has been established about the witness during the planning phase of the interview.
128. Some witnesses who have been traumatised might need to spend more time getting to know the interviewer(s) before they are ready and/or willing to take part in an investigative interview. The interviewer(s) should consider whether one or more meetings with a witness should be planned to take place prior to the interview because this familiarisation process may take some time.

129. Some witnesses may feel that their initial, lawful co-operation with a person who subsequently commits an offence may make them blameworthy and they may assume that they must have done something wrong simply because they are being interviewed. The interviewer might need to try to reassure the witness on these points but promises or predictions should not be made about the likely outcome of the interview. So far as possible, the interview should be conducted in a 'neutral' atmosphere with the interviewer taking care not to assume, or appear to assume, the guilt of an individual whose alleged conduct may be the subject of the interview.
130. Rapport-building while the witness is prepared for the interview can also serve to set the tone for the style of questions to be used by the interviewer during the interview. It is, therefore, important that the witness is encouraged to talk freely through the extensive use of open-ended questions because this can help to encourage them to give detailed accounts; a style of communication consistent with the guidance set out in this document.
131. In some instances, it might be helpful to conduct a practice interview while preparing the witness for the interview. In these circumstances, the witness could be asked to recall a personal event unrelated to the issue of concern (e.g. a birthday or a holiday). This serves to provide the witness with an example of the kind of detail that will be required in relation to the issue of concern and to practise extended verbal responses. Such practice interviews might be particularly useful with younger witnesses who might not appreciate the demands of a witness interview for detailed and context information.
132. Rapport-building while the witness is prepared for the interview also gives the interviewer the opportunity to build on their knowledge of the witness's communication skills and degree of understanding of vocabulary. The interviewer can then adjust their language use and the complexity of their questions in the light of the witnesses responses.
133. It may prove problematic to attempt to proceed with an interview until rapport has been established. Should establishing rapport when the witness is prepared for the interview 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.
134. Full written notes must be kept of the preparation of a witness for an interview and must be given to the prosecutor on request. The information obtained to plan the interview should be reviewed and revised if necessary in the light of any additional information that arises from preparing the witness for the interview.

8. Interview Technique

135. The 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 witness which is based on a phased approach. Much professional experience and published research now exist on the conduct of the phased interview with witnesses and have found that it produces a good balance between quality and quantity of information elicited from a witness. The phased interview normally consists of the following four phases:
- (a) establishing rapport;
 - (b) asking for free narrative recall;
 - (c) asking questions; and
 - (d) closure.
136. 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, will only divulge information to persons with whom they feel at ease and whom they trust. Therefore, the first phase 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 and into adulthood.
137. 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.
138. 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 witness, 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 witness sitting in front of them.

139. However, the sound 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. It may subsequently be necessary to explain such deviations at court.
140. 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', 'explain' and 'describe' 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.
141. Research has found that in their free narrative accounts vulnerable witnesses usually provide less information than other people. Nevertheless, this information may be no less accurate. However, it is vulnerable witnesses whose accounts are likely to be most tainted by inappropriate questioning.
142. 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.
143. 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.
144. 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 and acquiescence

145. Some vulnerable witnesses may be particularly compliant in that they will try to be helpful by going along with much of what they believe the interviewer 'wants to hear' and/or is suggesting to them. This is particularly so for witnesses who believe the interviewer to be an authority figure. Some witnesses may also be frightened of authority figures. This may also be linked to cultural attitudes in relation to authority, for instance for someone from an older generation or from another culture. Interviewers should be alert to this issue in cases where the witness originates from a country where there is a more authoritarian state particularly where the witness is a refugee or is seeking asylum.
146. This issue is also relevant in cases of sexual exploitation involving adults and children. 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.
147. Many vulnerable witnesses 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 do not understand. Saying that one does not 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 at appropriate points during the interview.
148. An emerging finding is that witnesses 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.
149. 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 that they do not understand, remember or know the answer.
150. 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 witnesses.
151. 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?', 'Can you think of a way to show me what you mean?' or 'Is there a way I can make this easier for you?'

152. 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 returns to the point later in the interview rather than be insistent.
153. 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 witnesses with a learning disability.
154. However, it is not solely due to the witness's 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.
155. Sometimes 'nay-saying' (repeatedly responding with 'no') will occur particularly for questions dealing with matters that are socially disapproved of or are social taboos. 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 witnesses than do 'yes/no' questions. Even so, a small proportion of witnesses seem always to choose the latter of the two alternatives offered by 'either/or' questions. If a witness 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.
156. 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.

9. Questioning the Witness

157. 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 on what they have said.
158. It is also beneficial to reiterate a number of the ground rules outlined in the rapport phase of the interview, for example to explain to the witness that detail is required or 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.
159. 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 witnesses 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 good practice have found that vulnerable witnesses may well have great difficulty with questions unless these:
- (a) are simple;
 - (b) do not contain jargon;
 - (c) do not contain abstract words and/or abstract ideas;
 - (d) contain only one point per question
 - (e) are not too directive/suggestive;
 - (f) do not contain double negatives.
160. 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.

161. 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.
162. 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.'
163. 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 themselves against an assault.
164. 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 witnesses will nevertheless attempt to answer it to the best of their ability by guessing at what is meant possibly producing an inappropriate reply.
165. 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.
166. 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.
167. Some vulnerable witnesses may also have a limited understanding of the relationship between negative events, their causation, and who is responsible. Even if an event was an unforeseeable accident or 'an act of God', some vulnerable witnesses 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.

168. 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.

Categories of Questions

Open-Ended Questions

169. 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 witnesses 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.
170. 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.
171. Open-ended questions can also be used to invite the witness to elaborate on 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 'You said you were not happy. Tell me what makes you unhappy?'
172. 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.
173. 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.

174. 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 or the length of a week, month or 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.
175. Therefore, interviewers should not prematurely ask questions about specific episodes. Most witnesses, whether vulnerable or not, will recall correct information about events that are not in the same time order as things actually happened. Some vulnerable witnesses may not have needed to rely in their everyday lives on a good sense of time and, therefore, 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, public festivals or holidays.

Specific-Closed Questions

176. A closed question is a question that closes down a witness's response and, therefore, 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 witness. 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.
177. Specific-closed questions vary in their degree of explicitness and it is always best to begin with the least explicit version of the question. Therefore, 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?'
178. 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?'
179. 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 witnesses 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').
180. 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.

181. 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?'
182. 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 narrower and focused specific-closed questions become, the easier it is for them to be suggestive.

Forced-Choice Questions

183. Forced-choice questions are ones that provide the witness 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?').
184. 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. It should be remembered that a third alternative, such as "can't you remember?" or "don't you know?" can be offered with all forced choice questions as there may be occasions where there are only two possible alternatives but the witness cannot recall or remember.
185. 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.
186. If forced-choice questions are to be used, it is particularly important to remind the witness that 'Don't know', '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

187. 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.
188. 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'.
189. 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.
190. In addition to the legal objections, psychological research indicates strongly that witnesses' 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.
191. 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.
192. 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 as 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 phase, it may not be known which facts will be in dispute.
193. 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.

194. 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.
195. 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

196. 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, 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?'
197. 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 witnesses 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 second interviewer is to check that the lead interviewer does not ignore important information provided by the witness.

Topic selection

198. Within the questioning phase of the interview, the interviewer should subdivide the witness's account into manageable topics or episodes, and seek elaboration on each area using open-ended and then specific-closed questions as outlined in the previous paragraphs. 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.

199. 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. Therefore, 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

200. 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.
201. 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.
202. In evaluating the witness's account, interviewers should not rely on cues from the witness's behaviour as guides to the reliability or otherwise of the witness's statements. 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.

Closing the Interview

203. 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. The interviewer should not "over summarise". Where summaries have been conducted appropriately throughout the interview, there is no need to provide a complete summary at the closing phase.
204. 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.
205. 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. 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?', 'Is there anything you think you've missed out?' or 'Is there anything else you think I should know?').
206. 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. 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.
207. 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 on themselves of giving an account of what may well have been greatly distressing events (and about which the witness may feel some guilt). 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.

10. Post-Interview

Evaluation

208. Evaluation should take two primary forms:
- (a) evaluation of the information obtained; and
 - (b) evaluation of the interviewer's performance.
209. 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. For example, are there any further actions and/or enquires required, or what direction should the case take?
210. 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 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.

Post-Interview Documentation

211. The interviewer should complete the relevant paperwork as soon as possible after the interview is completed including 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.

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