



Police Research Series
Paper 115

Interviewing Child Witnesses under the *Memorandum of Good Practice:* A research review

*Graham M. Davies
Helen L. Westcott*

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*Graham M. Davies
Helen L. Westcott*

*Editor: Barry Webb
Home Office*

*Policing and Reducing Crime Unit
Research, Development and Statistics Directorate
Clive House, Petty France
London, SW1H 9HD*



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Policing and Reducing Crime Unit: Police Research Series

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Foreword

The 'Memorandum of Good Practice on Video Recorded Interviews with Child Witnesses for Criminal Proceedings' (Home Office/Department of Health) was published in 1992 to provide guidance to police officers and social workers responsible for undertaking video-recorded interviews with child victims or witnesses. The document outlined core principles to be followed when conducting interviews; the video could then be played in court to spare the child the necessity of giving live examination-in-chief.

Since 1992, much literature and research has been generated around the *Memorandum* and around the issue of child witnesses in general. This report reviews this literature, drawing out the implications that this has for interviews conducted under *Memorandum* guidelines. It will therefore be of relevance for police officers, social workers and other agencies involved in investigations and interviews with children.

The report also complements recent policy recommendations, such as those contained in the Home Office consultation document '*Speaking Up For Justice*', some of which are included in the *Youth Justice and Criminal Evidence Bill*. It should also help to inform the revision of the original *Memorandum*, which is being taken forward as part of the programme of implementation of '*Speaking Up For Justice*'.

Gloria Laycock
Policing and Reducing Crime Unit
Home Office
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The Authors

- Graham Davies is a Professor of psychology at Leicester University; and,
- Helen Westcott is a lecturer in psychology at The Open University.

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Executive summary

This report summarises the findings of recent research on children as witnesses and draws out the implications for the conduct of interviews under the 'Memorandum of Good Practice on Video Recorded Interviews with Child Witnesses for Criminal Proceedings' (Home Office/Department of Health, 1992). Most of the research reviewed here has been conducted or published since the *Memorandum* was drafted. The report does not, however, pretend to be an exhaustive academic literature review, but aims to focus on the practical relevance that studies in psychology, social work and policing have for investigative interviewing.

Child development

Research on children's developing competence as witnesses highlights:

- the vulnerabilities of very young witnesses;
- the value of prompt interviewing;
- ways of reducing the possibility that children will go along with suggestive questions;
- the importance of accommodating to the child's language and level of understanding;
- the importance of asking questions at a level, and in a form, appropriate to the individual child;
- whether credibility can be assessed through the content of the child's statement, or their non-verbal behaviour; and,
- the importance of listening to what the child has to say.

Planning the interview

When planning an investigative interview, interviewers need to be aware of:

- differences in the way children disclose abuse;
- proper preparation of the child for the interview, and giving the child as much choice (and thus control) as possible;
- tailoring the interview to take account of factors such as the child's age, state of mind and level of anxiety, physical or learning impairments, and race and culture; and,
- the influence of the interviewer; children need support throughout the interview.

Conducting the interview

This section reviews research and practice in conducting *Memorandum* interviews.

It indicates that:

- the rapport phase of the interview can be used not merely to reduce social distance, but also to determine children's level of understanding and

competence and provide an opportunity to lay appropriate ground rules for the interview;

- although open questions provide more accurate information than closed questions, in some circumstances direct prompts are needed. In these situations, inappropriate questioning techniques, such as forced choice questions, multi-part questions or ‘can you...’ questions should be avoided; and,
- proper closure of the interview is frequently neglected; it should provide an opportunity for the interviewers to answer any questions children may have and to thank them for their time and effort.

The report also suggests that further guidance is needed on:

- tests of ‘truth/lies’;
- the duration, pace and number of interviews;
- the potential value of drawings, props, toys and anatomically detailed dolls; and,
- specialised interview techniques, such as the Cognitive Interview, semi-scripted interviews and SAGE (Systematic Approach to Gathering Evidence).

Appearance at court

The literature on child witness preparation programmes and the long-term effects of appearing in court on children, concludes that:

- the impact of a court appearance can be exacerbated by poorly conducted repeated interviews, harsh cross-examination or by testifying more than once;
- maternal support, case resolution and the passage of time ameliorate the effects of court appearance;
- preparation programmes are beneficial to children, but are under-funded and not sufficiently evaluated; and,
- experimental research on preparation suggests some potentially valuable practical interventions which deserve to be tried out in realistic settings.

The final section of the report reviews the main themes and recommendations for any future revision of the *Memorandum*. Recent policy developments such as the Utting report (1997) and ‘*Speaking Up for Justice*’ (1998) suggest that changes in the criminal justice system as it affects child witnesses will continue, and this is reflected in the 1999 *Youth Justice and Criminal Evidence Bill*. This report urges that any revision to the *Memorandum* is informed by the research reviewed here, and is located within a strategic, comprehensive and nationally agreed framework of reform.

Contents

	Page
Foreword	(iii)
Acknowledgements	(iv)
Executive summary	(v)
1. Introduction	1
Aims and scope of the report	1
The ‘ <i>Memorandum of Good Practice</i> ’	1
Child witness research	6
Structure of the report	6
2. Child development	8
Memory	8
Suggestibility	9
The type of language used in the interview	10
Deception	12
3. Planning the interview	14
Differences in childrens’ disclosure of abuse	14
Preparing the child for the interview	15
Characteristics of the child and family	15
The influence of the interviewer	18
4. Conducting the <i>Memorandum</i> interview	20
The phased approach	20
Duration, pace and number of interviews	23
Assisting child witnesses in the interview	24
Alternative questioning techniques	26
5. Appearance at court	28
Long-term effects of court appearance	28
Preparation of child witnesses for court	28
6. Review	32
Child development	32
Planning the interview	33
Conducting the <i>Memorandum</i> interview	35
Appearance at court	37
Concluding comments	38
References	40
Recent PRCU publications	57

1. Introduction

Aims and scope of the report

Children involved in legal proceedings concerning child abuse may have to tell their story on several occasions. This starts with the initial interview and may culminate in examination and cross-examination at court. Where there is a possibility that the child's statement may be used in evidence they may be video-interviewed by a police officer or social worker. These interviews are conducted under the guidelines set out by the *Memorandum of Good Practice on Video Recorded Interviews with Child Witnesses for Criminal Proceedings* (Home Office/Department of Health, 1992: hereafter the *Memorandum*). This report summarises the implications that recent research on children as witnesses has for the conduct of interviews under the *Memorandum*.

Most of the research reviewed here has been conducted since the *Memorandum* was issued in 1992. While the report sometimes cites the practice and research of knowledgeable professionals, wherever possible the major recommendations are based upon the results of experimental research, courtroom observation or analysis of actual investigative interviews. It does not claim to be an exhaustive review of the literature, but instead focuses on the practical relevance of studies from psychology, social work and policing.

'The Memorandum of Good Practice'

The origins of the Memorandum

The origins of the *Memorandum* lie in the report of an advisory group, chaired by His Honour Judge Thomas Pigot QC, which had been set up to consider the admissibility of video-recorded interviews with children in criminal cases. The Pigot Report (1989) recommended that such interviews, conducted by a police officer or social worker, should be used as a substitute for the child's live examination-in-chief at trial.

To ensure that the interviews were carried out in accord with the rules of evidence, the report recommended that a 'Code of Practice' be drawn up to govern their conduct. It also recommended that the videotape principle should be extended to examination by the defence, so that tapes of these interviews could replace the child's cross-examination at trial. In addition, the use of intermediaries was proposed to assist examination of young or otherwise vulnerable children at trial. These measures could spare many children the necessity of attending a formal trial. However, although the Criminal Justice Act 1991 incorporated the proposals regarding the admissibility of videotaped interviews as evidence-in-chief, it did not follow the report's recommendations regarding cross-examination and intermediaries.

In compiling a draft Code of Practice, the Home Office commissioned a psychologist, Professor Ray Bull, and a lawyer, Dr (now Professor) Diane Birch. The subsequent draft underwent successive revisions by a working party of concerned professionals (under the auspices of Home Office officials). During this process, the title changed from 'Code' to '*Memorandum of Good Practice*' to reflect the view that the document should provide guidance rather than seek to lay down inflexible rules. The *Memorandum* was launched in August 1992 to coincide with the implementation of the 1991 Act.

The main recommendations of the *Memorandum* are that:

- interviews should be conducted as soon as practicable after an allegation of abuse emerges;
- interviews should take place in an informal setting with interviewers trained in talking to children;
- children should be given every opportunity to tell their own story before being asked explicit questions;
- questioning should follow a phased or 'step-wise' approach, beginning with open-ended queries and reserving any direct or leading questions for the final phase of the interview; and,
- as a general rule, interviews should last no longer than one hour.

The 'Memorandum' in practice

Shortly after the implementation of the 1991 Act, a survey was conducted by the Association of Chief Police Officers (Butler, 1993). This revealed that nearly 15,000 interviews had been conducted under the Act in its first nine months of operation. However, less than a quarter of the videotaped interviews had been submitted to the CPS for prosecution purposes, and only 44 were known to have been played at court. At face value, these figures painted a pessimistic picture of the effectiveness of the new procedures. However, legal delays probably underestimated the number of video cases which eventually reached court, and the figures omitted cases where late guilty pleas removed the need to show the videotaped interview. The same survey also highlighted widespread disparities between forces in rates of interviewing and submission of cases to the CPS.

The Home Office also commissioned an initial evaluation of the new procedures.

The subsequent report (Davies et al., 1995) concluded that:

- within 18 months of implementation of the Act, 75% of relevant cases included an application to show a videotaped interview at trial;
- there was widespread acceptance among police officers and social workers of the evidential value of videotaped interviews and of the *Memorandum*;

INTRODUCTION

- judges generally expressed positive attitudes toward the new legislation, but barristers showed less enthusiasm;
- a sample of taped interviews showed that interviewers secured a clear account of events from the child in 75% of cases;
- children who gave their evidence on tape were more relaxed than those testifying live at court; and,
- interviewers did not always follow the *Memorandum's* emphasis on free narrative and open-ended questions.

The report also noted some specific criticisms of the *Memorandum*. In particular:

- that it had an emphasis on evidence gathering rather than support for the child;
- it gave inadequate guidance on interviews with young children or those with special needs; and,
- there were too few examples of good practice.

The study also noted a demand for consistent training standards, a view supported by a parallel study conducted by the Social Services Inspectorate (SSI; Holton and Bonnerjea, 1994).

The SSI study identified other perceived weaknesses in the *Memorandum* including:

- there was insufficient guidance on when to interview;
- the 'one hour' recommendation on interview length was not realistic;
- a neutral interviewing style was incompatible with proper support for the child victim;
- insufficient attention was given to the needs and wishes of the child; and,
- there was inadequate coverage of child development issues.

Subsequent research has continued to highlight criticisms, both of the content of the *Memorandum*, and of its interpretation by the courts. Indeed, a number of police child protection officers interviewed by Hughes, Gallagher and Parker (1996) doubted the value of the *Memorandum* and called for the document to be rewritten. However, a second study (Davies, et al., 1998) found continuing support for the principles of the document among police officers at all levels within child protection units, although they did reiterate many of the detailed criticisms mentioned above. In addition, officers expressed concern that the courts treated the *Memorandum* as an inflexible code rather than as guidance, and that cases were being dismissed because of what officers felt were relatively minor deviations from it. The research also found continuing support for national training guidelines (Davies et al., 1998).

Other criticisms have included the *Memorandum's* failure to address issues concerning children with special needs. Westcott and Jones (1997) highlighted the difficulties faced by disabled and black children, and concluded that the gulf between the needs of the abused child and the demands of the criminal justice system were likely to remain unbridgeable within current policy and practice. They called for a review of alternative systems of evidence gathering, such as forensic analysis and the development of interviewing strategies for suspected abusers.

Whilst most of the principles of the *Memorandum* apparently enjoy widespread support, other aspects appear to require revision and reflection. A review of its content is timely, given recent official reports which have highlighted the dilemmas facing child witnesses under existing law (Utting et al., 1997; '*Speaking up for Justice*', 1998; Davis et al., in press). A number of reforms, including full implementation of the Pigot proposals, are incorporated into the *Youth Justice and Criminal Evidence Bill*, currently before Parliament. It is important to remember, however, that this latter Bill, like the *Memorandum*, applies only to England and Wales. Although much of this review may be relevant to practice in Scotland and/or Northern Ireland, significant differences in the investigative and criminal justice process exist.

Profile of cases and witnesses

What is known of the typical witness interviewed under the *Memorandum*? Figures supplied to Davies et al. (1995) by the Lord Chancellor's Department, covering 1,561 child witnesses giving evidence at court between October 1994 and April 1995, gave the following profile:

- 88% were alleged victims;
- 73% were female;
- the majority were aged between 10 and 15 years of age; and,
- 59% of cases involved a single child witness.

The study found few instances of children from minority ethnic communities or disabled children giving evidence in court. Later research also confirms that it is unusual for children with learning difficulties (Saunders et al., 1997) or those with other communication difficulties to be given a *Memorandum* interview, largely because of its emphasis upon the need for free narrative (Westcott, 1994). Although data are not available on the proportion of children from minority ethnic communities who participate in *Memorandum* interviews, a survey conducted for Victim Support suggested that approximately 8.5% of all child witnesses were from minority communities (Chandler and Lait, 1996). This is slightly less than the recorded population for persons under the age of 16 years from the ethnic

population (9.7%; Office for National Statistics, 1991). However, such comparisons are inevitably tentative and more comprehensive monitoring, both of victimisation and involvement with the criminal justice system, is required.

Regarding the alleged offence, Davies et al. (1995) reported that:

- 97% of all charges involved a single defendant;
- 96% of defendants were male;
- 76% of defendants were charged with indecent assault; and,
- most allegations concerned sexual, not physical assault.

The impact of Memorandum interviews on the prosecution process

Since Butler's (1993) study, no national surveys have examined the frequency of *Memorandum* interviews or their impact on the prosecution process. The lack of systematic data collection on prosecution and conviction rates in relation to child witnesses makes it difficult to evaluate legal and procedural reforms. The recent CPS Inspectorate Report (1998) does, however, confirm that the submission of an application to show a videotaped interview is now the norm in cases of alleged child sexual abuse. The inspectors reported that:

- 93% of all cases were accompanied by an application to show a video;
- 77% were granted (6% were out of time);
- 54% of videos required some editing before being shown to the court;
- 23% of applications granted to show a video were not taken up; and,
- 56% of children had their videotapes played at court.

Some of this attrition can be explained by late guilty pleas, but others arose from a change in tactics by prosecuting counsel in order to examine the child live at court, in the belief that their evidence would have more impact (Chandler and Lait, 1996; Davies et al., 1995). However, Davies et al. (1995) could find no evidence from successful prosecution figures to support this assumption, and noted that such tactical switches were usually unsuccessful and frequently had an adverse effect upon the child.

The Criminal Procedure and Investigations Act (1996) proposed that binding Plea and Directions Hearings into child witness cases should be introduced in part to ensure that when a decision was made to show a videotaped interview, it should only be reversed in exceptional circumstances. This section of the legislation was not implemented, but similar provisions are incorporated in the *Youth Justice and Criminal Evidence Bill* currently before Parliament. Finally, whilst the CPS report noted that over 17% of child complainants had their cases heard at magistrates' courts, which are not equipped with video facilities, the current Home Office

consultative paper on victims (Home Office, 1998) envisages an extension of such facilities to the lower courts (see Davis et al., in press, for a detailed discussion of the legal problems of prosecuting defendants on the basis of children's evidence).

Child witness research

Two types of research study are drawn on for this report:

- **Field studies** which have examined the process of gaining and giving evidence by child witnesses in England and Wales. These include courtroom observation studies and evaluation of video-recorded interviews; and,
- **Experimental studies** which seek to simulate, under laboratory conditions, the pressures and circumstances child witnesses encounter in observing and recounting experiences. These studies typically involve non-abused school children as participants and thus doubts inevitably arise as to the generalisability and representativeness of their findings. These experiments do, however, enable researchers to study a single issue with a precision rarely possible in field studies (Davies, 1992).

Most experimental studies originate in the United States and tend to reflect American concerns. For example, there are many studies on memory and suggestibility in children aged four to six years. These reflect a series of high profile, controversial cases involving adults convicted of sexual abuse on the testimony of pre-school children (Ceci and Bruck, 1995). In England and Wales, however, it is rare for children of this age to feature in court proceedings (Barker et al., 1998). The US legal system also permits the multiple interviewing of individual children and this in turn leads to considerable research on the cumulative impact of such interviews. By contrast, much research in the UK has focused on the effectiveness of specialist interviewing procedures or innovative questioning techniques (Memon et al., 1998).

Structure of the report

The remainder of this report is structured as follows:

- The next section examines issues of child development. Recent experimental studies on children's memory, suggestibility, language development and deception are reviewed, and their implications for interviewing children of different ages are discussed;
- Section 3 considers planning the interview, taking into consideration differences in childrens' disclosure of abuse, preparing the child,

characteristics of the child and family background, and the influence of the interviewer;

- Section 4 covers the phases of the interview and draws on reports which have evaluated the content of actual interviews. The section also considers progress on innovative interviewing techniques and the use of props and cues;
- Section 5 describes studies on preparing children for their court appearance and the long-term consequences of giving evidence at court; and,
- Section 6 discusses the implications of research for police practice and summarises the main recommendations of this report.

2. Child development

Since the publication of the *Memorandum*, research has tried to identify how children's competence as witnesses grows with age. The findings of such research are of particular relevance to those who interview children involved in abuse allegations, and have been recently highlighted as important for police training (see Davies et al., 1998).

Four major areas relevant to this issue are:

- memory;
- suggestibility;
- language; and,
- deception.

Memory

The *Memorandum* interview currently consists of phases that combine elements of free recall and prompted recall. Researchers therefore distinguish between children's unprompted statements and information arising from questions.

Free recall

With regard to free recall within interviews, the consensus among researchers is that:

- the quantity of children's free recall increases with age;
- free recall is generally very accurate;
- the accuracy of reports do not vary with age; and,
- the omission of details is much more common than the invention of false ones.

This has been supported by studies involving a range of witnessed events, including commonly occurring stressful incidents, such as medical interventions or dental visits (Ornstein et al., 1997; Goodman and Schaaf, 1997). Although no clear relationship has emerged between the rated stressfulness of such incidents for the child and amount recalled (Vandermaas et al., 1993; Merritt et al., 1994), it is clear that the amount and accuracy of recall deteriorates over time (Flin et al., 1992; Poole and White, 1993). In addition, younger children (three to six years) appear to forget more rapidly than older children or adults (Baker-Ward et al., 1993; Poole and White, 1993). However, although their free recall is typically more incomplete and brief compared to older children, it is no less accurate (Saywitz et al., 1996).

Although children as young as three to four years are capable of spontaneous and accurate recall of events from their own lives, this may be limited to one or two salient facts (Fundudis, 1997). In addition, while isolated examples may be found of

young children introducing fantastical elements into their reports, this is exceptional and does not necessarily invalidate other parts of the child's statement (Everson, 1997).

Prompted recall

All witnesses know more than they are able to spontaneously recall and questioning is required to assist retrieval of relevant information from memory. However, experimental studies suggest that:

- although questioning increases the amount of information provided, prompted recall is less accurate than free recall;
- open-ended questions are answered more accurately than specific questions;
- specific questions are answered more accurately than leading questions; and,
- loss of accuracy is greater in younger than in older children.

The *Memorandum* correctly emphasises the evidential value of responses to open-ended questions and discourages the use of leading questions.

Suggestibility

Suggestibility has been defined as '*the act or process of impressing something (an idea, attitude or desired action) on the mind of another*' (Fundudis, 1997: 151). Much has been learned recently about the circumstances in which children are likely to go along with the implications of leading questions. The idea that children are infinitely suggestible and can be encouraged to make plausible allegations of abuse against an adult on the basis of a few leading questions has been refuted by research (Goodman et al., 1991). Nonetheless, there are circumstances under which children can be vulnerable to both cognitive and social forms of suggestion, i.e:

- the interrogation process has distorted their memory; and/or,
- they are acquiescing to the views of the more powerful interviewer.

An influential review of experimental research by Ceci and Bruck (1993) concluded that children in general, and young children below six years in particular, were prone to incorrect responding under certain circumstances (see McAuliff et al., 1998 for an update and critique), including:

- **An accusatory context.** In several experiments, neutral or ambiguous actions were performed by an adult. These were later reinterpreted negatively by young children if the interviewer or another authority figure repeatedly suggested that the adult's behaviour was suspicious (Leichtman and Ceci, 1995; Lepore and SESCO, 1994; Thompson et al., 1997). Gently

challenging children about such beliefs can substantially reduce, but not eliminate, this problem.

- **Repeated suggestive interviewing** . Both adult and child witnesses have been shown to be susceptible to leading questions. However, children below six appear especially vulnerable (see Cassel and Bjorklund, 1995). Repeated interviews with four to six year olds, in which leading questions were used to imply the same misleading account of events, led to free recall as well as prompted recall being affected, with convincing but false corroborating detail being offered by the child (Leichtman and Ceci, 1995).
- **Post-event misinformation.** Both adult and child witnesses who observe an event and later read a misleading account of it will incorporate some of the misinformation into their memories of the original event. Once again, however, four to six year olds appear particularly vulnerable to this form of distortion, which influences free as well as prompted recall (Poole and Lindsay, 1995).
- **Memories implanted by others.** It appears to be much easier to change a memory than to implant a totally false one in a witness' memory (Pezdek and Roe, 1997). However, adults repeatedly presented with a mix of real and fictitious events from their own lives will over time claim to 'remember' at least some of the fictitious events (Hyman et al., 1995). Similar effects have been demonstrated in four to six year old children, some of whom claimed not only that the fictitious events had occurred, but also provided plausible supportive detail. This effect was maximised if witnesses were encouraged to visualise repeatedly each incident and were given an assurance that their parents remembered all the events (Ceci et al., 1994). However, for such effects to occur, the suggested event must be compatible with the child's previous experience and beliefs (Pezdek et al., 1998).

The type of language used in the interview

Much of the research on the use of language in interviewing has focused on the courtroom. This has highlighted the problems which can arise when language inappropriate to the age of the child is used (Westcott, 1995; Wilson, 1995). The use of adult language in questioning a child can lead to inconsistent and confused answers and to an increase in incorrect responding (Carter et al., 1996). Children appear reluctant to query questions they do not understand, sometimes even when the question is not sensible.

Davies et al. (1995) found that although *Memorandum* interviewers tailor their language to the age of the child rather better than court officials, there can still be short-comings in the interviews (Westcott and Davies, 1996b). Bull (1995) and others found that not enough interviewers use the rapport phase of the interview to establish the child's level of linguistic competence. Three other areas of concern have also been identified:

- **Styles of questioning** . Walker (1993; 1994) has suggested that the following range of questioning styles can cause problems for children, and therefore should be avoided by interviewers:
 - passive questions (e.g. 'were you chased by him?');
 - negative questions (e.g. 'did you not see him in the park?'); and,
 - questions containing multiple propositions (e.g. 'Did you go to your uncle's house and was he present when you took a bath?').

Walker suggests that younger children have particular problems in answering 'yes/no' questions accurately and respond better to 'wh-' questions (who, whom, what, where, when?).

- **Vocabulary, particularly in relation to legal and sexual terms.** Major confusions can arise from vocabulary which is not tailored to the age of the child. Simply asking the child whether a term is understood is insufficient as the child may use the term in a limited or idiosyncratic way. For example, the word 'jury' may mean 'something you wear around your neck' to a younger child (Warren and McGough, 1996).
- **Comprehension of adult concepts.** Many concepts which are taken for granted in adult conversation are only acquired gradually in childhood. Therefore, the introduction of these concepts may generate a misleading response and a subsequent loss of credibility in other aspects of the child's statement. Difficult concepts include:
 - date and time;
 - duration;
 - frequency;
 - measurement; and,
 - location.

The concept of time is only slowly mastered: the ability to tell the time is normally learned around six to seven years of age, while understanding the day of the week and the seasons is generally acquired around eight years. However, this does not automatically bestow accuracy in either locating events in time or estimating their

duration (Saywitz et al., 1993a). Children below eight years will have difficulty in answering accurately whether a given event in the past occurred before or after another or in estimating its duration (Saywitz, 1995). Saywitz et al. (1991) have demonstrated, however, that reference to events in the child's own life, such as television programmes, can provide an accurate indirect measure.

Similarly, the ability to count is essential, but does not in itself guarantee accuracy in estimating the frequency of an event. The more concrete terms used to frame the question, the greater the likelihood of an accurate response (Saywitz et al., 1993a). Accurate estimates of height, weight and age are notoriously difficult, even for adults, and children have particular problems with such measures. The use of relative judgements (e.g. '*was he shorter/taller than me?*') provides more realistic estimates (Saywitz and Elliott, in press). Location is another area of difficulty: young children do not understand terms like 'behind', 'in front of', 'beneath' and 'above' (Wilson, 1995). However, statements regarding what can be expected of children of a given age must bear in mind that individual witnesses may perform above or below the level of their age group.

Deception

Three sources of information are available to interviewers as cues to deception:

Non-verbal behaviour and speech disturbances

Considerable research has been devoted to the use of non-verbal and speech cues in detecting deception in adults (Memon et al., 1998). The research concludes that:

- some cues do vary between deceptive and truthful statements;
- no single cue is uniquely associated with deception;
- cues linked to stress can be confused with those linked to lying; and,
- the public and professionals involved in child protection have an uncertain grasp of what the useful cues are.

Statement content

The analysis of statement content was a technique pioneered as an alternative to detecting truthfulness from children's demeanour (Bradford, 1994). Criteria-Based Content Analysis (CBCA) specifies 19 criteria, whose presence in a witness account is believed to characterise truthfulness (Raskin and Esplin, 1991). Comparisons of the content of interviews from children making well-founded and suspect allegations of abuse have suggested that at least some of the criteria have validity, though the differences are often small (Lamb et al., 1997). There are, however, continuing concerns over the reliability of scoring some criteria

(Horowitz et al., in press) and indications that considerable expertise is required to use the system effectively (Yuille, personal communication). CBCA may also be unsuitable for children who provide limited narratives, because of stress, depression or limited language development (Bekerian and Dennett, 1992).

Research reviewed in this section has highlighted the need for training and practice to emphasise:

- the value of free recall in interviews, and the need to minimise the number of closed and leading questions put to children;
- that interviewers should be aware of the dangers of children going along with implications of suggestive questioning in interviews, and the circumstances which can give rise to this;
- that the language used in interviews should be appropriate to age of the child;
- the provision of concrete examples to assist the child in understanding some concepts, e.g. dates, times and locations; and,
- although non-verbal cues and analysis of statement content can be used to detect deception, concerns currently exist over the reliability of these in practice.

3. Planning the interview

When planning an interview, a range of issues, other than those purely concerned with the interview, need to be taken into account. This will maximise the chances of the interview being successful. This section discusses the following:

- differences in childrens' disclosure of abuse;
- issues to consider when preparing the child for the interview;
- relevant characteristics of the child and family background; and,
- the influence of the interviewer on testimony.

Differences in childrens' disclosure of abuse

Reviews of the *Memorandum* have argued that the existing guidance does not sufficiently describe the conditions, situations and children for whom *Memorandum* interviewing should be used. The videotaping of every investigative interview with a child is neither resource -sustainable nor desirable, and local practices mean that the number of video interviews vary widely. This important area is under-researched, but preliminary findings have confirmed what most practitioners already know: the process of disclosure among children is frequently complex and idiosyncratic.

When planning an interview, police officers and social workers should pay attention to the findings of research that has shown that abused children are very different in the way they disclose. This is important in order to ensure that interviewers tailor their approach to the individual child in question. For example,

- disclosure can be 'accidental' (and non-verbal, e.g. through behaviour) or deliberate (and verbal);
- children, especially young children, are not always the instigators of an allegation or investigation (there may be a medical query, witness reports, or a confession);
- children may not report all details of their abuse at once, and may deliberately withhold or minimise the information they provide;
- children may report their abuse immediately or delay reporting for long periods of time (i.e. years);
- a number of children will deny abuse or later retract their disclosure, even if other evidence exists;
- the presence of a previous informal disclosure does not guarantee a formal disclosure in an investigative interview, but there may be a relationship between prior disclosure or non-disclosure and disclosure/non-disclosure in the investigative interview;
- many factors including age and culture may influence childrens' willingness or ability to disclose abuse; and,
- even if children tell, they may not anticipate professional intervention.

Research has shown that younger children are more likely to make ‘accidental disclosures’ (i.e. are less likely to have initiated the interview themselves) or to have an unclear ‘abuse status’ (e.g. Elliott and Briere, 1994). Some children may also consider the consequences of disclosure for themselves, for loved ones, and for the perpetrator, and may restrict the amount of information they give. This indicates that older children in particular should be prepared for the interview and informed about possible outcomes.

Preparing the child for the interview

If it is not possible to predict exactly how a child will respond in an interview, then certain steps may help to create a context in which a child is more likely to offer an account. The interviewer has an important role, both within the interview itself, and in preparing the child beforehand. To date, the preparation of child witnesses has largely been conceived as preparation for *court* (see section 5). However, research with children and young people who have been involved in child protection investigations has consistently highlighted the need for earlier consideration of the child’s position, and specifically, preparation for the investigative interview (and/or medical examination - Berson et al., 1993).

Childrens’ main concerns include:

- the speed with which an investigation is pursued. Children feel that they have insufficient time to understand what is happening, or to consider whether they are ready to disclose;
- the lack of information about what is happening and the likely outcome of the interview; and,
- the lack of choice about when and where the interview takes place, who accompanies them, and, for some children, the gender of the interviewer.

These issues can be addressed as part of the planning process. As far as possible, children should be prepared for, and involved in decisions about, what will happen in the interview and beyond.

Characteristics of the child and family

In planning the interview, a number of factors need to be considered:

Child age

Practitioners have highlighted the difficulties they face in interviewing very young children within the constraints of the *Memorandum*. These go beyond the types of questions asked and language used. For example, younger children may benefit from using techniques such as drawings, puppets, and dolls. There may, however, be problems with the use of such techniques (see section 4).

Research has not really addressed implications stemming from the age of the child (Poole and Lindsay, 1998). However, studies have highlighted that older children and young people are far from passive participants in interviews (Sas et al., 1995; Wade and Westcott, 1997; Westcott and Davies, 1996b).

Child's state of mind

The child's state of mind in the interview may be influenced by a variety of factors. Many of these, including the impact of the actual abuse, will be beyond the control of the interviewer. Although no simple 'syndrome' can account for the effects of sexual or physical abuse (Elliott and Briere, 1994; Kendall-Tackett et al., 1993) and no single symptom is diagnostic of abuse, some symptoms appear more frequently in abused children. These are listed below.

Physical abuse

- negative social behaviour, e.g. increased aggression, non-compliance, conduct disorder, criminal activity;
- possible self-injury and suicidal behaviour;
- increased emotional problems, e.g. anxiety, depression, low self-worth; and,
- lower intellectual functioning and academic achievement.

Sexual abuse

- fears;
- post-traumatic stress disorder;
- behaviour problems;
- sexualized behaviours; and,
- poor self-esteem.

Clearly, diagnosis of some of these symptoms (e.g. post-traumatic stress disorder) is a matter for the relevant professionals, but interviewers need to be sensitive to the symptoms and their implications for the way children may behave at interview. They may also affect perceptions of the child – e.g. in relation to the child's role in the abuse, or their credibility. However, some factors can moderate or exacerbate these effects, such as those relating to the characteristics of the abuse and the child's age. The presence of maternal support throughout the whole process appears to be particularly important for children's well-being where the mother was not involved in, or not party to the abuse (e.g. Elliott and Briere, 1994; Goodman et al., 1992).

Another influence on the child's state of mind at interview is likely to be the degree of stress experienced. Research has concentrated largely on the effects of the

stressful nature of the abuse itself (e.g. Goodman et al., 1991). However, some studies have looked at the influence of a stressful environment on the child's ability to recall or describe an event (e.g. Peters, 1991), or on their willingness to disclose. Yamamoto et al. (1996) found that being suspected of lying was rated by school children internationally as a very stressful event and many abused children have reported that their fear of not being believed discouraged them from disclosing (e.g. Wade and Westcott, 1997). The message for practice, however, is that stress effects are complex (Christianson, 1992). Stress does not automatically negatively affect memory, but being stressed may make it more difficult for children to recall information.

Disability

Many commentators have lamented the inadequate response of the child protection and criminal justice systems to the abuse of physically and learning disabled children (e.g. Marchant and Page, 1993; Westcott and Cross, 1996). Research on children's abilities to describe experiences includes research with children with mild learning disabilities (e.g. Milne and Bull, 1996) and with deaf children (Porter et al., 1995). These studies have shown that disabled children are able to provide accurate and reliable information in response to open and general questions, that differs little in quality or completeness from that of non-disabled children.

Studies have, however, also reported that disabled children were less accurate in response to (increasingly) specific questions than the non-disabled children. Sigelman et al. (1981) found that 'yes-no' questions were particularly problematic for children who had severe learning difficulties. This poses a dilemma for interviewing those disabled children who need to use communication boards. These are systems of communication based on pictures, symbols or words, depending upon the child's ability; the child communicates by pointing to the appropriate symbols, using their hands or eyes in order to communicate with others (Kennedy, 1992; Marchant and Page, 1997). In addition, some boards may fail to include relevant vocabulary, such as the names of body parts (e.g. 'bottom') and potentially abusive activities (e.g. 'hit'; Marchant and Page, 1993, 1997). Practitioners and some researchers (e.g. Porter et al., 1995) have also suggested that the desire to please the interviewer may be greater in children who are disabled.

Race and culture

No research has specifically examined eyewitness accounts of children from different racial or cultural groups, although the finding of no difference in accounts has been incidentally reported in studies using participants from different races (e.g.

Gordon et al., 1994). Phillips (1993) and Gupta (1997) argue that the child's experiences (e.g. of different cultural conventions such as the use of sexual terms in conversation with strangers) may influence the professional response to the abuse of that child. Elliott and Briere (1994) found complex patterns in disclosure rates amongst older black, Hispanic and caucasian American children who had been sexually abused. For example, Hispanic children were more likely to have made partial disclosures, whilst black children were more likely to have never disclosed abuse in cases where outside evidence (e.g. medical or confession) was available (e.g. Nagel et al., 1997). A survey of *Memorandum* training (Westcott and Davies, 1996a) found that trainers judged anti-discriminatory practice to be one of weakest components of *Memorandum* training, and that consideration of race and cultural issues was particularly poor.

The influence of the interviewer

Studies in the social work domain have reported childrens' and carers' evaluations of interviewers (see reviews by McGee and Westcott, 1996; Wade and Westcott, 1997). More recent research has also explored other aspects of interviewer influence (e.g. parents-as-interviewers; Ricci et al., 1996). One experiment claimed that the most accurate and complete accounts of a staged event were elicited by an interviewer who adopted a more formal or 'business-like' style (Hutcheson et al., 1996). However, factors such as age, type of offence and readiness to disclose might mediate any interviewer effects. Research findings suggest the following implications for the training of interviewers (e.g. Memon et al., 1996; Moston and Engleberg, 1992):

- the child witness desires social support from the interviewer. This includes open body posture, eye contact, smiles, friendly and welcoming demeanour, and has been shown to have a positive effect on children's testimony, particularly in increasing resistance to leading questions. However, care should be taken not to selectively reinforce statements which hint at abuse;
- by contrast, intimidating or non-supportive interviewers can inhibit children's testimony, or increase susceptibility to misleading questions;
- some children may have definite preferences for interviewers of a particular gender, although interviewer gender has also been found to have little overall impact on the quality of the interview; and,
- even when rigorously trained to follow an interviewing protocol, interviewers do not always apply this training consistently when they interview children.

This section has highlighted that:

- many factors may affect the way in which abuse is disclosed and the time period in which it is disclosed;
- in planning the interview, interviewers should involve children in decisions surrounding the conduct of the interview, e.g. where and when the interview will take place, and whether the interviewer will be male or female;
- a number of factors, including the child's age, state of mind, race and culture, and any impairments they might have, need to be taken into consideration; and,
- interviewers must avoid intimidating the witness and ensure that children are given as much social support as possible.

4. Conducting the *Memorandum* interview

This section considers research on applying the recommendations of the *Memorandum*, as well as innovations in interviewing technique which have occurred since its inception. Some of this research is experimental, but much involves analysis of tapes of *Memorandum* interviews conducted by trained interviewers.

The phased approach

The *Memorandum* calls for interviews to progress through a series of phases:

- rapport;
- free narrative;
- open-ended questions;
- closed but specific questions, and,
- closure.

Rapport

Boggs and Eyberg (1990: 86) define rapport as '*a positive relationship between interviewer and child that sets the tone for the entire assessment process and helps increase both the amount and accuracy of information provided*'. Rapport appears to be present in the majority of *Memorandum* interviews (Davies et al., 1995; Stockdale, 1996). Poorly done, attempts to establish rapport can appear trite and mechanical and some advocate dispensing with rapport altogether when there has been previous contact with the child (Davies et al., 1998). However, the proper use of rapport should permit the interviewer to:

- establish ground rules for the interview and explore the child's understanding of truth and lies;
- help reduce the social distance between interviewer and interviewee;
- estimate the child's level of knowledge and linguistic competence; and,
- establish open-ended questioning as the standard for the interview (Warren et al., 1996).

Ground rules

In order to minimise social suggestibility and prevent children from acceding to the views of the interviewer (see section 2), Warren and McGough (1996: 279) suggest challenging the following assumptions of child interviewees:

- '*every question must be answered even though I don't understand*';
- '*every question has a right or wrong answer*';
- '*the interviewer already knows what happened, so if he or she says something that differs from what I remember, I am wrong*'; and,
- '*I am not allowed to answer "I don't know"*'.

These assumptions are not regularly challenged by interviewers. Studies suggest that the acceptability of 'don't know' as a response is mentioned by less than half of all interviewers (Davies et al., 1995; Stockdale, 1996). However, experiments where interviewers have emphasised that 'don't know' is an acceptable answer have demonstrated substantial improvements in accuracy and completeness of recall (Mulder and Vrij, 1996; Saywitz et al., 1993b). Interviewers need to clarify these points with child witnesses.

Truth and lies

Nursery school-age children have been shown to be capable of identifying examples of true and false statements (Saywitz and Lyon, 1997). However, an understanding of the moral obligation to speak the truth does not normally occur before nine to 10 years (Perner, 1997). Despite this, children are sometimes asked to distinguish between truth and lies, a question which would tax anyone to answer adequately in the abstract (Wood et al., 1996).

As a consequence, the use of appropriate concrete examples is advised. Bekerian and Dennett (1995) point out that saying: '*If I am wearing blue socks and I said I was wearing red socks, would that be the truth or a lie?*' involves inaccuracy, but not necessarily an intent to deceive. They therefore recommend examples such as: '*If I knocked over this glass and broke it, and then I told x that you did it, what would I be doing?*'.

Free narrative

As noted in section 2, free report normally provides the most accurate information from witnesses, but this can be incomplete, especially in younger children. Examination of a sample of *Memorandum* interviews suggested that 28% lacked any free narrative phase (Davies et al., 1995). Securing free narrative is not always easy, but given its value, both in shifting control to the child and as evidence, every effort should be made to obtain it. Procedures which are likely to achieve this include:

- setting appropriate ground rules (such as asking children to give as much detail as they can); and,
- teaching interviewers restraint before interrupting.

Questioning styles

Research comparing questions in investigative interviews has found that, compared to closed questions, open questions (e.g. '*what did the man look like?/what happened after mummy went shopping?*'):

- elicit longer and more detailed answers (e.g. Lamb et al., 1996a);
- produce more accurate information, particularly in younger children (Hutcheson et al., 1996);
- can be repeated without impairing the accuracy of the answers (e.g. Memon and Vartoukian, 1996); and,
- are less likely to elicit ambiguous, non-verbal responses (Hunt et al., 1995).

However, despite the emphasis in the *Memorandum* on the value of open questions, reviews of actual interviews conducted by police officers have found:

- premature use of closed questions (Stockdale, 1996);
- over-use of specific but non-leading questions, with open-ended questions limited to one per interview (Westcott et al., 1998); and,
- only 30% of interviewers beginning with an open-ended question following the free narrative phase (Davies et al., 1995).

It is recognised that many children will not spontaneously disclose information about sensitive issues without the use of direct prompts (Saywitz et al., 1991). This problem is particularly marked when abusers swear children to secrecy or threaten them (Davies and Wilson, 1996). Even when the child is ready to tell their story, specific questions may be necessary to elicit evidential detail, particularly from younger children (Goodman and Schaaf, 1997). In addition, young children may be unskilled in retrieving specific information from memory on the basis of general queries: information about a suspect's appearance may not be readily accessed via a general request (e.g. 'What *clothing* was he wearing?'), but can be retrieved via a more specific prompt (e.g. 'Do you remember anything about his *trousers*?') (Hutcheson et al., 1996; Saywitz and Goodman, 1993). However, specific prompts always need to be followed up by a further general question in order to return control of the dialogue to the child (Lamb et al., 1998). An example might be '*where was your sister when all this was happening?*' followed by '*what else can you tell me about that visit from your Uncle?*'.

Inappropriate questioning techniques

An analysis of transcripts of American investigative interviews (Hunt et al., 1995) has highlighted some questioning techniques which cause particular difficulties for children:

- **forced choice questions** (e.g. '*did he have his hands inside or outside your clothes?*'); 74% of children respond simply with one or other choice rather than providing their own answer;
- **multi-part questions** (e.g. '*did he ask you to go upstairs with him and did you*

then go in the bedroom?’); when two or more questions were embedded in a single enquiry, 71% of responses did not address all the issues raised; and,

- ‘can you...’ (e.g. ‘can you tell me about that?’) questions; questions beginning in this way were more likely to be misunderstood or yield ‘yes/no’ answers.

As noted previously, the younger the child, the larger the negative impact of these procedures. Another serious problem arises from modifications, as when the interviewer inappropriately rephrases what the child has said (e.g. Roberts and Lamb, 1999). Walker and Hunt (1998) found 74% of a sample of US interview protocols contained such errors and less than 30% were corrected by the children concerned. There is a danger that if children are not given the opportunity to correct interviewer errors, they may inadvertently incorporate them into their own narrative.

Closure

The closure stage of the interview should attempt to leave the child in a positive state of mind. According to Cheung (1997), it provides the opportunity for the interviewer to:

- summarise what the child has said;
- answer any questions from the child;
- thank the child for their time and effort;
- provide a contact name and telephone number; and,
- report the end-time of the interview.

Samples of taped interviews suggest that such comprehensive closure is not usually achieved. Closure is often brief to the point of abruptness and key elements are omitted (Davies et al., 1995). In one study of 50 videotaped interviews, 24% of interviewers failed to check important points with the child (Stockdale, 1996).

Duration, pace and number of interviews

An initial survey of *Memorandum* interviews suggested that the majority lasted less than one hour (Davies et al., 1995) and subsequent research suggests that most interviews are under this length (Westcott et al., 1998). There is concern among police interviewers that the one hour recommendation is treated as a rule by the courts, and that officers are not always permitted to defend and explain exceptions (Davies et al., 1998). The idea that interviews should never last more than one hour may explain complaints about the pace of some interviews: children in 43% of the interviews observed by Davies et al. (1995) were judged to have been rushed into the questioning phase.

Although the *Memorandum* allows for multiple interviews, in practice this provision is rarely exercised (Westcott et al., 1998). In some circumstances, multiple interviewing can be a source of suggestive responding, particularly by young children. However experimental research suggests multiple interviews in themselves do not necessarily distort or invalidate an account, provided open-ended questions are consistently employed (Poole and White, 1993). A second interview may contain material not present in the first or omit previously recalled material, but this inconsistency need not imply unreliability (Memon et al., 1997). This variation is likely to reflect the natural processes associated with retrieval from memory, as there are always more facts available in the memory than we are able to retrieve on any one occasion (Fisher and Cutler, 1995). In the case of child victims of sexual abuse, this additional material may reflect the greater readiness of the child to disclose personal events to an interviewer as rapport develops (Vizard, 1991). It is important to distinguish between multiple interviews which are properly planned and sensitively conducted and repeated interviews, driven by adult priorities and assumptions, rather than the needs of the child. This latter form of repeat interviewing can lead to distorted testimony and have harmful effects upon the child (see section 5, below).

Assisting child witnesses in the interview

The use of dolls and other props

Children may benefit from access to physical cues to facilitate recall and enactment of events. Younger children in particular might be expected to benefit from such cues given their limited ability to search spontaneously their memories and construct a free narrative account (Pipe et al., 1993). However, it has been argued that the presence of props associated with the alleged offence (e.g. clothing, objects) could either be distracting for the child or encourage a fantasy-based account (Ceci and Bruck, 1993). Considerable research has been conducted on stimulus support in recent years, covering:

Drawings, props and toys: Encouraging a child to draw is often used as a preliminary task to settle the child before the formal interview (Jones, 1992). However, drawing can also be used to assist the child in retrieving information about key events (Burgess and Hartman, 1993). In one experiment, drawing the event helped the verbal recall of five to six year olds but not pre-school children (Butler et al., 1995). Props and toy replicas linked to an incident can also help recall. Experimental studies have demonstrated that:

- physical props are more effective than verbal prompts with children (Wilson and Pipe, 1989);

- this effect is most marked in children below eight years (Pipe et al., 1993);
- the presence of non-relevant props does not increase errors (Ascherman et al., 1997; Pipe and Wilson, 1994); but,
- the use of toys may prompt errors among three to four year old children who do not fully understand the role of symbols (DeLoache, 1990; Salmon et al., 1995).

These encouraging findings from experiments need to be complemented by field studies which explore the use of props and cues in actual investigations (see Hershkowitz et al., 1998).

Anatomically detailed dolls: The use of anatomically detailed dolls in child abuse investigations continues to excite controversy (Ceci and Bruck, 1993; Koocher et al., 1995). There are concerns that they may be suggestive to children leading to false allegations (Bruck et al., 1995) and caution is reflected in current *Memorandum* guidance. Despite their widespread use in clinical interviewing (Levy et al., 1995), there is no agreed design for such dolls (Simkins and Renier, 1996), nor are there accepted protocols as to how they should be used in an investigative interview (Koocher et al., 1995). Part of the difficulty lies in the different ways dolls can be used in interviews. Everson and Boat (1997) list a variety of uses including:

- a conversation starter;
- an anatomical model;
- a demonstration aid;
- a memory aid; and,
- a diagnostic tool.

Detailed research is required on these functions before emphatic recommendations can be made regarding their use in routine interviewing. A recent survey of experiments on the use of dolls by children concluded that older children showed some benefit from the presence of dolls in providing descriptions relating to the touching of private parts, but that they encouraged false reports when combined with suggestive techniques such as leading questions (Everson and Boat, 1997). Doll play in itself cannot be used as a diagnostic tool; while some kinds of play appear more frequent among abused than non-abused children, there is no single interaction with the dolls which is unique to abused children (Koocher et al., 1995). The use of dolls as a communication aid has enjoyed widespread support among clinicians who interview abused children (American Psychological Association, 1991; American Professional Society on the Abuse of Children, 1995). However, from the point of view of the courts, it is important that when the

child appears to demonstrate abuse with the aid of dolls, the interviewer follows this up with verbal questioning to clarify what the child wished to convey (Bull, 1995; Lamb et al., 1996b).

Alternative questioning techniques

Research has continued on interviewing techniques for child witnesses of abuse.

The Cognitive Interview

The Cognitive Interview (CI) was originally developed for use with adult witnesses and has been shown to increase levels of recall relative to traditional interviewing, without a commensurate rise in error (Kohnken et al., 1999). It consists of a package of mnemonic techniques designed to assist witnesses in searching their memory more exhaustively through multiple attempts at recall within a single session (see Memon, 1998, for a recent review). CI has been adapted for use with children, though its use is not advised with those under seven (Memon et al., 1993).

Experimental research has demonstrated positive effects of this form of interview with school-age children (McAuley and Fisher, 1995; Saywitz et al., 1992), and has shown an increased resistance to leading questions (Memon et al., 1996). It has also been adapted successfully for use with children with mild learning difficulties (Milne and Bull, 1996). There are, however, no field studies published on its effectiveness with child witnesses, and the courts have yet to rule on the legal acceptability of such interviews. Prosecutors may have concerns that repeated requests to recall the same events will highlight inconsistencies in the child's account or violate the 'one hour' guideline on interview duration.

Semi-scripted interviews

Although research suggests that the most accurate testimony arises from the use of open-ended questions, interviewers seem reluctant to use them. Lamb and Sternberg in America attempted to train interviewers in the use of open-ended prompts, but found that this had little impact on interview style. They therefore proposed the idea of a semi-scripted interview: a series of verbal formulae that interviewers would be required to learn and apply consistently in interviews (Lamb et al., 1998). Thus, interviewers are taught open questioning with an initial invitation such as: *'I gather that something may have happened to you recently which has upset you. Please tell me about that'*. They suggest that even a brief answer can be elaborated upon by seizing on a salient feature of what the child has said and offering a further standard prompt: *'Earlier, you mentioned something about a car. Can you tell me everything about that?'* Interviewers are taught to feign confusion as a

strategy (e.g. 'Gosh, I'm confused; you tell me that Grandpa was in your bed. Tell me how that happened').

Field studies in Israel suggest that interviewers trained in the use of semi-scripted interviews increased the amount of free narrative elicited from children by a factor of three compared to their previous methods (Lamb et al., 1997). However, although the semi-scripted interview appears a promising technique, it may need to counter the possible criticisms that it is too inflexible and affords too little initiative to the interviewer. Research is also required to demonstrate that the additional information elicited is accurate and of forensic significance.

SAGE

SAGE (Systematic Approach to Gathering Evidence) is an approach to interviewing designed for the child who is suspected to have been abused, but who will not talk about it. It involves a series of wide-ranging interviews, each lasting approximately 30 minutes, about significant persons and places in the child's world and their feelings and thoughts about them. Systematic comparisons of the child's responses in these interviews should enable the trained interviewer to identify areas of particular concern (Roberts and Glasgow, 1993). SAGE has proved a useful clinical procedure worthy of further research, but its requirement for repeated interviewing conflicts with existing *Memorandum* recommendations.

This section has reviewed research and practice in conducting *Memorandum* interviews. In doing so, it highlights the need to:

- incorporate as much free-narrative and open-ended questioning as possible into interviews; and,
- avoid inappropriate questioning techniques, such as forced-choice questions, multi-part questions and 'can you' questions.

The section has also discussed the need for the *Memorandum* to provide further guidance on:

- tests of truth and lies;
- the duration, pace and number of interviews;
- the use of drawings, props, toys and anatomically detailed dolls; and,
- specialised interviewing techniques.

5. Appearance at court

Although the *Memorandum* is only concerned with the investigative interview, it is important to see the interview as part of a process which culminates, for some children at least, in an appearance at court. Commentators have contrasted (unfavourably) the way children are interviewed, or treated, at court with what is permitted at earlier stages of the investigative process (e.g. Butler, 1997; Kranat and Westcott, 1994). The court appearance itself may be a new, potentially traumatic experience for the child, rather than the satisfactory closure of the investigation (Westcott and Page, 1998). In this section we consider:

- the long-term effects of court appearance; and,
- preparation of child witnesses for court.

Long-term effects of court appearance

A small number of researchers (e.g. Oates et al., 1995) have attempted to track child victims of sexual abuse through the criminal justice system, and to evaluate the effect of court appearances on them. Methodological difficulties in such research are profound (e.g. sample size and bias, isolating effects of different factors), and research findings have not been straightforward. However, studies suggest that:

- repeated interviews during investigation and pre-trial are detrimental to children's well-being;
- testifying more than once has negative effects on children;
- lengthy and harsh cross-examination is harmful;
- support of the child's mother, or a professional such as a guardian *ad litem*, promotes their well-being;
- case resolution (and the passage of time) promotes recovery from the court experience, regardless of outcome; and,
- testifying in court for some children *who desire it*, can have beneficial effects.

Many researchers have emphasised children's fears about testifying, especially their fear of seeing the defendant, and also the need for adequate preparation of both the child and the lawyers and judges involved in child witness cases. However, overall, it appears that most negative effects eventually dissipate over the long-term. They do, however, persist for a minority of children, depending on factors such as those above, as well as on the child's age and severity of abuse.

Preparation of child witnesses for court

Practice perspectives on preparation

The accumulating literature suggests agreement that preparation is a positive and essential provision for child witnesses (e.g. Aldridge and Freshwater, 1993;

Plotnikoff and Woolfson, 1995b; 1996). However, there is also agreement that provision in the UK is currently fragmented, under-resourced and not available to as many as one third of child witnesses (Chandler and Lait, 1996; Davies et al., 1995). There is also the need to challenge assertions (frequently made by defence counsel) that preparation constitutes coaching. The CPS *Guidance on Good Practice on Pre-trial Therapy for Child Witnesses* (1999) believes, however, that preparation should normally be non-contentious provided there is no attempt to rehearse or discuss the child's evidence.

'*The Child Witness Pack*' was published by the NSPCC/ChildLine in 1993, and has had a significant impact on practice. A revision – '*The Young Witness Pack*' – was launched in 1998 (NSPCC/ChildLine), and includes a new handbook for child witness supporters. Many preparation programmes have been built around *The Child Witness Pack*, or other similar materials, and are primarily aimed at the children themselves. However, information contained within these packs may also be aimed at carers and adults responsible for preparing children. The main components of most preparation programmes include:

- assessment (e.g. of children's needs and anxieties about testifying);
- education (e.g. teaching children about court procedures, legal terminology);
- preparation on the giving of testimony;
- preparation in order to enhance emotional resilience (stress management);
- involving the child's carer(s);
- liaison and practical arrangements regarding the court process (e.g. the use of video-links); and,
- debriefing (Aldridge, 1997).

If all these components are addressed, both the quality of the child's evidence and the child's well-being are believed to be enhanced. However, Murray (1997) and others have identified some outstanding issues which need to be addressed in relation to preparation programmes:

- who should be responsible for resourcing and delivering preparation?
- should children be prepared in groups or individually?
- what are the training needs of adults who prepare children for court?
- what are the most effective components of preparation programmes?
- are there any unintended side-effects of preparation? and,
- how can preparation programmes be tailored to individual needs, e.g. for children who are disabled, as for children who have been subject to different kinds of abuse?

Plotnikoff and Woolfson (1996) evaluated child witness support schemes provided by Victim Support. They drew upon information and interviews from a number of

different sources involved with child witnesses. Again, witness support was evaluated positively, though difficulties imposed by other aspects of the criminal justice process (e.g. delays, professional liaison) sometimes worked against these benefits. Children appearing at magistrates courts, and in non-sexual abuse cases, rarely received the provision. The report recommended training of both supporters and members of the judiciary in related issues, and the development of a model preparation protocol.

Experimental perspectives on preparation

Experiments have been carried out with the aim of:

- enhancing children's memory;
- facilitating communication; and,
- helping witnesses resist suggestion.

A variety of techniques have been used. Saywitz et al. (1993) found that:

- Narrative elaboration was a successful technique for increasing the amount of accurate recall offered by children, by prompting or reminding them of the importance of talking about participants, settings, actions, conversations/ emotional states, and consequences. Children aged six to nine years were trained in the use of five pictorial 'cue cards' relating to these features, and produced over 50% more information, without an increase in inaccurate information. The improvements were maintained when questioned by an unfamiliar authority figure.
- Comprehension-monitoring training was successful in helping six to eight year olds identify questions they did not understand, and ask adult interviewers for rephrasing. In the training, children were warned that they may not understand all questions asked of them, and advised as to why adults ask children difficult questions. Training also demonstrated some of the negative consequences of trying to answer questions which were not fully understood. Children receiving this training gave more accurate testimony than comparison groups not receiving the same intervention.
- Resistance training was also successful in enabling seven year old children to identify and respond appropriately – i.e. to resist – misleading questions put by interviewers. Again, training demonstrated some unanticipated consequences for children who go along with adults' suggestions, as well as teaching children to identify suggestive questions, compare the suggestion to their own memory of the event, and to feel confident in asserting their own response which challenged that of the adult's suggestion.

APPEARANCE AT COURT

- Court education and stress inoculation training was successful in increasing the legal knowledge of children aged eight to 10 years, but the increase in knowledge was not associated with a decrease in measured anxiety or improved memory during mock testimony. Training included role play and repeated practice in three sessions, as children were taught about different steps in the investigative process and trial procedures, and related coping skills such as deep breathing and confidence boosting self-statements.

This section has reviewed the effects of appearing in court, highlighting the need for interviewers to:

- minimise the number of repeated interviews during the investigation and pretrial period;
- recognise that lengthy and harsh cross-examination can have negative effects on children; and,
- ensure that children are prepared adequately for their appearance in court.

6. Review

What are the implications of the research reviewed in this report for policy and practice? The four areas covered were:

- child development;
- planning the interview;
- conduct of *Memorandum* interviews; and,
- pre-court preparation.

Here, the broad conclusions of each of these areas are summarised, pointers for practice are discussed and unanswered questions identified. The section concludes with a brief consideration of the wider policy context in which the research needs to be placed.

Child development

Overview

Children as young as three years of age are capable of recalling events they have experienced accurately and with detail, and competence improves with age. What material is remembered will be limited by children's level of conceptual understanding and their ability to search their memory in a systematic and directed way. However, a greater limitation for children of all ages will be the effectiveness of interviewing techniques and the style and form of questions that the interviewer chooses to employ. Questions which are inappropriately structured or which use concepts or vocabulary beyond the grasp of the child will, at best, bemuse, and at worst lead to replies which are misleading and reduce the child's overall credibility. Very young children (those below the age of six) have been identified as particularly vulnerable to suggestive pressures which can on occasion lead to false accounts. Such pressures include:

- denigration of the accused;
- repeated interviews by interviewers committed to a particular version of events; and,
- exposure to misleading accounts.

Research suggests the impact of these factors reduces with age, but given that they can also influence adults' statements, care is required in assessing the testimony of children exposed to such pressures. No reliable method yet exists of judging the truth or otherwise of childrens' allegations, either from their demeanour at interview or from features of their accounts. It is primarily the interviewer's responsibility to ensure, through appropriate training and awareness of childrens' strengths and vulnerabilities at different ages, that the risks of suggestive responding are minimised.

Implications for practice

The *Memorandum* speaks always of ‘the child’ but the research reviewed on child development suggests that children at different stages of development may require rather different styles of interview. Young children, for instance, will require much more support and encouragement to produce free narrative prior to any specific questions. If the proposals embodied in *Speaking Up for Justice* (Home Office, 1998) are implemented, it is likely that the numbers of children giving evidence in criminal cases will increase. Any revision of the *Memorandum* should have a specific section devoted to the interviewing of very young and particularly vulnerable witnesses. Those conducting these interviews require specialist training, above and beyond what is already provided.

The *Memorandum* includes some general comments on the difficulties of concepts such as time, duration and frequency, but any future edition should incorporate recent findings on the development of these concepts, as well as examples of how questions can be formulated for children of different ages. However, any statement on child age norms needs to be accompanied by a caution that norms cannot be applied rigidly: there will always be children whose intellectual development or emotional state cause them to perform above or below their chronological age. Developmental information about the individual child is crucial to the success of any interview and should be collected at the planning stage, supplemented where necessary by enquiries during the rapport stage of the interview itself.

Unanswered questions

Much of the existing experimental research has involved non-abused children. It is important to know what the impact of sexual and physical abuse is upon the general qualities of the abused child’s memory. It is known that social and emotional factors influence memory (Eysenck, 1992) and there is evidence that some children who have been victims of abuse may go on to suffer memory failings in adulthood (Lindsay and Read, 1994). Research could assist in identifying sub-groups who are particularly resilient or vulnerable to different questioning techniques, as well as tailoring guidance more explicitly toward abused children.

Planning the interview

Overview

The likelihood of interviewers eliciting accurate information from children will be determined not merely by the state of their memory and the phrasing of questions, but also by a range of social, cultural and emotional factors. An investigative interview which does not take these additional factors into account in planning

and preparation is unlikely to be successful. Children may have had threats made against them, may have entered secrecy pacts or have conflicting feelings toward the abuser, all of which can lead them to minimise or limit their accounts of abuse. In some instances, evidence of sexual or physical abuse may have arisen from third parties – siblings, teachers or medical practitioners – and children may need both time and reassurance before being able to disclose what has happened to them in a formal interview. Finally, interviewers need also to be aware of the disruption to emotions and behaviour that can characterise victims of child abuse and be prepared to accommodate this. Above all, interviewers need to generate sufficient warmth and mutual trust to permit frank disclosure of sensitive issues, while at the same time ensuring that questioning is conducted in an evidentially sound manner. Such an interview style requires experience and rigorous training to develop and maintain.

Implications for practice

Interviewers need to collate as much information as possible regarding the child and their family background. This includes considering issues such as the child's age, their state of mind at the time of the interview, their race and culture, and any impairments they might have. Research on the ways in which children may disclose also needs to be considered. A successful interview is also more likely to arise if children are enabled to take informed decisions covering such matters as the gender of the interviewer, and the time and location of the interview. Children also need to know what the consequences of the interview may be, both for themselves and the abuser – frankness from the child requires frankness from the interviewer. Legally acceptable pre-interview protocols need to be developed, covering the purpose of the interview and establishing any particular requirements the child may have.

Unanswered questions

More research is needed on the process by which a child's allegation turns into a *Memorandum* interview and finally into an appearance at court. Outcomes for children who undergo a *Memorandum* interview – and perhaps nothing further – are also in need of investigation. Evidence suggests that the decision-making at each stage can be inconsistent. Explicit criteria advising when an interview should be undertaken should be developed by the Home Office in consultation with interested parties, and included in the *Memorandum*. A further area of concern is the timing of any interview. Evidential considerations may demand an early interview, but this will be counter-productive if the child is not ready to disclose: much more needs to be learned about the optimal timing of interviews, which could assist in the development of pre-interview protocols.

Conducting the *Memorandum* interview

Overview

Interviews conducted under the *Memorandum* generally elicit an account of the child's story and employ styles of questioning which are acceptable to the courts. Research confirms that open-ended questions yield more information, and of greater accuracy, than closed questions. However, those conducting *Memorandum* interviews demonstrate insufficient emphasis on the use of open-ended questioning and free narrative from the child. Open-ended questions do not always precede closed questions and can be too limited in number. The ideal endorsed by the *Memorandum* of a simple progression from open through ever more specific questions is rarely achieved in practice. This is not surprising, given the sensitive nature of the material explored in investigative interviews and the limited narrative powers of younger or anxious children. Evidence gathering often requires recurrent questioning as one incident is explored and then another. This should not be seen as compromising the integrity of an interview as long as questioning on each incident begins with open-ended questions and the initiative remains with the child. Much can be done to encourage free narrative by children through proper use of the rapport phase.

Implications for practice

Given the range of children involved, in terms of age, culture, disability and emotional state, there is a strong case for emphasising the principles underlying sound evidential interviewing, rather than being over-prescriptive about one particular model. This applies in particular to advice on the progression of interview phases and the length of an interview. Given that an ideal progression cannot and will not be achieved in most interviews, any revision of the *Memorandum* should stress:

- the evidential value of responses to open-ended questions;
- the importance of following closed questions with further open-questions; and,
- the importance of giving the initiative for responding to the child.

This should be supplemented by examples of productive and counter-productive questioning techniques of the kind illustrated in section 4. One of the criticisms levelled against the existing *Memorandum* is the lack of sufficient examples, and there is now a fund of useful formulations available. Given its use as a core document for training courses (Davies et al., 1998), an extended range of concrete examples should always supplement general advice. In addition, if the recommended maximum interview length of one hour is to be retained, then the

guidance needs to acknowledge that there will be exceptions. Obvious examples include children with communication difficulties or cases where multiple incidents of abuse are being explored.

The importance of developmental changes in childrens' memory and susceptibility to suggestible questioning have already been emphasised. However, childrens' performance at interview not only reflects the questions they are asked, but also their own perceptions of the interview process. The existing *Memorandum* provides some recognition of these concerns through the inclusion of the rapport and closure stages, but it is evident from research that the function of these phases is insufficiently appreciated in practice. Any revision of the *Memorandum* needs to stress the importance of establishing and addressing children's needs and concerns prior to interview and highlighting the role of appropriate rapport and closure in that process.

The *Memorandum* also recognises that disabled children and those from minority ethnic communities will require special consideration, but goes little further than acknowledging the problem. As the literature makes clear, children with communication or learning impairments have difficulty in accommodating the requirements of the *Memorandum* interview with its emphasis upon free report. These difficulties and the need for flexibility in styles of interviewing such children need to be spelled out explicitly in any new edition, and clear guidance given as to where information and expertise may be found.

In one area, the existing *Memorandum* may be insufficiently prescriptive. When the legislation was introduced, it was envisaged that all children who were witnesses to sexual and physical violence, whether as victims or bystanders, would be eligible for *Memorandum* interviews. As surveys have repeatedly demonstrated, *Memorandum* interviews are conducted overwhelming in sexual abuse cases, much less frequently in physical abuse cases, and rarely in instances where children are witnesses to domestic violence or street crime (CPS Inspectorate, 1998; Wade, 1997). Given the specialised nature of the interviewing procedures required to elicit accurate testimony from children, it should be routine practice for all such interviews to be conducted by *Memorandum* trained officers, and any revision should emphasise its wider application.

Unanswered questions

There appear to be different interviewing styles, even within the confines of the *Memorandum* interview. How the styles differ from each other and what their impact is upon children are unknown and merit further evaluation. Clearly, if

certain styles are particularly facilitative, then these could be emphasised in training. It would also be advantageous to offer specific recommendations on the provision of social support in interviews and on the use of stimulus support (drawings, props, toys and models). Guidance on alternative interviewing techniques would also be useful.

With changes in attitude and legislation, certain sub-groups of children are likely to figure more prominently as interviewees. These include:

- young children (e.g. six years and under);
- disabled children; and,
- children from ethnic communities.

Research into these particular groups of children may be necessary in the future, along with the development of special questioning techniques.

Appearance at court

Overview

Research demonstrates that giving evidence at court is a traumatic experience for most children, though the long-term consequences appear less clear-cut. Research also shows that the effects on the child of court appearance can be ameliorated through careful pre-court preparation. The value of preparation was recognised through official support for *The Child Witness Pack* (1993) and *The Young Witness Pack* (1998). Existing research has identified some categories of child witness who are especially vulnerable – e.g. those whose first language is not English, disabled children, young children, and those who lack parental support – and it is important that these children receive particular attention. In addition to better preparation, much can be done to make giving of evidence a less threatening experience. The provision of live links and the use of videotaped interviews are examples, and the proposals incorporated in the 1999 *Youth Justice and Criminal Evidence Bill* would carry this a stage further.

Implications for practice

Pre-court preparation appears to have benefits for the children involved. However, provision is uneven across court centres and there is a need for national co-ordination and uniform standards. This needs to extend to all levels of court, given that 20% of children involved in abuse cases give their evidence in magistrates' courts which are not normally equipped with video or other special facilities (Home Office, 1998). Some comments on the value and legal acceptability of pre-court preparation should be included in a revised *Memorandum*: the effort of careful interviewing can be wasted if the child is unprepared for examination at court.

Unanswered questions

Preparation covers a multitude of procedures and it is not clear which components are likely to be most helpful; more research is required to examine the value of individual elements of the preparation package. Some techniques, particularly those relating to the searching of memory under stress and teaching resistance to leading or poorly understood questions have produced promising results in the laboratory. Provided that such procedures prove legally acceptable, their impact needs to be explored under courtroom conditions. Other aspects of court appearance require further investigation – such as case outcomes and childrens’ experiences subsequent to the trial, and the role of barristers and judges in influencing childrens’ experiences of testifying.

Concluding comments

Sentiment on the competency of child witnesses has been subject to pendulum swings in recent years. Headlines proclaim that children are either very good witnesses or very dangerous witnesses; children never lie about abuse or they lie easily about it; the law is tipped overwhelmingly in favour of the defendant or it accedes unnecessarily to the whims of the child. The research covered in this review has attempted to go beyond simplistic arguments to look at the implications of research findings. In many areas, however, the necessary research does not exist and there is a need for more systematic studies to address the tangle of social, developmental and motivational factors which determine the accuracy and suggestibility of a given child under questioning. However, enough findings of substance have emerged to underpin a revision of the *Memorandum*.

The main implication of the research outlined here is a move away from a single prescribed questioning style toward a more flexible approach based upon broad principles of interviewing, taking account of childrens’ ages, state and abilities, their social and cultural background and the nature of the allegations. Such an approach requires more planning and individual decision-making by the interviewer, but would enable a wider range of children to qualify for a formal interview. It would also protect interviewers from being legally impaled on what many defence lawyers continue to perceive as ‘the rules’ of the existing *Memorandum*, while still allowing the courts to reject improper interviews. This approach also has implications for training, which again would require greater insight on the part of the trainee and less adherence to formulae. The introduction of a nationally accepted training curriculum is recommended (Davies et al., 1998).

Revision of the *Memorandum* will take place within a context determined by developments in broader policy on investigating child abuse. The Home Office’s

proposals in *Speaking up for Justice* (1998) echo Sir William Utting (Utting et al., 1997) in calling for videotaped cross-examination as well as examination as originally proposed by Pigot (1989), avoiding the need for children to appear in court at all. The 1999 *Youth Justice and Criminal Evidence Act* will incorporate such procedures into law. However, experience in Scotland and Western Australia, where similar legislation already exists, suggests there is a reluctance on the part of court professionals to take full advantage of such facilities, and children continue to be cross-examined in court in the conventional way (see Davis et al., 1999, for an overview of provisions in other jurisdictions). The Department of Health's consultative document on *Working Together* (1998) foresees a more pro-active role for social workers, but contains no suggestion that they withdraw from involvement in *Memorandum* interviewing. There will, however, be increasing concern among some child protection professionals that the social and emotional needs of the child witness highlighted in this report might not be addressed if the drift towards exclusively police-led interviewing continues (Brownlow and Waller, 1997).

No current policy initiative is, however, likely to curtail investigative interviewing, or to end its link to the criminal justice system. This link forms the weakest part of the chain joining the child complainant to the court. For example, as has been noted, there are no explicit national criteria determining when an interview is made, or thresholds which must be exceeded before an interview becomes evidence likely to lead to prosecution. In order to have any impact on policy, a revision of the *Memorandum* needs to be geared to the introduction of nationally agreed decision rules to replace the current variable system.

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