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Achieving Best Evidence in Criminal Proceedings:

Guidance for Vulnerable or Intimidated Witnesses, including Children

Action for Justice

Implementing the *Speaking up for Justice* Report

VOLUME 1:

1. General Principles
2. Planning and conducting interviews with children
3. Planning and conducting interviews with Vulnerable and Intimidated Witnesses

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FOREWORD

The Government is committed to improving the protection during the criminal justice process for vulnerable or intimidated witnesses, including children. This document is issued as part of *'Action for Justice'*, the implementation programme for the *'Speaking Up for Justice'* report. Following the report, the Youth Justice and Criminal Evidence Act 1999 set out a range of special measures to assist vulnerable or intimidated witnesses, including children to give their best evidence in criminal proceedings. This guidance is intended to assist those conducting video-recorded interviews with such witnesses as well as giving guidance to those who are tasked with preparing and supporting such witnesses throughout the criminal justice process.

The 1991 Criminal Justice Act permitted certain child witnesses in cases involving sexual abuse or violence to give their evidence-in-chief in the form of a video-recorded statement. Since then, videotaped interviews, conducted according to the 1992 *'Memorandum of Good Practice'* have become the preferred method of hearing children's evidence in such criminal proceedings. This guidance revises, expands on and replaces the *'Memorandum'* in order to take forward the *'Speaking Up for Justice'* recommendations to extend this provision to vulnerable or intimidated adult witnesses. It describes good practice in preparing for and conducting interviews with vulnerable or intimidated witnesses, both adults and children, to enable them to give their best evidence in criminal proceedings, as well as providing guidance on supporting and preparing the witness for court and information about the trial process itself.

It is our particular hope that the use of this guidance in interviewing vulnerable or intimidated witnesses will help to improve access to justice so that vulnerable and intimidated witnesses are better able to give their best evidence to the court, where previously such access to justice would not have been possible.

Our departments and the Welsh Assembly Government have worked closely on the development of this guidance, with Professor Graham Davies (Leicester University) and his writing team. We have been greatly assisted by the Memorandum Project Steering Group and are grateful for all their contributions to this valuable document.

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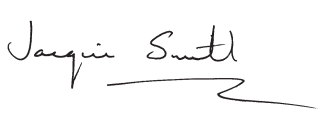

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INTRODUCTION

This Guidance describes good practice in interviewing vulnerable and intimidated witnesses, both adults and children, in order to enable them to give their best evidence in criminal proceedings. It considers preparing and planning for interviews with vulnerable and intimidated witnesses, decisions about whether or not to conduct an interview and decisions about whether the interview should be video recorded or whether it would be more appropriate for a written statement to be taken. It covers the interviewing of such witnesses both for the purposes of making a video-recorded statement and also for taking a written statement, their preparation for court and any subsequent court appearance. It applies to both prosecution and defence witnesses and is intended for all persons involved in relevant investigations including the police, social workers and members of the legal profession. Guidance in respect of the planning, preparation and conduct of interviews conducted for the purposes of taking a written statement can be found in the P.E.A.C.E. model of investigative interviewing advocated by the Association of Chief Police Officers in *The Practical Guide to Investigative Interviewing* (published annually by the National Crime Faculty at Bramshill).

Status of the Guidance

This document replaces the 1992 *Memorandum of Good Practice on Video Recorded Interviews for Child Witnesses for Criminal Proceedings*. The guidance provided in this document is advisory and does not constitute a legally enforceable code of conduct. Each witness is unique and the manner in which they are interviewed must be tailored to their particular needs and circumstances. However, interviewers and other practitioners should bear in mind that significant departures from the guidance provided in this document may have to be justified in the courts.

This introduction provides information on:

- the origins of the Guidance
- the witnesses to whom this Guidance applies
- its role in training
- the structure of the document

1. The origins of the new Guidance

In August 1992 the Government published the *Memorandum of Good Practice on Video Recorded Interviews with Child Witnessesfor Criminal Proceedings* to support the implementation of provisions in the 1991 Criminal Justice Act which permitted certain child witnesses to give their evidence in chief in the form of a video-recorded statement. Since then, videotaped interviews conducted according to the *Memorandum* have became the preferred method of hearing children's evidence in criminal proceedings, particularly in cases involving allegations of sexual abuse. Videotaped interviews conducted according to *Memorandum* guidelines have also frequently been used as evidence in civil proceedings involving the care and custody of children.

In order to take forward the Government's commitment to improve protection for vulnerable or intimidated witnesses, the Home Office in 1998 published *Speaking Up for Justice*, the report of an Interdepartmental Working Group on the treatment of vulnerable or intimidated witnesses, including children in the criminal justice system. The report

recommended extending the existing special measures introduced for child witnesses (live closed circuit television links (CCTV) and video-recorded evidencein-chief) to vulnerable or intimidated adults, together with a range of other measures from the investigation stage, through to the trial and beyond. Provisions to implement those recommendations requiring legislation were included in Part II of the 1999 Youth Justice and Criminal Evidence Act (see Appendix Q). These will be subject to phased implementation and will not all be available immediately. The implications of the new Act for children and for vulnerable and intimidated adults is described in Chapter 1 and again in detail at appropriate points in this document.

Speaking Up for Justice recommended the development of various sets of guidance, including the equivalent of the *Memorandum* for adult witnesses. It was subsequently decided to revise and expand the 1992 *Memorandum* so that it incorporated guidance on interviewing vulnerable or intimidated adults as well as children. In addition, a decision was made to include guidance on the pre-trial treatment of witnesses and their appearance at court, so as to reflect the commitment of all parties within the criminal justice system to ensuring that all witnesses may give their best evidence.

Context
This Guidance must be viewed in the context of other Government policies in relation to the protection of children and vulnerable adults and to tackling racism and violence against women. Relevant publications are listed in Appendix Q.

Development of the new document
The guidance has been written by a team of consultants, commissioned by the Home Office, comprising experts from a variety of relevant disciplines (see Acknowledgements) and guided by an Inter-Departmental Steering Group led by the Home Office. The document draws upon practical experience and relevant recent research. It has been developed with the assistance of a series of practitioner focus groups held in different parts of the country, a reference group of experts, a Home Office consultative conference and a public consultation exercise. All those consulted produced a range of suggestions for amendments and additions and many of these were incorporated into this final published version.

2. The Scope of the Guidance

Child witnesses
The new guidance covers all children under the age of seventeen years who may be witnesses to any type of crime – both as victims or witnesses to crimes perpetrated on others. It acknowledges that the term 'children' covers a range of ages and stages of development and that advice appropriate for a seven year-old may not necessarily be appropriate for a young person of sixteen. This is signalled in the text by a qualifier.

Where there is a reference to 'very young children', the advice refers to children of nursery school age (i.e. up to 5 years of age). Where there is reference to 'young children', this refers to children of primary school age (i.e. up to 11 years of age), while 'older children' denotes those of secondary school age (i.e. over 11 years of age). The unqualified term 'child', 'children' or 'young witnesses' refers generally to children of all ages up to the upper age limit defined in the 1999 Act (i.e. below 17 years of age). This guidance applies to the broad range of children in these age groups and as such will not necessarily apply to an individual child witness. *Interviewers and court officials should always take account of*

the level of cognitive, social and emotional development of the individual child when applying this general guidance.

Vulnerable or intimidated adults

Not all adults with disabilities will necessarily be vulnerable as witnesses and would not wish to be treated as such. This is recognised in the definitions and criteria contained in the Youth Justice and Criminal Evidence Act 1999. Those adults who are eligible for consideration for Special Measures fall into two groups, defined in sections 16 and 17 of the 1999 Act. The first group comprises those who have a disability or illness that the court considers is likely to affect the quality of their evidence. The second group consists of those who because of age, personal circumstance and the nature of the alleged offence, may also qualify for Special Measures if the court is satisfied that the quality of their evidence is likely to be diminished by reason of their fear or distress. A witness may fall into more than one category, including being both vulnerable and intimidated and it will be possible to make applications and for the courts to grant Special Measures on more than one ground.

In reaching a decision on whether the Special Measures should be invoked, the courts must take account of the wishes of the individual witness. It is imperative therefore that investigators establish at an early stage whether the adult witness is likely to qualify for a Special Measures direction under the 1999 Act and if so, what particular Measures, if any, will assist the witness to maximise the quality of their evidence. This will need to be discussed with the witness to ascertain their views. It is essential that the police, social agencies, the prosecution and defence and also court officials take account of the individual circumstances of each witness, together with their expressed needs and wishes, in order to provide support sufficient to enable all witnesses to give their best evidence.

Witness support

Speaking Up for Justice emphasised the value of social support for vulnerable witnesses at all stages of the investigation and trial. The new Guidance identifies three types of support, depending on whether support is offered at the interview, prior to trial or during the trial itself. It is unlikely that the same person will be able to perform all three roles (see Chapter 1, paragraph 1.9).

Defence witnesses

This Guidance applies to defence as well as prosecution witnesses and the Special Measures are also available to both groups if the court is satisfied that the witness meets the criteria.

3. The Guidance and training

As was the case with the 1992 *Memorandum*, it is recommended that this Guidance be used, in conjunction with other relevant guidance, as a key resource in the training of police and social workers involved in the investigative interviewing of children and vulnerable or intimidated adult witnesses. It should also be used as a resource by those concerned with providing pre-trial support and preparation and those involved in the trial process.

Training programmes will need to be developed to deliver and maintain skills and the content regularly reviewed in the light of practice developments and evolving legislation. Many of the provisions will require co-operation between agencies on a professional and personal level and may include furtherance of joint training initiatives which are a feature of existing child protection work.

4. The content of the Guidance

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

Chapter 1 provides a ***general introduction*** to the 1999 legislation as it relates to interviewing, safeguarding and supporting witnesses. Sufficient background material is provided to give a general orientation to all those who must be familiar with the intentions and provisions of the Act but are not necessarily concerned with its practical implementation.

Chapter 2 gives advice and guidance on how to prepare for (Part A) and how to conduct (Part B) investigative interviews with ***children***. It covers the legal knowledge necessary to carry out such interviews in a manner satisfactory to the courts, the requirements for the video recording of such interviews and advice on their conduct, including the style, variety and pace of questioning. This chapter will be particularly useful to child protection professionals and all those concerned with the evidence of children.

Chapter 3 contains advice and guidance on how to prepare for (Part A) and how to conduct (Part B) investigative interviews with ***vulnerable and/or intimidated adults***. Again, the legal position as regard these witnesses is outlined, and advice given on how witnesses may be most effectively interviewed to obtain best evidence. Special guidance is provided on interviewing witnesses with sensory impairments, learning disabilities and mental ill health. This chapter will be particularly relevant to investigators who are tasked to deal with vulnerable or intimidated witnesses and all those concerned with their evidence.

Chapter 4 describes how ***witnesses of all ages may be supported***, safeguarded and prepared in the interval between a statement being made and a case coming to trial. Topics covered include the nature and type of support that may be offered, access to therapy and the Witness Service and appropriate procedures to be followed once the outcome of a case is known. This chapter will be particularly useful to all persons who have an interest in preparing and supporting children and vulnerable or intimidated adults for court hearings.

Chapter 5 describes in detail the range of ***Special Measure***s available to vulnerable and/or intimidated witnesses, including children at the discretion of the court. It describes good practice in the examination and cross-examination of witnesses, so as to enable them to give their best evidence. This chapter will be of interest to all professionals who are involved in the support of witnesses and the reception of their evidence at court.

1 GENERAL PRINCIPLES

Aims

By the end of this chapter, those involved with interviewing vulnerable or intimidated adult and **child witnesses** and preparing them for court should be able to understand:

- The categories of vulnerable and intimidated **witness** covered by the 1999 legislation.
- The **Special Measures** available to assist such witnesses.
- The social support available for such witnesses during the investigation, pre-trial and **trial** process.

CATEGORIES OF VULNERABLE WITNESSES

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

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

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

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

- witnesses suffering from a mental disorder as detailed under the Mental Health Act, 1983 [16.(2)(a)(1)]. (Mental disorder is defined in Section 1 (2) of the Mental Health Act 1983).
- witnesses significantly impaired in relation to intelligence and social functioning [16.(2)(a)(ii)]. (*Learning disabled witnesses*)
- physically disabled witnesses [16.(2)(b)].
- witnesses suffering from fear or distress in relation to testifying in the case [I7(1)]. (*Intimidated witnesses*)

1.4 Early identification of the individual abilities as well as disabilities of each vulnerable adult is important in order to guide subsequent planning. An exclusive emphasis upon disability ignores the strengths and positive abilities which a vulnerable individual possesses. Vulnerable witnesses may have had social experiences which may have implications for the investigation and any subsequent court proceedings. For example, if the vulnerable adult has been institutionalised they may have learned to be compliant or acquiescent. However, such characteristics are not universal and can be ameliorated through appropriate preparation and the use of Special Measures.

Intimidated witnesses

1.5 Research suggests that sexual offences, assaults, and those offences where the victim knew the offender are particularly likely to lead to intimidation of witnesses. It seems likely that crimes which involved repeated victimisation such as stalking and racial harassment are also particularly likely to lead to intimidation. In addition, some witnesses to other crimes may be under fear and distress and may require safeguarding and support in order to give their best evidence. While the legislation distinguishes between vulnerable and intimidated witnesses, in respect of the criteria for their eligibility for Special Measures, it is important to recognise that:

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

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

Special Measures

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

1.7 Stress affects the quantity and quality of the communication of vulnerable witnesses of all ages. The 1999 Youth Justice and Criminal Evidence Act has introduced a range of measures which can be used to facilitate the gathering and giving of evidence by vulnerable and intimidated witnesses. It extends the existing provision for the videotaping of **evidence in chief** and the use of the Live Link facility to adult vulnerable or intimidated witnesses and introduces a range of new provisions (termed 'Special Measures') to facilitate the giving of best evidence. These are all subject to the discretion of the court, although different presumptions apply to different categories of witness.

1.8 These Special Measures are briefly outlined in Box 1.1 below and described in detail in Chapter 5.

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

Section 23: *Screens may* be made available to shield the witness from the defendant.

Section 24: *The live link* will enable the witness to give evidence during the **trial** from outside the court through a televised link to the courtroom. The witness may be either accommodated within the court building or in a suitable location outside the court.

Section 25: *Evidence given in private*. Exclusion from the Court of members of the public and the press (except for one named person to represent the press) will be considered in cases involving sexual offences or intimidation.

Section 26: *Removal of wigs and gown*s by judges and barristers.

Section 27: *A video recorded interview* with the vulnerable witness before the trial may be admitted by the court as the witness' evidence in chief The court can, however, exclude a recording if there is insufficient information about where it was made, or if the recording contains serious violations of the rules of evidence.

Section 28: *Video recorded cross-examination* is also to be considered admissible if the witness has already been permitted to give their evidence in chief on video prior to the court case. As with evidence-in-chief, the recording can be excluded if any rules have not been complied with.

Section 29: *Examination of the witness through an* ***Intermediary***, who may be appointed by the court to assist the witness to give their evidence at court. This measure is available only to witnesses who are eligible for Special Measures on grounds of age or incapacity.

Section 30: *Aids to communication* will be permitted to enable the witness to give best evidence whether through a communicator or interpreter, or through a communication aid or technique, provided that the communication can be independently verified and understood by the court. Again, this measure is only available to witnesses who are eligible for Special Measures on grounds of age or incapacity.

Sections 34 and 35: *Mandatory protection of witness from cross-examination by the accused in person*. An exception has been created which prohibits the unrepresented defendant from cross-examining vulnerable child and adult victims in certain classes of cases involving sexual offences.

Section 36: *Discretionary protection of witness from cross-examination by the accused in person*. In other types of offence, the court has discretion to prohibit an unrepresented defendant from cross-examining the victim in person.

Section 41: *Restrictions on evidence and questions about complainant's sexual behaviour*. The Act restricts the circumstances in which the defence can bring evidence about the sexual behaviour of a **complainant** in cases of rape and other sexual offences.

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

- interview support – *provided by someone independent of the police, who is not a party to the case being investigated who sits in on the original investigative interview; he or she may be a friend or relative, but not necessarily so.*
- pre-trial support – *provided to the witness in the period between the interview and the start of any* ***trial****. Appendix J sets out National Standards for Young Witness Preparation.*
- court witness support – *a person who may be known to the witness, but who is not a party to the proceedings and has no detailed knowledge of the case and may have assisted in preparing the witness for their court appearance. Appendix F sets out National Standards for the Court Witness supporter in the CCTV link room.*

Support measures are applicable to both defence and prosecution witnesses.

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

1.11 The Special Measures for use at court are subject to application to the judge or magistrate by the prosecution or defence before the **trial**. Special Measures are not automatically available and are subject to the discretion of the Court. There are also restrictions over the application of certain Special Measures to particular vulnerable groups and particular offences. It is envisaged that the Special Measures will be subject to phased implementation with the majority of Special Measures available in the **Crown Court** immediately on the implementation of the new legislation. Implementation in **magistrates' courts** and other measures, such as the use of intermediaries and videotaped **cross-examination**, will be introduced later.

1.12 The use of the Special Measures in relation to child witnesses are described in Chapter 2 and to adult vulnerable or intimidated witnesses in Chapter 3. The role of witness supporters is described in detail in the different phases of the investigation in Chapters 2, 3, 4 and 5. Advice on the legal rules and good practice concerning the use of Special Measures at trial are dealt with in detail in Chapters 4 and 5. This is followed by a glossary explaining specialist terms: the first use of such term in each chapter is placed in bold. Further appendices provide detailed guidance or information referred to in the chapters, together with a list of useful sources and further reading.

2 PLANNING AND CONDUCTING INTERVIEWS WITH CHILDREN

PART A: PLANNING INTERVIEWS

Aims

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

- The context of the allegation, and associated criteria for a formal interview (2.1-2.31)
- Who should be involved in planning the interview (2.32-2.46)
- What relevant background factors relating to the child and family might be (2.47-2.71)
- Who should lead the interview (2.72-2.76)
- Technical and organisational oversight for the interview (2.78-2.80)
- Planning for immediately after the interview (2.81-2.89)

Thorough planning is essential to a successful investigation and interview. Even if concerns about the child's safety necessitate an early interview, an appropriate planning session is required which identifies key issues and objectives. Time spent covering and anticipating issues early in the criminal investigation will be rewarded by an improved interview later on. It is important that, as far as possible, the case is thoroughly reviewed before an interview is embarked upon to ensure that all issues are covered and key questions asked, since the opportunity to do this will in most cases be lost once the interview(s) have been concluded.

THE CONTEXT OF THE ALLEGATION: THE INTERSECTION OF THE CHILD PROTECTION AND CRIMINAL JUSTICE SYSTEMS

The different purposes of a video-recorded interview

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

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

In addition, any relevant information gained during the interview can also be used to inform child protection enquiries under Section 47 of the Children Act 1989 and any subsequent actions to safeguard and promote the child's welfare, and in some cases, the welfare of other children.

2.2 Some information may be common to both purposes, but there will be issues specific to each to be considered at the planning stage. The video interview may additionally serve a useful purpose in informing any subsequent civil childcare proceedings, or in disciplinary proceedings against adult carers (e.g. in residential

institutions), and its potential value for these too should not be overlooked (see paragraphs 2.67-2.70 below on associated issues of consent).

The criminal investigation

2.3 As an opportunity to gather evidence in a criminal investigation, interviewers should ensure that they are aware of the types of information necessary to prove any particular charge which may arise.

Referral information may give clues to likely charges, but should not be used to drive the interview solely towards confirming earlier suspicions or allegations. *The interviewer should keep an open mind as to what may or may not have happened to the child*, and should not seek only to elicit details which will prove a hypothesis about the child's experience(s) constructed on the basis of the initial information. In abuse investigations, the possibility of gathering additional evidence from a medical examination of the child or from the scene of the alleged abuse should also be discussed.

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

2.5 In some circumstances, the child witness may be required to perform an identification, or to collaborate with police artists, or facial composite operators. The facial composition process itself should be video recorded, as it may form part of the child's evidence-in-chief. Police officers carrying out such procedures with child witnesses should be aware of the guidance contained in this document, and may require additional training or support (see Appendix H for more detailed guidance on identification parades with **vulnerable** witnesses).

2.6 The **Special Measures** introduced in the Youth Justice and Criminal Evidence Act 1999, together with the rephrasing of the competency requirement contained in the Act (see paragraphs 2.16-2.24 below), emphasise that no child should be precluded from an interview at an initial stage. Consideration of child witnesses should proceed on a case by case basis and there should be no automatic exclusion by reason of age or disability.

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

2.8 Although the CPS is not part of the investigating team, and does not direct the investigation, an early meeting between the police and CPS to discuss special measures may be appropriate *(Separate guidance on CPS–police liaison is in*

preparation and will give more information about the circumstances in which such meetings are likely to take place). The police may also seek advice from the CPS at an early stage about any other evidential issues that may affect the way in which the investigation is conducted. In some exceptional cases CPS may select suitably qualified counsel to advise from a very early stage and participate in interview planning.

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

Child protection enquiries

2.10 Other aspects of the criminal investigation will differ depending upon whether there are concurrent child protection enquiries being undertaken. Different circumstances experienced by the child prior to the interview will have implications both for the amount of knowledge that may already be available about the child to be shared between agencies, and subsequently for the manner in which the interview is planned and proceeds.

2.11 Thus,

- Some children will hitherto have been unknown to local authority social services, but known to their GP, Health Visitor or school.
- Some children may not be known to local authority social services, but may be known, for example, to child and adolescent mental health services or education professionals because of emotional or behavioural problems, or special educational needs.
- Some children will be known to local authority social services as open cases or as previously open cases, as well as to health and education services.

Whatever the child's individual circumstances, proper explanation must be given to the child (and their carer) of the roles of the social worker, police officer, and any other members of the investigating team as necessary. The child's knowledge and understanding should be monitored throughout the investigation.

2.12 Children who have previously been unknown to local authority social services and the police are likely to have least understanding of the interviewing process, and of the nature of professional interventions. The way in which the purpose of the interview, and the roles of the investigating team, are explained to the child and their carer(s) will need to take account of the fact that they have had no previous contact with public services regarding child protection concerns.

2.13 Children who have previous experience of public services may be more knowledgeable about the roles of different personnel, though their experiences will have varied depending on their individual circumstances. However, no assumptions should be made about a particular child's level of knowledge of public service personnel, especially social workers, who may have been involved with the family for a number of possible reasons (e.g. children in need services, services for disabled adults, or adults with mental health problems). If here have been concerns about a child's safety and/or well being, or current concerns have resulted in the consideration of a video recorded interview, an initial assessment of the child's needs and their family members will have already been undertaken by the local authority social services department (a flow chart summarising the paths of individual cases is reproduced from Working Together in Appendix D).

2.14 Whenever suspicion has arisen that a child has suffered, or is likely to suffer, signi icant harm, then additionally there may have been a strategy discussion involving the local authority social services department, the police and other professionals as appropriate, e.g. paediatrician, child and adolescent mental health services (*Working Together*, Department of Health, paragraphs 5.2.8-5.3.8 and *Working Together* – National Assembly for Wales, paragraphs 5.29-5.39). If enquiries under Section 47 of the Children Act are being pursued subsequent to such a special measures meeting, then the core assessment undertaken using the *Framework for the Assessment of Children in Need and their Families* (the *Assessment Framework* is summarised in Appendix C) will provide considerable information about the child and their carer(s). The interview and criminal investigation will run alongside such section 47 enquiries and the interviewing team may therefore have access to detailed information about the child which can be drawn upon when planning and conducting the interview, depending upon the exact timing of the video interview in relation to the Section 47 enquiries.

2.15 In the light of the Speaking Up for Justice report recommendations consideration should be given to holding a discussion between the investigating officer and the CPS to discuss what measures might be need to assist the witness before and during the trial. Separate guidance on Special Measures meetings is in preparation. One of the purposes is to agree the form of the statement in the case of a category (iii) child witness (see paragraph 2.26 below). However, in the case of all child witnesses consideration will need to be given to what additional Special Measures might be needed and who should attend the subsequent meeting between the prosecutor and the witness. In most cases a telephone discussion may be sufficient for these purposes.

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

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

2.17 Section 53 of the Youth Justice and Criminal Evidence Act 1999 provides that in principle "all persons are (whatever their age) competent to give evidence". The section qualifies this principle by saying that persons are incompetent as witnesses where the court finds that they are unable to understand questions put to them, or

unable to give answers to them which can be understood; but section 54(3) makes it clear that in considering this question a court must bear in mind the various **"Special Measures directions"** that are available under sections 16-30 of the Act (for example, "communications aids", available under section 30, see Chapter 5, paragraphs 5.84-5.88).

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

2.19 Where a pre-recorded statement is to be used in court as a substitute for a witness's live evidence in-chief, there is no need for the witness to be sworn. Section 31(2) and (3) of the Youth Justice and Criminal Evidence Act expressly provide that such a pre-recorded statement, if admitted by the court as the evidence of the witness, shall have the same legal status as that witness's direct oral testimony in court – even where, if giving direct oral testimony in court, the witness would have been required to take an oath.

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

2.21 In the light of this, it will usually be wise to explore with a witness who is very young, or who has a learning disability, what his or her understanding is of the difference between truth and lies (see paragraph 2.102). Where, as normal, the statement is admitted in evidence, this would often be of help to the court in assessing the weight to put on the evidence. And in the exceptional case where an attempt is made to persuade the court to exclude the evidence, it might help to rebut the argument that the court ought to exclude the evidence because it is seriously unreliable.

2.22 A witness is usually not only competent to give evidence, but also *compellable*. This means that he or she can be legally required to attend trial (or, where a "Special Measures direction" has been given to this effect, to attend court for a videotaped pretrial **cross-examination**.) In general, however, the fact that a witness is compellable does not mean that he or she can be legally required to give any kind of preliminary statement to the police – even the sort of statement that is made under this guidance

2.23 It does not necessarily follow that because a witness is competent and compellable, the Crown Prosecution Service will insist on making him or her attend court to give evidence if unwilling to do so. The prosecution is not legally required to call every piece of evidence available, and in some cases may proceed without a particular

witness's evidence if they believe they can secure a conviction without it. In cases where they believe the evidence of particular witness is essential, the Code for Crown Prosecutors leaves it open to the Crown Prosecution Service to drop the case if they think that it would be particularly damaging to the witness to proceed (in such cases the child witness and their carer must be informed of the implications of this decision). In deciding whether to include a particular witness's evidence, and whether to proceed with the case at all, the Crown Prosecution Service will always take account of the wishes of the witness (although they will not necessarily defer to them). Reports to the Crown Prosecution Service should always include clear information about the wishes of the witness, and his or her parents or carers, about going to court. The Crown Prosecution Service may in any event need to seek further information from the investigating team, and should always be kept up to date throughout the case to ensure a continuous review.

2.24 A pre-recorded statement is usually only admissible as evidence at trial where the person who made it is "available for cross-examination". By Section 27(4) of the Youth Justice and Criminal Evidence Act, however, "available for cross-examination" includes being available for a cross-examination held in private and in advance of trial, subject to the discretion of the court (when implemented, Section 28 of the Youth Justice and Criminal Evidence Act will make this facility available for all witnesses subject to the discretion of the court, while Section 21 makes it the normal procedure for witnesses under 17 years of age when the offence is a sexual one. In this connection, it should also be remembered that where the defendant is unrepresented, Sections 34 to 40 of the Youth Justice and Criminal Evidence Act now impose serious restrictions on the defendant to cross-examine in person (see Chapter 5, paragraphs 5.24-5.58. for further information on Special Measures).

2.25 Although a pre-recorded statement cannot normally be used at trial except where the person who made it will be "available for cross-examination% there are some exceptions to this. These include Sections 23 and 24 of the Criminal Justice Act 1988, which gives the Judge discretion to allow the court to hear the pre-trial statements of witnesses who are unable to give evidence for various stated reasons. These include the fact that the witness is dead, or "by reason of his bodily or mental condition unfit to attend as a witness", or does not give evidence at trial "through fear or because he or she is kept out of the way". It must be remembered however that the judge has the final word on whether or not the statement will be admitted. (See also Appendix B of this document).

Criteria for video recording an interview

2.26 Section 21 of the 1999 Youth Justice and Criminal Act creates three categories of child witness:

i) Children giving evidence in sexual offence cases;

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

iii) Children giving evidence in all other cases.

It is proposed that video recorded interviews should take place in all category (i) and (ii) child witness cases, unless the child objects, and/or there are insurmountable difficulties which prevent the recording taking place (this may include that the child has been involved in abuse involving video-recording or photography – see paragraph 2.9 above).

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

- The needs and circumstances of the child (e.g. age, development, impairments, degree of trauma experienced, whether the child is now in a safe environment)
- Whether the measure is likely to maximise the quality of that particular child's evidence
- The type and severity of offence
- The circumstances of the offence (e.g. relationship of the child to the alleged abuser)
- The child's state of mind (e.g. likely distress and/or shock)
- Perceived fears about intimidation and recrimination

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

- The individual child's circumstances, current or previous contact with public services, previous concerns around parenting, neglect or abuse, and history of the current allegation;
- The purpose and likely value of a video recorded interview on this occasion;
- Competency, compellability and availability of the child for cross-examination;
- The child's ability and willingness to talk in a fornial interview setting;
- Preparation of the child before interview.

2.29 Discussions at the planning stage about category (111) cases will thus enable the investigating team to decide whether a video recorded interview or an interview for the purposes of taking a written statement is appropriate for any particular individual. It is likely that a video-recorded interview will be considered if a child makes a clear allegation of abuse, or if someone has witnessed the child being abused. A video-recorded interview may also be appropriate, subject to the deliberations of the investigating team, if the child is emotionally distressed or has a psychiatric disorder. Where the child has made no verbal allegation of abuse, then the interviewing team may decide that other specialist help or assessment of the child is more appropriate to the needs of the child than a video recorded interview.

2.30 In circumstances where the investigating team conclude that it is more appropriate to take a written statement, the interviewer(s) should consider the P.E.A.C.E. model of investigative interviewing advocated by the Association of Chief Police Officers in *'The Practical Guide to Investigative Interviewing'* (published annually by the National Crime Faculty at Bramshill).

2.31 It must be remembered that non-disclosure of abuse is an acceptable outcome of an interview, either because the child has not experienced nor witnessed any maltreatment, or because the child is not ready, able or willing to tell now. Differences in how and when children disclose abuse are described in Box 2.1.

Box 2.1. How and when children talk about abuse

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

WHO SHOULD BE INVOLVED IN PLANNING THE INTERVIEW?

2.32 At a minimum, such as cases where the child has experienced no previous contact with social or other public services regarding child protection matters, the investigating team should include representatives from both police and local authority social services. In some cases, after joint consultation, the interview itself may be conducted by the police alone (with social services agreement). It may also be important to involve primary health care or educational professionals who know the child. For children who have had past or current involvement with social services, useful information may already have been provided from different professionals, or may be obtained from other adults who know the child (e.g. parent(s), carer(s), teacher(s), educational psychologist(s), youth worker(s), occupational therapist(s)), and it may be that other individuals are offered a more active role in the planning process, e.g. facial composite operators where the suspect is not known to the child. Research has shown that too often the views and opinions of children and young people are ignored or marginalized in the planning process. Wherever possible, and where practicable, older children and young people in particular should be consulted about matters appropriate to their age and understanding, and contribute to the planning and preparation for interview

(e.g. when and where the interview takes place, who is present, who conducts the interview). Reasons for the strategy agreed for interviewing a given child should be noted in writing by the investigators concerned and preserved for possible usage in any subsequent legal proceedings.

2.33 Consideration must be given to the timing, purpose and content of any medical examination or paediatric evaluation in relation to the interview. Sometimes the medical examination will have preceded the interview, e.g. after 'acute' abuse, or if the examination needs to take place before a laboratory closes (e.g. identification of sexually transmitted diseases). The doctor may be aware of problems that might be making the child uncomfortable, such as soreness or vaginal discharge, and/or may suggest the significance of any symptoms reported by the child at the time of the abuse or later. When examining children doctors should take care to avoid asking leading questions or anticipating the investigative interview. They should however make contemporaneous notes of any spontaneous comments by the child concerning the origins or circumstances giving rise to the evaluation or examination. On other occasions, the medical examination will be after the interview; in such cases where a medical examination is a possibility, a discussion should take place with the paediatrician or police surgeon who will undertake this to ensure that expectations of possible outcomes of the examination are realistic and appropriate. It is essential that all notes and records concerning medical examinations and decisions made in the course of investigations are preserved, as they may be required for disclosure as part of any subsequent criminal or civil court proceedings.

2.34 Consideration should also be given to the identity of the examiner. The evaluation should only be carried out by suitably qualified and experienced clinicians, and should not be confined solely to examination of the child's genital and/or anal areas. Guidance is available from the British Paediatric Association Child Interest Group about the training and experience of such a clinician and the content of the paediatric evaluation. A child who is concerned that abuse may have damaged them in some way can be reassured by a sensitive examination. Conversely, children who do not allege penetration should not receive unnecessary medical examinations.

2.35 The possible role of child and adolescent mental health specialists in discussions should also be considered, whether through direct involvement (e.g. in conducting or leading the interview) or through the form of a request for a formal mental health assessment by a child and adolescent psychiatrist, or assessment of cognitive ability by a clinical or child forensic psychologist. Where a child is known to suffer from a particular condition or syndrome (e.g. autism) then specific advice from outside professionals should be sought. Such assessment interviews by child psychiatrists or clinical psychologists would not attempt to resemble any interview conducted in accordance with this guidance, nor would they be facilitative or therapeutic interviews. They would fulfil a formal specialist assessment function which would inform the childcare planning process, and criminal investigation (dependent upon the timing in relation to the video interview). The limits and expectations of such assessments should be agreed with the psychologist/ psychiatrist prior to the interview taking place.

Interpreters and intermediaries

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

2.37 When the child's first language is not English, or the child communicates using an alternative communication system such as Blissymbolics, Rebus, Makaton or British Sign Language, then consideration should be given to the need for an interpreter. Careful thought must be given to the identity of an interpreter, for example, cultural norms and individual circumstances may make it more or less desirable that the interpreter is known to the child in addition to sharing the child's first language. Additionally, an interpreter may be required to interpret an explanation of what is happening to other members of the child's family. Other sensitivities on religious, cultural, or other grounds need to be respected, e.g. with respect to the interpreter's gender.

2.38 British Sign Language (BSL) is a comprehensive language in its own right; problems with vocabulary for potentially abusive activities should not arise with BSL but could do with lesser developed communication systems. Some words in English may not have an exact equivalent in other languages and communication systems. The matter should be discussed to decide whether this is a potential problem for the planned interview.

2.39 If the child is very young, very traumatised, has an idiosyncratic or very specialised system of communication, then an **intermediary** rather than interpreter may be required. The Youth Justice and Criminal Evidence Act 1999 has introduced for the first time, the possibility of intermediaries assisting communications between the child and the court (Chapter 5, paragraphs 5.77–5.83) and it may be that a suitable adult can be identified to act as an intermediary for the video recorded interview. Many speech and language therapists can provide excellent assistance in communicating with disabled children whose physical impairments impede their communication, and may be well placed to act as an intermediary (i.e. as someone who knows both the child and their way of communication). Intermediaries must not be witnesses to fact in the case.

2.40 Discussions with the intermediary or interpreter at the planning stage should include the arrangements for leading the interview, legal and confidentiality requirements, and the exact role that the interpreter or intermediary will take (see 2.71-2.77 below). The potentially explicit nature of the topics to be covered should be addressed; it may be that the interpreter or intermediary will require emotional support post-interview.

2.41 Separate guidance on the use of intermediaries is in preparation.

Interview Supporters
(See also Chapter 4, paragraphs 4.11-4.15 for the role of the pre-trial and court witness supporter)

2.42 Deliberations at the planning stage (see paragraphs 2.1-2.30. above), may lead to a decision to include a support person in the interview (termed an 'interview supporter'). Although it is important to guard against undue influence of the child by another adult, it may be helpful to the child (and to the process of securing an account) if someone is present to offer support, especially if the child is very young or upset. It is possible that such a person could withdraw once rapport has been established and the child has settled. Parent/carer(s) should not be automatically excluded from this role, but their appropriateness will very much depend on the circumstances and nature of the case, together with any issues arising out of the allegations made by the child. Also there are good reasons why their presence may not be in the best interests of the child (see paragraphs 2.43 and 2.44 below). Having a parent or carer close by in another room may be sufficient. Other possibilities might include a teacher, nursery helper, or other family member.

2.43 The supporter must be clearly instructed not to participate in the interview itself, whether by instructing or correcting the child, answering the interviewer's questions, head nodding or facial expressions. It may be helpful for the interview supporter to refer to the guidance in the *Young Witness Pack* (see Chapter 4). Interview supporters should never offer the child inducements, such as a toy or trip in return for general cooperation or answering particular questions. Persons involved as a witness in the case in any capacity (i.e. not just someone who has seen the incident in question) cannot take on the role of witness supporter. This would include a parent to whom the child first disclosed abuse, or a parent whose partner or former partner is the subject of the allegation of abuse. It is important to ensure that the interview supporter has not been involved in the alleged offence, nor will be perceived by the child as being involved (this may be particularly relevant to parent(s) acting as supporters). Carers can, however, wait in an adjacent room if it is thought that physical proximity might be helpful to the child.

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

2.45 Any interview supporter(s) must be clearly identified at the beginning of the taped interview. Whenever possible, they should also be visible in one of the shots recorded on the tape. Best practice would be for the supporter to make sure s/he is outside of the child's line of vision, by sitting behind the child, for example.

2.46 The interview supporter should consider carefully how they may best comfort the particular child, should s/he become distressed. The child should be reassured, but it may not be appropriate to physically touch the child, as this may be perceived as an invasion of personal space or even as abusive by some children.

FACTORS TO CONSIDER AT THE PLANNING STAGE

2.47 Consideration needs to be given to a number of factors pertaining to the child, their family and background in the planning of the investigation and interview. Some of this information may exist as a result of the assessment undertaken as part of local authority social services department enquiries under *Working Together* (see paragraphs 2.13-2.14 above), or may be provided by other professionals consulted or involved in the planning process. Other information may best be provided by the child's parent(s) or carer(s). A checklist of some of the desirable information is provided in Box 2.2, and again interviewers may find the *Assessment Framework* in Appendix C a useful guide when considering the child in their family context. The companion practice guidance *Assessing Children in Need and their Families* provides detailed advice on assessments involving black and disabled children. The interviewing team will need to balance the need to obtain as much of this information as possible with their desire to conduct the interview as soon as is practicable.

Box 2.2. Checklist of factors to be considered at the planning stage

- Child's age;
- Child's race, culture, ethnicity, and first language;
- Child's religion;
- Child's gender and sexuality;
- Any physical and/or learning impairments;
- Any specialist health and/or mental health needs;
- Child's cognitive abilities (e.g. memory, attention);
- Child's linguistic abilities (e.g. how well do they understand spoken language, how well do they use it?);
- Child's current emotional state and range of behaviours;
- Child's family members/carers and nature of relationships (including foster or residential carers);
- Child's overall sexual education, knowledge and experiences;
- Types of discipline used with the child (e.g. smacking, withholding privileges);
- Bathing, toileting and bedtime routines;
- Sleeping arrangements;
- Any significant stress(es) recently experienced by the child and/or family (e.g. bereavement, sickness, domestic violence, job loss, moving house, divorce etc.).

2.48 Box 2.2 is not comprehensive: Investigators will develop their own agenda in the light of their experience or knowledge of the individual child and all other relevant circumstances. Information on these issues will inform decisions about the structure, style, duration and pace of the interview. Children of the same age can differ widely in their development, particularly if they have been abused or neglected. Children may also react to the investigative process itself because it is unfamiliar, and aspects such as a medical examination or personal questions may be particularly difficult and/or upsetting for the child (although a sensitively conducted medical examination or paediatric evaluation can be reassuring).

2.49 In cases where the child is a suspected or known victim of previous abuse, the investigating team may find it helpful in addition to address the issues listed in Box 2.3 below.

Box 2.3. Additional factors to be addressed in case where the child is known or suspected to have been previously abused.

- The detailed nature of the child's attachment to his or her parents;
- The age and developmental level of the child at onset of abuse;
- Abuse frequency and duration;
- Whether different forms of abuse coexist;
- The relationship of the child to the alleged abuser(s);
- The type and severity of the abusive act;
- The existence of multiple perpetrators;
- The degree of physical violence and aggression used;
- Whether the child was coerced into reciprocating sexual acts;
- The existence of adult or peer supports;
- Whether or not the child has been able to tell;
- The parental reaction to disclosure/al legation;
- Previous interventions.

Assessment prior to the interview

2.50 Interviewers may often decide that the needs of the child and the needs of criminal Justice are best served by an assessment of the child prior to the interview taking place, particularly if the child has not had previous or current involvement with social services or other public services. Such an assessment should be considered for any child, and offers the opportunity to explore the following:

Box 2.4. General factors to be explored via an assessment prior to interview

- The child's preferred name/mode of address;
- The child's ability and willingness to talk within a formal interview setting to a police officer, social worker or other trained interview;
- An explanation to the child of the reason for an interview;
- The ground rules for the interview;
- The opportunity to practise answering open questions;
- The child's cognitive, social and emotional development. *Does the child appear 'street-wise' yet in reality have limited understanding?*
- The child's use of language and understanding of relevant concepts such as time and age. *Does the child appear clear and in touch yet actually have confused and limited thinking?*
- Any special requirements the child may have. *Does s/he suffer from separation anxiety or have an impairment? Is s/he known to have suffered past abuse, or to have previously undergone an investigative interview?*
- Any apparent clinical or psychiatric problems (e.g. panic attacks, depression) which may impact upon the interview, and for which the child may require referral for a formal assessment.
- An assessment of the child's competency to give consent to interview and medical examination.

Interviewers must be careful to balance the need to ensure that the child is ready and informed about the interview process against the possibility of allegations at trial of coaching or collusion.

2.51 Again, the *Assessment Framework* (summarised in Appendix C) may be helpful. A full written record of any such assessment(s) must be kept, and referred to in the body of the Section 9 statement which records the interview. This record should be disclosed to the CPS under the requirements of the Criminal Procedure and Investigations Act 1996.

2.52 Interviewers should have clear objectives for assessment(s) prior to interview, and should apply this guidance on talking with children during such assessment. For example, they should avoid discussing substantive issues (in any detail) and must not lead the child on substantive matters. Interviewers should never stop a child who is freely recalling significant events. Instead, as above (paragraph 2.50) the interviewers must make a full written record of the discussion, making a note of the timing and personnel present, as well as what was said and in what order. The interviewers should begin by explaining the objectives of the interview to the child; one possibility may be as follows:

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

The interviewer can also use the opportunity to answer any questions the child may have about the conduct of the interview and explain any transport arrangements. Some interviewers use this opportunity to introduce some of the ground rules to the child, while others do so exclusively on the tape as part of the Rapport phase of the interviews (see paragraphs 2.94-96). If any of the ground rules are introduced at this stage, then they should be repeated in the formal interview to demonstrate that the necessary procedures have been completed.

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

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

Time and length of the video recorded interview(s)

2.55 The interviewing team should anticipate the likely number and length of the video-recorded interview(s) as part of the planning process. It will help both the interviewer and the child to have an idea of approximately how long each interview is likely to last. The pace and duration of any interview will of course depend upon the individual child, his/her age, attention span and specific needs. Interviews should proceed at the pace of the child, not at that of the interviewers. Younger children in particular should only be interviewed for as long as they can sustain attention. Victimised children are often reluctant to speak about painful events. Having clear objectives and a natural style (as far as possible) can give victimised children a more helpful structure within which to give their account.

2.56 Professionals whose experience of interviewing has been mostly with adults may be tempted to adopt too fast a pace for the child, while those with only child care experience may adopt an overcautious approach and spend too long in the Rapport phase, when the child is ready to proceed with his/her account.

2.57 The investigating team should pay particular attention to when the interview takes place, as research has shown this to be one of the main concerns of child witnesses. Although the interview will normally take place as soon after an allegation or referral emerges as is practicable, rushing to conduct an interview, without properly considering the child's needs and consulting them as far as possible, and without proper planning, can undo any of the benefits of obtaining an early account from the child. The child's normal daytime routine and general needs should be considered – as well as those of the adult(s) who care for the child. Interviewers should avoid starting an interview just before a mealtime or bedtime. Children are very sensitive to being taken out of school classes, and on the rare occasions when it is unavoidable, the interviewers should liase with the child's teachers to ensure it is effected as discreetly as possible.

Race, gender, cultural and ethnic background

2.58 The child's race, gender, culture, ethnicity and first language should be given due consideration by the interviewing team. They have a responsibility to be informed about and take into account the needs and expectations of children from the variety of specific minority groups in their local area. Other useful guidance can be found in the *Assessment Framework*, and companion practice guidance *Assessing Children in Need and their Families*, published in England by the Department of

Health, 2000 [see at Quality Protects Website http://www.doh.gove.uk/qualityprotects and in Wales by the National Assembly for Wales]. The guide *Race and the Courts*, published by the Judicial Studies Board (and available on the Internet: http://www.jsboard.co.uk/etac/race+courts.htm) provides a helpful summary of different religions and associated holy days and festivals. The chapter by Page and Precey (see Appendix Q: Useful Sources) also includes discussion of related issues. The knowledge of the interviewing team about the child's religion, culture, customs and beliefs will have a bearing upon their understanding of the child's account, including the language and allusions the child may make as well as, for example, the child's beliefs about reward and punishment.

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

2.60 The investigating team need to bear in mind that some families and children may have experienced discrimination and/or oppression through their contact with Government agencies and local authorities. Their experiences of racism, for example, may result in them distrusting the professionals involved in an investigative interview. Asylum-seeking children and child refugees may have a fear of disclosing abuse because of what may happen to them and their family.

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

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

- Customs or beliefs which may hinder the child from participating in an interview on certain days (e.g. holy days), or may otherwise affect the child's participation, e.g. if older children are fasting;
- The relationship to authority figures within different minority ethnic groups. For example, children may be expected to show respect to adults and authority figures, such that they do not refer to such people by their first names, and do not correct or contradict them;
- The manner in which love and affection are demonstrated;
- The degree to which extended family members are involved in the parenting of the child. All cultures place a high value on nurturing children but achieve this through a variety of family structures;

- The degree of emphasis placed on learning skills in independence and self care;
- Issues of shame. For example, Muslim girls may fear bringing shame upon themselves or their families if they disclose abuse, and this may be further affected by expectations of them with respect to arranged marriages. Parents or carers may inhibit the child from disclosing with talk of shaming the family.

Other life experiences

2.63 Interviewers must also consider the possible impact on the child of one or more of the following which the child may have experienced: abuse, neglect, domestic violence, discrimination based on race or disability. There is no single 'diagnostic' symptom of any of the above, but some possible effects on children are provided in Boxes 2.5 through 2.8. It must be recognised that children who are abused in different ways, or who suffer the impact of discrimination in some form may exhibit all, none or some of the behaviours listed. As a result of their culture, language, religion or sexuality, children may also have had other experiences which impact on the interview situation.

Box 2.5. Some possible effects of child abuse and neglect

- Fears;
- Behaviour problems;
- Sexualised behaviours;
- Poor self-esteem;
- Post-traumatic stress disorder;
- 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;
- Lower intellectual functioning and academic achievement.

Box 2.6. Some possible effects of racism

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

Box 2.7. Some possible effects of discrimination based on impairment(s)

- Lack of autonomy, experience of being patronised by able-bodied people;
- Perceived as 'voiceless object';
- Difficulty in establishing positive self-identity as a disabled child;
- Isolation (geographical, physical, social);
- Dependency;
- Perceived as 'asexual';
- Increased vulnerability to abuse.

Box 2.8. Some possible effects of domestic violence

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

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

Preparing for the interview(s)

2.65 Interviewers must plan appropriately for each interview, in a focused way that is differentiated from the strategic planning of the overall investigation. Later guidance on who should lead the interview, the structure of the interview, and the types of questions to be asked is included in this guidance (see paragraphs 2.72-2.76 below). It is not appropriate to neglect such planning or leave preparation for the interview itself to the last minute.

2.66 Interviewers must also take steps to prepare the child for the interview itself. This includes explaining to the child what the interview is, who will be present, when/where it will happen, and for roughly how long, in a manner appropriate to the child's age and understanding. In addition, the child should be given some explanation of the unusual rules which apply to the interview (e.g. that the interviewer cannot infer what happened, or make assumptions, even if ordinarily they would know what the child's statements mean), as well as an overview of the four interview phases, (see paragraphs 2.92-2.94) the interview 'ground rules', and an opportunity to practise providing responses to open-ended questions and implementing ground rules (see paragraph 2.101).

2.67 *The child's non-abusing carer(s) should also be provided with suitable information at this stage*. For example, they should be discouraged from discussing the details of the child's allegation with their child or any other individual who may be involved in the investigation, but must be able to reassure the child who wishes to talk or express anxieties. They should be instructed to carefully document any discussions they have with their child or other persons regarding the allegation or investigation (e.g. who was present, date/time and setting, what exactly was said). The child should never be offered inducements for complying with the investigative process. Carer(s) should also be encouraged to provide emotional support to the child such as physical comfort and reassurance. They should be given information about what further role, if any, they may have in planning the interview or in being present while it is conducted (or given reasons why the interviewers would prefer them not to be present). Where possible, any support needs of the carer(s) that are identified should be brought to the attention of the relevant authorities/agencies. In cases where the child may have been abused within the family, concerns may arise as to the non-abusing carer's ability to support the child or to take seriously what the child has said.

Consent

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

- The benefits/disadvantages of having or not having a videotaped record later on;
- Who may see the videotaped interview (including the alleged abuser at court);
- The different purposes to which a videotaped interview may be put (e.g. if it appears the video may be useful in disciplinary proceedings against a member of staff who is suspected of abusing a child in their care).

2.69 The child should be advised that, should the case proceed, whether a video recording is made or not, s/he may be required to attend court to answer further questions directly (e.g. cross-examination). A live link facility will normally be available to enable the witness to give best evidence at court. There is a presumption that this aid will normally be required by the child (see Chapter 5, paragraph 5.48-5.51). The existence of a videotaped record does not by itself guarantee the video will be used.

2.70 Written consent to be video recorded is not necessary from the child, but it is unlikely to be practicable or desirable to video record an interview with a reluctant or hostile child (see paragraphs 2.15-2.25 above). The interviewers are responsible for ensuring that, as far as possible, the child is freely participating in the interview, and not merely complying with a request from adult authority figures. Proper use of rapport, including the opportunity to practise ground rules, can enhance this.

2.71 The investigating team may need to interview a suspected child victim without the knowledge of the parent or carer in certain situations. Relevant circumstances would include the possibility that a child would be threatened or otherwise coerced into silence; a strong likelihood that important evidence would be destroyed; or that the child in question did not wish the parent to be involved at that stage, and is competent to take that decision (see *Working Together*, Department of Health,

paragraph 5.3.7 and *Working Together* – National Assembly for Wales, paragraph 5.38). Proceeding with the interview in the absence of parental knowledge will need to be carefully managed in subsequent social services interventions with the family.

WHO SHOULD LEAD THE INTERVIEW?

2.72 The investigating team should consider who is best qualified to conduct the interview, and whether there should be a second interviewer/observer present to support that interviewer. Choice of lead interviewer should take into account any strong gender or ethnic preferences of the child which should have been established in planning (see paragraphs 2.58-2.62 above). *The presence of a second interviewer/observer is desirable* as s/he can help to ensure that the interview is conducted in a professional manner, can assist in identifying any gap's in the child's account that emerge, and can ensure that the child's needs are kept paramount. The different responsibilities represented by police and social services interviewers should be considered: the police officer has oversight of issues relating to the criminal investigation, while the social worker has responsibility for safeguarding and promoting the child's welfare.

2.73 A special blend of skills is required to lead video recorded interviews. The lead interviewer should be a person who has, or is likely to be able to establish, rapport with the child, who understands how to communicate effectively with children, including in sometimes disturbed periods, and who has a proper grasp of the rules of evidence and criminal offences. The lead interviewer must have good knowledge of the points needed to prove particular offences, e.g. for rape, actual penetration of the child's vagina by the perpetrator's penis must be proved. He or she must also be prepared to testify about the interview in court if called upon to do so. This is a formidable job specification and some compromise will probably be necessary. A rigid definition of the roles of police and social service professionals is not likely to be possible or desirable and a high degree of flexibility and responsiveness within a joint investigating team is required in the interests of an effective interview.

2.74 The decision as to who will lead the interview should only be made after a full discussion of issues raised above. If the child has expressed a particular preference for an interviewer of either gender, race/culture and/or profession this should be accommodated as far as possible (see paragraphs 2.58-2.62 above). If assessment prior to the interview, or other contact with the child has already taken place, it may be clear which professional has established a better rapport with the child. Provided both the police officer and social worker have been adequately trained in interviewing vulnerable and and/or intimidated child witnesses, there is no reason why either should not lead the interview.

2.75 Exceptionally, it may be in the interests of the child to be interviewed by an adult in whom he or she has already put confidence but who is not a member of the investigating team. Provided that such a person, has appropriate professional qualifications, is independent and impartial, is not a party to the proceedings, is prepared to co-operate with appropriately trained interviewers and can accept

adequate briefing (including permitted questioning techniques) this possibility should not be precluded.

2.76 Regardless of who takes the lead, the interviewing team should have a *clear and shared remit for the role of the second interviewer*. Too often this role is subjugated to the need for someone to operate the video equipment, when, in reality, the second interviewer has a vital role in observing the lead interviewer's questioning and the child's demeanour. The second interviewer should be alert to identifying gaps in the child's account, interviewer errors, and apparent confusions in the communication between lead interviewer and child. The second interviewer can reflect back to the planning discussions and communicate with the lead interviewer as necessary. Such observation and monitoring can be essential to the overall clarity and completeness of the video-recorded account, which will be especially important at Court. Research with child witnesses has further reported that often children do not understand why the second interviewer was present in the interview if that interviewer had no recognisable role to play.

Interpreters and intermediaries

2.77 If interviewers are working with an interpreter or intermediary, it is important to have clarified at the outset who will lead the interview in terms of maintaining direct communication with the child. If the child is communicating via an *interpreter*, it will probably be most appropriate for the police officer or social worker to identify themselves as the lead interviewer, maintaining appropriate eye contact with the child, so that the child understands that they should address the interviewer, not the interpreter or intermediary. If, however, an *intermediary* is being employed, due to the specialist nature of the child's communication system, or the child's particular needs (e.g. the child may be very young or very distressed), then it may be more important for the intermediary to maintain the direct communication with the child. In such cases the role of the accompanying police officer and/or social worker, and the manner in which the interview will proceed, should be clearly agreed at the planning stage.

TECHNICAL AND ORGANISATIONAL OVERSIGHT

2.78 The lead interviewer, or designated member of the interviewing team, should take responsibility for checking the availability and working order of the video equipment ahead of the interview (see Appendix O, Technical Guidance). In particular, if interviewers intend to communicate with each other, or with the equipment operator via an earpiece, then this equipment should be tested in situ to ensure its effectiveness. Problems with earpieces are highly distracting to the interviewer and child, and can be very destructive to the interview itself. Where an intermittent fault is suspected in the equipment, it may be better to stop and reschedule the interview, rather than stop and restart the interview, which places additional stress on the child. Interviewers should also consider the possibility that earpieces can be viewed as 'intrusive' by children: It can seem that the interviewer is receiving 'secret' instructions which, in fact, can often be heard by the child.

2.79 The room decor should be welcoming and friendly, e.g. pictures on the wall which will appeal to children and young people of all ages, races and cultures, and indicate that other children visit the interview suite. Appendix O provides guidance

on the selection and placement of furniture in the interview room. Food and drinks provided for comfort breaks should be appropriate for children from different ethnic groups.

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

PLANNING FOR IMMEDIATELY AFTER THE INTERVIEW

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

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

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

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

Victim Personal Statements

2.83 The Victim Personal Statement (VPS) Scheme starts on 1st October 2001. This is intended to give victims a more formal opportunity to say what effect the crime has had on them, and to help identify their need for information and support. It may also provide additional information, from the victim's perspective, which will be helpful to the criminal justice agencies subsequently dealing with the case. Details

of the scheme are set out in the Home Office Guidance on the Victim Personal Statement Scheme issued on 14th August 2001 under cover of Home Office Circular No. 35/2001.

2.84 Child witnesses who are victims should be given the opportunity to make a Victim Personal Statement after completing either a video-recorded interview or a written statement. In such cases the victim personal statement should be given in the same format as their witness statement; i.e. where the evidential witness statement is video-recorded, the victim personal statement should also be video recorded.

2.85 Providing a Victim Personal Statement (video recorded or written) is entirely voluntary. In the first instance the young witness should be given the opportunity to make the statement themselves but in some circumstances it may be appropriate for the parent/carer to provide the statement on the victim's behalf. In some cases it maybe necessary to take a statement from both the victim and the parent/ carer, in order to establish a full picture of the impact of their experience.

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

2.87 In cases where the witness statement has been taken in the form of a videorecorded interview, it is preferable for the Victim Personal Statement to follow on the same tape but there must be a clear break between the two. This can be achieved by dividing the two statements with a still image e.g. the police force logo. Alternatively or in addition, the interviewer may make a statement on the tape acknowledging the change from the evidential interview to the Victim Personal Statement.

2.88 There is always the possibility that at a later time the victim or their parent/carer may feel that the impact of the experience has been such that a second statement is needed. Unless there are exceptional circumstances, a second statement should be taken in a written format according to the Home Office guidance on Victim Personal Statements.

2.89 The interviewers should plan to complete the relevant paperwork (see Appendix M) as soon as possible after the interview is completed. A statement dealing with the preparation and conduct of the interview should be made whilst the events are still fresh in the interviewer's mind.

Therapeutic help for the child

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

2.91 The CPS and "those involved in the prosecution of an alleged abuser have no authority to prevent a child from receiving therapy" (p.24. paragraph 6.1) and It whether a child should receive therapy before the criminal trial is not a decision for the police or CPS" (p. 16. paragraph 4.3). However the policy and CPS must be made aware that therapy is proposed, is being undertaken, or has been undertaken (p.24, paragraph 6.2) so that consideration can be given to whether or not the provision of such therapy is likely to impact on the criminal case (p.24, paragraph 6.3). At all times the importance of not coaching the child or rehearsing the child in matters of direct evidential value must be borne in mind by the professional undertaking therapeutic work with the child.

2 PLANNING AND CONDUCTING INTERVIEWS WITH CHILDREN

PART B: INTERVIEWING CHILD WITNESSES

Aims

By the end of Part B, interviewers should have knowledge of.

- The four main phases of the video-taped interview and the functions of each (2.92-2.99)
- The importance of ground rules (2.101)
- How to elicit and support a free narrative account (2.106-2.111)
- The strengths and weaknesses of different types of question (2.112-2.130)
- Guidance on misleading questions and further interviews (2.136-2.139)
- Special interviewing techniques and the use of props (2.140-2.146)
- Considerations when interviewing very young or disabled children (2.147-2.150)
- What to do if the child makes a self-incriminating statement (2.151-2.154)

GENERAL PRINCIPLES

2.92 The basic goal of an interview with a witness of any age is to obtain an accurate and truthful account in a way which is fair, in the witness's interests and acceptable to the court. What follows is a recommended procedure for interviewing a child which is based on a phased approach. Much professional experience and published research now exists on the conduct of the phased interview with children. The phased interview normally consists of the following four main phases:

- establishing rapport
- asking for free narrative recall
- asking questions
- closure

2.93 The phased approach acknowledges that all interviews contain a *social* as well as a *cognitive* element. As regard the *social* element, witnesses, especially the young and the vulnerable, will only divulge information to persons to whom they feel at ease with and whom they trust. Hence the first stage of any interview involves establishing rapport with the witness and the final or closure phase requires interviewers to try to ensure that the witness leaves the interview feeling that they have been given the fullest opportunity to be heard. As regards the *cognitive* element, the phased interview attempts to elicit evidence from the witness in a way which is compatible with what is known about the way human memory operates and the way it develops through childhood. A variety of interviewing techniques are deployed, proceeding from free narrative to open and then closed specific questions. The technique is designed to ensure that, as far as possible, witnesses of

all ages provide their own account, rather than the interviewer putting suggestions to them with which they are invited to agree. The techniques of the phased interview are not those of casual conversation: they must be learned and then practised to ensure that they are applied consistently and correctly.

2.94 The emphasis on the phased approach should not be taken to imply that all other interview techniques are necessarily unacceptable or preclude their development. Nor should what follows be thought of as a checklist which must be rigidly adhered to: every interview is a unique event, which requires the interviewer to adapt procedures to the developmental age and temperament of the child and the nature of the alleged offence(s). However, the sound legal framework provided by the principles of the phased interview should not readily be departed from by interviewers unless they have fully discussed and agreed the reasons with their senior manager. It may subsequently be necessary to explain such deviations at court.

Preliminaries

2.95 The investigating team will first have to decide whether a video interview is appropriate, or whether in the circumstances of the investigation, the option of a written statement is preferable. The police may wish to hold an early meeting with CPS at this point, if such a meeting has not already taken place. The decision will be based on the nature and circumstances of the alleged offence and the age and preference of the child (See Chapter 5, paragraphs 5.59-5.76). If a video interview is the preferred option, then normally, one person, the lead interviewer, will be responsible for interviewing the child. A second interviewer may be present, in the room or outside, to monitor the interview and provide support for the lead interviewer and the child. In addition, it may also be appropriate for the child to have an interview supporter. (see paragraph 2.41 above).

2.96 The interview team will have decided at the planning meeting who will be lead interviewer, taking into account any strong gender or ethnic preferences expressed by the child (see paragraphs 2.58-2.62 above). It is essential that the interview team allow sufficient time prior to the interview to check that all equipment is working satisfactorily: to have to stop and re-start the interview places additional stress on the child. Decisions should also be taken about where the child and interviewer will be placed so as to ensure that they are within clear view of the cameras. For the benefit of the court, interviewers should begin an interview by:

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

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

Duration and pace of interviews

2.97 The pace of the interview will be dictated by the age and circumstances of the individual child. Whenever possible, the interviewer should seek advice from persons who know the child as to the likely length of time that he or she can be interviewed and whether a pause or break is desirable. The absolute length of the interview will be dictated by a range of factors including:

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

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

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

PHASE ONE: ESTABLISHING RAPPORT

2.100 All interviews should have a Rapport phase, where the aims and conventions of the interview are explained and relationships are established between the child and the interview team. Some interviewers prefer to deal into elements of Rapport in the interview preparation phase (ground rules, reassurance). If so, such procedures need to be properly documented and agreed with managers, More formally, the Rapport phase should normally encompass the following:

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

Most children will be anxious prior to an investigative interview and few will be familiar with the formal aspects of this procedure. It is therefore important that the interviewer uses the rapport period to build up trust and mutual understanding with the child and help them to relax as afar as possible in the novel environment. Initial discussions should focus on events and interests not thematically related to the investigation: sport, television programmes, school curriculum, the journey to the interview suite and so on. Sometimes, where the child and the interviewer have had some previous contact, this aspect of the Rapport phase can be quite brief. At other times, especially when the child is nervous or has been subject to threats from the alleged abuser, a much longer period of the rapport phase may be warranted.

Ground rules

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

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

These points are best put across in the context of concrete examples. It is recommended that interviewers give the child the chance to practice saying "I don't know" or "I don't understand". (See Box 2.9. for sample material).

Box 2.9. Establishing the ground rules for the interview

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

(Pause)

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

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

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

(pause)

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

(After Robinson Howes, 2000)

Truth and lies

2.102 Toward the end of the Rapport phase, when ground rules have been explained to the child, the interviewer should advise the witness to give a truthful and accurate account of any incident they describe. There is no legal requirement to administer the oath or admonish the child, but since the video may be used as evidence in court it is helpful to the court to know that the child was made aware of the importance of telling the truth (see paragraph 2.20 above). This should be done in the rapport phase and not later in the interview because this might run the risk of the child concluding that the interviewer had not believed what the child had said up to that point. It Is inadvisable to ask children to provide general definitions of what is the truth or a lie (a task which would tax an adult), rather, they should be asked to judge from examples. The interviewer should use examples suitable to the child's age, experience and understanding. Secondary school age children can be asked to give examples of truthful statements and lies, while younger children can be offered examples and be asked to say which is true and which are lies. *It is important that the examples chosen really are lies, not merely incorrect statements:* lies must include an intent to deceive another person. An example of one approach is shown in Box 2.10. Different examples are suggested for different ages of children. If a child shows a proper appreciation of the difference between truth and lies, it is important to conclude by emphasising the importance of being truthful and accurate in everything they say in the interview and the possible adverse consequences for another person of telling lies.

How this is put across will again vary with the age of the child. If a child shows no proper appreciation of the distinction between truth and lies, then this may seriously jeopardise the evidential value of the interview.

Box 2.10. Exploring the difference between truth and lies

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

Example for younger children

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

Did John tell a lie?

(pause)

(child responds)

What should he have said?

(pause)

(child responds)

Why do you think he said "no mummy"?

(pause)

(child responds)

Example for older children

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

Did Tony tell a lie?

(pause)

(child responds)

What should he have said?

(pause)

(child responds)

Why do you think he said "no mum"?

(pause)

(child responds)

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

Establishing the purpose of the interview

2.103 The reason for the interview needs to be explained in a way which makes the focus of the interview clear but does not specify the nature of the offence: to do so would be regarded as unnecessarily leading. Where a child has made an explicit complaint against a named individual and especially when this has been repeated in a pre-interview assessment (see paragraphs 2.50-2.54 above), it should be possible to raise the issue by referring to previous conversations. The law permits the interviewer to raise an earlier complaint by the child to a third party, though the substance of the complaint should not be raised by the interviewer. It is also important to stress that what the interviewer wants to discuss with the child is their memory of the incident(s) which gave rise to the complaint, not the complaint itself. The situation is less straightforward where the child has made no previous complaint, but where there are legitimate reasons for the interview (e.g. the results of medical examinations; allegations by a sibling; confessions by an alleged abuser).

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

Box 2.11. Raising issues of concern

'Tell me why you are here today'

(If no response)

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

(If no response)

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

(If no previous allegation)

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

(If no response)

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

(If no response)

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

(Adapted from M. E. Lamb, K. J Sternberg, P. W. Esplin, L Hershkowitz and Y Orbach, 1999a).

Learning more about the child

2.105 Rapport also gives the interviewer the opportunity to build on their knowledge of the child which they will have gathered from the planning meeting. In particular they will learn more about the child's communication skills and degree of understanding of vocabulary. The interviewer can then adjust their language use and the complexity of their questions in the light of the child's responses. Rapport also serves to set the tone for the style of questions to be used by the interviewer for the main part of the interview. It is important that the child be encouraged in the Rapport phase to talk freely through the extensive use of open-ended questions (see section 10.3 below for examples); a stream of questions which the child can answer with 'yes', 'no' or some equally brief response should be avoided.

PHASE TWO: FREE NARRATIVE ACCOUNT

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

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

2.108 In many interviews, particularly those relating to allegations of child sexual abuse, children may be reluctant to talk openly and freely about incidents. Sometimes this can be overcome simply by the interviewer offering reassurance, for example 'I know this must be difficult for you. Is there anything I can do to make it easier?'). It is quite in order for the interviewer to refer to a child by their first or preferred name, but the use of terms of endearment ('dear' 'sweetheart'), verbal reinforcement (telling the child he or she is 'doing really well') and physical contact between the interviewer and the child (hugging; holding a hand) are inappropriate. However, this should not preclude physical reassurance being offered by an interview supporter to a distressed child. Another cause of reticence could be that the child has been taught that the use of certain terms is 'rude' or otherwise improper. If interviewers believe this to be a problem, they can tell the child *'Perhaps you have been taught that you shouldn't say certain words. Don't worry, in this room you can use what words you like. We have heard all of these words before*. It's all right to use them here'. The interviewer should not assume that when the child uses a sexual term, he or she attaches the same meaning to it as the interviewer. Any ambiguities can be clarified in the Questioning phase.

2.109 Some children provide more information spontaneously than others. In general, developmentally younger children provide less free narrative than older children. This should not prevent the interviewer doing as much as possible to elicit a clear and full account from such children: bear in mind that research has consistently

demonstrated that young children's accounts are the most likely to be tainted through inappropriate questioning. Pauses and silences may be tolerated by the interviewer, but need careful handling where a child has been traumatised. Too long a silence can be oppressive and conversational pace can be lost. Tolerance should also be extended to what might appear irrelevant or repetitious information. Prompting is quite in order provided it is neutral ('and then what happened?') and does not imply positive evaluation ('right', 'good'). The interviewer needs also to be aware of the danger of intentionally or unintentionally communicating approval or disapproval, through inflexions of the voice or facial expressions.

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

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

PHASE THREE: QUESTIONING

Style of Questions

2.112 Children vary in how much relevant information they provide in free narrative. However, in nearly all cases it will be necessary to expand on the child's initial account through questions. It is important that the interviewer asks only one question at a time and to allow the child sufficient time to complete their answer before asking a further question. Patience is always required when asking questions, particularly with developmentally younger children: they will need time to respond. Do not be tempted to fill pauses by asking additional questions or making irrelevant comments. Sometimes, silence is the best cue for eliciting further information, but it can also be oppressive and care needs to be taken in the use of this technique. It is important also that the interviewer does not interrupt the child when he or she is still speaking. Interrupting the child may dis-empower the witness and also suggests that only short answers are required.

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

- open-ended,
- specific,
- closed, and
- leading, questions.

The Content of Questions

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

2.115 Vocabulary can be particularly important in dealing with allegations of sexual abuse, where children may use terms which are personal to themselves or their families. Alternatively, they may use terms like 'front bottom' which are vague and non-specific. It is always advisable for the interviewer to ensure that they understand what the child means. The use of a doll or diagrams (see paragraphs 2.134-2.135) is always preferable to children referring to their own bodies when reference needs to be made to the location of sexual acts. Where a young child uses the appropriate adult terminology, it may still be necessary to check their understanding.

2.116 The information requested in questions should always take account of the child's stage of development. Many concepts, which are taken for granted in adult conversation, are only acquired gradually as children develop. Therefore, questions which rely upon the grasp of such concepts may produce misleading and unreliable responses from children which can damage the overall credibility of their statements in the interview. Concepts with which children have difficulty include:

- dates and times
- length and frequency of events height
- weight and age estimates

2.117 Such concepts are only gradually mastered. For the concept of time, for instance, telling the time is learned by the average child at around 7 years of age, but an awareness, of the day of the week and the seasons does not occur until at least a year later. Age norms are only a guide and it should be anticipated in the Planning

phase whether a particular child is likely to perform above or below such norms. There are a number of techniques for overcoming difficulties of measurement. Height, weight and age can be specified relative to another person known to the child (e.g. the inter-viewer or a member of the child's family). Time and date estimates can also be made by reference to markers in the child's life (e.g. festive seasons, holidays, birthday celebrations, or which class at school). Time of day and the duration of events can sometimes be assisted by questions which refer to television programmes watched by the child or to home or to school routine.

Open-ended Questions

2.118 An open ended question is one that is worded in such a way as to enable the child to provide more information about any event in a way that is not leading, suggestive or putting the witness under pressure. Open-ended questions allow the witness to control the flow of information and minimise the risk that interviewers will impose their view of what happened. The temptation for the interviewer of a child who has disclosed relevant information in the Free Narrative phase is for the interviewer to immediately ask a series of very focused or even leading questions to 'get to the heart of the matter'. This should be resisted: such a procedure may upset the child and risk producing misleading information and may cause difficulties if the tape is played at court. Research and practice shows that the most reliable and detailed answers from children of all ages are secured from open-ended questions. *It is important, therefore, that the questioning phase should begin with open-ended questions and that this type of question should be widely employed throughout the interview*.

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

2.120 It is rarely possible to use only open-ended questions with children. For instance, research suggests that children who have been threatened or sworn to secrecy about abuse may only respond to specific questions. Even when children are prepared to provide information in response to open-ended prompts, further specific questions may be necessary to obtain enough evidence to proffer detailed charges. Young children too may not be able to access material in memory through openended questions (see paragraph 2.123 below). Where it is necessary to ask specific questions, it is advisable to follow them with an open-ended question to return the initiative to the child.

Specific Questions

2.121 Specific questions serve to ask in a non-suggestive way for extension or clarification of information previously supplied by the witness. Specific questions vary in their degree of explicitness and it is always best to begin with the least

explicit version of the question. Thus, a child in a sexual abuse investigation may have responded to an open ended prompt by mentioning that a named man had climbed into her bed. A specific but non-leading follow-up question might be 'What clothes was he wearing at the time?' If this yielded no clear answer, a further, more-explicit question might be: 'Was he wearing any clothes?'

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

2.123 For some young witnesses, open-ended questions may not assist them in accessing their memories because their abilities to search their memory systematically are insufficiently developed. However, they may well respond accurately to specific questions which target information they know. Thus a young child may provide little information to an open-ended prompt such as 'What clothes was he wearing?' but respond readily to a specific question such as 'What did his trousers look like?' Care must be taken in framing such questions in that the more specific questions become, the more likely they are to provoke suggestive responding.

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

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

Closed Questions

2.126 If a specific question proves unproductive, it may be useful to use a closed question. A closed question is one which poses fixed alternatives and the child is invited to chose between them ('Were you in the bedroom or in the living room when this happened?'). The dangers of using closed questions is that children respond with one or other choice without enlarging on their answer and that in the absence of a genuine memory, children may be tempted to guess. The latter can be countered by prefacing the question with a reminder to the child that 'don't know' is an acceptable response and that the interviewer does not know what happened. Alternatively, 'don't know' can be included as an option in the question ('Were you in the bedroom, the living room, or can't you remember?'). Closed questions should never be used for probing central events in the child's account which are likely to be disputed at court.

Leading Questions

2.127 Put simply, a leading question is one which implies the answer or assumes facts which are likely to be in dispute. As with closed questions, whether a question is construed as leading will depend not only on the nature of the question, but also what the witness has already said in the interview. When a leading question is put improperly to a witness giving evidence at court, opposing counsel can make an objection before the witness replies. This, of course, does not apply during recorded interviews, but it is likely that should the interview be submitted as evidence in court proceedings, portions might be edited out or, in the worst case, the whole recording ruled inadmissible. (See Appendix E).

2.128 In addition to legal objections, research indicates that interviewees' responses to leading questions tend to be determined more by the manner of questioning than by valid remembering. Leading questions can serve not merely to influence the child's answer, but may also significantly distort the child's memory in the direction implied by the leading question. For these reasons, leading questions should only be used as a last resort, where all other questioning strategies have failed to elicit any kind of response. On occasions, a leading question can produce relevant information which has not been led by the question. *If this does occur, interviewers should take care not to follow up this question with further leading questions. Rather, they should revert to open or specific questions.*

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

2.130 Of course, there may be circumstances in the interview where the use of leading questions is unlikely to result in any legal challenge. For instance, during the rapport phase when a witness is being taken through their name and address or for agreed factual information, for instance, members of the family and their names. However, good interviewing practice should discourage leading questions with all but the youngest and most reticent witnesses. The use of leading questions in the

rapport phase may inhibit the child from responding in their own words later in the interview and it is not always possible at the time to anticipate what facts might subsequently be in dispute. Moreover, the use of inappropriate leading questions may produce nonsensical or inconsistent replies which may damage the child's credibility as a witness.

PHASE FOUR: CLOSURE

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

- check with the second interviewer, if present
- summarise the evidentially important statements made by the child
- answer any questions from the child
- thank the child for their time and effort
- provide advice on seeking help and a contact number
- return to rapport or neutral topics, and
- report the end-time of the interview.

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

2.133 In addition to any summary, the child should be thanked for taking part in the interview and for the time and effort involved. They should also be asked if they have any questions which the interviewer can answer. Children frequently ask what will happen next. Answers and explanations should be appropriate to the age of the child; it is important that promises which cannot be kept should not be made. It is also good practice to offer a child (or if more appropriate, the accompanying adult) a contact name and telephone number should the child subsequently wish to discuss any matters of concern with the interviewer.

2.134 Sometimes in the planning stage, plans have been made for the protection and safety of the child if, in the interview, the child expressed a view that they felt unsafe with a given person or in a particular place. Closure provides the

opportunity to outline plans for the child's immediate safety, especially if the child is concerned about going home and/or meeting a particular person.

2.135 The aim of closure should be that, as far as possible, the child should leave the interview in a positive frame of mind. In addition to the formal elements, it may be useful to revert to neutral topics discussed in the Rapport stage to assist this. It is normal to complete the formal recorded interview by stating the end time.

FURTHER INTERVIEWS

2.136 One of the key aims of video recording early investigative interviews is to reduce the number of times on which children need to provide their account. Good pre-interview planning will often ensure that all the salient points are covered within a single interview. However, even with an experienced interviewer and good planning, an additional interview may be necessary in some circumstances. These include:

- where children indicate to a third party that they have significant new information which was not disclosed at the initial interview, but which they now wish to share with the interview team
- where the initial interview opens up new lines of enquiry or wider allegations which cannot be satisfactorily explored within the time available
- where in the preparation of his or her defence, an accused raises matters not covered in the initial interview
- where significant new information emerges from other witnesses or sources

In such circumstances, a supplementary interview may be necessary and this too, should be video-recorded. Consideration should always be given as to whether holding such an interview would be in the child's interests. Supplementary interviews for evidential purposes should only be conducted by members of joint investigation teams when they are fully satisfied, if necessary after consultation with the Crown Prosecution Service, that such an interview is necessary. The reasons for the decision should be fully recorded in writing.

2.137 More than one supplementary interview is unlikely to be appropriate. Exceptions to this include when interviewing very young or psychologically disturbed children (see section 16) or where a case is exceptionally complex or involves multiple allegations. Once again, the reasons for such decisions should be fully recorded in writing and if necessary, the Crown Prosecution Service should be consulted.

MISLEADING STATEMENTS

2.138 Children can on occasion provide misleading accounts of events, but these are often the result of misunderstandings or misremembering rather than deliberate fabrication. The most common cause of such misunderstandings is the interviewer failing to ask appropriate types of question or reaching a premature conclusion which the interviewer then presses the child to confirm. Like adult witnesses, children can on occasion be misleading in their statements, either by fabricating allegations or by omitting evidentially important information from their answers. Where inconsistencies in the child's account give rise to suspicion, interviewers

should explore these inconstancies with the child after he or she has completed their basic account. Children should never be challenged directly over an inconsistency, rather such inconsistencies should be presented in to the context of puzzlement by the interviewer and the need to be quite clear what the child has said. On no account should the interviewer voice his or her suspicions to the child or label a witness as a liar: there may be a perfectly innocuous explanation for any inconsistency.

2.139 In evaluating accounts, interviewers should not rely upon cues from the child's behaviour as guides to the reliability or otherwise of children's statements. While research confirms that certain non-verbal behaviours are typically more frequent when children or adults lie, there is no single cue which is an infallible sign. Moreover, such cues may be associated with stress and so their origins may be easily confused. Where a child uses language or knowledge, particularly of sexual matters which is believed to be inappropriate for a child of that age, specific questions can be asked to try to locate the source of that knowledge. Likewise, if it is suspected that children alleging sexual abuse may have been exposed to sexually explicit films, videos, internet sites or magazines, specific questions can be employed to explore whether parts of the child's account could conceivably be derived from such sources. It is important that all such questions should be reserved for the end of the formal questioning so as not to disrupt the child's narrative.

SPECIAL INTERVIEWING TECHNIQUES

Props

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

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

Other Interviewing Techniques

2.142 There are a number of specialised interview techniques which have been developed for interviewing children and these may be acceptable to the courts as an alternative to the method recommended in this guidance, provided evidential considerations are borne in mind and the child's well-being is safeguarded. Provided the interviewer avoids suggestive questions and succeeds in eliciting a spontaneous account of the substance of the allegation, there is no reason why such evidence should not be acceptable to the courts. The investigative team should discuss with senior managers and if necessary consult with CPS, before undertaking these alternative procedures. It is essential that the interviewers involved are especially trained in the techniques concerned. Each procedure is described only briefly and further information can be obtained by consulting the relevant sources (Appendix Q).

2.143 Among these specialised interviewing techniques are those for children who are particularly reticent or who may be under duress not to divulge information relevant to the investigation and who thus may not respond to conventional questioning. In the *Facilitative Interview*, children are asked about pleasant and unpleasant experiences, 'okay' and 'not okay' actions, what the child would like to change in his or her life and there may be an open-ended discussion about secrets. In the *Systematic Approach to Gathering Evidence or SAGE* interview, the child is encouraged over a number of separate sessions to talk about significant persons and places in the child's life and his or her attitude toward them. Systematic comparison of the child's responses enables the trained interviewer to identify areas of particular concern which can then be explored more thoroughly using open-ended questions (see Wilson and Powell, (2001) for more detailed information).

2.144 The *Cognitive Interview* was developed for use with adult witnesses to crime and has been shown to lead to an increase in accurate recall compared to traditional questioning procedures. It consists of a package of mnemonic techniques (e.g. mental reinstatement of context; changing order of recall, changing perspective) designed to assist witnesses to search their memory more exhaustively through multiple attempts at recall within a single interview session. The Cognitive Interview has been adapted for use with children, though it is not advised for children below a developmental age of 7, nor for incidents where there is a strong element of personal trauma (see Chapter 3 paragraphs 3.147-3.149 and Milne and Bull, 1999, for more detailed information).

2.145 *The Structured Investigative Protocol* is a variant on the phased approach to the interview recommended in this guidance. This has been developed by the National Institute of Child Development (NICHD) as a result of concern over insufficient use of open-ended questions. Interviewers use a learned series of openended prompts rather than following their own pattern of questioning to elaborate upon the child's initial free narrative account (see Lamb et al., (1999) and Sternberg et al, (1999) for more detailed information).

2.146 *Statement Validity Assessment* (SVA) is a technique widely used in Germany to interview and assess the statements of children in sexual abuse investigations. It shares with the Guidance an emphasis on free narrative linked to open-ended questioning. A key feature of SVA is *Criteria-Based Content Analysis* (CBCA) where a child's statement is examined for the presence of certain features, which

are believed to characterise truthful accounts. The technique relies upon an extended narrative being available for analysis and so it is inappropriate for witnesses who provide only limited narratives such as the very young, children with communication difficulties or depressed children. A number of issues concerning the reliability and validity of CBCA and its use in criminal proceedings in Egland and Walesare as yet unresolved (see Vrij (2000) for more detailed information).

INTERVIEWING DISABLED CHILDREN

2.147 The term 'disabled children' encompasses a wide range of impairments of varying severity. It will nearly always be necessary to seek specialist advice on what special procedures are appropriate and if the services of an intermediary or interpreter are required (see paragraphs 2.36-2.41. above). There is rarely any reason in principle why such children should not take part in a videotaped interview, provided the interview is tailored to the particular needs and circumstances of the child. This will require some thought and planning by the interview team and a degree of flexibility in scheduling the interview: For some children, a number of shorter sessions may be preferable to a single interview. Some advice on what adaptations may be necessary and guidance on dealing with different kinds of disability are provided in Appendix G.

2.148 Additional time will be required for planning interviews with disabled children or children with impairments. Particular attention will need to be taken to ensure that a safe and accessible environment is created for the child and that interview suite is adapted to the child's particular needs. Disabled children are likely to have already come to the attention of professionals; information can be gathered from existing assessments and from workers who know the child well. Such information should enable the interview team to make an assessment of the likely impact, if any, of an impairment on communication. Where children have specific communication difficulties, aids such as drawings or photographs will need to be prepared to facilitate questioning. All such aids should be preserved for possible production at court.

INTERVIEWING VERY YOUNG CHILDREN

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

2.150 One response to these difficulties may be to make a decision to distribute the interview over a number of short sessions conducted by the same interviewer, spread over a number of days. When this occurs, care must be taken to avoid repetition of the same focused questions over time, which could lead to unreliable or inconsistent responding in some children and interviews being ruled inadmissible by the court. Rapport and Closure should be included in each session.

THE CHILD WHO BECOMES A SUSPECT

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

2.152 If it is concluded that the evidence of the child as suspect is also highly relevant to a particular case, the interview should be terminated and the child told that it is possible that he or she may be interviewed concerning these matters at a later time. Care should be taken not to close the interview abruptly in these circumstances. Instead, the child should be allowed to complete any statement they wish to make. Any admission by a child in the course of an investigative interview may not be admissible as evidence in criminal procedures. Normally, a further interview would need to be carried out in accordance with the relevant provisions of the Code for the Detention, Treatment and Questioning of Persons by Police Officers (PACE, Code C). The Code provides, among other matters, for the cautioning of a suspect and for the presence of an appropriate adult during questioning.

2.153 A child who confesses to a criminal offence during the course of an interview may ask the interviewer for some guarantee of immunity. On no account should any such guarantee be given to a child over the age of criminal responsibility (10 years), however remote the prospect of criminal proceedings against the child might seem. Nor should the interviewer give any kind of undertaking regarding the child's future care arrangements. If the child is to be interviewed in accordance with PACE, he or she will be cautioned and the purpose of the interview made clear.

2.154 Where the priority is to obtain evidence from the child as a victim or a witness, the interview can proceed and should follow this guidance. So far as is practicable, consideration should be given in the planning stage as to how interviewers will deal with any confessions to criminal offences made by the child in the course of the interview. Any decision on an appropriate course of action will involve taking into account the seriousness of the crime admitted and weighing it against the seriousness of the crime perpetrated against the witness. It is preferable to anticipate and plan for such an eventuality while recognising that any decisions on a particular course of action are likely to depend upon what has been disclosed by the witness during the course of the interview.

3 PLANNING AND CONDUCTING INTERVIEWS WITH VULNERABLE AND INTIMIDATED WITNESSES

PART A: PLANNING INTERVIEWS

Aims

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

- The different types of vulnerable witness (3.1)
- Information which might assist recognition of such witnesses (3.2-3.18)
- How different types of vulnerable witnesses may be supported and safeguarded at interview (3.19-3.39)
- Information on planning interviews with vulnerable witnesses (3.41-3.53. and 3.64-3.74)
- Issues of consent and **competence** (3.53-3.56)

WHO ARE VULNERABLE WITNESSES?

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

- learning disabled witnesses
- physically disabled witnesses
- Witnesses with mental disorder/illness
- witnesses suffering from fear and distress (intimidated witnesses)

INFORMATION THAT MIGHT ASSIST THE INVESTIGATING TEAM IN RECOGNISING A VULNERABLE WITNESS

Recognising vulnerable witnesses

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

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

- intoxication through intake of alcohol and/or drugs
- withdrawal from drugs

- mental disorder or illness
- impairment of intelligence and social functioning (learning disability)
- a physical disability or disorder
- incapacity through age
- fear or distress.

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

Significant impairment of intelligence and social functioning (learning disability)

3.4 Learning disability is not a description of *one* disability, but a collection of many different syndromes and types of damage. Some two hundred causes of learning disability have been identified. Severe cases may be easily identified but mild or moderate learning disabilities may be more difficult to identify.

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

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

- Where did the witness go to school?

  Was this a special school?

- If not a special school, did the witness have a special support teacher?
- Does the witness have any reading or writing difficulties?
- What does the witness do during the day?

  Attend a special college or protected workplace?

- Where does the witness spend their leisure time?

  At a Day Centre or Gateway Club?

- Where does the witness live?

  Is this a group home or sheltered housing?

- Does the witness have a social worker or care assistant?

  Would the witness like this person to be contacted for interview or pre-trial support?

- Do they receive any benefits relating to disability?

3.7 Behavioural Indications:

Learning Disability

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

- A slow and/or confused response to questions.
- Difficulty in understanding simple questions.
- Speech difficulties.
- Difficulty/inability with reading and writing.
- An unclear concept of time and place.
- Difficulty in remembering personal details or events.

Further information may be found in *Vulnerable Witnesses: A Police Service Guide*, which supersedes the *Speaking Up for Justice* (SUFJ) list of prompts.

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

- they often have difficulty in making sense of the world and in understanding relationships
- they are likely to have little understanding of the emotional pain or problems of others
- they may display great knowledge of certain topics and have an excellent vocabulary, but are likely to be pedantic, literal, and may have obsessional interests.

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

Physical disability

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

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

Mental disorder/illness

3.12 This may be the most difficult category to define and identify for support through **'Special Measures'**, because of the fluctuating nature of many mental disorders. A person with such a disorder may only need special assistance at times of crisis.

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

3.14 Mental illness is undefined and its operational definition is a matter for clinical judgement in each case (Mental Health Act 1983 Explanatory Memorandum, Section 1(8)). However the definition goes much wider than mental illness to include any disorder which renders a person vulnerable regardless of diagnosis.

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

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

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

Witnesses suffering from fear or distress (intimidated witnesses)

3.18 Intimidated witnesses can be identified by the fear and distress they feel in relation to the case in which they are involved. Cases which are likely to give rise to intimated witnesses include:

- domestic violence
- assaults
- sexual offences
- racial abuse and racially motivated crime
- homophobic crime
- their relationship to the accused
- living in proximity to the alleged offender, their family or associates
- being the victim of crime

The effects of intimidation are likely to be greater where there have been repeated incidents. Fearful or distressed witnesses may be unwilling to give a statement.

SUPPORT FOR VULNERABLE WITNESSES AT INTERVIEW

Race and cultural factors

3.19 A witness's race, culture, ethnicity and first language should be given due consideration by the interviewing team. *A witness should be interviewed in the language of their choice*. If a witness is bilingual, then this may require the use of an interpreter. The interpreter should be from the National Register of interpreters (see Chapter 2, paragraphs 2.36-2.41). Other relevant factors may include the relationship to authority figures within different minority groups. It may be

necessary for the interviewing team to seek advice about particular customs and beliefs the witness may share, including religious festival or ceremonies such as Eld and Divali.

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

3.20 Many witnesses will be unable to give their evidence in one long interview. In many instances, several short interviews, preferably held on the same day (though not necessarily), would be more likely to lead to a satisfactory response.

3.21 A rapport stage prior to formal questioning is essential. This will allow the witness to have some familiarity with the personnel who will be involved (particularly where there are sensitive issues). Such persons might include the interviewer(s) and the ***intermediary*** *(if this is to be requested as a Special Measure)*.

3.22 The current provisions under the Police and Criminal Evidence Act 1984 Codes: (PACE) Code C: The Detention, Treatment and Questioning of Persons by Police Officers are unclear in defining the role of the 'appropriate adult' in relation to learning disabled witnesses as opposed to suspects. PACE Code C is currently being reviewed. This review will include a consultation process which will propose amending Code C to clarify that the provisions, including the requirements for the presence of an appropriate adult during interview, apply only to suspects and not to witnesses. As indicated (Chapter 1, paragraph 1.9.) vulnerable or intimidated witnesses (including children) may have a supporter present when being interviewed.

Witnesses with physical disabilities

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

3.24 If the witness does not communicate by speech, alternative communication systems are available, such as: British Sign Language (BSL) and Sign Supported English (SSE) (described in Chapter 2, paragraphs 2.36-2.41). Other sign and symbol systems may be required for witnesses with additional disabilities. Examples of sign systems include Makaton Signing and Sign-a-long. Symbol systems include Rebus and Makaton Symbols, and Communication Boards. Communication Boards can also be used with Makaton or Rebus or may be personalised and composed of words, pictures and symbols.

3.25 Some witnesses may also communicate using a mixture of words and gestures. If a witness has an idiosyncratic speech or communication pattern, a vocabulary should be worked out which will need to be explained to all the personnel present at the interview. Initially at least, signs for 'yes', 'no', 'don't know' and 'don't understand' should be identified. *In one case, a young woman who used single words along with expressive gestures which were clearly understood by those close to her gave a good account of events. Those interviewing her were made aware of her mode of communication prior to the interview.*

3.26 Witnesses who have limited movement may require computer or other electronic communication equipment which could be accessed via fingers, or by pointing to letters or symbols on a board, or by other means. It is important that witnesses

move or point themselves; the involvement of a third party is likely to lead to the evidence being ruled as inadmissible.

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

Witnesses with mental disorder/illness

3.28 Mental illness or disorder does not preclude the giving of reliable evidence. However, for many disorders there is need to protect the witness from additional stress and give support (see paragraphs 3.41-3.53 and 3.64-3.71) to enable them to give reliable evidence. Recall of traumatic events can cause significant distress and recognition of the mental state of the witness and its effect on their behaviour is crucial. There is also the need to ensure that the type of disordered behaviour is identified.

3.29 Witnesses with mental illness, such as schizophrenia or other delusional disorders, may give unreliable evidence through delusional memories or by reporting hallucinatory experiences, which are accurate as far as they are concerned, but bear no relationship to reality, e.g. they might describe a nonexistent crime. Challenges to these abnormal ideas may cause extreme reactions and/or distress.

3.30 Witnesses may suffer from various forms of anxiety through fear of authority, exposure or retribution. Extreme fear may result In phobias or panic attacks or unjustified fears of persecution. Anxious witnesses may wish to please, they may tell the interviewer what they believe he/she wishes to hear or fabricate imaginary experiences to compensate for loss of memory. The evidence given by depressed witnesses may be coloured by feelings of guilt, helplessness or hopelessness. Witnesses with anti-social or borderline traits may present with a range of behaviours such as deliberately giving false evidence. These disorders cause the most difficulties and contention in diagnosis, and require very careful assessment.

3.31 Witnesses, particularly some older witnesses, may also suffer from dementia which can cause cognitive impairment. A psychiatrist or clinical psychologist with experience of working with older individuals should be asked to assess their ability to give reliable evidence and the affect such a procedure might have on their health and mental welfare.

3.32 Witnesses with mental disorder or illness may show some of the behaviour seen in the learning disabled witness, such as confusion, memory loss and impaired reasoning. For this reason, many of the practices which would enable the learning disabled witness to give a statement may also benefit mentally disordered witnesses. The rapport stage can be used to identify and reduce confusion, as would interviewer awareness of possible emotional distress and anxiety.

3.33 Cognition may not present as an immediate difficulty, but attention to the way a statement is given (paragraph 3.44. below) and how questions are posed (see paragraphs 3. 96-3.101) should be considered.

3.34 The witness may wish to please the person in authority (also paragraphs 3.108.-3.111. below). They may be suspicious of the person, or aggressive, or wish to impress the interviewer. Interviewing teams should be aware of such possibilities. Expert assessment should give some direction as to the personality traits of the witness and how these may affect the evidence they give.

3.35 Confusion may be exacerbated by the use of drugs, alcohol or withdrawal from drugs. An assessment should include information as to whether this is likely to affect the statement, and for how long.

Witnesses suffering from fear or distress (intimidated witnesses)

3.36 Intimidated witnesses need to feel safe and they may require support and encouragement to make a statement. Such witnesses should be appraised at an early stage of both the pre-trial support and protection that can be made available to them and also of the Special Measures that may be available to them at **trial** at the discretion of the court, on application by the prosecution. Such applications will be based on advice and information from the police and take into account the witness's views. Further details of these Special Measures are set out in Chapter 5.

3.37 Investigators need to be alert to the fact that a witness may not be intimidated at the time the offence is reported but that subsequent events may give rise to fear and distress later on in the criminal process, which would qualify the witness for consideration for Special Measures.

3.38 Where there is risk of intimidation, witnesses should be offered information as to where rapid help and support can be obtained. A leaflet listing names, addresses and telephone numbers of relevant individuals and agencies should be available in each locality for distribution to witnesses. If the witness has any disabilities, additional support should be obtained, as appropriate (see paragraphs 12-3.11 above).

3.39 If the witness has to give evidence in respect of a sexual offence, they are deemed **eligible** for Special Measures unless they choose not to avail themselves of any additional measures.

3.40 The examination of witnesses through an intermediary (Section 29 of the 1999 Act) and the use of a communication device (Section 30) are not available to witnesses who are eligible for Special Measures on the grounds of fear and distress alone. They may be permitted to have the presence of a supporter present in the courtroom, at the discretion of the court.

PLANNING THE INTERVIEW.

The importance of planning

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

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

3.43 An early planning (Special Measures) meeting may be advisable between the police and the Crown Prosecution Service to discuss the issues involved. In deciding whether to formally interview a vulnerable witness, a balance should be kept between the need to obtain best evidence and the best interests of the witness.

Agreement should also be reached on the form in which the statement is to be taken. Separate guidance on Special Measures meetings is in preparation.

3.44 Any decision as to the form of the statement, whether as a videotaped interview or a written statement will need to be taken on an individual basis, taking into account information and any expert opinion available. One important factor would be the presence of any memory disabilities. If the witness has unusual difficulties in retrieving past events readily, then an early videotaped interview may be advisable. Likewise, if a witness is likely to suffer undue stress in giving **evidence in chief** live in the courtroom, then again a videotaped statement may be preferable. Where a written statement is thought to be more appropriate than a videotaped interview, the interviewer(s) should consider the P.E.A,C.E. model of investigative interviewing advocated by the Association of Chief Police Officers (ACPO) in "The Practical Guide to Investigative Interviewing" (published annually by the National Crime Facility at Bramshill).

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

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

3.47 An expert or, at the court's discretion, a responsible person who knows the witness well, may be called to provide advice on whether the witness would benefit from Special Measures. An early request for Special Measures can be made by either the prosecution or the defence (see Chapter 5 for details of Special Measures and their applicability to different types of vulnerable witness).

3.48 Some vulnerable witnesses may be very unused to speaking to strangers. Witnesses who are intimidated may be frightened and may well need to spend time getting to know the interviewer before they are ready and/or willing to take part in an investigative interview. This familiarisation process may take some time (e.g. hours in some cases) and therefore, in their preparation, interviewers need to consider whether one (or more) meetings with a witness should be planned to take place prior to the investigative interview. This preparation should also consider the most appropriate location for the interview (see 3.57). Other considerations might include: regular breaks for refreshment, the need to move around the room if the witness finds it difficult to sit still for more than a short time and the side effects of medication. A full written record must be kept and referred to in the body of the Section 9 Statement, which records the interview. This record should be disclosed to the CPS under the requirements of the Criminal Procedure and Investigation Act 1996. Substantive issues should *not* be discussed (see also Chapter 2, paragraphs 2.50-2.54).

3.49 At the conclusion of their interview, vulnerable or intimidated adult witnesses who are victims should be given the opportunity to make a Victim Personal Statement to say what effect the crime has had on them and to help identify their need for information and support. The statement should be taken in the same format as the

witness statement i.e.. where a video-recorded interview has taken place the Victim Personal Statement should also be video recorded. For further details of the scheme see Home Office guidance issued on 14th August 2001 under cover of Home Office Circular No. 35/2001.

3.50 Providing a Victim Personal Statement (video recorded or written) is entirely voluntary. In the first instance the vulnerable witness should be given the opportunity to make the statement themselves but in some circumstances, for example those with a learning disability it may be appropriate for their carer to provide the statement on the victim's behalf. In some cases it maybe necessary to take a statement from both the victim and the carer, in order to establish a full picture of the impact of their experience.

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

3.52 In cases where the witness statement has been taken in the form of a videorecorded interview, it is preferable for the Victim Personal Statement to follow on the same tape but there must be a clear break between the two. This can be achieved by dividing the two statements with a still image e.g. the police force logo. Alternatively or additionally the interviewer may make a statement on the tape acknowledging the change from the evidential interview to the Victim Personal Statement.

3.53 There is always the possibility that at a later time the victim or their carer may feel that the impact of the experience has been such that a second statement is needed. Unless there are exceptional circumstances, a second statement should be taken in a written format according to the Home Office guidance on Victim Personal Statements.

Interview duration

3.54 Whenever possible the interviewer should in the preparation and planning stage seek advice from people who know the witness about the likely length of time that the witness can be interviewed before a pause or break is offered. If there is an accompanying interviewer, this person can share responsibility with the lead interviewer concerning the active use of pauses and breaks. For some vulnerable witnesses there will be a need to plan for several pauses/breaks and for the interview to be spread over more than one day (see paragraph 3.46 above).

3.55 As well as being less able to concentrate for as long as other witnesses, some vulnerable witnesses may find the experience of being interviewed is 'too much' for them, especially if emotional matters are being dealt with. Ways of assisting such witnesses may include planning for breaks in the interview and/or pauses in which the interviewer moves the conversation on to more neutral topics (e.g. those mentioned in the Rapport phase – see paragraphs 3.84-3.92 below) before returning to the matter under investigation.

Social support at interview

3.56 It may often be helpful for a support person who is known to the interviewee to be present during the interview to provide emotional support (the 'interview supporter'). They may also be able to offer extra information regarding the particular communication needs of the witness. However, wherever possible, the views of the witness should be established prior to the interview as to whether they wish another person to be present and, if so, who this should be. The interviewer will need to explain to the interview supporter that he or she should not prompt or speak for the witness, especially on any matters relevant to the investigation. If an interpreter or an intermediary are included, then they will need to be distinct from the supporter and these different functions should not be vested in one person.

Location of interview

3.57 Active consideration needs to be given to the location of the interview. Should the witness come to a setting familiar to the interviewer but alien to the witness or is it possible for he or she to be interviewed in a setting familiar and comfortable? Not only may an alien setting be distressing for vulnerable witnesses, their recall may also be substantially poorer in such a setting. Furthermore, an unfamiliar setting may distract the witness from the purpose of the interview. In the planning phase, the interviewer should attempt to determine where the witness would prefer to be interviewed. Of course, the location for the interview should be one free from interruptions, distractions, and fear and intimidation. Consideration may be given to moving the interview to a suitable and secure location chosen by the witness, provided mobile video equipment of satisfactory quality is available. Good quality, lightweight **video recording** equipment is now widely available and relatively inexpensive.

The use of intermediaries

3.58 The use of intermediaries is dealt with in detail in Chapters 4 and 5. The role of the intermediary is to assist the witness to understand the interviewer, and the interviewer to understand the witness. The legislation requires the courts to approve the use of an intermediary, although this can be done retrospectively when used at the investigation stage to assist with the video recorded interview when an application is made for the recording to be admitted as the witness' evidence in chief. *(Separate guidance on the use of intermediaries is in preparation.)*

3.59 If the intermediary already knows the witness, then useful information concerning that witness's communication methods will be available. If this is the case, then it should be established in the planning phase that the intermediary has played no role in the events in question. Also, the planning phase should take account of the extra time that may well be required if an intermediary is to be used in the interview.

CONSENT AND COMPETENCE

3.60 It is a general principle that all witnesses should freely consent to be interviewed and to have the interview recorded on videotape. This may raise difficulties with regard to some groups of vulnerable witnesses, such as those with learning disabilities or mental ill health. For such witnesses special procedures may need to be developed. This may include explanatory leaflets or practical demonstrations adapted to the witness's level of communicative competence or preferred method

of communication. Where communication of consent is in any doubt, in line with the functional approach to consent recommended by the Law Commission, a decision may be taken to go ahead with the interview if it is perceived to be in the best interests of the witness. Where such a decision is taken, the reasons should be recorded in full and retained as pail of the interview documentation (for further information see *Making Decisions – The Government's proposals in relation to mentally incapacitated adults)*.

3.61 Competency may be an issue with some vulnerable witnesses. A person is deemed competent to give evidence in criminal proceedings unless it appears to the court that he/she is a person who is not able to understand questions put to him/her as a witness, and give answers to them which can be understood (53.(3)). At the court's discretion, the evidence of an expert and/or a non-expert may be called to give advice as to the competence of the witness. (The provisions on competency in the 1999 Act are considered in detail in Chapter 2, paragraphs 2.16 – 2.25.)

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

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

INFORMATION ON PLANNING INTERVIEWS WITH DIFFERENT TYPES OF VULNERABLE WITNESS

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

3.64 When interviewing witnesses with autistic syndromes, best practice suggests that being aware of the following may be helpful:

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

- the witness may prefer a consistent and stable environment. For example, if there is more than one interview, it should be carried out in the same place, with the same people in the same positions within the room. This would also apply to the courtroom situation if they have to appear on more than one day.

3.65 Witnesses with Down's Syndrome, along with many other individuals with learning disabilities may:

- be disturbed and become anxious if there is shouting or aggression, especially if they are questioned by unknown people, particularly authority figures
- be affected by noise. If they have a significant hearing loss they may, for example, confuse similar sounding words. *(This has particular relevance in responses to 'wh' 'questions':. 'when, where, what and who).*

3.66 A small group of learning disabled witnesses may also have language difficulties which require alternative means of communication (see paragraphs 3.24-3.26. above). Communication is naturally ambiguous and often depends on tone, gesture and body language as well as words. This is also the case for learning disabled witnesses who may use a combination of single words, signs and gestures. It will be important to ascertain any differences in their use of language, and to identify a person who knows how the witness communicates (such as a parent, carer, social worker or speech and language therapist) and can make this language clear to the interviewer prior to the interview.

3.67 There is also the possibility of additional physical disabilities which might contribute to intellectual impairment and add to the difficulty of giving evidence (see also paragraphs 3.23-3.27 above).

3.68 Elderly witnesses may also suffer from cognitive impairments (See paragraph 3.31 above). They may require the support of Special Measures in order to be able to give full and reliable testimony.

Witnesses with physical disabilities

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

Witnesses with mental disorder/illness

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

3.71 It might also be helpful to ask the witness if they are in contact with a professional such as a doctor, social worker, community psychiatric nurse or **legal representative** who might be able to assist them. In some cases it may be clear

either from the location of the witness (e.g. hospital) or from other information volunteered by the witness or by one of the professionals known to the witness, that they have a mental disorder/Illness.

Witnesses suffering from fear or distress (intimidated witnesses)

3.72 If it is suspected that the witness's evidence is likely to be adversely affected by threats and intimidation, careful consideration should be given to the support necessary to deal with such intimidations which may arise from persons in their own family or other persons living within their locality. In cases of domestic violence, the witness may be at considerable risk through contact with one or more members of the family. In cases of racial abuse, threats may be made against both the witness and members of the witnesses' family.

3.73 Young people under 18 involved in prostitution may also be vulnerable to intimidation, if the police are to be more active in pursuing offenders involved with young people.

3.74 If any of the above factors are present, intimidation should be considered to be a possibility. This might deter the witness giving evidence in court, up to and including a court hearing even when they have made a clear prior statement. It is important to the well-being of the witness that active steps are undertaken by the police to minimise the risk of contact between the witness and any persons or groups likely to attempt intimidation. (ACPO have issued guidance on witness intimidation). If a witness is judged by the investigating team, to require therapeutic help prior to giving evidence in criminal proceedings, then it is important that the professionals undertaking therapy adhere to the official guidance: *Provision Of Therapy To Child Witnesses Prior To A Criminal Trial – Practice Guidance, and Provision of Therapy Prior to a Criminal Trial for vulnerable or intimidated witnesses: Practice Guidance*. Home Office with the CPS and the Department of Health, 2001.

PART B: INTERVIEWING VULNERABLE WITNESSES

Aims

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

- Interviewer behaviour (3.78-3.81)
- Pace of interviews (3.82-3.83)
- Establishing rapport (3.84-3.92)
- Oaths and the importance of telling the truth (3.93-3.95)
- Free narrative (3.96-3.101)
- Compliance and Acquiescence (3.102-3.111)
- Styles of questioning (3.112-3.141)
- Understanding what the witness is trying to convey (3.142-3.143)
- Special interviewing techniques (3.144-3.152)
- Closing the interview (3.153-3.157)
- Further interviews (3.158-3.159)
- Safeguarding the intimidated (3.161-3.166)

GENERAL ADVICE ON INTERVIEWING VULNERABLE WITNESSES

3.71 What follows is a recommended procedure for interviewing based on a phased approach. This treats the interview as a process in which a variety of interviewing techniques are deployed in relatively specific and discrete phases, proceeding from free narrative to open and then to closed forms of questioning. It is suggested that this approach is likely to achieve the basic aim of allowing the witness to provide an account. However, inclusion of a phased approach in this Guidance should not be taken to imply that all other techniques are necessarily unacceptable or to preclude their development. Neither should what follows be regarded as a checklist to be rigidly worked through. Nevertheless, the sound legal framework it provides should not be departed from by interviewers unless they have discussed and agreed the reasons for doing so with their senior manager(s).

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

- establish rapport
- seek free narrative recall
- ask questions

• closure

which will be described in greater detail below.

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

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

3.75 While research has found that the accounts of some types of vulnerable witnesses are less complete than those of ordinary witnesses, these are not necessarily less accurate, if the interviewing is conducted appropriately. A fundamental consideration when interviewing vulnerable witnesses is to determine whether the necessary communication aids are in place. Otherwise, it may be decided erroneously that the person does not have the communication skills necessary to proceed.

3.76 The interviewer will need to pitch the language and concepts used (see below) to a level that the witness can clearly understand, while the focus should be on recognising and working with the witness' capabilities rather than limitations.

3.77 The wishes of the witness with regard to the gender, ethnicity, age, etc. of the potential interviewer should be taken into account (e.g. at the planning stage).

INTERVIEWER BEHAVIOUR

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

3.79 Interviewers must be aware that in order to gather accurate information from a vulnerable witness they have to be sensitive not only to the communication needs of the witness but also to their own Impact on the interview. They should try to focus on the witness as a person rather than on the vulnerability. For many disabled

people the disability is not central to their selfconcept. Interviewers should try to avoid being uncomfortable or unsure how to behave with people whom they have rarely experienced. Interviewers will often need to behave in a reassuring and sympathetic way but they should also avoid behaving in ways that vulnerable witnesses may find demeaning or insincere or patronising.

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

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

PACE AND DURATION OF INTERVIEWS

Pace

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

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

The interview should go at the pace of the witness.

Breaks

3.83 Not only will interviews with vulnerable witnesses typically be conducted at a slower pace than with other witnesses, these interviews will usually involve more breaks and pauses. Many vulnerable witnesses will not be able to concentrate for as long a time as can other witnesses, and some of them will also require regular

comfort breaks. The interviewer should agree with the witness a simple sign (e.g. the use of a special card) that the witness can use to request a break.

ESTABLISHING RAPPORT

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

3.85 Another major aim of the rapport phase is to help the witness, and indeed the interviewer, to relax and feel as comfortable as possible. As interviewers become more familiar with interviewing vulnerable witnesses they may become tempted to shorten their rapport phases. This temptation should be resisted since while the interviewer may now be more familiar with such interviews, the witnesses will not be.

3.86 The alleged offence and directly related topics should not be mentioned by the interviewer in the rapport phase. Typically, the witness should be invited to discuss 'neutral' events in his or her life (for example, interests or hobbies where this is appropriate for that witness). At an appropriate point in the rapport phase, if the witness has not spontaneously mentioned it, the interviewer should briefly discuss with the witness the reason for the interview in a way that does not refer directly to an alleged offence. For example, it could be appropriate for the interviewer to say that she or he would like to talk about something that the witness has already told someone else or because something seems to have been making the witness unhappy. Interviewers should be aware that while some interviewees will, from the outset, be very clear concerning what the interview is about, other interviewees will not.

3.87 Some witnesses may feel that their initial, lawful co-operation with a person who subsequently committed an offence may make them blameworthy. The interviewer should also bear in mind that some vulnerable witnesses will assume that because they are being interviewed they must have done something wrong. The interviewer might need to reassure the witness on this point but promises or predictions should not be made about the likely outcome of the interview. So far as possible, the interview should be conducted in a 'neutral' atmosphere, with the interviewer taking care not to assume, or appear to assume, the guilt of an individual whose alleged conduct may be the subject of the interview.

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

3.89 It should be made clear that vulnerable witnesses can ask for a break at any time. These may be required more frequently than with other witnesses. Practice suggests that 20 minutes is likely to be the maximum period that -most learning disabled witnesses are able to concentrate. In order for witnesses to have some control over a request for a break and yet not have to make a verbal request, a 'touch card' can be useful; that is, a card is placed beside witnesses which they can touch when they want a break. The break can provide an opportunity for refreshment. Such breaks should never be used as an inducement to witnesses.

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

3.91 Some witnesses may be unhappy or feel shame or resentment about being questioned, especially on personal matters. In the rapport phase, and throughout the interview, the interviewer should convey to the witness that she/he has respect, sympathy, and understanding for how the witness feels. A witness may be apprehensive about what may happen after the interview if she/he does provide an account of what happened. Such worries should be addressed.

3.92 It may be that some vulnerable witnesses do not perceive the need to produce full and detailed accounts of their experiences since this may not normally be required by the people around them in their normal environment. Thus the need for a full account should be explained, without putting undue pressure on the witness. When discussing 'neutral' events (see paragraphs' 3.84-3.88 above) the interviewee can be encouraged, if appropriate, to provide free recall and to appreciate that it is the interviewee who has the information. It may well prove problematic to attempt to proceed with an interview until rapport has been established. Some witnesses are not used to relating to strangers. Indeed, many are taught not to do so. Should establishing rapport prove difficult it may be preferable to postpone the interview rather than proceeding with an interview that may well turn out to be of no benefit.

OATHS AND THE IMPORTANCE OF TELLING THE TRUTH

3.93 Where a decision is taken to record an interview with a vulnerable witness on videotape, there should be no attempt to get the witness to swear an oath, either before or after an interview. If the witness goes on to give evidence at court, the court will decide whether an oath should be administered retrospectively or whether the witness is to give evidence unsworn. (see Chapter 5, paragraphs 5.18-5.23).

3.94 Where there is an issue as to whether the vulnerable witness understands the value and importance of telling the truth, the interviewer can obtain assurances from the witness on these points, as is current practice for **child witnesses** (see Chapter 2, paragraph 2.21). Note that these procedures should only be employed where questions regarding witness competency might be raised at trial: it is unlikely, for

instance, to be an issue for an adult witness, vulnerable solely because of fear or distress.

3.95 In those cases where discussion of truth and lies is appropriate, it would be important to demonstrate that the witness understood the difference between the two. The witness could be asked to give examples of truth and lies. If this was not possible, the interviewer could ask some questions about this difference. If such questions are asked they should follow the guidance set out elsewhere on styles of questioning and focus on an intent to deceive rather than mere mistakes (see Chapter 2, paragraph 2.101) for relevant examples. After such questions it would be appropriate to conclude with a statement like: "Please tell me all you can remember about what happened. Don't make anything up or leave anything out. It is very important to tell the truth".

FREE NARRATIVE

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

3.97 If it is deemed appropriate, having established rapport, to continue with the interview then the witness should be asked, when this is possible, to provide in her/his own words an account of the relevant event(s). (Note that the purpose of the interview should have been appropriately explained to the witness during the rapport phase.) Only the most general, open-ended questions should be asked in this phase as guidance to the witness concerning the general area of life experience relevant to the investigation (e.g. "Do you know why you are here today?"; "Is there anything that you would like to tell me?"). This type of question is one that inquires in a non-specific manner. If the witness responds in a positive way to such questions then the interviewer can encourage the witness to give a free narrative account of events. During this phase the interviewer's role is to act as a facilitator, not an interrogator. Research findings consistently have shown that improper questioning of vulnerable people is a greater source of distortion of their accounts than are memory deficits. Therefore it is essential to avoid using imperfect questioning in the early parts of an interview. Every effort must be made to obtain information from the witness which is spontaneous and uncontaminated by the interviewer. (Appropriate methods for questioning witnesses are described below in paragraphs 3.130–3.159).

3.98 In the free narrative phase the interviewer should encourage witnesses to provide an account in their own 'words' by the use of non-specific prompts such as "Did anything else happen?"; "IT you think about that is there more you can tell me?"; "Can you put it another way to help me understand better?". Verbs like "tell" and "explain" are likely to be useful. The prompts used at this stage should not include information known to the interviewer concerning relevant events that have not yet

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

3.99 Many witnesses when recalling negative events may initially be more comfortable with peripheral matters and may only want to move on to more central matters when they feel this to be appropriate. Therefore, interviewers should resist the temptation prematurely to 'get to the heart of the matter'. They should also resist the temptation to speak as soon as the witness appears to stop doing so, and should be tolerant of pauses, including long ones, and silences. They should also be tolerant of what may appear to be repetitious or irrelevant information from the witness. Above all, interviewers must try to curb their eagerness to determine whether the interviewee witnessed anything untoward.

3.100 A form of active listening is needed, letting the witness know that what she/he has communicated has been received by the interviewer. This can be achieved by reflecting back to the witness what she/he has just communicated, for example: "I didn't like it when he did that" (witness) "You didn't like it" (interviewer). The interviewer should be aware of the danger of subconsciously or consciously indicating approval or disapproval of the information just given.

3.101 If the witness has communicated nothing of relevance regarding the purpose of the interview the interviewer should consider, in the light of the plans made for the interview, whether to proceed to the next phase of the interview (i.e. questioning). The needs of the witness and of justice must both be considered. Exceptionally, consideration may be given to now concluding the interview by moving directly to the closure phase (paragraphs 3.154-.157 below).

COMPLIANCE

3.102 Some vulnerable interviewees may be particularly compliant in that they will try to be helpful by going along with much of what they believe the interviewer 'wants to hear' and/or is suggesting to them. This is particularly so for witnesses who believe the interviewer to be an authority figure. Also, some witnesses may be frightened of authority figures. Therefore the interviewer should not appear too authoritative.

3.103 Many vulnerable people are very concerned to present themselves in the best possible light, and many may try to appear as 'normal' as possible by, for example, pretending to understand when they do not. This is something we all do. Even though they may not understand a question, vulnerable witnesses may prefer to answer it than to say that they don't understand. Saying that one doesn't understand a question can be taken to be implying that the interviewer or witness is at fault. Some vulnerable people will prefer to avoid such implications.

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

3.105 Interviewers should clearly explain in the Rapport Phase that because they were not present at the event(s) they may unwittingly ask questions that witnesses do not understand or questions that they cannot answer. They should explain that if they do ask such questions they would be very happy for witnesses to indicate (perhaps by the use of a red card) that they don't understand, don't remember or don't know the answer. Vulnerable witnesses may benefit from practice at this before the interview commences. Interviewers should also make it clear that if the witness does not know the answer to a question then 1 don't know" responses are welcome. This will also help to avoid witnesses feeling under pressure to confabulate (i.e. to fill in parts of the event that they did not witness or cannot remember), which is otherwise likely for some vulnerable people.

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

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

ACQUIESCENCE

3.108 Research has consistently found that many vulnerable witnesses acquiesce to 'yes/no' questions. That is, they answer such questions affirmatively with "Yes" regardless of content. This can occur even when an almost identical 'yes/no' question is asked subsequently but this time with the opposite meaning. This tendency to respond positively to every question occurs particularly frequently with some people with learning disability. However, it is not solely due to interviewee vulnerability. The way in which the interview is conducted (e.g. in an overly authoritative way) and the nature of the questions asked (e.g. suggestive or too complex) will also influence the extent of unconditional positive responding.

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

3.110 Acquiescence is one of the major reasons why interviewers should do their very best to avoid using 'yes/no' questions, even though they are used frequently in everyday conversations. Questions that have a 'yes/no' format can very often be transformed into questions that have an 'either/or' format. Research has found that 'either/or' questions, by avoiding 'yea-saying' or 'naysaying', more frequently elicit reliable responses from vulnerable people than do 'yes/no' questions. Even so, a small proportion of people seem always to choose the latter of the two alternatives offered by 'either/or' questions. If an interviewee appears to be doing this, the interviewer should phrase some of the 'either/or' questions so that the first alternative is the one which more likely fits in with the account the witness is giving.

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

STYLES OF QUESTIONING

General Approach

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

- are simple
- do not contain jargon
- do not contain abstract words and/or abstract ideas
- contain only one point per question
- are not too directive/suggestive
- do not contain double negatives.

3.113 In addition, interviewers need fully to appreciate that there are various types of questions which vary in how directive they are. The questioning phase should, whenever possible, commence with open-ended questions and then proceed, if necessary, to specific questions and closed questions. Leading questions should only be used as a last resort. When questioning a witness, interviewers may wish to ask the various types of questions about one issue, before proceeding to ask questions about another. This would be good practice in terms of how memory storage is organised. When this occurs, the questioning on each issue should normally begin with an open question, though some particularly vulnerable witnesses may not be able to cope with such questions and specific or closed questions may be necessary.

Open-ended questions

3.114 Open-ended questions are ones that are worded in such a way as to enable the witness to provide an unrestricted response. These also allow the witness to control the flow of information. This type of questioning minimises the risk that interviewers will impose their view of what happened. Such questions usually specify a general topic which allows the witness considerable freedom in determining what to reply.

3.115 An example of a very open-ended question is "You live at Dewhurst House. What happens there?".

3.116 Open-ended questions can also be used to invite the witness to elaborate upon incomplete information provided in the preceding free narrative phase. For

example, "You've already told me that the person who hit you was a man. Would you please describe him for me.".

3.117 For a witness who has communicated very little in the free narrative phase a helpful question could be of the form "Are there some things you are not very happy about?".

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

3.119 Questions involving the word "why" (or similar utterances, e.g. "So how come ... ?") may be interpreted by vulnerable people as attributing blame to them and should therefore be avoided wherever possible. Also to be avoided is repeating a question soon after the witness has provided an answer to it (Including "Don't know"). Witnesses may well interpret this as a criticism of their original response and accordingly they may provide a different response closer to what they believe the interviewer wants them to give.

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

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

Specific questions

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

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

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

Closed Questions

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

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

3.127 If closed questions are to be used it is particularly important to remind the witness that "Don't know" or "Don't understand" or "Don't remember" responses are welcome and that the interviewer does not know what happened. If a witness replies "I don't know" to an 'either-or' question (e.g. "Was the car large or small?") interviewers should try to avoid then offering a compromise 'yes-no' question (e.g. "If it wasn't large or small, would you say it was medium size?") that the witness may merely acquiesce to.

Leading Questions

3.128 Put simply, a leading question is one which implies the answer or assumes facts which are likely to be in dispute. Of course, whether a question is leading depends not only on the nature of the question but also on what the witness has already communicated in the interview. When a leading question is improperly put to a witness giving evidence at court opposing counsel can make an objection to it before the witness replies. This is not usually possible during video or audio recorded interviews but subsequent objections could be made which may result in parts of the recording being edited out.

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

3.130 It cannot be over-emphasised that responses to leading questions referring to central facts of the case that have not already been described by the witness in an earlier phase of the interview are likely to be of very limited evidential value in criminal proceedings. If a leading question produces an evidentially relevant response, particularly one which contains relevant information not led by the question, interviewers should take care not to follow this up with further questions which might have the effect of leading the witness. Instead they should revert to the 'neutral' modes of questioning described above.

3.131 There are circumstances in criminal proceedings where leading questions are permissible. For example, a witness is often led into his or her testimony by being asked to confirm his or her name or some other introductory matter because these matters are unlikely to be in dispute. More central issues may also be the subject of leading questions if there is no dispute about them. However, at the interview stage it may not be known what facts will be in dispute.

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

3.133 As the courts become more aware of the difficulties of obtaining evidence from vulnerable witnesses, and of counteracting the pressures on witnesses to keep silent, a sympathetic attitude may be taken towards leading questions deemed necessary. A leading question which succeeds in prompting a witness into providing information spontaneously beyond that led by the question will normally be acceptable. However, unless there is absolutely no alternative, the interviewer should never be the first to suggest to the witness that a particular offence was committed, or that a particular person was responsible. Once such a step has been taken, it will be extremely difficult to counter the argument that the interviewer put the idea into the witness' head and that her/his account is therefore tainted.

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

3.135 When posing questions interviewers should try to use in them information that the witness has already provided and words/concepts that the witness is familiar with (e.g. for time, location, persons). Some vulnerable witnesses have difficulty understanding pronouns (e.g. he, she, they) and therefore it is better for interviewers to use people's names wherever possible.

3.136 Some vulnerable witnesses will experience difficulty if, without warning, the interviewer switches the questioning on to a new topic. To help witnesses interviewers should indicate a topic change by saying, for example, "I'd now like to ask you about something else".

3.137 As noted earlier, (see paragraph 3.109) many vulnerable witnesses will have difficulty with questions unless they are simple, contain only one point per question, do not contain abstract words, or double negatives and lack suggestion and jargon. Some vulnerable witnesses may well misinterpret terms that the interviewer is familiar with. For example, they may think that someone "being charged" involves payment or that **"defendant"** means a person who defended her/himself against an assault.

3.138 It is important that interviewers check that witnesses understand what has just been said to them by asking the witness to convey back to the interviewer (where this is possible) what she/he understands the interviewer to have just said. Merely asking the witness "Do you understand?" may result simply in an automatic positive response. If they do not understand a question some vulnerable people will nevertheless attempt to answer it to the best of their ability by guessing at what is meant, possibly producing a inappropriate reply.

3.139 Some vulnerable witnesses are not likely to be aware or understand the adversarial nature of court proceedings and therefore they will not spontaneously realise why, in an investigative interview, the account they have provided is being tested. If interviewers decide to repeat one or more questions later on in the interview, even with changed wording, they should also explain that it does not necessarily indicate that they were unhappy with the witness' initial responses; they just want to check their understanding of the witness (for example, "I just want to make sure that I've understood what you said about the man's jacket. What colour did you say it was?"). Otherwise some vulnerable witnesses may believe that the questions are being repeated solely because their earlier responses were incorrect or inappropriate or that they were not believed.

3.140 Some vulnerable witnesses may also have a limited understanding of the relationship between negative events, their causation, and who is responsible. Even if an event was an unforeseeable accident or 'an act of God' some vulnerable people will believe that someone must be held responsible. Some may even take the blame, thinking that the interviewer (an authority figure) will like them more if they do.

3.141 The questioning of vulnerable witnesses requires extensive skill and understanding on the part of interviewers. Incompetent interviewers can cause vulnerable witnesses to provide unreliable accounts. However, interviewers who are able to put into practice the guidance on questioning contained in this document will provide witnesses with much better opportunities to present their own accounts of what really happened.

UNDERSTANDING WHAT THE WITNESS IS TRYING TO CONVEY

3.142 Some vulnerable witnesses will have speech or other means of communication that ordinary people find difficult to understand. At appropriate points in the interview, and especially in the closure phase (see below), the interviewer should recap back to the witness what the interviewer believes the witness to have communicated. When the meaning of a witness communication is unclear, she/he could be asked, for example, to "put it another way" or "can you think of another way of telling me?".

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

SPECIAL INTERVIEWING TECHNIQUES

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

3.145 The use of items similar to those involved in the to-be-remembered event may assist recollection. However, they may also cause the witness distress. Furthermore, it may not be certain which items were actually involved and the introduction of incorrect items may mislead and/or confuse the witness. Similarly, models or toy items may be misleading if the objects they represent were not, in fact, part of the event. Some vulnerable witnesses may not realise the link between a toy or model and the real-life object it is supposed to represent.

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

The cognitive interview (Cl)

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

- mental context reinstatement
- Change the order of recall
- Change perspective.

3.148 A number of professionals who have worked with vulnerable witnesses recommend use of the Cl. However, research has found that unless the training of interviewers who attempt to use the Cl has been appropriate they will fall to use this technique effectively and could confuse the witness. Also, some witnesses may not be able to benefit from each one of the Cl procedures (e.g. very young witnesses and witnesses with autism may well not be able to 'change perspective').

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

Other techniques

3.150 Other techniques to assist witnesses to give accounts are being developed. These could be used in interviews carried out for the purposes of this guidance provided that evidential considerations are born in mind and agreement is given by senior managers after discussion of the issues involved.

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

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

CLOSING THE INTERVIEW

Recapitulation

3.153 During this aspect of closing the interview the interviewer may well need to check with the witness that the interviewer has correctly understood the evidentially important parts (if any) of the witness' account. This should be done using what the witness has communicated, not a summary provided by the interviewer (which could be mistaken but with which the witness may nevertheless agree). Care should be taken not to convey disbelief.

Closure

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

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

3.156 The witness should be thanked for her/his time and effort and asked if there is anything more she/he wishes to communicate. An explanation should be given to the witness of what, if anything, may happen next, but promises which cannot be kept should not be made about future developments. The witness should always be asked if shelhe has any questions and these answered as appropriately as possible. It is good practice to give to the witness (or, if more appropriate, an accompanying person) a contact name and telephone number in case the witness later decides that she/he has further matters she/he wishes to discuss with the interviewer.

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

FURTHER INTERVIEWS

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

3.159 With particularly vulnerable witnesses a decision could be made at the planning stage to divide the interview into a number of sections to be conducted by the same interviewer on different days, or at different times on the same day, with rapport and closure being achieved each time.

WHERE THERE IS A VIDEO RECORD

3.160 (See Appendix E).

SAFEGUARDING THE INTIMIDATED

3.161 Although witnesses may be willing to report or give information about an offence, this does not mean that they do not fear reprisals. Intimidated witnesses may be reluctant to provide a formal statement, preferring instead to merely tell the police about the offence they have witnessed. Some witnesses may explicitly claim that they have been or are likely to be intimidated, but others will not.

3.162 Some offences are more likely than others to give rise to the intimidation of witnesses. Research has shown that sexual offences, assaults, domestic violence, stalking (which by its nature involves repeated victimisation) and racially motivated crimes are particularly likely to lead to intimidation. When the witness is also the victim, the risks may increase further. It is not only the nature of the offence however, that may indicate the possibility of intimidation. Investigators need to be aware of the culture and the lifestyles of not only the witness, but those who live with and around them. On some medium and high density housing estates for instance, there may be a history of drug problems and/or anti-police feeling. A culture of fear and silence as regards criminal behaviour may exist in these areas. Equally, those who live in small, close-knit communities may have an increased risk of intimidation. Extended family networks may mean that the witness lives, shops and works near relatives and associates of the offender.

3.163 More specific factors may give risk to actual or perceived intimidation risks for the witness, such as the witness's age, gender, cultural or ethnic background. Vulnerable witnesses, particularly those with mental impairment or ill health (paranoia, or chronic anxiety, for instance) may perceive that they are at risk. More substantive indicators of risk may concern the nature of the relationship between the witness and the accused. For example, it may be that the defendant is in a position of authority over the witness (such as a carer in a residential home), or that the defendant is their violent ex-partner. Interviewers need to be aware of whether the witness has been intimidated in the past, and whether the defendant or their relatives and associates have a history or intimidation and violent behaviour. The local influence of the defendant is a further issue that requires investigation, whether this be in terms of their position within the criminal fraternity or their socio-economic status.

3.164 In some instances intimidation may occur only later in the investigative process. If this happens, such witnesses should qualify for Special Measures.

3.165 There are a number of steps that may be taken to provide protection, reassurance or assistance to intimidated witnesses at the interview stage. A police visit to the witness' home should be avoided as far as possible. Instead, police should consider following alternative procedures, whilst leaving the choice of arrangements, within reason, to the witness. Interviews should take place on 'neutral ground', such as a relative's home out of the locality, or the witness's place of work where appropriate.

3.166 Procedures that may serve to alleviate the witness's fears when an offence has first been reported include:

- inviting the witness, by telephone (or if no phone is available, by letter) to visit the police station to make a statement; or
- delaying the visit to the witness' home until the next day, preferably sending a plain clothes officer; or
- conducting a number of house to house calls on adjacent properties, so that the witness is not singled out

It is important that the witness's visits to the police station are planned to avoid encounters between witness and the suspect and their associates (for further information see ACPO guidance on intimidated witnesses).

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