



Provision of Therapy for Vulnerable or Intimidated Adult Witnesses Prior to a Criminal Trial

Practice Guidance

Implementing the *Speaking up for Justice* Report



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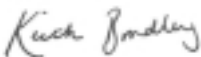
FOREWORD

Witnesses are fundamental to the success of the criminal justice system. The report *Speaking Up For Justice*, produced by an inter-departmental working group on the treatment of vulnerable or intimidated witnesses, said that vulnerable or intimidated witnesses should not be denied the emotional support and counselling they may need both before and after the trial.

The Department of Health, the Crown Prosecution Service and the Home Office have worked together to produce this practice guidance. The guidance is issued as part of the Home Office led *Action for Justice* programme, which said that good practice guidance on the provision of therapy prior to trial for vulnerable or intimidated adult witnesses would be issued.

The guidance is primarily for the assistance of therapists, those who commission or arrange therapy and lawyers involved in making decisions about the provision of therapeutic help for vulnerable or intimidated adult witnesses prior to a criminal trial. The guidance makes it clear that the best interests of the witness are paramount when deciding whether, and in what form, therapeutic help is given. We hope that it will be helpful for all practitioners, especially those in the criminal justice system, NHS, social services departments and voluntary organisations. The guidance complements the good practice guidance for child witnesses which was published in February 2001.

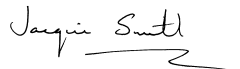
The guidance has been produced following consultation within the criminal justice system and with many professionals from a range of different disciplines. We are grateful to all concerned for their important contributions to this guidance. We believe that the use of this guidance will enable vulnerable or intimidated adult witnesses to receive the therapeutic help necessary both to assist their recovery and to give their best evidence in criminal proceedings.



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1 INTRODUCTION

- 1.1 Concern has been expressed that witnesses, including vulnerable or intimidated adult witnesses, have been denied therapy pending the outcome of a criminal trial for fear that their evidence could be tainted and the prosecution lost. This fear may conflict with the need to ensure that vulnerable or intimidated adult victims are able to receive, as soon as possible, immediate and effective treatment to assist their recovery. In the context of this potential conflict, the following matters are relevant:
- many victims express the wish to see the alleged offender convicted and punished;
 - there is a wider public interest in ensuring that offenders are brought to justice to prevent further offences;
 - all accused persons are entitled to a fair trial.
- 1.2 It follows, therefore, that victims, service provision professionals and forensic investigators have a mutual interest in ensuring, wherever possible, that those who receive therapy prior to a criminal trial are regarded as witnesses who are able to give reliable testimony.
- 1.3 In June 1998 the **Report “Speaking Up For Justice”** (“the Report”) was published. The Report was produced by an interdepartmental working group that considered the treatment of vulnerable or intimidated witnesses in the Criminal Justice System. Recommendation 28 of the Report said that vulnerable or intimidated witnesses should not be denied the emotional support and counselling they may need both before and after the trial. In the subsequently issued implementation programme document “Action for Justice”, it was said that good practice guidance on the provision of

therapy prior to trial for vulnerable or intimidated adult witnesses would be issued.

- 1.4** The Report also recommended that there should be **special measures** to enable vulnerable or intimidated witnesses in a criminal trial to give their best evidence. That recommendation has now been enacted by **sections 16-33** of the **Youth Justice and Criminal Evidence Act 1999** (“the Act”). These sections provide for a range of special measures, for example the giving of evidence by means of a live TV link (section 24 of the Act) and the giving of evidence by way of pre-recorded video interview (sections 27 and 28 of the Act), to enable a vulnerable or intimidated witness to give their best evidence. However, it will be for **the court to decide** which, if any, of the special measures will be made available to the particular witness.
- 1.5** As mentioned in paragraph 1.4 above, one of the **special measures** to be introduced by the Act will be the possibility of admitting, as evidence, a video recorded interview with an adult vulnerable or intimidated witness. Wherever possible, pre-trial therapy should not take place before such a video-recorded interview is completed.
- 1.6** Guidance on the making and use of video recorded interviews will be available in a document to be issued by the Home Office entitled “**Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses including Children**”.
- 1.7** Section 16 of the Act states that adult witnesses may be deemed to be vulnerable if the court considers that the quality of evidence given by the witness is likely to be diminished because:

- (a) the witness suffers from mental disorder within the meaning of the Mental Health Act 1983 or otherwise has a significant impairment of intelligence and social functioning, or
- (b) the witness has a physical disability or is suffering from a physical disorder.

1.8 Section 17 of the Act states that a witness may be deemed to be intimidated if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress in connection with testifying.

1.9 Further to other recommendations in the Report, a document entitled “**Vulnerable Witnesses – A Police Service Guide**” is to be issued and this will assist police officers to identify a vulnerable or intimidated witness at an early stage.

Purpose and use of this guidance

1.10 This guidance is issued jointly by the Home Office, the Crown Prosecution Service and the Department of Health and follows an extensive consultation exercise. Guidance for child witnesses entitled “**Provision of Therapy for Child Witnesses Prior to a Criminal Trial: Practice Guidance**” was published in February 2001.

1.11 This guidance is primarily aimed at those who arrange or commission therapy, therapists and lawyers involved in making decisions in cases where pre-trial therapy is a consideration. However, it is hoped that the guidance will be helpful for everyone involved in these cases.

1.12 It is recognised that decisions made in individual cases will depend upon the particular considerations which apply to those cases. The guidance is intended to be practical in nature and to avoid assumptions based on perceptions which may be unfounded. It is also acknowledged that practice

will continue to evolve. The guidance simply aims to support this process by providing information based on current thinking about these issues.

1.13 In particular the guidance which follows seeks to:

- improve understanding of the difficulties for criminal prosecutions associated with the provision of therapy for vulnerable or intimidated adult witnesses prior to a criminal trial;
- clarify the roles of those involved in making decisions about the provision of therapy prior to a criminal trial;
- explain the use of terminology, and provide advice on the appropriateness of different therapeutic techniques;
- set out a framework for good practice which highlights the important issues.

1.14 Until now, there has been no guidance on the provision of therapy for vulnerable or intimidated adult witnesses prior to a criminal trial.

2 WHAT IS THERAPY?

2.1 The term “**therapy**” covers a range of treatment approaches, including **counselling**, but in this context it does not include any physical treatments.

2.2 A precise definition of **psychotherapy** is not straightforward, but the definition used in the guidance for child witnesses came from Kazdin (Psychotherapy for child and adolescent (1990) Annual Review of Psychology 41, 21-5) and is set out below:

“Psychotherapy includes interventions designed to decrease distress, psychological symptoms and maladaptive behaviour, or to improve adaptive and personal functioning through the use of interpersonal interaction, counselling or activities following a specific treatment plan. Treatment focuses on some facet of how clients feel (affect), think (cognition) and act (behaviour).”

- 2.3** Psychotherapies and counselling can be grouped in a number of ways; for example, psychodynamic, cognitive-behavioural, systemic, experiential. They are underpinned by different models of understanding and techniques, and vary in the context in which they are given (individual, family, group, etc.) and frequency of session.

Types of therapeutic work undertaken prior to a criminal trial

- 2.4** Two broad categories of **therapeutic work with vulnerable or intimidated adults prior to a criminal trial** can be identified:

2.4.1 Counselling

This will address a number of issues, including;

- the impact of the incident on the adult;
- improving the self-esteem and confidence of the adult;
- providing the vulnerable or intimidated adult with information with regard to dealing with and avoiding abusive situations. The purpose of this is to help the adult to protect him/herself and to access appropriate help.

2.4.2 Psychotherapy

This will address a number of issues, including;

- treatment of emotional and behavioural disturbance, for example post-traumatic stress disorder;

- treatment of an adult who has been highly traumatised and shows symptoms which give rise to concern for his/her mental health.

Both **counselling** and **psychotherapy** may require long term involvement with the vulnerable or intimidated adult.

2.5 Preparation for court

2.5.1 A vulnerable or intimidated adult witness may have no previous experience of giving evidence in court and some preparation work prior to the criminal trial is likely to be of considerable value.

2.5.2 The purpose of this work will be to:

- provide information about the legal process, for example the respective roles of judge, advocates, jury;
- address any particular concerns or fears which the adult may have in relation to giving evidence;
- reduce anxiety.

2.5.3 Any information provided will need to be available in forms accessible for the particular witness taking account of such issues as language, literacy, communication (including British Sign Language, use of Braille etc.), cultural understanding and disability.

2.5.4 Guidance on pre-trial preparation will be included in the guidance “Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses including Children” referred to in **paragraph 1.6** above.

3 WHAT ARE THE CONSEQUENCES OF THERAPEUTIC HELP BEING GIVEN TO A VULNERABLE OR INTIMIDATED ADULT WITNESS PRIOR TO A CRIMINAL TRIAL?

- 3.1** A criminal court can only convict an accused of an offence if it is satisfied, on the basis of the evidence brought by the prosecution, that the accused is guilty. Evidence is something that tends to prove or to disprove any fact or conclusion.
- 3.2** The tradition in the courts of England and Wales is generally speaking an oral one. Great reliance is placed upon the oral evidence of witnesses. The evidence of each witness is probed under cross-examination, to test its accuracy and truthfulness. The jury, in a Crown Court trial, or the magistrates in a summary trial decide the weight to be attached to the evidence when assessing whether guilt is proved.
- 3.3** Discussions prior to a criminal trial with or between all types of witnesses have been held by the courts in a number of cases to give rise to the potential for:
- witnesses giving inconsistent accounts of the events in issue in the trial;
 - fabrication, whether deliberate or inadvertent. For example, a witness may:
 - become aware of gaps or inconsistencies in his or her evidence, perhaps when compared with that of others;
 - become more convinced, or convincing, in his or her evidence, but no less mistaken.

3.4 Therapy is one kind of discussion which may take place prior to a trial. Other examples of discussions which may give rise to the evidence of adults (and children) being challenged include;

- informal contacts, for example with friends and family;
- operational de-briefing by police officers (for example, after a large public disorder incident);
- training.

At court, witnesses other than experts are not permitted to sit in court before giving evidence (so that they do not hear the accounts of other witnesses) and they are not permitted to discuss their evidence until the case is concluded.

3.5 The key issue with regard to pre-trial discussions of any kind is the potential effect on the reliability, actual or perceived, of the evidence of the witness and the weight which will be given to in court. Pre-trial discussions may lead to allegations of coaching and, ultimately, the failure of the criminal case. It should also be borne in mind that the professionals concerned may themselves be called to court as witnesses in relation to any therapy undertaken prior to the criminal trial.

Records of therapy and confidentiality

3.6 The administration of justice and the need to ensure a fair trial demand that **any** information and evidence which could have an impact on the decision to prosecute, the conduct of the case, or the outcome of proceedings is made available to the police and prosecution.

3.7 The rules of disclosure place certain responsibilities on the investigator, prosecutor and also third parties, that is to say individuals or bodies who are not part of the prosecution.

Therapists will generally be third parties for this purpose. Those responsibilities mean that all material that **may** be relevant to the issues disputed in the case must be preserved.

- 3.8** At some stage during the trial process the prosecution must provide the defence with such of the information and evidence as may undermine the prosecution case or assist the defence case. In this way, all of the material that is relevant to the outcome of the trial is put before the jury or magistrates. Relevant material is that which may tend to prove or disprove the issues disputed by the prosecution and defence.
- 3.9** Disclosure should not be viewed as a tool to enable the prosecution or defence to satisfy their curiosity. It is a principle designed to ensure that information that is of genuine relevance to a criminal case is available to the parties and the court.
- 3.10** This document does not set out the detailed provisions relating to disclosure but aims to highlight some of the issues that may affect the handling of those cases. Local arrangements may exist to facilitate handling requests for disclosure of material in the hands of third parties.
- 3.11** Requests for information to be obtained from third parties may be made at various stages in a criminal case by:
- the police;
 - the prosecutor;
 - the defence;
 - the court.
- 3.12** The requests should explain the issues in the case, so far as they are known, and be reasonably precise. Speculative inquiries are discouraged. The purpose should be to elicit a

genuine and focused search for relevant documents or information. Careful maintenance of records of therapy will facilitate this focused approach. Where a therapist receives a request for information or documents, **legal advice** should be obtained before complying with the request. If, for example, the therapist is employed by a Social Services Department or NHS Hospital, the legal department of such a Department or Hospital will provide advice.

- 3.13** In addition to informal requests for information, if there are real grounds to believe that material which could affect the outcome of the prosecution is being withheld, an application may be made to the court for a witness summons to obtain the material. If, as will usually be the case, a therapist, having taken appropriate legal advice, believes that the material should not be disclosed, he or she may oppose the witness summons application. In that case the court may hold a hearing at which the therapist's employer may be legally represented. The court, having heard representations from the advocate representing the applicant for the witness summons and the advocate for the therapist's employer, will decide whether or not to issue a summons requiring the disclosure of the material.
- 3.14** Because of the recognition that maintaining trust is central to the provision of therapy, it will usually only be appropriate to breach confidentiality in compliance with a court order, as outlined in **paragraph 3.13** above. Those aspects of the therapy that have no material relevance to criminal proceedings should not have to be disclosed. However, the issue of relevance may need to be reviewed at different stages of the criminal case, as more becomes known about the prosecution and defence cases.

3.15 Confidentiality cannot, therefore, be guaranteed in advance. Bearing this in mind, it is important that an understanding is reached with the vulnerable or intimidated adult witness (and, where appropriate, any other emotionally significant person) at the outset of any therapy undertaken of the circumstances under which material obtained during treatment may be required to be disclosed.

4 DECISION MAKING

Who makes the decisions about the provision of therapy where there are criminal proceedings?

- 4.1** The Crown Prosecution Service is responsible for reviewing and conducting the majority of criminal cases involving adult vulnerable or intimidated witnesses. Once a crown prosecutor considers that there is a realistic prospect of conviction, the public interest must be considered.
- 4.2** The prosecution in these criminal cases must do what it can to:
- identify cases in which the provision of therapy before the criminal trial might be thought to have some material impact on the evidence;
 - assess the likely consequences for the criminal trial in these cases;
 - ensure that these cases are dealt with as quickly as possible;
 - safeguard the confidentiality of therapy sessions wherever possible whilst ensuring that the defence and the court are aware of the existence of information which might undermine the prosecution case or assist the defence.

These questions are not unique to therapy which takes place before the criminal trial, but the ethical, medical, welfare and legal issues are of particular importance in these cases.

- 4.3 Whether a vulnerable or intimidated witness should receive therapy before the criminal trial is not a decision for the police or the Crown Prosecution Service. Such decisions can only be taken by the vulnerable or intimidated witness, in conjunction with the professionals from the agencies providing service to the witness.
- 4.4 The **best interests of the vulnerable or intimidated witness** are the paramount consideration in decisions about the provision of therapy before the criminal trial. In determining what is in the best interests of the vulnerable or intimidated witness, it will be essential to consider the wishes and feelings of the witness and, where appropriate, of those who are emotionally significant to the witness. The witness will need to be given information on the nature of the therapy proposed in a form which is accessible. Account should be taken of issues associated with gender, race, culture, religion, language, disability and any communication difficulties both in initial discussions about the proposed therapy and in the provision of the therapy itself.
- 4.5 While some forms of therapy may undermine the evidence given by the witness, this will not automatically be the case. The Crown Prosecution Service will offer advice, as requested in individual cases, on the likely impact on the evidence of the vulnerable or intimidated witness receiving therapy.
- 4.6 If there is a demonstrable need for the provision of therapy and it is possible that the therapy will prejudice the criminal proceedings, consideration may need to be given to abandoning those proceedings in the interests of the

wellbeing of the vulnerable or intimidated witness. In order that such consideration can be given, it is essential that information regarding therapy is communicated to the prosecutor.

5 COMMUNICATION

- 5.1** Clear lines of communication are required to ensure that everyone involved in the process is fully and reliably informed. Named contact points should be established in each agency involved in a particular case.
- 5.2** Information should be routed through the police contact point, although direct consultation between the professionals involved may be advisable in certain circumstances. This should be arranged using the same named contact points.
- 5.3** Inter-agency information exchange will need to comply with Human Rights Act 1998 and the Data Protection Act 1998. Decisions on exchange of information will need to be made on a case by case basis and carefully documented.

6 GUIDELINES ON THE USE OF THERAPY

- 6.1** Set out below are guidelines on the use of appropriate therapy with vulnerable or intimidated adult witnesses. The stated principles mark the distinction between the use of psychotherapy and counselling by qualified practitioners and formal preparation of the witness for the giving of

evidence in court. Where such preparation takes place, the witness should not discuss or be encouraged to discuss the evidence which s/he is to give in the criminal proceedings but may receive general support to help them through the process of appearing in court.

- 6.2** All people who work with vulnerable or intimidated adult witnesses before a criminal trial should be aware of the possible impact of their work upon subsequent evidence in the trial. Some types of therapeutic work are more likely to be seen as prejudicial and thereby undermine the perception of the credibility and reliability of a witness, or to influence memory of the witness as to events or the account they give.
- 6.3** Preparation for court and carefully planned preventive work which does not focus upon past abuse presents less of a problem than interpretive psychodynamic psychotherapy. Hence, there is a spectrum of evidential risk to the criminal trial which should be considered.
- 6.4** The least problematic aspect of therapy will focus on improving self-esteem and self-confidence, often using cognitive/behavioural techniques. Other issues which might be addressed include:
- the reduction of distress about the impending legal proceedings;
 - the treatment of associated emotional and behavioural disturbance that does not require the rehearsal of abusive events.
- 6.5** The need for therapy should be clearly stated before it begins and both therapist and vulnerable or intimidated adult witness should be aware of the related criminal case, which may or may not have already been commenced. Careful recording is essential.

7 WHO ARE THE THERAPISTS?

- 7.1** Professionals offering therapy may be working within the NHS, Social Services, the voluntary sector or privately. Therapists may specialise in work with particular groups, for example people with learning disability, or with victims of particular offences, for example rape.
- 7.2** There is, at the moment, no centrally available register of those qualified to provide therapy to vulnerable or intimidated adult witnesses. Vulnerable or intimidated adult witnesses are not a homogeneous group and may have a wide range of needs. Professionals qualified to work with one group of witnesses may not be qualified to work with other witnesses who have different disabilities or problems. Treatment responses will need to draw on both general therapeutic skills and specialised knowledge of the particular cause of vulnerability. Skills in communication with the particular witness will always be important.
- 7.3** Providers and purchasers of therapy for vulnerable or intimidated adult witnesses must ensure that any therapist or counsellor has appropriate training and supervision, according to the level of work undertaken. Membership of an appropriate professional body or other recognised competence would be expected. The therapist or counsellor must also have a good understanding of how the rules of evidence for witnesses in criminal proceedings may require modification of techniques. Agencies involved in the provision of therapy should consider the need for the training for therapists and counsellors who work with vulnerable or intimidated adult witnesses prior to the criminal trial.

- 7.4** Vulnerable or intimidated adult witnesses may receive preparation for the experience of giving evidence in court. This must be done by suitably trained individuals, who will need to be aware of the clear distinction between the preparation of the witness for the experience of giving evidence in court and the provision of therapy or counselling to address trauma.

8 ASSESSMENT OF THE NEED FOR THERAPY

- 8.1** Assessment of the need for therapy during the pre-trial period (when the vulnerable or intimidated witness may become a witness in the subsequent trial) should only be undertaken following consultation with:

- the witness;
- where appropriate, those who are emotionally significant to the witness;
- the relevant professionals.

The police and the Crown Prosecution Service should be informed about any planned or ongoing therapy at the assessment stage.

- 8.2** If it is judged desirable, a meeting of all relevant professionals might be convened for the purpose of discussing an assessment and treatment strategy. This assessment and treatment strategy should take into account the special measures which might be available under the 1999 Act (see **paragraph 1.4** above), so that an early application to the court can be made. However, it is important to remember that it will be for the court to decide which, if any, special measures will be made available to the

witness. Accordingly, it is **essential** that unrealistic expectations on the part of the witness are not raised.

8.3 The function of any such discussion should be to discuss the needs and best interests of the particular witness. The discussion should include the logistics of setting up a specialist assessment of the witness, with agreement on who will undertake this assessment and the nature of the support necessary from other agencies, professional or voluntary. Issues to be considered will include:

- who is to fund the therapy;
- who will, if necessary, transport the witness to appointments;
- who will work with the family.

Mechanisms for communication between all those involved should be agreed and recorded at this stage.

8.4 The views and wishes of the witness and those who are emotionally significant to the witness must be taken into account. If not present at the decision-making meeting, there should be a means of ensuring that the informed views of the witness, and those who are emotionally significant, are sought and used as part of the decision-making process. Communication should take account of any special needs of the witness and how to meet these.

8.5 Priority must be given to **the best interests of the vulnerable or intimidated witness**. The impact of any therapy upon the conduct of the criminal case should also be fully discussed and this discussion should include the witness, if not previously consulted on this issue.

- 8.6** The Crown Prosecution Service will advise, if requested, on the likely effect of a particular type of therapy on the evidence of witnesses in individual cases. Where a criminal case is at an advanced stage, it may be possible to consult the judge in chambers as to the potential consequences of a proposed course of action.
- 8.7** It is important that anyone involved in an assessment, or in subsequent therapy, should be a trained professional person with a recognised competence, such as a social worker, psychiatrist, psychologist, psychotherapist, nurse or other relevant qualified person. On occasions, an assessment may be carried out by a different professional from the one who will undertake the therapy. It is for the agency funding or commissioning assessment and therapy to satisfy itself of the relevant competence of those undertaking either assessment or therapy.
- 8.8** Assessment for possible therapy may require more than one interview to determine whether, and in what way, the witness is emotionally disturbed and whether this problem can best be helped by the provision of therapy. Not all witnesses who are assessed in this way will need therapy.
- 8.9** Final recommendations from the assessment will indicate the type of therapy or intervention, if any, required by the particular witness. Decisions should be documented and findings made available to those agencies who need to know, as soon as possible after the assessment is completed.

9 IMPORTANT PRE-TRIAL ASSESSMENT ISSUES

- 9.1** A whole range of issues may arise in the course of any assessment, but for those undertaking pre-trial assessment of vulnerable or intimidated witnesses, who may require therapy, some issues are particularly important to address.
- 9.2** Assessment of witnesses with special needs requires particular consideration. Special needs include:
- physical or learning disabilities;
 - hearing or speech difficulties;
 - the need for an interpreter, where the native tongue of the witness is not English.
- 9.3** It is important that an accurate picture of the needs and wishes of the witness is obtained. This is likely to require input from professionals skilled and trained in work with the particular special need. For some witnesses, there may be a need for a particular method of communication, for example sign language. Attention should be given to the patterns of communication and use of language and expression by the witness, so that misunderstanding is avoided.
- 9.4** For a witness whose mother tongue is not English, it will be important to identify an interpreter who is not only competent in the relevant language and dialect but who is also aware of the vocabulary used in the criminal justice system and the need to ensure that no coaching of the witness takes place.

9.5 There is some evidence that some people who have been intimidated or physically beaten and some severely emotionally disturbed people are more likely to produce erroneous or ambiguous responses to leading questions from interviewers, than are less vulnerable people. Particular care, therefore, should be taken to ensure that any assessment:

- uses short, plain words;
- does not ask convoluted, hypothetical or leading questions;
- uses open-ended questions wherever possible;
- checks that the witness has understood the questions.

9.6 Some victims or witnesses may be so seriously traumatised that their needs can only be met by a placement within a containing environment, based on therapeutic principles as well as the provision of any necessary specific treatment. If the assessment identified this to be the case and it is considered that a less intense short-term provision of out-patient treatment will not be adequate, or may be unsatisfactory, it may be better, after considering the views of the witness and professionals involved, to delay therapy until after the criminal proceedings have been completed. However, such a witness can be offered general support as well as information and support about the court process. In such cases, prosecutors will wish to do all that they can to expedite the proceedings.

10 POTENTIAL PROBLEMAREAS

- 10.1** Problems may arise during therapy when the therapist attempts to distinguish fantasy from reality in the responses made by the witness. In this kind of situation, the therapist should be as open to the idea that the material presented as factual truth may be a distortion (even though real and meaningful to the witness), as they are to a fantasy being a representation of reality.
- 10.2** Some of the concerns in this area have been clarified by the report ‘Recovered Memories’ published by the British Psychological Society (BPS). More recently, recommendations for good practice were published, with the approval of the Royal College of Psychiatrists, in the October 1997 edition of Psychiatric Bulletin under the title “Reported recovered memories of child sexual abuse – Recommendations for good practice and implications for training, continuing professional development and research”. See also guidelines issued by the BPS in The Psychologist May 2000 under the title “Guidelines for Psychologists working with clients in contexts in which issues related to recovered memories may arise”.
- 10.3** Interpretative psychotherapy may present evidential problems even if carefully conducted. The professional background and training of the therapist, the provision of adequate supervision arrangements, the appropriateness and robustness of the policies of the agency providing therapy will all help to obviate problems.
- 10.4** There are therapeutic approaches that would very definitely present problems as far as evidential reliability is concerned. These would include hypnotherapy, psychodrama, regression techniques and unstructured groups.

- 10.5** As the courts become more familiar with the provision of therapy prior to the criminal trial and more confident in the standards and knowledge of the agencies providing it, anxieties will become less. Training for professionals providing therapy and for the judiciary and legal profession will be of value.

11 CONCLUSION

- 11.1** It should be understood that those involved in the prosecution of an alleged offender have no authority to prevent an adult vulnerable or intimidated witness from receiving therapy.
- 11.2** The police and the Crown Prosecution Service must be made aware that therapy is proposed, is being undertaken, or has been undertaken.
- 11.3** The nature of the therapy should be explained so that consideration can be given to whether or not the provision of such therapy is likely to impact on the criminal case. There should be a locally agreed mechanism for communicating this information and enabling it to be routed through the police to the Crown Prosecution Service, using named contact points assigned to each individual witness. Direct consultation between the professionals involved may be desirable in some circumstances and should be arranged in the same way.
- 11.4** Records of therapy (which includes videos and tapes as well as notes) and other contacts with the witness must be maintained so that they can be produced if required by the court. They should include, in the case of therapy, details of those persons present and the content and length of the

therapy sessions. It is not expected, for practical reasons, that verbatim written records will be kept.

- 11.5** At the outset of therapy an understanding should be reached with the witness and, where appropriate, those who are emotionally significant to the witness of the circumstances under which material obtained during therapy might be required to be disclosed. Maintaining trust will remain important and it can be confirmed that those aspects of the therapy that have no material relevance to criminal proceedings will not have to be disclosed. However, what is “relevant” may change as the case progresses and so **confidentiality cannot be guaranteed.**
- 11.6** In newly arising allegations, therapy should not usually take place before a witness has provided a statement or, if appropriate, before a video-recorded interview has taken place. However, in existing cases where therapy is already under way, a decision about how to proceed may be best made after discussion at a multi-disciplinary meeting which includes the therapist. Clearly, when therapeutic work is in progress, disruption of therapy should be avoided even if new investigations must be conducted. If it is decided that leading questions or interpretations must be used to help a witness in psychotherapy, then the evidential implications of this should be understood and made clear.
- 11.7** If the prosecutor advises that the proposed therapy may prejudice the criminal case, this should be taken into account when deciding whether to agree to the therapy. It may still be in **the best interests of the witness** to proceed with the therapy.
- 11.8** The therapist should be made aware of any pending criminal proceedings before commencing the therapy and should

also be aware of the implications of using techniques which may result in the evidence of the witness being discredited.

- 11.9** Therapists or counsellors should avoid using leading questions or discussing the evidence which the individual or any other witness will give, including exploring in detail the substance of specific allegations made.
- 11.10** Prior to the criminal trial, group therapy where the specific recounting of abuse takes place is best avoided. The particular danger of this kind of group therapy is that the witness may adopt the experiences of others taking part in the therapy. Structured group therapy approaches which help in a neutral way to improve the witness's self esteem are less likely to cause difficulties. As a general principle, **group therapy should not be offered** to the vulnerable or intimidated witness prior to the trial.
- 11.11** Witnesses may derive therapeutic benefits from talking about their experiences, but any detailed recounting or re-enactment of the offending behaviour may be perceived as coaching. Therapists should recognise that the criminal case is almost certain to fail as a consequence of this type of therapeutic work. This should be differentiated from the accepted practice of allowing witnesses, prior to giving evidence, to refresh their memory by reading the statement or viewing the video – recorded interview.
- 11.12** Professionals should avoid the use of jargon and take care to use language that will not be perceived, if repeated by a witness, as evidence of the witness being instructed. The language content of the therapy and counselling sessions is guided by the witness but equally it must be recognised that witnesses do use different forms of language in differing situations and contexts.

- 11.13** During therapy, witnesses should never be encouraged to extend their account of the offending behaviour which they have suffered. However, it is acceptable to offer general reassurance and support to a witness during this difficult process.
- 11.14** Any disclosures of materially new allegations by the witness undergoing therapy, including possible disclosures of their own abusive behaviour, or any material departure from or inconsistency with the original allegations should be reported to the Social Services Department (in line with procedures set down in the guidance “No Secrets – Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse” Department of Health March 2000) and to the Police and other relevant statutory agencies.
- 11.15** Prosecutors **must** be informed that the witness has received therapy. Prosecutors **must** then obtain an assurance that the witness did not, in the therapy session(s), say anything inconsistent with the statements made by the witness to the police. Prosecutors may need to be made aware of the contents of the therapy sessions as well as other details specified in the paragraph above, when considering whether or not to prosecute and their duties of disclosure.
- 11.16** Discussions at local level between the agencies concerned, exploring practical ways to facilitate good practice, will be helpful in handling the issues outlined in this guidance. A local protocol setting out the approach to be followed may be helpful.

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