

**CHILD WITNESS SUPPORT  
CONSULTATION DOCUMENT**

**October 2002**

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## **Foreword by the Minister for Justice**

Witnesses have a key, but frequently stressful, role in our justice and welfare proceedings. Child witnesses are especially vulnerable. It is paramount that they are supported preparing for and during court attendance, and that the criminal justice system and specialised court proceedings connected to cases dealt with by the children's hearing system, respect the best interests of the individual child. It was for this reason that the Lord Advocate established a working group to improve arrangements for the support and preparation for court of child witnesses, without jeopardising the rights or responsibilities of others in the court process. The Report of that Working Group, which contained a range of recommendations, was published in 1999.

Since then the Executive has been working in partnership with a wide range of agencies involved with children, the justice system, and the children's reporter in the children's hearing system, to deliver vigorous responses to these recommendations. We established a Child Witness Support Implementation Group and three multi-agency sub-groups to take forward the proposals. I welcome the valuable work undertaken by these groups and agencies. This package sets out their reports for consultation.

The package contains individual sections on a system of integrated support for child witnesses, guidance on investigative interviewing, the provision of pre-court therapy, the conduct of court familiarisation visits, the questioning of children in court, and a format for communicating information about child witnesses throughout the legal process. Comments are invited on the individual sections which are of particular interest to you, which the various groups will then consider further. You may not wish to comment on all sections, but I thought it was important that you see how all the different elements of the proposals fit together. The legal process can be complex, and involves the co-operation of many different agencies.

The work of the Child Witness Support Implementation Group and the sub-groups will continue to develop and deliver the recommendations of the Lord Advocate's Working Group. I am particularly keen to bring forward proposals for the prioritisation and fast tracking of child witness cases - a matter which has been highlighted in Mr John McAllion's MSP proposals for a Member's Bill as well as in the Lord Advocate's Working Group's proposals. Fast tracking has resource and procedural implications and it is important that proposals for fast tracking in one area do not have unwanted repercussions in others. I will be considering this further in consultation with the Lord Advocate and in the context of the review which is currently taking place of the High Court under the Hon Lord Bonomy.

The proposals presented in this document represent a major step forward. I invite you to contribute further to this progress with your responses.

**JIM WALLACE**  
**Deputy First Minister and Minister for Justice**

# CONSULTATION ON CHILD WITNESS SUPPORT

## OVERVIEW

### Introduction

1. The purpose of this document is to consult on proposals developed by the Scottish Executive's Child Witness Support Implementation Group (CWSIG), and 3 multi-agency sub-groups. The proposals apply primarily to child witnesses and / or victims under the age of 16 who are involved in the criminal justice system or the children's hearing court proceedings.
2. Children already traumatised as a result of being the victim of or a witness to a crime may be further traumatised by the court procedures which follow, including giving evidence as part of pre-trial investigations and during trials. Supporting and preparing the child throughout this experience is crucial to reducing the stress experienced by the child, as well as improving the quality of their evidence.
3. The vulnerability of children is recognised within the Criminal Justice System. In general, the Crown Office and Procurator Fiscal Service (COPFS) has a policy of giving special consideration and high priority to child witnesses and of providing a sensitive approach at every stage of the investigation. In 1990, the Lord Justice General, the most senior judge dealing with criminal cases in Scotland, issued a memorandum (Appendix 1) giving guidance to other judges and sheriffs about support which could be provided to child witnesses in court. This includes the removal of wigs and gowns by judges and lawyers, allowing the child to give evidence from the well of the court rather than the witness box, allowing a support person to sit alongside the child while giving evidence, and clearing the court room of those not involved in the case. In addition, there are other special statutory measures available to child witnesses giving evidence including use of CCTV, screens or video-recorded evidence on commission.
4. In court proceedings connected to Children's Hearing matters, special measures also exist for child witnesses, including the exclusion of an alleged perpetrator of abuse whilst a child gives evidence.

### Lord Advocate's Working Group

5. In 1995, the Lord Advocate established a working group to improve arrangements for the support and preparation for court of child witnesses, without jeopardising the rights or responsibilities of others in the court process. It also wished to see an enhancement of practice in relation to all child witnesses across the full range of legal proceedings. The group reported in 1999 with 16 sets of recommendations. In response, a Child Witness Support Implementation Group (CWSIG) was set up in 2001 by the Scottish Executive with the task of implementing those recommendations.
6. The recommendations of the Lord Advocate's Working Group covered the following areas:

- Providing operational support for child witnesses through the establishment of a child witness service
  - Promoting a sensitive and uniform approach to child witnesses by the judiciary
  - Improving communication about child witnesses throughout the legal process
  - Developing national guidance on investigative interviewing and the questioning of child witnesses in court
  - Introducing measures to reduce the stress of child witnesses during identification procedures
  - Developing national guidance on familiarisation visits to the court
  - Developing a code of practice on the provision of therapy pre-court
  - Addressing the need for research focusing on children's hearing court proceedings
  - Improving the publications available to children and their parents or carers
  - Developing an information base on child witnesses
  - Prioritising child witness cases.
7. A full list of the recommendations is set out in Appendix 2.

### **Child Witness Support Implementation Group**

8. The Child Witness Support Implementation Group and its 3 sub groups have been working on how best to implement effectively these recommendations. This package contains the outcome of their work to date. It has 6 sections which outline proposals on different aspects of the legal process which impact upon child witnesses. While comments on the whole document are welcome, you may wish to focus your comments on the sections which are of most relevance to your own professional involvement or interest.

### **Section 1: Establishment of a Child Witness Support Service**

9. A large number of agencies are currently involved in investigating the evidence of child witnesses, and supporting and preparing them for court. The Lord Advocate's Working Group recommended that an integrated Child Witness Support Service be established with Child Witness Officers to co-ordinate inter-agency support and provide management of individual cases. A sub-group comprising the Scottish Executive's Justice and Education departments and Social Work Inspectorate, Scottish Children's Reporter Administration (SCRA), Association of Chief Police Officers in Scotland (ACPOS), Association of Directors of Social Work (ADSW), Crown Office and Procurator Fiscal Service (COPFS), Scottish Court Service (SCS), Children 1<sup>st</sup>, and Victim Support Scotland has developed proposals for the establishment of a child witness support service. Section 1 contains those proposals.

### **Section 2: Interviewing Child Witnesses in Scotland**

10. The Lord Advocate's Working Group concluded that significant effort had been invested in joint training of police officers and social workers in investigative interviewing of child witnesses, and that overall standards had improved.

However, investigative interviewing is not conducted within a national framework, and often a lack of confidence in the interview process leads to multiple interviews and additional stress for the children concerned. A second sub-group, comprising the Scottish Executive's Justice Department, the Law Society of Scotland, COPFS, ADSW, NCH Scotland, ACPOS, SCRA, and the University of Aberdeen, has prepared draft national guidance on the conduct and recording of investigative interviews by police, social workers, and all other professionals involved in investigative interviews of child witnesses. The guidance aims to improve the quality of investigative interviewing and sharing of information, reduce the number of times a child will be interviewed, and sets out good practice for any organisation involved with the interviewing of children who may be witnesses. Section 2 contains the sub-group's draft guidance.

### **Section 3: Code of Practice on the Provision of Therapy to Child Witnesses Prior to Criminal Trials and Children's Hearings Court Proceedings**

11. While it is recognised that the provision of some form of counselling pre-court may be beneficial to child witnesses traumatised by their experience, there is a need to ensure that this process does not contaminate the evidence and to advise that the counsellor could be called as a witness. This has been confused in the past with the idea that child witnesses are not allowed counselling, or that the procurator fiscal or reporter can prevent counselling pre-court. A draft code of practice has therefore been developed which aims to provide clarification, information and guidance in relation to this issue. The code of practice is aimed primarily at therapists, health professionals, prosecutors and reporters involved in making decisions about the provision of pre-court therapy for child witnesses. It is also of particular concern to COPFS, ADSW, the Law Society of Scotland, the Faculty of Advocates, and child welfare organisations. Section 3 contains the draft code.

### **Section 4: Conduct of Child Witness Court Familiarisation Visits**

12. There is general agreement about the positive value of a familiarisation visit to the court for child witnesses. A large number of agencies currently carry out such visits including the procurator fiscal, SCRA, the Scottish Court Service, court-based social workers, the Crown Office Victim Information and Advice Service, and Victim Support Scotland's Witness Service. The Lord Advocate's Working Group found that practice varied widely in the conduct of these visits. It considered it essential that those conducting the visit are aware of their responsibility to provide support and information which is neutral and does not contaminate the evidence in any way. Draft guidance on the conduct of familiarisation visits has been developed by the same group which developed proposals on the establishment of a child witness service. Section 4 contains the draft guidance.

### **Section 5: Information about Young Witnesses to Inform Decision-making in the Legal Process**

13. The Lord Advocate's Working Group recommended that systematic procedures should be developed to gather and record background information about child

witnesses in order to inform decision-making during the legal process. A draft checklist has been developed by COPFS and SCRA. Comments are sought from relevant professionals including the police, SCS, COPFS, the judiciary, social work, and SCRA. This checklist is likely to lay the foundation for the format of a written child witness report for the judiciary, another of the Lord Advocate's Working Group recommendations. Such a written report for the judiciary is to be designed to prompt consideration of the provisions of the Lord Justice General's Memorandum on the treatment of child witnesses by the courts and to facilitate case management decisions.

## **Section 6: Questioning of Children in Court**

14. The Lord Advocate's Working Group recommended that guidance on the questioning of children in court be developed. Draft guidance aimed at assisting all practitioners in the conduct of examining child witnesses in court has been developed by a sub-group comprising the Scottish Executive's Justice Department, a Sheriff nominated by the Sheriff's Association, and representatives of the Faculty of Advocates, the Law Society of Scotland, SCRA, COPFS, and the Family Law Association. Section 6 contains their proposals.

### **General**

15. As indicated above, the Lord Advocate's Working group's report included a wide range of recommendations, and work is continuing in areas such as the improvement of identification procedures, constant revision and updating of published material for child witnesses and their carers, the establishment of better data on child witnesses, and the prioritisation of cases involving child witnesses. Mr. John McAllion has made proposals for a Member's Bill to impose new statutory time limits. The intention behind this is sound but statutory fast tracking would have resource and procedural implications and it is important that proposals for fast tracking in one area do not have unwanted repercussions in others. The Justice Department and COPFS will be considering this further taking into account the review which is currently taking place of the High Court under the Hon Lord Bonomy. This review is expected to result in major improvements to the effectiveness and efficiency of the High Court generally to the benefit of child witnesses and other court users.
16. This work is also complemented by the "Vital Voices" consultation on changes to the law required to support vulnerable witnesses, which has attracted some very thoughtful, and thought-provoking, responses from a wide spread of interests. We are now looking carefully at these and are likely to bring forward proposals for changes to the law of evidence early next year. Our aim will be to ensure that court processes and practices do not get in the way of witnesses giving their best evidence. We want to ensure that all witnesses who are genuinely vulnerable – particularly children – are not traumatised by the process, and that those who have to make the judgement in a case have as much fairly obtained, relevant information as they can to assist them. This contributes to a wider programme of work with vulnerable witnesses, which includes children, such as possible new special measures to assist vulnerable witnesses to give evidence and the range of proceedings across which the special measures should apply.

## Responses

17. We welcome responses from anyone who has an interest in the issues or questions raised by this paper by 31 January 2003. Please indicate clearly which section/s your comments apply to and they will be forwarded to the appropriate group. Comments should be sent to:

Susan Bolt  
Scottish Executive Justice Department  
1WR St. Andrews House  
Regent Road  
Edinburgh EH1 3DG

Telephone: 0131 244 3883  
Fax: 0131 244 2623  
e-mail: [childwitnesses@scotland.gsi.gov.uk](mailto:childwitnesses@scotland.gsi.gov.uk)

Comments can also be submitted electronically, using the form at the back of the publication in electronic form on the Scottish Executive website ([www.scotland.gov.uk/views/views.asap](http://www.scotland.gov.uk/views/views.asap)).

In accordance with normal practice in Scottish Executive consultations, all responses received will be made available to the public, unless confidentiality is specifically requested.



**CHILD WITNESS SUPPORT**

**SECTION 1**

**ESTABLISHMENT OF A CHILD WITNESS SUPPORT  
SERVICE**

**DRAFT PROPOSALS**

## SECTION 1

### ESTABLISHMENT OF A CHILD WITNESS SUPPORT SERVICE DRAFT PROPOSALS

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## ESTABLISHMENT OF A CHILD WITNESS SUPPORT SERVICE

### INTRODUCTION

1. This section focuses on the provision of support for child witnesses, in response to the Lord Advocate's Working Group on Child Witness Support which recommended that:  
support services should be provided to young witnesses in a structure which provides greater consistency and inter-agency accountability (recommendation 1, appendix 2).
2. Work on this section was carried out by a group comprising the Crown Office and Procurator Fiscal Service (COPFS), Association of Chief Police Officers in Scotland (ACPOS), Scottish Court Service (SCS), Victim Support Scotland, Children 1<sup>st</sup>, Scottish Children's Reporter Administration (SCRA), the Association of Director's of Social Work (ADSW) and the Scottish Executive's Education and Justice Departments and Social Work Inspectorate. It represented a range of organisations with a role in supporting young witnesses and it was able to draw on their expertise and practical experience. The full membership is set out in Appendix 1A of this section. The Group met on 5 occasions.
3. **This section is of particular interest to the COPFS, SCS, SCRA, the police, local authorities including social work, education, and child planning teams, child protection committees, Victim Information and Advice, Victim Support Scotland, and voluntary sector agencies which work with children and families.**
4. **Views are invited on the proposals in this section. In particular, views are invited on the following questions:**
  - (i) **What key functions should a child witness service provide?**
  - (ii) **What key tasks should a child witness officer carry out?**
  - (iii) **What elements would add value to the existing contributions of the many agencies involved with child witnesses throughout the whole court process?**
  - (iv) **What gaps exist in the provision of support for child witnesses?**
  - (v) **What stages of the process should the child witness officer contribute to?**
  - (vi) **What specific linkages could a child witness officer make between stages of the process, and between agencies?**
  - (vii) **What would be an ideal model of child witness support?**
  - (viii) **What would a suitable structure or organisation be, within which a child witness support service could operate, and what should the key elements of this structure be?**
  - (ix) **What should the training role of child witness officers be?**

### Definition

5. For the purposes of this proposal, the definition of a child witness is a child up to the age of 16 years who has witnessed an offence or event. In appropriate circumstances a child of 16 or 17 under a supervision requirement may be considered. The child may also be, but does not need to be, a victim of the crime. If called to give evidence in court, the child witness may be either a witness for the prosecution, for the defence, for the children's reporter or a witness for any party at children's hearing court proceedings. He/she may be called to give evidence in criminal cases or at children's hearings court proceedings.

### **Role of Child Witnesses**

6. The judicial system already recognises that witnesses, especially child witnesses, may have particular needs which should be met if the witness is to give best evidence. At the same time, a fair balance must be maintained between meeting the needs of vulnerable witnesses and ensuring that justice is fairly and openly administered. Children's hearings court proceedings must also be, and be seen to be, fair. The child witness may already have been adversely affected by witnessing the crime or event and the process of asking them to relive the experience in a court of law, where the procedures seem strange and language and surroundings unfamiliar, can be extremely daunting. The adversarial nature of a court case and the process of questioning their evidence may cause further distress, with the added problems of communication. In a number of the cases involving child witnesses, the accused or person alleged to have perpetrated or committed an act or acts, will be a family member and may even involve the child giving evidence against a parent. And yet, the best outcome for everyone concerned is to ensure that justice is fairly meted out.

### **PART 1: THE CURRENT SUPPORT SYSTEM**

7. Child witnesses are already eligible for special measures. In 1990, the Lord Justice General, the most senior judge dealing with criminal cases, issued a Memorandum giving guidance to other judges and sheriffs about the support which could be provided to child witnesses in criminal cases when giving evidence by conventional means. The past 10 years have seen a growing awareness of the need for, and benefits of, providing additional support for child witnesses. It is certainly true that some of the main elements of a support system are, in principle, in place in Scotland.
8. For example, children's reporters already aim to ensure early preparation for witnesses with an emphasis on the importance of links to other support networks – particularly in relation to information sharing about the child. The Police already recognise the vulnerability of children in their work although the prime focus of their work is generally through child protection work or work with victims. Some local authorities already have guidance and procedures in place although the provision of such guidance throughout Scotland is variable. Local authorities and the voluntary sector are providing some therapeutic support on a limited scale for children post-investigation but not pre-court, with the aim of helping to rebuild the child's

confidence. Procedures are in place in sheriff courts to fast track cases involving child witnesses but it falls to either the Crown or defence to flag the involvement of a child witness. It is also policy for child witness cases to be taken first although this may not be possible due to competing priorities and practical considerations. The Scottish Court Service (SCS) provides special accommodation and CCTV equipment and screens if requested, however, this equipment is not available in every court and, where it is available, SCS rely on others to make the request. The options of giving evidence from the table in the well of the court (rather than the witness box) and of allowing an adult supporter to sit close to the child during testimony are possible as is the removal of wigs and gowns. These options are however allowed only at the Judge's discretion and accordingly there are variations in practice.

9. While individual agencies have developed policies in relation to supporting child witnesses, such policies are often not put into practice. They function inconsistently across the country or operate as a number of separate systems. Information is shared on an ad hoc basis, depending on local relationships. There tends to be confusion about issues relating to pre-court therapy and issues around the boundaries for providing support because of the concerns about ensuring that there can be no possibility of legal challenge regarding any evidence having been contaminated. There also is no standard and formal mechanism for identifying a child witness until the case reaches the Procurator Fiscal.

## **PART 2: RESEARCH PILOT AND OTHER MODELS**

### **Research Pilot**

10. This part draws on the research carried out for the Lord Advocate's Working Group by Joyce Plotnikoff and Richard Wolfson. The research was carried out in two phases. Phase 1 was primarily an information gathering exercise concerned with current practice, identifying the needs of child witnesses and producing a plan for a pilot initiative. Phase 2 consisted of 5 pilot initiatives to take forward specific structures for supporting child witnesses, including:
  - The establishment of a pilot child witness officer
  - An examination of programmes to support and prepare child witnesses for court
  - The development of a protocol to aid communication within the legal process of information about child witnesses
11. A part-time Child Witness Officer (CWO) was appointed in Glasgow on an experimental basis funded by NCH Action for Children and Children 1<sup>st</sup>.
12. The key findings of the evaluation were that:
  - A preparation protocol was produced which was found to be useful
  - The CWO acted as a central information point and this was much valued
  - Those witnesses who had been supported by the CWO felt less isolated than those who had not received such a service

- The CWO position acted as a catalyst to ensure that the child's needs for preparation and support were identified and met by planning and implementation of a suitable programme
- Structures were needed to identify child witnesses, not just child victims
- Preparation and support were not the remit of any one agency and there was confusion in who should take the lead in identifying the needs of the child
- Resources were needed to provide other agencies with preparation and support skills
- Procedures were required to foster the communication of information about the child's needs and abilities
- The police report submitted to the procurator fiscal understandably concentrated on evidence and was not judged to be a suitable vehicle for recording non-evidential information relating to the child
- Information sources such as teachers and Police Officers who had observed the child's reactions, for example, at identification parades were overlooked
- The most effective mechanism for obtaining information and transmitting it to the Court was the report from the Procurator Fiscal in support of applications for special measures, however, such reports were completed for a small proportion of children
- Despite the attempts of the pilot, case conferences only focused on child protection issues and did not consider information relating to the child being a witness.

### **Child Witness Models – England and Wales**

13. Child Witness Services have been established in England and Wales. Two models which offer lessons for the development of a child witness service in Scotland are a Witness Service managed under the umbrella of Victim Support with paid coordinators and trained volunteers providing the service; and, the Hull and East Riding of Yorkshire model which is run as a sub-group of the Child Protection Committee, staffed by a full-time Child Witness Officer supported by 'volunteer' professionals who provide hands-on service to the children. Further details of these models are contained in Appendix 1B of this section.

### **Weaknesses in the present system**

14. Key weaknesses in the system which any new system of support would therefore need to address are:
  - Child witnesses are often not identified until the latter stages of the criminal justice process
  - Agencies often work in a stand-alone capacity
  - In particular, information is not routinely shared between agencies
  - An inconsistent level of support is provided to child witnesses across the country
  - There is a lack of guidance and training for appropriate personnel which means that they are often unsure about what the correct procedures are

- Professionals are not always clear about their respective roles in relation to the child
- Decisions can be made ‘in the best interests of the child’ without the child being consulted
- Pre-court therapy is not consistently provided due to a fear of contaminating evidence
- There are variations and uncertainty in relation to judicial practice
- Support ends at the conclusion of the Court process.

### **PART 3: A FUTURE INTEGRATED CHILD WITNESS SUPPORT SYSTEM**

15. Whilst it is important to emphasise that the responsibility of individual agencies for child witnesses should continue, the research into existing practice in Scotland and developments in England and Wales indicates that a system of child witness support would enhance the present system and that such a system should be established incorporating the following principles and elements:

#### **Principles**

16. The criminal justice process and children’s hearings court proceedings will be enhanced if child witnesses, supported by family and friends, and assisted by professionals, are able to produce better evidence. This should also reduce the risk of them suffering trauma and distress through participating in the judicial system. To achieve this certain principles should underpin the new service. These are that:

#### **In relation to the child:**

- the service should be focused on the needs of the child
- within the service, the interests of the individual child should always be paramount
- support should be needs led and should be able to ensure a flexible response
- vulnerability is individual to the child and should not be assumed from the nature of the offence or children’s hearing referral
- support should be available for as long as it is needed.

#### **In relation to agencies:**

- professionals in the justice process, and children’s hearings court proceedings, should recognise the benefits which result from an effective support system since it enables children to contribute to that process
- adults, whatever their roles in the process, must treat every child with respect and understanding, which takes account of the age and maturity of the child
- those preparing the child must work in partnership with parents and carers, where possible, and inform them of their rights and obligations within the court process
- procedures should be made as least intimidating as possible for the child
- the system of support must be designed and delivered in such a way that it does not contaminate evidence

- those preparing the child must work in partnership with other agencies and take account of different professional perspectives.
17. Some tensions might arise between these two sets of principles but they can be reconciled, provided that the advantages of doing so are highlighted and there is a commitment from all the various parties involved with child witnesses to resolve them. Strengthening the present system for supporting child witnesses is not so much dependent on changes in policy for much of the policy is already sound. It will rely more on changes in culture and in attitudes and in the way agencies are willing and able to work together to provide a better service for child witnesses.

**Elements/**



## Elements

Elements	Description	Responsible Agencies
<b>Identification and needs assessment</b>	The critical first step, at an early stage, is the trigger which must activate the system. If it does not operate, then the child witness is unlikely to receive the support which is available. To ensure that the system is activated, there is a need to increase awareness, raise sensitivities and enhance the knowledge and skills of those who come into contact with child witnesses. It is also essential that relevant information is passed between agencies.	<b>Police Social work VSS and others</b>
<b>Appropriate level of support offered</b>	Each child will have different support needs which need not, as now, be mainly determined by the nature of the offence or event which they have witnessed. It is therefore important, at an early stage, in the process, to determine what these needs are through an assessment process which is shared with other professionals. This assessment should also alert criminal justice agencies of the need to refer the child to other agencies which can provide additional support, such as Victim Support Scotland and the local authority social work department.	<b>Police Social work</b>
<b>Continuity of personnel involved with the child</b>	From the child's point of view, and that of the parents or carers, there are clear advantages in providing a dedicated person to work with the child so that the circumstances of the case are known and a relationship can be established. Where this is not possible, every attempt should be made to introduce the child and his parent or carer to those who will have dealings with them in the course of the case.	<b>All agencies</b>
<b>Prioritising cases</b>	In principle, there is already a policy to prioritise such cases but it seems that no records are kept of the speed of the process and it can be difficult, for a number of practical reasons, to make this work in practice. Better guidance and monitoring of the system will be introduced through the Child Witness Support Implementation Group in relation to this.	<b>COPFS SCS SCRA</b>

<b>Guidance and training for staff</b>	Most agencies already provide some form of training although this may form part of a more general induction process. The Plontikoff research shows that some of the issues which need to be addressed to strengthen the present system require a change in culture and attitude. It is here that guidance and training is necessary not only within individual agencies but also, importantly, on a multi-agency basis so that the respective roles can be properly understood and inter-agency working promoted.	<b>All agencies and between agencies</b>
<b>Involvement of the child</b>	The child should be involved in decisions affecting them. Procedures have been developed, appropriate to the age and maturity of the child, which enable professionals to listen to the views of children. Expertise in such matters will tend to lie outwith the criminal justice system but criminal justice agencies should learn these techniques which have been developed.	<b>All agencies</b>
<b>Age appropriate information</b>	Development in communicating information to children of all ages has moved forward in recent years and criminal justice agencies should draw on these lessons when preparing information leaflets for children. The provision of information to parents and carers so that they can understand the system and so provide the necessary support, should also be given priority.	<b>All agencies</b>
<b>Referral to appropriate support agencies</b>	Social services and voluntary sector organisations are valuable sources of support and can deal with the wider support needs of the child. Social services may already be involved in the case in relation to child protection issues.	<b>Social work VSS Other support agencies</b>
<b>Provision of pre-court therapy</b>	A system which puts the interests of the child first should not deny or delay access to therapy when a child needs it. A Code of Practice on the Provision of Therapy to Child Witnesses prior to Criminal Trials and Children's Hearings Court Proceedings is also the subject of consultation within this package of proposals.	<b>Social work Specialist voluntary agencies</b>

18. This analysis demonstrates the multi-agency nature of the work with child witnesses. The primary intention in setting up a Child Witness Support System would not be to diminish the role of each individual agency but rather to ensure good co-ordination and that responsibility is passed on appropriately at the right stage in the process. A Child Witness Support Service would therefore have a critical role in co-ordinating

the above elements, referring the child on to appropriate agencies with standard procedures for doing so. Appendix 1C of this section sets out the roles and responsibilities of individual agencies.

### A tiered approach

19. With a Child Witness Support Service in place, there would be three levels of intervention. A basic level of support would be in place for all child witnesses from the point at which they are formally involved in an investigation process that makes them likely to be a witness, and a co-ordinated continuous assessment would operate from that point onwards. At this stage, the police would facilitate access to general support services and there may be an option for the police to pass reports to the social work services in cases where a charge is not made. It is important to assess need at this point to facilitate the process of referring the child on to support services if they are required. The system would provide more targeted help at the threshold when a child would enter the Child Witness Service. This would be at the point when a charge is made and/or referral made to the Children’s Reporter. Depending on the model of Child Witness Officer Support, a child witness could however be referred to a Child Witness Officer by organisations at any stage if deemed appropriate. More intense support would be provided as the child moves towards a court appearance and beyond.

20. It is proposed that there should be four key stages in the system for providing support for child witnesses. Support needs will vary at each stage in the process. The stages are:

<b>Stage</b>	<b>Description</b>	<b>Agencies</b>
<b>Support during the investigation</b>	Support and preparation should begin as soon as the child’s involvement is identified so that support mechanisms can be put in place for the subsequent stages of the process. Additional support should be available either from a voluntary sector organisation such as Victim Support Scotland or from the appropriate local authority. During this stage further information relating to the child may become evident which will assist with the decision as to how evidence can best be taken. It is important that this is passed on to the next stage in the process.	<b>Police Social work VSS/vol agencies Or other designated supporter</b>

<b>2(a). pre-Court support, preparation and liaison</b>	By this stage, a child witness officer should be available to support the child and would have a role from this stage to post-court provision of support. The child witness officer would establish the concerns of the witness regarding giving evidence and attending court in order to resolve any identified issues through liaison with the other relevant agencies.	<b>Child witness service working with COPFS SCS Judiciary VIA Witness Service SCRA</b>
<b>2(b). Familiarisation Visits to Court</b>	At Stage 2, a pre-court visit or visit prior to children’s hearings court proceedings, should explain court procedures to the child and familiarise him/her with the court in order to reduce some of the anxiety that arises from fear of the unknown. The child should be afforded the opportunity to meet with the prosecutor or the person who will examine the child when the child gives evidence before the trial commences. The child may also meet the defence solicitor/advocate.	<b>COPFS SCS Witness Service VIA Social work SCRA</b>
<b>3.Support at the Court hearing</b>	A child is likely to wish a support person with them at court. A support person’s role during the hearing is principally to provide emotional and practical support for the witness in order to reduce anxiety or stress, and enable children to give their best evidence. The support person should be in a position to alert the judge to any problems the witness may have while they are giving evidence but must not discuss the actual evidence to be given. A support person is generally someone known to and trusted by the child but should not be a witness in the case. In some cases it is possible that a child witness officer might undertake the role of the support person.	<b>Child witness service SCS COPFS Judiciary Witness service VIA SCRA</b>
<b>4. Support after the Court hearing.</b>	The need for co-ordinating continuing support post-Court should be a responsibility of the child witness officer. This is a time when the child may feel isolated and will require to come to terms with the court outcome that may not have been as hoped. This can be exacerbated if the child has not been called to give evidence. Discussion after the court process is completed also provides an opportunity for the child witness officer to identify and make arrangements for any counselling or continuing support that may be required.	<b>Child witness support With VSS Social work or specialist support</b>

#### PART 4: CHILD WITNESS OFFICER AND TRAINING

21. Whilst the court process itself can be the most worrying part for a child witness, it will not be sufficient to improve the court process in isolation. Not all child witnesses will, in the end, be required to give evidence. Nevertheless, it is also necessary to prepare the child properly in a way which does not contaminate the evidence he/she will give. Given the complexity of the agency relationships which exist in such cases and the scope for confusion about respective roles and responsibilities, confirmed by recent research, it is also necessary to ensure that the system is properly co-ordinated and that relevant information is shared.

22. The remit for a child witness officer (CWO) is proposed as follows:

“to co-ordinate services and ensure the provision of services to young witnesses, including preparing some children for court who would not otherwise receive this service”

23. The functions could vary but incorporate the following:

- to act as a central information point and ensure preparation is carried out by others
- to provide direct support, assistance and information to child witnesses where that is not already provided
- to provide support and information to carers, to help them assist and support children appropriately
- to help the child and family cope with the stress and anxiety associated with the witness role
- to communicate information about the child to others in the court process with the aim of ensuring that treatment of the child is appropriate to his or her needs and abilities
- to improve services to children and families in the pre-trial and court process
- to facilitate the flow of information in individual cases
- to raise awareness of good practice generally
- to provide feedback about compliance with policy commitments and the experience of children and families at court

24. The tasks could vary but incorporate the following:

- to develop appropriate referral mechanisms from agencies to the child witness service
- to augment existing arrangements, develop good practice and facilitate communication between agencies, child witnesses and their parents/carers
- to act as a central information point for information and advice for those working directly with child witnesses
- to provide direct support, assistance and information to child witnesses and their carers where it is not already provided.

- to plan and implement a suitable programme of support for each child witness and thereafter monitor and review cases
- to build an effective team from relevant agencies and individuals representing a broad spectrum of interests whilst respecting their respective roles.
- to recruit and train child support workers
- to provide feedback about compliance with policy commitments and the experience of children and their families at court

## **Training**

25. Given the need not only to change policy and practice but even more culture and attitudes, effective training should be a key element in ensuring that the new child witness support service works effectively in practice. For example, issues around contamination of evidence need to be clearly understood by the professionals who support child witnesses. There is a requirement both for general training and professional specific training relating to child witnesses. This can build on the arrangements which are already in place. There should also be more specific training for the child witness officers.

## **Key Principles for Training**

26. It will be important to draw on current training provision across agencies and to implement further training where necessary. This would be a key task for the new service to develop.

27. The key principles for training should be:

- The provision of multi-agency training where appropriate
- Profession specific training relating to child witnesses should be adopted where required
- Development of ongoing training for Child Witness Officers

28. The CWO would not necessarily carry out all the functions themselves but would work with other agencies to ensure that child witnesses receive the level of support they require.

## **PART 5: STRUCTURE OF A CHILD WITNESS SERVICE**

29. Child witness officers could not operate effectively if they operate in isolation from the rest of the system. The Lord Advocate's Working Group envisaged a service which formed a sub-group of Child Protection Committees. In the time since the report was published, new developments, notably the establishment of the Witness Service and Victims Information and Advice service, offer other options for the structure of a child witness service. Whatever the structural arrangement, it should be able to provide individual CWOs with status, authority and support.

## **Options for the structure for service**

30. There are a number of options for locating a child witness service in Scotland within an existing organisational structure for management purposes, although the service need not be an integral part of the organisation. It is proposed that following this consultation and finalisation of a specification for a child witness service, relevant agencies will be invited to tender for the service. Potential organisations could include Child Protection Committees, Local Authority Children's Services Planning Structure, the Police Force, Victim Information and Advice, the Witness Service, the Scottish Court Service and organisations from the voluntary sector.

## **Criteria for structure**

31. A suitable structure would be required to meet the following criteria:

- authority and status to ensure the service is influential
- clear lines of accountability
- Scotland wide coverage
- ownership to take responsibility for and develop the service
- focus on child protection or judicial process
- context to make needs of child witnesses a central issue
- capacity, with additional resources, to accommodate a new service
- ability to co-ordinate all stages of the process and link into the key decision points of process
- ability to provide a contact point which is accessible to child witnesses, and their parents and carers
- provides a comprehensive view to span work of other agencies from start to finish and links to other organisations
- ability to plug gaps in the system
- provide appropriate policy, planning and operational context.

## **CONCLUSIONS**

32. It is therefore proposed that:

- A child witness service should be established to co-ordinate agencies and services
- Individuals should be appointed to act as child witness officers to ensure that the child's needs for preparation and support are identified and met
- Structures should be established to identify child witnesses not just child victims and to ensure that numbers of such witnesses are collected routinely
- A clear structure should be established regarding the roles and responsibilities of agencies to identify which agency should take the lead at each stage
- An inter-agency training agenda relating to child witnesses should be developed

- The child witness officer should contribute to the development and implementation of procedures to foster the communication of information about the child's needs and abilities.



## **Appendix 1A: Membership of Group**

The group was chaired by Elizabeth Carmichael, Head of Community Justice Services Division (CJSD) with the following membership:

Jo Knox, Victims Branch

Kerry Morgan, Victims Branch

Kathleen Harper, Crown Office and Procurator Fiscal Service, Policy Group

Jan Raitt, Education Department, Children & Families Division

Alistair Gaw, Social Work Services Inspectorate

Marilyn Riddell, Scottish Court Service

Jackie Robeson, Scottish Children's Reporter Administration

ACC Malcolm Dickson, ACPO(S)

Margaret McKay, Children 1<sup>st</sup>

David McKenna, Victim Support Scotland

Jim Hazlett/Moira McKinnon, ADSW

## **1. Appendix 1B: Child Witness Models – England and Wales**

### **Hull and East Riding of Yorkshire Model**

1. A useful model for providing a child witness service is the model adopted by the Child Protection Committee of Hull and the East Riding of Yorkshire. A Child Witness Co-ordination Group, which includes representatives of all criminal justice agencies, is a sub-group of the area child protection committee to which it reports. Support and advice is provided to all witnesses aged 17 and under, both prosecution and defence, who have been victims of, or witnesses to, a crime. The model includes:

- multi-agency collaboration – the service is managed by a Child witness Co-ordination Group, including members from the Area Child Protection Committee, representatives from the courts, CPS and voluntary agencies.
- flagging of cases – child witnesses are identified at an early stage in order that their needs can be identified and the case progress tracked.
- familiarisation workers - approximately 60 child witness familiarisation workers drawn from social work staff, teachers, police officers, health professionals provide the ‘hands on’ service to children.

### **Staffing**

2. A full-time Child Witness Co-ordinator is funded by the ACPC. The responsibilities of the post holder are:

- recruitment and training of support workers
- referral and allocation systems
- monitoring and reviewing of cases
- evaluation

3. The ‘hands on’ service to the witnesses is provided by approximately 60 Child Witness Familiarisation Workers. These are ‘professional’ volunteers drawn from the ACPC member group e.g. social workers, teachers, police officers, health professional etc who receive specialist training on multi-agency child protection work, the signs and symptoms of child abuse and child witness preparation and support. Workers spend approximately 6-10 hours with a child involved in a case that does not go to trial increasing to between 15 and 25 hours for trial cases.

4. Responsibility for identifying child witnesses rests with the Police and is carried out by the reporting Police Officer. The Police reports checker completes part A of the Child Witness Service referral form in respect of all child witnesses in respect of which a report will or has been forwarded to the CPS. The referral form is then passed to the CPS with the case papers and a photocopy forwarded to the Child Witness Service.

### **Liaison with Child Witness**

5. Prior to a Plea and Direction Hearing date being set, the Child Witness Officer liaises directly with the child witness and their parents/carers regarding the progress of their case and provides appropriate support and advice in order to safeguard the child's welfare and interests in the interim period. As soon as the court fixes a date, a support worker is allocated to the child and the identity of this support worker made known to all criminal justice agencies. The support worker will thereafter continue to support the child up to and beyond the trial.

### **Witness Service Model**

6. There are several child witness services run by the Victim Support Witness Service in England and Wales. These services offer support and preparation to all young prosecution or defence witnesses aged 17 and under.

### **Staffing**

7. The 'hands-on' delivery of services is carried out by trained volunteers. Numbers are dependent on the geographical area. One service, the Kent County Child Witness Service has a part-time co-ordinator, a part time assistant co-ordinator and 30 trained volunteers.

### **Identification of Witnesses**

8. Witnesses are identified by the Police as being involved in a case which is likely to go to Court. A referral form is completed at this stage and forwarded to the Child Witness Service.

### **Liaison with Child Witness**

9. Prior to a plea and directions hearing a letter and NSPCC leaflet is sent from the co-ordinator to the child or their carer. Actual support from a volunteer begins after the plea and directions hearing when it is confirmed that there will be a not guilty plea. The volunteer visits the child approximately one month before the trial date to establish any special needs, anxieties etc and passes this information on to the relevant agencies. This same volunteer will support the child before, during and after the trial with appropriate referral to other organisations where required.

## **Appendix 1C: Roles and Responsibilities of Individual Agencies**

### **THE SCOTTISH POLICE SERVICE**

All Forces have broad arrangements in place for the identification of, and provision of additional support and assistance to, vulnerable victims and witnesses (including those who may be subject to intimidation). Whilst there are specific arrangements for children, these currently tend to be victim orientated and have developed from the specialist support provided to victims of child abuse and sexual offences. Consequently, in many cases, child witnesses will receive access to the same services and information as adult witnesses, unless the case requires to be investigated by specialist officers due to its nature or seriousness.

In practice, therefore, support can range from the provision of general information on victim support services and court procedure to dedicated support from an appointed family liaison officer in the most serious cases. In relation to intimidated witnesses, the Witness Liaison Unit (based at Strathclyde Police but providing a service across Scotland) provides a service to witnesses, including child witnesses, who are subject to intimidation. The child witness may be the victim of intimidation themselves or part of a family where another family member is the subject of intimidation. The assistance provided ranges from the provision of personal safety advice through to the removal of the witness and/or their family to safe accommodation. The level of response provided is based on an assessment of the threat to the witness. Where there is not a direct threat of intimidation to a child witness, the unit can provide valuable advice and assistance to the proposed child witness service based on their strong inter-agency links and experience of providing practical assistance, e.g. plans for witnesses entering and leaving court buildings.

## **THE CROWN OFFICE AND PROCURATOR FISCAL SERVICE**

COPFS aims to give children special consideration within the criminal justice system which should be reflected in a well-structured and expeditious investigation, a high priority being given to the case throughout its history, and a sensitive approach to the child at every stage of the investigation and prosecution. As far as possible delays should be kept to a minimum and, in particular, any precognition work should be completed as soon as possible and early diets of trial sought.

The importance of good communication with other agencies and the need for inter-agency co-operation is recognised and is especially important as regards contact with the Reporter.

In relation to medical examination of children it is the responsibility of the Procurator Fiscal to obtain the necessary evidence of requisite quality with a minimum of distress to the child. It is recognised that unnecessary and/or repeated examination should be avoided if at all possible.

Where a child requires some form of counselling, decisions on the provision of such counselling are the responsibility of the child's carers and the Procurator Fiscal does not have a locus other than to advise, where appropriate, on whether the proposed counselling is likely to have an adverse effect on subsequent criminal proceedings.

In terms of Section 53(4) of the Children (Scotland) Act 1995 the Procurator Fiscal has a duty in certain circumstances to comply with a Reporter's request for evidence for the purpose of care and protection proceedings.

If a child is an essential witness in a case, not only the public interest but also the best interests of the child have to be considered when deciding whether to proceed with a case. Factors such as the seriousness of the offence, the age and vulnerability of the child and the child's relationship with the accused have to be taken into account, however, as a general rule children of pre-school age should not be called to give evidence. Given that children under 12 will require to pass a competency test before being allowed to give evidence, Procurators Fiscal must, as part of their overall assessment of a case, make their own preliminary assessment of the competency of a child witness either from available reports or assessment or in cases of difficulty by interviewing the child.

Where the question of bail arises, Procurators Fiscal should consider whether any additional condition of bail is necessary to protect the child from any approach by the accused.

Where a child has been precognosed, consideration should be given to providing a copy of the precognition to the defence where it appears that this will avoid the necessity for defence precognition.

The 'Going to Court' booklets should be made available to all child witnesses and all child witnesses should be offered a court visit. This is to explain court procedures and familiarise the child with the court in order to reduce some of the anxiety which arises from fear of the unknown.

Procurators Fiscal should ensure that advance notice is given to the Sheriff Clerk of the intention to call a child witness so that suitable facilities can be made available.

Consideration must be given to whether or not a child requires a Support Person to sit with them in court. The identity of such a person should be discussed with the defence and intimated to the court, however, the Judge can refuse to allow a support person to sit with the child especially if the defence object, although this is unusual. (Lord Justice General's Memorandum on Child Witness Support).

The Procurator Fiscal is under a duty to consider which special evidential provisions, if any, are appropriate for a child (section 271 of the Criminal Procedure (Scotland) Act 1995). If such a provision is thought to be appropriate the Procurator Fiscal must make an application to the court to allow the provision of the particular option e.g. screens, CCTV etc.

At the trial diet, it is the responsibility of the Procurator Fiscal to take the initiative to reduce any anxiety for the child (although to a large extent this can only be done with the co-operation of the judiciary). The Procurator Fiscal must always be aware of the terms of the Lord Justice General's Memorandum which is guidance issued to Judges on special arrangements which may be adopted in relation to child witnesses giving evidence in the conventional manner e.g. removal of wigs and gowns, support persons, clearing the court etc. When examining a child in court it is the duty of the Procurator Fiscal to keep questions short and simple and the pace of questioning should suit the child. The child should be watched for signs of fatigue etc. and if fatigued or distressed, the Procurator Fiscal should request a break. Prosecutors should remind the Judge where necessary of their discretionary power under section 50(3) of the Criminal Procedure (Scotland) Act 1995 to clear the court of the general public when a child is giving evidence in cases involving indecency. The court may also be cleared where the Judge deems it necessary to avoid distress/anxiety to a child witness.

Where it is known that the child or parent wishes to be informed of the outcome of a case the Procurator Fiscal should ensure that the information is communicated as soon as possible.

## **SCOTTISH CHILDREN'S REPORTER ADMINISTRATION**

### **Witnesses in Children's Hearing court proceedings – general**

A child's case is referred to Children's Hearing for a Hearing to decide if compulsory measures of supervision are required in that child's interests. Children are referred to Hearings for different reasons, sometimes to do with the child's own behaviour, sometimes the behaviour of others towards them. The matter is referred to the Hearing in terms of a formal document known as the grounds for referral. The grounds reflect the nature and specifics of the concern. A Hearing can only proceed to impose measures of supervision if the child and the child's parents or carers formally accept the grounds. If any of them do not accept or do not understand the grounds for referral, the Hearing will not decide if the matters specified in the grounds are correct. It is a court that is asked to hear the case and make any decision about disputed facts.

At court the sheriff hears evidence that the reporter provides to substantiate the grounds for referral and any evidence that a party disputing the grounds wishes to put before the court. The sheriff decides whether all or sufficient parts of the grounds are correct and if so, the matter is remitted back to a Hearing for the Hearing to consider the necessary measures of disposal.

This separation of function between Hearing and court is a fundamental part of the Children's Hearing system in Scotland. It is at this stage of proof that a reporter may be required to cite a child to be a witness. Whilst there is provision for witnesses to be heard in appeals before the sheriff against decisions taken by the Children's Hearing, it is less common that witnesses, especially child witnesses, will be heard in this process.

### **Special features of children's hearing cases**

*A child witness may be the child who is the subject of the proceedings.* This has implications for the child's role as a witness, in that:

- there are rights attached to their status as a child referred, e.g. the right to be present throughout the hearing of all of the evidence
- if the child's family are generally resistant to referral to a Hearing (which is often the case given the need to consider *compulsory* measures of supervision) then measures of support for the witness may be difficult to ensure
- if emergency measures are in existence, timescales can impinge on proper assessment and delivery of support
- there are often complex issues present for the child that requires close co-operation with all other agencies involved with the child.

*Some witnesses for the reporter may also be witnesses for separate criminal or civil proceedings that relate to the same subject matter.* This is more common with the increase in action in relation to domestic abuse. Close liaison between those involved in the different processes is essential.

*Reporters work to geographical patches and can 'know' children referred especially those children referred to Hearings and subject to supervision requirements. It would normally be the same reporter who would investigate a case, draw up any formal legal papers, attend Children's Hearings and conduct proceedings at court from the beginning of the process to the end.*

*A child witness may give evidence about a person who, if not a party to the proceedings, will not be present in court or challenge the evidence. Only people with a right as parent or carer (as specifically defined in legislation as a 'relevant person') has a right to be a party to proceedings. Children's Hearing proceedings allow for a child to be protected from a person who has harmed another child or is considered to be a risk to the child.*

*Court proceedings are heard in private. Only persons who are required by the process to be present will attend.*

### **Types of cases at court**

- Many cases involve children as witnesses to abuse; sexual, physical or emotional, that is perpetrated against them or a family member or friend, by someone within or without their own family
- Cases often involve children as witnesses to matters that constitute an offence by another child. This relates to all offences and includes serious physical or sexual assault by a child on another child or adult.

A child who has committed a serious offence is unlikely to be dealt with by a Children's Hearing although it is possible. Such a serious case will be dealt with as a criminal prosecution of the child. However, it is now common for serious cases of abuse and neglect against children to be heard in Children's Hearing court proceedings alongside separate prosecution of the perpetrator or where prosecution does not occur.

### **Child witnesses**

In general terms the Reporter will have contact with child witnesses who are

- Cited by the reporter as a witness of the reporter
- Cited as a witness by other parties to the proceedings (this is less common)

### **The Reporter's contact with child witnesses before court**

Usually information about a child is received in written form as a police statement, a recording of a joint police social work investigative interview, a report by a care agency professional or notes taken by same. At that stage the reporter is investigating and assessing the need for compulsory measures of supervision for the child referred. The reporter may investigate by speaking to the witness directly but this is unusual. The reporter can ask a person who has already interviewed the child to re-interview where clarification of matters is required. At this stage there may already be measures of



support in place for the witness. The reporter would want to know of these measures and be kept informed as the support continues.

If the reporter's investigation results in no need for further action, the reporter would communicate this to the child witness if the child were the subject of the referral. This communication would normally be by letter and sometimes in person. If the witness is not the subject of the referral the reporter is restricted by confidentiality as to what information he or she can disclose to the witness.

If investigation results in referral to a Hearing it is unlikely that the reporter would have contact with a child witness until it is clear that the matter is to proceed to court. This will only be after the Hearing has taken place. Thereafter support preparation will begin.

There may be some contact prior to that stage if the child witness is the child referred and attends the Hearing that refers matters to court. A reporter would at the very least meet a child witness before the court date to assess the needs of the child at court. Reporters are encouraged through training to prepare for such contact and to communicate appropriately with the child.

Reporters are encouraged to assess individual preparation needs of a child witness and to ensure that support required is not only identified and attempts made to provide that support but that the support is kept under review and any changes made as required.

With any measures of support it is essential that the reporter work with other agencies or professionals involved with the child so that a co-ordinated response to the child's needs occurs.

### **Preparation for court**

There are a number of actions that a reporter will pursue in preparation for court:

- Meeting the child – (even if the reporter has met the child before it is important that they meet specifically to look at witness preparation)
- Precognosing the child – this may or may not be necessary
- Arranging a court visit
- Confirming the support person to be involved with the child
- Assessing the measures required for the child as a witness, e.g. the need for CCTV, etc
- Identifying and preparing a support person
- Gathering information about the child to aid communication at court
- Identifying the child's views
- Establishing a point of contact with the child and their carer

### **Timescales**

Once a Hearing refers matters to court the reporter has 7 days to lodge the court application. Once lodged the court must set a date for the proof within 28 days. There is

an expectation that matters will proceed at this time if at all possible. The court can adjourn a case if further time is required.

### **Measures of support available to child witnesses in court Rules**

The Act of Sederunt (Child Care and Maintenance) Rules (S. I. 1997, No 291) provides for specific measures of support that the court can allow for child witnesses.

The specific measures relate to any child witness and the definition of child includes children over 16 years of age who are subject to a supervision requirement.

The measures are:

- The power to exclude a relevant person for part or all of the evidence
- Use of CCTV link for hearing the child's evidence

In addition courts have used common law powers to allow the use of screens, and the hearing of evidence outwith the court in child friendly environments.

### **Interview / Precognition**

The reporter may decide to precognose the child. Reporters are aware of the dangers for the child and for the process of unnecessary interview about traumatic events. Reporters would attempt to avoid further interview by other parties in the process by making available any statement or interview of the child.

It has become more common for there to be a separate legal representation of relevant persons in court proceedings. Often the court will appoint a safeguarder or a curator ad litem to represent the child's interests in the proceedings. It is particularly important where there is the potential for multiple interview of the child for the reporter to attempt to co-ordinate interview / access to the child.

### **Court Visit**

Reporters would arrange for a child to have a visit to the court where their evidence will be heard before the date of court. This is sometimes an opportunity for the child to meet others, e.g. court personnel who may be present at court when the child gives evidence.

### **Leaflets / Information**

At this time there are no leaflets that are specific to children's hearing court proceedings. Reporters would use information presently available in different forums as a basis for information provision.

## **Measures available at court**

Specific measures contained in court Rules are mentioned above. Other measures that can be arranged by the reporter or negotiated with parties or requested of the court include:

- Arrangements for access to and from court premises where the child is fearful of persons expected to be at court
- Separate waiting and private waiting facilities – at court or at a distance from court
- Special arrangements for access into the court room if required
- Arrangement of seating / positioning of persons in the court to ease the giving of evidence
- A support persons presence with the child in court
- Provision of uncontroversial information to the bench to assist the court in any questioning of the child for competency reasons or management of the child
- Restricting the number of persons present whilst the child gives evidence
- Communication aids for a child e.g. writing or drawing materials.

## **Measures of support after court**

Reporters are encouraged to offer a child the opportunity to meet with the reporter after the case has concluded to go over any questions that the child has had about their experience at court. The reporter can arrange for new or additional measures of support from relevant agencies or professionals if required beyond the court proceedings.

## **Current Developments**

SCRA has been developing a Child Witness Pack for reporters that should be launched within the next few months. The Pack will contain policy, practice guidance, tools for use with children, carers and support persons and reference to further relevant materials. More specifically, the Pack will contain:

- policy on the role and responsibility of reporters towards child witnesses
- the parameters of support
- policy on precognition and interview
- guidelines on CCTV
- information (leaflets) for child witnesses, carers and support persons
- clarity on the relationship / liaison with safeguarders, curator ad litem and the crown office procurators fiscal service
- clarification of what information about a child is useful and what to do with this information
- direction and guidance on communication with the child and with others in the process

All of these areas drew specific comment in the Lord Advocate's Working Party on Child Witnesses Report in relation to reporter's work.

### **Training**

Any reporter would receive some training before dealing with a case where a child witness was involved. Reporters would usually work with experienced reporters and court work would be supported particularly if a child witness were involved with the case. All reporters receive induction training that specifically looks at the subject of child witnesses and their needs. Reporters will attend training provided outwith the organisation relevant to this area. General training is provided on child development and advocacy skills. Further training will be provided with the launch of the Child Witness Pack.

## **SOCIAL WORK**

Child Witnesses can come in to contact with social work services as a –

Child referred as a consequence of a child protection concern. The child may be a direct victim of abuse or an indirect victim e.g. a child who has witnessed domestic violence.

Child who is already known to the department either voluntarily or on a statutory order and who may be required to give evidence in court proceedings as a victim or witness.

Child involved in a contact hearing who is required to express his/her views in court.

Child referred to the children's hearing system and may be required to give evidence in a proof hearing.

It is recognised that there will be many children who have to give evidence in court who have no contact with social work services and will receive no support or preparation for court. On occasion, court social workers will be asked to sit with a child in court where there has been to prior planning or arrangements put in place for the child to give evidence.

Current social work staff shortages and resource can result in some children who do not require any form of statutory intervention or child protection measures, but who would benefit from support, not being prioritised for service.

### **Key Responsibilities**

Child witnesses and their need for support has been given status both in local child protection procedures (in single social work documents and in some authorities in the inter-agency child protection committee guidelines).

While the need to focus on the needs of child witnesses is recognised within the child protection system, it is hard to know how this part of the procedure is actually being implemented.

Where a child is known to social work and a range of services can be offered –

**Social Worker may directly link with Procurators Fiscal – following the progress of the case through the Procurator Fiscal and court processes.** Often families feel they are not kept informed of the legal processes and ask social worker to assist them in establishing what is happening in their case, especially around timescales.

**Linking with Procurators Fiscal to arrange pre-trial visits.** While the Procurator Fiscal Service often will arrange this for children, the experience of workers working with children is that this does not always happen and workers have to contact the Procurator Fiscal and try and set this up. The Procurator Fiscal showing the child around the court may not be the Procurator Fiscal who will be leading the trial.

**Providing children and families with Information about the Actual Court Process.**

It would be helpful if a general information pack was available to explain the processes to children and families. There are a range of leaflets etc, but some of these are fairly old and need to be updated (SCRA currently involved in rewriting information for children and families).

**Accompanying Children and Families to Precognitions.** Again supporting children and families through the process – children may have to repeat their story on more than one occasion if more than one defendant. Also workers may have a role in helping to set these interviews up.

**Preparing Children for Court.** Helping children and families to understand what to expect in court.

**Accompanying Children to Court.** Supporting children and their families during the court process. This can be a time-consuming role for workers, as sometimes the court process can be extended and children have to wait long periods before giving evidence. In addition, cases can be delayed at the last minute, rescheduled and the worker will be involved in supporting the child at a further trial date. In the interim the social worker will have to help the child and family cope with the additional stress of such delay.

**Being a Support Person for the Child.** In some instances workers will act as support person to the child and will sit with the child in court. Workers obviously cannot undertake this role if they are a witness in the trial.

**Post-trial Support.** Workers may be involved in supporting children following the trial – this can often be a very difficult for children and their families dependant on the outcome of the process. For some children the whole process can be an anti-climax and children are left with a whole range of mixed feelings.

**Preparation of Reports for CCTV etc.** Workers can be requested by the Procurator Fiscal to prepare a report for the court supporting an application for CCTV. This report can involve a worker spending a considerable amount of time with a child, their family and relevant others. Sometimes workers are not given very long to prepare these reports.

**Therapeutic Work with Children Awaiting Trial.** Such work may happen in specialist settings, however, this work could be undertaken by workers in area team settings. Guidance is needed in this area of work. Some children clearly cannot wait months for therapeutic support.

Research clearly states that children who are as “ready as they can be” for the court give “best evidence”.

Guidance is required for social workers in their role of supporting children pre-trial.

## **SCOTTISH COURT SERVICE**

The Scottish Court Service (SCS) is an executive agency of the Scottish Executive Justice Department. Its main function is to support the judges and sheriffs in the Supreme and Sheriff Courts in Scotland. It provides staff who are properly trained to carry out the technical, administrative and organisational services necessary for the smooth running of the courts, while giving an efficient and courteous service to court users. It also provide and maintain court buildings.

### **Pre-trial familiarisation visits**

Court Service staff currently arrange pre-trial familiarisation visits to court for child witnesses on request. The child will be shown the courtroom, and the facilities available in the courthouse. The child will be accompanied on their visit by a member of the SCS staff, a member of the Procurator Fiscal's staff, or a member of the Witness Service.

### **Fast tracking of cases involving children**

When a person accused of a crime pleads not guilty a date is allocated for his/her trial. In summary criminal cases when the accused is held in custody pending trial, that trial must be held within 40 days of the accused first appearing court. In all other cases the SCS aims to offer a date for trial within twelve weeks of the accused pleading not guilty, but where a case is identified as involving children it should be given priority<sup>1</sup> and an earlier date should be fixed.

In solemn criminal cases when the accused is held in custody pending trial, that trial must be held within 110 days of the accused first appearing court. In all other cases the trial should be held within 12 months of the accused first appearing court. The SCS is not involved in the allocation of solemn cases, this being a matter for the Crown Office.

### **Prioritising of cases involving children**

Normally, seven or eight summary criminal trials will be put down for each court. Court programming guidelines<sup>1</sup> agreed by the Sheriffs Principal advise that where a case involves children it should be given priority on the day of the trial. Where it is not possible for a trial involving children to be taken first, a timetable should be agreed by the court and the witnesses allowed to leave the court house and return at a later time.

### **Facilities for children attending court**

The SCS is committed to ensuring that all witness accommodation in courts is clean, adequate, comfortable and furnished with reading materials; and in all but the smallest courts, refreshment facilities are available for all or part of the day, along with toys for children<sup>2</sup>. Additionally we aim to provide separate accommodation for vulnerable

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<sup>1</sup> Programming of business in the sheriff courts; Cox Nicholson Report published 1992

<sup>2</sup> SCS Court Users Charter

witnesses, including children, which minimises the opportunity for contact with the accused and their witnesses, family, etc.

### **CCTV and screens**

Legislation provides for the use of screens in the court room to shield the child from the accused, or for the use of CCTV equipment linked to a separate room which avoids the need for the child to enter the court room at all. The SCS is responsible for the provision of the necessary equipment. Where CCTV equipment is to be used this would be demonstrated to the child on the pre-trial familiarisation visit.

### **Proviso**

The SCS has no means of identifying cases involving child witnesses, and relies on the prosecution and defence flagging them up when diets are being assigned, etc.



## **VICTIM SUPPORT SCOTLAND**

### **Introduction**

The services offered by Victim Support Scotland fall into two categories, those offered by the community based service housed within all but one local authority area in Scotland and those via the court based Witness Service now present in the 49 Sheriff Courts in Scotland plus in two annexes. (Presently there is no Witness Service in Edinburgh or Glasgow High Courts.) Children receive support as a direct victim, an indirect victim and as a witness. It is estimated that annually Victim Support Scotland provides some level of practical or emotional support to over 4000 children affected by crime either as victims or witnesses in Scotland.

### **Context**

When working with children and young people, VSS believes the safety and well being of the child and volunteer is paramount. The extent to which the services of Victim Support are provided is dependant on the need of individual victims and witnesses. Victim Support Scotland's role when supporting child victims and witnesses is clear:

*All work undertaken with children under the age of 16 is carried out through their parent/guardian or with their direct consultation and involvement.*

### **Victim Support Scotland Community Based Services**

Community based services are in contact with children through referral by the police, self-referral and other routes. Referrals can be for a range of crimes, from the seemingly minor to sexual assault. The support offered falls into the following four main areas:

#### **Information**

The provision of information falls into the following main areas of support:

Information about the impact of the crime,

Information about the criminal justice process and its stages,

Assistance with any case specific concerns,

Criminal Injuries Compensation Authority information, if required

Information about precognition

Information about going to court

Providing information about other potential sources of support for example, Social Work, Witness Service, GP and any other specialist services.

#### **Emotional Support**

This involves assisting the child and parent or guardians to address the physical and emotional affect of the crime including any reactions to the incident and its aftermath and behavioural changes. For example, this could involve:

Assisting the child/parent/guardian to recognise that their emotional and physical response are normal.

Encouraging a child to allow themselves to acknowledge their reaction.

Many children hide their feelings in order to protect their parent/guardian. However such intervention should be balanced so as to avoid over-concentration on the crime.

Listening

Assisting parent/guardian with their response to child i.e. encouraging, calmness, their provision of consistent reassurance and their patience with the child and the quick return to normal daily routines.

Assisting the child to recognise physical symptoms of fear or anxiety.

### **Practical Support**

Practical assistance could involve the following types of support:

Assisting the parent/guardian with practical suggestions to aid the child with their anxiety and fear. E.g. suggestions for leaving bedroom doors open, the use of nightlights if fear of the dark is an issue, the use of music via radio or tape recorder.

If a burglary has occurred, VS may be able to liaise with a crime prevention officer to talk with the family about their house security which may assist the child in their recovery.

Assist the parent/guardian with finding additional sources of specialist support including the Witness Service if appropriate.

VS would also advocate on behalf of a victim/witness if asked, with specific tasks, for example, providing assistance with information about how to put in an application for a housing transfer.

Liaise with other agencies at the specific request of the parent/guardian.

Assist with organising transport to and from court if required.

Assist with any practicalities of being in court, for example, ensuring games, magazines, toys and lunch are available.

At High Court assist in the liaison between family and Procurator Fiscal Service e.g. raising specific needs as requested by parent/family with PF.

Support at identification parades, precognition and attendance at court.

### **Liaison**

The Community based service will liaise, if required by the victim/witness, with the Court based service for the duration of a court case and arrange court familiarisation visits and any special support required at court. Liaison can also take the form of working with the parent/guardian with a school, for example, in order to assist a child re-entering the school system or adjusting to the aftermath of a trauma.

It is worth noting that community based services will provide support before during and after the trial. The provision of assistance and information at court however is always provided by the Witness Service if the court houses such a facility.

## **Referral Procedures for community based services in relation to children**

VSS has recently updated its guidance to services for their work with children. However the following methods are applied:

When a service receives a referral for a child between the ages of 14-16yrs the service should normally contact the child through the parent/guardian.

In some instances children may contact a service directly, information would be elicited in a supportive manner to consider the avenues of help available. In consultation with the child, a letter would be forwarded to their parent/guardian informing them of the referral.

When the child is under the age of 14 years, the parent/guardian/appropriate adult with responsibility will be informed prior to direct contact with child.

## **Victim Support Scotland Witness Service**

The Witness Service being court based is well positioned to pick up and support children who have not accessed support prior to attending court, as well as those children referred by advance referral procedures. This support also extends to the child's parent, guardian or any other person attending court with the child. Pre-trial visits can help reduce children's anxieties, making them more at ease with their environment. After disposal of the case, any child who required further support from Victim Support would be referred to the local community based service or any other service or facility deemed appropriate, after agreement with the child and guardian

## **Referrals from other agencies to the Witness Service**

Referrals to the Witness Service come via the following means:

Directly from parents via the citation

Procurator Fiscal

Social work

Small number from voluntary agencies – e.g. Women's Aid

Local Victim Support services

Referrals from the Fiscal are usually identified through case papers or at precognition stage. Social work departments often refer cases where field social workers have made contact and identified that children will be going to court. Parents will often phone the Witness Service on receipt of citation. Other agencies would contact the Witness Service directly. Victim Support Community services would refer to Witness Service and vice-versa.

## **Support For Child Witnesses/Victims**

When the WS is made aware of a child victim/witness going to court, contact is made with the family informing them of the support available to them. Pre-trial visits are offered and if any issues are raised and if appropriate, this information would then be passed to the PF. Where the court has given permission to support a child in the CCTV Link room, the Witness Service's responsibility is:

*“to provide support to the young witness in a neutral and sympathetic manner but without influencing the evidence in any way.”*

**This is also common standard when accompanying young witnesses in the court room.**

On the day of the trial, a dedicated volunteer would be assigned to the child to ensure all their needs could be met. In liaison with court officials, on the day arrangements would be put in place to accompany the child, if requested or required into the court.

On occasion, the WS have chaperoned a child witness over lunch or kept them company whilst the parent has given evidence. Separate waiting accommodation can be made available if required. On the day of the trial the WS can make arrangements to escort the child witnesses/victims to the designated waiting area, or if particularly vulnerable, in collaboration with court staff, the WS can arrange a different way of entry and exit. The WS have also been asked on occasion (when no CCTV has been available) to provide reports to support an application to the Crown for use of screens within the courtroom for child witnesses. Witnesses and family are kept advised throughout proceedings on the progress within the court, and if possible/appropriate, the WS may advise the family of the outcome of the trial or subsequent disposal. The WS is always available if further assistance is required post/pre trial.

## **VSS Basic Standards for Work with Children**

Volunteers who are supporting children must, without exception, have had a satisfactory criminal record check.

Wherever possible and appropriate, parents or guardians will be present or in the immediate vicinity of the volunteers and the child.

Notwithstanding, volunteers should always work in the presence of another responsible adult and in any event, support should be deferred until this is arranged.

In each case volunteers need to ensure that the child understands what is meant by confidentiality and the possible need to disclose some types of information to their manager

The co-ordinator will either be directly involved when a child is being supported, or will be providing close supervision to volunteers who are supporting a child, i.e. the co-ordinator will receive a report of the support meeting immediately after it takes place.

### **Training**

VSS is presently reviewing its generic training course for work with children and is also in the middle of rolling out its new training course for supporting children bereaved through murder.

### **Child Protection Issues**

Victim Support Scotland does not provide specialist in depth support to children in cases of neglect or in cases of emotional or sexual abuse of children within a family. This work is the responsibility of the social services departments and other agencies.

In the case of abuse by a stranger of a child living at home Victim Support may be involved in offering support to parents, to the child and his/her family, but would not undertake therapeutic work in any instance. Information regarding other potential sources of support could also be provided.

### **Services who have a concern about children in danger :**

VSS offers guidance for volunteers who may have a suspicion or direct disclosure of a child being abused. Volunteers may find themselves in situations where they have a concern over a child. In these instances they will consider their response in light of:

- The welfare of the child being paramount
- The age of the child and the nature of the crime
- The statutory responsibilities for child abuse
- The possible views of parents/guardians

Help/guidance and support would be sought from the appropriate authorities concerned. (e.g. social work departments).

### **Conclusion**

Victim Support Scotland is presently establishing its standards on working with children and through its experiences of supporting children, within both the community and court based services, we recognise that a more formalised structure for work in this arena is required in Scotland.

**CHILD WITNESS SUPPORT**

**SECTION 2**

**INTERVIEWING CHILD WITNESSES IN SCOTLAND**

**DRAFT GUIDANCE**

**SECTION 2**  
**INTERVIEWING CHILD WITNESSES IN SCOTLAND**  
**DRAFT GUIDANCE**

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# **INTERVIEWING CHILD WITNESSES IN SCOTLAND DRAFT GUIDANCE**

## **PART 1: INTRODUCTION**

1. This section of the document contains draft guidance developed in response to recommendation 7.1 of the Lord Advocate's Report which stated that in order to improve the conduct of interviews and precognitions with young witnesses:
  - the Scottish Office should invite all relevant organisations to co-operate in the development of guidance on the conduct and recording of investigative interviews of children by police officers and social workers, on the basis that implementation of standard guidance would improve the quality and consistency of interviews and assist in reducing the need for others to re-interview the child about the circumstances of the alleged offence.
2. The guidance starts from the premise that every child has a right to protection from harm, abuse and exploitation. Where a child has suffered from such treatment, and agencies involved in child protection are called to intervene, the child's welfare should be of paramount importance when considering their needs and that of justice. Care must be taken that children do not suffer any undue distress during investigations into allegations or information received. Moreover, agencies should endeavour to treat children as individuals, and involve them in decisions that affect their future. These principles are founded in the United Nations Convention on the Rights of the Child and the Children (Scotland) Act 1995.
3. This guidance has been developed by the Child Witnesses Support Implementation Group sub group comprising the Scottish Executive's Justice Department, Crown Office and Procurator Fiscal Service, NCH Scotland, the Association of Chief Police Officers in Scotland, the Association of Directors of Social Work, the Law Society for Scotland, the Scottish Association of Community Child Health and the Scottish Children's Reporter Administration which commissioned work from the University of Aberdeen. The sub group has, in the context of criminal proceedings and Scottish Children's Reporter Administration proceedings, overseen the formulation of guidance to:
  - improve the quality of investigative interviews and the sharing of information;
  - reduce the number of times the child is interviewed; and
  - set out good practice for any organisation involved in interviewing children who may be witnesses,

all with a view to safeguarding the welfare of children.

4. **This section is intended for all professionals who undertake investigative interviews with child witnesses<sup>1</sup>. Views are invited on the draft guidance from all those with an interest.**

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<sup>1</sup> In the context of this section, ‘very young children’ will refer to preschoolers (i.e. up to 5 years of age), ‘young children’ to those of primary school age (i.e. up to 11 years of age), and ‘older children’ to those of secondary school age (i.e. over 11 years of age).

## PART 2: BACKGROUND

### Aims of the guidance

5. The guidance focuses primarily on practices used by police and social work for gathering information and evidence during the investigative phase. However, children may be questioned by other professionals at other times, e.g. in court. The methods used by such professionals should also serve to safeguard children's welfare whilst facilitating best evidence – see Ellison (2001) for example.
6. It aims to provide a clear outline of the purposes of investigative interviews and of the procedures and techniques that comprise current best practice.
7. It must be stressed that each child and their circumstances are unique, therefore interviews should be tailored according to the individual child and situation. However, this guidance provides a *flexible* interview framework that may be applied and adapted for use with all child witnesses. It may also be useful with persons classified as vulnerable witnesses<sup>2</sup> and people aged 16 and 17 years old who are subject to supervision requirements regarding SCRA proceedings.

### Definition of the 'Investigative Interview'

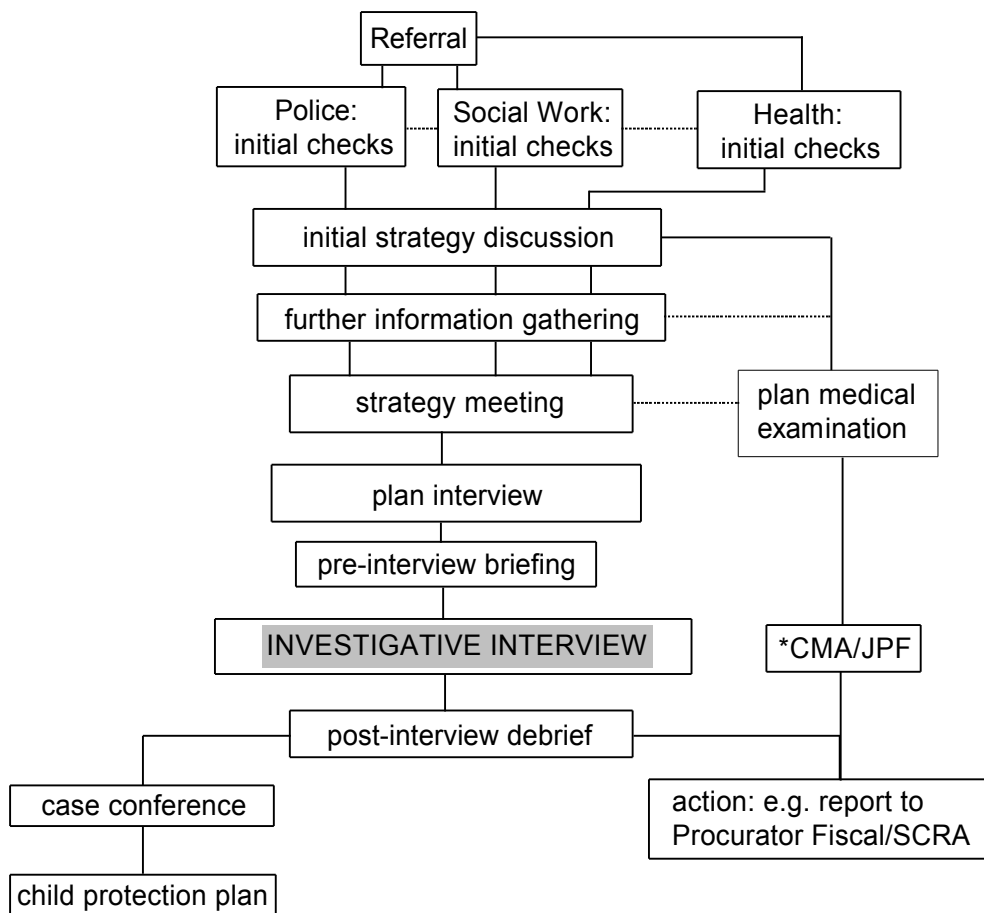
*An investigative interview is "a formal, planned interview with a child, carried out by staff trained and competent to conduct it, for the purposes of gaining the child's account of events (if any) which require investigation"*

8. This guidance is concerned with the formal interviews carried out primarily for evidential and risk assessment purposes. Although children may first approach those people who are around them daily (e.g. teachers, parents) to communicate their worries, these discussions are not to be confused with the investigative interview. If a child does spontaneously disclose information - outside of the formal context - of a nature that might require investigation by the authorities, the receiver should *listen*, and support the child, then seek help from the appropriate agencies. They should also make a written record of the child's remarks as soon afterwards as possible. Professionals working in such areas as education and health, for example, should follow the procedures set out in their local Child Protection Committee guidelines.

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<sup>2</sup> As well as children under 16 years of age, Scotland's current legal definition of vulnerable witnesses encompasses: an adult who has had a mental health court order made in respect of him/her; or an adult with significant impairment of intelligence and social functioning. The recent consultation paper from the Scottish Executive, '*Vital Voices: Helping Vulnerable Witnesses Give Evidence*', raises the possibility of widening this definition, for example to include people who suffer from racial harassment, physical disability or communication difficulties.

9. Disclosures of incidents such as sexual or physical abuse might also occur unexpectedly during counselling or assessment sessions, held to address other issues (e.g. behavioural problems the child has been displaying at school). Discussions within these settings should not be confused with investigative interviews. Finally, investigative interviews should not be confused with interviews conducted for therapeutic purposes (see paragraph 12 Investigative versus therapeutic goals and techniques).



**Figure 1. An example of the Investigative Interview in Context**

\*Comprehensive Medical Assessment (CMA) will be required where concerns are raised about possible physical abuse and neglect. Joint Paediatric/Forensic examination (JPF) will be required to gather medical and forensic evidence in cases of alleged sexual abuse and cases of significant physical injury. Full descriptions of these assessments are available in the Scottish Executive publication, *Protecting Children a Shared Responsibility, Guidance for Health Professionals in Scotland*, January 2000.

**NB.** Police, social work and health professionals (as mentioned above) are not the only ones who may be involved at this stage of the investigative process.

10. The main purposes of the investigative interview are as follows:
  - to learn the child's account of the circumstances giving rise to the concern
  - to gather information to permit decision making on whether the child in question, or any other child, is in need of protection
  - to establish whether a crime has been committed
11. The joint paediatric forensic examination has some overlap with the investigative interview and the general principles laid out in this document may be relevant to paediatricians and police surgeons. Likewise, this guidance is applicable to interviews conducted by precognoscers.

### **Investigative versus therapeutic goals and techniques**

12. It is important to make a distinction between an investigative interview and therapy. Research shows that procedures that might make sense in therapeutic settings (e.g. playroom environment, direct questioning about pain/harm) are not always suitable for investigative interviews (see Poole & Lamb, 1998). Therapy-focused interviews may compromise the investigative function. A therapy-focused approach (e.g. clinical approach to interviewing) should therefore not be adopted in an investigative interview. However, that is not to say an investigative interview should not include certain qualities also common in a therapeutic interview, i.e. empathy and being sensitive to children's feelings and emotional reactions to questions.

### **The guidance and training**

13. This guidance is only the first step to improving interviewing in child protection cases. To ensure best practice is actually *implemented and maintained*, the various agencies involved will need to devise compatible joint training programmes and review strategies, which must be kept up-to-date. This will require considerable collaboration amongst police and social work departments, on both a professional and a personal level. Training will be necessary not only for those persons who will conduct the interviews, but also management and supervisors who will oversee the investigations. It is a demanding task, and the different agencies must appreciate and respect each other's professional values, roles and responsibilities.
14. This guidance document should thus be used in conjunction with a suitable programme of training. We advise an intensive programme of training. The training should provide appropriate background information concerning all the topics set out in this document. There should also be ample opportunity to practice and obtain feedback on the techniques set out below. Practice interviews should be video-recorded and reviewed to provide examples of good and bad practice. Of course, much learning will be done during actual interviews in real life cases. Therefore, following training, there should be ongoing monitoring, supervision and refresher courses to assess how well procedures learnt in training have been implemented in the field, and to allow a two-

way sharing of information between practitioners and training staff. Finally, a lot can be learned from the experience of the past. An example is provided in Appendix 2C (Criticisms of the Orkney inquiry - summarised from the Clyde Report).

### PART 3: PLANNING THE INVESTIGATIVE INTERVIEW

15. This guidance advocates the joint interview. Thus, whenever necessary and possible, police and social work should plan and conduct investigative interviews together. A formal planning meeting prior to the interview is strongly advised. This has several benefits. It will enable interviewers to discuss the needs of the child (see *part 4. Special Needs*). It will enable the interviewers to agree on the interview location – subject to consultation with the child and caregiver – and the procedure, recording of interview details, and so on. It will also allow for speedier and more informed progress in the investigation since risk assessments can be carried out together and reduce the number of interviews that need to be conducted. The decision as to whether or not to conduct an interview jointly will be a matter for both the Senior Social Worker and Police Supervisor involved with the case.
16. There may be a need, with certain cases, for collaboration with forces and child protection agencies in England and Wales. The police have cross-border powers to investigate and it would normally be a matter of police protocol as to which persons from which forces would lead the investigation, where the interview would take place, and so forth. Agencies involved in child protection in England and Wales follow the Home Office guidance, *Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses, including Children*. The procedures and practice outlined in this document generally complement that in *Achieving Best Evidence*.
17. Minutes should be taken for every planning meeting, in particular detailing all decisions made and justifications for making them. Copies of Minutes should be kept by both agencies.

#### PLANNING CHECKLIST

- The child's age and gender
- Their race, culture, religion, ethnicity and first language
- Their cognitive (e.g. attention and memory) and linguistic (comprehension and speech, vocabulary) abilities and range of behaviours
- Their present emotional state
- Any mental and/or physical health requirements
- Any mental, physical or learning impairments that require specialist input/attention
- The child's family composition and living arrangements
- The nature of the child's relationships with family members and/or carers
- Daily routines, bath, bed, meals, etc.
- Any sources of stress for the child and/or the family (e.g. bereavement, marriage break-up, redundancy, house move, bullying, sickness/incapacitation, domestic violence)
- Any previous involvement with child protection agencies – if so, the nature of such
- Details of previous action taken and support provided (e.g. any therapy/counselling)
- Other sources of information: parents, carers, teachers, GPs, child psychologists
- Contingency plans (e.g. for retraction of earlier statement, change in lead interviewer)

**Note:** This checklist is not exhaustive.

## **Purpose of interview**

18. All those involved in the case must clarify and define the purpose of the interview(s) to be conducted and also the topics to be explored. It is vital that both interviewers enter the interview situation with a clear understanding of how this will further the investigation, and are sure that interviewing the child is a necessary next step to take (i.e. all other sources of information have first been exhausted). Naturally, there will be a degree of uncertainty as to what will come out of the interview, but by having all the background information at their fingertips, the interviewers should have some idea of the direction of the enquiry.

## **The interviewers**

19. Investigative interviews should be carried out by trained professionals. They should be familiar with the legal system and evidential requirements (e.g. different standards of proof for criminal and civil proceedings). They should also have some knowledge of the child's understanding of language and their needs (see *part 5. Special Needs*). However, sometimes the decision as to who should interview will be determined by availability of staff.
20. The lead interviewer may be from *either* the police *or* social work and will be identified after due consideration of all factors (preferred gender, race, experience of interviewing, any previous experience with the particular child, likelihood of establishing best rapport with the child). The lead interviewer will take primary responsibility for gathering information during the interview.
21. The second interviewer will also have a clear, *active* role. Their duty will be to monitor and accurately record the questions, answers and demeanour of both the child and lead interviewer. Moreover, they will look for inconsistencies or gaps in the child's account, and any misinterpretations on the interviewer or child's part. The second interviewer can direct the lead interviewer and ask questions but only at the appropriate phase of the interview and following the guidelines set out below (see *part 4. Conducting the interview* in particular).

## **Location of interview**

22. The interview should be held in a suitable setting, one in which the child feels safe and comfortable. The child or his/her guardian should be consulted in advance about this matter if appropriate. The décor should be child-friendly and welcoming but not distracting. The interview room should be somewhere private, and devoid of background noise. This is particularly important for witnesses with hearing impairments where similar sounding words may be confused. It is also important that the interviewer accurately hears the child's response.
23. A small range of age- and gender-appropriate play materials can be available, e.g. crayons and paper, but should only be used where they will put the child at ease thereby making them more capable of giving their account and participating fully in the interview. A room full of toys is not advisable. Older children may find toys



patronising and they may be unsuitable for younger and hyperactive children who are easily distracted.

### **Timing of interview**

24. When planning the interview, the child's routines (e.g. mealtimes, bedtime, bathtime, etc.) and any religious practices (prayer times, holy days) should be taken into consideration. Interviewers may also wish to avoid taking children out of their school classes or from other locations where their removal might be conspicuous and/or cause embarrassment (e.g. youth or sports clubs).
25. However, in certain situations where there are clear grounds for concern over the child's welfare and safety, it may be imperative to talk to the child immediately.
26. If more than one interview is planned, interviewers should aim to conduct these at a regular time, keeping the child fully informed, thus reducing the child's feelings of uncertainty.

### **Number and duration of interviews**

27. One of the major aims of the joint interview is to reduce the overall number of interviews conducted. Hence, it would be preferable if police and social work gather all the necessary information from just one single interview. This is not always possible. Sometimes it may take more than one interview to build rapport with the child or an interview may need to be terminated and rescheduled if a child becomes too upset (see *paragraph 104 Debriefing and further interviews*). Where more than one interview is to be conducted, it is important that the needs of justice be carefully balanced with the needs of the child. Extra information *could* be acquired following each subsequent interview. However, the greater the number of further interviews, the more likely each successive one is to be perceived as excessive and unnecessary and this will, in turn, affect the strength of evidence obtained. Furthermore, the emotional trauma and stress that the child may endure from repeatedly recalling the event(s) could have serious repercussions for their wellbeing. Another problem interviewers must be aware of, particularly with multiple interviews, is that of *confirmation bias*; suggestions might be instilled in the child's mind and then reinforced within and across interviews and interviewers.<sup>3</sup>
28. It is good for both the interviewers and the child to have an approximate idea of how long the interview is likely to last. This will depend primarily on the child – their pace, attention span, specific needs, willingness to talk, etc.

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<sup>3</sup>A biased interviewer is one who holds prior beliefs about the occurrence or non-occurrence of certain events. Consequently this may shape the interviewer's line of enquiry such that they obtain statements from witnesses that are consistent with prior beliefs (for example, see White, Leichtman & Ceci, 1997). Biased interviews are not just restricted to professionals who interview children but can include parents, teachers and others.

29. The child will also benefit from having some idea of when breaks will be available. Interviewers should never persist in interviewing a child beyond a point where they are no longer capable of sustaining concentration and show signs of tiredness or distress.

### **Issue of consent**

30. *Although not a legal requirement, it is best practice to always seek a child's consent when wishing to interview them.*
31. Where appropriate, steps should also be taken to keep parents/guardians informed of the unfolding situation. In certain cases, the interviewers may need to see the child without the knowledge or consent of the parent/guardian. For example, where there are strong grounds to suspect that they are involved in the abuse. If this is necessary, a record should be made by *both* agencies detailing the reasons for excluding them.
32. Even where there are compelling reasons to exclude a parent or guardian from the investigative enquiries, they still have the right to courtesy and consideration.

### **Recording of interview**

33. A record of the interview must be taken while it is being conducted. One advantage of the joint interview is that one interviewer records what is being said, or being demonstrated non-verbally, leaving the other interviewer free to listen to the child and think of appropriate questions.
34. It is current practice for interviewers to then write a joint record of the interview afterwards, as soon as is possible and while the proceedings are still fresh in their memories. However, research (e.g. Warren & Woodall, 1999) shows that professional interviewers tend to misremember the questions they asked in an interview even when questioned immediately after the interview. This can have serious consequences if an interviewer obtained a response from a child as a result of asking a leading or misleading question but failed to remember that. Therefore, it is extremely important that the record taken *during* the interview is full, accurate, and verbatim.
35. Details should cover such things as room layout and seating positions. They must also include the date, time and duration of the interview; any breaks or interruptions; most importantly, the child's remarks and the questions that prompted these (in the exact words used); and non-verbal behaviour (the child's actions, e.g. "He grabbed me here (*pointing to body part*)" and their demeanour). Observations must be objective - interviewers should avoid overly interpreting or making inferences from the behaviour of a child.
36. The original record should be retained by the Police and a copy sent to Social Work.

**Note:** At present, investigative interviews carried out in Scotland with child witnesses are recorded by hand. This is a demanding task and one which many practitioners have expressed difficulty with even when using the joint interview approach. It is recommended that alternative methods are investigated for the future. We refer practitioners to the provision in the Criminal Procedure (Scotland) Act 1995 (*see*

sections 260 and 262) that allows prior statements made by a child witness to be admitted as evidence in court. This statement must be contained in a document but the definition of document includes audio and visual formats<sup>4</sup>. Thus it appears that a taped investigative interview, *accompanied by a written statement*, could be presented in lieu of examination in chief. Naturally, there are resource implications for this method of recording. Nevertheless, there are also benefits<sup>5</sup>.

### Other interview personnel

37. Personnel should be kept to a minimum, to avoid intimidating or inhibiting the child. In most circumstances, it is best for only the two interviewers to be present in the room with the child. In certain cases, however, a child may wish for, and benefit from having, a support adult present<sup>6</sup>. Every effort should be made to establish that this person is not a witness or potential witness, nor someone who has a personal investment in the case. Moreover, in certain circumstances, the support person should not be a parent or carer. This is important if, for example, if the parent/carer is suspected of being directly involved in the abuse or their relationship with the abuser is likely to lead to a conflict of interests (see also *section 5* about personnel at interviews with children who have a disability, are very young or whose first language is not English).
38. The supporter must be aware that they are not to participate in the interview itself (i.e. no answering of questions, or prompting child to say certain things). They must also watch their body language and facial expressions to avoid conveying any emotions or intentions towards the child. Their role is to *support* in the sense that their presence during the interview is comforting and reassuring.
39. It must be noted, however, that the presence of a supporter might be more of a hindrance to the child, especially if that adult is someone the child has a particular relationship with (e.g. teacher, parent) and the child feels uncomfortable about them knowing intimate details of their personal life. If a parent insists on being present and

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<sup>4</sup> “ ‘document’ includes, in addition to a document in writing - (a) any map, plan, graph or drawing; (b) any photograph; (c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and (d) any film, negative, tape, disc or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom” (s.262. (3) Criminal Procedure (Scotland) Act 1995).

<sup>5</sup> Research (see Cashmore, 2002 for a review) suggests that there are many advantages to electronic recording. It increases the chances of an accurate and complete statement by providing a verbatim account of questions and answers. This is especially important given the fact that children’s language is so dependent on the questioning context. It can also be used to refresh the child’s memory for events that occurred some time earlier. Finally, a video-recording provides information on the quality of the investigative interview.

<sup>6</sup> See Section 1 of this consultation document, *Establishment of a Child Witness Support Service*.

the interviewers do not feel this would be appropriate, the police do have common law power to exclude them from the interview.

40. If a supporter is present, it is best that they are there only for the rapport phase until the child is settled. They should always sit out of the line of the child's vision but can move to physically comfort the child if the need arises. A better strategy is to have the adult sit in an adjacent room. This can often placate the worries of both the child and the adult, whilst ensuring the interview remains private and unhindered. The child is informed that the adult is next door and on hand should they be needed.

### **Non-disclosure**

41. While the purpose of the investigative interview is to establish whether the child is or has been exposed to risk from abuse or other types of criminal conduct, interviewers must never enter the interview with the intention of only seeking information that substantiates a suspicion/allegation. ***Interviewers must always keep an open mind.*** Thus, they should aim to obtain information regarding several alternative hypotheses, e.g. details that *refute* the suspicion/allegation and offer another explanation for the event(s). Note the point above that was made about *confirmation bias*.
42. A child's age, their perception of how safe it is to talk to the authorities, their family circumstances, religion, culture or other factors may determine whether or not he or she discloses.
43. When a child does not disclose evidentially relevant information during an interview, this is an acceptable outcome, not a failure on anyone's part especially the child's. It may be that the child is not yet willing or able to tell, or that they have not been the victim of, or witnessed, any wrongdoing. It is also not uncommon for children to deny or retract earlier allegations, although no inferences should be drawn from this. Interviewers should prepare and plan for all these eventualities.

## **PART 4: CONDUCTING THE INTERVIEW**

44. We strongly advise a phased approach to interviewing. All investigative interviews with a child should be comprised of the phases described below.

### **The phases of the interview**

- Introductions
  - Rapport Phase
  - Free Narrative
  - Questioning
  - Closure Phase
45. The interview framework described here is similar to, and incorporates many features and techniques from, several other interview formats described in the literature – the phased interview, stepwise interview, the structured interview protocol, cognitive interview, to name a few (see *part 6. Further Reading and References*). The general principle behind this approach is to elicit an as accurate and comprehensive account of event(s) from a child as possible, one that may stand up to the scrutiny of the court as legally sound testimony. Although there are five distinct phases, there may be some overlap between these and interviewers should be prepared to switch back and forth between them.
46. It must be emphasised that to effectively apply the techniques described in this guidance in an actual interview setting will require a considerable amount of skill and practice on the interviewers' behalfs. Thus, extensive training *must* be undertaken, and this should be up-to-date involving proper practice and feedback from other practitioners and trained supervisors (see *paragraph 13 The guidance and training*).

### **Introductions and explaining purpose**

47. Once in the interview room, both interviewers should sit somewhere with an unobstructed view of the child but not in a fashion that might come across as confrontational. It is better for the second interviewer to be positioned out of the child's direct line of vision, so as not to interfere with the interaction between the lead interviewer and the child. If the second interviewer unintentionally distracts the child with a look or an action, this may interrupt or inhibit the child's statement.
48. Interviewers should introduce all persons present in the interview room to the child and explain, in age-appropriate language, why each person is in the room. Any preconceptions or misperceptions about the police and social workers (e.g. police only come to see people when they are going to lock them up) can be addressed at this time. The child's preferred name or mode of address should be established. The purpose of the interview should be explained as clearly and simply to the child who should also be given an opportunity to ask questions.

e.g. “Hello (*child’s name*). My name is \_\_\_\_\_. I am a police officer/social worker/etc. Part of my job is to listen to children and young people about things that may have happened to them, to give them a chance to describe any worries they may have”.

“Do you have any questions about why you are here today?”

49. Children will attend to interviews more successfully when they have a better understanding of the interview purpose. To avoid bias, interviewers should be careful not to suggest the allegation being investigated. Even where the initial concern originated from something the child had said, it is important for the interviewers to hear the child disclose and elaborate on this during the course of the interview with minimal prompting. The aim is to obtain the child’s memories of the event(s), *in their own words*.
50. Another point to explain to the child is that the interview will be recorded. A good way to do this is:
  - “I will be writing things down because I want to be sure I remember it properly”.
  - Before proceeding on to the next stage, interviewers must obtain the child’s consent to interview if they have not already done so.

**Note:** It is important that children are kept informed not only at the planning and interview stages but throughout the course of the whole legal process.

### **Rapport Phase: establishing a child-centred interview**

51. This phase is very important and **should never be omitted**. Although, in some instances, the child may be very aware of why they are about to be interviewed and want to go straight to the topic of concern, most children will need time before they can talk openly with the interviewers. Building rapport can overcome any initial hesitance, unease or mistrust. It also conveys to the child that they are the most important (central) person in the interview and they are the one who holds the knowledge, not the interviewer.
52. The rapport phase is moreover an excellent opportunity for the interviewer to gain a better understanding of the child’s communication skills and current stage of cognitive, social and emotional development. For example, during rapport building the interviewer may become aware that the child who is apparently ‘street-wise’ might, in reality, only have a superficial understanding.

### **Interview atmosphere**

53. The child should feel as relaxed and as comfortable as possible before beginning the interview. Interviewers should try not to over-emphasise their authority in relation to the child as this might cause the child to clam up or to simply agree with whatever the interviewer says. Police interviewers should wear civilian clothes rather than uniform.

Recent research confirms that more information can be obtained from a child when the interviewer is *not* in uniform (Powell, Wilson & Croft, in press).

54. Other tactics interviewers might find conducive include for a young child sitting down on the floor to be at eye-level. In essence, the interviewer is trying to shift the balance of control in favour of the child. Consequently, the child should feel empowered, which may reduce the desire to simply respond to questions to please the interviewer.
55. *The pace of the interview should be dictated primarily by the child.* Their developmental age, attention span, the time it takes for them to overcome any initial mistrust they might have of the interviewers, and so on will all affect the length and pace of the interview. The number and complexity of alleged incidents will also impact on the overall duration of the interview.
56. Interviewers should speak slowly and clearly and allow for *pauses*. They should refrain from interrupting the child or immediately ‘jumping in’ when the child appears reluctant/unable to talk. In fact, pausing and not interrupting the child is the best technique for allowing the child to search their memory effectively.
57. Interviewers must also be vigilant for signs of fatigue in the child, or the need for a refreshment or toilet break. If the child does wish to take a break, this should never be withheld or offered as a reward in an effort to extract a disclosure. Interviewers should not attempt to drive proceedings along or continue questioning a child that has become very distressed or restless (at the same time, interviewers should not be too hasty to offer breaks when the topic turns to something difficult or embarrassing. This could indicate to the child that the interviewer cannot cope with what they are about to hear). If breaks are taken, a note should be kept of the reasons for them, how long they lasted, what the child was doing during the break, who they spoke to, what was said, and so on.
58. As an icebreaker, interviewers might begin with a few general words about e.g., the journey to the interview location or what subjects the child had at school that day. The interview then enters the phase where the interviewer introduces the format the subsequent substantive interview will follow – using neutral topics – and encourages the child to talk about themselves.
59. Taking into account all the factors above emphasises the need for flexibility to meet the individual circumstances as presented in each case.

### **Ground rules**

60. Before the child begins the main part of the interview (and particularly before any questions are asked) the interviewer must make clear ‘ground rules’ of the interview. It is recommended that interviewers do not just ask whether the child understands the rules but check by giving examples (see APPENDIX 2A).
61. Appropriate ground rules to communicate to the child are:
  - The interviewer is there mainly to listen. This is the child’s chance to do most of the talking.

- The interviewer was not present at the event(s) and therefore needs the child's help to understand what happened.
- Even if the child thinks the interviewer already knows something, they should still tell them anyway.
- If the interviewer asks a question that the child does not know or remember the answer to, it is okay for the child to say "I don't know/remember".
- If the interviewer asks a question that the child finds too difficult or unclear, the child should let the interviewer know so they can rephrase it or approach the subject in a different way.
- The child should not try to guess the answers. They should only talk about true things, things that really happened.
- If the interviewer makes a mistake, or says something that is not true, it is okay for the child to correct the interviewer.
- Sometimes the interviewer will ask the child the same question again. This does not mean that the child gave the wrong answer the first time, it is just to help the interviewer remember what has been said. The child should always tell the truth.

### Telling the truth

62. The child does not have to take the oath for an investigative interview but it is advisable to make them aware at the outset of the importance of giving their *own*, true account. By 'true account', that is saying what *they believe* has happened. Interviewers should not ask for definitions of what is a truth or a lie as this is a difficult task, even for adults. Instead, the interviewer should emphasise that they want to know what the child actually saw with their own eyes, heard with their own ears, smelled with their own nose and tasted with their own mouth.

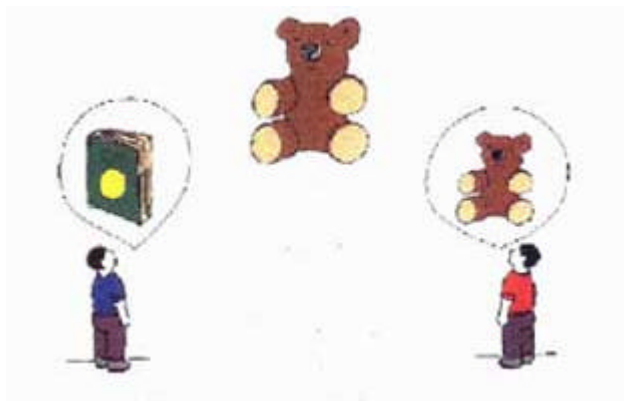
"I want you to tell me what really happened, even if you said something different to somebody else at some other time"

- Don't tell me anything pretend
- Don't guess about things
- Don't tell me what someone else told you to say happened

63. There are no commonly accepted criteria for assessing child witness competency and available research findings lead us to question whether the varied procedures currently used can discriminate between witnesses who will be reliable and those who will not (Lyon, Saywitz, Kaplan & Dorado, 2001).
64. Prior research on children's conceptual knowledge of lies and truth-telling suggests that children possess a good understanding of these concepts provided they are



questioned appropriately (Bussey, 1992). Lyon and Saywitz (1999) designed a task that would help very young children identify truth and lies. They presented 4- and 5-year-olds with pictures depicting an object and two children accompanied by ‘conversation bubbles’ stating what each child said about the object. The child is simply asked to say which child is telling the truth. The task reduces motivational problems because the child is not asked to identify the interviewer as a liar.



**Reproduced with permission from Lyon & Saywitz**

65. The above is one example that can be used with very young children. With young children, the interviewer might refer to an object in the interview room, for example:

**Interviewer:** “I like your shoes. What colour are they?” (*Child says “red”*)

**Interviewer:** “What if one of your classmates had told me you were wearing *blue* shoes today? Would that be a lie or the truth?”

66. With older children, examples involving scenarios more appropriate for their age and level of understanding may be used. One such example:

Frances (Francis) was watching TV. (S)he was trying to change the channel but kept pressing the button and nothing happened. (S)he pressed and pressed really hard and broke the TV! (S)he went to her/his room. John came along and asked "Frances/Francis, did you break the TV? Frances/Francis said "No".

- Was Frances/Francis telling a lie or the truth?
- What should Frances/Francis have said?
- Why do you think Frances/Francis said NO?

67. For children with special needs, advice about a child’s developmental level should guide interviewers as to the type of question to ask<sup>7</sup>.

### **Rapport building with a practice interview:**

68. Once ground rules have been established, a practice interview can be conducted. The topic for the practice interview should be a neutral, personally experienced event. This may be to do with, e.g. the child’s school, hobbies, a birthday, or a holiday (see APPENDIX 2A for an example). The interviewer should ask the child to describe the event from beginning to end.
69. From the practice, the interviewer can also learn more about the child’s use and understanding of vocabulary and adjust their own accordingly. The interviewer should also encourage the child to give an open-ended account (and detailed description). They should avoid questions that will prompt brief one-word answers as much as possible, to set the form of the substantive phase of the interview.
70. Even in cases where the child is already familiar with the interviewer(s) through previous contact, time should be taken for fresh rapport building before commencing the interview. How long is spent on this phase is up to the discretion and common sense of the interviewers.

#### TECHNIQUES FOR BUILDING RAPPORT: A PRACTICE INTERVIEW

- Ask child to identify a favourite topic or event, e.g. television programme
- Use open-ended questions to get details: Who, What, Where, When, How
- Ask the child to describe their feelings, sounds, smells, tastes
- Use open-ended prompts to encourage the child to keep talking: “Tell me more”

### **Raising topic of concern**

71. The interviewer should now remind the child of the ground rules and move on to raising the topic of concern. This should be done in a way that encourages the child to spontaneously come up with information, a way that is free from suggestive influence. So, for example, a good opener would be,

“Now, it’s time to talk about something else, the reason you are here today. Do you know why you are here today?”

A *bad* opener would be,

“I hear you’ve been having problems with Uncle Johnny, is that right?”

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<sup>7</sup> The Scottish Executive is currently looking at competency and truth telling, particularly in cases where there are special needs and communication difficulties, in the *Vital Voices* consultation paper.

72. Not all children will be able or willing to respond with relevant information to general prompts (especially when the initial allegation has come from a source other than the child), so interviewers may have to progress to more specific ones. A ‘hierarchy’ of prompts can be found in the protocol in APPENDIX 2A of this document.

### Free Narrative

73. Free narrative is the most reliable source of accurate and untainted information provided the child has not been subject to interviewer bias in earlier interviews. A free narrative is the child’s own uninterrupted account of what has taken place. Professionals will know from the literature and from experience that, due to their developmental stage, younger children may be less likely to spontaneously provide information than older children and adults. However, interviewers should always provide children, of *all* ages, with sufficient opportunity to describe their version of events, *in their own words*.
74. There are several ways of obtaining this free narrative. For example, when the child mentions the topic of concern, the interviewer can simply ask, “Tell me *everything* you can about that”.
75. Interviewers should resist ‘jumping in’ to clarify any comments or follow up evidentially relevant statements with focused questions at this stage of the interview. Instead, interviewers should adopt the position of an active listener – that is, let the child know that the interviewer hears what the child is saying and is taking it seriously.
76. If the child begins to falter, the interviewer should be patient and allow for pauses. If it is clear that the child has finished, the interviewer can use a number of strategies (see *Facilitative Prompts* below).

#### FACILITATIVE PROMPTS

- A neutral acknowledgement (“uh huh”)
- Repeat back the child’s last comment (*Child*: “And then we went into the bedroom...” (Pause) *Interviewer*: “I see, so you went into the bedroom”)
- A “Tell me more” prompt
- A “Then what?” prompt

77. If the child is pained to speak about the topic then reassure them (“It’s alright. Take your time, I’m listening” or “Is there something that would make it easier for you to talk with me today?”). Interviewers can be sympathetic but not too personal – avoid using terms of endearment (e.g. “dear”, “sweetheart”) and initiating physical contact (e.g. leaning over and hugging a child).
78. All personnel present at the interview should ensure that verbal reinforcement is given sporadically and is not contingent on a given response. Never offer the child any form of bribe (e.g. “If you just tell me what he did you can go home”)<sup>7</sup>.

### BENEFITS OF A FREE NARRATIVE

1. Responses to open-ended questions are more accurate than responses to specific questions. This is assuming the child has not been previously subjected to multiple interviews involving persistent and erroneous suggestions.
2. A child may attempt to answer a specific question even when they do not have the details requested.
3. A child who does not understand a question can use all sorts of cover up – repeating back phrases used by an interviewer, giving a stereotypical answer, providing a yes answer because that is what they think the interviewer wants.
4. Specific questions do not allow the child to collect their thoughts; it takes time to search memory.

### Questioning

79. Even when the child has provided a fairly substantial account of the event(s) from free narrative, it may be necessary to expand what has been said so far, or to clarify ambiguities, with questions. Questioning should ideally be built around what the child has said in the free narrative. Point to consider include the:

- style of questions
- content of questions.

### Style of questions

80. Questions can be posed in several ways. Interviewers should always aim to phrase questions in a way that will produce the most detailed response, and is least likely to influence the child's answer in a particular direction.

81. The four main types of question are:

- Open-ended
- Specific
- Closed
- Leading

82. This can be seen as a hierarchy of interview questions, from most preferable down to least preferable, yet interviewers should always strive to return to free narrative (or open-ended questions) as much as possible throughout the interview.

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<sup>7</sup> If the child has not disclosed any information regarding the alleged incident, either spontaneously or after prompting (using the recommended prompts and facilitators), interviewers should jointly consider whether to continue the interview further. Decisions made at the planning phase should be referred back to. The child may not be ready to speak yet, but it may also be the case that no actual incident has taken place. If, in the light of information obtained (or not) during the interview and the strength of the original referral, the interviewers decide it is in the best interests of the child and justice to terminate the interview here, *they should then proceed to the Closure Phase.*

## Open-ended questions

83. Open-ended questions are questions phrased in such a way that they invite a more detailed response and do not lead or pressurise the child into giving a particular answer. Research shows this form of question can yield up to 3-4 times longer responses from children.

*Example:* “You said earlier that you and this man played a game. Please tell me everything you can remember about that”.

84. Not only do open-ended questions result in more detailed responses, the evidence obtained in this way is least likely to be challenged in court. The other advantage of open-ended questions is that they serve to give children control over what they want to divulge.

## Specific Questions

85. Specific questions probe for clarification or a more precise account of the event(s) the child has *previously mentioned*.

*Example:* “Where were you when you played this game?”

86. Such “wh-” questions are often useful, particularly with younger children. Care must be taken with “why” and “how” questions, however, as these can sometimes unintentionally imply blame (e.g. “Why didn’t you call out for help?” or “How come you never told anyone this before?”).
87. If a child’s initial response to a specific question is deemed incomplete, interviewers can pose the question again but in a different form. Persistently repeating a question is not advisable as the child may come to believe their first answer was wrong, and consequently alter their response to something they think the interviewer wants to hear.
88. Where it has become clear that there were multiple incidents of abuse, specific questions can be used to identify and explore individual episodes. A useful technique here is to turn the child’s attention to the first or last incident of abuse (these episodes are most likely to stand out in the child’s mind as distinct events) and ask the child to describe it fully from beginning to end. Once marked, this incident can be given a unique label and then be used as a reference point for accessing memories of other (subsequent/prior) incidents (see APPENDIX 2A for examples). Interviewers should note that this technique might not be so beneficial with very young children. Their understanding of temporal terms such as ‘the first time’, ‘the last time’ is often limited at this stage of development.

## Closed Questions

89. Closed questions provide the child with only a limited number of response options, usually “yes”, “no” or “don’t know”. When used inappropriately, such questions tend to yield *less* accurate information.

Example: “Was anyone else in the house when this happened?”

90. Children are less likely to say “I don’t know” to a closed question and more likely to guess or be misled by the interviewer. Thus, interviewers must take care if using closed questions and should always remember to follow immediately with *open-ended* questions for a spontaneous provision of information.
91. To reduce the possibility that a child is biased towards one response option (e.g. the first), interviewers can omit the correct answer from the possible options. For example, if the interviewer wants to confirm that the incident happened in the living room, they can ask: “Where did that happen, in the kitchen, the bathroom, or in another place?”

### **Leading Questions**

92. A leading question is one which is presented in such a way that it suggests a certain answer to the child or one which makes assumptions about facts yet to be confirmed.

Example: “So then he touched you, didn’t he?”

93. Whether a question is construed as leading or not depends on a number of factors: e.g. the nature of the question; whether the child has already mentioned, for the above example, any physical contact or not; the tone of the interviewer’s voice when asking the question; and so on.
94. It may be more useful to draw a distinction, and create two categories: ‘leading’ and ‘misleading’ questions. The former can lead a child to give a correct response whereas the latter leads a child to give an incorrect response. To return to the above example, if the child had actually been touched then an affirmative response would be a true response. However, if no physical contact had taken place yet the child gave an affirmative response, the nature of questioning could be directed away from true events. Note the previous reference to confirmation bias (*paragraph 27 Number and duration of interviews*). The danger of such questioning is that interviewers rarely know the answer, therefore cannot be sure whether they have asked a leading or misleading question.
95. A misleading question can also be based on an incorrect interpretation/reiteration of what the child has said. An example would be where a child mentions getting into a blue car with a stranger and the interviewer then asks, “Tell me more about this *green* car”, to which the child responds with a fuller description. Such questioning might jeopardise the credibility of the child’s statement.
96. Despite the dangers, leading questions continue to be used during investigative interviews. A leading question that is based on something a child said during a free narrative report may be OK. A response to a leading question based on an interviewer’s hunch is not to be trusted. Leading questions, if ever used during an interview, should be immediately followed with an open-ended prompt to get a free response. Out of the four main question types, leading questions are most likely to be challenged in court. Thus, any use of this type of question should be well thought out, planned and justified.

## Content of questions

97. Interviewers should aim to keep questions as unambiguous, simple and as short as possible. They should avoid the following:

- Double negatives: “Don’t you remember whether you said no or not?”
- Multiple propositions: “Did you think that you would get into trouble if you didn’t go along with it, or did you think that it was a cool thing to do, because you were told that all the other boys had done it?”
- Very long questions
- Questions containing legal jargon
- Abstract or hypothetical questions: “Do you think this would still have happened if...?”

### SOME (DEVELOPMENTALLY) TROUBLESOME CONCEPTS FOR CHILDREN, WITH POSSIBLE SOLUTIONS

- “behind”, “in front of”, “beneath”, “above”
  - Might need to ask child to demonstrate what they mean.
- Dates and times
  - Can use memorable or routine events as reference markers such as birthday, school or television schedules (thus can pin-point the event to a particular month, week, day, or even time of day)
- Estimates of length, height and weight
  - Can be specified relative to another object or person familiar to the child
- Estimates of age
  - Again, can be specified relative to another person the child knows
- Frequency of events
  - Young children may have trouble estimating frequency; specific examples may help
- Use of “he”, “she” and “they”
  - Better to say the person(s) specific name(s)
- “anything”
  - Better to say “all” or “everything”
- When there is a change of topic
  - To reduce confusion or misunderstandings, signal change with a phrase such as “I’d now like to go on to talk about something else...”
- Passive voice
  - Better to use the active voice, e.g. “*Person X* hit *Person Y*” rather than “*Person Y* was hit by *Person X*”

98. Some of the child's own use of vocabulary may cause problems for the interviewer. Young children often *over-* and *underextend* the meaning of words. That is, they may use the term "private parts" to encompass body parts other than the genitals which are also usually covered under clothing (e.g. knees), or deny being touched but later admit to having been kissed as they consider touching to involve the hands.
99. Imprecise biological terms (e.g. "front bottom") will need to be explained – for crimes such as rape in Scot's Law, the interviewer will need to know *exactly* what parts of anatomy were involved. Moreover, if a child uses certain sexual terms during their statement, the interviewer cannot assume that the child fully understands them. The child might simply have overheard adults using them or come across them in magazines, without ever finding out their true meaning. Where there is ambiguity, the interviewer should gently ask for clarification.
- Note:** Demonstrations of body parts involved in sexual acts should be made on an anatomical diagram for example, *not* on the child's or the interviewer's body. However, children may *spontaneously* point to their body. Where this happens, the child should then be asked to confirm the location by pointing to it on the diagram.
100. Clarification is also important when a child's statement contains fantastical or bizarre elements, e.g. the mention of "glue" during a sexual act. Interviewers should ask, "What do *you* mean by glue?" It is not unknown for bizarre elements to turn out to be quite rational, e.g. "glue" meaning semen.
101. It should be highlighted that children sometimes reveal new and different information across statements and interviews. ***It is important to bear in mind that differences are not necessarily inaccuracies.*** Where the differences are *inconsistencies*, then these should be probed after the child has finished their free narrative and interviewers must take care not to imply that the child is lying.

## Closure Phase

102. It is essential to end every interview properly with a closure phase, even if an interview has had to be terminated prematurely. The following features should be included<sup>8</sup>:
- The lead interviewer should summarise (using the child's language as much as possible) the important evidential points in the child's statement, confirming that those aspects have been understood correctly
  - The lead interviewer should check with the second interviewer whether any additional questions or clarifications are required

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<sup>8</sup> Though no official guidance on therapy for child witnesses currently exists for Scotland, child protection practitioners might wish to consult the guidance produced by the Home Office, *Provision of Therapy for Child Witnesses Prior to a Criminal Trial: Practical Guidance* (2001). See also Section 3 of this consultation document, *Code of Practice on the Provision of Therapy to Child Witnesses Pre-court*.



- The child should be asked if they have any questions they want answered, or something else which they wish to add
  - The child should be informed of what, if anything, will happen next, e.g. the likelihood of a further interview. Explanations should be honest and realistic but appropriate for the child's age and level of understanding. Commonly asked questions include "Will [the alleged offender] go to prison?" Interviewers should be prepared to answer such questions but avoid making promises that cannot be kept
  - The child and/or their guardian should be provided with a contact name and number plus advice on where they can seek help. This should include a contact from the police or social work but some children and/or their families may also need further support from voluntary agencies or professional counsellors or therapists<sup>8</sup>
  - Interviewers should thank the child for their time and effort – but take care not to thank the child for disclosure – and show that they have taken the child's account seriously.
  - Interviewers should inform the child of the possibility of further interviews.
  - Finally, children should be given time to compose themselves. The main aim of closure is that the child leaves the interview in a positive frame of mind, not distressed. Neutral topics, such as those covered in the Rapport Phase, can be discussed in order to help achieve this state
103. As a reminder, no child should ever be made to feel that they have failed or disappointed the interviewers if they do not impart any details of evidential value during the interview.

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<sup>8</sup> Though no official guidance on therapy for child witnesses currently exists for Scotland, child protection practitioners might wish to consult the guidance produced by the Home Office, *Provision of Therapy for Child Witnesses Prior to a Criminal Trial: Practical Guidance* (2001). See also Section 3 of this consultation document, *Code of Practice on the Provision of Therapy to Child Witnesses Pre-court*.

## 10 COMMON INTERVIEWER ERRORS

- 1. Not explaining interview purpose**
- 2. Not explaining 'ground rules'**
- 3. Not establishing rapport**
- 4. Not asking for free narrative**
- 5. Relying on closed questions and not asking open-ended ones**
- 6. Asking 'faulty' questions**
- 7. Not following up what the child has just said**
- 8. Not allowing for pauses**
- 9. Interrupting a child when they are speaking**
- 10. Not closing the interview**

### Debriefing and further interviews

104. Once the interview and an agreed joint record of its proceedings has been completed, a debriefing session should be arranged between the interviewers and the Senior Social Worker and/or Police Supervisor overseeing the investigation. The findings from the interview and any further action can be discussed and decided upon. This may include the need for another interview and/or arrangements for a medical examination.
105. Although the joint approach advocated here aims to reduce the number of times a child is interviewed, there are several reasons why further interviews may be necessary:
  - when a child who did not disclose for whatever reason in the initial interview is now willing and able to disclose.
  - when new information comes to light from sources other than the child.
  - when, in the course of the initial interview, new allegations emerge (therefore, wider implications) and extra time is needed to investigate them fully.
  - when the child and interviewers have not built up a good rapport.
  - when the interviewer has not yet gained the child's trust.
  - when the child is currently too distressed to talk.
106. When such circumstances arise, the different agencies should decide whether conducting another interview would be in the best interests of the child.
107. The 'one interview' rule is not set in stone, but interviewers should question whether more interviews are necessary and appropriate. The guidance set out here should be followed each time an interview with a child is conducted.

### Props

108. Props such as anatomical diagrams can be useful in certain circumstances where a child needs to demonstrate an action or body part to clarify something they said during

the interview (children should never be asked to use their own bodies to demonstrate such things).

109. The use of anatomically-correct dolls may be permissible during the Rapport Phase where interviewers need to identify terms used by the child. However, research raises several concerns about the use of these dolls during investigative interviews with children, especially very young children. Toys and other props should *not* be used during the information gathering phase of an investigative interview. Props should never be used in conjunction with leading questions nor should their use be instigated by the interviewer. Research shows dolls and toys used in this way may increase inaccuracies especially in younger children.
110. It is acceptable for children to hold on to items that they themselves have brought along to the interview as comforters, e.g. 'safety' blanket. This also includes dolls or stuffed animals but interviewers should not use these as props nor try to interpret the child's behaviour with the toy in the context of their evidence.
111. Any drawings made during, or brought along to, the interview should be recorded in the interviewer's notes. However, only those that are relevant to the investigation should be retained by police/social work at the end of the interview.

### **Other interviewing techniques**

112. The procedures and protocol set out in this guidance are not the only methods available for interviewing child witnesses. Other established methods of interviewing, e.g. the Cognitive Interview, can be very effective at eliciting accurate and detailed responses in an investigative context. However, to apply these techniques requires a great deal of skill and practice. If they are used without sufficient training they can increase inaccuracies.

## **PART 5: SPECIAL NEEDS**

This is an addendum to the guidance set out in parts 3 and 4.

113. During the pre-interview planning phase any special needs should be identified. These may include firstly disabilities, sensory impairments and illnesses. These special needs should have been highlighted through preliminary checks with health professionals at the referral stage and where appropriate should be further clarified by contacting those professionals working directly with the child and family, e.g. the primary health care team, education professionals, community paediatrician, child psychiatrist, psychologist or therapists.
114. Special needs may also pertain to very young children, first languages other than English, and ethnicity.

### **Disabilities and illnesses**

115. Disabilities and illnesses vary widely in terms of type of impairment (e.g. physical, learning, social, communication), severity, and so on therefore interviewers should usually seek specialist advice from teams familiar with that specific disability and child and family. These people can advise on how to tailor the interview – including the physical setting – to the child’s particular needs to make the experience as suitable and as comfortable as possible for all involved.
116. More time will be needed during the planning phase to gather and assess information from all relevant sources. If a need for a facilitator/intermediary is identified, additional time will have to be set aside to ensure they are clearly briefed about their role and remit for the interview. This will require some flexible scheduling, not only for planning meetings but also for the interview itself.
117. When looking at the child’s disabilities, the focus should always be “So what are their *abilities*?” Even if the child cannot communicate through the usual communication channels, this should not prevent investigative agencies from attempting to obtain their account of the event (i.e. the child should not be automatically excluded from the investigative process).
118. Planning interview for a child with special needs:
  - Ideally, the facilitator/intermediary should be independent of the child (e.g. not a family member or another witness. However, in some cases, for instance with a very young child with an impairment, sometimes the only person the child will and can communicate successfully with is that who they are closest to and most familiar with, i.e. a parent.) and have adequate training. They should be clear as to their interview role.
  - Ensure communication boards contain the appropriate vocabulary that the investigative team may need to use.

- The interview room should take place in a suitable setting – i.e. one able to accommodate any equipment (e.g. a wheelchair), free from distractions and noise, have good lighting, etc. Seating arrangements should accommodate the needs of the child.
- The facilitator/intermediary should be introduced to the child and take full part in rapport building. However, the child should be made aware that the police officer or social worker is the lead interviewer and that all responses should be directed towards them, not the facilitator/intermediary.
- Instructions may have to be broken down into smaller points and the length of questions should also be adjusted accordingly.
- Children with learning difficulties may not always respond to open-ended questions. That being the case, begin with a specific question and then follow it with an open question. Interviewers should still take care to avoid leading the child or influencing their responses.
- With certain conditions, e.g. deafness, children may struggle with abstract concepts (including ‘trust’, ‘yesterday’, ‘tomorrow’, ‘hot’, ‘cold’, ‘soft’) therefore the investigative team will need to consider carefully how to frame questions.
- Children with special needs may have a shorter attention span, require more breaks and shorter sessions.

### **Very young children**

119. Many of the points that apply to children with special needs may be relevant when interviewing very young children. Additional considerations for this group include the fact that very young children can be very attached to familiar figures such as a parent. They can be distrustful of strangers and become distressed or avoid contact when left alone in rooms with unfamiliar adults. Unfamiliar surroundings can heighten their distress. Furthermore, pre-schoolers are more used to interacting with adults in play situations rather than serious formal sessions so, again, building rapport will be essential and more time may be needed when explaining the conventions of the investigative interview.

### **When the child’s first language is not English**

120. A child should, wherever possible, be interviewed in their first language (or, if bilingual, the one of their preference). Only in special circumstances, i.e. where an interpreter is not available and there is an immediate need to talk to the child, should an exception be made. Interviewers should be aware that some children who use English everyday, for example at school, may revert to using their native language for certain terms, e.g. parts of the body.
121. If an interpreter is required, then they should be someone independent of the child’s family and community. They should be fully briefed as to their role and remit during

the interview and to the principles of the phased interview. The interpreter should also have an understanding of the child's cultural context as well as being able to speak the language.

122. The interpreter should be fully aware that they must translate exactly the interviewer's questions and the child's responses. They should avoid making inferences. Moreover, interpreters should not add in or omit anything; just report what has been said.
123. If the child has any preferences regarding the interpreter's gender or ethnicity, these should be respected and accommodated wherever possible. This applies for all interview personnel (and also any forensic medical examinations).

### **Ethnicity**

124. There may be certain barriers to communication other than language. Some children from asylum-seeking families, for example, may have had negative experiences with the authorities dealing with their application (e.g. discrimination, racism, etc.) and may therefore be mistrustful of professional interviewers. Such issues should be treated with due care and consideration.
125. When interviewing children from different backgrounds and heritage, interviewers might encounter beliefs and values that are different to their own. However, interviewers should never impose any ethnocentric attitudes during an interview. The child's culture and customs must always be respected. The following are some points to consider:
  - Certain rituals or customs might affect the scheduling of the interview (e.g. prayer times, holy days, fasting)
  - Behaviour towards authority figures can vary from culture to culture. In some cultures it is inappropriate for a child to question anything an authority figure says. In this situation, it is essential that the interviewer makes clear the ground rules described earlier (e.g. where the child should correct the interviewer if they make a mistake).
  - Beliefs and practices regarding child rearing can also vary from culture to culture. Interviewers should respect that and avoid passing judgement.
  - The issue of shame can be a major determinant of how co-operative the child and their family are with regards the investigation (a child disclosing allegations of abuse might fear retribution from their family and the community).

### **When the child witness becomes a suspect**

126. In the course of the investigative interview, the child may impart some information that implicates them in the commission of a criminal offence. If the interviewers conclude that the child has become a suspect, and not just a victim or witness, the interview may be terminated. This should not happen abruptly but once the child has finished any

statement they wish to make. Interviewers should always remember to end with Closure.

127. In such circumstances, a further interview will normally be conducted relating to the child's involvement in the newly emerged criminal offence, following established police procedures.
128. It is impossible to know exactly how an interview will unfold. Nevertheless, it is wise to anticipate such outcomes in the Planning Phase and interviewers should attempt to have contingency plans prepared. However, the balance between the child's needs and welfare and that of justice must still be borne in mind. If the child's account as a victim/witness is considered the main priority and the interview is to continue, it should proceed in accordance with this guidance.

## PART 6: FURTHER READING AND REFERENCES

The guidance set out in this document is based on extensive psychological research as well as studies of actual investigative interviews. The practices and principles mirror those set out in current training guidelines for professionals who interview children throughout Western Europe and North America. Below is a list of texts where one can find up-to-date reviews of the literature. This list also contains the research cited in this document:

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- White, T.L., Leichtman, M.D. & Ceci, S.J. (1997). The good, the bad, and the ugly: Accuracy, inaccuracy, and elaboration in pre-schoolers' reports about a past event. Applied Cognitive Psychology, 11, S37-S54.
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## **PART 7: APPENDICES**

These appendices provide sample protocols that can be modified to suit the needs of the child you will be interviewing. Current research indicates that interviewers find a *highly structured interview protocol* easiest to use and most effective.

## APPENDIX 2A

***Protocol example. Interviewers can modify according to the particular child's needs. Protocols should be age appropriate.***

### **Introduction**

**[Lead interviewer:]** “Hello [child’s name], my name is \_\_\_\_\_. I am a police officer/social worker/etc. Part of my job is to listen to children and youths about things that may have happened to them, to give them a chance to describe any worries they may have”.

**[Second interviewer introduces themselves too]**

**[Second interviewer:]** “I will be writing things down today, because what you say here is important and I want to be sure I remember it properly”.

**[Obtain consent if haven’t already done so. Also, answer any spontaneous questions the child asks at this point.]**

### **Ground rules**

“Before we begin, there are some things I want to go over with you”.

“Firstly, I am here mainly to listen. I’ll be asking you to tell me about things that have happened to you but this is *your* chance to most of the talking”.

(Pause)

“I don’t know what happened, I wasn’t there, so I’ll need you to help me understand everything. Even if you think I already know something, you should still tell me. Have I explained that properly?”

(Pause)

“Now, I might ask some questions that you don’t know the answers to. That’s OK. This isn’t like school – you know if a teacher asks you a question and you say you don’t know, what does your teacher say to you?”

*(Child: “They say I should try or guess the answer”)*

“Well I don’t expect you to know all the answers. If you don’t know, just say “I don’t know”. Let’s practice that. If I say, ‘What day is *my* birthday?’ you should say...”

(Wait for child’s response)

“That’s right. Also, if you don’t remember the answer to something, it’s OK to say, ‘I don’t remember’”.

“Now, I might ask you some questions today which you don’t understand or seem a bit ‘strange’. I’ll try not to, but if I do, I want you to say, ‘ I don’t understand’. Then I can try to put it another way. So, if I say, ‘How many wegs are in a wug?’ you should say...”

(Wait for child’s response)

“That’s right. You should not try to guess the answers. If a question doesn’t make sense, just tell me. Also if I make a mistake, or get something wrong, I want you to tell me. For example, if I say, ‘So do you like being 7 years old?’ you should say, ‘I’m not 7 years old, I’m 5 years old’ because that is how old you really are. Let’s practice with another example. If I say your daddy is called *X*, you should say...”

(Wait for child’s response)

“Yes, your daddy is really called *Y*. Always correct me if I say something wrong”.

“Now, I might ask you the same question more than once today. Or, I might ask you a question that someone else has already asked you. That doesn’t mean that you gave the wrong answer the first time. It’s just to help me remember what has been said. So if I do ask a question again, just tell me the truth, because that is very important”.

(Pause)

“I want you to tell me the truth. Not what someone else has *told* you to say. I don’t want you to make anything up. Only tell me what *really* happened to you – what you saw with *your* own eyes, what you heard with *your* own ears, smelled with *your* own nose, and tasted with *your* own mouth. Will you do that?”

### **Practising free narrative**

“So far, I’ve done a lot of talking. But from now on today, *you* shall be doing most of the talking. Why don’t you tell me a bit about yourself and your family”.

(Wait for child’s response)

“And what else can you tell me about your family?”

(Wait for response)

“What do you enjoy doing?” (Child: “*Watching television*”) “ Tell me all about your favourite television programme.”

(Wait for response)

“Not long ago, we celebrated an event called \_\_\_\_\_ [e.g. Christmas]. Tell me how you celebrated [the event]”.

(Wait for response)

“What else can you tell me about [the event]?”

(Wait for response)

“Think again about [the event]. I would like you to tell me everything that happened, from when you got up that morning right through until when you went to bed that night”.

**[If the child only speaks briefly then prompt with, “And then what happened?”. Also, probe for details of each item mentioned by the child. For example if the child says, “We opened presents” then say, “Tell me everything that you can remember, every detail, about you opening your presents”]**

(Wait for response. Then to conclude...)

“Wow, it sounds like you had a great [event]!”

### **Raising topic of concern**

**[Provide quick reminder of ground rules]**

“Now, it’s time to talk about something else, the reason you are here today. Do you know why you are here today?”

**[If the child refers to, or makes, an allegation then repeat that allegation and ask the child to expand on it with more detail:]**

“OK, so [briefly summarise the main offence/problem that the child has just disclosed]. I want you to tell me *everything* that happened; from the very beginning to the very end, as best you can remember”

**[On the other hand, if the first request does not elicit any relevant response then proceed through the hierarchy of prompts below:]**

“Tell me why you are here today”;

“I heard you said something to your teacher/friend/mummy last week. Tell me everything you can about that”;

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

### **Free narrative**

**[When the child does refer to the allegation, encourage them to give a free narrative using appropriate open-ended questions, follow-ups and prompts when the child stops]**

e.g. “Tell me everything you can about that”, “Then what happened?”, “uh huh”, “go on”, “You said \_\_\_\_\_ Can you tell me more about that, please”

### **Questioning**

**[Once it is clear that the child has finished their free narrative, establish whether the event described was a one-off or a repeated event:]**

“Did that happen one time or more than one time?”

**[If the child replies, “one time” then draw the child’s attention back to a particular salient detail that they talked about. Refer to that, and other details where necessary, to obtain a fuller account/clarification]**

“You said earlier that \_\_\_\_\_. Please tell me/explain/describe...”

**[If the child says it happened more than once:]**

“Think back to: the time you remember best/the first time/the last time. I want to understand what happened, from the very beginning to the very end”.

**[After the child has finished talking about event no.1, continue with open-ended prompts, e.g. “And then what happened?”, “What else can you tell me about that?”. Once the child has finished talking about that incident, ask about other salient ones and try to obtain as much detail about each]**

**[Finally, ask, “Is there another time you remember well? Tell me about that time, from the very beginning to the very end”, using the prompts above to elicit additional information]**

**[If more evidentially important details are required from the child, e.g. about the offender’s appearance, then probe for them at this stage with specific “Wh-” questions wherever possible]**

e.g. “What did the man look like?” **[Wait for response then follow-up with]** “Tell me more about this man, everything you can remember”

### **Closure**

**[After summarising the main points of the child’s statement and having conferred with the second interviewer, ask:]**

“Is there something else I should know?”

(Wait for response)

“Is there something else you want to tell me?”

(Wait for response)

“Do *you* have any questions you’d like to ask me?”

(Wait for response)

**[After this discussion, provide the child with contact names/addresses/numbers. Then say:]**

“Thank you for taking the time to talk to us today, \_\_\_\_\_. I’m going to take you back to [your mum/dad/other person] in just a minute. What are you going to do once the interview is over?”

(Wait for response)

**[If the child says for example that they are going to go home, ask:]**

e.g. “Are you going to watch some TV?” **or** “Are you going to have something to eat?”

(Wait for response)

“What is your favourite TV programme/food?” [and so on until the child is calm and relaxed and ready to leave]

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## APPENDIX 2B

### Quick Guide: Conducting the investigative interview

#### 1. Prepare the interview setting

- ensure there will be no interruptions (e.g. unplug telephones)
- remove any distracting material
- ensure adequate seating and equipment are available and laid out in a ‘child-friendly’ arrangement

#### 2. Introductions

- introduce yourself to the child, giving name, occupation and role (in a general way; don’t mention words such as “risk” and “child protection”)
- explain that the interview will be recorded
- obtain child’s consent to interview, if have not already done so
- allow child to settle; have brief “icebreaker” chat about neutral event (e.g. journey there)
- *avoid mentioning the allegation and avoid instilling any stereotypes about the alleged perpetrator*

#### 3. Establish the ground rules

- the child will do most of the talking
- the interviewer wasn’t there so needs the child’s help to understand what happened
- it is OK to say “I don’t know/remember/understand” and to correct the interviewer when they get something wrong
- the child should not guess, or make up any answers. They should always tell the truth (i.e. what they know from having seen with their own eyes, heard with their own ears, etc.)
- if questions are repeated this does not mean the child’s first answer was wrong or thought to be a lie

#### 4. \*Reminders for interviewer

- the interview should follow the child’s pace
- be tolerant of pauses; don’t interrupt the child
- be aware of signs of fatigue or loss of concentration. Let the child know how long the interview might take and when breaks will be available
- *keep an open mind*

#### 5. Complete rapport building with a practice interview

- ask the child to recall a neutral personally-experienced event (e.g. a holiday)
- tell them to report everything they remember about the event from beginning to end
- avoid specific questions



- encourage a spontaneous narrative from the child using facilitators, e.g. “That sounds interesting, tell me more”

## 6. Raising topic of concern

- just before starting, reiterate the ground rules
- then raise the topic, beginning with the least suggestive prompt
- if this is not successful, proceed gradually onto more specific prompts
- *avoid suggesting any wrongdoing (e.g. by using words such as “hurt”, “bad”)*

## 7. Free narrative

- encourage a spontaneous account from the child using general probes, e.g. “Tell me everything you can about that”
- use open-ended prompts to follow when the child has finished speaking, e.g. “And then what happened?”
- also use facilitators to keep the narrative flowing, e.g. “uh huh”, “so [repeat what the child has just said]”

## 8. Questioning

- refer back to things that the child has mentioned previously in free narrative
- try to determine whether the episode of abuse was single or repeated
- try to cover the sequence of topics in the same order as the child raised them
- use the least direct/specific types of questions wherever possible
- clarify any ambiguities, inconsistencies, or unfamiliar terms/names used by the child, in a way that does not imply suspicion, disbelief or mockery

## 9. Closure

- summarise main evidential points using child’s language as much as possible
- check whether second interviewer has any questions
- ask child if they have any questions
- don’t make promises that cannot be kept
- provide contact names/addresses/numbers
- thank child for their time
- revert to neutral topics

## APPENDIX 2C

### **Criticisms of Orkney inquiry (Summarised from Clyde Report)**

#### **1. Planning Stage**

- background information about the children given to the interviewers was deliberately restricted
- Neither social work, the police, nor the RSSPCC considered the exact purpose of undertaking interviews, nor did they question the techniques to be used, or examine the adequacy of the resources available

#### **2. Interview conduct**

- Excessive number of interviews with the children
- Same interviewers involved with the different children
- Failed to obtain *informed* consent from the parents, and particularly the children
- Inappropriate technique and approach used for *investigative* interviews
- Right from the outset, interviewers introduced considerable detail of the allegations, then later inappropriately introduced personal material and reintroduced drawings in ways which were unhelpful
- Failed to pursue matters raised by the child ('hypothesis confirming questioning', 'confirmatory bias')
- Used leading questions in inappropriate ways
- No records were taken of the first two interviews with the subsequently removed children
- Insufficient attention to recording how drawings were created, who had created them, and to labelling them accordingly

#### **3. Post interview**

- Insufficient time available to keep proper records so, consequently, they were incomplete
- Inadequate evaluation of progress and no clear understanding as to who was to carry out the evaluation; also inadequate co-ordination of what was going on

(Clyde, J.J. (1992). The Report of the Inquiry into the Removal of Children from Orkney in February 1991, HMSO: Edinburgh)

**CHILD WITNESS SUPPORT**

**SECTION 3**

**DRAFT CODE OF PRACTICE ON THE PROVISION OF  
THERAPY TO CHILD WITNESSES PRIOR TO CRIMINAL  
TRIALS AND CHILDREN'S HEARINGS COURT  
PROCEEDINGS**

### **SECTION 3**

## **DRAFT CODE OF PRACTICE ON THE PROVISION OF THERAPY TO CHILD WITNESSES PRIOR TO CRIMINAL TRIALS AND CHILDREN'S HEARINGS COURT PROCEEDINGS**

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# **CODE OF PRACTICE ON THE PROVISION OF THERAPY TO CHILD WITNESSES PRIOR TO CRIMINAL TRIALS AND CHILDREN'S HEARINGS COURT PROCEEDINGS**

## **INTRODUCTION**

1. The following code of practice seeks to address recommendation 10 of the Lord Advocate's Working Group on Child Witness Support Report. Recommendation 10 addresses the need to clarify the roles of those making decisions relating to therapy before court proceedings and recommended that:
  - The Crown Office, Scottish Children's Reporter Administration, social work departments, health boards and child welfare organisations should, in consultation with the Law Society of Scotland and Faculty of Advocates, produce a code of practice addressing the provision of therapy before children give evidence.
  - The code should emphasise that decisions about the timing and need for therapy can only be taken by those responsible for the welfare of the child and that the interests of children in need of treatment are paramount.
  - The code should contain certain advice for therapists about how to avoid undermining children's credibility and reliability or influencing their memory of events or the account they give.
2. Concern has been expressed that, before the conclusion of a criminal trial or children's hearing court proceedings<sup>1</sup>, therapy for child witnesses has sometimes been discouraged, even where it is considered necessary for the child's welfare. The fear that the child's evidence could be contaminated by such therapeutic work, and the proceedings prejudiced as a result, conflicts with the need to ensure that child victims are able to receive, as soon as possible, effective treatment to assist their recovery.
3. It is in the public interest, and in accordance with positive obligations under Articles 3 and 8 of the European Convention on Human Rights, that alleged crimes against children are properly investigated and, where appropriate, prosecuted in the criminal courts. In such actions, the interests of the child must be a primary consideration. In addition, all accused persons have the right to a fair trial. It is also crucial that child witnesses in children's hearing court proceedings are afforded the same consideration and that proceedings in this forum are fair and seen to be fair to all those with an interest.
4. **The Lord Advocate's Working Group's Report on Child Witness Support recommended that this issue be carefully examined by the Crown Office, Scottish Children's Reporter Administration, social work departments, health boards, child welfare organisations, the Law Society of Scotland, and the Faculty of Advocates, and comments on the following code of practice are therefore**

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<sup>1</sup> Court proceedings resulting from referrals to Children's Hearings in terms of Part II to the Children (Scotland) Act 1995.

**especially invited from those agencies. Comments are also invited from therapists, and all others with an interest.**

### **Purpose and Use of this Code of Practice**

5. This code of practice has been developed by the Crown Office and Procurator Fiscal Service, and is primarily aimed at therapists, health professionals, prosecutors and reporters involved in making decisions about the provision of pre-court therapy for child witnesses. However, the Code is also relevant to everyone who comes into contact with child witnesses – such as teachers, health visitors, social workers and the police, as well as defence solicitors and counsel, and the judiciary.
6. In particular, the Code is intended to:
  - Improve understanding of the issues that arise in criminal prosecutions and children’s hearing court proceedings with regard to the provision of therapy for child witnesses prior to a criminal trial or other court process;
  - Clarify the roles, and policies, of those involved in making decisions about the provision of pre-trial therapy;
  - Explain the different therapeutic techniques, and terminology used.

### **What Guidance already exists on the provision of therapy for child witnesses prior to court?**

7. The UN Convention on the Rights of the Child states:
  - Article 3. “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.
  - Article 12. “States Parties shall assure to the child, who is capable forming his or her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”.
8. The Home Office, Crown Prosecution Service and Department of Health have published Practice Guidance on the Provision of Therapy for Child Witnesses prior to a Criminal Trial. We are grateful for their permission to draw on that valuable multi-agency work and use the Practice Guidance as a basis for this Scottish document.
9. *Protecting Scotland’s Children* (Scottish Executive, 1996) sets out the inter-agency processes to be followed when a child is considered to be likely to be or is suffering harm.

10. Prosecution policy, as set out in Chapter 16 of the Crown Office and Procurator Fiscal Service Book of Regulations, states:

#### **“16.52 Counselling**

Where a child has been traumatised as a result of a criminal act, the provision of some form of counselling may be beneficial. Various different types of counselling can be provided by social workers, therapists, psychologists, etc. Decisions on the provision of counselling are the responsibility of the child’s carers and the Procurator Fiscal does not have a locus other than to advise where appropriate on whether the proposed counselling is likely to have an adverse effect on any subsequent criminal proceedings, by for example “contaminating” the evidence or assisting the child to put the incident behind him, and to advise that the counsellor may be cited as a witness. (It is not anticipated that the Crown would generally wish to cite a counsellor, but the defence may wish to do so if they are suggesting that the witness has been coached.)

In such a case the precognition should include details of (a) the nature of the counselling, its purpose and its duration, and (b) the counsellor.”

#### **WHAT IS THERAPY?**

11. The term “therapy” covers a range of treatment approaches, including counselling, but in this context does not include any physical treatments.
12. A precise definition of psychotherapy is not easy to formulate, but Kazdin (1990) described it as follows:
  - “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).”
13. 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 they vary in the context in which they are given (individual, family, group etc) and frequency of sessions.

#### **Types of Therapeutic Work Undertaken Prior to a Criminal Trial of Children’s Hearing Court Proceedings**

14. Two broad categories of therapeutic work undertaken prior to a criminal trial can be identified:

## **Counselling and Psychotherapy**

15. Counselling will address a number of issues, including:
- The impact on the child of the abuse
  - Improving the self esteem and confidence of the child
  - Providing the child with information with regard to, for example, abusive relationships. The aim of this is to enable the child to seek out assistance from a trusted adult if the child feels unsafe at some stage in the future.
16. Psychotherapy will address a number of issues, including:
- Treatment of emotional and behavioural disturbance, for example post-traumatic stress disorder;
  - Treatment of a child who has been highly traumatised and shows symptoms which give rise to concerns for the child's mental health.
17. Both counselling and psychotherapy may require long term involvement with the child, depending upon the degree of the trauma suffered and the child's cognitive ability.

## **Preparation for Court**

18. Prior to the criminal trial or children's hearing court proceedings, work may be undertaken to prepare a child for court. The purpose of this work is to:
- Provide the child with information about the legal process;
  - Address any particular concerns or fears which the child may have in relation to giving evidence;
  - Reduce anxiety.
19. The timing of the preparation for court is important. If it is carried out too soon before the evidence is given, the child's anxieties may be increased. On the other hand, if it is carried out at the last minute the child may feel rushed and be unable to assimilate the information given. There are a number of materials that will assist with the preparation of child witnesses for giving evidence in court. Crown Office and the Procurator Fiscal Service have produced two booklets called "Going to Court", tailored for primary and secondary schoolchildren respectively. NSPCC have produced a video entitled "Giving Evidence – What's it Really Like?" (2000) and Barnardo's have a similar video "So You're Going to be Witness" (1996) that is suitable for younger children. These relate to English court proceedings. The Scottish Children's Reporter Administration will soon publish leaflets for children and families for use in court preparation.



## **WHAT ARE THE CONSEQUENCES OF THERAPEUTIC HELP BEING GIVEN TO A CHILD PRIOR TO COURT?**

20. In criminal proceedings an accused person can only be convicted of a criminal offence on the basis of evidence which allows a jury to be satisfied, beyond a reasonable doubt, that he/she is guilty. Evidence is that which tends to prove or disprove any fact or conclusion. In children's hearing court proceedings facts relating to concerns about a child are established on the basis of evidence that allows a sheriff to be satisfied on a balance of probabilities (unless the facts relate to an offence committed by a child). These facts may name the person responsible for acts or behaviour.
21. The tradition in the Scottish courts, like England and Wales, is largely an oral one. Great reliance is placed on the oral testimony of witnesses. The accuracy, credibility and reliability of each witness' evidence is tested under cross-examination. The jury (in solemn proceedings), or the judge (in summary proceedings), or sheriff in children's hearing court proceedings decides the weight to be attached to the evidence when assessing whether guilt or a fact has been proved.
22. Discussions among or with witnesses prior to a criminal trial or children's hearing may give rise to a number of potential concerns. For example:
  - Witnesses may change their account of the events in issue
  - The risk of fabrication, deliberate or inadvertent, may be increased, in that a witness may:
    - become aware of gaps or inconsistencies in his or her evidence, perhaps when compared to that of others;
    - become more convinced (or convincing) in his or her evidence, but no less mistaken
    - be influenced, consciously or unconsciously, by the views or reaction of others
23. Therapy is one kind of discussion that may take place before a trial or other court proceedings. Other examples of discussions that may give rise to the evidence of adults and children being challenged include:
  - Informal contacts (for example friends and family);
  - Operational de-briefing by police officers (for example after a large public order incident);
  - Training
24. 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.
25. Children may derive therapeutic benefit from simply talking about their experiences. To an extent they will determine when they are ready to do this, but the professionals

concerned should be aware of the possible consequences of allowing it to happen. These may include allegations of coaching and, ultimately, the failure of the court 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 or children's hearing court proceedings.

26. The issue raised by all the discussions undertaken prior to the trial or court proceedings, including therapy, is whether the process can affect – and that is to say undermine – the actual or perceived credibility and/or reliability of that witness' evidence, and the weight the judge or jury will attach to it. This will depend on a number of factors, such as the circumstances in which the discussions take place. Some of these factors are also explored in part 5 below, which sets out guidelines on the use of therapy.

### **Records of Therapy and Confidentiality**

27. The administration of justice and the duty to respect the accused's right to a fair trial demand that any information and evidence that 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.
28. The Crown has a duty at any time to disclose to the defence information in their possession which would tend to exculpate the accused and the defence will have access to documents and information which are material to the preparation and presentation of their case.
29. Prosecution policy on disclosure is designed to ensure that information that is of genuine relevance to a criminal case is available to the parties and the court.
30. Requests for information to be obtained from third parties may be made at various stages in a criminal or children's hearing case, by:
- The police
  - The Procurator Fiscal
  - The Reporter
  - The defence
  - The Court
31. The requests should explain the issues in the case, so far as they are known, and be as precise as possible. Speculative enquiries are discouraged, and are unlikely to be acted upon. The purpose should be to elicit a genuine and focused search for relevant documents, records 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 Work Department, or by an NHS

Hospital, the legal services department of such a Department or Hospital will provide advice.

32. In addition to informal requests for information, if there are real grounds for believing that material that could affect the outcome of the trial or court proceedings is being withheld, an application may be made to the court for an order to produce the material. If the therapist, having taken legal advice, believes that the material should not be disclosed, the application may be opposed. The court will have regard to all of the interests concerned, including the public interest, in deciding whether or not to grant the application and order production of the material.
33. Because of the recognition that maintaining a child's 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 above, unless the child, therapist and/or relevant authority (e.g. the Crown in criminal cases) consent to the release of the records. Those aspects of the therapy that have no material relevance to the trial or court proceedings should not have to be disclosed. However, the issue of relevance may need to be reviewed at different stages of the case, as more becomes known about the prosecution and defence, or parties' cases. Confidentiality can not therefore be guaranteed in advance. Bearing this in mind, it is important that an understanding is reached with the child and carers at the outset of therapy, of the circumstances under which material obtained during the treatment may require to be disclosed.

## **DECISION MAKING**

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

34. Crown Office and the Procurator Fiscal Service is responsible for the prosecution of crime in Scotland - both for the decision whether criminal proceedings should be taken, and for the conduct of criminal proceedings in Scottish courts. Scottish prosecutors act independently in the public interest. The interests of the individual child in any case is a primary consideration. The Children's Reporter is responsible for the conduct of children's hearing court cases. The interests of the child who is the subject of the proceedings and the interests of any child witness in the proceedings are a primary consideration to the Reporter.
35. Whether a child should receive therapy before the criminal trial is not a decision for the police or the prosecution. Similarly a Reporter cannot decide whether a child receives therapy in Reporter proceedings. Such decisions can only be taken by all of the professionals from the agencies responsible for the welfare of the child, in consultation with the carers of the child and the child him or herself, if the child is of sufficient age and understanding.

36. The best interests of the child are the paramount consideration in decisions about the provision of therapy before the court case. In determining what is in the best interests of the child, due consideration should be given to ascertaining the wishes and feelings of the child, in a manner which is appropriate to the child's age and understanding. When working with the child either for assessment or therapeutic purposes, account should be taken of the child's gender, race, culture, religion, language and (if appropriate) disability.
37. If there is a demonstrable need for the provision of therapy and it is possible that the therapy will prejudice the court proceedings, consideration may need to be given to abandoning those proceedings in the interests of the child's wellbeing. In order that such consideration can be given, it is essential that information regarding therapy is communicated to the prosecutor or reporter.
38. Alternatively, there may be some children for whom it will be preferable to delay therapy until after the court case has been heard, to avoid the benefits of the therapy being undone.
39. While some forms of therapy may undermine the evidence given by the witness, this will not automatically be the case. The Procurator Fiscal and Children's Reporter will offer advice, as requested in individual cases, on the likely impact on the evidence of the child receiving therapy.

### **Communication**

40. 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 for each child. 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.

### **GUIDELINES ON THE USE OF THERAPY**

41. Set out below are guidelines on the use of appropriate therapy with child 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 court proceedings but may receive general support to help them through the process of appearing in court.
42. All people who work with children before court proceedings 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 a child's credibility and reliability or to influence a child's memory of events or the account they give. Preparation for court and carefully planned preventive work which does not focus upon past abuse presents less of a problem than interpretative psychodynamic psychotherapy. Hence, there is a spectrum of evidential risk to the court case which should be considered.

43. 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.
44. Careful recording is essential and, prior to therapy beginning, the child's need for such therapy should be clearly stated.

### **Who are the therapists?**

45. Professionals offering therapy may be working within the NHS, social work services, the voluntary sector or privately. The context in which therapy occurs can therefore vary from a social work services or NHS child and family mental health clinic to a private or voluntary setting.
46. There are a number of factors relating to qualifications, training and experience which can guide the relevant professionals about the competence of any single individual to undertake psychotherapy or counselling with a child who is to be a witness in a court case.
47. Providers and purchasers of therapy for children in this situation must ensure that any therapist or counsellor has appropriate training according to the level of work to be undertaken, as well as a thorough understanding of the effects of abuse. Membership of an appropriate professional body or other recognised competence would be expected in these circumstances. They must also have a good understanding of how the rules of evidence for witnesses in criminal proceedings and children's hearing court proceedings may require modification of techniques.
48. Children may receive preparation for the experience of giving evidence in court. This must be given by suitably trained individuals, who will need to be aware of the clear distinction between the preparation of a child for the experience of giving evidence in court and the provision of therapy or counselling to address trauma.

### **Assessment of need for therapy**

49. Assessment of the need for therapy of any child during the pre-court period (when that child may become a witness in the subsequent court case), should only be

undertaken following consultation with the relevant professionals involved. This may be appropriate in the context of a strategy discussion or child protection conference convened under child protection procedures. If the child is not the subject of child protection processes, and it is judged desirable, a meeting of all relevant professionals might be convened for the purpose of discussing an assessment and treatment strategy.

50. The function of any such discussion should be to discuss the needs and best interests of the particular child. The discussion should include the logistics of setting up a specialist assessment of the child, with agreement on who will undertake this assessment and which professional agencies will support the assessment, for example by bringing the child to appointments and working with the family.
51. Although it would be inappropriate to pre-empt the outcome of a subsequent specialist assessment for therapy of whichever kind proposed, it is nonetheless important that priority be given to the best interests of the child. The impact of any therapy upon the conduct of the court case should also be fully discussed. The Procurator Fiscal or Reporter will advise, as requested, on the likely effect of a particular type of therapy on the evidence of witnesses in individual cases and will need to be informed about any planned or ongoing therapy.
52. It is vital that a trained professional with a recognised competence in such assessments should see the child and any relevant family members. One or more careful assessment interviews should be conducted in order to determine whether and in what way the child is emotionally disturbed and also whether further treatment is needed.
53. It is important to note that not all children who are assessed in this way will need therapy. Final recommendations from the assessment will indicate the type of therapy or intervention, if any, required by the particular child. It will be important for such findings to be made available to other relevant agencies involved as soon as possible after the assessment is completed.

### **Important issues regarding an assessment**

54. A whole range of issues may arise in the course of any assessment, but for those undertaking an assessment of child witnesses to determine whether they require therapy, it is important to address the following areas.
55. Developmental factors must be taken into account during the assessment of each child. Children of the same age may have different levels of understanding. An assessment should therefore address the child's development in both emotional and cognitive terms, as well as any relevant physical illnesses or developmental problems which might affect a child's performance as a witness in court, and which could be worked with in the course of therapy provided prior to the court case.

56. A child with specific needs may, with the appropriate assistance, be a competent witness. An assessment of children with specific needs, including physical and learning disabilities, hearing and speech impairments should be conducted in conjunction with specialist workers who are trained in these areas of work.
57. The potential for suggestibility in an interview situation, or during cross-examination in court should also be addressed during an assessment. It should be remembered that some children, including young children, learning disabled children, very severely abused children who have been intimidated or physically beaten, or severely emotionally disturbed children, are more likely to produce erroneous or ambiguous responses to leading questions from interviewers, than are less vulnerable or older children. In the assessment of such vulnerable children particular care should be taken to use short, plain, words, to ask open questions where possible and to avoid convoluted, hypothetical or other leading questions.
58. The assessor should use a limited range of selected assessment tools such as drawing materials and appropriate toys (for example, non-anatomical dolls) to supplement questioning within a session. The use of anatomical dolls in assessment for therapy is unlikely to be necessary, since specific investigative work about alleged abuse (which may or may not involve anatomical dolls) will already have been undertaken in the joint investigative interview. The use of any materials which suggest or presume that abuse has taken place should be avoided.
59. If deemed clinically appropriate, children should also have a separate psychological and/or developmental assessment to obtain baseline data on their cognitive and emotional functioning. Such a psychological assessment will indicate whether the child has specific needs which may require assistance in court, for example an intermediary or interpreter, as well as contributing to an understanding of the child's emotional needs.
60. Some children are so severely traumatised that the short term provision of, for example, once or twice weekly therapeutic sessions may be either inadequate for their needs or positively disturbing for them, particularly if their home or alternative care situation has not been fully resolved. With certain children, therefore, it may be better to delay long-term therapeutic work until a placement is made within a containing environment and then commence more intensive therapeutic work.
61. This may, in some cases, mean delaying therapy until the criminal proceedings are at an end (though in such cases prosecutors or reporters will wish to do all that they can to expedite the proceedings – and so contact should be made to ensure that the prosecutor is aware of the position). This does not preclude the important provision of general support for the child and family or briefer forms of more focused therapy.

## **Potential problem areas**

62. Problems may arise when the therapist attempts to distinguish fantasy from reality. In this kind of situation, the therapist should be as open to the idea that material presented as factual truth may be a distortion, as they are to a fantasy being a representation of reality.
63. Interpretative psychotherapy may, therefore, 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.
64. 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.
65. As the courts become more familiar with the provision of therapy prior to the court case 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.

## **CONCLUSION**

66. It should be understood that those involved in the prosecution of an alleged abuser or establishment of abuse in hearings proceedings have no authority to prevent a child from receiving therapy.
67. The police, the Crown and Reporter should be made aware that therapy is proposed, is being undertaken, or has been undertaken.
68. 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 court case. There should be a locally agreed mechanism for communicating this information and enabling it to be routed through the police to the Procurator Fiscal and Reporter using named contact points assigned to each individual child. Direct consultation between the professionals involved may be desirable in some circumstances and should be arranged in the same way.
69. 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.



70. At the outset of therapy an understanding should be reached with the child and the carers, of the circumstances under which material obtained during therapy might be required to be disclosed. Maintaining a child's trust will remain important and it can be confirmed that those aspects of the therapy that have no material relevance to court proceedings will not have to be disclosed. However, what is "relevant" may change as the case progresses, and so confidentiality cannot be guaranteed.
71. In newly arising allegations, therapy should not usually take place before a witness has provided a statement at a joint interview. 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 child's 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 child in psychotherapy then the evidential implications of this should be understood and made clear.
72. If the prosecutor or reporter advises that the proposed therapy may prejudice the court case, those responsible for the child's welfare should take this into account when deciding whether to agree to the therapy. It may still be in the best interests of the child to proceed with the therapy.
73. The therapist should be made aware of any pending court proceedings before commencing the therapy and should also be aware of the implications of using techniques which may result in the child's evidence being discredited.
74. 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.
75. Prior to the court case, 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 child's self esteem are less likely to cause difficulties. As a general principle, group therapy should not be offered to the child witness prior to the court case.
76. Children may derive therapeutic benefits from talking about their experiences, but any detailed recounting or re-enactment of the abuse may be perceived as coaching. Therapists should recognise that risk to, or even failure of, the court case is a likely consequence of this type of therapeutic work.
77. Professionals should avoid the use of jargon and take care to use language that will not be perceived, if repeated by a child witness, as evidence of the witness being coached or tutored. The language content of the therapy and counselling sessions is

guided by the child but equally it must be recognised that children do use different forms of language in differing situations and contexts.

78. During therapy, witnesses should never be encouraged to extend their account of the abuse which they have suffered. However, it is acceptable to offer general reassurance and support to a child during this difficult process.
79. Any disclosure 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 work services, police and any other statutory agency in accordance with the local child protection procedures. The Procurator Fiscal must be notified of any statement made by the child that exculpates the accused.
80. Prosecutors and reporters must be informed that the witness has received therapy. Prosecutors and reporters 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 and reporters may need to be aware of the contents of the therapy sessions as well as other details specified in the above paragraph, when considering whether or not to proceed and their duties of disclosure.
81. 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.

# **CHILD WITNESS SUPPORT**

## **SECTION 4**

### **DRAFT GUIDANCE ON THE CONDUCT OF CHILD WITNESS COURT FAMILIARISATION VISITS**

## SECTION 4

### DRAFT GUIDANCE ON THE CONDUCT OF CHILD WITNESS COURT FAMILIARISATION VISITS

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# GUIDANCE FOR CHILD WITNESS FAMILIARISATION VISITS TO COURT

## INTRODUCTION

1. This section of the document contains draft guidance on the conduct of court familiarisation visits in response to recommendation 9 of the report by the Lord Advocate's Working Group on Child Witness Support. This recommendation states:

that in order to improve the conduct of child witness familiarisation visits to the court:

  - the Lord Advocate should invite all those involved in the criminal justice and civil justice process to agree guidance on the conduct of familiarisation visits.
  - persons conducting familiarisation visits should receive training based on this guidance which raises awareness of the concerns of young witnesses and their carers and the importance of being able to respond to their questions in a neutral way.
  - the Lord Advocate should invite judges and sheriffs to ask whether children have had a familiarisation visit and allow some time for this to take place if the child has not already seen a courtroom.
2. This guidance was developed by a sub-group of the Child Witness Support Implementation Group. This sub-group comprised the Scottish Executive's Justice and Education Departments and Social Work Inspectorate, Crown Office and Procurator Fiscal Service (COPFS), Scottish Court Service (SCS), Scottish Children's Reporter Administration (SCRA), Victim Support Scotland, Children 1<sup>st</sup>, the Association of Chief Police Officers of Scotland (ACPOS), and the Association of Director's of Social Work (ADSW).
3. The aim of the guidance is to define the purpose of child witness court familiarisation visits, and what the visits entail.
4. **The guidance is aimed at all those involved with the court process, and comments are invited.**

### **Purpose of the Visit**

5. Court visits are important to any child who is asked to go to court as a witness. A court visit is an important part of support that can be available to a child witness. Visits must be carried out by a person who understands the needs of child witnesses and the importance of the visit not influencing the evidence of the child in any way.
6. Court visits are a vehicle for relieving anxiety and are an essential part of reducing the stress felt by any witness, especially children. The principal purpose of a court visit is:
  - for the child to see the court room or a similar room to that where the child will give their evidence
  - for the possibilities of how the child will give evidence in that room to be explained to the child

- to identify and attempt to resolve measures of support not already identified
  - to ensure that future arrangements are clear to the child.
7. The visit may have other benefits for the child, for example, meeting court personnel or providing an opportunity for other issues about giving evidence to be resolved with the child.

### **Persons conducting visits**

8. A person conducting a visit must have knowledge of:
- the detail of the court process or processes that the child is a part of
  - the expected layout of the court and the positioning of persons in the court
  - the measures of support that have been available to the child and are intended for the child
  - this guidance
9. The person conducting the visit must have some discussion with the person responsible for calling the witness, if the person conducting the visit is not the same person.
10. Responsibilities of the person conducting the visit include that:
- the person has information before the visit regarding support available to the child
  - the child is told about the lay out of the court and personnel who may be present
  - the child's anxieties or questions are answered by the person most appropriate to do so
  - the issues arising during the visit are fed back to the person calling the witness and any other appropriate person

### **Preparation for the Visit**

11. It is essential that any person conducting a visit is aware of the manner in which the child will be expected to give their evidence. In all cases where CCTV or screens may be used these facilities should be explained and demonstrated.
12. The room that will be used for the child to give their evidence must be visited or a room that is similar. If no similar venue can be identified the benefit of a visit should be re-assessed.

### **Timing of the Visit**

13. Court visits should occur in advance of the case, preferably at a time that is not too early in the process for any benefit to the child to be forgotten but not too late in the process for the child to have sufficient time to digest information given and raise any issues that may be resolved before the case is heard. It should be noted that children sometimes require more than one court visit.

## **Support Persons**

14. The person who has already been identified as the person who will support the child witness whilst the child gives evidence should be present at the court visit where possible. If a support person has not yet been identified, a suitable person should be identified and asked to accompany the child to the visit. This person would normally be the child's parent or carer. It may become apparent during the course of the visit that the parent or carer has anxiety about the process and where assurance cannot be given to this person at the time, the issue should be passed on to the most appropriate person to deal with it after the visit. If this is not the person who has called for the child to be a witness then they should also be told of the anxiety.

## **Court Equipment**

15. Where facilities such as CCTV or screens are agreed or intended, the facilities should be used during the visit. Where CCTV is to be used, the child should be given the opportunity of seeing how the equipment works, what the equipment will look like when the child gives evidence from the child, the judge and the legal professionals' perspective and how the child will sound using the facility.
16. It will be important on any visit of the child to the court that the acoustics in the court are tried so that not only does the child have an opportunity to hear their voice in court but any difficulties with acoustics or audibility of the child can be identified and additional provision made. For example, the distance of the examiner from the child may need to be assessed or microphones introduced.

## **Information Given to the Child on the Visit**

17. It is often not possible to provide certainty to a child about what will happen on the day that the child gives evidence. Any person who intends to examine a child at court should make all attempts to clarify in advance what will happen. A person conducting a visit must be aware of any agreed or sanctioned measures or the possibilities of what can occur.
18. Information that may be important to the child includes:
  - who will be in the court room
  - what is their function/job
  - where will people sit (be careful about identifying where accused sits)
  - where will I sit
  - will I sit
  - will people be wearing wigs and gowns
  - where will I wait
  - who can come in with me
  - how will I know when I am finished
  - who will question me
19. The person conducting the visit should ask the child what they would like to know.

20. A child witness should be given information about what to do if they feel unwell or want to ask a question or do not understand a question. The court visit provides an opportunity for the child to be reminded or told about questioning in court. The importance of telling the truth, the child saying if the child doesn't know or has forgotten and that not knowing or forgetting something is alright can all be discussed at the court visit. If a child identifies broad worries about questioning these can be addressed at the visit or at a later date. It is important that the child understands the parameters of questioning and is informed about how to indicate difficulty with any questioning that occurs.

### **Identification of an accused or alleged perpetrator**

21. If identification of a person is an issue in a case and will require a child being asked to identify in court it is essential that no person gives the child information that could influence or be perceived to influence the child making any identification in court. Often children will ask at a visit to a court whether that particular person will be there and where the person will be in the room.

22. Persons conducting the visit must attempt to answer such queries in a manner that

- does not inform the child that such person will or will not be in the room and in particular where the person will be in the room, and
- reassures the child that the court is a safe place, structured to ensure that all witnesses are protected and that all personnel in the court have some responsibility to ensure that no one intimidates or hurts a child or any other witness.

23. It is helpful to explain to the child that it is important that if the child does speak about things that the child has seen or experienced the child will be asked to see if the person who did these things is in the court and if so to point the person out. This is an important part of what will happen and therefore the person conducting the visit cannot say if and where the person will be on the day.

24. If a child has any fears about their safety at court these fears must be responded to in an appropriate way. Information about the presence of a police officer in court may be reassuring to the child.



**CHILD WITNESS SUPPORT**

**SECTION 5**

**INFORMATION ABOUT YOUNG WITNESSES TO  
INFORM DECISION-MAKING IN THE LEGAL PROCESS**

**DRAFT PROCEDURE AND FORM**

**SECTION 5**

**INFORMATION ABOUT YOUNG WITNESSES TO INFORM DECISION-  
MAKING IN THE LEGAL PROCESS**

**DRAFT PROCEDURE AND FORM**

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# **INFORMATION ABOUT YOUNG WITNESSES TO INFORM DECISION-MAKING IN THE LEGAL PROCESS**

## **INTRODUCTION**

1. Recommendation 3 of the Lord Advocate's Working Group Report on Child Witness Support was:

that in order to ensure information about young witnesses is available to inform decision-making in the legal process:

- Systematic procedures should be developed by all those involved in the criminal justice process and children's hearing court proceedings, to gather and record background information about the child witness. This is likely to require the development of special forms and the revision of case discussion and case conference procedures.
  - Multi-agency training should emphasise the important contribution of background information about the child to planning for the trial or children's hearing court proceedings and the management of the child's evidence at court.
2. **Comments are invited on the format and content of the following form from all those involved in the criminal justice process and children's hearing court proceedings.**

### **Purpose of the form**

3. The purpose of the following form is to ensure that all relevant information about a child witness is recorded and available to assist those making decisions during the criminal court process and children's hearing court proceedings.
4. The form will inform the approach to be taken in respect of the young witness in an effort to reduce distress to him/her prior to and during the court process and with a view to making every endeavour to achieve best evidence from the child.

### **Procedure**

5. It is proposed that the form will be completed initially by the police, although it is envisaged that additions may be inserted by the Procurator Fiscal or reporter at later stages in the court process, when further information about the child becomes available.

## **CHILD WITNESS REPORT**

### **CHILD'S NAME AND DATE OF BIRTH**

1. **MATURITY.** Does the child seem to more mature/younger than average for his/her age?
2. **PERSONALITY.** e.g. confident, shy etc.
3. **ABILITIES.** e.g. concentration span, ability to understand difference between truth and lies etc.
4. **LANGUAGE.** First language if not English/ability to communicate/level of understanding.
5. **HEALTH.** e.g. Need for glasses?/Hard of hearing?/Need for medication e.g. for asthma? etc.
6. **HOME SITUATION.** e.g. not living at home
7. **LIFE EVENTS.** e.g. exams, moving house, bereavement etc.
8. **HOBBIES/INTERESTS.** e.g. favourite subjects at school, favourites sports, general likes and dislikes etc.
9. **FEELINGS ABOUT BEING A WITNESS.** e.g. child's willingness to be a witness, supportiveness of parents/carers about going to court, specific worries about going to court etc.
10. **RELATIONSHIP OF CHILD TO OFFENDER**
11. **NATURE OF EVIDENCE CHILD IS LIKELY TO GIVE AND WHETHER CHILD VICTIM OR WITNESS**
12. **CANDIDATE FOR SUITABLE SUPPORT PERSON AT COURT.**  
**RELATIONSHIP TO CHILD AND INVOLVEMENT TO DATE IN CASE.**
13. **OTHER SOURCES OF INFORMATION.** e.g. persons and organisations with information about child or the family
14. **DOES IT APPEAR LIKELY THAT CHILD WILL REQUIRE SPECIAL EVIDENTIAL MEASURES AT COURT** e.g. screens, CCTV etc.

**CHILD WITNESS SUPPORT**

**SECTION 6**

**DRAFT GUIDANCE ON THE QUESTIONING OF  
CHILDREN IN COURT**

## **SECTION 6**

### **DRAFT GUIDANCE ON THE QUESTIONING OF CHILDREN IN COURT**

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# GUIDANCE ON THE QUESTIONING OF CHILDREN IN COURT

## INTRODUCTION

1. Recommendation 5 of the Lord Advocate's Working Group on Child Witness Support was that in order to improve the standard of questioning of young witnesses:
  - the Lord Advocate should consider inviting all those involved in criminal and children's hearing court proceedings to collaborate on the development of guidance on the questioning of children in court.
  - the Director of Judicial Studies in Scotland should be invited to refer to such guidance in judicial training, in order to develop a more consistent approach to judicial intervention when questioning is deemed inappropriate.
2. Accordingly the Scottish Executive Justice Department set up a small working group comprising a sheriff nominated by the Sheriffs' Association and representatives of the Crown Office, the Faculty of Advocates, the Law Society of Scotland, the Scottish Children's Reporter Administration and the Family Law Association. The working group produced the following guidance on the questioning of children in court for the use of Prosecutors, Children's Reporters, Counsel, Solicitor Advocates and Solicitors as well as any other person who may be engaged in this process including Safeguarders or Curators *ad litem*.
3. **Comments are invited on the content of the guidance which follows, particularly from members of the professional groups mentioned in the Introduction, but also from all others with an interest.**

## Purpose of the Guidance

4. What follows is intended to provide a brief summary of some basic points to assist all practitioners to conduct the examination of children in an effective, responsible and professional manner. It is not a detailed technical manual. It is neither possible nor desirable to prescribe detailed rules to be followed in every case irrespective of the circumstances in which a child is questioned. On the other hand it is possible to identify certain advocacy techniques that can be usefully employed in this field. Some of what follows may appear to experienced practitioners to be rudimentary. It is, however, especially important where the questioning of children is concerned for all practitioners to learn how to use and to employ the basic advocacy skills. The effective questioning of children demands that responsible practitioners consider carefully the preparations that require to be made in advance of the hearing as well as the tone, content and manner of questioning to be employed. This guidance is intended to assist in these tasks. Finally, practitioners are reminded that only when it is unavoidable in the interests of justice should a child<sup>1</sup> be called as a witness to give evidence.

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<sup>1</sup> The younger or more vulnerable the child the more important it is to weigh in the balance the necessity of calling him or her as a witness.

## **Duty of the Court**

5. It is the duty of the Court to ensure a fair trial<sup>2</sup>. Consistent with this duty the Court is also obliged to have regard to the reasonable interests of other parties to the Court process, in particular witnesses and among witnesses particularly those who are obliged to relive by describing in the witness box an ordeal to which they say they have been subject. Where it is necessary in the interests of justice to call as a witness a child, steps will be taken to ensure that the interests of the child are protected consistent with the duty to ensure a fair hearing. In criminal cases the Memorandum by the Lord Justice - General on Child Witnesses<sup>3</sup> provides guidance to judges to assist them to ensure so far as is reasonably practicable that the experience of giving evidence by all children under the age of 16 causes as little anxiety and distress to the child as possible in the circumstances.

## **Duty of Practitioners**

6. Any party intending to call a child as a witness in any proceedings should give notice of that intention to the other parties and to the Court as soon as is reasonably practicable. It is the duty of every practitioner to ensure so far as is reasonably practicable that the experience of giving evidence by all children causes as little anxiety and distress to the child as possible in the circumstances. The Guide to the Professional Conduct of Advocates and the Code of Conduct (Scotland) Rules 1992<sup>4</sup> specifically provide that in the examination of witnesses and particularly the cross examination of hostile witnesses the law places the practitioner in a privileged position which he should not abuse. The Court requires the assistance of parties in making suitable arrangements for the examination of children and ensuring that such examination is confined to what is strictly necessary in the interests of justice and the securing of a fair hearing. In an adversarial system it is necessary that each party should be vigilant as to the proper conduct of the examination of the child by the other and to take objection to any inappropriate examination.

## **Power of the Court**

7. Inappropriate questioning can be particularly harmful to children. Practitioners can expect the court to be particularly sensitive to the need to ensure that children are questioned appropriately. Practitioners should bear in mind that the court has inherent power to disallow questioning (1) that is irrelevant to the issue before it<sup>5</sup> (2) that has no object other than to insult the witness (3) that is intended to or has the effect of harassing the witness (4) that has as its purpose the making of a comment as

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<sup>2</sup> In this context "trial" includes hearing or proof

<sup>3</sup> Reproduced at Appendix 1 of this consultation document on Child Witness Support

<sup>4</sup> Supplementary Code of Conduct for Solicitors exercising extended Rights of Audience

<sup>5</sup> Thus it is essential that the court and the parties are fully aware of the issues. The parties have a duty to assist the court in ensuring that the examination does not stray into irrelevant matters



opposed to eliciting a fact (5) that involves repetition of a question that has already been clearly answered.

### **Pre-hearing Preparation - Identification of the Issue**

8. Pre-hearing investigation should be carried out skilfully, professionally and in accordance with published national guidelines<sup>6</sup>. These are necessary and appropriate safeguards – for the children involved, the investigators and for the investigation itself i.e. the ascertainment of the truth. The investigation should be completely transparent and open to scrutiny.
9. Parties should, so far as is reasonably practicable, clearly identify in advance the issues to be determined.
10. Parties have a duty, so far as is reasonably practicable, to try to reach agreement on all matters that are or are likely to be to be uncontroversial.
11. All parties and the Court should be aware as far as is reasonably practicable the respective positions of the parties in relation to the evidence that the child being examined will give. Where there are several parties it is important that arrangements are made to avoid the duplication of questioning so far as is reasonably practicable.

### **Pre-Hearing Preparation - Accommodating the witness**

12. The child should give evidence as soon as is reasonably practicable after the events being spoken about. Taking of evidence on commission (and if necessary recording it on video) in advance of the hearing should be considered.
13. Steps should be taken to facilitate the giving of evidence by the child. Account should be taken of the child's views in this regard. (Screens, video link, familiarisation visit, removal of Court dress etc.) The parties must assist the court to take the steps in relation to the child. Parties should provide as much information as possible as early as possible in relation to the circumstances of the child and his or her requirements.
14. The child should be introduced to the examiners in advance of their examination<sup>7</sup>.
15. Before giving evidence, the child should be made aware of the procedure and arrangements under which he or she will give evidence.

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<sup>6</sup> These guidelines are to be published separately. Draft guidelines for consultation are contained in section 2 of this document.

<sup>7</sup> For the avoidance of doubt the rule of professional practice that prevents an Advocate or Solicitor Advocate from interviewing or discussing a case with a witness does not present any impediment whatsoever to an introductory meeting with a child in advance of the hearing to introduce themselves. On the contrary it is good professional practice to have such an introductory meeting with the child.

16. The pace of the examination should be dictated primarily by the needs of the child. Sufficient time should be allowed for breaks in the evidence as required.

### **Examination - general**

17. Examination, Cross- Examination and Re-examination require:

- **Preparation.** The examiner must read all of the papers in advance of the hearing, understand the issues in the case and be fully prepared to conduct the examination.
- **Organisation.** The examiner should organise the material to be examined. Ideally, the examiner should exhaust each topic being examined before moving on to the next one. It is helpful if the topic being examined is signposted at the beginning<sup>8</sup> and the end<sup>9</sup> of the examination on that point.
- **Mutual Understanding.** Before examining the child on the controversial matters it may be helpful to attempt build a rapport with the witness<sup>10</sup>. Once the examiner has finished with rapport building he should clearly signal that he is moving to important matters<sup>11</sup>.
- **Fact-finding.** The purpose of examination is to elicit facts. Questions should be short and straightforward<sup>12</sup>. The examiner should seek to elicit only one fact with each question asked. It may be irrelevant to seek explanations of behaviour. Care should be taken before asking a child why he or she did or did not do something. An answer to such a question from the child may be unnecessary to the purpose of the examiner. It may be harmful to the child to require him or her to provide an answer. It is also unhelpful to repeat persistently a question in the same form as children can alter their response according to what they may think they want the questioner to hear. It is unnecessary for a child witness to be told what another witness has said or is expected to say. Questions of that nature are apt to confuse the child. Likewise summarising or recapitulating an answer already given should be avoided in questioning and should not under any circumstances involve the use of words other than those already used by the child.
- **Simplicity.** The examiner should use as simple language as possible. Plain words should be chosen that can be clearly understood by the child. It is impossible to over emphasise importance of the choice of words used in questions.
- **Precision.** Precision is required in the use of language in the question. Careful thought requires to be given to using as precise language as possible so that the child clearly understands what it is that is being asked.
- **Pace.** The examiner should speak slowly and clearly and allow for pauses by the child. The child should not be interrupted. Sufficient time should be given to the child to allow him or her to answer the question.

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<sup>8</sup> E.g. I want to ask you about what happened on the day you went to Zoo?

<sup>9</sup> E.g. that is all that I have to ask you about what happened on the day you went to the Zoo?

<sup>10</sup> E.g. ask the child to identify a favourite topic or event and explore the details with open questions.

<sup>11</sup> E.g. Now I want to ask you about the reason you are here today?

<sup>12</sup> Avoid double questions, hypothetical questions, double negatives, long questions and legalese.

- **Tone.** The tone of questioning should be appropriate to the circumstances. Bullying and harassing a child is wholly inappropriate
- **Eye Contact.** It is important that, so far as is reasonably practicable, the examiner maintains eye contact with the child during the examination. This is especially the case where CCTV equipment is being used.

### **Examination in Chief and Re-examination**

18. It is particularly important not to ask leading questions in relation to controversial matters. The child must be allowed to tell his or her story in her own words. The focus should be on the child and not the examiner. The examiner must be able to distinguish between a leading and non-leading question and should be able to elicit the evidence in a non-leading form<sup>13</sup>. If there remain background matters that are uncontroversial then the parties should identify these in advance of the examination and may agree that leading questions may be asked in relation to them. Practitioners may find it beneficial not to ask leading questions even in relation to non-controversial matters or during rapport building as leading a witness, particularly a child, is habit forming.

### **Cross Examination**

19. It is rarely, if ever, appropriate to adopt a confrontational approach in the cross-examination of a child. Practitioners have a professional duty not ask inappropriate questions<sup>14</sup>. Practitioners can expect that the Court will not permit inappropriate questions to be asked.
20. Although it is technically permissible to ask leading questions in cross examination an answer to such a question will be of no real evidential value. Children can be suggestible. Even the most unsophisticated fact finder is aware of this. Whether the purpose of the examination of the child is to test his or her credibility and reliability or to enhance it, an answer from a child to a leading question will not assist the fact finder in either respect.
21. In cases where there are several parties (for example more than one accused) arrangements should be made in advance of the examination to avoid so far as is reasonably practicable successive examiners duplicating questioning of the witness. This is one of the matters that should be dealt with in advance of the hearing.

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<sup>13</sup> A leading question is a question that suggests the answer desired. It is sometimes said that putting a question in a form that is amenable to both an affirmative and a negative answer is not a leading question (e.g. did you or did you not see the dog?). This is incorrect as the examiner has clearly alerted the witness to the answer desired. The way to avoid asking a leading question is to prefix it with words such as Where, when, what, who, etc. In the example given “What did you see?”

<sup>14</sup> i.e. questions that are irrelevant, insulting, or repetitive or are designed to harass the witness or are framed so as to make a comment as opposed to eliciting a fact.

**CHILD WITNESS SUPPORT**

**APPENDIX 1**

**LORD JUSTICE GENERAL'S MEMORANDUM ON THE  
TREATMENT OF CHILD WITNESSES BY THE COURTS**

## **MEMORANDUM BY THE LORD JUSTICE GENERAL ON THE TREATMENT OF CHILD WITNESSES BY THE COURTS**

1. The following memorandum of guidance has been prepared at the suggestion of the Scottish Law Commission: see Report on the Evidence of Children and Other Potentially Vulnerable Witnesses (Scot Law Com No 125). Its purpose is to provide assistance to judges in the exercise of their discretionary powers, where a child is to give evidence by conventional means in open court, to put the child at ease while giving evidence and to clear the court of persons not having a direct involvement in the proceedings.
2. The general objective is to ensure, so far as is reasonably practicable, that the experience of giving evidence by all children under the age of sixteen causes as little anxiety and distress to the child as possible in the circumstances.
3. The following are examples of the measures which may be taken, at the discretion of the presiding judges, with a view to achieving that objective -
  - (a) The removal of wigs and gowns by the judge, counsel and solicitors;
  - (b) The positioning of the child at a table in the well of the court along with the judge, counsel and solicitors, rather than requiring the child to give evidence from the witness box;
  - (c) Permitting a relative or other supporting person to sit alongside the child while he or she is giving evidence;
  - (d) The clearing from the court room of all persons not having a direct involvement in the proceedings.
4. In deciding whether or not to take these or similar measures, or any of them, the presiding judge should have regard to the following factors -
  - (a) The age and maturity of the child.

In general the younger the child the more desirable it is that steps should be taken to reduce formality and to put the child at ease while giving evidence.

- (b) The nature of the charge or charges, and the nature of the evidence which the child is likely to be called upon to give.

Particular care should be taken in cases with a sexual element or involving allegations of child abuse especially where the child is the complainer or an eye witness. Children directly involved in such cases are likely to be especially vulnerable to trauma when called upon to give evidence in the presence of the accused. The giving of evidence of a relatively formal nature, especially in the case of an older child, is unlikely to cause anxiety or distress and in such cases it will rarely be necessary to take special measures in the interests of the child.

- (c) The relationship, if any, between the child and the accused.

A child who is giving evidence at the trial of a close relative may be especially exposed to apprehension or embarrassment, irrespective of the nature of the charge. The positioning of the child and the support of a person sitting alongside the child while giving evidence are likely to be of particular importance in these cases.

(d) Whether the trial is summary or on indictment -

While informality may be easier to achieve in summary cases, the presence of a jury in cases taken on indictment is likely to present an anxious or distressed child with an additional cause for anxiety or distress. This makes it all the more necessary under solemn procedure that steps should be taken to put the child at ease.

(e) Any special factors placed before the court concerning the disposition, health or physique of the child.

All children are different, and judges should take each child's particular circumstances into account before deciding what steps, if any, should be taken to minimise anxiety or distress.

(f) The practicability of departing from normal procedure, including the size and layout of the court and the availability of amplification equipment.

Whatever step taken, a child witness who gives evidence by conventional means must remain visible and audible to all those who have to hear and assess the evidence, including the jury and the accused

5. In all cases before a witness under sixteen years is led in evidence an opportunity should be given to those representing the Crown and the defence to address the judge as to what special arrangements, if any, are appropriate. Under solemn procedure such representations should be made outwith the presence of the jury and preferably before the jury is empanelled or at least before the commencement of the evidence.
6. If a relative or other supporting person is to sit alongside the child, that person should not be a witness in the case and he or she should be warned by the judge at the outset not to prompt or seek to influence the child in any way in the course of the evidence.
7. The clearing of the court while a child is giving evidence will normally be appropriate in all cases which involve an offence against, or conduct contrary to, decency or morality: see section 166 and section 362 of the Criminal Procedure (Scotland) Act 1975. In other cases this should only be done if the judge is satisfied that this is necessary in order to avoid undue anxiety or distress to the child. The statutory provisions that bona fide representatives of a newspaper or news agency should not be excluded should be applied in all cases.
8. When taking any of the measures described above the judge should have regard to the court's general duty to ensure that the accused receives a fair trial and is given a proper opportunity to present his defence.

**CHILD WITNESS SUPPORT**

**APPENDIX 2**

**LORD ADVOCATE'S WORKING GROUP REPORT ON  
CHILD WITNESS SUPPORT**

**RECOMMENDATIONS**

## **LORD ADVOCATE'S WORKING GROUP REPORT ON CHILD WITNESS SUPPORT**

### **RECOMMENDATIONS**

**Recommendation 1: that in order to provide support services for young witnesses in a structure providing greater consistency and inter-agency accountability:**

- 1.1 Child Protection Committees should appoint a subgroup to take forward operational support of young witnesses with terms of reference covering both criminal and children's hearing court proceedings and young witnesses in general, not solely those who are victims. Subgroup members should represent all key groups, including the judiciary.
- 1.2 Child witness officers should co-ordinate independent familiarisation services provided by trained employees of Child Protection Committees' member organisations. In less populated areas, this co-ordinating role may require only a part-time or shared position.
- 1.3 Those involved in child witness support and preparation should receive training on the standards set out in the protocol developed by the Child Witness Support Working Group, which describes the scope of appropriate preparation and emphasises the need to avoid doing anything to contaminate the child's evidence.
- 1.4 Child Protection Committee member agencies should contribute the time of staff acting as familiarisation workers, mileage and training costs and accommodation for the child witness officer, as in the model adopted by the Child Witness Co-ordination Group, a sub-group of the Area Child Protection Committee for Kingston upon Hull and the East Riding of Yorkshire.
- 1.5 The Scottish Office should be invited to consider options for resourcing child witness officer co-ordinators and the necessary administrative support, including the possibility of partnerships with child welfare organisations. It is estimated that coverage of the 26 Child Protection Committees for Scotland could be achieved for £663,000 (based on £39,000 for a full-time co-ordinator with administrative support in eight Child Protection Committees, with the remaining 18 Committees being served by 18 half-time positions).

**Recommendation 2: that in order to promote the "sensitive handling" and "desirable uniformity of approach" advocated by the Scottish Law Commission in its 1990 Report on the Evidence of Children and Other Potentially Vulnerable Witnesses:**

- 2.1 The Scottish Courts Administration should consider the production of good practice guidance for judges and sheriffs on the management of young witness cases. Development of this guidance and training should take place in consultation with organisations that have specialist knowledge of young witness concerns.



- 2.2 The Lord Justice General should be invited to consider revision of his Memorandum and how to raise awareness of its provisions among the judiciary and practitioners.
- 2.3 The Scottish Court Service, in consultation with the Lord Justice General, should consider conducting a pilot to assess the feasibility of allocating criminal and children's hearing court procedures involving young witnesses to nominated and trained members of the judiciary.

**Recommendation 3: that in order to ensure information about young witnesses is available to inform decision-making in the legal process:**

- 3.1 Systematic procedures should be developed by all those involved in the criminal justice process and children's hearing court proceedings to gather and record background information about the child witness. This is likely to require the development of special forms and the revision of case discussion and case conference procedures.
- 3.2 Multi-agency training should emphasise the important contribution of background information about the child to planning for the trial or children's hearing court proceedings and the management of the child's evidence at court.

**Recommendation 4: that, in order to prompt consideration of provisions in the Lord Justice General's Memorandum and to facilitate case management decisions:**

- 4.1 A format should be agreed for a written child witness "report" for sheriffs and judges, to be provided by the Procurator Fiscal or reporter at a preliminary hearing where possible, and its implications discussed with the sheriff and defence or other agents.
- 4.2 The Scottish Court Service should ensure that the child witness report and reports in support of CCTV and screens applications are available to the trial judge or sheriff.
- 4.3 Where possible, the sheriff to conduct the trial or children's hearing court proceeding should be identified beforehand and invited to convene a meeting in chambers with the parties before the day of trial or children's hearing court proceeding to decide matters relating to the child witness.
- 4.4 In order to ensure continuity in the provision of information to the courts, the Lord Justice General should be invited to investigate the practicality of regulating the procedures for communicating information about young witnesses to the judiciary at interim diets, by way of Act of Adjournal.

**Recommendation 5: that in order to improve the standard of questioning of young witnesses:**

- 5.1 The Lord Advocate should consider inviting all those involved in the criminal and children's hearing court proceedings to collaborate on the development of guidance on the questioning of children in court.
- 5.2 The Director of Judicial Studies in Scotland should be invited to refer to such guidance in judicial training, in order to develop a more consistent approach to judicial intervention when questioning is deemed inappropriate.

**Recommendation 6: that the Lord Advocate should raise these perceived anomaly with the Home Advocate depute with a view to their resolution.**

**Recommendation 7: that in order to improve the conduct of interviews and precognitions with young witnesses:**

- 7.1 The Scottish Office should invite all relevant organisations to co-operate in the development of guidance on the conduct and recording of investigative interviews of children by police officers and social workers, on the basis that implementation of standard guidance would improve the quality and consistency of interviews and assist in reducing the need for others to re-interview the child about the circumstances of the alleged offence.
- 7.2 The Crown Office, Association of Chief Police Officers in Scotland and Scottish Children's Reporter Administration should develop consistent policies on the disclosure of police child witness statements and prosecution and reporter precognition, as greater certainty about disclosure may help to reduce the number of times that a young witness is interviewed.
- 7.3 The Scottish Children's Reporter Administration should indicate its policy as to when, if at all, reporters should precognosce young witnesses.
- 7.4 The Law Society of Scotland should develop guidance for solicitors on the precognition of young witnesses, for example, requiring contact only by prior appointment, conducting the precognition at a location of the child's and carer's choice, and ensuring that a supporter chosen by the child is present during the interview. This guidance should address practice where there is more than one accused. A complaints procedure should be established and brought to the attention of witnesses
- 7.5 The Law Society of Scotland should require solicitors to introduce safeguards to ensure that persons precognoscing young and vulnerable witnesses are screened, have appropriate skills and receive relevant training.
- 7.6 Where a solicitor uses an agent with specific skills and training to interview a young witness, the Scottish Legal Aid Board should consider authorising an enhanced fee for this purpose.

**Recommendation 8: that in order to reduce the stress of young witnesses in relation to identification of the accused:**

- 8.1 The recommendation of the 1990 Scottish Law Commission report on the

Evidence of Children and Other Vulnerable Witnesses (paragraph 3.20) should be implemented –“(a) In any case, whether under solemn or summary procedure, where a report of an identification parade or of some other recognised identification procedure has been lodged as a production by the prosecutor, it should be presumed, subject to (b) below, that the person named in the report is the person of the same name in the complaint or indictment and answering the charge in court,

(b) The foregoing presumption should only arise where (i) the prosecutor has, not less than 14 days before the trial, served on the accused a copy of the report and a notice of intention to rely on the presumption, and (ii) the accused has not given notice of an intention to challenge the facts stated in the report by at least six days before the trial, or such later time before the trial as the court may in special circumstances allow

- 8.2 The Association of Chief Police Officers in Scotland should disseminate the checklists for the officer conducting the identification parade, the officer in charge of the investigation and for young witnesses attending parades and their carers, subject to their further evaluation by the Strathclyde Police.
- 8.3 The Association of Chief Police Officers in Scotland should explore ways to reduce further the trauma of children attending identification parades, including video recording the parade and showing it to the witness at some later point and allowing the witness to view the parade over a CCTV link.

**Recommendation 9: that in order to improve the conduct of child witness familiarisation visits to the court:**

- 9.1 The Lord Advocate should invite all those involved in the criminal and civil justice process to agree guidance on the conduct of familiarisation visits.
- 9.2 Persons conducting familiarisation visits should receive training based on this guidance which raises awareness of the concerns of young witnesses and their carers and the importance of being able to respond to their questions in a neutral way.
- 9.3 The Lord Advocate should invite judges and sheriffs to ask whether children have had a familiarisation visit and allow some time for this to take place if the child has not already seen a courtroom.

**Recommendation 10: that in order to clarify the roles of those making decisions relating to therapy before court proceedings:**

- 10.1 The Crown Office, Scottish Children’s Reporter Administration, social work departments, health boards and child welfare organisations should, in consultation with the Law Society of Scotland and Faculty of Advocates, produce a code of practice addressing the provision of therapy before children give evidence.
- 10.2 The code should emphasise that decisions about the timing and need for

therapy can only be taken by those responsible for the welfare of the child and that the interests of children in need of treatment are paramount.

- 10.3 The code should contain certain advice for therapists about how to avoid undermining children's credibility and reliability or influencing their memory of events or the account they give.

**Recommendation 11: that The Scottish Office and Scottish Children's Reporter Administration should address the need for research focusing on children's hearing court proceedings.**

**Recommendation 12: that the Lord Advocate should consider inviting the relevant organisations to discuss publication and distribution of the booklet for parents and carers "Your Child is a Witness".**

**Recommendation 13: that NCH Action for Children and Children's Reporter Administration should continue to consult with the relevant organisations in preparing the guidance on the support and preparation of child witnesses for publication.**

**Recommendation 14: that the Scottish Children's Reporter Administration should develop materials for children and their parents and carers in relation to children's hearing court proceedings.**

**Recommendation 15: that in order to inform decision-making about the level of need and resource allocation, relevant agencies should jointly establish mechanisms for the collection and publication of statistics on:**

- 15.1 The number of young witnesses in the criminal and children's hearing court proceedings system.
- 15.2 How long each organisation takes to process young witness cases at each stage of proceedings.
- 15.3 How often cases are rescheduled for diets and the reasons why this happens.
- 15.4 The incidence of forensic medical examinations and compliance with inter-agency policy on the manner in which they should be conducted.

**Recommendation 16: that in order to facilitate the prioritisation of cases, relevant agencies should:**

- 16.1 Agree a common definition of which young witness cases should receive priority.
- 16.2 Identify mechanisms for flagging up young witness cases to ensure that they receive appropriate treatment and to avoid delay at all stages.
- 16.3 Adopt a "culture of urgency" in which the priority status of young witness cases is highlighted on files and correspondence.