Achieving Best Evidence in Criminal Proceedings

Guidance on interviewing victims and witnesses, the use of special measures, and the provision of pre-trial therapy.

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Introduction

1.1 This guidance, which replaces that published in May 2011, describes good practice in interviewing witnesses, including victims, and using special measures in order to enable them to give their best evidence in criminal proceedings. It also contains advice in relation to pre-trial therapy. The guidance applies to both prosecution and defence witnesses and is intended for all persons involved in the criminal justice process, including the police, health and/or social care workers, legal profession and victim support organisations.

1.2 It is recognised that the guidance is challenging in terms of time (for example, it may take more than one attempt to interview a person with dementia) and resources, especially with the necessary delivery of training. However, the guidance set out in this document is intended to support the Northern Ireland Criminal Justice System’s commitment to improve the quality of treatment for victims and witnesses in the criminal justice system so that they have an opportunity to access justice and provide their best evidence. It is complemented by the Code of Practice for Victims of Crime and should be viewed in the context of other criminal justice policies in relation to improving the quality of service to victims and witnesses (see Appendix T for a list of relevant publications).

Scope

1.3 Achieving Best Evidence in England and Wales includes guidance in relation to section 137 Criminal Justice Act 2003 witnesses and ‘significant witnesses’, including ‘reluctant’ and ‘hostile’ witnesses. As the equivalent legislation (Article 39 of the Criminal Justice (Evidence) (NI) Order 2004) has not yet been commenced, guidance on Article 39 witnesses has not been included. It is particularly important that interviewers are aware of this difference between the jurisdictions as guidance from the Association of Chief Police Officers often reflects the current position in England and Wales - this has the potential to lead to video recordings being made that cannot be used in Northern Ireland courts.
Children

1.4 References to ‘very young children’ in this guidance mean children of nursery school age (i.e. up to 5 years of age), the term ‘young children’ refers to children of primary school age (i.e. up to 11 years of age) and ‘older children’ denotes those of secondary school age (i.e. over 11 years of age). The unqualified terms ‘child’, ‘children’ or ‘young witness’ refer generally to children of all ages up to 18 years of age. This guidance applies to the broad range of children in these age groups and as such will not necessarily apply to an individual child witness. Practitioners should always take account of the level of cognitive, social and emotional development of the individual child when applying this general guidance.

Defence witnesses

1.5 This guidance applies to defence, as well as prosecution, witnesses and the provisions contained in Part II of the Criminal Evidence (Northern Ireland) Order 1999 (the 1999 Order), as amended by the Justice Act (Northern Ireland) 2011, are available to both prosecution and defence witnesses if the court is satisfied that they meet the criteria.

1.6 While some of the guidance is drafted with the particular needs and concerns of the prosecution in mind, in general it applies to those involved in working with all vulnerable and intimidated witnesses.

Status of the guidance

1.7 This document describes good practice in interviewing victims and witnesses, and in preparing them to give their best evidence in court. While it is advisory and does not constitute a legally enforceable code of conduct, practitioners should bear in mind that significant departures from the good practice advocated in it may have to be justified in the courts.

1.8 The guidance is generic: it cannot ever cater for every possible set of circumstances that might arise. Each witness is unique and the manner in which they are interviewed, prepared for their court appearance and supported throughout the criminal justice process must be tailored to their particular needs and circumstances.
Training

1.9 Training should take account of the curriculum that has been developed in support of the National Investigative Interviewing Strategy (Association of Chief Police Officers 2009). It is recommended that this guidance is used, in conjunction with other relevant guidance, as a key resource in the training of police officers and social workers involved in the investigative interviewing of vulnerable or intimidated witnesses. It should also be used as a resource by those concerned with providing pre-trial support and preparation, and those involved in the criminal justice process generally.

1.10 Programmes will need to deliver and maintain skills, and their content regularly reviewed in the light of practice developments and evolving legislation. As much of the guidance requires co-operation between agencies on a professional and personal level, joint training initiatives are beneficial.

1.11 Specialist training is required to interview witnesses with particular needs, for example young witnesses, traumatised witnesses and witnesses with a mental disorder, learning disability or physical disability which impacts on communication. Specialist interview training is also required in respect of the use of the techniques in the cognitive interview.

1.12 It is important to note, however, that training alone is unlikely to deliver effective performance in the workplace. Training needs to be set in the context of a developmental assessment regime. Such a regime should deliver a means of quality assuring interviews, while developing, maintaining and enhancing the skills of interviewers. The regime should be supported by an agreed assessment protocol. In the case of police interviewers, such a protocol should take account of the National Occupational Standards for interviews with witnesses. Agencies regularly involved in conducting interviews with witnesses should have the necessary policies, procedures and management structures in place to quality assure interviews on an ongoing basis.

1.13 Training is also relevant for those providing support to victims and witnesses, and this should conform to agreed standards.
Gathering physical evidence

1.14 At the investigative stage (Chapters 2-4), the guidance focuses on how to interview vulnerable and intimidated witnesses. In preparing for and conducting such interviews, investigating police officers should remember the importance of gathering physical evidence. The analysis of physical evidence may need to be completed before an interview can take place so that the planning for interview is properly informed. Physical evidence may or may not support the testimony of a witness and it can also guide the interviewer in their interview with the witness, as well as opening up new lines of enquiry. Additionally, the interview itself may guide further recovery or direct testing of physical evidence. In preparing for interviews with vulnerable and intimidated witnesses, investigating officers must ensure that their approach does not unwittingly compromise the recovery and protection of physical evidence. The recovery of physical evidence for subsequent analysis and interpretation by forensic scientists is potentially susceptible to contamination which may compromise later prosecutions. Contamination control procedures need to be robust, not only in terms of body fluids and DNA, but also fibres etc. The advice of a forensic scientist, competent in this field, should be sought when establishing, monitoring or reviewing such procedures.

Vulnerable witnesses

1.15 'Vulnerable' witnesses are defined by Article 4 of the 1999 Order, as amended, as:

- all child witnesses (under 18 years of age); and
- any witness whose quality of evidence is likely to be diminished because they have a:
  - mental disorder (as defined by the Mental Health (NI) Order 1986); or
  - significant impairment of intelligence and social functioning (witnesses who have a learning disability); or
  - physical disability or are suffering from a physical disorder.

1.16 Early identification of the individual abilities, as well as disabilities, of each vulnerable witness is important in order to guide subsequent planning. An exclusive emphasis on disability ignores the strengths and positive abilities that a vulnerable individual possesses. Vulnerable witnesses may have had social experiences that could have implications for the investigation and any subsequent court proceedings. For example, if the vulnerable adult has spent a long time in an institutional environment, they may have learned to be compliant or acquiescent. However, such characteristics are not universal and can be ameliorated through appropriate preparation and the use of special measures. The Protocol for Joint Investigation of Alleged and Suspected Cases of Abuse of Vulnerable Adult and the Protocol for Joint Investigation
by Social Workers and Police Officers of Alleged and Suspected Cases of Child Abuse – Northern Ireland both set out a framework for joint working in this complex area of practice and emphasise the need to involve all other relevant agencies in information sharing, early assessment and the planning process.

1.17 Not all people with disabilities will necessarily be vulnerable as witnesses and would not wish to be treated as such. It is therefore important that the views of individual witnesses who might fall into this category are taken into account.

**Intimidated witnesses**

1.18 ‘Intimidated’ witnesses are defined by Article 5 of the 1999 Order, as those whose quality of evidence is likely to be diminished by reason of fear or distress at the prospect of giving evidence.

1.19 In determining whether a witness falls into this category, the court should take account of:

- the nature and alleged circumstances of the offence;
- the age of the witness;
- where relevant:
  - the social and cultural background, and ethnic origins of the witness;
  - the domestic and employment circumstances of the witness; or
  - any religious beliefs or political opinions of the witness; and
- any behaviour towards the witness by:
  - the accused;
  - members of the accused person’s family or associates; or
  - any other person who is likely to be either an accused person or a witness in the proceedings.

1.20 Fear and distress for victims and witnesses may be increased by factors relating to their gender, age, marital status, family circumstances, sexual orientation, race, ethnicity, culture, religion, political opinions and/or disability. Training in equality and diversity including section 75 obligations under the Northern Ireland Act 1998 are likely to complement practice and decision making in this area.

1.21 Particular groups of victims and witnesses who are likely to benefit from the provisions under this Article include:

- those who have experienced domestic violence;
- complainants in cases of sexual assault (as defined by Article 5(4) of the 1999 Order);
• victims of, and witnesses to, homophobic crime, racially motivated crime and 
  crime motivated by reasons relating to religion;
• those who have experienced past or repeat harassment, stalking and bullying, 
  or repeat victimisation;
• those who self-neglect and self-harm;
• frail older persons;
• witnesses to murder and the families of murder and manslaughter victims; and
• those who are making allegations against professionals or carers.

1.22 Research suggests that sexual offences, assaults and those offences where the victim 
 knew the offender are particularly likely to lead to the intimidation of witnesses. In 
 addition, crimes which involve repeated victimisation, such as racial harassment and 
 stalking, are also particularly likely to lead to intimidation.

1.23 While the legislation distinguishes between vulnerable and intimidated witnesses, 
in respect of the criteria for their eligibility for special measures it is important to 
 recognise that:
• some witnesses may be vulnerable as well as intimidated (e.g. an elderly victim 
   of vandalism who has dementia on a housing estate); 
• other witnesses may be vulnerable but not subject to intimidation (e.g. a child 
   who witnesses a robbery in the street); and
• some witnesses may not be vulnerable but may be subject to possible 
   intimidation (e.g. a young woman who fears violence from her current or former 
   partner, or someone who has been the subject of a racial attack).

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

Special measures

1.25 It has long been recognised that many people who are the victims of, or witnesses 
 to, crimes find the ensuing process of investigation and trial difficult and stressful. 
 This affects the quantity and quality of the witness’s communication. The 1999 
 Order, as amended, introduced a range of measures that can be used to facilitate 
 the gathering and giving of evidence by vulnerable and intimidated witnesses. These 
 are collectively referred to as ‘special measures’ and are briefly outlined in Box 1.1 
 below and are described in detail in Chapter 6.
Box 1.1 Special measures available to vulnerable and intimidated witnesses by order of the court under the 1999 Order, as amended

**Article 11:** Screens may be used to stop the witness seeing the defendant.

**Article 12:** A live link can enable the witness to give evidence during the trial from outside the court through a live televised link (live link) to the courtroom. The witness may be either accommodated within the court building or in a suitable location outside the court. A direction for evidence to be given via live link may also provide for a supporter.

**Article 13:** Evidence given in private. Exclusion from the court of members of the public and the press (except for one named person to represent the press) may be considered in cases involving sexual offences or intimidation.

**Article 14:** Removal of wigs and gowns by judges and barristers in the Crown Court to make the courtroom appear less formal.

**Article 15:** The police interview can be visually recorded and played at the trial as the witness’s evidence in chief.

**Article 16:** Cross-examination and re-examination may be recorded in advance of the trial and then played at the trial. [Please note: this special measure is not yet available.]

**Article 17:** Examination of a witness through an intermediary. An intermediary may assist a witness, who has difficulty understanding questions and/or framing answers coherently, to give their evidence to the police and at court. This measure is available only to vulnerable witnesses. [Please note: this special measure is not yet available.]

**Article 18:** Aids to communication may be permitted to enable a witness to give best evidence whether through a communicator or interpreter, or through a communication aid or technique, provided that the communication can be independently verified and understood by the court. This measure is only available to vulnerable witnesses.

1.26 Pending the implementation of Article 17 (examination of witness through intermediary), the courts under their inherent jurisdiction can still grant the use of an intermediary. Appendix B provides details of an unreported judgment in Northern Ireland which would be of assistance to legal representatives and judges considering the need for and use of an intermediary prior to the commencement of Article 17.
1.27 The special measures for use at court are subject to application to the judge by the prosecution or defence before the trial. Special measures are not automatically available and are subject to the discretion of the court. In reaching a decision on whether the special measures application should be granted, the courts must take account of all of the circumstances of the case, including the wishes of the witness and whether or not the special measure in question is likely to inhibit the evidence being effectively tested by any party to the proceedings. In effect, three tests are applied as follows:

- whether the witness is vulnerable or intimidated;
- whether any of the special measures or any combination of them are likely to improve the quality of the witness’s evidence; and
- which of the available special measures are most likely to maximise the quality of the witness’s evidence.

1.28 Where a reference is made in the legislation to the ‘quality of a witness’s evidence’ for the purposes of defining a witness as vulnerable or intimidated, and in terms of access to special measures, it refers to the “completeness, coherence and accuracy” of the evidence and “coherence” refers to a witness’s ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively.

1.29 Investigators should establish at an early stage whether the witness is likely to qualify for a special measures direction and, if so, what particular measures, if any, will assist the witness to maximise the quality of their evidence. It should be noted that it does not necessarily follow that playing a video recorded interview as evidence in chief is going to be the best way for the witness to achieve their best evidence. In some cases, other special measures, such as live evidence in chief from behind a screen, may be of more assistance to the witness. It is essential that the police, social care agencies, the prosecution and defence, and also court officials, take account of the individual circumstances of each witness, together with their expressed needs and wishes, in order to provide support sufficient to enable witnesses to give their best evidence.

1.30 While it is important to establish at an early stage whether the witness is likely to qualify for special measures, it should be noted that the need for such measures may change from the time of the investigation to the time of the trial. The effect of this is that witnesses might be eligible for more or less support as time goes on, depending on changes in their circumstances. For example, in some circumstances, effective witness preparation might reduce the witness’s anxiety, therefore reducing the need for some or all of the special measures previously thought necessary. In other circumstances, the witness’s anxiety might increase
as the time of the trial approaches, particularly where intimidation or harassment occurs or is anticipated, therefore increasing the need for special measures. It is, therefore, important that all those involved in maintaining contact with the witness and preparing them to give evidence continue to liaise with the prosecution or the defence, as appropriate, to ensure that any changes of circumstance are carefully considered and taken into account as necessary.

1.31 The legislation also provides that if a witness gave video recorded evidence in chief on the grounds that they were under 18 years of age but subsequently turned 18, the video recording is still admissible as evidence.

Additional protection

1.32 As well as special measures provisions, the 1999 Order contains additional protection as follows:

- Articles 22 and 23: Mandatory protection of witness from cross-examination by the accused in person. An exception has been created which prohibits the unrepresented defendant from cross-examining vulnerable child and adult victims in certain classes of cases involving sexual offences.
- Article 24: Discretionary protection of witness from cross-examination by the accused in person. In other types of offences, the court has discretion to prohibit an unrepresented defendant from cross-examining the victim in person.
- Article 28: Restrictions on evidence and questions about the complainant’s sexual behaviour. The 1999 Order restricts the circumstances in which the defence can bring evidence about the sexual behaviour of a complainant in cases of rape and other sexual offences.

Reporting restrictions

1.33 Provisions for reporting restrictions are covered in sections 44 to 52 of the Youth Justice and Criminal Evidence Act 1999 (the 1999 Act). The 1999 Act covers England, Wales and Northern Ireland in this regard and provides for restrictions on the reporting by the media of information likely to lead to the identification of children under 18 and certain adult witnesses in criminal proceedings. Sections 46 to 52 in relation to adults have been commenced but sections 44 and 45 in relation to children under 18 have not been commenced.

1.34 The 1999 Act is not the only provision for reporting restrictions and it is important to remember that they may be available and appropriate in other circumstances, for example in relation to specific offences. For example, section 1 of the Sexual Offences (Amendment) Act 1992 imposes a mandatory reporting restriction for a
complainant’s lifetime once an allegation of a sexual offence has been made. This applies to children and adults. Also, Article 22 of the Criminal Justice (Children) (NI) Order 1998 gives the courts discretion to ban the reporting of details likely to lead to the identification of a child concerned with any criminal proceedings. There is a mandatory ban on such reporting in the youth court under Article 22(2) of the 1998 Order.

**Victim and witness support**

**1.35** Vulnerable and intimidated witnesses can receive support at all stages of the investigation. Four distinct roles or phases for witness support have been identified. They are:

- interview support – provided by someone independent of the police, who is not a party to the case being investigated. The supporter can sit in on the interview. They may be a friend or relative, but not necessarily so;
- pre-trial support – provided to the witness in the period between the interview and the start of any trial;
- court witness support – a person who may be known to the witness but who is not a party to the proceedings, has no detailed knowledge of the case or may have assisted in preparing the witness for their court appearance. A direction for evidence to be given via live link under may also provide for a supporter; and
- post-trial support – witnesses have considerable needs following a trial and it is important that practitioners are mindful of the information needs of victims and witnesses following a verdict and sentencing. The need for information is acute in discontinued cases or where lesser charges are proffered, particularly where a plea is accepted. Agencies providing support have a key role in identifying current need; linking the witness to appropriate sources of information; helping the witness to understand the outcome of proceedings; and connecting witnesses to sources of relevant ongoing support.
Part 2A: Planning and preparing for interviews

What follows in this part is a recommended procedure for planning and preparing for interviews with child witnesses. Thorough planning is essential to a successful investigation and interview. Even if concerns about the child’s safety necessitate an early interview, an appropriate planning session is required to identify key issues and objectives. Time spent anticipating and covering issues early in the criminal investigation will be rewarded with an improved interview later on. It is important that, as far as possible, the case is thoroughly reviewed before an interview begins to ensure that all issues are covered and key questions asked since the opportunity to do this will, in most cases, be lost once the interview has been concluded.

Part 2B covers the interview process itself. While what follows in this part and Part 2B should not be regarded as a checklist to be rigidly worked through, the sound framework that it provides should not be departed from by interviewers unless they have discussed and agreed the reasons for doing so with their senior manager or an interview adviser. Any such agreements and the rationale underpinning them should be recorded. It may subsequently be necessary to explain such departures at court.

While this chapter deals specifically with the interviewing of children, it should not be read and used in isolation from Chapters 3 and 4. This guidance has been written so that Chapters 2 - 4 form a complementary whole. For example, issues in relation to disability and intimidation will have an application across all vulnerable witnesses. Approaches that work well with children may work equally well with adults with learning disabilities and vice versa.

In preparing for interview, investigating officers must take note of the paragraph on gathering physical evidence in Chapter 1.
The importance of planning

2.1 The purpose of an investigative interview is to ascertain the child witness’s account of the alleged event(s) and any other information that would assist the investigation. A well-conducted interview will only occur if appropriate planning has taken place. The importance of planning cannot be overstated. The success of an interview and, therefore, an investigation could hinge on it. Even if the circumstances necessitate an early interview, an appropriate planning session that takes account of all the information available about the witness at the time and identifies the key issues and objectives is required. Time spent anticipating and covering issues early in the criminal investigation will be rewarded with an improved interview later on. It is important that, as far as possible, the case is thoroughly reviewed before an interview begins to ensure that all issues are covered and key questions asked, since the opportunity to do this will, in most cases, be lost once the interview has been concluded.

2.2 Although the Public Prosecution Service (PPS) is not part of the investigating team and does not direct the investigation, an early meeting between the police and PPS to discuss special measures may be appropriate. The police may also seek advice from the PPS at an early stage about any other evidential issues that may affect the way in which the investigation is conducted. In some exceptional cases, the PPS may select suitably qualified counsel to advise from a very early stage.

2.3 In some cases, it may useful to obtain the assistance of an interview adviser to develop a witness interview strategy (see National Investigative Interviewing Strategy, Association of Chief Police Officers 2009).

Initial contact with child witnesses

2.4 The need to consider a video recorded interview will not always be immediately apparent either to the first police officer who has contact with the child witness or to other professionals involved prior to the police being informed. Even where it is apparent, the need to take immediate action in terms of securing medical attention and making initial decisions about the criminal investigation plan might be such that some initial questioning is necessary.

2.5 Any initial questioning should be intended to elicit a brief account of what is alleged to have taken place. A more detailed account should not be pursued at this stage but should be left until the formal interview takes place. Such a brief account should include where and when the alleged incident took place and who was involved or otherwise present. This is because this information is likely to influence decisions made in respect of the following aspects of the criminal investigation plan:
• forensic and medical examination of the victim;
• scene of crime examination;
• interviewing of other witnesses;
• arrest of alleged offender(s); and
• witness support.

2.6 In these circumstances, any early discussions with the child witness should, as far as possible, adhere to the following basic principles:

• listen to the child;
• do not stop a child who is freely recalling significant events;
• where it is necessary to ask questions, they should, as far as possible in the circumstances, be open-ended or specific-closed rather than forced-choice, leading or multiple;
• ask no more questions than are necessary in the circumstances to take immediate action;
• make a comprehensive note of the discussion, taking care to record the timing, setting and people present as well as what was said by the witness and anybody else present (particularly the actual questions asked of the witness);
• make a note of the demeanour of the witness and anything else that might be relevant to any subsequent formal interview or the wider investigation; and
• fully record any comments made by the witness or events that might be relevant to the legal process up to the time of the interview.

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

2.7 Article 31 of the Criminal Evidence (NI) 1999 Order (the 1999 Order) provides that in principle “all persons are (whatever their age) competent to give evidence”. The Article qualifies this principle by saying that persons are incompetent as witnesses where the court finds that they are unable to understand questions put to them or unable to give answers to them which can be understood. However, Article 32(3) makes it clear that in considering this question a court must bear in mind the various special measures that are available under Articles 11 to 18 of the 1999 Order, as amended by the Justice Act (NI) 2011.

2.8 In the case of children, the Court of Appeal judgment in R v Barker [2010] EWCA Crim 4 makes it clear that “… although the chronological age of the child will inevitably help to inform the judicial decision about competency, in the end the decision is a decision about the individual child and his or her competence to give evidence in the particular trial.”.
2.9 Where a video recorded statement is to be played in court as evidence in chief, there is no need for the witness to be sworn. Article 33(2) and (3) of the 1999 Order expressly provide that such a video recorded statement, if admitted by the court as the evidence of the witness, shall have the same legal status as that witness’s direct oral testimony in court even where, if giving direct oral testimony in court, the witness would have been required to take an oath.

2.10 Where a witness is competent to give evidence, they are also compellable. This means that they can be legally required to attend trial. In general, however, the fact that a witness is compellable does not mean that they can be legally required to give any kind of preliminary statement to the police even the sort of statement that is made under this guidance.

2.11 It does not necessarily follow that because a witness is competent and compellable the PPS will insist on making them attend court to give evidence if unwilling to do so. The PPS is not legally required to call every piece of evidence available and, in some cases, may proceed without a particular witness’s evidence if they believe that they can secure a conviction without it. In cases where the PPS believes that the evidence of a particular witness is essential, the PPS may not proceed if they think that to do so would be particularly damaging to the witness (in such cases the child witness and their carer must be informed of the implications of this decision). In deciding whether to include a particular witness’s evidence, and whether to proceed with the case, the PPS will always take account of the wishes of the witness (although they will not necessarily defer to them). Police reports to the PPS should always include clear information about the wishes of the witness and, if appropriate, their parents or carers, about going to court. The PPS may in any event need to seek further information from the investigating team and should always be kept up-to-date throughout the case to ensure a continuous review.

2.12 A video recorded interview is usually only admissible as evidence in chief at trial where the person who made it is “available for cross-examination”. However, there are exceptions to this general rule. The judge has discretion to allow the court to hear the pre-trial statements of witnesses who are unable to give evidence for various specified reasons. These include the fact that the witness is dead, “by reason of his bodily or mental condition unfit to attend as a witness” or does not give evidence at trial “through fear or because he or she is kept out of the way”. It must be remembered, however, that the judge has the final word on whether or not the video recorded statement will be admitted.
Planning information

Overview

2.13 The planning phase of an interview with a child witness involves some consideration of three types of information:

- information about the witness;
- information about the alleged offence(s); and
- information important to the investigation.

2.14 At this stage, interviewers need to have differing amounts of knowledge about each type of information. In a general sense, they need to know as much as is possible in the circumstances about the child witness, and a little about the alleged offence and information important to the investigation.

Definition

2.15 Article 4 of the 1999 Order, as amended, defines child witnesses as being under the age of 18.

Preliminaries

2.16 A consideration of child protection issues, consent, medical examinations and psychiatric/psychological assessments necessarily informs the planning process as it applies to child witnesses. Each of these matters will be considered in turn prior to considering the information that should ideally be obtained before planning an interview with a child.

The context of the allegation: the intersection of the child protection and criminal justice systems

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

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

2.18 In addition, any relevant information gained during the interview can also be used in relation to any subsequent actions to safeguard and promote the child’s welfare and, in some cases, the welfare of other children.
2.19 Some information may be common to both primary purposes but there will be issues specific to each to be considered at the planning phase. The video interview may additionally serve a useful purpose in informing any subsequent civil childcare proceedings or in disciplinary proceedings against adult carers (e.g. in residential institutions), and its potential value for these should not be overlooked.

2.20 At a minimum, such as instances in which the child has no previous contact with the public services, the investigating team in child protection cases should include representatives from both the police and Health and Social Care. It may also be important to involve GPs or educational professionals who know the child. For children who have had past or current involvement with Health and Social Care, useful information may already have been provided from different professionals or may be obtained from other adults who know the child (e.g. parents, carers, teachers, educational psychologists, youth workers, occupational therapists), and it may be that other individuals are offered a more active role in the planning process for the investigation (e.g. facial composite operators where the suspect is not known to the child).

2.21 Whenever suspicion has arisen that a child has suffered, or is likely to suffer, significant harm, there will be a strategy discussion or meeting involving Health and Social Care, the police and other professionals as appropriate, e.g. paediatrician, child and adolescent mental health services (Co-operating to Safeguard Children, DHSSPS). If enquiries under Article 66 of the Children’s (NI) Order 1995 are pursued following the strategy discussion/meeting then the Initial Assessment undertaken using the UNOCINI (Understanding the Needs of Children in Northern Ireland) Framework (see Appendix C) will provide considerable information about the child and their carer(s). The investigative interview and criminal investigation will run alongside such Article 66 enquiries and the interviewing team may, therefore, have access to detailed information about the child which can be drawn on when planning and conducting the interview, depending on the exact timing of the video interview in relation to the Article 66 enquiries.

2.22 Where it has been agreed by the police and children’s social care in a strategy discussion/meeting that it is in the best interests of the child that a full criminal investigation be carried out, the police are responsible for that investigation, including any investigative interview (video recorded or otherwise) with the victim. Having responsibility for the criminal investigation does not mean that the police should always take the lead in the investigative interview. Provided both the police officer and social worker have been adequately trained to interview child witnesses in accordance with the guidance set out in this document, there is no reason why either should not lead the interview. The decision as to who leads the interview
should depend on who is able to establish the best rapport with the child. In some cases, after joint consultation, the interview itself may be conducted by the police alone (with Health and Social Care agreement and with reference to the Protocol for Joint Investigation by Social Workers and Police Officers of Alleged and Suspected Cases of Child Abuse - Northern Ireland). In circumstances where a social worker leads the interview, the police should retain their responsibility for the criminal investigation by ensuring that the interview is properly planned and that the police officer has an effective role in monitoring the interview. Similarly, where a police officer leads the interview, Health and Social Care should retain its duty to make enquiries under Article 66 by ensuring that the interview is properly planned and that the social worker has an effective role in monitoring the interview.

2.23 Research has shown that too often the views and opinions of children and young people are ignored or marginalized in the planning process. Wherever possible, and where practicable, older children and young people in particular should be consulted about matters appropriate to their age and understanding, and contribute to the planning and preparation for interview (e.g. when and where the interview takes place, who is present, who conducts the interview). It is, however, important to honour any commitments made to the child. The strategy agreed for interviewing a child should be noted in writing by the investigators concerned (see Form PJI4 of the Protocol for Joint Investigation by Social Workers and Police Officers of Alleged and Suspected Cases of Child Abuse – Northern Ireland).

2.24 Enquiries should be carried out in such a way as to minimise distress to the child, and to ensure that families are treated sympathetically and with respect. The decision as to whether to conduct a joint investigative interview or joint visits should be determined by what is in the best interests of the child, for example by limiting the number of occasions that the child has to relate an account of what has happened to them or reducing the frequency of agency visits to the child’s home. Investigators should consult safeguarding children procedures about how enquiries relating to children suffering or likely to suffer significant harm (under Article 66) and associated criminal investigations should be conducted and the circumstances in which joint enquiries are necessary and/or appropriate.
2.25 Different circumstances experienced by the child prior to the interview will have implications both for the amount of knowledge that may already be available about the child to be shared between agencies, and subsequently for the manner in which any investigative interview is planned and proceeds:

- some children will be unknown to health and social care but known to their GP, health visitor or school;
- some children may not be known health and social care but may be known, for example, to child and adolescent mental health services or education professionals because of emotional or behavioural problems, or special educational needs; or
- some children will be known to health and social care as open cases or as previously open cases, as well as to health and education services.

2.26 Whatever the child’s circumstances, the police officer, the children’s social care worker and any other members of the investigating team should give a proper explanation of their roles to the child and their carer. The child’s knowledge and understanding should be monitored throughout the investigation.

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

2.28 Children who have previous experience of public services may be more knowledgeable about the roles of different personnel, though their experiences will have varied depending on their individual circumstances. However, assumptions should not be made about a particular child’s level of knowledge of public service personnel, especially children’s social care workers, who may have been involved with the family for a number of possible reasons (e.g. children in need services, services for disabled adults or adults with mental health problems). If there have been concerns about a child’s safety and/or welfare or current concerns have resulted in the consideration of an investigative interview, an initial assessment of the child’s needs and their family members will have already been undertaken by the relevant Health and Social Care Trust. The child’s and/or the family’s experiences and perceptions, both positive and negative, of any previous interventions may influence how receptive they are to the investigative process and may also affect the child’s response in an interview.
2.29 Consideration should be given to holding a discussion between the investigating officer and the PPS to discuss what measures might be needed to assist the witness before and during the trial.

Consent

General principles

2.30 When assessing how a child’s evidence should be obtained interviewers should:

• consider each child as an individual;
• assess the child’s individual needs whatever the offence;
• take account of the following characteristics of the child:
  - age;
  - gender;
  - culture;
  - religion;
  - physical and/or learning disability; and
  - confidence and developmental level; and
• consider the views of the child and their carer.

2.31 When considering the needs of child witnesses interviewers should NOT:

• assume that an older child will necessarily be more confident than a younger one;
• assume that an older child will always want to give evidence live in the court room; and
• make assumptions based on the child’s demeanour (for example, some children may behave with a degree of bravado even though they are actually experiencing a great deal of angst at the prospect of giving evidence).

2.32 It is important that the special measures proposed are tailored to meet the individual needs of the witness rather than being based on the nature of the offence. In no circumstances should it be assumed that all child witnesses are the same and they will want to give evidence by video recorded statement and live link.

2.33 It is not uncommon for a child witness to change their views about giving evidence using particular special measures. Therefore, special measures discussions should be ongoing and discussed at the police interview stage, before submission of a special measures application and reviewed again after a pre-court familiarisation visit.
Informed consent and the child witness opt out

2.34 The law presumes that child witnesses under 18 will normally give their evidence outside the courtroom by playing a video recorded interview as evidence in chief and cross-examination via live link unless this will not improve the quality of their evidence. However, subject to the agreement of the court, children may opt out of giving their evidence by either a video recorded interview as evidence in chief or by means of live link, or both. The process of obtaining informed consent and explaining the ‘opt out’ can be summarised as follows:

- explanation of video recorded evidence in chief;
- explanation to the effect that children usually give their evidence in chief by way of video recorded interview but that it is a matter of choice and that they can ‘opt out’ if they wish to do so; and
- if the child exercises their choice to opt out they should be told that:
  - a written record will be made of the interview in the form of notes and a statement prepared for them to sign as appropriate; and
  - the court will then presume that they will give evidence in chief first by means of live link unless they opt out with the court’s permission and then from behind screens unless they opt out.

Explanation of video recorded evidence in chief

2.35 In coming to a view about video recorded evidence in chief children and/or the carers who have parental responsibility for them should be given enough information for them to come to an informed decision. Interviewers should, therefore, take steps to explain the purpose of any proposed video recorded interview to the child (and/or their carers) at a level appropriate to their age and understanding. Such an explanation should include the following:

- the benefits/disadvantages of having or not having the interview video recorded;
- who may see the video recorded interview (including the alleged offender both before the trial and at court); and
- the different purposes to which a video recorded interview may be put (e.g. if it appears the video may be useful in disciplinary proceedings against a member of staff who is suspected of abusing or neglecting a child in their care).

2.36 The child should be advised that, should the case proceed, whether a video recording is made or not, they may be required to attend court to answer further questions directly (e.g. cross-examination). A live link facility will normally be available to enable the witness to give best evidence at court. There is a
presumption that this aid will normally be required by the child. The existence of a video recorded interview does not by itself guarantee that it will be used as evidence in chief as this will be a decision for the court.

2.37 Written consent to be video recorded is not necessary from the child. However, it is unlikely to be practicable or desirable to video record an interview with a reluctant or hostile child. The interviewers are responsible for ensuring that, as far as possible, the child is freely participating in the interview and not merely complying with a request from adult authority figures.

The child witness opt out

2.38 If a child wishes to opt out of video recorded evidence in chief, they may give all their evidence by live link from outside the courtroom, if the court agrees. The child may also opt out of live link evidence, if the court agrees but the law then presumes that they will give evidence in the court room behind a screen. Should they not wish to use a screen, they may also be allowed to opt out of using it. Ultimately this is a matter for the court to decide but it must take the witness' views into account when making its decision on whether to approve an opt out request.

When interviewers do not consider a video-recorded interview to be appropriate

2.39 If, after having considered the circumstances of the child, an interviewer comes to the conclusion that a video recorded interview is not the best way of presenting the child’s evidence to a court they should explain this to the child and/or their carer. It is important that the explanation is based on a consideration of the circumstances. A full written record should be made of any such explanation.

2.40 If a child and/or their carer disagrees with an interviewer’s explanation for concluding that a video recorded interview is not the best way of presenting the child’s evidence, a discussion between the police and the PPS should take place ideally before the interview. If the prosecutor agrees with the interviewer’s view, it should be explained to the child and/or their carer and no video recorded interview should take place. If it is not practical to hold a meeting with the PPS before the interview, it should be video recorded and the child and/or their carer informed that advice will sought from the PPS at the earliest opportunity.
Informing the child’s carers

2.41 It is generally presumed that the parents or carers of a child witness will be informed of any interview before it takes place. In exceptional circumstances, however, it may be necessary to interview a suspected child victim without the knowledge of the parent or carer. Such circumstances include the possibility that a child would be threatened or otherwise coerced into silence; a strong likelihood that important evidence would be destroyed; or that the child in question did not wish the parent to be involved at that stage, and is competent to take that decision. Proceeding with the interview in the absence of parental knowledge needs to be carefully managed in interventions with the family by the local children’s services authority, but may be necessary for example where children are at risk of honour-based violence or forced marriage.

Medical examinations

2.42 Consideration must be given to the timing, purpose and content of any medical examination or paediatric evaluation in relation to the interview. Sometimes the medical examination will have preceded the interview, e.g. after ‘acute’ abuse or if the examination needs to take place before a laboratory closes (e.g. identification of sexually transmitted diseases). The Forensic Medical Officer may be aware of problems that might be making the child uncomfortable, such as soreness or vaginal discharge, and/or may suggest the significance of any symptoms reported by the child at the time of the abuse or later. When examining children, the Forensic Medical Officer should take care to avoid asking leading questions or anticipating the investigative interview. They should, however, make contemporaneous notes of any spontaneous comments by the child concerning the origins or circumstances giving rise to the evaluation or examination. On other occasions, the medical examination will be after the interview. In cases where a medical examination is a possibility, a discussion should take place with the paediatrician or Forensic Medical Officer who will undertake this to ensure that expectations of possible outcomes of the examination are realistic and appropriate. It is essential that all notes and records concerning medical examinations and decisions made in the course of investigations are preserved as they may be required for disclosure as part of any subsequent criminal or civil court proceedings.
2.43 Consideration should also be given to the identity of the examiner. The evaluation should only be carried out by suitably qualified and experienced clinicians, and should not be confined solely to examination of the child’s genital and/or anal areas. A child who is concerned that abuse may have damaged them in some way can be reassured by a sensitive examination. Parents will usually require similar reassurance. Conversely, children who do not allege penetration should not receive unnecessary medical examinations.

Psychiatric/psychological assessment interviews

2.44 The role of child and adolescent mental health specialists should be considered where appropriate. Where assessment interviews by a psychiatrist or a psychologist take place, their primary purpose is to inform the childcare planning process. For this reason, they will not resemble interviews conducted in accordance with this guidance. However, such assessment interviews can also be of assistance to the criminal investigation, including the planning process for a video recorded interview. The limits and expectations of such assessments should be agreed with the psychiatrist or psychologist prior to the assessment taking place.

Information about the child witness

2.45 Consideration needs to be given to a number of factors pertaining to the child, their family and background in the planning of the investigation and interview. Some of this information may exist as a result of an Initial or Pathway Assessment having been undertaken using the UNOCINI Framework (see Appendix C) or from any pre-interview assessment. Additional information may be provided by other professionals consulted or involved in the planning process. Other information may best be provided by the child’s parent(s) or carer(s). A checklist of some of the desirable information is provided in Box 2.1 and again interviewers may find the UNOCINI Guidance useful when considering the child in their family context. The Thresholds of Need Model (UNOCINI) provides detailed descriptions of the different levels of children’s needs. This model is used to enable practitioners and agencies to understand and communicate better the needs of children, and any concerns relating to children. The interviewing team will need to balance the need to obtain as much of this information as possible with their desire to conduct the interview as soon as is practicable.
Box 2.1 Checklist of desirable information

Factors to be considered at the planning phase include:

- child’s age;
- child’s race, culture, ethnicity and first language;
- child’s religion;
- child’s community or (perceived) political background;
- child’s gender;
- child’s sexuality (where the child is old enough for this to be relevant);
- child’s preferred name/form of address;
- any physical and/or learning impairments;
- any specialist health and/or mental health needs;
- any medication being taken and its potential impact on any proposed interview;
- child’s cognitive abilities (e.g. memory, attention);
- child’s linguistic abilities (e.g. how well do they understand spoken language, how well do they use it? An intermediary may be able to help improve the quality of evidence of any child who is unable to detect and cope with misunderstanding, particularly in the court context, i.e. if a child seems unlikely to be able to recognise a problematic question or tell the questioner that they have not understood, assessment by an intermediary should be considered);
- child’s current emotional state and range of behaviours;
- likely impact on the child’s behaviour of recalling traumatic events;
- child’s family members/carers and nature of relationships (including foster or residential carers, or is the child a young carer?);
- child’s relationship to alleged perpetrator;
- child’s overall sexual education, knowledge and experiences;
- has the child been subject to sexual exploitation?;
- types of discipline used with the child (e.g. smacking, withholding privileges);
- bathing, toileting and bedtime routines;
- sleeping arrangements;
- any significant stress(es) recently experienced by the child and/or family (e.g. bereavement, sickness, domestic violence, job loss, moving house, divorce etc.);
- current or previous contact with public services (including previous contact with the police or health and social care); and
- any other relevant information or intelligence known.
2.46 Box 2.1 is not comprehensive. Investigators will develop their own agenda in the light of their experience or knowledge of the individual child, and all other relevant circumstances. Information on these issues will inform decisions about the structure, style, duration and pace of the interview. Children of the same age can differ widely in their development particularly if they have been abused or neglected. Children may also react to the investigative process itself because it is unfamiliar, and aspects such as a medical examination or personal questions may be particularly difficult and/or upsetting for the child (although a sensitively conducted medical examination or paediatric evaluation can be reassuring). The interviewer will need to pitch the language and concepts used to a level that the witness can clearly understand while the focus should be on recognising and working with the witness’s capabilities rather than limitations.

2.47 Particular care and preparation needs to be taken in the planning of the investigation and interview of young people who may have been subject to sexual exploitation. Few young people will ever make a disclosure or statement to this effect. Their reluctance to do so may be for various reasons including being fearful of what might happen to them should they disclose; misplaced loyalty towards those abusing or exploiting them; or failure to view this as abuse given the grooming techniques frequently employed by the perpetrators or their often traumatic early childhood experiences. It is often only after a number of months or years have elapsed before a young person can see the abusive intent behind their experiences. Many young people are reluctant to come forward and go through a period of turmoil before deciding if they should disclose the abuse. If they do, then it is crucial that this window of opportunity is taken immediately as experience has shown that when this has not happened this opportunity can often be lost because of the young person’s fear of their abusers and/or mistrust of authorities. Specialist training and support should be sought for interviewers working with children who may have had these experiences. Agencies should be aware that, even where the young person makes a complaint, they may retract their statement, claiming that they have been lying. Sometimes these young people may appear compliant in the abuse and may actually defend the alleged abuser. This can be a result of both the sophisticated grooming techniques used by abusers and the level of dependency created by the abuser.
Previous interventions

2.48 In cases where the child is a suspected or known victim of previous abuse, the investigating team may find it helpful to address the issues listed in Box 2.2 below.

Box 2.2 Checklist of additional factors

Additional factors to be addressed in cases where the child is known or suspected to have been previously abused include:

- the detailed nature of the child’s attachment to their parents;
- the age and developmental level of the child at onset of abuse;
- abuse frequency and duration;
- whether different forms of abuse coexist;
- the relationship of the child to the alleged abuser(s);
- the type and severity of the abusive act;
- the existence of multiple perpetrators;
- the degree of physical violence and aggression used;
- whether the child was coerced into reciprocating sexual acts;
- the existence of adult or peer supports;
- whether or not the child has been able to tell someone about the abuse;
- the parental reaction to disclosure/allegation; and
- previous interventions.

Race, gender, culture and ethnic background

2.49 The child’s race, gender, culture, ethnicity, first language, religious and political beliefs must be given due consideration by the interviewing team. They have a responsibility to be informed about and take into account the needs and expectations of children from the specific minority groups in their local area. The interviewing team’s knowledge of the child’s religion, culture, customs and beliefs may have a bearing on their understanding of any account given by the child including the language and allusions the child may make, for example, to reward and punishment. In a Northern Ireland context, it is always important to be alert to issues which may relate to sectarianism.
2.50 The interviewing team needs to bear in mind that some families and children may have experienced discrimination and/or oppression through their contact with government agencies and local authorities. Their experiences of racism, for example, may result in them distrusting the professionals involved in an investigative interview. Asylum-seeking children and child refugees may have a fear of disclosing abuse because of what may happen to them and their family.

2.51 It is also important that the interviewing team considers the complexities of multiple discrimination, for example in the case of a child from a minority ethnic community who has a disability, and of the child’s experiences of discrimination. The specific needs and experiences of dual-heritage children must also be taken into account.

2.52 Some possible relevant considerations include the following although this list is not exhaustive:

- customs or beliefs that could hinder the child from participating in an interview on certain days (e.g. holy days) or may otherwise affect the child’s participation (e.g. if older children are fasting);
- the relationship to authority figures within different minority ethnic groups, for example, children from some cultures may be expected to show respect to authority figures by not referring to them by their first names, and by not correcting or contradicting them;
- the manner in which love and affection are demonstrated;
- the degree to which extended family members are involved in caring for the child;
- the degree of emphasis placed on learning skills in independence and self care; and
- issues of shame, for example carers in some cultures may inhibit the child from talking about a sexual assault for fear of shaming the family.

2.53 A child should be interviewed in the language of their choice. If the child is bilingual then this may require the use of an interpreter. The interpreter should normally be selected from the PSNI register of translators and interpreters.

Other life experiences

2.54 Where the child may have experienced abuse, neglect, domestic violence and/or discrimination based on race or disability, the interviewers must consider its potential impact on the interview. There is no single ‘diagnostic’ symptom of abuse or discrimination but some of the possible effects on children are set out in Boxes 2.3 to 2.6. When considering the possibility of abuse or discrimination, it must be understood that children who have experienced it will not necessarily exhibit all, or indeed any, of the behaviours set out in these boxes.
Box 2.3  Some possible effects of abuse and neglect

These include:

• fear:
• behavioural problems;
• sexualised behaviours;
• poor self-esteem;
• post-traumatic stress disorder;
• self-injury and suicidal behaviour;
• increased emotional problems, e.g. anxiety and depression;
• decreased cognitive functioning;
• negative social behaviour, e.g. increased aggression, non-compliance, anti-social behaviour and criminal activity; and
• lower intellectual functioning and academic achievement.

Box 2.4  Some possible effects of racism

These include:

• fear;
• poor self-esteem;
• fear of betrayal of community;
• mistrust of people from outside own community;
• difficulty in establishing positive (racial) identity; and
• increased vulnerability to racist abuse.
Box 2.5  Some possible effects of discrimination based on disability
These include:
- decreased autonomy, experience of being patronised by able-bodied people;
- increased dependency;
- difficulty in establishing positive self-identity;
- experience of being isolated (geographical, physical, social);
- experience of being patronised by people who do not have a disability;
- experience of being treated as a ‘voiceless object’;
- feelings of being perceived as ‘asexual’; and
- increased vulnerability to abuse.

Box 2.6  Some possible effects of domestic violence
These include:
- fear for safety of self and others in family;
- sadness/depression, possibly reflected in self-harm or suicidal tendencies;
- anger, which may be demonstrated in aggressive behaviour;
- negative impact on health (e.g. asthma, eczema, eating disorders or developmental delays); and
- negative impact on behaviour (e.g. aggression, lack of concentration, truanting).

2.55 It is important for interviewers to consider these matters in relation to each individual child rather than work from assumptions based on stereotypes. Being sensitive to such factors should contribute towards a safe and non-judgmental interview environment for the child. It is essential that the interview process itself does not reinforce any aspects of discriminatory or abusive experiences for the child.
Assessment prior to the interview

2.56 Interviewers may often decide that the needs of the child and the needs of criminal justice are best served by an assessment of the child prior to the interview taking place particularly if the child has not had previous or current involvement with social services or other public services. Such an assessment should be considered for any child as it offers the opportunity to explore a number of general factors (see Box 2.7 below).

**Box 2.7 General factors to be explored via an assessment prior to interview**

These include:

- the child’s preferred name/form of address;
- the child’s ability and willingness to talk within a formal interview setting to a police officer, social worker or other trained interviewer;
- an explanation to the child of the reason for an interview;
- the ground rules for the interview;
- the opportunity to practise answering open questions;
- the child’s cognitive, social and emotional development (e.g. does the child appear ‘streetwise’ yet in reality have limited understanding?);
- the child’s use of language and understanding of relevant concepts such as time and age. (As a general rule of thumb, an intermediary may be able to help improve the quality of evidence of any child who is unable to detect and cope with misunderstanding, particularly in the court context, i.e. if a child seems unlikely to be able to recognise a problematic question or tell the questioner that they have not understood, assessment by an intermediary should be considered.);
- any special requirements the child may have (e.g. do they suffer from separation anxiety or have an impairment, are they known to have suffered past abuse or to have previously undergone an investigative interview?);
- any apparent clinical or psychiatric problems (e.g. panic attacks, depression) which may impact on the interview, and for which the child may require referral for a formal assessment; and
- an assessment of the child’s competency to give consent to interview and medical examination.
2.57 Interviewers must be careful to balance the need to ensure that the child is ready and informed about the interview process against the possibility of allegations at trial of coaching or collusion (for further discussion of coaching see Appendix D).

2.58 The UNOCINI Framework for assessing children may be helpful. A full written record of any such assessment(s) must be kept (on form PJI3 where the assessment is conducted as part of a Joint Protocol investigation into alleged or suspected child abuse). This record should be revealed to the PPS under the requirements of the Criminal Procedure and Investigations Act 1996.

2.59 Interviewers should have clear objectives for assessment(s) prior to interview and should apply this guidance on talking with children during such assessment. For example, they should avoid discussing substantive issues (in any detail) and must not lead the child on substantive matters. Interviewers should never stop a child who is freely recalling significant events. Instead, the interviewers must make a full written record of the discussion, making a note of the timing and personnel present, as well as what was said and in what order. The interviewers should begin by explaining the objectives of the interview to the child: “We will talk about the things you are concerned about tomorrow. Today, I want to get to know you a bit better and explain what will happen if we do a video interview.”.

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

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

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

2.63 It is preferable (but not always necessary or essential) that the interviewer knows little detail of the alleged offence(s) for the purposes of the interview. However, in order to plan and prepare for the interview, the interviewer will need a little general knowledge about:

- the type of alleged offence(s);
- the approximate time and location of the alleged offence(s);
- the scene of the alleged offence(s) (note that this should only be enough general knowledge to help the interviewer understand what might be said during the interview); and
- how the alleged offence(s) came to the notice of the police.

2.64 Where the interviewer is also the investigating officer and has been involved in a multi-agency strategy discussion (Co-operating to Safeguard Children, DHSSPS, 2003 - paragraphs 5.15 -5.19; Protocol for Joint Investigation by Social Workers and Police Officers of Alleged and Suspected Cases of Child Abuse – Northern Ireland 2004 – paragraphs 2.30 – 2.38), it is accepted that circumstances and practical resource considerations might be such that they are likely to know more about the alleged offence(s) than is set out above. In this situation, the interviewer should try as far as possible to avoid contaminating the interview process with such knowledge.

2.65 It is also accepted that circumstances and resource considerations might be such that it could be necessary for an interviewer to interview more than one witness during the course of an investigation. In such a situation, care should be taken to avoid asking questions of a witness based on the responses of previous interviewees because this could contaminate the witness’s account.

2.66 Nothing in this guidance is intended to limit operational decision-making in cases where the nature of the investigation, the context of the interview and the circumstances as they are known at the time make it necessary for interviewers to have a more detailed knowledge of the offence than the general information outlined in the paragraphs above.
Information important to the investigation

2.67 While obtaining an account of the alleged event is essential, other matters might need to be covered during the interview in order to progress the investigation. These matters can be regarded as ‘information important to the investigation’. Obtaining a complete picture of all the relevant issues within an interview is essential because it will provide the investigating officer with the information necessary to conduct a comprehensive investigation. It could also prove beneficial in discussions with the PPS if the subject of witness assessment is raised. Information important to the investigation falls into two categories: general investigative practice and case-specific material. Where such information has not already been covered as part of the child’s account, interviewers should consider introducing it either in the latter part of the questioning phase or in a subsequent interview session, depending on the complexity of the case and what is alleged to have been seen by the witness.

2.68 The amount of knowledge that the interviewer has about information important to the investigation prior to the interview depends on what they know about what is alleged to have been witnessed by the child. It is preferable that the interviewer knows little detail of the alleged offence(s) before the interview. Only a little knowledge that could form the basis of potential questions about information important to the investigation is, therefore, likely to be available to the interviewer at this point in time. However, while planning the interview, the interviewer should apply what they know of the alleged offences to determine the areas of general investigative practice that might need to be covered in the interview. More case-specific material could either be made available to the interviewer (from the investigating officer or the second interviewer) after an attempt has been made to elicit and clarify the child’s account, or be included in the planning information for a later interview to avoid potential contamination of the process.
Information important to the investigation relating to general investigative practice

2.69 Information important to the investigation relating to general investigative practice includes:

- points to prove any alleged offence(s);
- information that should be considered when assessing a witness’s identification evidence, as suggested in R v Turnbull and Camelo ([1976] 63 Cr App R 132) and embodied in the mnemonic ADVOKATE (Practical Guide to Investigative Interviewing (National Centre for Policing Excellence, 2004)):

  A Amount of time under observation
  D Distance from the eyewitness to the person/ incident
  V Visibility – including time of day, street lighting, etc.
  O Obstructions – anything getting in the way of the witness’s view
  K Known or seen before – did the witness know, or had they seen, the alleged perpetrator before?
  A Any reason to remember – was there something specific that made the person/incident memorable?
  T Time lapse – how long since the witness last saw the alleged perpetrator?
  E Errors or material discrepancies;

- anything said by the witness to a third party after the incident (evidence of first complaint etc.); and
- any other witnesses present.

2.70 This is not intended to be an exhaustive list. The nature of the information important to the investigation pertaining to general investigative practice varies according to the circumstances of the case.

Information important to the investigation relating to case-specific material

2.71 Information important to the investigation relating to case-specific material includes:

- how and where any items used in the commission of the offence (e.g. clothing, vehicles, weapons, cash, documents, other property) were disposed of if the child might have some knowledge of this;
- access by the young person and suspect to electronic media including computers and mobile telephones;
• relevant financial transactions by the young person and suspect;
• any background information relevant to the child’s account (e.g. matters that might enhance or detract from the credibility of the child’s evidence such as the amount of any alcohol consumed);
• any lifestyle information relevant to the child’s account;
• where the child has knowledge of an alleged victim or a suspected perpetrator, an exploration of their relationship, background history, places frequented and any events related or similar to the matter under investigation; and
• any risk assessment issues that the child might know about that concern the likely conduct of the alleged perpetrator, family or associates.

2.72 This is not intended to be an exhaustive list. The nature of any case-specific material varies according to the circumstances of the alleged offence, the nature of any relationship between the child and the alleged perpetrator, and what is alleged to have been seen, heard or otherwise experienced. Significant evidential inconsistencies and significant evidential omissions (case-relevant information) are discrete categories of case-specific material.

Significant evidential inconsistencies

2.73 During the course of an investigation it may be necessary to ask a child to explain a significant evidential inconsistency between what they have said during the interview and other material gathered during the course of the investigation. Such inconsistencies would, for example, include significant differences between the account provided by the child during the interview and:

• what the child is reported to have said on a previous occasion;
• the accounts of other witnesses; and
• injuries sustained by either the alleged victim or the alleged offender.

2.74 There are a number of reasons for significant evidential inconsistencies between what a child says during an interview and other material gathered during the course of an investigation. Many of these reasons are innocent in nature (e.g. genuine mistakes by the child or others stemming from a memory-encoding or recall failure, or subconscious contamination of their memory by external influences) but occasions may arise where the child is motivated to either fabricate or exaggerate their account of an event.
2.75 Whatever the reason for the significant evidential inconsistency, occasions may arise where it is necessary to ask the child to explain it. The following principles should be taken into account when considering whether, when and how to solicit such an explanation:

- explanations for evidential inconsistencies should only be sought:
  - where the inconsistency is a significant one;
  - after careful consideration has concluded that there is no obvious explanation for them; and
  - after the child's account has been fully explored, either at the end of the interview or in a further interview, as appropriate;
- interviewers should always be aware that the purpose of asking a child to explain an evidential inconsistency is to pursue the truth in respect of the matter under investigation; it is not to put pressure on a child to alter their account;
- explanations for evidential inconsistencies should take account of the extent to which the child may be vulnerable to suggestion, compliance or acquiescence; and
- questions intended to elicit an explanation for evidential inconsistencies should be carefully planned, phrased tactfully and presented in a non-confrontational manner.

2.76 The intermediary's advice will be helpful when considering whether, when and how to solicit an explanation for significant evidential inconsistencies.

Significant evidential omissions

2.77 During the course of an investigation, it may be necessary to ask a child about relevant information that they have not mentioned in their account. This may arise, for example, where others say that the alleged offender was carrying an object, or the alleged offender’s behaviour was unusual, or that there was something particular about the alleged offender’s description or vehicle, but this is not mentioned by the child. There are a number of reasons why this type of information can be omitted from an account and situations may arise where it is important to seek an explanation from the child. In these circumstances, it may be necessary to ask a question to establish whether the child has knowledge of the information. Such a question should only be asked after the child’s account has been fully explored at the end of the interview (or in a further interview if necessary).
2.78 When planning such a question, the interviewer should consider:

- whether the information omitted by the child is likely to be important enough to be worthy of explanation;
- the extent to which the child may be vulnerable to suggestion, compliance or acquiescence; and
- which type of question is most likely to elicit the information in a manner least likely to have an adverse effect on the value of any answer.

2.79 A plan for soliciting an explanation for the omission of case-relevant information from a child’s account must take account of the reliability of any answer. For example, a useful starting point might be to ask the child a specific-closed question such as: ‘What else can you tell me about the incident?’ If the child’s answer:

- includes the case-relevant information but lacks sufficient detail, the interviewer should ask the child to provide a more detailed response by means of an open question (e.g. ‘Tell me about…’). When the case-relevant information has been covered, the child should be tactfully asked to explain its omission from their account unless the reason for its omission is apparent from the child’s response or the circumstances of the case; or
- does not include the case-relevant information, a further decision will need to be made as to whether it is necessary to ask a question that might be regarded as leading (e.g. ‘Do you recall seeing/hearing…?’). It should be noted that if the answer to such a leading question contains the case-relevant information, it is likely to be of limited evidential value. The evidential value of such an answer may, however, be enhanced if the interviewer then asks the child to provide a more detailed response by means of an open question (e.g. ‘Tell me about…’) followed by questions intended tactfully to elicit an explanation for its omission from their account (unless the reason for the omission is apparent from the child’s response or the circumstances of the case).

2.80 Where the child cannot recall the case-relevant information, this may be due to not attending to the information or to memory loss. Further reading on case-relevant information can be found in The Evaluation of the Investigation and Legal Process Involving Child Abuse Offences to Establish a Model of Investigation for Investigators by K.B. Marlow (unpublished MSc thesis, Portsmouth, 2002).
Using the planning information

Overview

2.81 The planning information should be used to:

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

Aim and objectives

2.82 The aim of the interview should be to achieve all the objectives that are set for it while being as concise as reasonably possible.

2.83 Setting clear objectives is important because they give direction to the interview and contribute to its structure. The interview objectives should focus on:

- the alleged incident or event(s); and
- any case-specific information important to the investigation.

Techniques

2.84 The kind of techniques used within the phased structure will vary according to what is known about both the child and the offence when planning the interview as well as how the child behaves and what emerges during the interview itself. For example, it might be productive to make use of some of the cognitive procedures referred to in the relevant paragraphs within the phased interview approach with a witness who is able and willing to participate in the process. On the other hand, such techniques are unlikely to be productive with a witness who is less cooperative and hostile, and a more managed communication is necessary.
How the interview is to be recorded

2.85 The decision whether or not to video record an interview should take into account:

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

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

- the individual child’s circumstances, current or previous contact with public services, previous concerns around parenting, neglect or abuse, and history of the current allegation;
- the purpose and likely value of a video recorded interview on this occasion;
- competency, compellability and availability of the child for cross-examination;
- the child’s ability and willingness to talk in a formal interview setting;
- the use of an intermediary and/or aids to communication (interviews involving intermediaries and/or aids to communication should be video recorded unless the child does not consent or there are exceptional circumstances for not doing so); and
- preparation of the child before interview.

2.87 Discussions at the planning phase will enable the investigating team to decide whether a video recorded interview or an interview for the purposes of taking a written statement is appropriate for any particular individual. It is likely that a video recorded interview will be considered if a child has already made a clear allegation of abuse or if someone has witnessed the child being abused. A video recorded interview may also be appropriate, subject to the deliberations of the investigating team, if the child is emotionally distressed or has a psychiatric disorder. Where the child has not made a verbal allegation of abuse then the interviewing team may decide that other specialist help or assessment of the child is more appropriate to the needs of the child than a video recorded interview.
2.88 In circumstances where the investigating team conclude that it is more appropriate to take a written statement, the interviewer(s) should consider the P.E.A.C.E. model of investigative interviewing advocated by the Association of Chief Police Officers in ‘The Practical Guide to Investigative Interviewing’.

2.89 Regardless of how the interview is recorded, notes should always be taken which are sufficiently detailed to assist the investigating officer to determine any further lines of enquiry that might be necessary and to brief the custody officer and any other interviewers where a suspected perpetrator is in custody. Responsibility for the compilation of such notes should be agreed during the planning phase of the interview. Where a video recorded interview is conducted as part of a Joint Protocol investigation into alleged or suspected child abuse, this responsibility would fall to the second interviewer and captured in Form PJ16.

**Interviewers and others present at the interview**

2.90 The interviewer, second interviewer and equipment operator must all be trained to the relevant standards.

**The interviewer**

2.91 Consideration should be given to who is best qualified to lead the interview. A special blend of skills is required to take the lead in video recorded interviews. The lead interviewer should be a person who has or is likely to be able to establish rapport with the child, who understands how to communicate effectively with witnesses who might become distressed, and who has a proper grasp of the rules of evidence and criminal offences. The lead interviewer must have good knowledge of information important to the investigation, including the points needed to prove particular offences.

2.92 In addition to taking account of the prospective interviewer’s skills, the following factors should be taken into consideration when considering who should conduct the interview:

- the experience of the prospective interviewer in talking to children in respect of the type of offence under investigation and any other skills that they possess that could be useful;
- any personal or domestic issues that the prospective interviewer has that might have an adverse impact on the interview; and
- whether any previous experience that the prospective interviewer has with the child is likely to either inhibit rapport building, or give rise to challenges of coaching, prompting or offering inducements.
2.93 The child’s gender, race, culture and ethnicity must always be given due consideration and advice sought where necessary but stereotypic conclusions about who is to conduct the interview should be avoided.

2.94 Where the child expresses a preference for an interviewer of a particular gender or sexual orientation, or from a particular race, cultural or ethnic background, this should be accommodated as far as is practical in the circumstances.

2.95 The interviewer should consider the appropriate mode of dress for the particular witness. For example, research shows that a person’s perceived authority can have an adverse effect on the witness especially with respect to suggestibility.

2.96 Exceptionally, it may be in the interests of the child to be interviewed by an adult in whom they have already put confidence but who is not a member of the investigating team. Provided that such a person has appropriate professional qualifications, is independent and impartial, is not a party to the proceedings, is prepared to co-operate with appropriately trained interviewers and can accept adequate briefing (including permitted questioning techniques), this possibility should not be precluded.

The second interviewer

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

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

2.99 The equipment should always have an operator for the duration of the interview. This will allow the view recorded by the camera to be adjusted if the child moves. It should also provide an opportunity for the interviewer to be alerted at the earliest possible moment in the event of an equipment failure rather than such a failure not being discovered until the end of the interview (see also Appendix E).

Interpreters

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

2.101 Interpreters should be appropriately accredited and trained so that they understand the need to avoid altering the meaning of questions and replies. They should normally be selected from the PSNI register of translators and interpreters. If it is not possible to select an interpreter from these registers then the interpreter may be chosen from some other list provided that the interpreter meets standards at least equal to those required for entry onto the registers in terms of academic qualifications and proven experience of interpreting within the criminal justice system. While the familiarity of the interpreter to the child is not a bar to use and
may indeed facilitate communication, all interpreters need to be independent, impartial and unbiased. Family members or other close relatives should not be used either during the interview or when preparing the witness for it.

2.102 Interpreters should be involved in the planning process. They should have a clear understanding of the objectives of the interview, its structure and the function served by any specific techniques used (e.g. those of the cognitive interview). It should be remembered that some words in English might not have an exact equivalent in other languages and communication systems. This possibility should, therefore, be discussed while planning the interview with a view to developing strategies to address what might otherwise be a problem.

2.103 If interviewers are working with an interpreter, it is important to have clarified at the outset who will lead the interview in terms of maintaining direct communication with the child. If the child is communicating via an interpreter, the lead interviewer should identify themselves as such while maintaining appropriate eye contact with the child so that the child understands that they should address the interviewer not the interpreter. If, however, a signer is being used to communicate with a child who has a hearing impairment, it may be more important for the signer to maintain the direct communication with the child.

2.104 Where an interpreter is present, they must be clearly identified at the beginning of the interview. Whenever possible, they should also be visible in one of the shots recorded.

2.105 Where a sign language interpreter is being used to communicate with a child with a hearing impairment, a camera should be used to record the signer’s hand movements as well as those of the child. In some interview suites, it might be necessary to make use of a portable camera, in addition to the static equipment already set up in the suite, for this purpose. Interviewers should also emphasise to the signer that it is important to avoid inadvertently leading the witness by presenting only one particular option when some of the more generic signs are used, e.g. the signs for ‘weapon’ and ‘touch’ depend on the context so it may be important to present the witness with a number of alternatives.

2.106 Where a signer is to be used, it is important to remember that the energy involved in signing is such that the hands of the signer and the witness are likely to get tired. The interview plan should therefore take account of the need for breaks to give the signer and the witness an opportunity to rest their hands.
Intermediaries (note: this special measure is not yet available)

2.107 The information provided here is intended to summarise the role of the intermediary and general principles that need to be considered in criminal investigations. Detailed procedural guidance will be produced when this special measure is commenced. While the services of an intermediary are likely to be particularly helpful where the child is very young, is traumatised or uses a specialised system of communication, it is important to note that an intermediary may be able to help improve the quality of evidence of a child of any age who is unable to detect and cope with misunderstanding, or to clearly express their answers to questions especially in the context of an interview or while giving evidence in court.

2.108 Article 17 of the 1999 Order makes it clear that intermediaries can assist a witness to communicate by explaining questions put to and answers given by a vulnerable witness. Intermediaries can also assist during the planning phase of an interview by providing advice on how questions should be asked and then to intervene during the interview where miscommunication is likely by assisting the interviewer to rephrase the question or by repeating the witness’s answers where they might otherwise be inaudible or unclear on the recording. The extent to which the intermediary is actively involved in the communication of questions and answers will vary from witness to witness depending on the witness’s particular needs and communication style. It will also depend on the degree of compliance with the intermediary’s recommendations by the interviewer. It is very important to remember that the intermediary is there only to assist communication and understanding – they do not take on the function of investigator.

2.109 Following commencement of this special measure, registration and accreditation arrangements will be put in place.

2.110 Before an intermediary can assist with communication, they need to conduct one or more assessment meetings with the witness. The criminal case is not discussed during assessment meetings. These meetings enable the intermediary to consider the witness’s communication needs, and devise strategies and recommendations on how to maximise understanding. The meetings also enable the intermediary to build the necessary rapport with the witness and to determine whether they (the intermediary) are the right person to act as an intermediary for that witness. Intermediaries should never be alone with a witness; a responsible third party must be present. This should usually be a police officer at the investigation phase.
2.111 Registered Intermediaries should be used. The use of an unregistered person as an intermediary can only be considered once the options for using a Registered Intermediary have been exhausted. When this is the case, an unregistered intermediary has the same responsibility to the court. They must be independent of the case being investigated (i.e. not witnesses or suspects). There is a preference on unregistered intermediaries to be professional people rather than family members, friends or associates. In the event that the particular circumstances of the case are such that it appears that only a non-professional person can perform the function of an intermediary, it is important that the witness is assessed by a Registered Intermediary before proceeding, in order to confirm that the role can only be performed by the non-professional.

2.112 Discussions with the intermediary at the planning phase should include the arrangements for leading the interview, legal and confidentiality requirements, and the exact role that the intermediary will take. The potentially explicit nature of the topics to be covered should be addressed. The intermediary should be provided with information that is relevant to their role and will help them to maximise communication/understanding (e.g. the specific vocabulary used by the witness and relevant relationships).

Interview supporters

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

2.114 The supporter must be clearly instructed not to participate in the interview itself, whether by instructing or correcting the child, answering the interviewer’s questions, head nodding or facial expressions. It may be helpful for the interview supporter to refer to the guidance in the Young Witness Pack (NSPCC (NI) 2011). Interview supporters should never offer the child inducements, such as a toy or trip, in
return for general co-operation or answering particular questions. Persons involved as a witness in the case in any capacity (i.e. not just someone who has seen the incident in question) cannot take on the role of interview supporter. This would include a parent to whom the child first disclosed abuse, or a parent whose partner or former partner is the subject of the allegation of abuse. It is important to ensure that the interview supporter has not been involved in the alleged offence nor will be perceived by the child as being involved (this may be particularly relevant to parent(s) acting as supporters). Carers can, however, wait in an adjacent room if it is thought that physical proximity might be helpful to the child.

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

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

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

Location of the interview

2.118 Active consideration should be given to the location of the interview and the layout of the room in which it is to take place. The location should be quiet enough to avoid a situation in which background noise is likely to interfere with the quality of the sound on any visual or audio record, and should be free from interruptions, distractions, and fear and intimidation so that the interviewer and the child can concentrate fully on the task in hand: the interview. The interviewer should ensure that sufficient pens and paper are available for use where a child’s recall could be assisted by drawing a sketch plan.
2.119 Where the interview is conducted in a purpose-built interview suite (preferred option), the room decor should be welcoming and friendly (e.g. pictures on the wall which will appeal to children and young people of all ages, races and cultures, and indicate that other children visit the interview suite). Appendix E provides guidance on the selection and placement of furniture in the interview room. Food and drinks provided for comfort breaks should be appropriate for children from different ethnic groups.

2.120 Toys and other play materials should be located out of immediate view of the child so that any not introduced by the interviewer do not act as a distraction to the child during the interview. A limited range of gender- and age-appropriate playthings should be available. Suitable items are likely to include pens/crayons and paper. Dolls, puppets, puzzles and toys could also be considered where they appear likely to make the child’s experience more positive (e.g. in establishing rapport) and/or help the child to give their account more effectively. Whilst toys can be used both to reduce stress and anxiety, and as a method to improve communication, interviewers should be alert to the possibility that toys could distract a restless or young child, or possibly patronise an older child.

2.121 In the event of it being necessary to interview a child at their home address, care should be taken to avoid saying anything or video recording any background material that might lead to the location being identified (the use of background screens should be considered if necessary).

Timing of the interview

2.122 The investigating team should pay particular attention to when the interview takes place as research has shown this to be one of the main concerns of child witnesses. Although the interview will normally take place as soon after an allegation or referral emerges as is practicable, rushing to conduct an interview without properly considering the child’s needs and consulting them as far as possible, and without proper planning can undo any of the benefits of obtaining an early account from the child. The child’s normal daytime routine and general needs should be considered as well as those of the adult(s) who care for the child. Interviewers should avoid starting an interview just before a mealtime or bedtime (or at any other time when the child is likely to be suffering from the effects of fatigue).

2.123 The decision about when to conduct an interview should also take account of the potential effects of trauma and/or stress. Trauma and stress can interfere with the process of recall but this should be determined by asking the child rather than by the imposition of an arbitrary period of time. Some child witnesses will want to be interviewed relatively quickly while others might wish to be interviewed at a later date. It should always be borne in mind that the potential for memory contamination taking place increases with the delay.
2.124 Children are very sensitive to being taken out of school classes, and on the rare occasions when it is unavoidable, the interviewer should liaise with the child’s teachers to ensure it is affected as discreetly as possible.

2.125 In the event of circumstances being such that it is absolutely essential for a witness to be interviewed at a time when they are likely to be suffering the effects of fatigue (for example, where an alleged offender is in police custody for a serious offence and an interview is necessary to secure potentially vital evidence), consideration may be given to conducting a brief interview in the first instance which sets out the witness’s account and addresses any issues on which immediate action needs to be taken. A more substantial interview can then be arranged at an appropriate time.

Duration of the interview (including pace, breaks and the possibility of more than one session)

2.126 The interviewing team should anticipate the likely number and length of the video recorded interview(s) as part of the planning process. It will help both the interviewer and the child to have an idea of approximately how long each interview is likely to last.

2.127 The pace of the interview should be dictated by the age and circumstances of the individual child. Interviews should proceed at the pace of the child not at that of the interviewer. Professionals whose experience of interviewing has been mostly with adults may be tempted to adopt too fast a pace for the child while those with only childcare experience may adopt an overcautious approach and spend too long in the rapport phase when the child is ready to proceed with their account. Whenever possible, the interviewer should seek advice from people who know the child about the likely length of time that they can be interviewed, and whether a pause or break is desirable.

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

- the developmental age of the child;
- any disability the child may have;
- the number of alleged incidents to be described;
- how forthcoming the child is; and
- how much time is required to establish rapport.

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

2.131 In some circumstances, it might be necessary to conduct the interview over more than one session (e.g. in complicated cases where allegations of multiple offences are involved or where the child has a short attention span). The interviewer must plan appropriately for each interview/session in a focused way that is differentiated from the strategic planning of the overall investigation. It is not appropriate to neglect such planning or to leave preparation for the interview itself to the last minute. These sessions might be separated by a matter of hours or, if necessary, could take place over a number of days. When this occurs, care must be taken to avoid repetition of the same focused questions over time because these could lead to unreliable or inconsistent responses from some children, and interviews therefore being ruled inadmissible by the courts.

Planning for immediately after the interview

2.132 Although the interviewer cannot predict the course of an interview, planning discussions should cover the possible outcomes and consider the implications for the child and family taking account of knowledge about the child’s circumstances, and previous or current involvement with social care or other public services. This should include the possibility of a medical examination (where this has not taken place before the interview), the possible need for alternative accommodation and any other steps necessary to protect the witness or reduce the possibility of harassment. Research has shown that children and their carers are often left unsupported subsequent to an interview (especially if the alleged abuser is outside the immediate family) which can be a source of great stress. The interviewing team itself is unlikely to be responsible for the child and family’s continuing support.
needs but they could be advised of the range of support services that are available. In addition, early consideration by the wider professional team may alleviate some of the child’s and carers’ anxieties. For instance, various outcomes of the video interview can be anticipated:

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

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

2.134 For each possible outcome, the interviewer should prepare explanations of what may happen next for the child and their carer(s). Answers can be prepared to commonly asked questions such as ‘What is the likelihood of a prosecution?’ and ‘Will [perpetrator] go to prison?’. A contact person should be identified to whom the child and carer(s) can direct any subsequent queries or further information.

2.135 It must be remembered that non-disclosure of abuse is an acceptable outcome of an interview either because the child has not experienced or witnessed any maltreatment, or because the child was not ready, able or willing to tell at the time of the interview. Differences in how and when children disclose abuse are described in Box 2.8.
Box 2.8  How and when children talk about abuse

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

Child witnesses who might become suspects

2.136 So far as is practicable, consideration should be given in the planning phase as to how the interviewer will deal with any confessions to criminal offences made by the child in the course of the interview. Any decision on an appropriate course of action will involve taking into account the seriousness of the crime admitted and weighing it against the seriousness of the crime under investigation.

2.137 It is preferable to anticipate and plan for such an eventuality while recognising that any decisions on a particular course of action are likely to depend on what has been disclosed by the child during the course of the interview (see paragraphs in Part 2B for guidance in respect of incriminating statements made by child witnesses during interviews).

Recording the planning process

2.138 A full written record should be kept of the decisions made during the planning process, and of the information and rationale underpinning them. This record should be referred to in the statement of evidence subsequently made by the interviewer in relation to the planning, preparation and conduct of the interview, and should be revealed to the PPS under the requirements of the Criminal Procedure and Investigations Act 1996. In addition, if the investigation is conducted under the Protocol for Joint Investigation by Social Workers and Police Officers of Alleged and Suspected Cases of Child Abuse – Northern Ireland, Form PJI4 should be completed.
Preparing the child for an interview

2.139 Children should always be prepared for an interview. In some cases, this might be fairly brief and take place immediately prior to the interview. In other instances, it might be necessary to take more time (e.g. where the child can also be considered to be an intimidated witness) and/or for it to take place several hours or days before the interview.

2.140 The preparation of the child should include an explanation of the purpose of the interview and the reason for video recording it (including who might subsequently view it), the role of the interviewer(s) and anybody else to be present, the location of the interview and roughly how long it is likely to take. The interviewer(s) should also outline the general structure of the interview and provide some explanation of the ground rules that apply to it (including the child not making any assumptions about the interviewer’s knowledge of the event). Substantive issues relating to the evidence should not be discussed while preparing a child for an interview.

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

2.142 Any issues or concerns raised by the child or their carer(s) should be addressed while preparing them for the interview (e.g. welfare issues or concerns about the possibility of a later court appearance).
2.143 Most child witnesses will be anxious prior to an investigative interview, and few will be familiar with the formal aspects of this procedure. It is, therefore, important that the interviewer uses the time spent preparing a child for an interview to build up a rapport with them. The nature and the extent of rapport building required very much depends on what has been established about the child during the planning phase of the interview.

2.144 Some children who have been traumatised might need to spend more time getting to know the interviewer(s) before they are ready and/or willing to take part in an investigative interview. The interviewer(s) should consider whether one or more meetings with a child should be planned to take place prior to the interview because this familiarisation process may take some time.

2.145 Some children may feel that their initial, lawful co-operation with a person who subsequently commits an offence may make them blameworthy and they may assume that they must have done something wrong simply because they are being interviewed. The interviewer might need to try to reassure the child on these points but promises or predictions should not be made about the likely outcome of the interview. So far as possible, the interview should be conducted in a ‘neutral’ atmosphere with the interviewer taking care not to assume, or appear to assume, the guilt of an individual whose alleged conduct may be the subject of the interview.

2.146 Some children may be unhappy, or feel shame or resentment about being questioned especially on personal matters. In the rapport phase, and throughout the interview, the interviewer should convey to the child that they have respect and sympathy for how they feel. A child may be apprehensive about what may happen after the interview if they do provide an account of what happened. Such worries should be addressed.

2.147 Initial discussions with the child could focus on events and interests not thematically related to the investigation: sport, television programmes, favourite games, school curriculum, and so on. Sometimes, where the child and the interviewer have had some previous contact this can be quite brief. At other times, especially when the child is nervous or has been subject to threats from the alleged abuser, a much longer period of rapport-building when the child is prepared for the interview may be warranted.

2.148 Rapport-building while the child is prepared for the interview can also serve to set the tone for the style of questions to be used by the interviewer during the interview. It is, therefore, important that the child is encouraged to talk freely through the extensive use of open-ended questions because this can help to encourage them to give detailed accounts; a style of communication consistent with the guidance set out in this document.
2.149 In some instances, it might be helpful to conduct a practice interview while preparing the child for the interview. In these circumstances, the child could be asked to recall a personal event unrelated to the issue of concern (e.g. a birthday or a holiday). This serves to provide the child with an example of the kind of detail that will be required in relation to the issue of concern and to practise extended verbal responses. Such practice interviews might be particularly useful with younger witnesses who might not appreciate the demands of a witness interview for detailed and context information.

2.150 Rapport-building while the child is prepared for the interview also gives the interviewer the opportunity to build on their knowledge of the witness’s communication skills and degree of understanding of vocabulary. The interviewer can then adjust their language use and the complexity of their questions in the light of the child’s responses.

2.151 It may prove problematic to attempt to proceed with an interview until rapport has been established. Should establishing rapport when the child is prepared for the interview proves difficult, it may be preferable to postpone the interview rather than proceeding with an interview that may well turn out to be of no benefit.

2.152 Assistance should be sought if necessary from interview supervisors and interview advisers concerning the issues that might arise during the preparation of a child witness for an interview.

2.153 Full written notes must be kept of the preparation of a child for an interview and must be given to the PPS on request. The information obtained to plan the interview should be reviewed and revised if necessary in the light of any additional information that arises from preparing the child witness for the interview.

Part 2B: Interviewing child witnesses

General principles

2.154 The basic goal of an interview with a witness of any age is to obtain an accurate and truthful account in a way which is fair, is in the witness’s interests and is acceptable to the court. What follows is a recommended procedure for interviewing a child which is based on a phased approach. Much professional experience and published research now exist on the conduct of the phased interview with children and have found that it produces a good balance between quality and quantity of information elicited from a witness. The phased interview normally consists of the following four phases:
• establishing rapport;
• asking for free narrative recall;
• asking questions; and
• closure.

2.155 Each phase will be described in greater detail below. These phases are compatible with and underpin the PEACE (Planning and Preparation; Engage and Explain; Account, Clarification and Challenge; Closure; Evaluation) interview framework advocated by the Association of Chief Police Officers (ACPO).

2.156 The phased approach acknowledges that all interviews contain a social, as well as a cognitive, element. As regards the social element, witnesses, especially the young, will only divulge information to persons with whom they feel at ease and whom they trust. Therefore, the first phase of any interview involves establishing rapport with the witness, and the final or closure phase requires the interviewer to try to ensure that the witness leaves the interview feeling that they have been given the fullest opportunity to be heard. As regards the cognitive element, the phased interview attempts to elicit evidence from the witness in a way which is compatible with what is known about the way human memory operates and the way it develops through childhood. A variety of interviewing techniques are deployed, proceeding from free narrative to open and then specific-closed questions where a hierarchy of reliability of the information is obtained. The technique is designed to ensure that, as far as possible, witnesses of all ages provide their own account rather than the interviewer putting suggestions to them with which they are invited to agree. The techniques of the phased interview are not those of casual conversation: they must be learned and then practised to ensure that they are applied consistently and correctly.

2.157 The emphasis on the phased approach should not be taken to imply that all other interview techniques are necessarily unacceptable or preclude their development. Nor should what follows be thought of as a checklist that must be rigidly adhered to: every interview is a unique event which requires the interviewer to adapt procedures to the developmental age and temperament of the child, and the nature of the alleged offence(s). Flexibility is the key to skilful interviewing. A good interviewer is someone who can adapt their interviewing style in accordance with the witness sitting in front of them. However, the sound framework provided by the principles of the phased interview should not readily be departed from by the interviewer unless they have fully discussed and agreed the reasons with their senior manager or an interview adviser (tier 5 of ACPO’s National Investigative Interviewing Strategy (ACPO, 2009)). It may subsequently be necessary to explain such deviations at court.
Preliminaries

2.158 The investigating team will first have to decide whether a video interview is appropriate or whether, in the circumstances of the investigation, the option of a written statement is preferable. The police may wish to hold an early meeting with the PPS at this point if such a meeting has not already taken place. The decision will be based on the nature and circumstances of the alleged offence, and the age and preference of the child. The child, or their parent or carer, should to be consulted and informed that they may opt out of a video recorded interview. Any decision to do so must take into account:

- age and maturity of the witness;
- ability of the witness to understand the consequences of giving evidence otherwise than by video recording;
- any relationship between the witness and the accused;
- witness’s social, cultural and ethnic background or origin; and
- nature and circumstances of the alleged offence.

If a video recorded interview is the preferred option then normally one person, the lead interviewer, will be responsible for interviewing the child. A second interviewer may be present, in the room or outside. In addition, it may also be appropriate for the child to have an interview supporter.

2.159 The interviewing team will have decided at the planning meeting who will be the lead interviewer, taking into account any strong gender or ethnic preferences expressed by the child. It is essential that the interviewing team allows sufficient time prior to the interview to check that all equipment is working satisfactorily. To have to stop and restart the interview places additional stress on the child. Decisions should also be taken about where the child and interviewer will be placed so as to ensure that they are within clear view of the cameras. For the benefit of the court, the interviewer should begin an interview by:

- introducing all those present to the child, using the name by which the child prefers to be known;
- explaining in terminology appropriate to the developmental age of the child the role and function of police officers and/or social workers involved in the investigation;
- announcing where the interview is taking place, and the time and date of the interview; and
- pointing out the presence and location of cameras in the room, and their function as a permanent record of the interview.
2.160 Research confirms that many children believe that being interviewed by the police is an indication of their wrongdoing and any misperceptions need to be corrected at this early stage. The type of explanation offered for the purpose of the interview will vary with the developmental age of the child. Younger children may be told that other people need to view what they have to say in order for them to decide how best to help them if they have any problems. Older children can be reassured that making a recording of the interview will result in fewer requests to repeat their account to others.

**Phase one: establishing rapport (including engaging and explaining)**

**Explaining the formalities**

2.161 Firstly, it is necessary when video recording the interview to check that the equipment is turned on; all of the people in the room can be clearly seen on the monitor through the camera with the wide-angle lens where two cameras are in use; and the witness is appropriately framed in the main camera image (see Appendix E). Next, the interviewer should say out loud the day, date, time and place (not the detailed address) of the interview, and give the relevant details of all those present.

**Building rapport**

2.162 All interviews should have a rapport phase where relationships are established between the child and the interviewing team, and, towards the end of this phase, the aim and conventions of the interview are explained. Some interviewers prefer to deal with elements of rapport in the interview preparation phase (ground rules, reassurance). If so, such procedures need to be properly documented and reiterated during rapport. More formally, the rapport phase should normally encompass the following:

- initially discussing neutral topics and, where appropriate, playing with toys and reassuring the child that they have done nothing wrong;
- explaining the ground rules;
- exploring the child’s understanding of truth and lies, and establishing the purpose of the interview; and
- supplementing the interviewer’s knowledge of the child’s social, emotional and cognitive development.
2.163 Within the main body of the interview and, if an interview is being video recorded, it is important that any discussion of neutral topics in the rapport phase is completed within a relatively short space of time. Interviewers should remember that a lengthy rapport phase may result in some child witnesses getting:

- tired before they are asked to provide an account. This could have an adverse impact on the quality of their evidence; and
- confused about the purpose of the interview. This could increase their anxiety.

2.164 If the interview plan suggests that discussing neutral topics for a lengthy period of time may be beneficial (e.g. with very young witnesses, those with a learning disability, traumatised children) it should take place as part of witness preparation before the interview commences.

2.165 Interviewers should be aware that it is neither desirable nor essential to discuss neutral topics in every interview. Where a child witness is anxious to begin their account of the alleged incident(s) as soon as possible, a discussion of neutral topics could be counterproductive by needlessly prolonging the rapport phase thus increasing their anxiety levels. In any event, rapport should not be regarded as something that is confined to the first phase of an interview: it begins when the interviewer first meets the child witness and continues throughout the interview.

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

2.167 Rapport also gives the interviewer the opportunity to build on their knowledge of the child which they will have gathered from the planning meeting. In particular, they will learn more about the child’s communication skills and degree of understanding of vocabulary. The interviewer can then adjust their language use and the complexity of their questions in the light of the child’s responses. Research has shown that recall is hindered if adult appropriate (as opposed to age appropriate) language is used.
2.168 Rapport also serves to set the tone for the style of questions to be used by the interviewer for the main part of the interview. It is important that the child is encouraged in the rapport phase to talk freely through the extensive use of open-ended questions. A stream of questions that the child can answer ‘yes’ or ‘no’ to, or make an equally brief response, should be avoided. This not only helps the interviewer to assess the child’s level of language, as the child should be talking at length relative to answering more specific-closed questions, but also teaches the child to talk (i.e. give detailed accounts). An interview is a learning experience even from the outset of the interview.

2.169 In some instances, it might be helpful to conduct a practice interview during the rapport phase of the interview during which the child is asked to recall a personal event unrelated to the issue of concern (e.g. a birthday celebration or a holiday treat). This serves to provide the child with an example of the kind of detail that will be required in relation to the issue of concern and to practise extended verbal responses. Such practice interviews might be particularly useful with younger witnesses who do not appreciate the demands of a witness interview for detailed and context information.

Ground rules

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

- the interviewer was not present when the events under investigation allegedly took place and that, therefore, they are relying on the child’s account;
- if the interviewer asks a question that the child does not understand, the child should feel free to say so;
- if the interviewer asks a question to which the child does not know the answer, the child should say, ‘I don’t know’; and
- if the interviewer misunderstands what the child has said or summarises incorrectly what has been said, the child should point this out.
These points are best put across in the context of concrete examples. It is recommended that the interviewer gives the child the chance to practise saying ‘I don’t know’ or ‘I don’t understand’ (see Box 2.9 for sample material).

### Box 2.9 Establishing the ground rules for the interview

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

[Pause]

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

[Child’s response, e.g. ‘Miss Jackson tells you off but Miss Smith is okay’, ‘I have to try and answer’ or ‘I have to guess the answer.’]

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

[Pause]

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

After Robinson Howes (2000).
Truth and lies

2.172 Toward the end of the rapport phase, when ground rules have been explained to the child, the interviewer should advise the witness to give a truthful and accurate account of any incident they describe. There is no legal requirement to do this, but since the video may be used as evidence in court, it is helpful to the court to know that the child was made aware of the importance of telling the truth. This should be done in the rapport phase and not later in the interview because this might run the risk of the child concluding that the interviewer had not believed what they had said up to that point.

2.173 It is inadvisable to ask children to provide general definitions of what is the truth or a lie (a task that would tax an adult). Rather they should be asked to judge from examples. The interviewer should use examples suitable to the child’s age, experience and understanding. Secondary school-age children can be asked to give examples of truthful statements and lies while younger children can be offered examples and be asked to say which are true and which are lies. It is important that the examples chosen really are lies not merely incorrect statements: lies must include an intent to deceive another person. An example of one approach is shown in Box 2.10. Different examples are suggested for different ages of children. If a child shows a proper appreciation of the difference between truth and lies, it is important to conclude by emphasising the importance of being truthful and as accurate as possible in everything they say in the interview. How this is put across will again vary with the age of the child.

2.174 If a child shows no appreciation of the distinction between truth and lies during this phase of the interview, consideration should be given to commissioning an expert assessment by a clinician of the child’s abilities following consultation with the PPS if necessary. A lack of understanding of truth and lies by the child during the interview and any subsequent clinical assessment may seriously jeopardise the evidential value of the interview. (Understanding the difference between truth and lies should also form part of the preparation process by the young witness supporter and should follow the guidance set out above.)
Box 2.10 Exploring the difference between truth and lies

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

Example for younger children

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

‘Did John tell a lie or the truth, or don’t you know?’

[Pause]

[Child responds]

‘What should he have said?’

[Pause]

[Child responds]

Example for older children

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

‘Did Tony tell a lie or the truth, or don’t you know?’

[Pause]

[Child responds]

‘What should he have said?’

[Pause]

[Child responds]

‘Why do you think he said ‘no mum’?’

[Pause]

[Child responds]

Adapted from A. Williams and S. Ridgeway (2000).
Explaining the outline of the interview

2.175 The interviewer should provide an explanation of the outline of the interview appropriate to the child’s age and abilities. Typically the outline will take the form of the interviewer asking the child to give a free narrative account of what they remember and follow this with a few questions in order to clarify what has been said. It should also be explained that the interviewer might take a few brief notes.

Establishing the purpose of the interview

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

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

‘Tell me why you are here today.’

[If no response]

‘If there is something troubling you, it is important for me to understand.’

[If no response]

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

[If no previous allegation]

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

[If no response]

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

[If no response]

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


Phase two: initiating and supporting a free narrative account

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

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

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

2.181 Some children provide greater amounts of information more spontaneously than
others. In general, developmentally younger children provide less free narrative than
older children. This should not prevent the interviewer doing as much as possible
to elicit a clear and full account from such children: bear in mind that research has
consistently demonstrated that young children’s accounts are the most likely to be
tainted through inappropriate questioning. Pauses and silences may be tolerated by
the interviewer but need careful handling where a child has been traumatised. Too
long a silence can be oppressive and conversational pace can be lost. Tolerance
should also be extended to what might appear irrelevant or repetitious information.
Prompting is quite in order provided it is neutral (‘and then what happened?’) and
does not imply positive evaluation (‘right’, ‘good’). The interviewer needs also to be
aware of the danger of intentionally or unintentionally communicating approval or
disapproval through inflexions of the voice or facial expressions.
2.182 Sometimes reticence can reflect the fact that an abuser has told the child that what has occurred is a secret between them, or has made physical threats against the child or their loved ones. Where this is suspected, an appeal to the child’s wish to stop the abuse is often effective. The child can be asked directly whether they have been asked to keep a secret. If the child gives a positive indication, it is in order to say: ‘So, you’ve been told to keep a secret. Tell me what would happen if you told me this secret.’ The interviewer can then address or debunk the threat, stressing that: ‘We need to know what the secret is so that we can try to help you.’ Sometimes children will be happier communicating secret information through indirect means such as using a toy telephone or writing down information on a piece of paper. If such methods are used, it is important that the interviewer refers to such devices on the recording, and that any written material is properly preserved and documented.

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

Phase three: questioning

Prior to the questioning phase of the interview

2.184 Prior to entering the questioning phase of the interview, it may be beneficial to reiterate some of the ground rules noted at the start of the interview. This is especially the case if the child has given a long free narrative account and/or there has been a break in the interview. In particular, consideration should be given to stating explicitly that:

- the interviewer was not present when the events under investigation allegedly took place and that, therefore, they are relying on the child’s account;
- if the interviewer asks a question that the child does not understand, the child should feel free to say so;
- if the interviewer asks a question that to which the child does not know the answer, the child should say, ‘I don’t know’; and
- if the interviewer misunderstands what the child has said or summarises incorrectly what has been said, the child should point this out.
Style of questions

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

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

- open-ended;
- specific-closed;
- forced-choice; and
- leading questions.

Content of questions

2.187 Questions should be kept as short and simple in construction as possible. Each question should contain only one point (see Chapter 4 for more information about multiple questions). The younger the child, the shorter and more simply phrased the question should be. Interviewers should avoid complex questions with witnesses of all ages such as those involving double negatives (‘Did John not say later that he had not meant to hurt you?’) and double questions (‘Did you go next door and was Jim waiting for you?’). It is also important that questions do not involve vocabulary with which the child is unfamiliar. Very young children, for instance, have particular problems with words denoting location (‘behind’, ‘in front of’, ‘beneath’ and ‘above’) and, in the event of ambiguity, it may be necessary to ask the child to demonstrate what they mean. Merely asking a child whether they understand a given word is insufficient as they may be familiar with a word but still not understand its real meaning (for instance, they may think of ‘the defendant’ as someone who defends themselves against assault).
2.188 Vocabulary can be particularly important in dealing with allegations of sexual abuse where children may use terms that are personal to themselves or their families. Also, they may use terms like ‘front bottom’ which are vague and non-specific. It is always advisable for the interviewer to ensure that they understand what the child means. The use of a doll or diagrams is always preferable to children referring to their own bodies when reference needs to be made to the location of sexual acts. Where a young child uses the appropriate adult terminology, it may still be necessary to check their understanding.

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

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

2.190 Such concepts are only gradually mastered. For the concept of time, for instance, telling the time is learned by the average child at around seven years of age but an awareness of the days of the week and the seasons does not occur until at least a year later. Age norms are only a guide and it should be anticipated in the planning phase whether a particular child is likely to perform above or below such norms. There are a number of techniques for overcoming difficulties of measurement. Height, weight and age can be specified relative to another person known to the child (e.g. the interviewer or a member of the child’s family). Time and date estimates can also be made by reference to markers in the child’s life (e.g. festive seasons, holidays, birthday celebrations or their class at school). Time of day and the duration of events can sometimes be assisted by questions that refer to television programmes watched by the child, or to home or school routine.

2.191 When posing questions, the interviewer should try to make use of information that the child has already provided and words/concepts that the child is familiar with (e.g. for time, location, persons). Some children have difficulty understanding pronouns (e.g. he, she, they). In these circumstances, it is better for the interviewer to use people’s names wherever possible.
Open-ended questions

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

2.193 Questions beginning with the phrases ‘Tell me’, or the words ‘describe’ or ‘explain’ are useful examples of this type of question. Examples of open-ended questions are: ‘You said you were... Tell me everything that you remember.’

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

2.195 It is rarely possible to use only open-ended questions with children. For instance, research suggests that children who have been threatened or sworn to secrecy about abuse may only respond to more specific questions. Even when children are prepared to provide information in response to open-ended prompts, further specific-closed questions may be necessary to obtain enough evidence to proffer detailed charges. Young children too may be unable to access material in memory through open-ended questions alone. Where it is necessary to ask more specific questions, it is advisable to follow them with an open-ended question to return the initiative to the child.
Specific-closed questions

2.196 A specific-closed question is a question that closes down a witness’s response and, therefore, allows only a relatively narrow range of responses to be obtained where the response usually consists of one word or a short phrase. Closed questions can, therefore, be appropriate or inappropriate in nature depending on the quality of the information likely to be obtained from the witness. Specific-closed questions are appropriate and serve to ask in a non-suggestive way for extension or clarification of information previously supplied by the witness. Specific-closed questions vary in their degree of explicitness and it is always best to begin with the least explicit version of the question. For example, a child in a sexual abuse investigation may have responded to an open-ended prompt by mentioning that a named man had climbed into her bed. A specific-closed but non-leading follow-up question might be: ‘What was he wearing at the time?’ If this yielded no clear answer, a further, more explicit question might be: ‘Was he wearing any clothes?’.

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

2.198 For some young witnesses, open-ended questions may not assist them in accessing their memories because their abilities to search their memory systematically are insufficiently developed. However, they may well respond accurately to specific-closed questions that target information they know. Therefore, a young child may provide little information to an open-ended prompt such as: ‘Can you describe what he was wearing?’ but respond readily to a specific-closed question such as: ‘What did his clothes look like?’ Care must be taken in framing such questions in that the more focused and narrow the specific-closed question becomes, the more likely it is to provoke suggestive responding and may then be labelled leading.

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

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

2.201 A closed-specific question may be seen to be inappropriate if it is asked too early in the interview (e.g. in the free narrative account phase) or it is asked when an open-ended question could have been asked instead.

Forced-choice questions

2.202 If a specific-closed question proves unproductive, it may be necessary as a last resort to ask a forced-choice or selection question. This type of question is one that poses fixed alternatives and the child is invited to choose between them (e.g. ‘Were you in the bedroom or in the living room when this happened?’). The dangers of using such questions is that children respond with one or other choice without enlargeing on their answer and that in the absence of a genuine memory, or if the correct alternative is missing, children tend to guess and pick an option given, rather than saying ‘I don’t know’ or giving the correct (but missing) alternative. The latter may be countered by prefacing the question with a reminder to the child that ‘don’t know’ is an acceptable response and that the interviewer does not know what happened. Alternatively, ‘don’t know’ can be included as an option in the question (‘Were you in the bedroom, the living room, or can’t you remember?’). Forced-choice questions should never be used for probing central events in the child’s account that are likely to be disputed at court as information obtained by such questions may be seen to have limited evidential value.
Leading questions

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

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

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

2.206 Of course, there may be circumstances in the interview where the use of leading questions is unlikely to result in any legal challenge; for instance, during the rapport phase when a witness is being taken through their name and address, or is being asked for agreed factual information such as members of the family and their names. However, good interviewing practice should discourage leading questions with all but the youngest and most reticent witnesses. The use of leading questions in the rapport phase may inhibit the child from responding in their own words later in the interview and it is not always possible at the time to anticipate what facts might subsequently be in dispute. Moreover, the use of inappropriate leading questions may produce nonsensical or inconsistent replies which may damage the child’s credibility as a witness.
**Topic selection**

2.207 Within the questioning phase of the interview, the interviewer should subdivide the witness’s account into manageable topics or episodes, and seek elaboration on each area using open-ended and then specific-closed questions as outlined above. Each topic/episode should be systematically dealt with until the child is unable to provide any more information. Interviewers should try to avoid topic-hopping (i.e. rapidly moving from one topic to another and back again) as this is not helpful for the child’s remembering processes and may confuse them.

2.208 Good questioning should also avoid the asking of a series of predetermined questions. Instead the sequence of questions should be adjusted according to the child’s own retrieval processes. This is what ‘witness-compatible questioning’ means. Each individual will memorise information concerning the event in a unique way. Therefore, for maximum retrieval/information gain, the order of the questioning should resemble the structure of the child’s knowledge of the event, and should not be based on the interviewer’s notion or a set protocol. It is the interviewer’s task to deduce how the relevant information is stored by the child (via the free narrative account) and to organise the order of questions accordingly.

**Misleading statements**

2.209 Children can on occasion provide misleading accounts of events but these are often the result of misunderstandings or misremembering rather than deliberate fabrication. The most common cause of such misunderstandings is the interviewer failing to ask appropriate types of question or reaching a premature conclusion that the interviewer then presses the child to confirm. Like adult witnesses, children can on occasion be misleading in their statements either by fabricating allegations or by omitting evidentially important information from their answers. Where inconsistencies in the child’s account give rise to suspicion, the interviewer should explore these inconsistencies with the child after they have completed their basic account. Children should only be challenged directly over an inconsistency in exceptional circumstances and even then only when it is essential to do so. Rather, such inconsistencies should be presented in the context of puzzlement by the interviewer and the need to be quite clear what the child has said. On no account should the interviewer voice their suspicions to the child or call them a liar: there may be a perfectly innocuous explanation for any inconsistency.
In evaluating accounts, the interviewer should not rely on cues from the child’s behaviour as guides to the reliability or otherwise of children’s statements. Where a child uses language or knowledge, particularly of sexual matters, that is believed to be inappropriate for a child of that age, specific questions can be asked to try to locate the source of that knowledge. Likewise, if it is suspected that children alleging sexual abuse may have been exposed to sexually explicit films, videos, internet sites or magazines, specific questions can be employed to explore whether parts of the child’s account could conceivably be derived from such sources. It is important that all such questions should be reserved for the end of the formal questioning so as not to disrupt the child’s narrative.

Phase four: closing the interview

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

- check with the second interviewer, if present;
- summarise the evidentially important statements made by the child, as much as possible in the child’s own words, having told the child to intervene if any of the summarising is incorrect;
- answer any questions from the child;
- thank the child for their time and effort;
- provide advice on seeking help and a contact number;
- return to rapport or neutral topics; and
- report the end-time of the interview.

The lead interviewer should first consult with the second interviewer, if present, as to whether there are any additional questions that need to be raised, or ambiguities or apparent contradictions that could usefully be resolved. Where the child has provided significant evidence, the lead interviewer should check with the child that they have correctly understood the important parts of the child’s account. This should be done as much as possible using the child’s own language and terms not as a summary provided by the interviewer in adult language. There is a danger that any summary may include statements or assumptions at variance with the child’s account so it is useful if the child is reminded that they should correct any errors made by the interviewer. The opportunity should also be taken to check that the child has nothing further they wish to add. The interviewer should not “over summarise”. Where summaries have been conducted appropriately throughout the interview, there is no need to provide a complete summary at the closing phase.
2.213 Where nothing of evidential value has emerged from the interview, it is important that the child should not be made to feel that they have failed or have somehow disappointed the interviewer.

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

2.215 Sometimes in the planning phase, plans have been made for the protection and safety of the child if, in the interview, the child expressed a view that they felt unsafe with a given person or in a particular place. Closure provides the opportunity to outline plans for the child’s immediate safety especially if the child is concerned about going home and/or meeting a particular person.

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

Evaluation

2.217 Evaluation should take two primary forms:

- evaluation of the information obtained; and
- evaluation of the interviewer’s performance.

Evaluation of the information obtained

2.218 After the interview has concluded, the interviewing team will need to make an objective assessment as to the information obtained and evaluate this in light of the whole case. Are there any further actions and/or enquires required? What direction should the case take?
Evaluation of interviewer’s performance

2.219 The interviewer’s skills should be evaluated. This can take the form of self-evaluation with the interviewer examining the interview for areas of good performance and poor performance. This should result in a development plan. The interview could also be assessed by a supervisor and/or someone who is qualified to examine the interview and give good constructive feedback to the interviewer highlighting areas for improvement. This should form part of a staff appraisal system (see tier 4 of ACPO’s National Investigative Interviewing Strategy (ACPO, 2009)).

Post-interview documentation and storage of recordings

2.220 The interviewer should complete the relevant paperwork as soon as possible after the interview is completed including the Index to Video Recorded Interview referred to in Appendix G. A statement dealing with the preparation and conduct of the interview should be made while the events are still fresh in the interviewer’s mind.

2.221 Recordings should be stored as recommended in Appendix H.

Further interviews

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

- children indicate to a third party that they have significant new information that was not disclosed at the initial interview but which they now wish to share with the interviewing team;
- the initial interview opens up new lines of enquiry or wider allegations that cannot be satisfactorily explored within the time available for the interview;
- in the preparation of their defence, the defendant raises matters not covered in the initial interview; or
- significant new information emerges from other witnesses or sources.
2.223 In such circumstances, a supplementary interview may be necessary and this too should be video recorded. Consideration should always be given as to whether holding such an interview would be in the child’s interests. Supplementary interviews should not be conducted in an attempt to retrieve a situation in which the child’s evidence is likely to have been compromised by the use of inappropriate techniques or questioning styles by the interviewer during a previous evidential interview. Supplementary interviews for evidential purposes should only be conducted by members of joint investigation teams when they are fully satisfied, if necessary after consultation with the PPS, that such an interview is necessary. The reasons for the decision should be fully recorded in writing.

Identification procedures

2.224 Where a video recorded interview has been conducted by virtue of this chapter, the production of facial composites using E-FIT (electronic facial identification) or other systems, or the production of an artist’s impression should also be video recorded. This will enable the court to hear the evidence from the child in the same medium as the main evidence in chief and show how any new evidence has come about, giving confidence to the evidence gathering process and reducing the need for the child to give additional evidence in chief in the witness box or by live link. Staff carrying out these procedures should be suitably trained to interview and record the evidence in line with this guidance (see Appendix J).

Therapeutic help for the child

2.225 A child witness may be judged by the investigating team, and/or by those professionals responsible for the welfare of the child, to require therapeutic help prior to giving evidence in criminal proceedings. It is vital that professionals undertaking therapy with prospective child witnesses prior to a criminal trial follow the guidance in Chapter 7.

2.226 The PPS and those involved in the prosecution of an alleged offender do not have authority to prevent a child from receiving therapy and whether a child should receive therapy before the criminal trial is not a decision for the police or the PPS. However, the police and the PPS must be made aware that therapy is proposed, is being undertaken, or has been undertaken, so that consideration can be given to whether or not the provision of such therapy is likely to impact on the criminal case. At all times the importance of not coaching the child or rehearsing the child in matters of direct evidential value must be borne in mind by the professional undertaking therapeutic work with the child. (For further discussion of coaching see Appendix D.)
General guidance on using drawings, pictures, photographs, symbols, dolls, figures and props with children

2.227 Drawings, pictures, photographs, symbols, dolls, figures and props may be used for different reasons:

- to assess a child’s language or understanding;
- to keep a child calm and settled, and in one place;
- to support a child’s recall of events; and
- to enable a child to give an account of events.

2.228 It is these last two categories that the most controversy tends to arise. Young children and children with communication difficulties may be able to provide clearer accounts when drawings, pictures, photographs, symbols, dolls, figures and props are used compared with purely verbal approaches. For example, drawings or dolls may allow a child to clarify body parts or demonstrate an abusive act while props may help the child to describe the environment in which an incident took place.

2.229 Drawings or props can also enable children to demonstrate an understanding of truth and lies at a younger age than previously thought possible.

2.230 Drawings, pictures, photographs, symbols, dolls, figures and props can, therefore, function as very useful communication aids. However, when considering whether their use is appropriate in any given circumstances, interviewers need to be aware of the risks and pitfalls, as well as the advantages, associated with their use.

2.231 The risks and pitfalls of using drawings, pictures, photographs, symbols, dolls, figures and props include:

- potential challenge in the legal arena followed by admonitions not to use or cautionary statements;
- some props, e.g. anatomical dolls, can result in distortions or inaccuracies;
- some props, e.g. teddies, animals, dolls houses, may engender play or fantasy;
- children or carers may be upset by the use of explicit dolls or drawings; and
- children aged three and under are usually not able to use dolls, models or anatomical drawings as representational objects.

The advantages of using drawings, pictures, photographs, symbols, dolls, figures and props include:

- children may be more competent to demonstrate what happened rather than explain in words;
- allows two modes of communication so children can both show and tell;
- may mean detailed information can be collected with fewer questions;
- can provide retrieval cues or memory triggers;
- can overcome reluctance or fear, e.g. children who take ‘don’t tell’ literally;
- may be less stressful for children to show than tell;
- may resolve concerns about false allegations; and
- may provide an organisational framework for children to give a fuller account.

Drawings, pictures, photographs, symbols, dolls, figures and props should be used with caution and never combined with leading questions.

Interviewers should try to ensure that the child’s facial expressions, gestures and body language, as well as any drawings, pictures, photographs, symbols, dolls, figures and props, are visible to the interviewer and to the camera. This will require at least two cameras and an operator. The interviewer should pause if the child moves outside an agreed area to allow the camera operator time to re-focus on them.

Where necessary, verbal attention should be drawn to the child’s unspoken communication. One way to do this is to comment to the child without offering an interpretation, e.g. ‘you’re pointing’.

Interviewers should make sure that drawings, pictures, photographs, symbols, dolls, figures and props do not prevent children gesturing. It may be help to have a table at the appropriate height for the child to work at and place them on.

Any drawings, pictures, photographs, symbols, dolls, figures and props used should be preserved for production at court if required.

Using drawings

Interviewers may use the child’s own drawings. Such drawings may be either produced live during the interview or prepared by the child prior to it.

Drawings can be used in different ways to help with communication and drawing has significant benefits. Also, the symbolic nature of pictures and drawings is more easily understood by young children than dolls and models.
2.240 It may be useful to check whether the child can represent themselves symbolically\(^3\) (e.g. by saying ‘draw a picture of you’ or ‘draw [child’s name]’).

2.241 If possible, the child should label the drawings themselves. If they cannot, the interviewer should let them dictate the names of any people drawn to them and also write down any other features identified by the child.

2.242 It is important to think about the visibility of the drawings to both child and camera, for example colour, size and medium. It does not matter if a drawing is unrecognisable to the interviewer; the key issue is that the child recognises the drawing, and, if it is to be used to aid recall or communication, that the child assigns a stable identity to the drawing. Interviewers can check this by asking ‘who’s this?’ and by making at least one deliberate identity error ‘so this is x?’. Research suggests that asking children to draw what happened after an initial interview can help them to focus, retrieve more information and reduce their anxiety, and that 96% of children who draw in these circumstances recall more information in a second interview\(^4\).

2.243 Human figure drawings can help children of all ages to provide clearer information about body parts but not necessarily about touch-related actions\(^5\).

**Using pictures, photographs and symbols**

2.244 Pre-prepared pictures, photographs and/or symbols may be used if appropriate\(^6\).

2.245 If the child has an existing communication system of pictures or symbols, it is important to explore any potential gaps in their vocabulary during a pre-interview assessment. Introducing new vocabulary prior to interview must be carefully done and can create difficulties but may be unavoidable\(^7\).

**Using dolls, figures and props**

2.246 The use of items similar to those involved in the to-be-remembered event may assist recollection. However, they may also cause the child distress. Furthermore, it may not be certain which items were actually involved, and the introduction of incorrect items may mislead and/or confuse the child. Similarly, models or toy items may be misleading and confusing if the objects they represent were not, in fact, part of the event. Some children may not realise the link between a toy or model and the real-life object it is supposed to represent; this is particularly so for very young children and learning disabled children.
Where anatomically accurate dolls are to be used, it is particularly important that the interviewer is trained in their use and understands how they might be misused: a combination of these dolls and leading questions can elicit misleading statements from children. Children’s interactions with such dolls alone are unlikely to produce evidence that could be used in criminal proceedings. In the main, anatomically accurate dolls should only be used as an adjunct to the interview to allow the child to demonstrate the meaning of terms used by them or to clarify verbal statements. Anatomically accurate dolls can be used very effectively to clarify body parts, position of bodies and so on as can conventional dolls. However, they should only be used following verbal disclosure of a criminal offence by the child or where there is a very high suspicion that an offence has been committed which the child is unable to put into words.

1 Gesture allows children to articulate information they cannot yet put into words. Gesture helps us plan what we are going to say and find the words to say it. Even adults pause more if not allowed to gesture – fluency is affected. Doherty-Sneddon 2003.

2 No speech required, immediate, easy to apply and check, tells you more than speech because unanticipated and unpractised. Unlike speech, drawing forces people to take a position (Vrij 2009).

3 Representation of self emerges between the age of 3:2 and 3:6 in white middle class children (DeLoache et al 1995).

4 ‘Draw me what happened’ looked at the effects of event drawing on children’s accounts of sexual abuse. 125 children aged 4-14 in real NICHD protocol interviews. Looked at the impact of using drawing to prompt a second retrieval. Blind trial: interviewers opened the envelope with the condition (drawing or no drawing) only after first interview completed. Children instructed to draw ‘what happened’ for seven minutes, children in the control group had a seven minute break. Both sets of children then re-interviewed using open ended questions, interviewers were instructed to ignore the drawing and focus only on the child’s verbal account. (Katz and Hershkowitz 2009).

5 The usefulness of human figure diagrams in clarifying accounts of touch. 88 children aged 4-13 interviewed within NICHD protocol then asked a series of questions using unclothed gender neutral outline diagrams of human body (Yang et al 2009).

6 Symbols for abusive acts, feelings and private body parts are available without charge at www.howitis.org.uk. Some of these are now incorporated into generic symbol sets, e.g. see www.widgit.com

7 The Intermediary Procedural Manual (Office for Criminal Justice Reform 2011) gives guidance on how to teach new vocabulary and who should be involved (Section 5, page 35).
Special interviewing techniques

The cognitive interview (CI)

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

- mental reinstatement of context;
- report everything;
- change the temporal order of recall; and
- change perspective.

2.249 A number of professionals who have worked with children recommend use of the cognitive interview (CI) though it is not advised for children below a developmental age of seven. In addition, research has found that unless the training of interviewers who attempt to use the CI has been appropriate, they will fail to use this technique effectively and could confuse the witness. Some witnesses may not be able to benefit from all of the CI procedures (e.g., young child witnesses and witnesses with autism may well not be able to ‘change perspective’ and, therefore, this component is not recommended). See Investigative Interviewing: Psychology and Practice by R. Milne and R. Bull (Wiley, 1999) for more detailed information.

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

2.251 Further information on the techniques that make up the CI can be found in Chapter 4 Part B of this guidance.
Other interviewing techniques

2.252 There are a number of specialised interview techniques that have been developed for interviewing children and these may be acceptable to the courts as an alternative to the method recommended in this guidance, if evidential considerations are borne in mind and the child’s well-being is safeguarded. Provided the interviewer avoids suggestive questions and succeeds in eliciting a spontaneous account of the substance of the allegation, there is no reason why such evidence should not be acceptable to the courts. The investigative team should discuss with senior managers or an interview adviser (tier 5 of ACPO’s National Investigative Interviewing Strategy (ACPO, 2009)) and, if necessary, consult with the PPS before undertaking these alternative procedures. It is essential that the interviewers involved are specially trained in techniques concerned. Each procedure is described only briefly and further information can be obtained by consulting the relevant sources (see Appendix T).

2.253 Among these specialised interviewing techniques are those for children who are particularly reticent or who may be under duress not to divulge information relevant to the investigation and who, therefore, may not respond to conventional questioning. In the facilitative interview, children are asked about pleasant and unpleasant experiences, ‘okay’ and ‘not okay’ actions, what the child would like to change in their life, and there may be an open-ended discussion about secrets. In the systematic approach to gathering evidence (SAGE) interview, the child is encouraged over a number of separate sessions to talk about significant persons and places in the child’s life, and their attitude toward them. Systematic comparison of the child’s responses enables the trained interviewer to identify areas of particular concern which can then be explored more thoroughly using open-ended questions (see A Guide to Interviewing Children: Essential Skills for Counsellors, Police, Lawyers and Social Workers by C. Wilson and M. Powell (Routledge, 2001), for more detailed information).

2.254 The structured investigative protocol is a variant on the phased approach to the interview recommended in this guidance. This has been developed by the National Institute of Child Health and Human Development (NICHD) as a result of concern over insufficient use of open-ended questions by practitioners. Interviewers use a learned series of open-ended prompts rather than following their own pattern of questioning to elaborate on the child’s initial free narrative account (see The NICHD Protocol for Investigative Interviews of Alleged Sex-abuse Victims by M.E. Lamb et al (unpublished manuscript, 1999) and Using a Scripted Protocol in Investigative Interviews: A Pilot Study by J.K. Sternberg and M.E. Lamb in Applied Developmental Science (1999) for more detailed information).
2.255 Statement validity assessment (SVA) is a technique widely used in Germany, Canada and the USA to interview and assess the statements of children in sexual abuse investigations. It shares with this guidance an emphasis on obtaining a free narrative linked to open-ended questioning. A key feature of SVA is criteria-based content analysis (CBCA) where a child’s statement is examined for the presence of certain features which are believed to characterise truthful accounts. The technique relies on an extended narrative being available for analysis and so it is inappropriate for witnesses who provide only limited narratives, such as the very young, children with communication difficulties or depressed children. A number of issues concerning the reliability and validity of CBCA and its use in criminal proceedings in England and Wales are as yet unresolved (see Detecting Lies and Deceit: The Psychology of Lying and its Implications for Professional Practice by A. Vrij (Wiley, 2000) for more detailed information).

**Interviewing children with disabilities**

**Planning and preparation**

2.256 The phrase ‘children with disabilities’ encompasses a wide range of abilities and disabilities. Interviewers need to be aware of the extensive differences between potential witnesses in their social, emotional and cognitive development, and in their communication skills, the degree of their understanding and in their particular needs. It will nearly always be necessary to seek specialist advice on what special procedures are appropriate and to consider if the services of an intermediary are required.

2.257 There is rarely any reason in principle why children with disabilities should not take part in a video recorded interview, provided the interview is tailored to the particular needs and circumstances of the child. This will require additional planning and preparation by the interviewing team, and a degree of flexibility in scheduling the interview. Particular attention will need to be taken to ensure that a safe and accessible environment is created for the child, and that the interview suite is adapted to the child’s particular needs. Children with disabilities are likely to have already come to the attention of professionals, as a result of which, information is likely to be available from existing assessments and from workers who know the child well. Such information should enable the interviewing team to make an assessment of the likely impact, if any, of a disability on communication. Where children have specific communication difficulties, aids such as drawings or photographs may need to be prepared to facilitate questioning. All such aids should be preserved for possible production at court.
2.258 It is important to find out what impact the child’s disability is likely to have on the communication process and to adopt a positive approach that focuses on the child’s abilities when trying to find out how they can be helped to communicate.

2.259 The impact of any medication being taken by the child on the interview, including the most appropriate timing for it, should be taken into account.

2.260 For some children, a number of shorter sessions may be preferable to a single interview. For example, children with learning disabilities may have shorter attention spans giving rise to a need for regular and frequent breaks. In addition to this, some children with physical or learning disabilities might find communicating to be quite demanding, and this may also heighten the need for breaks and a slow pace, therefore lengthening the duration of the interview(s).

2.261 Children with learning disabilities may adapt more slowly to unusual situations than their peers. It may, therefore, be likely that more time may be needed to prepare the child for the interview and extra time might be needed for the rapport phase.

2.262 Children with learning disabilities may be easily distracted. Interview rooms should, therefore, be organised so as to minimise the opportunity for distraction.

2.263 The possibility that children with learning disabilities may have difficulty with time concepts should be taken into account while planning the interview.

2.264 The procedures that make up the cognitive interview can be used in respect of children with mild learning disabilities over the age of seven although the change perspective technique is not recommended.

The interview

Phase one: rapport

2.265 It is important that adequate time is allowed for this phase. Establishing rapport between the interviewer and the child will in itself require more time and attention especially if an intermediary is needed to assist communication. There are also additional functions of the rapport phase for children with disabilities. These are to:

• relax the interviewer;
• educate the viewer of the video about the child and their disabilities;
• dispel common myths and prejudices (e.g. physical impairments affect a child’s intelligence); and
• allow the child to demonstrate communication and understanding.
2.266 It is important for the child to sense the importance of communicating clearly, and for the interviewer to develop as much skill as possible in talking with and understanding the child. Any difficulty that the interviewer or the interview monitor has in understanding the child’s account at the time is likely to be magnified for any person subsequently viewing the video recording. The interviewer needs to be comfortable about referring to this and asking the child to repeat, rephrase or clarify as necessary, and the interview monitor needs to ensure that the recording can demonstrate the child’s communication method.

2.267 The child needs to be given an opportunity to explain their world especially where this might be unusual and relevant for the interview (e.g. if the child stays away from their family, if there are different adults involved with their care at home or elsewhere, or if the child needs intimate care or other ‘unusual’ help in day-to-day life). It is important to establish the context at this stage to give meaning to what may follow as it is often harder to do so later. If, for example, a child with disabilities has a number of adults involved in their care, it will be important to demonstrate their ability to distinguish reliably between these different people. Alternatively, if a child needs very invasive care procedures (e.g. intermittent catheterisation), it will be helpful to establish the child’s comprehension of this as a process before any discussion of possible sexual abuse ensues.

2.268 The experience of some children with disabilities might make them more compliant and eager to please, or to see themselves as devalued. Some children with learning disabilities could have problems understanding the concept of truth and interpreted communication may lead to additional confusion. Some children may need explicit permission to refute adult suggestions. Even with this permission, some children may find this impossible to do. It can help if everyone in the room makes a commitment to tell the truth (including the interviewer and any additional adults). It is important to convey that the child and the interviewer, and any additional adults (including the intermediary), should say ‘I don’t know’, ‘I don’t know how to say that’ (where the child’s understanding has sufficiently developed), or ‘I don’t understand’, and not to guess if they are unsure.

2.269 Children with disabilities might need very explicit permission to request breaks, and a clear, simple sign, gesture or word with which to do so. Given the concentration required by all parties, it is important to establish that the adults can request breaks as well as the child.
Phase two: free narrative account

2.270 Communication impairments do not necessarily prevent a child from giving a spontaneous account. Exceptions to this include when a child is:

- relying heavily on yes/no signalling;
- using a communication board with a vocabulary that makes it difficult to discuss certain topics; or
- where a child has not reached the developmental stage of being able to tell a story.

2.271 In these circumstances, the services of an intermediary should be secured to assist communication.

2.272 Children with learning disabilities are capable of providing accurate free narrative accounts although such accounts are likely to be less complete than those provided by their peers. While some omissions are likely to be the result of the child remembering less, some will probably be due to an assumption by the child that the interviewer already knows about the alleged event. It might, therefore, be advisable to repeat that the interviewer was not present and to reiterate the need for the child to report as much as they can remember at a number of points in the interview including the free narrative phase.

2.273 Children with learning disabilities may often require a greater degree of facilitation before it is clear whether an offence has occurred and, if so, what form it took. Open-ended prompts should be used as far as possible. Reflecting back to the child in an open, non-directive manner what they have told the interviewer helps to ensure accuracy as well as facilitating the production of further details.

Phase three: questioning

2.274 A clear and informed plan for questioning is essential to ensure that a child with disabilities is not expected to respond to questions they cannot answer or questions that are inherently confusing. This is important not just in terms of the child’s emotional welfare but also in order to avoid undermining the child’s credibility. For example:

- children with disabilities might be dependent on others for intimate care (interviewers will need to be able to distinguish between necessary caring or medical procedures and abusive or criminal actions);
- children may be receiving orthopaedic treatment or using postural management equipment that might cause pain or discomfort but should never cause injury;
• a child’s condition may restrict the positions they can get into or be placed into and some positions might in themselves be dangerous;
• certain physical or neurological conditions are likely to affect the sensations a child can feel; or
• a child with a sensory impairment may be restricted in some of the information they can provide about the identity of the alleged suspect or details of the alleged offence(s).

2.275 Questions should be simple and concrete. The use of abstract concepts, double negatives and other inappropriate questions should be avoided.

2.276 With some methods of communication, such as communication boards, questions can only be asked in a closed form which demands a yes or no response. Techniques that can increase the evidential validity of closed questions include:
• avoiding a series of ‘yes’ responses by suggesting less likely alternatives first;
• completing any series of related questions rather than halting at the first ‘yes’; and
• reverting to open questions wherever possible.

2.277 When offering the child a range of alternatives, consistent wording is needed for each, particularly if the child has a learning disability or poor short-term memory.

Phase four: closing the interview

2.278 Given the relative lack of knowledge of investigative interviewing of children with disabilities, it would helpful for developing practice to obtain feedback from the child on their experience of the interview, and perhaps also to acknowledge again additional barriers to communication that discussion of sensitive issues such as abuse can provide. As long as there is no discussion of the evidence itself, such debriefing need not take place on camera though a note should be kept of the points raised.

2.279 For children who have been sexually exploited, it is particularly important to maintain contact post-interview as they will often find themselves still at risk of further exploitation. For this group of children, it is vital that police officers and social workers honour any commitments that are made as these children find it very difficult to trust professionals and a ‘window of opportunity’ can be easily lost. Delay can have a very negative impact on these cases and it is vital that there is good ongoing communication with the victim.
Interviewing very young or psychologically disturbed children

2.280 When a child is very young or known to be psychologically disturbed, the planning phase for the interview needs to be undertaken with great care. Consideration should be given to the use of an intermediary in the planning process and during such interviews.

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

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

The child who becomes a suspect

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

2.284 If it is concluded that the evidence of the child as a suspect is also highly relevant to a particular case, the interview should be terminated and the child told that it is possible that they may be interviewed concerning these matters at a later time. Care should be taken not to close the interview abruptly in these circumstances. Instead, the child should be allowed to complete any statement they wish to make. Any admission by a child in the course of an investigative interview may not be admissible as evidence in criminal procedures. Normally, a further interview would
need to be carried out in accordance with the relevant provisions of the Code for the Detention, Treatment and Questioning of Persons by Police Officers (Police and Criminal Evidence (NI) Order 1989, Code C)). The Code provides, among other matters, for the cautioning of a suspect and for the presence of an appropriate adult during questioning.

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

2.286 Where the priority is to obtain evidence from the child as a victim or a witness, the interview can proceed and should follow this guidance. So far as is practicable, consideration should be given in the planning phase as to how interviewers will deal with any confessions of criminal offences made by the child in the course of the interview. Any decision on an appropriate course of action will involve taking into account the seriousness of the crime admitted and weighing it against the seriousness of the crime perpetrated against the witness. It is preferable to anticipate and plan for such an eventuality while recognising that any decisions on a particular course of action are likely to depend on what has been disclosed by the witness during the course of the interview.
Part 3A: Planning and preparing for interviews

What follows is a recommended procedure for planning and preparing for interviews with the witnesses referred to in this chapter. Part 3B covers the interview itself and treats the interview as a process in which a variety of interviewing techniques are deployed in the framework of a phased approach. While what follows in this chapter should not be regarded as a checklist to be rigidly worked through, the sound framework that it provides should not be departed from by interviewers unless they have discussed and agreed the reasons for doing so with their senior manager or an interview advisor (tier 5 of the Association of Chief Police Officers’ National Investigative Interviewing Strategy, ACPO 2009). Any such agreements and the rationale underpinning them should be recorded. It may subsequently be necessary to explain such departures at court.

While this chapter deals specifically with the interviewing of vulnerable adult witnesses, it should not be read and used in isolation from Chapters 2 and 4. This guidance has been written so that Chapters 2 - 4 form a complementary whole. For example, issues in relation to disability and intimidation will have an application across all vulnerable witnesses. Approaches that work well with children may work equally well with adults with learning disabilities and vice versa.

In preparing for interview, investigating officers must take note of the paragraph on gathering physical evidence in Chapter 1.
The importance of planning

3.1 The purpose of an investigative interview is to ascertain the witness’s account of the alleged event(s) and any other information that would assist the investigation. A well-conducted interview will only occur if appropriate planning has taken place. The importance of planning cannot be overstated. The success of an interview and, therefore, an investigation could hinge on it. Even if the circumstances necessitate an early interview, an appropriate planning session that takes account of all the information available about the witness at the time, and identifies the key issues and objectives is required. Time spent anticipating and covering issues early in the criminal investigation will be rewarded with an improved interview later on. It is important that, as far as possible, the case is thoroughly reviewed before an interview is embarked upon to ensure that all issues are covered and key questions asked since the opportunity to do this will in most cases be lost once the interview(s) have been concluded.

3.2 Although the Public Prosecution Service (PPS) is not part of the investigating team and does not direct the investigation, an early meeting between the police and PPS to discuss special measures may be appropriate. The police may also seek advice from the PPS at an early stage about any other evidential issues that may affect the way in which the investigation is conducted. In some exceptional cases, the PPS may select suitably qualified counsel to advise from a very early stage.

3.3 In some cases, it may useful to obtain the assistance of an interview adviser to develop a witness interview strategy (see National Investigative Interviewing Strategy, Association of Chief Police Officers 2009).

Initial contact with vulnerable victims and witnesses

3.4 The need to consider a video-recorded interview will not always be immediately apparent either to the first police officer who has contact with the witness or to other professionals involved prior to the police being informed. Even where it is apparent, the need to take immediate action in terms of securing medical attention and making initial decisions about the criminal investigation plan might be such that some initial questioning is necessary.
3.5 Any initial questioning should be intended to elicit a brief account of what is alleged to have taken place. A more detailed account should not be pursued at this stage but should be left until the formal interview takes place. Such a brief account should include where and when the alleged incident took place, and who was involved or otherwise present. This is because this information is likely to influence decisions made in respect of the following aspects of the criminal investigation plan:

- forensic and medical examination of the victim;
- scene of crime examination;
- interviewing of other witnesses;
- arrest of alleged offender(s); and
- witness support.

3.6 In these circumstances, any early discussions with the witness should, as far as possible, adhere to the following basic principles:

- listen to the witness;
- do not stop a witness who is freely recalling significant events;
- where it is necessary to ask questions, they should, as far as possible in the circumstances, be open-ended or specific-closed rather than forced-choice, leading or multiple;
- ask no more questions than are necessary in the circumstances to take immediate action;
- make a comprehensive note of the discussion, taking care to record the timing, setting and people present as well as what was said by the witness and anybody else present (particularly the actual questions asked of the witness);
- make a note of the demeanour of the witness, and anything else that might be relevant to any subsequent formal interview or the wider investigation; and
- fully record any comments made by the witness or events that might be relevant to the legal process up to the time of the interview.

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

3.7 Competency may be an issue with some vulnerable witnesses. Article 31 of the Criminal Evidence (NI) 1999 Order (the 1999 Order) provides that in principle ‘all persons are (whatever their age) competent to give evidence’. The Article qualifies this principle by saying that persons are incompetent as witnesses where the court finds that they are unable to understand questions put to them or unable to give answers to them which can be understood. However, Article 32(3) makes it clear that in considering this question a court must bear in mind the various special measures that are available under Articles 11 to 18 of the 1999 Order, as amended by the Justice Act (NI) 2011.
3.8 The defence, as well as the prosecution, may have an interest in having the witness declared competent. The party calling the witness is required to satisfy the court that, on a balance of probabilities, the witness is competent to give evidence in the proceedings. It is, therefore, important that the prosecution (or the defence) ensure that applications have been made for any special measures that will maximise the competence of the vulnerable witness.

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

3.10 Where a video recorded statement is to be played in court as evidence in chief, there is no need for the witness to be sworn. Article 33(2) and (3) of the 1999 Order expressly provide that such a video recorded statement, if admitted by the court as the evidence of the witness, shall have the same legal status as that witness’s direct oral testimony in court even where, if giving direct oral testimony in court, the witness would have been required to take an oath.

3.11 Where a witness is competent to give evidence, they are usually also compellable. This means that they can be legally required to attend trial. In general, however, the fact that a witness is compellable does not mean that they can be legally required to give any kind of preliminary statement to the police even the sort of statement that is made under this guidance.

3.12 It does not necessarily follow that because a witness is competent and compellable the PPS will insist on making them attend court to give evidence if unwilling to do so. The PPS is not legally required to call every piece of evidence available and, in some cases, may proceed without a particular witness’s evidence if they believe that they can secure a conviction without it. In cases where the PPS believes that the evidence of a particular witness is essential, the PPS may not proceed if they think that to do so would be particularly damaging to the witness. In deciding whether to include a particular witness’s evidence, and whether to proceed with the case, the PPS will always take account of the wishes of the witness (although they will not necessarily defer to them). Police reports to the PPS should always include clear information about the wishes of the witness and, if appropriate their carers, about going to court. The PPS may in any event need to seek further information from the investigating team and should always be kept up-to-date throughout the case to ensure a continuous review.
3.13 A video recorded interview is usually only admissible as evidence in chief at trial where the person who made it is “available for cross-examination”. However, there are exceptions to this general rule. The judge has discretion to allow the court to hear the pre-trial statements of witnesses who are unable to give evidence for various specified reasons. These include the fact that the witness is dead, “by reason of his bodily or mental condition unfit to attend as a witness” or does not give evidence at trial “through fear or because he or she is kept out of the way”. It must be remembered, however, that the judge has the final word on whether or not the video recorded statement will be admitted.

Planning information

Overview

3.14 The planning phase of an interview with a witness involves some consideration of three types of information:

- information about the witness;
- information about the alleged offence(s); and
- information important to the investigation.

3.15 At this stage, interviewers need to have differing amounts of knowledge about each type of information. In a general sense, they need to know as much as is possible in the circumstances about the witness and a little about the alleged offence and information important to the investigation.

Definition

3.16 The statutory definition of a vulnerable adult witness is set out in Article 4 of the 1999 Order. Briefly, vulnerable adult witnesses are those who have a mental disorder, learning disability or physical disorder/disability that is likely to have an impact on the quality of their evidence.

3.17 It must be remembered that a physical disorder may include individuals with communication difficulties, which may not be attributable to a mental disorder, or learning or physical disability. Difficulties with speech, language and communication can also be hidden like problems with vision and hearing.
3.18 In addition to considering the provisions of the 1999 Order, as amended, it should be noted that the Disability Discrimination (NI) Order 2006 may apply to these vulnerable groups where discrimination occurs in respect of the services provided to them. Interviewers should also be aware of Articles 12 (Equal recognition before the law and legal capacity) and 13 (Access to justice) of the United Nations Convention on the Rights of Persons with Disabilities.

Preliminaries

Recognising vulnerable adult witnesses

3.19 Recognition of vulnerability may be particularly difficult when interviewing takes place at a police station shortly after an alleged offence due to the stress and immediacy of the action. The guidance provided here is in accord with the separate guidance to the police contained in Vulnerable and Intimidated Witnesses: A Police Service Guide (Ministry of Justice 2011), which can be consulted for additional information.

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

- intoxication through intake of alcohol and/or drugs;
- withdrawal from drugs;
- mental disorder;
- impairment of intelligence and social functioning (learning disability);
- a physical disability or disorder (including a speech or communication disorder);
- incapacity through age;
- trauma; and/or
- fear or distress.

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

3.22 Mental disorder is legally defined in Article 3(1) of the Mental Health (NI) Order 1986 as mental illness, mental handicap, severe mental handicap, severe mental impairment, or any other disorder or disability of mind.

3.23 This may be the most difficult category to identify for support through special measures because of the fluctuating nature of many mental disorders. A person with such a disorder may need special assistance only at times of crisis.

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

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

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

Significant impairment of intelligence and social functioning (learning disability)

3.27 Learning disability is not a description of one disability but a collection of many different factors that might affect a person’s ability in relation to learning and social functioning to greatly varying degrees. While some 200 causes of learning disability have been identified, most diagnoses are still ‘unspecified learning disabilities’. People with high support needs may be easily identified but those with mild or moderate learning disabilities may be more difficult to identify.

3.28 It is impossible to give a single description of competence in relation to any particular disability because there is such a wide range of abilities within each in terms of degree of intellectual and social impairment. However, there are some indicators that may help identify a witness with a learning disability.
3.29 A police officer or social care worker in the community may know the witness so an initial request should be made for any local information. If the witness is not known to the services, some early discussion/questioning by a specially trained member of the investigating team might be helpful in identifying possible disabilities. Relevant questions include:

- Where did the witness go to school?
  Was the school designated as a ‘special school’?
- If the school was not designated as a ‘special school’ but was mainstream, did the witness have a designated support teacher?
  Does the witness have any reading or writing difficulties?
- What does the witness do during the day?
  Does the witness attend a college that makes particular provision for students with learning disabilities?
- Where does the witness spend their leisure time?
  At a day centre or Gateway Club?
- Where does the witness live?
  Is this a group home or sheltered housing?
- Does the witness have an adult social care social worker or care assistant?
  Would the witness like this person to be contacted for interview or pre-trial support? (This question is not appropriate where the social care worker or care assistant is suspected of having abused the person.)
- Does the witness receive any benefits relating to disability?

Behavioural indications of learning disability

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

- a slow and/or confused response to questions;
- difficulty in understanding simple questions;
- speech difficulties;
- difficulty/inability with reading and writing;
- limited understanding of a wide range of concepts, for example:
  - time and place;
  - sequences (before, after, first, last, etc.);
  - spatial position (in, on, under, above, etc.);
  - relationships; and
- difficulty in remembering personal details or events.
Though generalisations cannot be made, some characteristics may exist in relation to some syndromes. For example, witnesses with autistic spectrum disorder, which includes Kanner’s syndrome and Asperger’s syndrome, have a range of abilities/disabilities but:

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

Some people with learning disabilities are reluctant to reveal that they have a disability and may be quite articulate. It is, therefore, not always immediately obvious that they do not understand the proceedings in whole or in part.

### Physical disability

Recognition of this type of disability is less likely to be a problem although some disabilities may be hidden (for example, hearing, vision and communication disabilities) but it is important to be aware of whether or how a physical disability may affect the person’s ability to give a clear statement. Most witnesses will be able to give evidence with support.

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

### Speech, language and communication difficulties and disabilities

Speech, language and communication difficulties or disabilities will, like many physical disabilities, be fairly obvious at a first encounter with the witness. However, it is important to emphasise the degree to which speech, language and communication difficulties or disabilities can be hidden. As is often the case with impairment of vision and hearing, aspects of presentation may be missed, misinterpreted or mistaken for something else. People who struggle with communication may present the type of compliance or acquiescence highlighted further on in this chapter. Signs that a person may have communication needs might include:
• a loss of attention, getting restless, becoming agitated;
• seeming to agree often (nodding head);
• asking for clarification;
• seems to lack an understanding of word meanings;
• forgetting instructions;
• confused by non-literal language (‘show me the ropes’), sarcasm or jokes;
• difficulty thinking of words;
• talks in short, choppy sentences;
• a limited vocabulary (lots of ‘yes’ and ‘no’, and no basic words);
• difficulty explaining or providing details;
• giving up easily when trying to explain something;
• talking a lot but saying very little (no substance to content);
• difficulty asking questions; and
• difficulty staying on topic.

3.36 This highlights why advice from, and assessment by, speech and language therapists can be so vital in the preparation for, and conduct of, an interview with a vulnerable witness.

Support for vulnerable adult witnesses prior to interview

Witnesses with a mental disorder

3.37 A mental disorder does not preclude the giving of reliable evidence. However, for many disorders there is a need to protect the witness from additional stress and provide support to enable them to give reliable evidence. The recall of traumatic events can cause significant distress, and recognition of the mental state of the witness and its effect on their behaviour is crucial. There is also the need to ensure that the type of behaviour is identified, as far as possible.

3.38 Witnesses with a mental disorder, such as schizophrenia or other delusional disorders, may give unreliable evidence through delusional memories or by reporting hallucinatory experiences, which are accurate as far as the witness is concerned but bear no relationship to reality (e.g. they might describe a nonexistent crime). Challenges to these abnormal ideas may cause extreme reactions and/or distress. Interviewers should probe these accounts carefully, sensitively and in a non-judgemental way with a view to identifying which elements of the account may be delusional and which elements might have a firmer foundation in reality.
Witnesses may suffer from various forms of anxiety through fear of authority, exposure or retribution. Extreme fear may result in phobias, panic attacks or unjustified fears of persecution. Anxious witnesses may wish to please, they may tell the interviewer what they believe they wish to hear or fabricate imaginary experiences to compensate for loss of memory. The evidence given by depressed witnesses may be influenced by feelings of guilt, helplessness or hopelessness. Witnesses with anti-social or borderline traits may present with a range of behaviours, such as deliberately giving false evidence. These disorders cause the most difficulties and contention in diagnosis, and require very careful assessment.

Witnesses, particularly some older witnesses, may also have dementia, which can cause cognitive impairment. A psycho geriatrician, psychiatrist, or clinical psychologist with experience of working with older people should be asked to assess their ability to give reliable evidence and the effect such a procedure might have on their health and mental welfare. For witnesses with dementia, it will be important to gather evidence as quickly as possible given the degenerative nature of the condition. Consideration should be given at an early stage to the use of video recorded evidence and all agencies should be alert to the negative impact of delay in such cases. Investigators and interviewers should also be aware that, although less prevalent, there are forms of dementia that can affect people under the age of 65 years. Particular care and preparation needs to be taken in relation to interviewing persons who have dementia. Specialist training and support, such as the advocates employed by the Alzheimer’s Society, should be sought for interviewers working with persons with dementia.

Witnesses with a mental disorder may show some of the behaviour seen in witnesses with a learning disability, such as confusion, memory loss and impaired reasoning. For this reason, many of the interview practices that are likely to help witnesses with a learning disability may also benefit witnesses with a mental disorder. Properly preparing the witness for the interview may help to identify and reduce confusion, emotional distress and anxiety. Cognition may not be an immediate difficulty but attention to the way a statement is given and how questions are posed must always be considered.

The witness may wish to please the person in authority. They may be suspicious of the person, aggressive or wish to impress the interviewer. Interviewing teams should be aware of such possibilities. Consultation with people who know the witness well should give some indication of their likely behaviour and some suggestions as to how interviewers can best interact with the witness.
3.43 Confusion may be exacerbated by the use of drugs or alcohol, or withdrawal from drugs. An assessment should include information as to how this is likely to affect the interview and how long this effect is likely to last.

3.44 Preparation of the witness for the interview and a rapport phase prior to formal questioning during the interview is essential. This will allow the witness to have some familiarity with the personnel who will be involved in the interview, including the interviewer, interview monitor and intermediary (where used).

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

3.45 Some witnesses with a learning disability may wish to please people in authority. Some may be suspicious of people, aggressive or may wish to impress the interviewer. Interviewing teams should be aware of such possibilities. Consultation with people who know the witness well should give some indication of their likely behaviour and some suggestions as to how interviewers can best interact with the witness.

3.46 Some witnesses with a learning disability may show confusion, memory loss and impaired reasoning. Properly preparing the witness for the interview may help to identify and reduce confusion, emotional distress and anxiety.

3.47 In some instances of mild and moderate learning disability, a difficulty with cognition may not be immediately apparent. The experience that many people with learning disabilities have of discrimination towards them in society is likely to act as an incentive to conceal or minimise their disability whenever possible. Where there are concerns that a witness has a learning disability, even if the extent of the disability is considered to be relatively mild, it is essential that a great deal of care is taken in framing questions and evaluating the witness’s response to them.

3.48 Some witnesses with a learning disability communicate using a mixture of words and gestures (e.g. Makaton signs/symbols when used as an augmentative communication system). While an intermediary should be considered in every case where a witness has a learning disability, the services of an intermediary are essential in circumstances where a witness communicates using a mixture of words and gestures.

3.49 Some witnesses with a learning disability do not use speech but communicate using alternative methods. Such alternative methods of communication include sign and symbol systems. Examples of sign systems include Makaton signing and
Sign-a-long (these systems may be used either as an augmentative system with speech or as an alternative system without it). Examples of symbol systems include Rebus, Bliss and Makaton. The symbols may be printed on boards or cards, or contained in booklets. They vary from being iconic and concrete to being more abstract in their composition. They may be personalised and can be composed of words, pictures and symbols. While an intermediary should be considered in every case where a witness has a learning disability, the services of an intermediary are essential in circumstances where a witness uses an alternative method of communication instead of speech.

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

3.51 Preparation of the witness for the interview and a rapport phase prior to formal questioning during the interview is essential. This will allow the witness to have some familiarity with the personnel who will be involved in the interview, including the interviewer, second interviewer and intermediary (where used).

**Witnesses with a physical disability**

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

3.53 If the witness does not communicate by speech, alternative communication systems are available, such as British Sign Language (BSL), Irish Sign Language (ISL) and Sign Supported English (SSE). In these instances, an interpreter capable of signing will be required.

3.54 Other sign and symbol systems may be required for witnesses with additional disabilities. Examples of sign systems include Makaton signing and Sign-a-long. Symbol systems include alphabet boards and boards/books/cards containing pictorial symbols (these symbols vary from being iconic and concrete to being more abstract in their composition). Examples of pictorial symbol systems include Makaton, Rebus and Bliss. Communication boards may also be personalised and composed of words, pictures and symbols. In these circumstances, an intermediary capable of using the communication system in question will be required.
Some witnesses may also communicate using a mixture of words and gestures. If a witness has an idiosyncratic speech or communication pattern, a vocabulary should be worked out which will need to be explained to all the personnel present at the interview. Initially at least, signs for ‘yes’, ‘no’, ‘don’t know’ and ‘don’t understand’ should be identified. In one case, a young woman who used single words along with expressive gestures, which were clearly understood by those close to her, gave a good account of events. Those interviewing her were made aware of her mode of communication prior to the interview.

Witnesses who have limited movement may require computer or other electronic communication equipment that can be accessed via fingers by pointing to letters or symbols on a board, or by indicating letters or symbols by blinking or by some other means. It is important that witnesses move or point to the letters or symbols themselves; the involvement of a third party is likely to lead to the evidence being ruled as inadmissible.

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

Preparation of the witness for the interview and a rapport phase prior to formal questioning during the interview is essential. This will allow the witness to have some familiarity with the personnel who will be involved in the interview, including the interviewer, second interviewer and intermediary (where used).

Consent

It is a general principle that all witnesses should freely consent to be interviewed and to have the interview recorded on video. For this reason, interviewers should explain the purpose of a video recorded interview to the witness in a way that is appropriate to their understanding. Such an explanation should include:

- the benefits/disadvantages of having or not having the interview video recorded;
- who may see the video recorded interview (including the alleged offender, both before the trial and at court); and
- the different purposes to which a video recorded interview may be put (e.g. if it appears the video may be useful in disciplinary proceedings against a member of staff who is suspected of abusing a vulnerable adult in their care).

While interviewers should make a record of the action taken to obtain consent for a video recorded interview, it is not necessary for the witness to give their consent in writing.
3.61 Obtaining consent for a video recorded interview may raise difficulties with regard to some groups of vulnerable witnesses, such as those with a learning disability or a mental disorder. In these circumstances, it is important to take account of the following principles:

- every adult has the right to make their own decisions and must be assumed to have capacity to make them unless it is proved otherwise;
- a person must be given all practicable help before anyone treats them as not being able to make their own decisions;
- just because an individual makes what might be seen as an unwise decision, they should not be treated as lacking capacity to make that decision;
- anything done or any decision made on behalf of a person who lacks capacity must be done in their best interests; and
- anything done for or on behalf of a person who lacks capacity should be the least restrictive of their basic rights and freedoms.

3.62 A communication issue should not be confused with a capacity issue and every effort should be made to communicate with people using whatever methods are necessary. An intermediary may be of use in these circumstances.

3.63 If, following an assessment (the extent of which depends on the circumstances), it is concluded that lack of capacity is an issue, actions should be taken in the ‘best interests’ of the witness. As far as is reasonably ascertainable, when considering the person’s best interests particular account should be taken of the matters set out in Box 3.1.

**Box 3.1  Matters to be taken into account when considering best interests**

The matters to be taken into account include:

- the person’s past and present wishes and feelings;
- the beliefs and values that would be likely to influence the person’s decision if they had capacity; and
- the other factors that the person would be likely to consider if they were able to do so.

3.64 In seeking to determine the matters set out in Box 3.1, particular account should be taken of the views of those referred to in Box 3.2.
Box 3.2  Views to be taken into account when considering best interests

The following should be considered:

- such views as the witness is able to express (with such assistance as is necessary); and
- where it is practicable and appropriate to consult them, the views of:
  - anyone named by the person as someone to be consulted on the matter in question or on matters of that kind; and
  - anyone engaged in caring for the person or interested in their welfare.

3.65 Where somebody who is involved in the care of a person believed to lack capacity is also suspected of abusing them, this should be taken into account when considering their views of the person’s best interests.

3.66 The scope of the consultation with others involved in the care, welfare and treatment of the person lacking capacity very much depends on the nature of the decision and the time available in the circumstances. This means taking account of the urgency of the case and the time at which it arises.

3.67 When considering best interests, account should also be taken of any possibility that the witness will regain capacity and, if so, when this is likely to be. This is important in circumstances where, for example, the effect of a witness’s medication on their capacity to make a decision changes over time; when a witness is likely to recover from an injury or an illness to the extent that they are likely to be able to participate more fully in the process of making a decision; or, in the case of persons with dementia, capacity can fluctuate considerably and factors such as location and time of day can be significant.

3.68 Records should be kept of all decisions taken in a person’s best interests, the rationale for that decision and the scope of the consultation that took place in reaching that decision.

Sharing information with carers

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

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

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

3.72 Where vulnerability is likely to be an issue, early individual assessment by an expert of the abilities and disabilities of the witness may be desirable to identify any particular difficulties that the witness may experience in producing a satisfactory statement at interview. Interviewers could also consider the use of advocates for vulnerable groups, for example, people with learning disabilities or those with dementia. An advocate could assist in the preparation for an interview and could provide support for the vulnerable witness through the criminal justice process.

3.73 At the court’s discretion, a responsible person who knows the witness well or is an expert with generic knowledge of the witness’s condition might subsequently be called to provide advice on whether the witness would benefit from special measures. An early request for special measures can be made by either the prosecution or the defence.

Information about vulnerable adult witnesses

3.74 While circumstances will sometimes limit what can be found out about the witness prior to the interview taking place (e.g. as a result of time constraints where the alleged perpetrator is in custody), as much of the following information should be obtained about the witness as is possible:

- age;
- gender;
- sexuality (where the alleged offence might contain a homophobic element);
- community or (perceived) political background (where the alleged offence might have been motivated by this);
- preferred name/form of address;
- the nature of the witness’s disability or mental disorder, and the implications of this for the interview process;
- any medication being taken and its potential impact on the interview (including its timing);
• domestic circumstances (including whether the witness is currently in a ‘safe’ environment, and if the witness has any dependants or caring responsibilities);
• the relationship of the witness to the alleged perpetrator;
• current emotional state (including trauma, distress, shock, depression, fears of intimidation/recrimination and recent significant stressful events experienced);
• the likely impact of recalling traumatic events on the behaviour of the witness;
• current or previous contact with public services (including previous contact with the police, the local authority adult services or health professionals); and
• any relevant information or intelligence known.

3.75 Interviewing teams should also be alert to issues relating to literacy as this will affect a witness’s ability to understand documents and, in some cases, may impact on their ability to give informed consent based on information that is provided in a written format. In other cases, difficulties with reading and writing may have a link to a range of disabilities, for example learning disability, dementia, sensory impairment, stroke or head trauma. Interviewers should remember that many people with literacy deficits will often be adept at hiding the problem to avoid social stigma and through learning to cope in everyday life without these skills.

Race, gender, culture and ethnic background

3.76 The witness’s race, gender, culture, ethnicity, first language, religious and political beliefs must be given due consideration by the interviewing team. They have a responsibility to be informed about and take into account the needs and expectations of witnesses from the specific minority groups in their local area. The interviewing team’s knowledge of the witness’s religion, culture, customs and beliefs may have a bearing on their understanding of any account given by the witness, including the language and allusions the witness may make, for example, to reward and punishment. In a Northern Ireland context, it is always important to be alert to issues which may relate to sectarianism.

3.77 The interviewing team needs to bear in mind that some families may have experienced discrimination and/or oppression through their contact with government agencies and local authorities. Their experiences of racism, for example, may result in them distrusting the professionals involved in an investigative interview (see also Box 3.4). Asylum-seeking witnesses and refugees may have a fear of disclosing abuse because of what may happen to them and their family.

3.78 It is also important that the interviewing team considers the complexities of multiple discrimination, for example in the case of a witness from a minority ethnic community who has a disability, and of individuals’ experiences of discrimination. The specific needs and experiences of dual-heritage witnesses must also be taken into account.
3.79 Some possible relevant considerations include the following although this list is not exhaustive:

- customs or beliefs that could hinder the witness from participating in an interview on certain days (e.g. holy days) or may otherwise affect the witness’s participation (e.g. when fasting);
- the relationship to authority figures within different minority ethnic groups, for example, witnesses from some cultures may be expected to show respect to authority figures by not referring to them by their first names, and by not correcting or contradicting them;
- the manner in which love and affection are demonstrated;
- the degree to which extended family members are involved in caring for the witness;
- the degree of emphasis placed on learning skills in independence and self-care; and
- issues of shame, for example, carers in some cultures may inhibit the witness from talking about a sexual assault for fear of shaming the family.

3.80 A witness should be interviewed in the language of their choice. If a witness is bilingual then this may require the use of an interpreter. The interpreter should normally be selected from the PSNI register of translators and interpreters.

**Other life experiences**

3.81 Where the witness may have experienced abuse, neglect, domestic violence and/or discrimination based on race or disability, the interviewers must consider its potential impact on the interview. There is no single ‘diagnostic’ symptom of abuse or discrimination but some of the possible effects on vulnerable adult witnesses are set out in Boxes 3.3 to 3.6. When considering the possibility of abuse or discrimination, it must be understood that vulnerable adult witnesses who have experienced it will not necessarily exhibit all, or indeed any, of the behaviours set out in these boxes.
Box 3.3  Some possible effects of abuse and neglect
These include:
  • poor self-esteem;
  • post-traumatic stress disorder;
  • self-injury and suicidal behaviour;
  • increased emotional problems, e.g. anxiety and depression;
  • decreased cognitive functioning;
  • sexualised behaviour; and
  • negative social behaviour, e.g. increased aggression, non-compliance and criminal activity.

Box 3.4  Some possible effects of racism
These include:
  • fear;
  • poor self-esteem;
  • fear of betrayal of community;
  • mistrust of people from outside own community;
  • difficulty in establishing positive (racial) identity; and
  • increased vulnerability to racist abuse.

Box 3.5  Some possible effects of discrimination based on disability
These include:
  • decreased autonomy;
  • increased dependency;
  • difficulty in establishing positive self-identity;
  • experience of being isolated (geographical, physical, social);
  • experience of being patronised by people who do not have a disability;
  • experience of being treated as a ‘voiceless object’;
  • feelings of being perceived as ‘asexual’; and
  • increased vulnerability to abuse.
Box 3.6 Some possible effects of domestic violence

These include:

- fear for safety of self and others in family;
- sadness/depression, possibly reflected in self-harm or suicidal tendencies;
- anger, which may be demonstrated in aggressive behaviour;
- negative impact on health (e.g. asthma, eczema or eating disorders); and
- negative impact on behaviour (e.g. aggression).

3.82 It is important for interviewers to consider these matters in relation to each individual witness rather than work from assumptions based on stereotypes. Being sensitive to such factors should contribute towards a safe and non-judgmental interview environment for the witness. It is essential that the interview process itself does not reinforce any aspects of discriminatory or abusive experiences for the witness.

Witnesses with a mental disorder

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

3.84 It might be helpful to ask the witness if they are in contact with a professional such as a doctor, adult social care social worker, community psychiatric nurse or legal representative who might be able to assist them. In some cases, it may be clear either from the location of the witness (e.g. hospital), from other information volunteered by the witness or by one of the professionals known to the witness that they have a mental disorder.

3.85 Witnesses with a mental disorder are eligible for an intermediary where their use would maximise the quality of their evidence.
Witnesses with a significant impairment of intelligence and social functioning (learning disability)

3.86 Some people with learning disabilities can be isolated and distanced from other communities, congregated together, dependent on others (learned helplessness) and waiting for ‘permission’ to do anything. Interviewers should try to establish what impact this kind of situation may have had on the witness and take it into account when planning the interview, preparing the witness for the interview and conducting the interview. It is essential that every possible effort is made to encourage the witness’s active participation in the interview process and to ensure that they know that their contribution is valued, whatever the outcome.

3.87 It is not possible to provide advice in this guidance covering every form of learning disability because there are over 200 of them. Autistic spectrum disorder (autism) and Down’s syndrome are simply highlighted in these paragraphs as examples. When planning and conducting interviews, it should be remembered that there will be significant variation in the abilities of individuals with autism or Down’s syndrome, or with learning disabilities more generally: each witness is an individual and should be treated as such.

3.88 When interviewing witnesses with autism, being aware of the following may be helpful:

- the interviewer should try to be calm, controlled and non-expressive;
- the witness may be frightened of emotion or shouting;
- the witness may be fearful of unfamiliar stimuli, including noise, colour and unknown people;
- the witness may not like people to come too close to them;
- the witness may not like to make direct eye contact; and
- the witness may prefer a consistent and stable environment. For example, if there is more than one interview, they should be carried out in the same place with the same people in the same positions within the room. This would also apply to the courtroom situation if they have to appear on more than one day.

3.89 Witnesses with Down’s syndrome and many other people with learning disabilities might be:

- disturbed and become anxious if there is shouting or aggression, especially if they are questioned by unknown people, particularly authority figures; and
- affected by noise. If they have a significant hearing loss they may, for example, confuse similar sounding words (this has particular relevance in responses to questions regarding when, where, what, why and who).
3.90 All witnesses with learning disabilities are eligible for an intermediary where their use would maximise the quality of their evidence. Communication is naturally ambiguous and often depends on tone, gesture and body language as well as words. This is also the case for witnesses with learning disabilities, who may use a combination of single words, signs and gestures. It will be important to ascertain any differences in their use of language and to identify a person who knows how the witness communicates (such as a parent, carer, adult social care social worker, or speech and language therapist) to facilitate the identification of an intermediary with the appropriate skills prior to the interview.

3.91 There is also the possibility of additional physical disabilities, which might contribute to intellectual impairment and add to the difficulty of giving evidence.

3.92 Elderly witnesses may also have cognitive impairments (e.g. as a result of dementia). They may require the support of special measures in order to be able to give full and reliable testimony.

Witnesses with a physical disability

3.93 A physical disability may cause additional health problems. Witnesses who have associated health or mobility difficulties may benefit if their interviews are spaced out with periods for rest and refreshment. Planning should allow for the extra time necessary. Physically disabled witnesses may need a carer on hand to give assistance with toileting, medication and drinks. Access requirements may also need additional planning. Where the witness has speech and/or hearing losses, this may require the use of an intermediary. Interviewers should always remember that physical disability includes sensory impairment or loss, and these can often be hidden. For reasons of combating social stigma, many people with visual or hearing disabilities will have compensated to a degree that their disability may not be immediately apparent.

Information about the alleged offence(s)

3.94 It is preferable (but not always necessary or essential) that interviewers know little detail of the alleged offence(s) for the purposes of the interview. However, in order to plan and prepare for the interview, interviewers will need a little general knowledge about:

- the type of alleged offence(s);
- the approximate time and location of the alleged offence(s);
- the scene of the alleged offence(s) (note: this should only be enough general knowledge to help the interviewer understand what might be said during the interview); and
- how the alleged offences came to the notice of the police.
3.95 Where the interviewer is also the investigating officer and has been involved in a multi-agency strategy meeting/discussion (see Protocol for Joint Investigation of Alleged and Suspected Cases Abuse of Vulnerable Adults (Health and Social Care Board, July 2009)) or has been interviewing other witnesses during the course of an investigation, it is accepted that circumstances and practical resource considerations might be such that they are likely to know more about the alleged offence(s) than is set out above. In this situation, the interviewer should try as far as possible to avoid contaminating the interview process with such knowledge.

3.96 It is also accepted that circumstances and resource considerations might be such that it could be necessary for an interviewer to interview more than one witness during the course of an investigation. In such a situation, care should be taken to avoid asking questions of a witness based on the responses of previous interviewees, because this could contaminate the witness’s account.

3.97 Nothing in this guidance is intended to limit operational decision-making in cases where the nature of the investigation, the context of the interview and the circumstances as they are known at the time make it necessary for interviewers to have a more detailed knowledge of the offence than the general information outlined in the paragraphs above.

**Information important to the investigation**

3.98 While obtaining an account of the alleged event is essential, other matters might need to be covered during the interview in order to progress the investigation. These matters can be regarded as ‘information important to the investigation’. Obtaining a complete picture of all the relevant issues within an interview is essential because it will provide the investigating officer with the information necessary to conduct a comprehensive investigation. It could also prove beneficial in discussions with the PPS if the subject of witness assessment is raised. Information important to the investigation falls into two categories: general investigative practice and case-specific material. Where such information important to the investigation has not already been covered as part of the witness’s account, interviewers should consider introducing it either in the latter part of the questioning phase or in a subsequent interview session depending on the complexity of the case and what is alleged to have been witnessed by the interviewee.
3.99 The amount of knowledge that interviewers have about information important to the investigation prior to the interview depends on what they know about what is alleged to have been witnessed by the interviewee. It is preferable that interviewers know little detail of the alleged offence(s) before the interview. Therefore, only a little knowledge that could form the basis of potential questions about information important to the investigation is likely to be available to the interviewer at this point in time. However, while planning the interview, interviewers should apply what they know of the alleged offences to determine the areas of general investigative practice that might need to be covered in the interview. More case-specific material could be either made available to the interviewer (from the investigating officer, interview monitor or recording equipment operator) after an attempt has been made to elicit and clarify the witness’s account, or included in the planning information for a later interview to avoid potential contamination of the process.

Information important to the investigation relating to general investigative practice

3.100 Information important to the investigation relating to general investigative practice includes:

- points to prove any alleged offence(s); and
- information that should be considered when assessing a witness’s identification evidence, as suggested in R v Turnbull and Camelo ([1976] 63 Cr App R 132) and embodied in the mnemonic ADVOKATE (Practical Guide to Investigative Interviewing (National Centre for Policing Excellence, 2004)):
  - **A** Amount of time under observation
  - **D** Distance from the eyewitness to the person/ incident
  - **V** Visibility – including time of day, street lighting, etc.
  - **O** Obstructions – anything getting in the way of the witness’s view
  - **K** Known or seen before – did the witness know, or had they seen, the alleged perpetrator before?
  - **A** Any reason to remember – was there something specific that made the person/incident memorable?
  - **T** Time lapse – how long since the witness last saw the alleged perpetrator?
  - **E** Errors or material discrepancies;
- anything said by the witness to a third party after the incident (evidence of first complaint etc.); and
- any other witnesses present.

3.101 This is not intended to be an exhaustive list. The nature of the information important to the investigation pertaining to general investigative practice varies according to the circumstances of the case.
Information important to the investigation relating to case-specific material

3.102 Information important to the investigation relating to case-specific material includes:

- how and where any items used in the commission of the offence (e.g. clothing, vehicles, weapons, cash, documents or other property) were disposed of, if the vulnerable adult witness might have some knowledge of this;
- access by the witness and suspect to electronic media including computers and mobile telephones;
- relevant financial transactions by the witness and suspect;
- any background information relevant to the witness’s account (e.g. matters that might enhance or detract from the credibility of the witness’s evidence, such as the amount of any alcohol consumed);
- any lifestyle information relevant to the witness’s account;
- where the witness has knowledge of an alleged victim or a suspected perpetrator, an exploration of their relationship, background history, places frequented, and any events related or similar to the matter under investigation; and
- any risk assessment issues that the witness might know about that concern the likely conduct of the alleged perpetrator, their family or associates (this should be dealt with after the witness’s account has been covered to avoid confusion).

3.103 Again, this is not intended to be an exhaustive list. The nature of any case-specific material varies according to the circumstances of the alleged offence, the nature of any relationship between the witness and the alleged perpetrator, and what is alleged to have been seen, heard or otherwise experienced.

3.104 Significant evidential inconsistencies and significant evidential omissions (case-relevant information) are discrete categories of case-specific material.

Significant evidential inconsistencies

3.105 During the course of an investigation it may be necessary to ask a vulnerable adult witness to explain a significant evidential inconsistency between what they have said during the interview and other material gathered during the course of the investigation. Such inconsistencies would, for example, include significant differences between the account provided by the witness during the interview and:

- what the witness is reported to have said on a previous occasion;
- the accounts of other witnesses; and
- injuries sustained by either the alleged victim or the alleged offender.
3.106 There are a number of reasons for significant evidential inconsistencies between what a witness says during an interview and other material gathered during the course of an investigation. Many of these reasons are perfectly innocent in their nature (e.g. genuine mistakes by the witness, those stemming from a memory-encoding or recall failure, or subconscious contamination of their memory by external influences) but occasions may arise where the witness is motivated to either fabricate or exaggerate their account of an event.

3.107 Whatever the reason for the significant evidential inconsistency, occasions may arise where it is necessary to ask the witness to explain it. The following principles should be taken into account when considering whether, when and how to solicit such an explanation:

- explanations for evidential inconsistencies should only be sought:
  - where the inconsistency is a significant one;
  - after careful consideration has concluded that there is no obvious explanation for them; and
  - after the witness's account has been fully explored, either at the end of the interview or in a further interview, as appropriate;

- interviewers should always be aware that the purpose of asking a witness to explain an evidential inconsistency is to pursue the truth in respect of the matter under investigation, it is not to put pressure on a witness to alter their account;

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

- questions intended to elicit an explanation for evidential inconsistencies should be carefully planned, phrased tactfully and presented in a non-confrontational manner.

Significant evidential omissions

3.108 During the course of an investigation it may be necessary to ask a vulnerable adult witness about relevant information that they have not mentioned in their account. This may arise, for example, where others say that the alleged offender was carrying an object, the alleged offender’s behaviour was unusual, or there was something particular about the alleged offender’s description or vehicle but this is not mentioned by the witness. There are a number of reasons why this type of information can be omitted from an account and situations may arise where it is important to seek an explanation from the witness. In these circumstances, it may be necessary to ask a question to establish whether the witness has knowledge of the information. Such a question should only be asked after the witness’s account has been fully explored at the end of the interview (or in a further interview if necessary).
3.109 When planning such a question, the interviewer should consider:

- whether the information omitted by the witness is likely to be important enough to be worthy of explanation;
- the extent to which the witness may be vulnerable to suggestion, compliance or acquiescence; and
- which type of question is most likely to elicit the information in a manner that will not have an adverse effect on the value of any answer.

3.110 A plan for soliciting an explanation for the omission of case-relevant information from a witness’s account must consider the reliability of any answer. For example, a useful starting point might be to ask the witness a specific-closed question, such as: ‘What else can you tell me about the incident?’. If the witness’s answer:

- includes the case-relevant information but lacks sufficient detail, the interviewer should ask the witness to provide a more detailed response by means of an open question (e.g. ‘Tell me about…’). When the case-relevant information has been covered, the witness should be tactfully asked to explain its omission from their account unless the reason for its omission is apparent from the witness’s response or the circumstances of the case; or
- does not include the case-relevant information, a further decision will need to be made as to whether it is necessary to ask a question that might be regarded as leading (e.g. ‘Do you recall seeing/hearing…?’). It should be noted that if the answer to such a leading question contains the case-relevant information, it is likely to be of limited evidential value. The evidential value of such an answer may, however, be enhanced if the interviewer then asks the witness to provide a more detailed response by means of an open question (e.g. ‘Tell me about…’) followed by questions intended tactfully to elicit an explanation for its omission from their account (unless the reason for the omission is apparent from the witness’s response or the circumstances of the case).

3.111 Where the witness cannot recall the case-relevant information, this may be due to not attending to the information or to memory loss.
Using the planning information

Overview

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

Aim and objectives

3.113 The aim of the interview should be to achieve all the objectives that are set for it while being as concise as reasonably possible.

3.114 Setting clear objectives is important because they give direction to the interview and contribute to its structure. The interview objectives should focus on:
   • the alleged incident or event(s);
   • any case-specific information important to the investigation.

Techniques

3.115 The kind of techniques used within the phased structure set out in Part 3B will vary according to what is known about the witness and the offence when planning the interview as well as how the witness behaves and what emerges during the interview itself. For example, it might be productive to make use of some of the cognitive mnemonics within the phased interview approach with a direct witness who is able and willing to participate in the process whereas such techniques are unlikely to be productive while a witness remains hostile and less co-operative, and where a more managed communication is necessary.
**How the interview is to be recorded**

3.116 Any decision as to the form of the witness’s statement, whether as a video recorded interview or a written statement, will need to be taken on an individual basis taking into account information and any expert opinion that is available. One important factor would be the presence of any memory disabilities. If the witness has unusual difficulties in retrieving past events readily then an early video recorded interview may be advisable. Likewise, if a witness is likely to suffer undue stress in giving evidence in chief live in the courtroom, a video recorded statement may again be preferable.

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

3.118 Regardless of how the interview is recorded, notes should always be taken that are sufficiently detailed to assist the investigating officer to determine any further lines of enquiry that might be necessary, and to brief the custody officer and any other interviewers where a suspected perpetrator is in custody. Responsibility for the compilation of such notes should be agreed during the planning phase of the interview. This responsibility should fall to the second interviewer. While the lead interviewer may consider taking brief notes to assist them during the free narrative phase of the interview, where this is appropriate, they should not be responsible for taking notes for the purposes of briefing others because it is likely to distract the witness, obstruct the flow of recall and slow the interview process down therefore hindering the maximum retrieval of information.

**Interviewers and others present at the interview**

The interviewer

3.119 Consideration should be given to who is best qualified to lead the interview. A special blend of skills is required to take the lead in video recorded interviews. The lead interviewer should be a person who has or is likely to be able to establish rapport with the vulnerable adult, who understands how to communicate effectively with witnesses who might become distressed, and who has a proper grasp of the rules of evidence and criminal offences. The lead interviewer must have good knowledge of information important to the investigation, including the points needed to prove particular offences.
2.120 In addition to taking account of the prospective interviewer’s skills, the following factors should be taken into consideration when considering who should conduct the interview:

• the experience of the prospective interviewer in talking to vulnerable adults in respect of the type of offence under investigation and any other skills that they possess that could be useful;
• any personal or domestic issues that the prospective interviewer has that might have an adverse impact on the interview; and
• whether any previous experience that the prospective interviewer has with the witness is likely to either inhibit rapport building, or give rise to challenges of coaching, prompting or offering inducements.

3.121 The witness’s gender, race, culture and ethnicity must always be given due consideration and advice sought where necessary. However, stereotypic conclusions about who is to conduct the interview should be avoided.

3.122 Where the witness expresses a particular preference for an interviewer of either gender or sexual orientation, or from a particular race, cultural or ethnic background, this should be accommodated as far as is practical in the circumstances.

3.123 The interviewer should consider the appropriate mode of dress for the particular witness. For example, research shows that a person’s perceived authority can have an adverse effect on the witness especially with respect to suggestibility.

3.124 Exceptionally, it may be in the interests of the witness to be interviewed by somebody with whom they are already confident but who is not a member of the investigating team. Provided that such a person has appropriate professional qualifications, is independent and impartial, is not a party to the proceedings, is prepared to co-operate with appropriately trained interviewers and can accept adequate briefing (including permitted questioning techniques), this possibility should not be precluded.

**The second interviewer**

3.125 The presence of a second interviewer is desirable because they can help to ensure that the interview is conducted in a professional manner, can assist in identifying any gaps that emerge in the witness’s account and can ensure that the witness’s needs are kept paramount. Careful consideration needs to be made with regard to whether the second interviewer is present in the interviewing room itself or in the adjoining room with the monitoring equipment. The possibility that the witness might feel intimidated by the presence of too many people in the interview room should be taken into account in determining where a second interviewer is situated particularly where an interview supporter, intermediary and interpreter are also to be present in the interview room.
Regardless of who takes the lead, the interviewing team should have a clear and shared remit for the role of the second interviewer. Too often this role is subjugated to the need for someone to operate the video equipment when, in reality, the second interviewer has a vital role in observing the lead interviewer’s questioning and the witness’s demeanour. The second interviewer should be alert to interviewer errors and to apparent confusions in the communication between the lead interviewer and the witness. The second interviewer can reflect back to the planning discussions and communicate with the lead interviewer as necessary. Such observation and monitoring can be essential to the overall clarity and completeness of the video recorded account which will be especially important at court.

**Equipment operators**

The equipment should always have an operator for the duration of the interview. This will allow the view recorded by the camera to be adjusted if the witness moves. It should also provide an opportunity for the interviewer to be alerted at the earliest possible moment in the event of an equipment failure rather than such a failure only being discovered at the end of the interview (see also Appendix C).

**Interpreters**

Witnesses should always be interviewed in the language of their choice unless exceptional circumstances prevail (for example, in respect of the availability of interpreters). This will normally be the witness’s first language unless specific circumstances result in their second language being more appropriate. Interviewers should be aware that some witnesses could be perfectly fluent in English but might use their first language to express intimate or more complex concepts. As a result, the possibility of using an interpreter should be considered while planning the interview even where a witness is bilingual.

Interpreters should be appropriately accredited and trained so that they understand the need to avoid altering the meaning of questions and replies. They should normally be selected from the PSNI register of translators and interpreters. If it is not possible to select an interpreter from these registers then the interpreter may be chosen from some other list provided that the interpreter meets standards at least equal to those required for entry onto the registers, in terms of academic qualifications and proven experience of interpreting within the criminal justice system. While the familiarity of the interpreter to the witness is not a bar to employment and may indeed facilitate communication, all interpreters need to be independent, impartial and unbiased. Family members or other close relatives should not be used either during the interview or when preparing the witness for it.
Interpreters should be involved in the planning process. They should have a clear understanding of the objectives of the interview, its structure and the function served by any specific techniques used (e.g. those of the cognitive interview). It should be remembered that some words in English might not have an exact equivalent in other languages and communication systems. This possibility should, therefore, be discussed while planning the interview with a view to developing strategies to address what might otherwise be a problem.

If interviewers are working with an interpreter, it is important to have clarified at the outset who will lead the interview in terms of maintaining direct communication with the witness. If the witness is communicating via an interpreter, the lead interviewer should identify themselves as such while maintaining appropriate eye contact with the witness so that the witness understands that they should address the interviewer not the interpreter. However, if a signer is being used to communicate with a witness who has a hearing impairment, it may be more important for the signer to maintain the direct communication with the witness.

Where an interpreter is present, they must be clearly identified at the beginning of the interview. Whenever possible, they should also be visible in one of the shots recorded.

Where a sign language interpreter is being used to interpret for a witness with a hearing impairment, a camera should be used to record the signer’s hand movements as well as those of the witness. In some interview suites, it might be necessary to make use of a portable camera, in addition to the static equipment already set up in the suite, for this purpose. Interviewers should also emphasise to the signer that it is important to avoid inadvertently leading the witness by presenting only one particular option when some of the more generic signs are used, e.g. the signs for ‘weapon’ and ‘touch’ depend on the context so it may be important to present the witness with a number of alternatives.

Where a signer is to be used, it is important to remember that the energy involved in signing is such that the hands of the signer and the witness are likely to get tired. The interview plan should therefore take account of the need for breaks to give the signer and the witness an opportunity to rest their hands.
Intermediaries (note: this special measure is not yet available)

3.135 An intermediary may be able to help improve the quality of evidence of any vulnerable adult witness who is unable to detect and cope with misunderstanding, or to clearly express their answers to questions especially in the context of an interview or while giving evidence in court. The information provided here is intended to summarise the role of the intermediary and provide general principles that need to be considered in criminal investigations. Detailed procedural guidance will be produced when this special measure is commenced.

3.136 Article 17 of the 1999 Order makes it clear that an intermediary can assist a witness to communicate by explaining questions put to and answers given by a vulnerable witness. In addition, intermediaries can assist during the planning phase of an interview by providing advice on how questions should be asked and then to intervene during the interview where miscommunication is likely, by assisting the interviewer to rephrase the question or by repeating the witness’s answers where they might otherwise be inaudible or unclear on the recording. The extent to which the intermediary is actively involved in the communication of questions and answers will vary from witness to witness depending on the witness’s particular needs and communication style. It will also depend on the degree of compliance with the intermediary’s recommendations by the interviewer. It is very important to remember that the intermediary is there only to assist communication and understanding – they do not take on the function of investigator.

3.137 Following commencement of this special measure, registration and accreditation arrangements will be put in place.

3.138 Before an intermediary can assist with communication, they need to conduct one or more assessment meetings with the witness. The criminal case is not discussed during assessment meetings. These meetings enable the intermediary to consider the witness’s communication needs, and devise strategies and recommendations for how to maximise understanding. The meetings also enable the intermediary to build the necessary rapport with the witness and to determine whether they (the intermediary) are the right person to act as an intermediary for that witness. Intermediaries should never be alone with a witness; a responsible third party must be present. This should usually be a police officer at the investigation phase.

3.139 Registered Intermediaries should be used. The use of an unregistered person as intermediary can only be considered once the options for using a Registered Intermediary have been exhausted. When this is the case, an unregistered intermediary has the same responsibility to the court. They must be independent of the case being investigated (i.e. not witnesses or suspects). There is a preference for unregistered intermediaries to be professional people rather than family members,
friends or associates. In the event that the particular circumstances of the case are such that it appears that only a non-professional person can perform the function of an intermediary, the rationale for this decision should be clearly recorded.

3.140 Discussions with the intermediary at the planning phase should include the arrangements for leading the interview, legal and confidentiality requirements, and the exact role that the intermediary will play. The potentially explicit nature of the topics to be covered should be addressed. The intermediary should be provided with information that is relevant to their role and will help them to maximise communication/understanding (e.g. the specific vocabulary used by the witness and relevant relationships).

**Interview supporters**

3.141 It may often be helpful for a person who is known to the witness to be present during the interview to provide emotional support (the ‘interview supporter’). They may also be able to offer extra information regarding the particular communication needs of the witness. However, in some circumstances it has been found that the use of a person who is well-known to the witness as an interview supporter can prove counterproductive by inhibiting the disclosure of information (e.g. as a result of embarrassment arising from sensitive information being disclosed in the presence of a person seen by the witness on a day-to-day basis). For this reason, discussions as to the identity of any potential interview supporter should take account of the nature of their relationship with the witness and its potential impact on the interview process. Wherever possible, the views of the witness should be established prior to the interview as to whether they wish another person to be present and, if so, who this should be.

3.142 Other witnesses in the case, including those giving evidence of an early complaint, cannot act as interview supporters.

3.143 If an interpreter or intermediary is included then they will need to be distinct from the interview supporter and these different functions should not be vested in one person.

3.144 Interview supporters must be clearly told that their role is limited to providing emotional support and that they must not prompt or speak for the witness especially on any matters relevant to the investigation.

3.145 Where an interview supporter is present, they must be clearly identified at the beginning of the interview. Whenever possible, they should also be visible in one of the angles recorded. Good practice would be for the interview supporter to make sure they are outside of the witness’s line of vision, for example by sitting on the opposite side of the witness to the interviewer.
Location of the interview

3.146 Active consideration should be given to the location of the interview and to the layout of the room in which it is to take place. In the planning phase, the interviewer should attempt to determine where the witness would prefer to be interviewed. Some witnesses may be happy to be interviewed in an interview suite while others might prefer to be interviewed in a setting familiar and comfortable to them. Whatever the decision, the location should be quiet enough to avoid a situation in which background noise is likely to interfere with the quality of the sound on any visual or audio record, and free from interruptions, distractions, and fear and intimidation so the interviewer and witness can concentrate fully on the task in hand: the interview. All decisions need to take account of the witness’s own expressed preferences as to the location of the interview.

3.147 Interviewers should ensure that sufficient pens and paper are available for use where a witness’s recall could be assisted by drawing sketches/plans (NB: it is important to remember that any sketches/plans, etc. drawn in the interview will need to be retained so that they can either be adduced as evidence or disclosed as unused material under the terms of the Criminal Procedure and Investigations Act 1996).

3.148 In the event of a witness being interviewed at their home address, care should be taken to avoid saying anything or video recording any background material that might lead to the location being identified (the use of background screens should be considered if necessary).

Timing of the interview

3.149 The decision when to conduct an interview needs to take account of the demands of the investigation (e.g. a suspected perpetrator being in custody) as well as the potential effects of trauma and/or stress. Trauma and stress can interfere with the process of remembering but this should be determined by asking the witness rather than by the application of an arbitrary period of time. Some witnesses will want to be interviewed relatively quickly while others might wish to be interviewed at a later date. It should always be borne in mind that the potential for memory contamination taking place increases with the delay.

3.150 Interviews should not take place at a time when the witness is likely to be suffering from the effects of fatigue (other than in the exceptional circumstances mentioned). The effect of the witness’s routine and the potential impact of any medication, as well as their views, must be taken into account in determining the best time to conduct the interview.
In the event of circumstances being such that it is absolutely essential for a witness to be interviewed at a time when they are likely to be suffering the effects of fatigue (for example, where an alleged offender is in police custody for a serious offence and an interview is necessary to secure potentially vital evidence), consideration may be given to conducting a brief interview in the first instance which sets out the witness’s account and addresses any issues on which immediate action needs to be taken. Where it is necessary to conduct a brief interview, the principles set out in the paragraphs about initial contact with vulnerable adult witnesses should be adhered to. A more substantial interview can then be arranged at an appropriate time.

**Duration of the interview (including pace, breaks and the possibility of more than one session)**

Whenever possible, the interviewer should, in the preparation and planning phase, seek advice from people who know the witness about the likely length of time that the witness can be interviewed before a pause or break is offered, and breaks should be offered or taken during the interview in accordance with this information. If there is an accompanying interviewer, this person can share responsibility with the lead interviewer concerning the active use of pauses and breaks. For some vulnerable witnesses, there will be a need to plan for several pauses/breaks and for the interview to be spread over more than one day. When this occurs, care must be taken to avoid repetition of the same focused questions over time which could lead to unreliable or inconsistent responding in some witnesses and interviews being ruled inadmissible by the court.

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

**Planning for immediately after the interview**

Although interviewers cannot predict the course of an interview, planning discussions should cover the different possible outcomes and consider the implications for the witness. This should include the possibility of a medical examination (where this has not taken place before the interview), the possible need for alternative accommodation, and any other steps necessary to protect the witness or reduce the possibility of harassment.
Witnesses who might become suspects

3.155 So far as is practicable, consideration should be given in the planning phase as to how interviewers will deal with any confessions to criminal offences made by the witness in the course of the interview. Any decision on an appropriate course of action will involve taking into account the seriousness of the crime admitted and weighing it against the seriousness of the crime under investigation.

3.156 It is preferable to anticipate and plan for such an eventuality while recognising that any decisions on a particular course of action are likely to depend on what has been disclosed by the witness during the course of the interview.

Recording the planning process

3.157 A full written record should be kept of the decisions made during the planning process and of the information and rationale underpinning them. This record should be referred to in the statement of evidence subsequently made by the interviewer in relation to the planning, preparation and conduct of the interview, and should be revealed to the PPS under the requirements of the Criminal Procedure and Investigations Act 1996.

Preparing the witness for an interview

3.158 Vulnerable witnesses should always be prepared for an interview. In some cases, this preparation might be fairly brief but some vulnerable witnesses may be very unused to speaking to strangers and may well need to spend time getting to know the interviewer before they are ready and/or willing to take part in an investigative interview. This familiarisation process may take some time (e.g. hours in some cases) and, therefore, in their preparation, interviewers need to consider whether one (or more) meetings with a witness should be planned to take place prior to the investigative interview.

3.159 In some instances, it may be helpful to arrange a familiarisation visit to the interview suite for the witness as part of the preparation process.

3.160 The preparation of the witness should include an explanation of the purpose of the interview and the reason for visually recording it (including who might subsequently view it), the role of the interviewer(s) and anybody else to be present, the location of the interview and roughly how long it is likely to take. The interviewer(s) should also outline the general structure of the interview and provide some explanation of the ground rules that apply to it (including the witness not making any assumptions about the interviewer’s knowledge of the event). Substantive issues relating to the evidence should not be discussed while preparing a witness for an interview.
3.161 Where appropriate, the witness’s carer(s) should also be provided with suitable information at this stage. In particular, they should be discouraged from discussing the details of the alleged offence(s) with the witness or any other individual who may be involved in the investigation but must be able to reassure the witness who wishes to talk or express anxieties. They should be asked to document carefully any discussions they have with the witness or other persons regarding the allegation or investigation (e.g. who was present, date/time and setting, what exactly was said). The witness should never be offered inducements for complying with the investigative process. Carer(s) should also be encouraged to provide emotional support to the witness such as physical comfort and reassurance. They should be given information about what further role, if any, they may have in planning the interview or in being present while it is conducted (or given reasons why the interviewer(s) would prefer them not to be present). Where possible, any support needs of the carer(s) that are identified should be brought to the attention of the relevant authorities/agencies.

3.162 Any issues or concerns raised by the witness or their carer(s) should be addressed while preparing them for the interview (e.g. welfare issues or concerns about the possibility of a later court appearance).

3.163 Most witnesses will be anxious prior to an investigative interview and few will be familiar with the formal aspects of this procedure. It is, therefore, important that the interviewer uses the time spent preparing a witness for an interview to build up a rapport with the witness. The nature and the extent of rapport building required very much depends on what has been established about the witness during the planning phase of the interview.

3.164 Vulnerable witnesses might need to spend more time getting to know the interviewer(s) before they are ready and/or willing to take part in an investigative interview. The interviewer(s) should consider whether one or more meetings with a witness should be planned to take place prior to the interview because this familiarisation process may take some time.

3.165 Some witnesses may feel that their initial, lawful co-operation with a person who subsequently commits an offence may make them blameworthy and vulnerable witnesses may assume that they must have done something wrong simply because they are being interviewed. The interviewer might need to try to reassure the witness on these points but promises or predictions should not be made about the likely outcome of the interview. So far as possible, the interview should be conducted in a ‘neutral’ atmosphere, with the interviewer taking care not to assume, or appear to assume, the guilt of an individual whose alleged conduct may be the subject of the interview.
3.166 Some witnesses may be unhappy or feel shame or resentment about being questioned especially on personal matters. In the rapport phase, and throughout the interview, the interviewer should convey to the witness that they have respect and sympathy for how the witness feels. A witness may be apprehensive about what may happen after the interview if they do provide an account of what happened. Such worries should be addressed.

3.167 Initial discussions with the witness could focus on events and interests not thematically related to the investigation: sport, television programmes, and so on. Sometimes, where the witness and the interviewer have had some previous contact this can be quite brief. At other times, especially when the witness is nervous or has been subject to threats from the alleged abuser, a much longer period of rapport-building when the witness is prepared for the interview may be warranted.

3.168 Rapport-building while the witness is prepared for the interview can also serve to set the tone for the style of questions to be used by the interviewer during the interview. It is, therefore, important that the witness is encouraged to talk freely through the extensive use of open-ended questions because this can help to encourage the witness to give detailed accounts; a style of communication wholly consistent with the guidance set out in this document.

3.169 In some instances, it might be helpful to conduct a practice interview while preparing the witness for the interview. In these circumstances, the witness could be asked to recall a personal event unrelated to the issue of concern (e.g. a birthday or a holiday). This serves to provide the witness with an example of the kind of detail that will be required in relation to the issue of concern and to practise extended verbal responses. Such practice interviews might be particularly useful with learning disabled witnesses who might not appreciate the demands of a witness interview for detailed and context information.

3.170 Rapport-building while the witness is prepared for the interview also gives the interviewer the opportunity to build on their knowledge of the witness’s communication skills and degree of understanding of vocabulary. The interviewer can then adjust their language use and the complexity of their questions in the light of the witness’s responses.

3.171 It may prove problematic to attempt to proceed with an interview until rapport has been established. Should establishing rapport when the witness is prepared for the interview proves difficult, it may be preferable to postpone the interview rather than proceeding with an interview that may well turn out to be of no benefit.
3.172 Assistance should be sought if necessary from interview supervisors and interview advisers concerning the issues that might arise during the preparation of a witness for an interview.

3.173 Full written notes must be kept of the preparation of a witness for an interview and must be given to the PPS on request. The information obtained to plan the interview should be reviewed and revised if necessary in the light of any additional information that arises from preparing the witness for the interview.

Part 3B: Interviewing vulnerable adult witnesses

General advice on interviewing vulnerable adult witnesses

3.174 What follows is a recommended procedure for interviewing based on a phased approach. This treats the interview as a process in which a variety of interviewing techniques are deployed in relatively specific and discrete phases, proceeding from free narrative to open and then to more closed forms of questioning. It is suggested that this approach is likely to achieve the basic aim of allowing the witness to provide an account. This structure should also result in a hierarchy of reliability of the information elicited. However, inclusion of a phased approach in this guidance should not be taken to imply that all other techniques are necessarily unacceptable or to preclude their development. Neither should what follows be regarded as a checklist to be rigidly worked through. Nevertheless, the sound framework it provides should not be departed from by interviewers unless they have discussed and agreed the reasons for doing so with their senior manager(s) or an interview adviser (tier 5 of the Association of Chief Police Officers’ (ACPO’s) National Investigative Interviewing Strategy (ACPO, 2009)).

3.175 Much more professional experience and published research now exist on the topic of conducting appropriate investigative interviews with children than with other vulnerable groups. Nevertheless, as for all witnesses, interviews with vulnerable witnesses should normally consist of the following four main phases:

- establish rapport;
- seek free narrative recall;
- ask questions; and
- closure.

Each phase will be described in greater detail below. These phases are compatible with and underpin the PEACE interview framework advocated by ACPO.
3.176 The additional planning phase, which will have occurred prior to the actual interview and which will often need to be extensive, should provide guidance to the interviewer about what might be achieved in each of the four main phases of the interview (e.g. ‘Is the witness able to communicate via free recall?’). No interview should be conducted without there having been prior, proper planning.

3.177 Although currently our knowledge is limited concerning how best to interview vulnerable witnesses, some of the difficulties that research and good practice have noted for vulnerable witnesses illustrate the less obvious difficulties that ordinary witnesses experience. Interviewing practices and procedures that diminish difficulties for ordinary witnesses are likely to do so for vulnerable witnesses and vice versa. While Chapter 2 focuses specifically on child witnesses, the learning and approaches captured there have a transferable application to vulnerable witnesses in general.

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

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

**Interviewer behaviour**

3.180 Many interviewers will not be very familiar with the various types of vulnerable witnesses. Research has made it clear that when people meet others with whom they are unfamiliar their own behaviour becomes abnormal. This unusual behaviour is often noted by vulnerable people who may view it as a sign of our discomfort. When planning an interview, interviewers should always plan to monitor their own behaviour throughout the interview and to try to keep it as normal as circumstances allow. The planning should, in this regard, especially focus on how the interviewer will manage the opening minutes of the interview. The planning should also have dealt with the issue of the interviewer being conversant with the appropriate terms to use with witnesses for various vulnerabilities/disabilities so that interviewers will not be uneasy/tense about using such terminology (when necessary) in the presence of the witness and so that the witness will not be caused unease by inappropriate use of terminology.
3.181 Interviewers must be aware that, in order to gather accurate information from a vulnerable witness, they have to be sensitive not only to the communication needs of the witness but also to their own impact on the interview. They should try to focus on the witness as a person rather than on the vulnerability. For many people with disabilities, the disability is not central to their self-concept. Interviewers should try to avoid being uncomfortable or unsure how to behave with someone who has a disability that they have not encountered before. Interviewers will often need to behave in a reassuring and sympathetic way but they should avoid behaving in ways that vulnerable witnesses may find demeaning, insincere or patronising.

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

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

Pace and breaks

Pace

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

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

The interview should go at the pace of the witness.

Breaks

3.185 Not only will interviews with vulnerable witnesses typically be conducted at a slower pace than with other witnesses, these interviews will usually involve more breaks and pauses. Many vulnerable witnesses will not be able to concentrate for as long a time as can other witnesses and some of them will also require regular comfort breaks. Where appropriate, the interviewer should agree with the witness a simple sign (e.g., the use of a special card) that the witness can use to request a break. This will also help to empower the witness and might help to reduce any power differential that they perceive in the interaction.

Phase one: establishing rapport (including engaging and explaining)

Explaining the formalities

3.186 Firstly, it is necessary when video recording the interview to check that the equipment is turned on and that all people in the room can be clearly seen on the monitor through the camera with the wide-angle lens where two cameras are in use and that the witness is appropriately framed in the main camera image (see Appendix E). Next, the interviewer should say out loud the day, date, time and place (not the detailed address) of the interview and give the relevant details of all those present.

Building rapport

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

3.188 Another major aim of the rapport phase is to help the witness, and indeed the interviewer, to relax and feel as comfortable as possible. Typically, the witness should be invited to discuss ‘neutral’ events in their life (for example, interests
or hobbies where this is appropriate for that witness). The use of open-ended questions at this stage, if appropriate, should help the witness understand at the outset that detail is required. It will encourage them to talk at length. It is at this stage in the interview that the interviewer can supplement their knowledge of the witness’s social, emotional and cognitive development. This should help an interviewer to adapt their style (questions and use of language) of interviewing to the needs of the witness. As interviewers become more familiar with interviewing vulnerable witnesses, they may become tempted to shorten their rapport phases. This temptation should be resisted since, while the interviewer may now be more familiar with such interviews, the witnesses will not be.

3.189 Within the main body of the interview and, if an interview is being video recorded, it is important that any discussion of neutral topics in the rapport phase is completed within a relatively short space of time. Interviewers should remember that a lengthy rapport phase may result in some vulnerable witnesses getting:

- tired before they are asked to provide an account. This could have an adverse impact on the quality of their evidence; and
- confused about the purpose of the interview. This could increase in their anxiety.

3.190 If the interview plan suggests that discussing neutral topics for a lengthy period of time may be beneficial (e.g. with witnesses with a learning disability or some traumatised witnesses), it should take place as part of witness preparation before the interview commences.

3.191 Interviewers should be aware that it is neither desirable nor essential to discuss neutral topics in every interview. Where a vulnerable witness is anxious to begin their account of the alleged incident(s) as soon as possible, a discussion of neutral topics could be counterproductive by needlessly prolonging the rapport phase thus increasing their anxiety levels. In any event, rapport should not be regarded as something that is confined to the first phase of an interview: it begins when the interviewer first meets the witness and continues throughout the interview.

3.192 At an early point in the rapport phase the interviewer should briefly mention the reason for the interview in a way that does not refer directly to an alleged offence. For example, it could be appropriate for the interviewer to say that they would like to talk about something that the witness has already told someone else or because something seems to have been making the witness unhappy. Interviewers should be aware that, while some witnesses will from the outset be very clear concerning what the interview is about, others will not.
3.193 Some witnesses may feel that their initial, lawful co-operation with a person who subsequently committed an offence may make them blameworthy. The interviewer should also bear in mind that some vulnerable witnesses will assume that, because they are being interviewed, they must have done something wrong. The interviewer might need to reassure the witness on this point but promises or predictions should not be made about the likely outcome of the interview. So far as possible, the interview should be conducted in a 'neutral' atmosphere with the interviewer taking care not to assume, or appear to assume, the guilt of an individual whose alleged conduct may be the subject of the interview.

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

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

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

3.197 The interviewer should provide an explanation of the outline of the interview that is appropriate to the abilities of the witness. Typically, the outline will take the form of the interviewer asking the witness to give a free narrative account of what they remember and following this with a few questions in order to clarify what has been said. Witnesses should also be told that:

- if the interviewer asks a question they do not understand or asks a question that they do not know the answer to, they should say so; and
- if the interviewer misunderstands what they have said or summarises what has been said incorrectly then they should point this out.

3.198 It should be explained that the interviewer might take a few brief notes.

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

3.200 Interviewers should be aware that asking someone to provide information frankly and in detail about personal matters (e.g. involving sex) is asking the person to discuss something in a manner they have learned to avoid. The interviewer should inform the witness why they are being asked to give a detailed account and that doing so, in that situation, is not breaking with convention. Interviewers should also be aware that some witnesses may prefer, initially, to write rather than say aloud sensitive words or phrases. The witness should be advised of the option to write things down at certain points of the interview.

Oaths and the importance of telling the truth

3.201 Where a decision is taken to record an interview with a vulnerable witness on video, there should not be an attempt to get the witness to swear an oath, either before or after an interview. If the witness goes on to give evidence at court, the court will decide whether an oath should be administered retrospectively or whether the witness is to give unsworn evidence.
3.202 Where there is an issue as to whether the vulnerable witness understands the value and importance of telling the truth, the interviewer can obtain assurances from the witness on these points, as is current practice for child witnesses. Note that these procedures should only be employed where questions regarding witness competency might be raised at trial. This is not an issue for all adult witnesses who have disabilities or a mental disorder.

3.203 In those cases where discussion of truth and lies is appropriate, it is important to demonstrate that the witness understands the difference between the two. The witness could be asked to give examples of truth and lies. If this is not possible, the interviewer can ask some questions about this difference. If such questions are asked, they should follow the guidance set out elsewhere on styles of questioning and focus on an intent to deceive rather than mere mistakes (NB: where the use of the examples set out in Chapter 2 is contemplated, they should be modified in a way appropriate to the witness’s communication). After such questions, it is appropriate to conclude with a statement like: ‘Please tell me all you can remember about what happened. Don’t make anything up or leave anything out. It is very important to tell the truth’.

Phase two: initiating and supporting a free narrative account

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

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

3.206 In the free narrative phase, the interviewer should encourage witnesses to provide an account ‘in their own words’ by the use of non-specific prompts such as ‘Did anything else happen?’, ‘Is there more you can tell me?’ and ‘Can you put it another way to help me understand better?’. Verbs like ‘tell’, ‘explain’ and ‘describe’ are likely to be useful. The prompts used at this stage should not include information known to the interviewer concerning relevant events that have not yet been communicated by the witness. Research has found that in their free narrative accounts vulnerable witnesses usually provide less information than other people. Nevertheless, this information may be no less accurate. However, it is vulnerable witnesses whose accounts are likely to be most tainted by inappropriate questioning.

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

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

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

3.210 Some vulnerable witnesses may be particularly compliant in that they will try to be helpful by going along with much of what they believe the interviewer ‘wants to hear’ and/or is suggesting to them. This is particularly so for witnesses who believe the interviewer to be an authority figure. Some witnesses may also be frightened of authority figures. This may also be linked to cultural attitudes in relation to authority, for instance for someone from an older generation or from another culture. Interviewers should be alert to this issue in cases where the witness originates from a country where there is a more authoritarian state particularly where the witness is a refugee or asylum seeker. This issue is also relevant in cases of sexual exploitation involving adults and children. In addition, this warrants consideration in a Northern Ireland specific context where, despite the progress of recent years, there will still be a variety of views about and reaction to the police or those who are seen to represent ‘the State’. The interviewer should, therefore, try not to appear too authoritative but should be confident and competent as a means of reassuring the witness that they can be relied on.

3.211 Many vulnerable witnesses are very concerned to present themselves in the best possible light and many might try to appear as ‘normal’ as possible by, for example, pretending to understand when they do not. This is something we all do. Even though they may not understand a question, vulnerable witnesses may prefer to answer it than to say that they do not understand. Saying that one does not understand a question can be taken to be implying that the interviewer or witness is at fault. Given that some vulnerable witnesses will prefer to avoid these implications, it is appropriate to reassure them by re-emphasising the ground rules at appropriate points during the interview.

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

3.213 Interviewers should clearly explain in the rapport phase that because they were not present at the event(s) they may unwittingly ask questions that witnesses do not understand or questions that they cannot answer. They should explain that if they do ask such questions they would be very happy for witnesses to indicate (perhaps by the use of a red card) that they do not understand, remember or know the answer. Vulnerable witnesses may benefit from practice at this before the interview commences. Interviewers should also make it clear that, if the witness does not know the answer to a question, ‘I don’t know’ responses are welcome. This will also help to avoid witnesses feeling under pressure to confabulate (i.e. to fill in parts of the event that they did not witness or cannot remember) which is otherwise likely to be the case for some vulnerable witnesses.
3.214 If communication becomes difficult, it may be helpful, where appropriate, for the interviewer to say ‘Can you think of a way to tell me more?’, ‘Can you think of a way to show me what you mean?’ or ‘Is there a way I can make this easier for you?’.

3.215 If the witness has communicated something that the interviewer feels needs to be clarified but the witness at present seems reluctant or unable to do so, it may be better that the interviewer returns to the point later in the interview rather than be insistent.

Acquiescence

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

3.217 Sometimes ‘nay-saying’ (repeatedly responding with ‘no’) will occur particularly for questions dealing with matters that are socially disapproved of or are social taboos.

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

3.219 Similarly, if some ‘yes/no’ questions have to be used, they should be phrased so that sometimes ‘yes’ and sometimes ‘no’ would be the response that fits in better with the account the witness is giving.
Phase three: questioning

Prior to the questioning phase of the interview

3.220 Before asking the witness any questions, it may be beneficial to outline for them what is expected of them in this phase of the interview. It is helpful for the interviewer to tell the witness that they will now be asking them some questions, based on what they have already communicated in the free narrative phase, in order to expand and clarify on what they have said. It is also beneficial to reiterate a number of the ground rules outlined in the rapport phase of the interview, for example to explain to the witness that detail is required or this is a difficult task which requires a lot of concentration, and to point out that it is acceptable to say ‘I don’t know’ or ‘I don’t understand’ to a question.

General approach

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

- are simple;
- do not contain jargon;
- do not contain abstract words and/or abstract ideas;
- contain only one point per question (see Chapter 4 for more information about multiple questions);
- are not too directive/suggestive; and
- do not contain double negatives.

3.222 In addition, interviewers need fully to appreciate that there are various types of question which vary in how directive they are. The questioning phase should, whenever possible, commence with open-ended questions and then proceed, if necessary, to specific-closed questions. Forced-choice questions and leading questions should only be used as a last resort. When questioning a witness, interviewers may wish to ask the various types of question about one issue before proceeding to ask questions about another. This would be good practice in terms of how memory storage is organised. When this occurs, the questioning on each issue should normally begin with an open-ended question although some particularly vulnerable witnesses may not be able to cope with such questions and specific-closed questions might be necessary.
3.223 When posing questions, interviewers should try to make use of information that the witness has already provided and words/concepts that the witness is familiar with (e.g. for time, location, persons). Some vulnerable witnesses have difficulty understanding pronouns (e.g. he, she, they); in these circumstances it is better for interviewers to use people’s names wherever possible.

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

3.225 Many vulnerable witnesses will have difficulty with questions unless they are simple, contain only one point per question, do not contain abstract words or double negatives, and lack suggestion and jargon. Some vulnerable witnesses may well misinterpret terms that the interviewer is familiar with. For example, they may think that someone ‘being charged’ involves payment or that ‘defendant’ means a person who defended themselves against an assault.

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

3.227 Some vulnerable witnesses will respond to a question from, or a comment made by, an interviewer by repeating the last few words in the utterance (echolalia). Appropriate methods for managing this depend on the individual. Interviewers should take appropriate advice (e.g. from a carer) on how to manage it while planning the interview.

3.228 If, for the sake of clarity, interviewers decide to repeat one or more questions later on in the interview, even with changed wording, they should explain that it does not indicate that they were unhappy with the witness’s initial responses but that they just want to check their understanding of what the witness said (for example, ‘I just want to make sure that I’ve understood what you said about the man’s jacket. What colour did you say it was?’). Otherwise, some vulnerable witnesses may believe that the questions are being repeated solely because their earlier responses were incorrect or inappropriate, or that they were not believed.
3.229 Some vulnerable witnesses may also have a limited understanding of the relationship between negative events, their causation, and who is responsible.

3.230 Even if an event was an unforeseeable accident or ‘an act of God’, some vulnerable witnesses will believe that someone must be held responsible. Some may even take the blame, thinking that the interviewer (an authority figure) will like them more if they do.

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

Open-ended questions

3.232 Open-ended questions are ones that are worded in such a way as to enable the witness to provide an unrestricted response. These also allow the witness to control the flow of information. This type of questioning minimises the risk that interviewers will impose their view of what happened. Such questions usually specify a general topic which allows the witness considerable freedom in determining what to reply. Research and practice show that the most reliable and detailed answers from witnesses of all ages are secured from open-ended questions. It is important, therefore, that the questioning phase should begin with open-ended questions and that this type of question should be widely employed throughout the interview.

3.233 Questions beginning with the phrase ‘Tell me’ or the words ‘Describe’ or ‘Explain’ are useful examples of this type of question. ‘You said you were... Tell me everything that you remember’ is an example of an open-ended question.

3.234 Open-ended questions can also be used to invite the witness to elaborate on incomplete information provided in the preceding free narrative phase. For example, ‘You’ve already told me that the person who hit you was a man. Describe him for me.’. For a witness who has communicated very little in the free narrative phase, a helpful question could be of the form ‘You said you were not happy. Tell me what makes you unhappy?’.

3.235 If the witness responds to open-ended questions, the interviewer should try to avoid interrupting even if the witness is not providing the expected type(s) of information. Interrupting the witness disempowers them and suggests that only short answers are required. If a witness is communicating information that the interviewer does not understand, this should be returned to only when the witness has finished responding to that question.
3.236 When being questioned, some witnesses may become distressed. If this occurs, the interviewer should consider moving away from the topic for a while and, if necessary, reverting to an earlier phase of the interview (e.g. the rapport phase). Shifting away from and then back to a topic the witness finds distressing and/or difficult may need to occur several times within an interview.

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

Specific-closed questions

3.238 A closed question is a question that closes down a witness’s response and, therefore, allows only a relatively narrow range of responses to be obtained where the response usually consists of one word or a short phrase. Closed questions can, therefore, be appropriate or inappropriate in nature depending on the quality of the information likely to be obtained from the witness. Specific-closed questions are appropriate and serve to ask in a non-suggestive way for extension or clarification of information previously supplied by the witness. Specific-closed questions vary in their degree of explicitness and it is always best to begin with the least explicit version of the question. Therefore, a vulnerable adult witness in a sexual assault investigation may have responded to an open-ended prompt by mentioning that a named man had climbed into his bed. A specific-closed but non-leading, follow-up question might be ‘What clothes was he wearing at the time?’ If this yielded no clear answer, a further, more explicit question might be ‘Was he wearing any clothes?’.

3.239 Specific-closed questions can ask in a non-suggestive way for extension and/or clarification of information previously provided by the witness. For example, for a witness who has already provided information that a young man in the high street was wearing a jacket, a specific yet non-suggestive question could be ‘What colour was the man’s jacket?’.
Examples of specific-closed questions are those that begin ‘Who’, ‘What’, ‘Where’, ‘When’, and ‘Why’. Questions involving the word ‘why’ (or similar utterances, e.g. ‘So how come...?’) may be interpreted by vulnerable witnesses as attributing blame to them and should, therefore, be avoided wherever possible. Also to be avoided is repeating a question soon after the witness has provided an answer to it (including ‘Don’t know’). Witnesses may well interpret this as a criticism of their original response and accordingly they may provide a different response closer to what they believe the interviewer wants them to give.

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

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

**Forced-choice questions**

Forced-choice questions are ones that provide the witness with a limited number of alternative responses. For example, ‘Was the man’s jacket black, another colour, or can’t you remember?’. As long as the question provides a number of sensible and equally likely alternatives, it would not be deemed suggestive. Some vulnerable witnesses may find such closed questions particularly helpful. However, at the beginning of the use of forced-choice questions, interviewers should try to avoid using ones that contain only two alternatives (especially yes/no questions) unless these two alternatives contain all possibilities (e.g. ‘Was it daytime or night-time?’). If questions containing only two alternatives are used, these should be phrased so that they sometimes result in the first alternative being chosen and sometimes in the second alternative. It should be remembered that a third alternative, such as “can’t you remember?” or “don’t you know?” can be offered with all forced choice questions as there may be occasions where there are only two possible alternatives but the witness cannot recall or remember.
3.244 Some vulnerable witnesses may only be able to respond to forced-choice questions that contain two alternatives. Even in such circumstances it should still be possible for interviewers to avoid an investigative interview being made up largely of such questions. However, such interviews are likely to require special expertise and extensive planning especially regarding the questions to be asked.

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

**Leading questions**

3.246 Put simply, a leading question is one that implies the answer or assumes facts that are likely to be in dispute. Of course, whether a question is leading depends not only on the nature of the question (where the answer is implicit in the way the question is worded) but also on what the witness has already communicated in the interview. An example of a question that is leading by virtue of the very nature of the words used would include ‘I bet that hurt, didn’t it?’. An example of a leading question that depends on what the witness has already communicated in the interview would include ‘Where did he punch you?’ when the witness said previously in the interview that a male assailant ‘hit’ them without using the word ‘punch’.

3.247 When a leading question is improperly put to a witness giving evidence at court, opposing counsel can make an objection to it before the witness replies. This is not usually possible during video- or audio-recorded interviews but subsequent objections could be made which may result in parts of the recording being edited out.

3.248 In addition to the legal objections, psychological research indicates strongly that witnesses’ responses to leading questions tend to be determined more by the manner of questioning than by valid remembering. Some vulnerable witnesses may be more willing to respond to ‘yes/no’ questions with a ‘yes’ response. Therefore, if questions permitting only a ‘yes’ or ‘no’ response are asked, these should be phrased so that those on the same issue sometimes result in a ‘yes’ response and sometimes a ‘no’ response.
3.249 It cannot be overemphasised that responses to leading questions referring to central facts of the case that have not already been described by the witness in an earlier phase of the interview are likely to be of very limited evidential value in criminal proceedings. If a leading question produces an evidentially relevant response, particularly one that contains relevant information not led by the question, interviewers should take care not to follow this up with further questions that might have the effect of leading the witness. Instead, they should revert to the ‘neutral’ modes of questioning described above.

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

3.251 Courts also accept that it may be impractical to ban leading questions. This may be because the witness does not understand what they are expected to tell the court without some prompting as may be the case for a witness with a learning disability.

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

3.253 However inappropriately leading or suggestive some questions might be, some vulnerable witnesses will go along with them and may produce nonsensical replies. Such incompetence by the interviewer will inappropriately call into question the competency of the witness.
Understanding what the witness is trying to convey

3.254 Some vulnerable witnesses will have speech or other means of communication that other people find difficult to understand. At appropriate points in the interview, and especially in the closure phase, the interviewer should provide the witness with a recap of what the interviewer believes the witness to have communicated. When the meaning of a witness’s communication is unclear, they could be asked, for example, to ‘Put it another way’ or ‘Can you think of another way of telling me?’.

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

Topic selection

3.256 Within the questioning phase of the interview, the interviewer should subdivide the vulnerable witness’s account into manageable topics or episodes, and seek elaboration on each area using open-ended and then specific-closed questions as outlined in the previous paragraphs. Each topic/episode should be systematically dealt with until the witness is unable to provide any more information. Interviewers should try to avoid topic-hopping (i.e. rapidly moving from one topic to another and back again) as this is not helpful for the witness’s remembering processes and may confuse them.

3.257 Good questioning should also avoid the asking of a series of predetermined questions. Instead, the sequence of questions should be adjusted according to the witness’s own retrieval processes. This is what ‘witness-compatible questioning’ means. Each individual will store information concerning the event in memory in a unique way. Therefore, for maximum retrieval/information gain, the order of the questioning should resemble the structure of the witness’s knowledge of the event and should not be based on the interviewer’s notion or a set protocol. It is the interviewer’s task to deduce how the relevant information is stored by the witness (via the free narrative account) and to organise the order of questions accordingly.
Misleading statements

3.258 Vulnerable witnesses can on occasion provide misleading accounts of events; these are often the result of misunderstandings or misremembering rather than deliberate fabrication. The most common cause of these misunderstandings is the interviewer failing to ask appropriate types of question or reaching a premature conclusion that the interviewer then presses the witness to confirm.

3.259 Vulnerable witnesses, like any other witness, can on occasion be misleading in their statements, either by fabricating allegations or by omitting evidentially important information from their answers. Where inconsistencies in the witness’s account give rise to suspicion, interviewers should explore these inconsistencies with the witness after they have completed their basic account. Witnesses should only be challenged directly over an inconsistency in exceptional circumstances and even then only when it is essential to do so. Rather, such inconsistencies should be presented in the context of puzzlement by the interviewer and the need to be quite clear what the witness has said. On no account should the interviewer voice their suspicions to the witness or label a witness as a liar: there may be a perfectly innocuous explanation for any inconsistency.

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

3.261 Where a witness with a learning disability uses language or knowledge, particularly of sexual matters, that appears to be inappropriate for them, specific questions can be asked to try to locate the source of that knowledge. Similarly, if it is suspected that a witness alleging sexual abuse may have been exposed to sexually explicit films, videos, internet sites or magazines, specific questions should be used to explore whether parts of the witness’s account could conceivably be derived from such sources. It is important that all such questions should be reserved for the end of the formal questioning so as not to disrupt the witness’s narrative.

Phase four: closing the interview

3.262 In this final main phase, interviewers should provide an account of what the witness has said during the interview. This should be done as much as possible in the witness’s own words. This allows the witness to check the interviewer’s recall of what they have said for accuracy. Care should be taken not to convey any impression of disbelief. The interviewer must explicitly tell the witness to correct them if they have missed anything out or have got something wrong. The interviewer should not “over summarise”. Where summaries have been conducted appropriately throughout the interview, there is no need to provide a complete summary at the closing phase.
Closure

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

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

3.265 The witness should be thanked for their time and effort, and asked if there is anything more they wish to communicate (e.g. by saying to the witness ‘Is there anything else you want to say?’, ‘Is there anything you think you’ve missed out?’ or ‘Is there anything else you think I should know?’).

3.266 An explanation should be given to the witness of what, if anything, might happen next but promises that cannot be kept should not be made about future developments.

3.267 The witness should always be asked if they have any questions and these should be answered as appropriately as possible. It is good practice to give the witness (or, if more appropriate, an accompanying person) a contact name and telephone number in case the witness later decides that they have further matters they wish to discuss with the interviewer.

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

3.269 The aim of closure should be that, as far as possible, the witness should leave the interview in a positive frame of mind. In addition to the formal elements, it will be useful to revert to neutral topics discussed in the rapport phase to assist this. It is normal to complete a video recorded interview by stating the end time.
Evaluation

3.270 Evaluation should take two primary forms:

• evaluation of the information obtained; and
• evaluation of the interviewer’s performance.

Evaluation of the information obtained

3.271 After the interview has concluded, the interview team will need to make an objective assessment as to the information obtained and evaluate this in light of the whole case. For example, are there any further actions and/or enquires required, or what direction should the case take?

Evaluation of interviewer’s performance

3.272 The interviewer’s skills should be evaluated. This can take the form of self-evaluation with the interviewer examining the interview for areas of good and poor performance. This should result in a development plan. The interview could also be assessed by a supervisor and/or someone who is qualified to examine the interview and give good constructive feedback to the interviewer, highlighting areas for improvement. This should form part of a staff appraisal system (see tier 4 of ACPO’s National Investigative Interviewing Strategy (ACPO, 2009)).

Post-interview documentation and storage of recordings

3.273 The interviewer should complete the relevant paperwork as soon as possible after the interview is completed including the Index to Video Recorded Interview referred to in Appendix G. A statement dealing with the preparation and conduct of the interview should be made while the events are still fresh in the interviewer’s mind.

3.274 Recordings should be stored as recommended in Appendix H.

Further interviews

3.275 One of the key aims of video recording early investigative interviews is to reduce the number of times a witness is asked to tell their account. However, it may be the case that even with an experienced and skilful interviewer, the witness may provide less information than they are capable of divulging. A supplementary interview may, therefore, be necessary and this, too, should be video recorded, if possible. Consideration should always be given to whether holding such an interview would be in the witness’s interest. The reasons for conducting supplementary interviews should be clearly articulated and recorded in writing. The PPS should be consulted if necessary.
3.276 With particularly vulnerable witnesses, a decision could be made at the planning phase to divide the interview into a number of sections to be conducted by the same interviewer on different days or at different times on the same day with rapport and closure being achieved each time.

Identification procedures

3.277 Where a video recorded interview has been conducted by virtue of this chapter, the production of facial composites using E-FIT or other systems, or the production of an artist’s impression should also be video recorded. This will enable the court to hear the evidence from the witness in the same medium as the main evidence in chief and show how any new evidence has come about. This would give confidence to the evidence-gathering process and reducing the need for the witness to give additional evidence in chief in the witness box or by live link. Staff carrying out these procedures should be suitably trained to interview and record the evidence in line with this guidance (see Appendix J).

Therapeutic help for vulnerable adult witnesses

3.278 While vulnerable adult witnesses may be judged by the investigating team and/or by those professionals responsible for their welfare, to require therapeutic help prior to giving evidence in criminal proceedings, it is important to recognise the individual’s right to exercise choice. It is vital that professionals undertaking therapy with prospective vulnerable adult witnesses prior to a criminal trial adhere to the official guidance contained in Chapter 8.

3.279 The PPS and those involved in the prosecution of an alleged offender do not have authority to prevent a vulnerable adult witness from receiving therapy. Whether a witness should receive therapy before the criminal trial is not a decision for the police or the PPS. However, the police and the PPS must be made aware that therapy is proposed, is being undertaken or has been undertaken so that consideration can be given as to whether or not the provision of such therapy is likely to impact on the criminal case. At all times, the importance of not coaching or rehearsing the witness in matters of direct evidential value must be borne in mind by the professional undertaking therapeutic work with the witness (see Appendix D).
Special interviewing techniques

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

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

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

The cognitive interview (CI)

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

- mental reinstatement of context;
- report everything;
- change the temporal order of recall; and
- change perspective.

3.284 A number of professionals who have worked with vulnerable adult witnesses recommend use of the cognitive interview (CI). However, research has found that, unless the training of interviewers who attempt to use a CI has been appropriate,
they will fail to use this technique effectively and could confuse the witness. Some witnesses may not be able to benefit from all of the CI procedures (e.g. witnesses with autism may well not be able to ‘change perspective’).

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

3.286 Further information about the procedures contained in the CI can be found in Part 4B of this guidance.

Other interview techniques

3.287 Other techniques to assist witnesses to give accounts are being developed. These could be used in interviews carried out for the purposes of this guidance provided that evidential considerations are borne in mind, interviewers have been specifically trained to use them, and agreement is given by senior managers or an interview adviser (tier 5 of ACPO’s National Investigative Interviewing Strategy (ACPO, 2009)) after discussion of the issues involved.

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

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

3.290 It may happen that a witness who is being interviewed comes under suspicion of involvement in a criminal offence, perhaps by uttering a self-incriminating statement. Any decision on an appropriate course of action in these circumstances should involve taking into account the seriousness of the crime admitted and weighing it against the seriousness of the crime under investigation.

3.291 Where the priority is to obtain evidence from the person as a witness, the interview can proceed.

3.292 If it is concluded that the evidence of the witness as a suspect is highly relevant to a particular case, the interview should be terminated and the witness told that it is possible that they may be interviewed concerning these matters at a later time. Care should be taken not to close the interview abruptly in these circumstances. Instead, the witness should be allowed to complete any statement that they wish to make.

3.293 Any admission by a witness in the course of an investigative interview may not be admissible as evidence in criminal proceedings against them. Normally, a further interview would need to be carried out in accordance with the relevant provisions of the Code for the Detention, Treatment and Questioning of Persons by Police Officers (Code C of the Police and Criminal Evidence (NI) Order 1989). The Code provides, among other matters, for the cautioning of a suspect.

3.294 A witness who confesses to a criminal offence during the course of an interview may ask the interviewer for some guarantee of immunity. On no account should any such guarantee be given, however remote the prospect of criminal proceedings against the witness might seem. If the witness is to be interviewed in accordance with Code C of the Police and Criminal Evidence (NI) Order 1989), they must be cautioned and the purpose of the interview made clear.
Planning and conducting interviews with intimidated witnesses

Part 4A: Planning and preparing for interviews

What follows is a recommended procedure for planning and preparing for interviews with intimidated witnesses. Part 4B covers the interview itself and treats the interview as a process in which a variety of interviewing techniques are deployed in the framework of a phased approach. While what follows in this part and Part 4B should not be regarded as a checklist to be rigidly worked through, the sound framework that it provides should not be departed from by interviewers unless they have discussed and agreed the reasons for doing so with their senior manager or an interview adviser (tier 5 of the Association of Chief Police Officers’ (ACPO’s) National Investigative Interviewing Strategy (ACPO, 2009)). Any such agreements and the rationale underpinning them should be recorded. It may subsequently be necessary to explain such departures in court.

While this chapter deals specifically with interviewing intimidated witnesses, it should not be read and used in isolation from Chapters 2 and 3. This guidance has been written so that Chapters 2 - 4 form a complementary whole. For example, issues in relation to disability and intimidation will have an application across all vulnerable witnesses.

In preparing for interview, investigating officers must take note of the paragraph on gathering physical evidence in Chapter 1.
The importance of planning

4.1 The purpose of an investigative interview is to ascertain the witness’s account of the alleged event(s) and any other information that would assist the investigation. A well-conducted interview will only occur if appropriate planning has taken place. The importance of planning cannot be overstated. The success of an interview and, therefore, an investigation could hinge on it. Even if the circumstances necessitate an early interview, an appropriate planning session that takes account of all the information available about the witness at the time, and identifies the key issues and objectives is required. Time spent anticipating and covering issues early in the criminal investigation will be rewarded with an improved interview later on. It is important that, as far as possible, the case is thoroughly reviewed before an interview is embarked upon to ensure that all issues are covered and key questions asked since the opportunity to do this will in most cases be lost once the interview(s) have been concluded.

4.2 Although the Public Prosecution Service (PPS) is not part of the investigating team and does not direct the investigation, an early meeting between the police and PPS to discuss special measures may be appropriate. The police may also seek advice from the PPS at an early stage about any other evidential issues that may affect the way in which the investigation is conducted. In some exceptional cases, the PPS may select suitably qualified counsel to advise from a very early stage.

4.3 In some cases, it may useful to obtain the assistance of an interview adviser to develop a witness interview strategy (see National Investigative Interviewing Strategy, Association of Chief Police Officers 2009).

Initial contact with intimidated victims and witnesses

4.4 The need to consider a video recorded interview will not always be immediately apparent, either to the first police officer who has contact with the witness or to other professionals involved prior to the police being informed. Even where it is apparent, the need to take immediate action in terms of securing medical attention and making initial decisions about the criminal investigation plan might be such that some initial questioning is necessary.
4.5 Any initial questioning should be intended to elicit a brief account of what is alleged to have taken place. A more detailed account should not be pursued at this stage but should be left until the formal interview takes place as described in Part 4B. Such a brief account should include where and when the event is alleged to have taken place, and who was involved or otherwise present. This is because this information is likely to influence decisions made in respect of the following aspects of the criminal investigation plan:

- forensic and medical examination of the victim;
- scene of crime examination;
- interviewing of other witnesses;
- arrest of alleged offender(s); and
- witness support.

4.6 In these circumstances, any early discussions with the witness should, as far as possible, adhere to the following basic principles:

- listen to the witness;
- do not stop a witness who is freely recalling significant events;
- where it is necessary to ask questions, they should, as far as possible in the circumstances, be open-ended or specific-closed rather than forced-choice, leading or multiple;
- ask no more questions than are necessary in the circumstances to take immediate action;
- make a comprehensive note of the discussion, taking care to record the timing, setting and people present as well as what was said by the witness and anybody else present (particularly the actual questions asked of the witness);
- make a note of the demeanour of the witness, and anything else that might be relevant to any subsequent formal interview or the wider investigation; and
- fully record any comments made by the witness or events that might be relevant to the legal process up to the time of the interview.

**Availability for cross-examination: the legal position**

4.7 A video recorded interview is usually only admissible as evidence in chief at trial where the person who made it is “available for cross-examination”. However, there are exceptions to this general rule. The judge has discretion to allow the court to hear the pre-trial statements of witnesses who are unable to give evidence for various specified reasons. These include the fact that the witness is dead, “by reason of his bodily or mental condition unfit to attend as a witness” or does not give evidence at trial “through fear or because he or she is kept out of the way”. It must be remembered, however, that the judge has the final word on whether or not the video recorded statement will be admitted.
Planning information

Overview

4.8 The planning phase of an interview with a witness involves some consideration of three types of information:

- information about the witness;
- information about the alleged offence(s); and
- information important to the investigation.

4.9 At this stage, interviewers need to have differing amounts of knowledge about each type of information. In a general sense, they need to know as much as is possible in the circumstances about the witness and a little about the alleged offence and information important to the investigation.

Definition

4.10 The statutory definition of an intimidated witness is set out in Article 5 of the Criminal Evidence (NI) Order 1999. Intimidated witnesses are those likely to experience fear or distress about testifying to such an extent that special measures are necessary to maximise the quality of their evidence.

Preliminaries

Cases involving intimidated witnesses

4.11 Cases that are likely to give rise to intimidated witnesses include:

- sexual offences (including those alleged by adults in relation to events said to have taken place in their childhood);
- domestic violence;
- murder and other serious assaults;
- culpable road deaths;
- racially motivated crime;
- homophobic crime;
- crime motivated by the perceived religious or political views of the victim;
- offences where the alleged perpetrator has a relationship of care to, or authority over, the witness;
- offences where the witness is related to the alleged perpetrator;
- offences where the witness lives in close proximity to the alleged perpetrator, or their family or associates;
- offences where the witness is elderly and/or frail;
• offences that form part of a series of incidents in which there is evidence of repeat victimisation;
• offences where the alleged perpetrator is influential in the criminal fraternity (this should not be based solely on anecdotal evidence);
• offences where the violent nature of the alleged perpetrator, or their family or associates suggests an increased likelihood of intimidation;
• offences where the alleged perpetrator, or their family or associates, have the intention and the ability to influence or interfere with the witness; and
• offences where witnesses have been, or are likely to be, subject to intimidation as a result of the behaviour of the alleged perpetrator, or their family or associates, or anyone else who is likely to be a defendant or a witness in the proceedings.

This is not intended to be an exhaustive list and each case should be judged on its merits.

4.12 While being the victim of an offence is in itself likely to increase the witness’s fear and distress, it is unlikely to be sufficient on its own to categorise a witness as ‘intimidated’. However, that a witness is also the victim of the alleged offence should be taken into account along with the other circumstances of the case (such as those listed above).

Support for intimidated witnesses prior to the interview

4.13 Intimidated witnesses need to feel safe, and may require support and encouragement to participate in an interview. Such witnesses should be appraised at an early stage about the possibility of having a supporter present during the interview where this is appropriate and about the pre-trial support that can be made available to them (see Chapter 5).

4.14 Intimidated witnesses should also be informed about the protection that might be available to them, including witness protection schemes where appropriate.

4.15 Where there is risk of intimidation, witnesses should be offered information about where rapid help and support can be obtained. A leaflet listing names, addresses and telephone numbers of relevant individuals and agencies should be available in each locality for distribution to witnesses.

4.16 The special measures that intimidated witnesses might be given access to at the trial should be outlined and their views ascertained in respect of them. Their views about the possibility of having a supporter present while they are giving evidence should also be sought. While interviewers are seeking these views, it is essential that the witness understands that, while their views will be listened to, access to
special measures during the trial is very much a decision for the court based on an application by the legal representative, and as such should not be taken for granted. Further details of special measures are set out in Chapter 6.

4.17 Investigators need to be alert to the possibility that a witness may not be intimidated at the time the offence is reported but that subsequent events may give rise to fear and distress later on in the criminal process that would qualify the witness for consideration for special measures.

4.18 Intimidated witnesses should be prepared for an interview as appropriate.

Consent

4.19 It is a general principle that all witnesses should freely consent to be interviewed and to have the interview video recorded. For this reason, interviewers should explain the purpose of a video recorded interview to the witness. Such an explanation should include:

- the benefits/disadvantages of having/not having the interview video recorded; and
- who may see the video recorded interview (including the alleged offender).

4.20 Interviewers should note that it is not necessary for the witness to give their consent in writing and that they should make a record of the action taken to obtain consent for a video recorded interview.

4.21 The witness should be told that, should the case proceed, whether a video recording is made or not, they may be required to attend court to answer further questions (i.e. cross-examination). Where an application is granted by the court, cross-examination may take place using a live link facility.

Information about intimidated witnesses

4.22 While circumstances will sometimes limit what can be found out about the witness prior to the interview taking place (for example, as a result of time constraints where the alleged perpetrator is in custody), as much of the following information should be obtained about the witness as is possible:

- age;
- gender;
- sexuality (where the alleged offence might contain a homophobic element);
- community or (perceived) political background (where the alleged offence might have been motivated by this);
- preferred name/mode of address;
• domestic circumstances (including whether the witness is currently in a ‘safe’ environment);
• relationship of the witness to the alleged perpetrator;
• any medication being taken and its potential impact on the interview;
• current emotional state (including trauma, distress, shock, depression, fears of intimidation/recrimination and recent significant stressful events experienced);
• likely impact of recalling traumatic events on the behaviour of the witness;
• current or previous contact with public services (including previous contact with the police, or health and social care services); and
• any other relevant information or intelligence known.

Race, gender, culture and ethnic background

4.23 The witness’s race, gender, culture, ethnicity and first language must be given due consideration by the interviewing team. They have a responsibility to be informed about, and take into account, the needs and expectations of witnesses from the specific minority groups in their local area. The interviewing team’s knowledge of the witness’s religion, culture, customs and beliefs may have a bearing on their understanding of any account given by the witness, including the language and allusions the witness may make, for example, to reward and punishment. Political beliefs should also be considered and interviewing teams should be alert to issues relating to sectarianism.

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

4.25 It is also important that the investigating team considers the complexities of multiple discrimination, e.g. a homosexual witness from a minority ethnic community, and individuals’ experiences of discrimination. The specific needs and experiences of dual-heritage witnesses must also be taken into account.
4.26 Some possible relevant considerations include the following (although this list is not intended to be exhaustive):

- customs or beliefs that could hinder the witness from participating in an interview on certain days (e.g. holy days) or may otherwise affect the witness’s participation (e.g. when fasting);
- the relationship to authority figures within different minority ethnic groups. For example, witnesses from some cultures may be expected to show respect to authority figures by not referring to them by their first names, and by not correcting or contradicting them;
- the manner in which love and affection are demonstrated; and
- issues of shame. For example, witnesses from some cultures may be inhibited from talking about a sexual assault for fear of shaming their family.

4.27 A witness should be interviewed in the language of their choice. If a witness is bilingual, this may require the use of an interpreter. The interpreter should be selected from the PSNI register of translators and interpreters.

Other life experiences

4.28 Where the witness may have experienced abuse, neglect, domestic violence and/or discrimination based on race or disability, the interviewers must consider its potential impact on the interview. There is no single ‘diagnostic’ symptom of abuse or discrimination but some of the possible effects on vulnerable adult witnesses are set out in Boxes 4.1 to 4.3. When considering the possibility of abuse or discrimination, it must be understood that intimidated witnesses who have experienced it will not necessarily exhibit all, or indeed any, of the behaviours set out in these boxes.

Box 4.1 Some possible effects of abuse and neglect

These include:

- poor self-esteem;
- post-traumatic stress disorder;
- self-injury and suicidal behaviour;
- increased emotional problems, e.g. anxiety and depression;
- decreased cognitive functioning;
- sexualised behaviour; and
- negative social behaviour, e.g. increased aggression, non-compliance and criminal activity.
Box 4.2  Some possible effects of racism

These include:

• fear;
• poor self-esteem;
• fear of betrayal of community;
• mistrust of people from outside own community;
• difficulty in establishing positive (racial) identity; and
• increased vulnerability to racist abuse.

Box 4.3  Some possible effects of domestic violence

These include:

• fear for safety of self and others in family;
• sadness/depression, possibly reflected in self-harm or suicidal tendencies;
• anger, which may be demonstrated in aggressive behaviour;
• negative impact on health (e.g. asthma, eczema or eating disorders); and
• negative impact on behaviour (e.g. aggression).

4.29  It is important for interviewers to consider these matters in relation to each individual witness rather than work from assumptions based on stereotypes. Being sensitive to such factors should contribute towards a safe and non-judgmental interview environment for the witness. It is essential that the interview process itself does not reinforce any aspects of discriminatory or abusive experiences for the witness.

Information about the alleged offence(s)

4.30  It is preferable (though not always necessary or essential) that interviewers know little detail of the alleged offence(s) for the purposes of the interview. However, in order to plan and prepare for the interview, interviewers will need a little general knowledge about:

• the type of alleged offence(s);
• the approximate time and location of the alleged offence(s);
• the scene of the alleged offence(s) (note: this should only be enough general knowledge to help the interviewer understand what might be said during the interview);
• how the alleged offence came to the notice of the police; and
• the nature of any intimidation.
4.31 Where the interviewer is also the investigating officer or has been interviewing other witnesses during the course of an investigation, it is accepted that circumstances and practical resource considerations might be such that they are likely to know more about the alleged offence(s) than is set out above. In this situation, interviewers should try to avoid contaminating the interview process with such knowledge.

4.32 It is also accepted that circumstances and resource considerations might be such that it could be necessary for an interviewer to interview more than one witness during the course of an investigation. In such a situation, care should be taken to avoid asking questions of a witness based on the responses of previous interviewees, because this could contaminate the witness’s account.

4.33 Nothing in this guidance is intended to limit operational decision-making in cases where the nature of the investigation, the context of the interview and the circumstances as they are known at the time make it necessary for interviewers to have a more detailed knowledge of the offence than the general information outlined in the paragraphs above.

Information important to the investigation

4.34 While obtaining an account of the alleged event is essential, other matters might need to be covered during the interview in order to progress the investigation. These matters can be regarded as ‘information important to the investigation’. Obtaining a complete picture of all the relevant issues within an interview is essential because it will provide the investigating officer with the information necessary to conduct a comprehensive investigation. It could also prove beneficial in discussions with the PPS if the subject of witness assessment is raised. Information important to the investigation falls into two categories: general investigative practice and case-specific material. Where such information important to the investigation has not already been covered as part of the witness’s account, interviewers should consider introducing it either in the latter part of the questioning phase or in a subsequent interview session, depending on the complexity of the case and what is alleged to have been witnessed by the interviewee.

4.35 The amount of knowledge that interviewers have about information important to the investigation prior to the interview depends on what they know about what is alleged to have been witnessed by the interviewee. It is preferable that interviewers know little detail of the alleged offence(s) before the interview. Only a little knowledge that could form the basis of potential questions about information important to the investigation is, therefore, likely to be available to the interviewer at this point in time. However, while planning the interview, interviewers should apply what they know of the alleged offences to determine the areas of general
investigative practice that might need to be covered in the interview. More case-specific material could either be made available to the interviewer (from the investigating officer, interview monitor or recording equipment operator) after an attempt has been made to elicit and clarify the witness’s account, or be included in the planning information for a later interview to avoid potential contamination of the process.

**Information important to the investigation relating to general investigative practice**

### 4.36 Information important to the investigation relating to general investigative practice includes:

- points to prove any offence(s) alleged; and
- information that should be considered when assessing a witness’s identification evidence, as suggested in *R v Turnbull and Camelo* ([1976] 63 Cr App R 132) and embodied in the mnemonic ADVOKATE (Practical Guide to Investigative Interviewing (National Centre for Policing Excellence, 2004)):
  - **A** Amount of time under observation
  - **D** Distance from the eyewitness to the person/ incident
  - **V** Visibility – including time of day, street lighting, etc.
  - **O** Obstructions – anything getting in the way of the witness’s view
  - **K** Known or seen before – did the witness know, or had they seen, the alleged perpetrator before?
  - **A** Any reason to remember – was there something specific that made the person/incident memorable?
  - **T** Time lapse – how long since the witness last saw the alleged perpetrator?
  - **E** Errors or material discrepancies;

- anything said by the witness to a third party after the incident (evidence of first complaint etc.); and
- any other witnesses present.

This is not intended to be an exhaustive list. The nature of the information important to the investigation pertaining to general investigative practice varies according to the circumstances of the case.
Information important to the investigation relating to case-specific material

4.37 Information important to the investigation relating to case-specific material includes:

- how and where any items used in the commission of the offence (e.g. clothing, vehicles, weapons, cash, documents or other property) were disposed of, if the vulnerable adult witness might have some knowledge of this;
- access by the witness and suspect to electronic media including computers and mobile telephones;
- relevant financial transactions by the witness and suspect;
- any background information relevant to the witness’s account (e.g. matters that might enhance or detract from the credibility of the witness’s evidence, such as the amount of any alcohol consumed);
- any lifestyle information relevant to the witness’s account;
- where the witness has knowledge of an alleged victim or a suspected perpetrator, an exploration of their relationship, background history, places frequented, and any events related or similar to the matter under investigation; and
- any risk assessment issues that the witness might know about that concern the likely conduct of the alleged perpetrator, their family or associates (this should be dealt with after the witness’s account has been covered to avoid confusion).

This is not intended to be an exhaustive list. The nature of any case-specific material varies according to the circumstances of the alleged offence, the nature of any relationship between the witness and the alleged perpetrator, and what is alleged to have been seen, heard or otherwise experienced.

4.38 Significant evidential inconsistencies and significant evidential omissions (case-relevant information) are discrete categories of case-specific material.

Significant evidential inconsistencies

4.39 During the course of an investigation, it may be necessary to ask a witness to explain a significant evidential inconsistency between what they have said during the interview and other material gathered during the course of the investigation. Such inconsistencies would, for example, include significant differences between the account provided by the witness during the interview and:

- what the witness is reported to have said on a previous occasion;
- the accounts of other witnesses; and
- injuries sustained either by the alleged victim or the alleged offender.
4.40 There are a number of reasons for significant evidential inconsistencies between what a witness says during an interview and other material gathered during the course of an investigation. Many of these reasons are perfectly innocent in their nature (e.g. genuine mistakes by the witness, reasons stemming from a memory-encoding or recall failure, or sub-conscious contamination of their memory by external influences), but occasions may arise where the witness is motivated either to fabricate or exaggerate their account of an event.

4.41 Whatever the reason for the significant evidential inconsistency, occasions may arise where it is necessary to ask the witness to explain it. The following principles should be taken into account when considering whether, when and how to solicit such an explanation:

- explanations for evidential inconsistencies should only be sought: where the inconsistency is a significant one; after careful consideration has concluded that there is no obvious explanation for them; and the witness’s account has been fully explored, either at the end of the interview or in a further interview, as appropriate;
- interviewers should always be aware that the purpose of asking a witness to explain an evidential inconsistency is to pursue the truth in respect of the matter under investigation. It is not to put pressure on a witness to alter their account;
- explanations for an evidential inconsistency should take account of the extent to which the witness may be vulnerable to suggestion, compliance or acquiescence; and
- questions intended to elicit an explanation for an evidential inconsistency should be carefully planned, phrased tactfully and presented in a non-confrontational manner.

Significant evidential omissions

4.42 During the course of an investigation, it may be necessary to ask a witness about relevant information that they have not mentioned in their account. This may arise, for example, where others say that the alleged offender was carrying an object; that the alleged offender’s behaviour was unusual; or that there was something particular about the alleged offender’s description or vehicle but this is not mentioned by the witness. There are a number of reasons why this type of information can be omitted from an account and situations may arise where it is important to seek an explanation from the witness. In these circumstances, it may be necessary to ask a question to establish if the witness has knowledge of the information. Such a question should only be asked after the witness’s account has been fully explored at the end of the interview (or in a further interview if necessary).
4.43 When planning such a question, the interviewer should consider:

- whether the information omitted by the witness is likely to be important enough to be worthy of explanation;
- the extent to which the witness may be vulnerable to suggestion, compliance or acquiescence; and
- which type of question is most likely to elicit the information in a manner that will not have an adverse effect on the value of any answer.

4.44 A plan for soliciting an explanation for the omission of case-relevant information from a witness’s account must consider the reliability of any answer. For example, a useful starting point might be to ask the witness a specific-closed question such as ‘What else can you tell me about the incident?’ If the witness’s answer:

- includes the case-relevant information but lacks sufficient detail, the interviewer should ask the witness to provide a more detailed response by means of an open question (e.g. ‘Tell me about…’). When the case-relevant information has been covered, the witness should be tactfully asked to explain its omission from their account unless the reason for its omission is apparent from the witness’s response or the circumstances of the case; or
- does not include the case relevant information, a further decision will need to be made as to whether it is necessary to ask a question that might be regarded as leading (e.g. ‘Do you recall seeing/hearing…?’). It should be noted that if the answer to such a leading question contains the case-relevant information, it is likely to be of limited evidential value. The evidential value of such an answer may, however, be enhanced if the interviewer then asks the witness to provide a more detailed response by means of an open question (e.g. ‘Tell me about…’), followed by questions intended tactfully to elicit an explanation for its omission from their account (unless the reason for the omission is apparent from the witness’s response or the circumstances of the case).

4.45 Where the witness cannot recall the case-relevant information, this may be due to not attending to the information or to memory loss.
Use of planning information

Overview

4.46 The planning information should then be used to:

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

Aim and objectives

4.47 The aim of the interview should be to achieve all the objectives that are set for it while being as concise as reasonably possible.

4.48 Setting clear objectives is important because they give direction to the interview and contribute to its structure. The interview objectives should focus on:

- the alleged incident or event(s);
- any case-specific information important to the investigation.

Techniques

4.49 The kind of techniques used within the phased structure set out in Part 4B will vary according to what is known about the witness and the offence when planning the interview, as well as how the witness behaves and what emerges during the interview itself. For example, it is likely to be productive to make use of some of the cognitive mnemonics within the phased interview approach with an eyewitness who is able and willing to participate in the process. However, such techniques are unlikely to be productive while a witness remains hostile and less co-operative. In such cases, an approach based on communication management is likely to be more productive.
How the interview is to be recorded

4.50 To make an application for the record of an interview with an intimidated witness to be played as evidence in chief, the interview must be video recorded. In the event of such a witness being reluctant to have their interview video recorded, the possibility of an application being made to the court for the recording to be edited in such a way as to minimise the identification of the witness (for example, by pixilation of the witness’s face and by adjusting the tone of the witness’s voice) should be considered. Where this possibility is discussed, it should be made clear to the witness that such anonymity cannot be guaranteed but that it is rather a matter to be determined by the court.

4.51 Regardless of how the interview is recorded, notes should always be taken that are sufficiently detailed to assist the investigating officer to determine any further lines of enquiry that might be necessary, and to brief the custody officer and any other interviewers where a suspected perpetrator is in custody. Responsibility for the compilation of such notes should be agreed during the planning phase of the interview. This responsibility should fall to the second interviewer, where they are in the adjoining room with the monitoring equipment, or the recording equipment operator. While interviewers should consider taking brief notes to assist them during the free narrative phase of the interview where this is appropriate, they should not be responsible for taking notes for the purposes of briefing others because this is likely to distract the witness, obstruct the flow of recall and slow the interview process down, therefore hindering the maximum retrieval of information.

Interviewers and others present at the interview

The interviewer

4.52 Consideration should be given to who is best qualified to lead the interview. A special blend of skills is required to take the lead in video recorded interviews. The lead interviewer should be a person who has established, or is likely to be able to establish, rapport with the witness, who understands how to communicate effectively with witnesses who might become distressed, and who has a proper grasp of the rules of evidence and criminal offences. The lead interviewer must have good knowledge of information important to the investigation, including the points needed to prove particular offences.

4.53 In addition to taking account of the prospective interviewer’s skills, the following factors should be taken into consideration when considering who should conduct the interview:
• the experience of the prospective interviewer in talking to witnesses in respect of the type of offence under investigation and any other skills that they possess that could be useful;
• any personal or domestic issues that the prospective interviewer has that might have an adverse impact on the interview; and
• whether any previous experience that the prospective interviewer has with the witness is likely to either inhibit rapport building or give rise to challenges of coaching, prompting or offering inducements.

4.54 The witness’s gender, race, culture and ethnicity must always be given due consideration and advice sought where necessary. However, stereotypic conclusions about who is to conduct the interview should be avoided.

4.55 Where the witness expresses a particular preference for an interviewer of either gender or sexual orientation, or from a particular race, cultural or ethnic background, this should be accommodated as far as is practical in the circumstances.

4.56 The interviewer should consider the appropriate mode of dress for the particular witness. For example, research shows that a person’s perceived authority can have an adverse effect on the witness, especially with respect to suggestibility.

4.57 Exceptionally, it may be in the interests of the witness to be interviewed by an adult in whom they have already put confidence but who is not a member of the investigating team. Provided that such a person has appropriate professional qualifications, is independent and impartial, is not a party to the proceedings, is prepared to co-operate with appropriately trained interviewers and can accept adequate briefing (including permitted questioning techniques), this possibility should not be precluded.

The second interviewer

4.58 The presence of a second interviewer is desirable because they can help to ensure that the interview is conducted in a professional manner, can assist in identifying any gaps that emerge in the witness’s account and can ensure that the witness’s needs are kept paramount. Careful consideration needs to be made with regard to whether the second interviewer is present in the interviewing room itself or in the adjoining room with the monitoring equipment. The possibility that the witness might feel intimidated by the presence of too many people in the interview room should be taken into account in determining where a second interviewer is situated, particularly where an interview supporter and interpreter are also to be present in the interview room.
Regardless of who takes the lead, the interviewing team should have a clear and shared remit for the role of the second interviewer. Too often this role is subjugated to the need for someone to operate the video equipment, when, in reality, the second interviewer has a vital role in observing the lead interviewer’s questioning and the witness’s demeanour. The second interviewer should be alert to interviewer errors and to apparent confusions in the communication between the lead interviewer and the witness. The second interviewer can reflect back to the planning discussions and communicate with the lead interviewer as necessary. Such observation and monitoring can be essential to the overall clarity and completeness of the video recorded account, which will be especially important at court.

**Equipment operators**

The equipment should always have an operator for the duration of the interview. This will allow the view recorded by the camera to be adjusted if the witness moves. It should also provide an opportunity for the interviewer to be alerted at the earliest possible moment in the event of an equipment failure rather than such a failure only being discovered at the end of the interview (see also Appendix C).

**Interpreters**

Witnesses should always be interviewed in the language of their choice unless exceptional circumstances prevail (for example, in respect of the availability of interpreters). This will normally be the witness’s first language unless specific circumstances result in their second language being more appropriate. Interviewers should be aware that some witnesses could be perfectly fluent in English but might use their first language to express intimate or more complex concepts. As a result, the possibility of using an interpreter should be considered while planning the interview even where a witness is bilingual.

Interpreters should be appropriately accredited and trained so that they understand the need to avoid altering the meaning of questions and replies. They should normally be selected from the PSNI register of translators and interpreters. If it is not possible to select an interpreter from these registers then the interpreter may be chosen from some other list provided that the interpreter meets standards at least equal to those required for entry onto the registers in terms of academic qualifications and proven experience of interpreting within the criminal justice system. While the familiarity of the interpreter to the witness is not a bar to use and may indeed facilitate communication, all interpreters need to be independent, impartial and unbiased. Family members or other close relatives should not be used either during the interview or when preparing the witness for it.
4.63 Interpreters should be involved in the planning process. They should have a clear understanding of the objectives of the interview, its structure and the function served by any specific techniques used (e.g. those of the cognitive interview). It should be remembered that some words in English might not have an exact equivalent in other languages and communication systems. This possibility should, therefore, be discussed while planning the interview with a view to developing strategies to address what might otherwise be a problem.

4.64 If interviewers are working with an interpreter, it is important to have clarified at the outset who will lead the interview in terms of maintaining direct communication with the witness. If the witness is communicating via an interpreter, the lead interviewer should identify themselves as such while maintaining appropriate eye contact with the witness so that the witness understands that they should address the interviewer not the interpreter. However, if a signer is being used to communicate with a witness who has a hearing impairment, it may be more important for the signer to maintain the direct communication with the witness.

4.65 Where an interpreter is present, they must be clearly identified at the beginning of the interview. Whenever possible, they should also be visible in one of the shots recorded.

4.66 Where a sign-language interpreter is being used to interpret for a witness with a hearing impairment, a camera should be used to record the signer’s hand movements as well as those of the witness. In some interview suites, it might be necessary to make use of a portable camera, in addition to the static equipment already set up in the suite, for this purpose. Interviewers should also emphasise to the signer that it is important to avoid inadvertently leading the witness by presenting only one particular option when some of the more generic signs are used, e.g. the signs for ‘weapon’ and ‘touch’ depend on the context so it may be important to present the witness with a number of alternatives.

4.67 Where a signer is to be used, it is important to remember that the energy involved in signing is such that the hands of the signer and the witness are likely to get tired. The interview plan should, therefore, take account of the need for breaks to give the signer and the witness an opportunity to rest their hands.
Interview supporters

4.68 It may often be helpful for a person who is known to the witness to be present during the interview to provide emotional support (the ‘interview supporter’). However, in some circumstances it has been found that the use of a person who is well-known to the witness as an interview supporter can prove counterproductive by inhibiting the disclosure of information (e.g. as a result of embarrassment arising from sensitive information being disclosed in the presence of a person seen by the witness on a day-to-day basis). For this reason, discussions as to the identity of any potential interview supporter should take account of the nature of their relationship with the witness and its potential impact on the interview process. Wherever possible, the views of the witness should be established prior to the interview as to whether they wish another person to be present and, if so, who this should be.

4.69 Other witnesses in the case, including those giving evidence of an early complaint, cannot act as interview supporters.

4.70 If an interpreter is included then they will need to be distinct from the interview supporter and these different functions should not be vested in one person.

4.71 Interview supporters must be clearly told that their role is limited to providing emotional support, and that they must not prompt or speak for the witness especially on any matters relevant to the investigation.

4.72 Where an interview supporter is present, they must be clearly identified at the beginning of the interview. Whenever possible, they should also be visible in one of the angles recorded. Good practice would be for the interview supporter to make sure they are outside of the witness’s line of vision, for example by sitting on the opposite side of the witness to the interviewer.

Location of the interview

4.73 Active consideration should be given to the location of the interview and the layout of the room in which it is to take place. In the planning phase, the interviewer should attempt to determine where the witness would prefer to be interviewed. Some witnesses may be happy to be interviewed in an interview suite while others might prefer to be interviewed in a setting familiar and comfortable to them. Whatever the decision, the location should be quiet enough to avoid a situation in which background noise is likely to interfere with the quality of the sound on any video or audio record, and free from interruptions, distractions, and fear and intimidation, so the interviewer and witness can concentrate fully on the task in hand – the interview.
4.74 Interviewers should ensure that sufficient pens and paper are available for use where a witness’s recall could be assisted by drawing a sketch/plan.

4.75 In the event of a witness being interviewed at their home address, care should be taken to avoid saying anything or video recording any background material that might lead to the location being identified (the use of background screens should be considered if necessary).

**Timing of the interview**

4.76 The decision on when to conduct an interview needs to take account of the demands of the investigation (e.g. a suspected perpetrator being in custody) as well as the potential effects of trauma and/or stress. Trauma and stress can interfere with the process of remembering but this should be determined by asking the witness rather than by the application of an arbitrary period of time. Some witnesses will want to be interviewed relatively quickly while others might wish to be interviewed at a later date. It should always be borne in mind that the potential for memory contamination taking place increases with the delay.

4.77 Interviews should not take place at a time when the witness is likely to be suffering from the effects of fatigue (other than in the exceptional circumstances mentioned in the paragraph below). The effect on the witness’s routine and the potential impact of any medication, as well as their views, must be taken into account in determining the best time to conduct the interview.

4.78 In the event of circumstances being such that it is absolutely essential for a witness to be interviewed at a time when they are likely to be suffering the effects of fatigue (for example, where an alleged offender is in police custody for a serious offence and an interview is necessary to secure potentially vital evidence), consideration may be given to conducting a brief interview in the first instance which sets out the witness’s account and addresses any issues on which immediate action needs to be taken. Where it is necessary to conduct a brief interview, the principles set out at the beginning of this Part should be adhered to. A more substantial interview can then be arranged at an appropriate time.
Duration of the interview (including pace, breaks and the possibility of more than one session)

4.79 The interview should go at the pace of the witness. Some witnesses will require regular comfort breaks (for example, elderly and frail witnesses). Whenever possible, the interviewer should seek advice from people who know the witness about the likely length of time that the witness can be interviewed before a pause or break is offered while planning the interview.

4.80 Some witnesses who have experienced a traumatic event may find that the interview is ‘too much’ for them, especially if emotional matters are being discussed. Ways of assisting these witnesses may include planning for breaks in the interview and/or pauses in which the interviewer moves the conversation on to more neutral topics such as those mentioned in the rapport phase before returning to the matter under investigation.

4.81 In some circumstances, it might be necessary to conduct the interview over more than one session (for example: in complicated cases; where allegations of multiple offences are involved; where the witness is elderly and frail; or where the witness is taking medication likely to make them sleepy). These sessions might be separated by a matter of hours or, if necessary, could take place over a number of days. When this occurs, care must be taken to avoid repetition of the same focused questions over time, which could lead to unreliable or inconsistent responding in some witnesses and interviews being ruled inadmissible by the court.

Planning for immediately after the interview

4.82 Although interviewers cannot predict the course of an interview, planning discussions should cover the different possible outcomes and consider the implications for the witness. This should include the possibility of a medical examination (where this has not taken place before the interview), the possible need for alternative accommodation, and any other steps necessary to protect the witness or reduce the possibility of harassment.

Witnesses who might become suspects

4.83 So far as is practicable, consideration should be given in the planning phase as to how interviewers will deal with any confessions to criminal offences made by the witness in the course of the interview. Any decision on an appropriate course of action will involve taking into account the seriousness of the crime admitted and weighing it against the seriousness of the crime under investigation.
4.84 It is preferable to anticipate and plan for such an eventuality while recognising that any decisions on a particular course of action are likely to depend on what has been disclosed by the witness during the course of the interview.

Recording the planning process

4.85 A full written record should be kept of the decisions made during the planning process, and of the information and rationale underpinning them. This record should be referred to in the statement of evidence subsequently made by the interviewer in relation to the planning, preparation and conduct of the interview, and should be revealed to the PPS under the requirements of the Criminal Procedure and Investigations Act 1996.

Preparing the witness for an interview

4.86 Witnesses should always be prepared for an interview. In some cases, this might be fairly brief and take place immediately prior to the interview, while in other instances it might be necessary to take more time and/or for it to take place several hours or days before the interview.

4.87 The preparation of the witness should include an explanation of the purpose of the interview and the reason for video recording it (including who might subsequently view it); the role of the interviewer(s) and anybody else to be present; and the location of the interview and roughly how long it is likely to take. The interviewer(s) should also outline the general structure of the interview and provide some explanation of the ground rules that apply to it (including the witness not making any assumptions about the interviewer’s knowledge of the event). Substantive issues relating to the evidence should not be discussed while preparing a witness for an interview.

4.88 Any issues or concerns raised by the witness should be addressed while preparing them for the interview (for example, welfare issues or concerns about the possibility of a later court appearance).

4.89 Most witnesses will be anxious prior to an investigative interview and few will be familiar with the formal aspects of this procedure. It is, therefore, important that the interviewer uses the time spent preparing a witness for an interview to build up a rapport with the witness. The nature and the extent of rapport building required very much depends on what has been established about the witness during the planning phase of the interview.
4.90 Witnesses who are intimidated might need to spend more time getting to know
the interviewer before they are ready and/or willing to take part in an investigative
interview. Interviewers should consider whether one (or more) meetings with a
witness should take place prior to the interview because this familiarisation process
may take some time.

4.91 Some witnesses may feel that their initial, lawful co-operation with a person who
subsequently commits an offence may make them blameworthy. The interviewer
might need to try to reassure the witness on these points but promises or
predictions should not be made about the likely outcome of the interview. So far
as possible, the interview should be conducted in a ‘neutral’ atmosphere, with
the interviewer taking care not to assume, or appear to assume, the guilt of an
individual whose alleged conduct may be the subject of the interview.

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

4.93 Initial discussions with the witness could focus on events and interests not
thematically related to the investigation: sport, television programmes, and so on.
Sometimes, where the witness and the interviewer have had some previous contact
this can be quite brief. At other times, especially when the witness is nervous
or has been subject to threats from the alleged abuser, a much longer period of
rapport-building when the witness is prepared for the interview may be warranted.

4.94 Rapport-building while the witness is prepared for the interview can also serve to
set the tone for the style of questions to be used by the interviewer during the
interview. It is, therefore, important that the witness is encouraged to talk freely
through the extensive use of open-ended questions because this can help to
encourage the witness to give detailed accounts; a style of communication wholly
consistent with the guidance set out in this document.

4.95 In some instances, it might be helpful to conduct a practice interview while
preparing the witness for the interview. In these circumstances, the witness could
be asked to recall a personal event unrelated to the issue of concern (e.g. a
birthday or a holiday). This serves to provide the witness with an example of the
kind of detail that will be required in relation to the issue of concern and to practise
extended verbal responses.
4.96 It may prove problematic to attempt to proceed with an interview until rapport has been established. Should establishing rapport when the witness is prepared for the interview proves difficult, it may be preferable to postpone the interview rather than proceeding with an interview that may well turn out to be of no benefit.

4.97 Assistance should be sought if necessary from interview supervisors and interview advisers (see tiers 4 and 5 of ACPO’s National Investigative Interviewing Strategy (ACPO, 2009)) with the issues that might arise during the preparation of a witness for an interview.

4.98 Full written notes must be kept of the preparation of a witness for an interview and given to the PPS on request.

4.99 The plan for the interview should be reviewed and revised if necessary in the light of any additional information that arises from preparing the witness for the interview.

**Part 4B: Interviewing intimidated witnesses**

**General advice on interviewing intimidated witnesses**

4.100 Over the years, many professionals have recommended the use of the phased approach of interviewing, starting with a free narrative phase and then gradually becoming more and more specific in the nature of the questioning in order to elicit further detail. This structure results in what is termed a ‘hierarchy of reliability’ of information with the opening phases resulting in good quality recall. However, as the interview becomes more specific, the quality of information elicited may reduce. Research has shown that the free narrative phase of the interview typically is incomplete but more accurate. When witnesses are questioned about a ‘to-be remembered’ event, more information is elicited but the accuracy tends to be lower with the more direct questions resulting in higher error. Therefore, interviewers have to be particularly careful about the types of questions used and where in the interview to use particular questions.

4.101 However, inclusion of a phased approach in this guidance should not be taken to imply that all other techniques are necessarily unacceptable or to preclude their development. Neither should what follows be regarded as a checklist to be rigidly worked through. Flexibility is the key to successful interviewing. Nevertheless, the sound framework it provides should not be departed from by interviewers unless they have discussed and agreed the reasons for doing so with their senior manager(s) or an interview adviser (tier 5 of the Association of Chief Police Officers’ (ACPO’s) National Investigative Interviewing Strategy (ACPO, 2009)).
4.102 For all witnesses, interviews should normally consist of the following four main phases:

- establish rapport;
- seek free narrative recall;
- ask questions; and
- closure.

Each phase will be described in greater detail below. These phases are compatible with and underpin the PEACE interview framework advocated by ACPO.

4.103 The phased approach is at the heart of the cognitive interview (CI)/enhanced cognitive interview (ECI). Essentially, if all the cognitive ‘special’ instructions are taken away and not used, what is left is the phased interview. The CI was initially developed in an attempt to improve witness memory performance by using various techniques derived from cognitive psychology to gain as much correct information as possible without jeopardising the quality of the information reported. The original CI comprised a set of four instructions given by the interviewer to the witness: (i) report everything; (ii) mentally reinstate context; (iii) recall events in a variety of different temporal orders; and (iv) change perspective. Subsequently, the originators found that real-life police interviewing of witnesses lacked much that the psychology of interpersonal communication deemed important. Therefore, they developed the ECI, which incorporated several new principles from memory research and the social psychology of communication. As a result, the ECI consists of the original CI techniques noted above plus some additional techniques (e.g. transfer of control and witness-compatible questioning).

4.104 Therefore, the following discussion will also describe the ‘special’ cognitive mnemonics that aim to help elicit specific details that witnesses may have difficulty remembering. Some interviewers think that use of the ECI is an all-or-nothing affair – that they have to use all the techniques or none at all. Instead, it would be preferable to use one technique well rather than all of its techniques poorly. As noted above, if you take away all the ‘special’ techniques of the ECI, you are left with the phased interview. So, rather than it being a decision to use the ECI or not, the questions are: ‘Which ECI technique(s) should I use?’, ‘With whom should I use each?’, ‘When should I use each?’ and ‘How should I present each?’. It is important, therefore, for interviewers to use the appropriate technique at the appropriate time with the appropriate witness. This is not an easy task. As a result, interviewers should be trained and be competent to the appropriate tier (2 or 3) of ACPO’s National Investigative Interviewing Strategy (ACPO, 2009) in order to do this appropriately.

4.105 The CI/ECI mnemonics typically can only be used with co-operative witnesses. If the witness is not co-operative then the interviewer should resort to either the phased interview or, as the next step, an approach based on communication management.
Phase one: establishing rapport (including engaging and explaining)

Opening the interview: explaining the formalities

4.106 Firstly, it is necessary when video recording the interview to check that the equipment is turned on and that all people in the room can be clearly seen on the monitor through the camera with the wide-angle lens where two cameras are in use and that the witness is appropriately framed in the main camera image (see Appendix E). Next, the interviewer should say out loud the day, date, time and place (not the detailed address) of the interview and give the relevant details of all those present.

Opening the interview: personalising the interview, building rapport and engaging the witness

Personalising the interview

4.107 The opening phase of an interview will often determine the success of the interview as a whole. At the outset, it is necessary to establish trust and lay the foundations for successful communication. The interviewer is often a person who is unfamiliar to the witness and, therefore, in order to reduce possible tension and insecurity felt by the witness, it is essential that the interviewer should introduce themselves by name and greet the witness by name (i.e. personalise the interview). Greeting should occur as it is at the heart of effective rapport development which is the next step of the interview process.

4.108 Paying attention to the appropriate form of address at this initial greeting phase can help send a message of equality both now and throughout the interview. This is essential as it reduces the perceived authority differential between interviewer and witness so that they are less likely to comply with leading questions. As no interview can be perfect, it is essential to build resistance against inappropriate questions which may unwittingly be used by an interviewer later in the interview.

4.109 The interviewer needs to treat the witness as an individual with a unique set of needs as opposed to being ‘just another interviewee’. Obtaining maximum retrieval is a difficult task requiring deep concentration. A witness, therefore, needs to feel that they are an integral part of the interview in order to be motivated to work hard.

4.110 As noted above, the interviewer needs to present themselves as an identifiable person. This is because people dislike the unknown and prior to the interview may draw on past experiences and knowledge about the police and interviews to help them think about what to expect. This information may be obtained from media
representation and, as a result, may not be particularly favourable. Therefore, it is the job of the interviewer at the outset, and throughout the interview, to lessen any 'stereotypes' the witness may have. This can start through personalising the interview. Interviewers who are in uniform may have to spend more time on this and the next phase of the interview to overcome any barriers set up by their clothing.

4.111 First impressions count so the clothing an interviewer wears is a matter that should be considered before an interview. For example, interviewers in too formal attire may have more difficulty in personalising the interview and developing rapport especially when interviewing younger individuals.

Building rapport and engaging the witness

4.112 Rapport is essential, and good rapport between interviewer and witness can improve both the quantity and quality of information gained in the interview. Rapport, therefore, has a direct impact on the interview process itself. Rapport is especially important where the type of information required is highly personal.

4.113 The witness's anxiety, whether induced by the crime and/or the interview situation (or otherwise), needs to be reduced for maximum remembering. This is because people only have a limited amount of processing power available and the aim is to have the witness's full power devoted to retrieving as much information as possible. Anxiety may detract from this. The interviewer, therefore, needs to start to create a relaxing atmosphere and to make the witness feel secure and confident both with the interviewer and with the interview situation. One way to achieve this is to start by asking some neutral questions not related to the event which can be answered positively and, therefore, create a positive mood.

4.114 Within the main body of the interview and, if an interview is being video recorded, it is important that any discussion of neutral topics in the rapport phase is completed within a relatively short space of time. Interviewers should remember that a lengthy rapport phase may result in some intimidated witnesses getting:

- tired before they are asked to provide an account. This could have an adverse impact on the quality of their evidence; and
- confused about the purpose of the interview. This could increase in their anxiety.

4.115 If the interview plan suggests that discussing neutral topics for a lengthy period of time may be beneficial (e.g. with some traumatised witnesses) it should take place as part of witness preparation before the interview commences.
4.116 Interviewers should be aware that it is neither desirable nor essential to discuss neutral topics in every interview. Where an intimidated witness is anxious to begin their account of the alleged incident(s) as soon as possible, a discussion of neutral topics could be counterproductive by needlessly prolonging the rapport phase thus increasing their anxiety levels. In any event, rapport should not be regarded as something that is confined to the first phase of an interview: it begins when the interviewer first meets the witness and continues throughout the interview.

4.117 Rapport requires that the interviewer interacts meaningfully with the witness contributing as an interested party and not simply asking a list of predetermined short-answer questions. Standardised phrases should be avoided as their use will convey to the witness that they are ‘just another interviewee’ which is likely to depersonalise the interview. It is a good idea for the interviewer to talk about themselves too as this openness can serve as a model to demonstrate what is required of the witness and help to further personalise the interview by making the interviewer more identifiable.

4.118 The use of open-ended questions in the developing of rapport will help the witness understand at the earliest phase in the interview what will be required later, i.e. elaborated responses. The interviewer should encourage the witness to speak without interruptions when they are describing a familiar event (e.g. a recent holiday).

4.119 Witnesses have different levels of language and skilful interviewers tailor their own communication level to that of the witness. It is in this rapport phase of the interview that the interviewer can assess the witness’s communication abilities (this should also occur in planning and preparation), and this will allow the interviewer to develop an interactive model of interviewing determined and defined by the witness. This is easier to do when examining the witness’s responses to open-ended questions. For example, it is often useful to count how many words on average a witness uses per sentence and use this figure as a guide to the length of sentences/questions the interviewer should use.

4.120 A guiding principle for developing rapport is to communicate empathy. Here the interviewer needs to demonstrate a willingness to try to understand the situation from the witness’s perspective. Some witnesses may be unhappy, or feel shame or resentment about being questioned especially on personal matters. In the rapport phase, and throughout the interview, the interviewer should convey to the witness that they have respect and sympathy for how the witness feels.
A witness may be apprehensive about what may happen after the interview if they provide an account of what happened. While every effort should have been made to address these concerns while preparing the witness for the interview, they should be addressed during this phase if they emerge again.

At the start of the interview, the interviewer could allow the witness to vent their concerns and emotions about the incident(s) in question. These in turn can be used to explain the interviewer’s needs. This can help to initiate the next phase of describing the aims of the interview (i.e. setting the ground rules).

Opening the interview: explaining the ground rules

It is important to explain to the witness what is to be expected from them as for most witnesses an investigative interview is an alien situation. People typically fear the unexpected but by describing the interview process this fear can be reduced.

Interview factors

There are some details concerning the interview itself that need to be explained to the witness. The reason for the interview needs to be given which in turn will make its focus clearer. The interviewer, however, needs to be careful not to comment on the nature of the offence as this can be seen as leading the witness. Questions such as ‘Do you know why you are here today?’ have been found to help at this stage of the interview.

The interviewer needs to give an explanation of the outline of the interview. Typically the outline will take the form of the interviewer asking the witness to give a free narrative account of what they remember and following this with a few questions in order to clarify what the witness has said. Witnesses should also be told that:

- if the interviewer asks a question that the witness does not understand or asks a question that the witness does not know the answer to, they should say so; and
- if the interviewer misunderstands what the witness has said or summarises what has been said incorrectly then they should point this out.

In addition, it should be explained that the interviewer might take a few brief notes.

There should not be an attempt to get the witness to swear an oath during an interview. If the witness goes on to give evidence at court, the court will administer an oath retrospectively.
Focused retrieval

4.127 Memory recall at the most detailed level requires focused attention and intense concentration. If there are too many distractions then the witness will find it very difficult to retrieve from the detailed level of memory. The interviewer should inform the witness that the task is not an easy one but one that will require considerable concentration. Witnesses also need to feel that they have an unlimited time for recall so that they can search their memory effectively at their own pace and provide elaborate, detailed responses. If there is a restricted time, witnesses may shorten their responses accordingly and shorter responses are usually less detailed.

Transfer of control

4.128 This instruction is an ECI technique which would be helpful in almost all interviews. The witness may expect the interviewer, usually an authority figure, to control the interview. Therefore, a witness may well be expecting an active interviewer asking a series of questions to a more or less passive witness whose only task is to answer these questions and wait for the next one. This is not the typical behaviour of a skilful interviewer. Instead their role is as a facilitator, a person to help the witness remember, to facilitate retrieval and to help the witness, as and when they require it, to recall as much information as possible. It is the witness who has been witness to the event and who has all the information. Consequently, the main person in this exercise is the witness and not the interviewer.

4.129 The interviewer should, therefore, pass the control of the information flow to the witness. After all, it is the witness who holds the necessary information. Therefore, at the start of the interview the witness needs to be informed explicitly of this. It is the witness who should do most of the mental work and most of the communicating throughout the course of the interview.

4.130 Another reason why this instruction is so important is because detail is not often required in everyday communication. For example, when asking a colleague who has just returned from holiday ‘Did you have a good time?’, only limited detail from them is actually sought. The reason for asking this question is generally a polite, common courtesy. This is because we learn from a young age what is termed the ‘maxim of quantity’ which states that detail in general communication is not required and may even be seen as rude. However, in an investigative interview the witness needs to give extensive detail and should do most of the communicating. Unless directly told this, the witness will not give such detail automatically as they will have learned from years of experience of communicating that to give detail is not necessary and to dominate the conversation is rude.
Report everything

4.131 This final instruction in this sub-phase of the interview is also an ECI instruction that would be useful in almost all interviews. As noted above, witnesses are unlikely to volunteer a great amount of detailed information unless told to do so. Interviewers, therefore, should explicitly state their need for detail. Therefore, as with the transfer of control instruction, the ‘report everything’ instruction encourages witnesses to report everything they remember without any editing even if witnesses think the details are not important or trivial, or cannot remember completely a particular aspect of the event.

4.132 There are a number of reasons thought to be responsible for the effectiveness of this instruction. Many witnesses may believe that the interviewer already knows a lot about the event in question. As a result, witnesses may not mention things they think are unimportant or which seem obvious as witnesses do not want to be seen to be wasting interviewer time. Some witnesses may (erroneously) believe that they themselves know what types of information are of value and, therefore, may only report what they believe to be important. In some cases, this may result in witnesses mistakenly withholding relevant information. Therefore, the instruction to report everything is likely to result in the reporting of information which otherwise may be held back by the witness. Witnesses may also withhold information if they cannot remember it completely. However, the recall of partial information may help the interviewer gain a more complete picture of the incident (for example, if a witness recalls a few characters of a number plate and other witnesses each recall one other character).

Phase two: initiating and supporting a free narrative account

4.133 In this phase of the interview, the interviewer should initiate an uninterrupted free narrative account from the witness through the use of an open-ended invitation. The interviewer can also use this phase as the planning phase for the questioning phase of the interview. This is because the free narrative account allows the interviewer an insight into the way in which the witness holds the information about the event in their memory. Therefore, brief note-taking is recommended at this stage. However, if the interviewer takes too many notes, this may well distract the witness, hindering the flow of recall. In addition, if the interviewer slows the witness down in order to take detailed notes, this again hinders maximum retrieval. In this regard, it is always helpful to give thorough consideration to the need for a second interviewer at the planning phase.
4.134 It is essential not to interrupt the witness during their narration to ask questions – these should be kept for later.

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

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

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

**Context effects, memory and the mental reinstatement of context**

**Context effects and memory**

4.138 Research has demonstrated that context can have a powerful effect on memory. It is sometimes easier to recall information if you are in the same place or context as that in which the encoding of the information took place. This helps us to explain why we are overcome with a surge of memories about our past life when we visit a place we once knew (e.g. a school you used to attend). The context in which an event was encoded is itself thought by some to be one of the most powerful retrieval aids. For example, Crimewatch reconstructions attempt to reinstate the physical context of the event in order to jog people’s memories of the event itself.
4.139 Research has demonstrated the effects physical context can have on memory. For example, participants learned a list of words either on land or 20 feet under water. Later the participants had to recall the previously learned list of words either on land or under water, i.e. in the same context where they learned the list or in a different context. It was found that those who learned the words on land recalled more of the words when they were also on land and those who learned the words under water recalled more of the words under water. Recall was approximately 50 per cent higher when the learning and recalling contexts were the same.

4.140 In a practical sense, physically reinstating the context of the event (i.e. taking a witness back to the scene of a crime) may not be possible or advisable (though sometimes this is a strategy that can be used in the correct circumstances). There are a number of reasons why taking someone back physically to the incident scene is inappropriate. From a police operational perspective, if it is a recent crime, the scenes of crime officers may still be present and taking someone back to the scene could contaminate the crime scene itself. Also, the witness/may become too traumatised and anxiety may interfere with the process of remembering. Furthermore, the crime scene may have actually changed. For example, the weather may be different, or people and objects, which were at the crime scene, are unlikely to have remained the same. Therefore, taking someone back may be counterproductive if the scene is drastically different. In addition, physically taking someone back to the scene is expensive and time-consuming, and, if the interview is being video recorded, the logistics of doing this at the scene may be problematic (e.g. if the scene is outside and it is raining).

4.141 Context, however, need not be external to the person remembering. Our internal state can also act as a contextual cue. For example, a person who was feeling happy when experiencing an event may be better placed to remember the event in that state. Recollection of an experience is likely to be most successful when a retrieval cue reinstates a person’s subjective state at the time of an event including thoughts and feelings.

4.142 Research has shown that the mental reinstatement of the context of the event, both the physical and the internal context, can be as effective as taking someone back physically.
The mental reinstatement of context

4.143 The context reinstatement instruction is part of the ECI and it asks witnesses to reconstruct in their minds the context, both physical (environmental) and internal (i.e. how they felt at the time), of the witnessed event. Any aspect of an environment in which an event is encoded can, in theory, serve as a contextual cue. For example, the interviewer could say to the witness: ‘Put yourself back to the same place where you saw the assault. Think of where you were. How were you feeling at the time? What could you hear? What could you smell? Think of any people who were present. Think about the objects there. Now tell me everything you can remember without leaving anything out.’. The statements should be given using the past tense and should not be leading. This instruction can be used before obtaining the first free narrative account or to obtain a second free narrative. Again, this will depend on the witness.

4.144 The use of sketch plans may also be helpful here. The witness could be asked to draw the layout of the event and describe who was where, etc. This will also help the witness reinstate the context, and could be a useful tool for the questioning phase of the interview to help focus the witness and structure topic selection. In addition, this is a useful investigative tool in ensuring that the R v Turnbull and Camelo rules are comprehensively covered.

4.145 Context reinstatement can be a useful technique and, like any procedure that enhances recall, it can recreate feelings associated with the event. Interviewers, therefore, need to be appropriately trained in the use of this instruction and what to do if the recalling of a negative event upsets the witness.

Active listening and appropriate non-verbal behaviour

4.146 Appropriate non-verbal behaviour during the interview is just as important for a successful interview as are the verbal instructions.

Proxemics

4.147 Proxemics refers to the physical distance between individuals (e.g. interviewer and witness) and the effects of this on them. Everyone has around them a personal ‘bubble’ of space which usually extends to about an outstretched arm’s length around them though cultural differences in this do occur. It has been found that an invasion of a person’s personal space, especially by a stranger, can be emotionally disturbing and may well result in gestures indicative of stress. Therefore, it is imperative to be aware that an interviewer’s own behaviour can affect the behaviour of the witness.
Posture and orientation

4.148 The angle or orientation at which people stand or sit in relation to one another can convey information about attitude, status and affiliation. Although cultural differences do occur, positive conversation tends to take place most comfortably at a 120-degree angle (or a ‘ten-to-two’ position). Confrontation tends to occur in a face-to-face orientation. Therefore, positions in an interview room can affect the interview outcome even before any verbal interaction has taken place. If the interviewer sits in a non-confrontational orientation (e.g. a ‘ten-to-two’ position), this can start to promote a relaxed atmosphere in the interview.

The principle of synchrony

4.149 In a two-person interaction, which is progressing well, each person’s behaviour will tend over time to mirror that of the other person – the principle of synchrony. Interviewers can make use of this to influence the witness’s behaviour simply by displaying the desired behaviour themselves. Therefore, by speaking slowly in a calm, even voice and behaving in a relaxed way, the interviewer can guide the witness to do so as well. The interviewer should encourage the witness to speak slowly as rapid speech (which is common in anxious witnesses) becomes a problem for memory retrieval. ‘Mirroring’ can also help build and maintain rapport in that intended behaviours can be demonstrated by the interviewer and may in turn be mirrored by the witness. If an interviewer sits and speaks in a relaxed manner, the witness is more likely to demonstrate relaxed behaviour as well.

Pauses and interruptions

4.150 The interviewer also needs to give the witness time to give an elaborate answer and should use pauses so that the witness can conduct a thorough search of their memory. Witnesses pause during a free narrative account for a variety of reasons. The witness may be seeking feedback from the interviewer on the quality of the response. For example, the witness may be thinking ‘Have I given enough information or do I need to continue?’ or ‘Have I been talking too long?’. The witness may also pause in order to organise the rest of the narration or when trying to access information. Any interruption during these pauses may preclude further information being produced and this information may be lost.

4.151 Interviewers can promote extensive answers during these pauses by remaining silent or by expressing simple utterances (gurgles) conveying their expectation that the witness should carry on (e.g. ‘mm hmm’). This non-verbal behavioural feedback should not be qualitative (e.g. saying ‘right’) as this may give the witness the
impression that the information they have already given is the type of information required and may, therefore, be judged by the courts as inappropriately rewarding certain types of utterance. Instead, interviewers should praise the witness for their efforts in general and do so between interview phases. Similarly, the interviewer should not display surprise at information as this could be taken as a sign that the information is incorrect. Repeated interruptions soon teach witnesses that they have only a limited time to reply and this often leads to shortened responses to future questions.

Phase three: questioning

4.152 During the free narrative phase of an interview, most witnesses will not be able to recall everything relevant that is in their memory. Therefore, their accounts could greatly benefit from the interviewer asking appropriate questions that assist further recall.

4.153 Interviewers need to appreciate fully that there are various types of questions that vary in how directive they are. The questioning phase should, whenever possible, commence with open-ended questions and then proceed, if necessary, to specific-closed questions.

Prior to the questioning phase of the interview

4.154 Before asking the witness any questions, it may be beneficial to outline for them what is expected of them in this phase of the interview. It is helpful for the interviewer to inform the witness that they will now be asking them some questions based on what they have already communicated in the free narrative phase in order to expand on and clarify what they have said. It is also beneficial to reiterate a number of the ground rules outlined in the rapport phase of the interview. For example, it is helpful to explain to the witness that detail is required, to explain that this is a difficult task which requires a lot of concentration, and to point out that it is acceptable to reply ‘I don’t know’ or ‘I don’t understand’ to a question.

Types of question

4.155 Different types of question produce different types of answer with respect to quality and quantity, and it is essential that particular classes of question are used in the correct order. There are some types of question that have a tendency to produce erroneous information.
Open-ended questions

4.156 An open-ended question is the best kind of question from the point of view of information-gathering (i.e. gaining good quality information). Therefore, this type of question should be used predominantly during the interview. Open-ended questions are framed in such a way that the witness is able to give an unrestricted answer which in turn enables the witness to control the flow of information in the interview. This questioning style also minimises the risk that the interviewer will impose their view of what happened on the witness. Open-ended questions elicit responses similar to those obtained by the free narrative account which has been found to be the most accurate form of remembering. Open-ended questions can also be used to elaborate on incomplete information provided in the free narrative account.

4.157 Questions beginning with the phrase ‘Tell me’ or the word ‘Describe’ are useful examples of this type of question. Examples of open-ended questions are: ‘You said you were at the scene of the incident this morning. Tell me everything you remember.’ ‘You said that there was a man with a knife. Describe him for me.’

Specific-closed questions

4.158 A specific-closed question is one that allows only a relatively narrow range of responses. Specific-closed questions are the second-best type of question, and should be used to obtain information not provided by the witness in the free narrative account and not elicited through the use of open-ended questions. This is because the use of specific-closed questions allows the interviewer to control the interview and minimise irrelevant information being provided. However, they may cause witnesses to be passive and decrease their concentration, and, therefore, can result in less recall. Also, specific-closed questions can produce more incorrect responses than open-ended questions. Open-ended questions are, therefore, preferable because they elicit more elaborate and more accurate responses.

4.159 In answering the open-ended question given above that requested a description of the perpetrator, the witness may have omitted hair colour; therefore, a subsequent specific-closed question could be: ‘What colour was his hair?’.

4.160 An interview is a learning experience especially if the witness has limited or no knowledge of the interview situation. As a consequence, any interviewer behaviour is likely to have an immediate effect on the interview process (e.g. on an answer given). The witness will also learn from this behaviour what is to be expected and will try to adjust their behaviour accordingly. Therefore, if an interviewer opens an interview by using a succession of specific-closed questions, which do not allow the

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witness to give full answers, they will expect this to occur throughout the interview. As a result, the witness will give short answers even if the interviewer may request long responses from the witness later in the interview using open-ended questions. This is the reason why open-ended questions should be used first with specific-closed questions as a back-up option.

4.161 Some authors define open-ended questions by their opening word: ‘Who’, ‘What’, ‘Where’, ‘When’ and ‘Why’. Although these questions can be framed as open-ended questions, they are much more commonly used as specific-closed questions. For example:

Q. ‘Who said that?’
A. ‘John Smith.’

Q. ‘What did he say?’
A. ‘He said...’

Q. ‘Where were you standing?’
A. ‘Outside the bedroom.’

Q. ‘When was that?’
A. ‘About 11.’

4.162 An example of such a question framed as an open-ended question is ‘What happened next?’. However, its effect depends on where in the interview this question is asked. If ‘What happened next?’ is used within predominately open-ended questions, it should elicit an open-ended response from the witness. However, if it is embedded among a large number of specific-closed questions, it is unlikely to elicit a lengthy response because the witness is not used to giving detail.

4.163 A ‘Why’ question, although it may produce a response, can create more problems than it solves particularly if the question seeks an explanation of behaviour. This is because people often do not know, with any degree of accuracy, what their own motivation is, let alone what motivates others. ‘Why did he do that?’ may well be a closed question but it is also a question that the witness cannot possibly answer with 100 per cent accuracy. In addition, ‘Why’ questions also tend to promote the feeling of blame. Victims often partly blame themselves for what happened and so ‘Why’ questions may strengthen this belief. This will not help the witness or the remembering process.
Wording of specific-closed questions

4.164 The interviewer needs to tailor the language of each individual question to each witness and should avoid using grammatically complex questions. Interviewers should also avoid using questions that include double negatives. The key is to keep questions as short and simple as possible including only one point per question.

4.165 If the interviewer is seeking elaboration on what the witness mentioned in their free narrative account, the interviewer should as far as possible try to use the same words that the witness used. Negative phrasing should also be avoided as this suggests a negative response which it often receives (for example, ‘You can’t remember any more, can you?’).

4.166 In addition, jargon and technical terminology should not be used as these reduce the witness’s confidence and may alienate them. Moreover, a witness may just respond in the affirmative to avoid embarrassment if they do not understand.

4.167 Specific-closed questions should not be repeated ‘word for word’ because the witness may feel that their first answer was incorrect and change their response accordingly. When a question is not answered or the answer is not understood, it should be reworded instead of repeated. Also, if the witness has been unable to answer a number of questions in succession, the interviewer should explicitly change to an easier line of questioning with a short break in the interim otherwise the witness may lose self-confidence.

Forced-choice questions

4.168 This and the following are further types of question that should be avoided if at all possible and only be used as a last resort.

4.169 This type of question can also be termed a selection question: it gives witnesses only a small number of alternatives from which they must choose and which may, in fact, not include the correct option (e.g. ‘Would you like tea or coffee?’). The result of asking this type of question is that witnesses may guess the answer by selecting one of the options given. Witnesses may also answer in the affirmative, and the interviewer must then either assume to which part of the question this reply corresponds (which may be an incorrect assumption) or rephrase the question.
Multiple questions

4.170 A multiple question is one that asks about several things at once. For example: ‘Did you see him? Where was he? What was he wearing?’ The main problem with this type of question is that witnesses do not know which part of it to answer. The witness has to remember all the sub-questions asked while trying to retrieve the information required to answer each sub-question. Moreover, when an witness responds to such a question, misunderstandings can occur as the interviewer may wrongly assume that the witness is responding to sub-question one when actually they are responding to sub-question two.

4.171 Less obvious examples of this type of question include those questions that refer to multiple concepts, for example ‘What did they look like?’. This question asks the witness to describe two or more people and, therefore, may not only limit the amount of retrieval per person but also may confuse the interviewer as to who the witness is currently describing. Misunderstandings could, therefore, occur.

Leading questions

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

4.173 In addition to legal objections, research indicates that witnesses’ responses to leading questions tend to be determined more by the manner of questioning than by valid remembering. Leading questions can serve not merely to influence the answer given but may also significantly distort the witness’s memory in the direction implied by the leading question. For these reasons, leading questions should only be used as a last resort where all other questioning strategies have failed to elicit any kind of response. On occasion, a leading question can produce relevant information which has not been led by the question. If this does occur, interviewers should take care not to follow up this question with further leading questions. Rather, they should revert to open-ended questions in the first instance or specific-closed questions.
4.174 A leading question that prompts an witness into spontaneously providing information which goes beyond that implied by the question will normally be acceptable to the courts.

4.175 Furthermore, witnesses who do not provide distorted information in response to such questions are nevertheless likely to become irritated by questions that imply the anticipated answer especially if they know that answer to be incorrect.

4.176 Leading questions come in a number of different forms, some being more suggestive than others. The leading questions thought to be the most suggestive are tag questions such as ‘You did see the gun, didn’t you?’. It has also been found that questions worded using ‘the’ compared with ‘a’ result in greater levels of erroneous responses. This is because ‘the’ presupposes the existence of an item. It should be noted that witnesses may be more likely to succumb to suggestive questioning when they see the interviewer as an authority figure. The way that interviewers structure questions can have a marked influence on the responses given by the witness. It is imperative to understand the nature of questioning in order to conduct the most effective and non-biased interview. (See also issues of suggestibility, acquiescence and compliance in Chapter 3.)

**Asking questions**

**Topic selection**

4.177 Within the questioning phase of the interview, the interviewer should subdivide the witness’s account into manageable topics or episodes, and seek elaboration on each area using open-ended and then specific-closed questions. Each topic or episode should be systematically dealt with until the witness is unable to provide any more information. Interviewers can also summarise what the witness has said, using their own words, in relation to each topic or episode. Topic-hopping (i.e. rapidly moving from one topic to another and back again) should be avoided as this is not conducive to maximum retrieval.

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

4.179 Good questioning should avoid asking a series of predetermined questions. Instead, the sequence of questions should be adjusted according to the witness’s own memory processes. This is what ‘witness-compatible questioning’ means. Each witness will store information concerning the event in a unique way. Therefore, for maximum retrieval, the order of the questioning should resemble the structure of the witness’s knowledge of the event, and should not be based on the interviewer’s notion or a set protocol. It is the interviewer’s task to deduce how the relevant information is stored by the witness (via the free narrative account) and to organise the order of questions accordingly.

Activating and probing images (mini-context reinstatement)

4.180 This has been used as part of the ECI. It is used to help the witness to recall more specific details of the event (a mini-context reinstatement). This begins by recreating/activating the psychological and environmental context. The context here is very specific in that it refers to a particular moment or aspect of the incident. For example, if the first aspect of the event that the witness reported in their free narrative account was the man with a knife, they can now be asked the following: ‘You mentioned the man with the knife. I want you to focus on him. When did you get the best view of him? [Sketch plans can be useful here.] Think of what he looked like, his overall appearance. What was he wearing? What could you smell? What could you hear? What were you feeling? Tell me everything you can about him in as much detail as you can.’. For each aspect the interviewer should start by probing with open-ended questions to enable the witness to supply an extensive answer. The interviewer should follow up with specific-closed questions but only when the open-ended questions do not result in the desired information. Avoid using leading questions.

Extensive retrieval

4.181 This is an element of the ECI. The more attempts the witness makes to remember a particular event, the more information will be recalled. Some witnesses should, therefore, be encouraged to conduct as many retrieval attempts as possible because many witnesses terminate their memory search after the first attempt. However, simply asking the witness to repeat the same search strategy is unlikely to lead to much new information and may be de-motivating for the witness. Therefore, in addition to searching extensively, using concentration, the witness should be encouraged to use a variety of memory search strategies. One way of doing this is to get the witness to use varied retrieval strategies such as the ECI techniques of...
'change the temporal order of recall' and 'change perspective'. However, it is vital at this phase in the interview to allay any fears that this is being done because the witness is not believed.

**Different senses**

4.182 Retrieval may also be varied by probing different senses. Typically interviewers concentrate on what the witness saw and, as a consequence, what they heard, smelt, felt and tasted are often ignored. Valuable information may, therefore, go unreported. For example, if the witness has so far not mentioned much about sounds in the event, such as conversations, an interviewer could use sound as a retrieval cue: ‘What I want you to do now is to go through the event again but this time think of all the sounds [use any sounds they have mentioned earlier in the interview as an example] and tell me what you can remember.’.

4.183 At the time of the offence, victims of serious violence sometimes dissociate themselves from the attack, and may close their eyes or focus on something else to help themselves do this. As a result, they may later have limited information attained from sight and, therefore, interviewers need to probe their memory of the event using other senses.

**Recall in a variety of temporal orders**

4.184 When an event is freely recalled, most witnesses report the event in real time (i.e. in the order in which it took place though not completely chronological – there is usually some jumping about). When recalling in this way, witnesses use their knowledge of such events in the past to help them recall this particular event (e.g. what typically happens on a Friday night will help them remember the assault on a particular Friday night). This results in the recall of information that is in line with their general knowledge (in this case of ‘typical Friday nights’). However, unusual information or occurrences may not be so readily recalled. The ‘change order’ instruction invites the witness to examine the actual memory record which in turn can result in the reporting of additional information which is unusual and unique.

4.185 Research has shown that witnesses who were instructed to recall an event in forward order and in reverse order remembered more total correct information than those who recalled the event twice in forward order. The additional information gained tended to concern action information (i.e. what people did), which can distinguish the event (what happened on the Friday night the assault happened) from similar events (what typically happens on Friday nights).
Therefore, once witnesses have (using free narrative account) recounted the event in their own order, the interviewer could encourage the witness to recall the event using a different order; for example, from the end to the beginning of the event (i.e. reverse order recall), and/or working backwards and forwards in time from the most memorable aspect of the event.

**Change perspective technique**

Witnesses have a tendency to report events from their own psychological perspective. The change perspective instruction, from the ECI, asks the witness to recall the event from a different personal perspective (not a change in location). For example, in one police investigation a secretary saw what she thought was a scuffle between two men across the road from her office as she walked to work. When initially questioned by the police, about what was in fact a murder, all she could remember about one of the men’s hair was that it was blond. The victim had dark hair but another witness had also said that one of the men had blond hair. Therefore, the murderer may well have had blond hair and the secretary may have seen his hair. In her subsequent interview, the interviewer said ‘So far you have said you are having difficulties retrieving details of his hair style. What could a hair stylist remember about his hair?’.

Care must be taken with this technique as witnesses may misinterpret the instruction to adopt a different perspective as an invitation to fabricate an answer. Therefore, witnesses should be explicitly told not to guess at this stage of the interview and this instruction needs to be explained clearly. It is imperative when using this instruction to tell the witness explicitly that they must only report details that they actually witnessed themselves. Note that this technique should only be used by well-trained interviewers.

**Memory prompts**

There are also additional memory aids used in the ECI to help the reporting of specific details concerning people (e.g. names, faces, voices, clothing, appearance) and objects (e.g. vehicles, number sequences, weapons). For example, people are often unable to remember names. To assist with this, the interviewer could request the witness to think about name frequency (common or unusual name), name length (short or long, number of syllables) and the first letter of the name by conducting an alphabetical search. Similar techniques can help in the remembering of vehicle licence plate characters.
Witnesses tend not to realise that the interviewer requires detailed descriptions, specifically of the perpetrator, and instead tend to focus on the actions in the event. As a result, descriptions tend to be short and incomplete. Therefore, interviewers need to instruct the witness to report all types of information and not just action information. In addition, witnesses often have difficulty reporting information about people. When ‘people information’ does exist in the witness’s memory, reporting such information from that mental image often involves a translation process from a visual to a verbal medium. This is a difficult task that requires concentration and assistance from the interviewer. The following techniques may help in eliciting specific details about people involved in the event:

- Physical appearance
  Did the person remind you of someone you know?
  Why?
  Any peculiarities?

- Clothing
  Did the clothing remind you of anyone?
  Why?
  What was the general impression?

- Speech characteristics and conversation
  Did the voice remind you of anyone?
  Why?
  Think of your reactions to the conversation.

It is important to remember when using the above three techniques to always back up the question with ‘Why’. This is because the response to ‘Did the voice remind you of anyone?’ may for example be Sean Connery but the witness may not necessarily be thinking of a Scottish accent. Therefore, asking ‘Why?’ is imperative.

Phase four: closing the interview

Recapitulation

Interviewers should in this final main phase provide an account of the witness’s description of the event in their own words. This allows the witness to check the interviewer’s recall for accuracy. The interviewer must explicitly tell the witness to correct them if they have missed anything out or have got something wrong. The interviewer should not “over summarise”. Where summaries have been conducted appropriately throughout the interview, there is no need to provide a complete summary at the closing phase.
4.192 This phase also functions as a further retrieval phase. The witness, however, should be instructed that they can add new information at this point in the interview otherwise they are unlikely to stop an interviewer in the full flow of recapitulating.

4.193 If there is a second interviewer present, the lead interviewer should also check with them whether they have missed anything.

4.194 Care should be taken not to convey disbelief.

**Closure**

4.195 The interviewer should always try to ensure that the interview ends appropriately. Every interview must have a closing phase. In this phase, it may be useful to discuss again some of the ‘neutral’ topics mentioned in the rapport phase.

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

4.197 The witness should be thanked for their time and effort, and asked if there is anything more they wish to communicate. An explanation should be given to the witness of what, if anything, may happen next but promises that cannot be kept should not be made about future developments. The witness should always be asked if they have any questions and these should be answered as appropriately as possible. It is good practice to give to the witness (or, if more appropriate, an accompanying person) a contact name and telephone number in case the witness later decides that they have further matters they wish to discuss with the interviewer. It is natural for witnesses to think about the event after the interview and this may elicit further valuable information. Advice on seeking help and support should also be given.

4.198 When closing the interview, and indeed throughout its duration, the interviewer must consider the witness’s mental health and be prepared to assist them to cope with the effects of giving an account of what may well have been greatly distressing events (and about which the witness may feel some guilt).
4.199 The aim of closure should be that, as far as possible, the witness should leave the interview in a positive frame of mind. In addition to the formal elements, it will be useful to revert to neutral topics discussed in the rapport phase to assist this. This point has important repercussions, one of which is that a well-managed interview can positively influence organisation–community relations. Many witnesses will tell friends, family, etc. about the skill of the interviewer and their feelings about the interview process as a whole.

4.200 Report the end time of the interview on the video/audio-recording.

Evaluation

4.201 Evaluation should take two primary forms: evaluation of the information obtained and evaluation of the interviewer’s performance.

Evaluation of the information obtained

4.202 After the interview has concluded, the interview team will need to make an objective assessment of the information obtained and evaluate this in light of the whole case. Are there any further actions and/or enquiries required? What direction should the case take?

Evaluation of interviewer’s performance

4.203 The interviewer’s skills should be evaluated. This can take the form of self-evaluation with the interviewer examining the interview for areas of good performance and poor performance. This should result in a development plan. The interview could also be assessed by a supervisor and/or someone who is qualified to examine the interview, and give good constructive feedback to the interviewer, highlighting areas for improvement. This should form part of a staff appraisal system (see tier 4 of ACPO’s National Investigative Interviewing Strategy (ACPO, 2009)).

Post-interview documentation and storage of recordings

4.204 The interviewer should complete the relevant paperwork as soon as possible after the interview is completed including the Index to Video Recorded Interview referred to in Appendix G. A statement dealing with the preparation and conduct of the interview should be made while the events are still fresh in the interviewer’s mind.

4.205 Recordings should be stored as recommended in Appendix H.
Supplementary interviews

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

Identification procedures

4.207 Where a video recorded interview has been conducted by virtue of this chapter, the production of facial composites using E-FIT or other systems, or the production of an artist’s impression should also be video recorded. This will enable the court to hear the evidence from the witness in the same medium as the main evidence in chief and show how any new evidence has come about, giving confidence to the evidence gathering process and reducing the need for the witness to give additional evidence in chief in the witness box or by live link. Staff carrying out these procedures should be suitably trained to interview and record the evidence in line with this guidance (see Appendix K).

Therapeutic help for intimidated witnesses

4.208 An intimidated witness may be judged by the investigating team, and/or by the witness, to require therapeutic help prior to giving evidence in criminal proceedings. It is vital that professionals undertaking therapy with prospective intimidated witnesses prior to a criminal trial adhere to the official guidance contained in Chapter 8.

4.209 The PPS and those involved in the prosecution of an alleged offender do not have authority to prevent an intimidated witness from receiving therapy and whether a witness should receive therapy before the criminal trial is not a decision for the police or the PPS. However, the police and the PPS must be made aware that therapy is proposed, is being undertaken or has been undertaken so that consideration can be given to whether or not the provision of such therapy is likely to impact on the criminal case. At all times, the importance of not coaching or rehearsing the witness in matters of direct evidential value must be borne in mind by the professional undertaking therapeutic work with the witness (see Appendix D).
Safeguarding intimidated witnesses

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

4.211 Some offences are more likely than others to give rise to the intimidation of witnesses. Research has shown that assaults, domestic violence, stalking (which by its nature involves repeated victimisation) and racially motivated crimes are particularly likely to lead to intimidation. When the witness is also the victim, the risks may increase further. Victims of sexual offences are also particularly vulnerable to intimidation. This vulnerability is heightened when the victim is a child and is further heightened when they do not have strong family support structures in place as is the case for many children in care who might have been sexually exploited. Such children can often experience a real and tangible fear as to what might happen if they report the abuse. This fear can be based on explicit or implicit threats. It is not only the nature of the offence, however, that may indicate the possibility of intimidation. Investigators need to be aware of the culture and the lifestyles of not only the witness but those who live with and around them. On some medium- and high-density housing estates, for instance, there may be a history of drug problems and/or anti-police feeling. A culture of fear and silence as regards criminal behaviour may exist in these areas. Equally, those who live in small, close-knit communities may have an increased risk of intimidation. Extended family networks may mean that the witness lives, shops and works near relatives and associates of the offender.

4.212 More specific factors might give rise to actual or perceived intimidation risks for the witness such as the witness’s age, gender, sexual orientation, disability, cultural or ethnic background, religious and political beliefs. Careful attention must always be paid to issues that may relate to sectarianism. Vulnerable witnesses, particularly those with mental impairment or ill health (paranoia or chronic anxiety, for instance), may perceive that they are at risk. More substantive indicators of risk may concern the nature of the relationship between the witness and the accused. For example, it may be that the alleged perpetrator is in a position of authority over the witness (such as a carer in a residential home) or that the alleged perpetrator is the witness’s violent ex-partner. Interviewers need to be aware of whether the witness has been intimidated in the past, and whether the alleged perpetrator or their relatives and associates have a history of intimidation and violent behaviour. The local influence of the alleged perpetrator, whether this is in terms of their position within the criminal fraternity or their socio-economic status, is a further issue that requires investigation.
4.213 In some instances intimidation may occur only later in the investigative process. If this happens, the intimidated witness should still qualify for special measures.

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

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

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

It is important that the witness’s visits to the police station are planned to avoid encounters between the witness and the suspect and their associates.


Witnesses who become suspects during the interview

4.217 It may happen that a witness who is being interviewed comes under suspicion of involvement in a criminal offence, perhaps by uttering a self-incriminating statement. Any decision on an appropriate course of action in these circumstances should involve taking into account the seriousness of the crime admitted and weighing it against the seriousness of the crime under investigation.

4.218 Where the priority is to obtain evidence from the person as a witness, the interview can proceed.
4.219 If it is concluded that the evidence of the witness as a suspect is highly relevant to a particular case, the interview should be terminated and the witness told that it is possible that they may be interviewed concerning these matters at a later time. Care should be taken not to close the interview abruptly in these circumstances. Instead, the witness should be allowed to complete any statement that they wish to make.

4.220 Any admission by a witness in the course of an investigative interview may not be admissible as evidence in criminal proceedings against them. Normally, a further interview would need to be carried out in accordance with the relevant provisions of the Code for the Detention, Treatment and Questioning of Persons by Police Officers (Code C of the Police and Criminal Evidence (NI) Order 1989). The Code provides, among other matters, for the cautioning of a suspect.

4.221 A witness who confesses to a criminal offence during the course of an interview may ask the interviewer for some guarantee of immunity. On no account should any such guarantee be given, however remote the prospect of criminal proceedings against the witness might seem. If the witness is to be interviewed in accordance with Code C of the Police and Criminal Evidence (NI) Order 1989), they must be cautioned and the purpose of the interview made clear.
5.1 Support and preparation by providing victims and witnesses information about the court process, explaining special measures to them, and giving them an opportunity to express their wishes (including identifying who they would like to accompany them in the live television room when they are giving evidence if appropriate) helps them to give better evidence and can influence their decision to proceed with the case in the first place. The additional stress of coping with an unfamiliar situation is likely to reduce the ability of witnesses to participate and to respond to questioning, or to effectively recall events in order to assist the fact-finding process of the criminal justice system. Preparation and support which are planned to fit the needs of individual witnesses can help to prevent and alleviate this problem.

5.2 Improvements have recently been introduced to improve information provision to victims and witnesses, and the identification of their support needs. The Code of Practice for Victims of Crime explains how a victim should expect to be treated by the criminal justice system. The Guide to Northern Ireland’s Criminal Justice System for Victims and Witnesses of Crime builds on and complements the Code of Practice by providing a step by step guide through the criminal justice process, explaining what a victim or witness can expect at each stage. This guidance should be read in conjunction with the Code of Practice and Guide, and agencies should ensure that they deliver the requirements set out in both documents.

5.3 Vulnerable and intimidated witnesses will need greater consideration and it will be necessary to identify appropriate additional support and preparation to help them to give the best evidence they can.
5.4 ‘Vulnerable’ witnesses are defined by Article 4 of the Criminal Evidence (Northern Ireland) Order 1999 (the 1999 Order), as amended by the Justice Act (Northern Ireland) 2011, as:

- all child witnesses (under 18 years of age); and
- any witness whose quality of evidence is likely to be diminished because they have a:
  - mental disorder (as defined by the Mental Health (NI) Order 1986); or
  - significant impairment of intelligence and social functioning (witnesses who have a learning disability); or
  - physical disability or are suffering from a physical disorder.

5.5 ‘Intimidated’ witnesses are defined by Article 5 of the 1999 Order, as those whose quality of evidence is likely to be diminished by reason of fear or distress at the prospect of giving evidence.

5.6 Children and adults with learning disabilities might have problems with memory, vocabulary, level of understanding and suggestibility to leading questions. Some people with learning disabilities are acquiescent or compliant with the demands of those in positions of power or authority. In these cases, it may be beneficial to use an intermediary who will assess the witness’s level of communication and make recommendations about how their needs can be met. In addition to these difficulties, such witnesses often lack knowledge or understanding of the criminal justice system. Consideration should always be given to using an intermediary to assist in communicating with children with learning disabilities. The defence or prosecution should ask court staff to make provision for any special needs a witness may have as a result of a disability, medical condition or age. Such difficulties can be helped by provision of appropriate information and support. National Standards have been prepared for those involved in young witness preparation (see Appendix L).

5.7 Children or adults who have been victimised may have special difficulties as witnesses in criminal proceedings. They may need help to overcome the feeling that it is they, rather than the defendant, who is on trial. The context and process of the trial itself may also bring back old memories, and patterns of reaction and response for vulnerable witnesses. They may be especially sensitive to suggestions of their own guilt or responsibility for the alleged actions of the defendant.

5.8 People with mental health issues can find the criminal justice system especially stressful. Those with post-traumatic anxiety disorders can have special problems prior to and during the trial, particularly if their problem is related to the alleged offence.
5.9 At the earliest stage in the process, the police should explain the special measures available to vulnerable or intimidated witnesses (and their parent or carer if the witness is a young witness, i.e. under 18), including the advantages/strengths and potential weaknesses/disadvantages of each. When providing such an explanation, the police should explain the role of the supporter in accordance with National Standards on Witness Supporters and make it clear to the witness that the granting of special measures and witness supporter is for the court to decide after taking their views into account.

5.10 The views of witness about which if any special measure(s) would be likely to assist them, including the identity of any supporter that they would like to accompany them in the live television link room while they give evidence if applicable, should be carefully recorded in the ‘witness care report’ (a standard form used by the police during case preparation to transmit confidential information to the Public Prosecution Service (PPS)) . This normally accompanies the witness’s statement. In addition, once it has been established that a witness is to be involved in criminal proceedings, provided consent is given, the police officer will make a referral to the appropriate support service (VSNI Witness Service or NSPCC Young Witness Service) by completing Form PJ 19. The police and the PPS will need to consider if there is a need for a formal assessment of the witness in relation to special measures provision. In more complex cases, it may be appropriate for the police and PPS to convene a meeting to discuss special measures provision. This may need to include other relevant parties (e.g. Health and Social Care Trust, witness support services) and is likely to include the witness. Careful consideration should be given to the venue for such a meeting where a witness is to be included. The witness should be informed as soon as possible of a special measures application being granted or of any changes to the special measures being provided.

**Overview of witness support and preparation**

**Entitlement to support and preparation**

5.11 All witnesses, including those who may be vulnerable or intimidated, may require support before the trial. Witnesses, whether giving evidence for the prosecution or defence, should be given an explanation of their role at court and assistance to ensure that they are able to give their best evidence. Support is appropriate at all stages of the case. This will not involve discussing or rehearsing the witness’s evidence or otherwise coaching them before the trial – witness ‘training’ for criminal trials is prohibited. That does not prohibit pre-trial familiarisation visits provided that broad guidance is followed – the witness can be shown the courtroom and the live link room to familiarise themselves before their day in court but there can be no discussion of the evidence (see Appendix D for relevant case law).
The first task is the identification of children and vulnerable and intimidated adults who need special consideration during their involvement with the criminal justice process. To ensure timely access to support, the police must take all reasonable steps to identify vulnerable or intimidated victims, and to record relevant information on the ‘Witness Details Form’ under the section marked ‘Witness Care Report’. In practice, this approach to victims will also be extended to the identification of vulnerable and intimidated witnesses. While it is usually the police who first identify witnesses’ vulnerability, it can be highlighted by anyone with knowledge of the witness or by the prosecutor following assessment of the evidence. Once a witness has been identified as either vulnerable or intimidated, there is potentially a long period of time before a court hearing takes place. During this time, preparation and support need to focus on arrangements surrounding any interviews with the witness, pre-trial arrangements and preparation for any court hearing. Providing the witness with information about the investigation and court case, and obtaining their views on which special measures they feel is most appropriate for their needs, and who they would want to accompany them into the live link room, if that is their preferred special measure, is crucial. If the case goes ahead, support will also be required during the court hearing and in the immediate aftermath. In the typical criminal case, these activities will probably occur over many months.

Box 5.1 illustrates some of the range of possible activities that can be undertaken with vulnerable and intimidated witnesses by pre-trial and court witness supporters. The key tasks for young witness preparation are described in the National Standards for Young Witness Preparation (see Appendix L) and Preparing Young Witnesses for Court – A Handbook for Child Witness Supporters (NSPCC, 1998).

Victims of sexual violence and abuse may have multiple support and safety needs because of the nature of these crimes. These may include therapeutic support, housing, treatment of injuries and infection, drugs and alcohol treatment, risk assessment and support through the criminal justice process. The Sexual Assault Referral Centre which is under construction at the time of writing will provide victims of sexual assault with medical care and counselling alongside a police investigation.
Victims of domestic abuse will also have particular support and safety needs. Women’s Aid has a key support role in cases of domestic abuse. However, it should be noted that it is the Victim Support NI (VSNI) Witness Service which has a lead role in supporting victims and witnesses in domestic abuse cases in court. Where children are to be called as witnesses, there will be a role for the NSPCC Young Witness Service. The three agencies have a range of joint protocols which support the delivery of these services. The introduction of Multi-Agency Risk Assessment Conferences (MARAC) creates a partnership model for dealing with domestic abuse. These multi-agency conferences aim to provide a forum for sharing information and developing action plans which will reduce future harm to very high-risk domestic abuse victims and their children. This will also include maximising evidential opportunities throughout criminal investigations and subsequent criminal proceedings to ensure perpetrators of domestic abuse are held accountable for their actions.

**Box 5.1  Activities undertaken by pre-trial supporters and court witness supporters**

Depending on the supporter’s role, they can:

- provide emotional support;
- educate and give information;
- understand the witness’s views, wishes, concerns and any particular vulnerabilities that might affect them during the criminal process (including the witness’s views on special measures), and convey these to the relevant criminal justice system agency;
- agree the manner and frequency of the provision of information;
- familiarise the witness with the court and its procedures, and with the responsibilities of the criminal justice system;
- support the witness through interviews and court hearings;
- undertake court preparation and pass on information about the trial;
- explore with the witness their preferences in respect of special measures and, if it is relevant, who they would want to accompany them into the live link room, and relay that information to the police or PPS;
- accompany the witness on a pre-trial visit to court;
- accompany the witness when their memory is to be refreshed (this should not be undertaken by a supporter who will accompany the witness while giving evidence);
• accompany the witness while they give evidence in court or the live link room (where the court approves this);

• liaise with family members and friends of the witness;

• liaise with legal, health, educational, social work and other professionals, and act as an advocate on behalf of the witness;

• liaise with those offering therapy and counselling prior to a criminal trial; and

• arrange links with experts in any of the witness’s specific vulnerabilities or difficulties, e.g. communication problems, learning disabilities, or specific cultural or minority ethnic group concerns.

Different types of supporter

• Victim Support NI community services

• Victim Support NI Witness Service

• NSPCC Young Witness Service

• Women’s Aid re domestic abuse

• Nexus and Rape Crisis and Sexual Abuse Centre Northern Ireland re sexual offences

• PSNI Domestic Abuse Officer, Family Liaison Officer, Child Abuse Investigation Officer etc

• Other voluntary groups as appropriate, such as NICEM (Northern Ireland Council for Ethnic Minorities) and the Rainbow Project

5.16 Different support functions may be provided at different stages. Four distinct roles or phases for witness support have been identified. They are:

• interview support – provided by someone independent of the police, who is not a party to the case being investigated. The supporter can sit in on the interview. They may be a friend or relative, but not necessarily so;

• pre-trial support – provided to the witness in the period between the interview and the start of any trial;

• court witness support – a person who may be known to the witness but who is not a party to the proceedings, has no detailed knowledge of the case or may have assisted in preparing the witness for their court appearance. A direction for evidence to be given via live link under may also provide for a supporter; and

• post-trial support – witnesses have considerable needs following a trial and it is important that practitioners are mindful of the information needs of victims and witnesses following a verdict and sentencing. The need for information is acute in discontinued cases or where lesser charges are proffered, particularly where a
plea is accepted. Agencies providing support have a key role in identifying current need; linking the witness to appropriate sources of information; helping the witness to understand the outcome of proceedings; and connecting witnesses to sources of relevant ongoing support.

5.17 The same supporter will not normally be used throughout the entire criminal justice process and indeed it is unlikely to be appropriate for the same person to be involved in all four phases since this can lead to allegations that the witness is being coached; family members and friends are unlikely to have experience of the courtroom and the pre-trial supporter must have knowledge of the court process. Research indicates that the interests of the witness, especially in terms of consistent information, are best served if pre-trial and court support are undertaken by the same person. Any supporter used during the interview, however, should not be used to prepare the witness for court nor should they offer to support the witness while they are giving evidence because they are already aware of the witness’s account. However, in exceptional circumstances (such as a witness finding it difficult to adapt to change), the same supporter may be used at all stages of the process. When this happens, great care needs to be taken to brief the supporter about the limitations of their role. There needs to be certainty that the supporter will not be called as a witness either by the defence or the prosecution.

Investigative interview support

5.18 Accompanying and supporting children as well as vulnerable and intimidated witnesses can be helpful during investigative interviews. The supporter may be a friend or relative provided they are not party to the proceedings, and they are not involved in pre-trial support or in the role of supporter at trial.

Pre-trial support

5.19 Support from a trained person with knowledge of the court process can assist the witness through information provision and preparation for giving evidence. The police and PPS will provide information about the progress of the case and support requirements in preparation for court will be discussed and agreed with the witness. A supporter may be present when the witness views their video recorded statement for the purpose of memory refreshment before the trial. However, careful consideration must be given as to who this supporter should be in order to guard against future allegations of coaching the witness. Generally, any supporter present during the witness’s memory refreshment would not be the same person who has supported the witness pre-trial and/or is expected to accompany the witness when giving evidence. The court should be informed of the identity of any supporter and any potential conflicts should be highlighted. A discussion should also take place
with the witness that explores their preferences in respect of special measures and, if it is relevant, who they would want to accompany them into the live link room. The witness’s views in respect of special measures and support during the trial should then be conveyed to the PPS.

5.20 VSNI’s Witness Service and the NSPCC Young Witness Service can arrange pre-trial visits for prosecution witnesses. The defence can make similar arrangements for defence witnesses by contacting NI Courts and Tribunals Service (NICTS). These visits should give vulnerable or intimidated witnesses information about special measures including, where applicable, the opportunity to practise using the live link facility.

Support while giving evidence

5.21 Support during the court process itself, in the live link room or when giving remote live link evidence is to be provided when it is necessary. There are evidential constraints that apply to the person providing support (see Appendix K). The identity of a supporter in the live link room or at the remote location must be the subject of an application to the court. It is normal practice in Northern Ireland courts for supporters from the VSNI Witness Service or the NSPCC Young Witness Service to accompany witnesses in the live link room. Where a supporter from either witness service is not available, a suitably trained member of Court Service staff will be available to accompany the witness in the live link room.

Evidential boundaries

5.22 The pre-trial support and/or court witness supporter must not be a witness in the case and must not be given details of the case or the evidence of the witness. However, the supporter needs to know:

- the charges against the defendant;
- the relationship between the defendant and the witness, and whether the charges involve an abuse of trust;
- the defendant’s custody status and any change in this during the pre-trial period; and
- matters which may affect how preparation is conducted or how the witness gives evidence (e.g. the age of the witness, whether an intermediary has been applied for or not, and any medical needs).
5.23 Court witness supporters must not discuss the details of the case with the
witness, or the evidence the witness is to give or has given. In their initial contact
with witnesses, supporters must explain that they are independent of both the
prosecution and the defence, and that there will be no discussion of the evidence
in order to avoid allegations that the supporter has told the witness what to say.
Supporters need to distinguish between providing practical, emotional help and
support to the witness generally which is a key part of their role, and on the other
hand expressing their own views and beliefs concerning the evidence of the witness,
which is not permitted.

5.24 Court witness supporters must also explain that preparation work cannot be
guaranteed to be confidential. For example, if the witness begins to talk about the
evidence, the supporter must make a note – in the witness’s words – of what was
said, notify the police and ask the witness to speak to the person who conducted
the investigative interview. Such a written record is disclosable. Further guidance on
court witness supporters is described in Appendix K.

Who can provide support?

5.25 Who undertakes the range of support and preparation functions will depend on
the needs of the individual witness, the availability of resources and the court’s
directions. In addition to general considerations, including the views of the witness,
it may be appropriate to secure the assistance of a supporter who has a particular
understanding of the needs of the witness, for example from the point of view of
ethnic or cultural background, or disability awareness.

5.26 Assistance and support is available from VSNI through their community services
and Witness Service, and from the NSPCC Young Witness Service as well as a
range of other organisations, such as Women’s Aid, NICEM and the Rainbow
Project. VSNI’s Witness Service provides pre-trial preparation and support to adult
witnesses and the NSPCC Young Witness Service provides pre-trial preparation and
support to witnesses under 18 years. These arrangements are covered by a series
of complementary protocols between the two support service providers and the
other key statutory agencies – PSNI, PPS and NICTS. All the agencies recognise
that it is vital that pre-trial preparation and support begins as soon as the witness’s
vulnerability or intimidation is identified and the police and/or the PPS become
aware that they may need to attend court.
Support and preparation work with a prosecution witness should not be undertaken without informing the police officer in charge of the case. The work should be carried out by someone who is independent and focuses purely on preparing the witness for the experience of giving evidence which they may find difficult. The supporter must also not have been involved in the detailed preparation of the case, nor must they discuss details of the prosecution case or the evidence of the witness. It is recognised that supporters could be police officers or other professionals, or volunteers. However, all must have received basic training, which may include additional information from the PPS on the criminal justice system and court processes. Supporters working with child and adult witnesses should be subject to current Enhanced Disclosure Procedures through Access NI in line with the Protection of Children and Vulnerable Adults (NI) Order 2003 (POCVA). The social worker or police officer who conducted the investigative interview is excluded from the role of supporter in the same case (see ‘Government Policy on the Child Witness Supporter’ in Preparing Young Witnesses for Court – A Handbook for Child Witness Supporters (NSPCC, 1998)).

What knowledge and skills are involved?

Witness support requires training. The skills involved in pre-trial preparation and support include the following:

- knowledge about, and aptitude for, working with vulnerable and intimidated individuals;
- an ability to prepare witnesses to go to court without discussing their evidence or coaching them in any way;
- knowledge and understanding of court procedures, relevant legislation and policy;
- knowledge about the information and support requirements of vulnerable and intimidated witnesses as well as the support that is available; and
- an ability to liaise with other professionals and family members.

Working with young witnesses requires additional qualities and skills which are described in the National Standards for Young Witness Preparation (see Appendix L) and in Preparing Young Witnesses for Court – A Handbook for Child Witness Supporters (NSPCC, 1998). There must be proper documentation of any support work (see Box 5.2).
Box 5.2: Documenting support work

Supporters should:

- make concise and factual records summarising all activities undertaken with witnesses including a record of all phone contacts (these should be suitable to produce to the court if required);
- make the records as soon as possible after the event;
- make a record of all liaison contacts with other professionals and the voluntary sector;
- distinguish fact from opinion when it is necessary to record opinion;
- note in the witness's own words any reference by the witness to the evidence, and notify the police accordingly; and
- keep records securely in a locked room or filing cabinet.

Identifying vulnerable and intimidated witnesses

5.30 The prosecutor and/or defence legal representatives require information about the needs and the wishes of the witness for the purpose of pre-trial preparation, planning how the witness should give evidence and in making related applications to the court. At the outset, the police should identify details of any difficulties witnesses might have in giving evidence and explain how the different special measures might assist them. Young witnesses are automatically eligible for consideration for special measures. Witnesses can then express an informed view on their preference for particular measures, which will be included in any application. Research concerning young witnesses suggests that giving them the choice of how they give their evidence has a beneficial effect on their emotional state, their experience of court and their performance as a witness. While a child’s views are obviously important, it is the norm for child witnesses to give evidence via video/live link.

5.31 The police should provide the PPS with information relevant to vulnerability and intimidation. Provision of this information at this stage allows for active consideration of the steps necessary to secure the giving of a witness’s best evidence as early as possible. The police must give consideration to obtaining medical or equivalent evidence from someone with professional knowledge of the witness in the appropriate discipline, as this may be required in support of a special measures application. This will be subject to the relevant permission being sought from, and explanation given to, the witness.
The police may also seek indirect information about the needs of the witness from their court witness supporter, relatives, friends or carers (provided that they are not party to the crime under investigation), or other agencies. The PPS should seek such information if it is not provided, as this will be necessary for pre-trial planning. In the case of defence witnesses, it is the responsibility of the defence lawyer to enquire about the witness’s needs, refer them to appropriate support services and make appropriate special measures applications.

Preparation, support and liaison throughout the court process

Pre-trial support and preparation should begin as soon as possible, particularly if the witness has been identified as vulnerable or liable to intimidation. Vulnerability will normally have been highlighted before the first investigative interview. In the case of video recorded interviews, a pre-interview planning meeting should be scheduled at which any special difficulties are identified and plans made for relevant special measures to be taken at the interview. The police investigators are responsible for calling an early special measures meeting during the investigation with the PPS (these meetings can, in practice, be a telephone discussion). Where there is any doubt as to whether an interview should be video recorded, where an intermediary or aids to communication are involved, or where there might be an issue about the use of a supporter during an interview, the police investigator should normally undertake an early special measures meeting. The PPS may, in more serious cases, hold an early consultation with the victim prior to making a decision to prosecute and this meeting may include prosecution counsel. After the interview, the next stage involves support, further assessment of needs and liaison with others. As pre-trial hearings and the trial hearing come closer, specific preparatory work for these witnesses will be necessary. In some cases, separate pre-trial therapy or counselling work will be necessary to meet the needs of the witness (see Chapters 7 and 8). A variety of support needs must be met at the hearing itself. The period after the hearing is an important one for ensuring continuing support or treatment, through debriefing and arranging for further work with the vulnerable or intimidated witness to be carried out by other professionals. Opportunities for support occur throughout the witness’s involvement with the legal process. These activities can be summarised under four phases:

- support during the investigation;
- pre-trial support, preparation and liaison;
- support at the hearing; and
- support after the hearing.
Support during the investigation

5.34 Information collected during the planning phase prior to a video recorded investigative interview, and that emerging during the interview itself, is highly relevant to later decisions concerning how witnesses may give their best evidence. It is important that the views of the witness are sought. Not all vulnerable and intimidated witnesses will be video interviewed – the majority of adult witnesses will probably give a written statement. A decision as to whether or not to video interview a witness or make a written statement will be decided by the police at this stage. However, the investigating officer may wish to consult with the PPS prior to making this decision. During the investigation, information about the witness will have been gathered from contact with the witness directly as well as from those providing care, education or specific services. The effective undertaking of the initial needs assessment by the police prior to the statement being written or the video interview recorded will also have established critical information relevant to the investigation, and about support needs up to and including the trial.

5.35 During the course of the investigation, for example in an interview, further information may emerge that may be relevant to decisions about how the witness might give their best evidence. It may become clear that further expert advice is needed in order to determine the best method of communicating with the witness, any special support or assistance which might be required and in what form the witness’s evidence might best be taken. For example, it may be identified that the witness requires an intermediary.

Special requirements

5.36 Some witnesses will have special requirements. These can include communication difficulties, but also differences connected with cultural and minority ethnic values and, sometimes, religious practices that are likely to have an influence on the investigative and pre-trial support and preparation phases. For witnesses whose specific needs include culture, language and communication, consultation should take place with an appropriate adviser, interpreter or intermediary. During the course of a pre-interview planning meeting for a video recorded interview, or immediately after the interview, the police may have discovered special requirements of the witness with respect to culture or communication. Some of these issues will have been identified during the undertaking of the initial needs assessment. Members of the witness’s family or friends, or their carer will often be a good source of information about these needs or requirements. The Police should consult with the witness and those who know the witness well in order to seek their advice on these matters, provided that they are not a party to the crime under investigation, or likely to undermine or interfere with the investigation. One example is those witnesses...
whose first language is not English but who at first meeting appear to communicate relatively easily using English. Appropriate advice and interpretation may be needed during the interview, when providing information about the court process and when giving evidence at trial in order to prevent the witness becoming confused and to enable them to give their best evidence. The guidance in the National Agreement on Arrangements for the Use of Interpreters, Translators and Language Service Professionals in Investigations and Proceedings within the Criminal Justice System, which has been endorsed by the Association of Chief Police Officers, should be referred to.

5.37 As the hearing approaches, witness support work will become more specifically focused on preparing the witness for giving evidence at court. In some cases, therapy prior to trial will be organised as well.

Pre-trial support, preparation and liaison

5.38 The interval between the investigative interview and the final trial hearing can often be lengthy. Over the months the tasks range from initially assessing needs, either by direct enquiry or observation by the police, through gathering information from others, to providing continuing support. The pre-trial supporter may not take on all these roles (for example, therapy) and different components may be carried out by a different person. The different roles of a pre-trial supporter are considered in Box 5.3. Anyone providing support to a witness at any stage of the criminal process must be clear about which roles they are adopting and which are not compatible with their overall role or the support roles they have taken on. It is recommended that individual agencies make this clear in their own role descriptions and associated guidance for their staff and volunteers. The PSNI, PPS, VSNI Witness Service and NSPCC Young Witness Service will work together to ensure that witnesses are updated on all court hearings in their case. They will also make arrangements to continually assess the witness’s information and support needs because these may change over time.
Box 5.3: Components of pre-trial preparation

Assess the needs of the witness:
- directly; or
- by obtaining information from others.

Support:
- seek the witness’s views about giving their evidence and being at court, including who they want to accompany them into the live link room is that is relevant;
- provide information about the criminal process and their role within it, for example the Young Witness Pack, if applicable;
- provide support and general assistance to the witness to enable them to give their best evidence;
- liaise with others as appropriate, particularly in respect of any pre-trial court familiarisation visit;
- provide general emotional support to the witness;
- manage anxiety connected with the court process; and
- provide therapy (including counselling).

Liaise and communicate with:
- the witness;
- other professionals in connection with the legal case;
- the witness’s family and friends;
- the witness’s circle of professionals; and
- those providing therapy and counselling to the witness.

Preparing for the trial:
- provide information concerning courts (personnel and what will happen during the trial);
- explain the options for giving evidence;
- consider any practical needs;
- discuss the victim’s wishes;
- arrange the pre-trial visits;
- refresh memory; and
- meet the legal representative.
Communication between the police and PPS

5.39 Police officers should have undertaken an initial needs assessment for the witness and recorded relevant information, which is then provided to the PPS. Additional information relevant to vulnerability and intimidation should be included in the Witness Care Report and the prosecution file. If an accused is charged by the police, any information as to the vulnerability or intimidation of the witness should be conveyed to the PPS at that time.

5.40 A meeting between the investigating officer and the PPS may be of assistance in determining which measures could assist the witness before and during the trial, taking into account the witness’s own views and preferences for a particular person to act as a supporter. This may require no more than a telephone call. Where appropriate, a second meeting involving the witness should be considered so that these issues can be discussed further and the needs of the witness fully assessed and appreciated.

5.41 In addition, both the prosecution and defence have a responsibility to communicate any special needs of the witness to the court either at the time the case file is reviewed or at a pre-trial hearing. The court should be made aware of what special measures will be needed at court to enable the witness to give their best evidence. It is also helpful if the court can be told in advance about any special arrangements they can make for the witness to make them feel safer e.g. entering and leaving the court by a separate entrance, or arranging separate seating in the court. In addition, it may be appropriate for the legal representatives and/or the judge to meet the witness before the trial. The investigating officer or the PPS should ensure that witnesses discussed at any such hearing (or their supporters) are informed about these hearings and the outcome.

Support before and on the day of the trial/hearing

Pre-trial hearing/review

5.42 A pre-trial hearing or review provides the opportunity for pre-trial planning and for initial decisions to be taken about the special measures available to vulnerable and intimidated witnesses under the 1999 Order, as amended, and any other provisions. At a preliminary hearing, the judge, informed by the legal representatives, with full instructions and having seen any video recordings of the witness’s evidence, should be asked by the prosecution and/or the defence to consider all the issues set out below and make any necessary directions. This is to ensure that all relevant issues can be coordinated and planned in readiness for the
trial. There are advantages in completing this as early as possible as it will tend to avoid delay, and bring greater clarity and certainty to the preparation of vulnerable and intimidated witnesses. This will also assist the prioritisation of cases involving child witnesses. It is vital that there is clear communication between the legal representative and those providing support for the witness, both before and after any pre-trial hearing(s).

5.43 The judge may wish to use the list of issues set out below as a checklist to ensure that legal representatives have fully considered the needs of the witness and these have been issued as a checklist for all Crown Court judges:

- video recorded evidence;
- television links;
- screens around the witness box;
- proposals for any supporter;
- arrangements for the witness to refresh their memory;
- the witness’s preparation for court (including meeting the legal representatives);
- witness attendance times;
- breaks for the witness;
- special circumstances (such as learning difficulties, hearing problems, English not being the first language, short attention span) and the arrangements made to accommodate these;
- mental or medical condition of the witness;
- views of the witness about court dress;
- scheduling and standby arrangements; and
- disclosure of third party records.

5.44 In addition, judges may wish to make use of the Equal Treatment Bench Book published by the Judicial Studies Board in England and Wales (www.jsboard.co.uk), which can be used as good practice guidance in Northern Ireland. In considering the needs of the witness, judges should be cognisant of the information that has been gathered in relation to the witness at the planning and decision making phases of the interview process as this will provide insight into the particular needs and circumstances of each witness. Legal representatives have an important role in ensuring that this information is available to judges.

Preparation for going to court

5.45 The aim of preparing witnesses for court is to make them feel more confident and better equipped to give evidence; to help them understand the legal process and their role within it; and to encourage them to reveal their fears and misapprehensions. For many witnesses, the court environment may increase their
stress and reduce their ability to provide accurate testimony. Effective preparation can assist the witness to give a more accurate and complete account, and also help secure better post-trial adjustment.

5.46 The pre-trial supporter can provide the witness with information about the court process (or can direct their carer or specialist service to it). For example, there is a witness pack available for supporters and child witnesses to use (NSPCC, 2011), including a video for 11–15-year-olds, Giving Evidence – What’s it Really Like. A video for witnesses with learning disabilities has been made by Voice UK. A range of materials in different formats is available (see Appendix T).

**Pre-trial visit to the court**

5.47 Witnesses are likely to benefit considerably from a pre-trial court familiarisation visit. VSNI and the NSPCC will offer pre-trial visits to court as part of their witness support services. (Where an intermediary is being used to help the witness to communicate at court, the intermediary should accompany the witness on their pre-trial visit). The visit will enable witnesses to familiarise themselves with the layout of the court and make witnesses better informed about the particular special measures ordered by the court to assist them to give evidence. The following may be covered at the visit:

- location of the defendant in the dock;
- court officials (what their roles are and where they sit);
- who else might be in the court, for example those in the public gallery and press box;
- location of the witness box;
- run-through of basic court procedure;
- facilities available in the court;
- discussion of any particular fears or concerns;
- outline of the services offered by VSNI’s Witness Service or the NSPCC Young Witness Service, as appropriate, on the day of trial; and
- demonstration of any special measures applied for and/or granted, for example practising on the live link and explaining who will be able to see them in the courtroom, or showing the use of screens (where it is practical and convenient to do so).
Refreshing the memory of the witness

5.48 Witnesses are entitled to see a copy of their statement before giving evidence. Where the investigative interview of the witness has been video recorded, the recording is often used to refresh the witness’s memory before the trial – the equivalent of reading the statement beforehand. Viewing the video ahead of time in more informal surroundings helps some witnesses familiarise themselves with seeing their own image on the screen and makes it more likely that they will concentrate on the task of giving evidence. Arranging memory refreshment for young witnesses is particularly important.

5.49 If a video recording is ruled inadmissible by the court then legal representatives must give careful consideration to the alternative method of refreshing the witness’s memory. Decisions about admissibility should be made in sufficient time to allow other steps to be taken. If the witness is to give oral evidence in chief, legal representatives should consider seeking a ruling on whether it is appropriate to allow the witness to see the video before evidence is given. Relevant supporters should be informed promptly about any decisions on video admissibility and editing.

5.50 Issues involved in planning for refreshment of a witness’s memory will be raised with the court by the legal representatives. If memory refreshment is to proceed, a decision may be required as to how the vulnerable witness should be supported during the process and the implications for the supporter’s role in any subsequent trial. A decision can be reached about the person who is best placed to support the witness while their memory is refreshed. Consideration will need to be given to any competing requirements for the witness supporter during the remainder of the criminal justice process. Witness supporters from VSNI and the NSPCC routinely avoid being present during memory refreshment to reduce any risk of contamination but can be available before and after memory refreshment.

5.51 Having consulted with the PPS, if appropriate, the police will arrange for prosecution witnesses to read their statements or view video recorded interviews. The relevant police officer should consult the prosecution about where this should take place, when it should take place and who should be present. A record of anything said at the viewing should be maintained. In exceptional cases, such as those involving very young children or children with learning disabilities, the prosecutor should consider whether a video recording should be made when the witness refreshes their memory from the video recorded interview.
Witnesses need to receive appropriate explanations about the purpose of watching the video before the trial and their views about this must be taken into account. Sometimes videos will be edited for legal reasons, for example if the video contains irrelevant material or inadmissible matters of fact or law. Witnesses need to be alerted to any editing so that they will not be surprised, suspicious or confused when the recording does not match precisely their recollection of the interview.

The time interval between showing the video for the purpose of refreshment and actually giving evidence should take account of the witness’s needs and concentration span. Minimising delay should be balanced against the difficulty experienced by some witnesses in concentrating through two viewings on the same day. Many child witnesses may prefer to watch the video at least a day before the trial to help prepare them and reduce the stress of giving evidence on the day. It is recommended that the first viewing of the video recording should not be on the morning of the trial in order to avoid the child having to view the recording twice in one day. If the witness loses concentration or becomes distressed during the viewing, a break will be necessary.

Communication with the witness

Witnesses should be told who is responsible for keeping them informed of significant developments in their case. The PSNI, PPS, VSNI Witness Service and NSPCC Young Witness Service will work together to ensure that witnesses are kept informed. This will be the subject of formal protocols between the agencies which set out roles, responsibilities and lead agency status at different stages of the criminal justice process. It is vital to keep victims properly informed but this is particularly the case for vulnerable or intimidated witnesses.

The police or the PPS must keep the supporter informed about key decisions, for example about how the witness is to give evidence. The police and the PPS will agree how this should be done. Where an intermediary is to be used, the police should inform them that they have been appointed.

Witnesses are likely to be anxious about the progress of the case and decisions about whether and how they will give evidence. A vital ingredient therefore, for the police, in maintaining the confidence of the victim, is keeping them fully informed of significant developments in their case. Where there is a need to update a victim of a significant development during the course of an investigation, good practice indicates that the police should consider making personal contact with the victim or, if impractical, by telephone or letter. This would include where a person has been arrested on suspicion of an offence; where the person has been subsequently
released with no further action; where a person has been remanded in custody to appear before a court and details of that first court appearance; when police charge and release a person on bail to appear at court and details of that first court appearance; or where a person has been reported to the PPS for their consideration as to whether that person should be prosecuted. Victims should also be updated by the police in cases where no one has been made amenable.

5.57 The PPS has established dedicated Community Liaison Teams (CLT) who provide a range of services to victims and witnesses for the prosecution who are involved in magistrates’ court cases, indictable cases until committal stage (PSNI take over responsibility post-committal) and youth court cases. CLTs provide a contact point for victims and witnesses who have queries concerning the overall prosecution process and the progress of their specific case. When it appears likely that the commission of a crime will result in a person being prosecuted, the victim (and other witnesses) should be advised of the role of the VSNI Witness Service and/or the NSPCC Young Witness Service. The PPS has responsibility for informing the witness services of the referral details of witnesses called to attend magistrates’ and youth courts. In the Crown Court, the police continue to notify witnesses of when to attend and will inform witnesses required to attend the Crown Court of the services offered by both witness services.

5.58 While continuing efforts are made to minimise delays in the criminal justice system, witnesses should be forewarned at an early stage that some cases take a long time to reach trial or may be discontinued pre-trial, and that some trials may need to be adjourned. They should also be advised beforehand of the possibility of waiting to give evidence on the day of trial. Witnesses may be put on ‘standby’ and asked to wait at locations away from the court, to be summoned by pager when their evidence is to be heard. Vulnerable or intimidated witnesses may be able to wait somewhere near to the court until the time they need to give evidence.

**Provision of therapy prior to a criminal trial**

5.59 There is a concern that some witnesses are denied therapy pending the outcome of a criminal trial for fear that their evidence could be considered tainted and the prosecution lost. This may conflict with ensuring that a witness is able to have immediate and effective treatment to assist recovery. Delay in seeking treatment may worsen the prognosis. Therefore, witnesses should not be denied access to any therapeutic help prior to any criminal trial, in particular if they have a mental illness. Chapter 7 provides guidance in relation to pre-trial therapy for child witnesses and Chapter 8 provides guidance in relation to pre-trial therapy for vulnerable and intimidated adult witnesses.
Pre-trial therapy should be kept separate from preparation and support. Therapy includes both counselling and psychotherapy. The guidance in Chapter 7 has been prepared for childcare professionals as well as lawyers involved in making decisions about the provision of therapeutic help for child witnesses. It emphasises that the best interests of the child are paramount when deciding whether, and in what form, therapeutic help is given. Records of any therapeutic work should be kept because they may become relevant material at a forthcoming trial and may satisfy a test for disclosure under relevant legislation. Whenever possible, before any therapeutic work is undertaken, there should be full discussion between the various agencies and professionals, as well as clear communication and named contact points within each agency. It is recommended that a protocol is established so that the different issues involved in providing pre-trial therapy can be jointly co-ordinated and the best interests of the child held central. Chapter 8 provides similar guidance in relation to pre-trial therapy for adults where the welfare of the witness is also the paramount consideration. Record keeping, discussion between agencies and professionals before any therapeutic work is undertaken and ongoing communication are equally relevant in relation to adults.

Plans and communication concerning the trial

Applications for special measures can be made at any stage up to and including the trial itself. However, it is good practice for special measures and any related matters to be decided on as early as possible as this enables the pre-trial supporter to plan ahead with greater certainty. If the court rules that a witness is eligible for one or more special measures then this ruling and the details of the measures to be provided are binding on the trial court. Details of where, when, and how these are to be provided are set out in the form of binding directions. Frequent communication and co-ordinated planning is needed if more than one person is undertaking the pre-trial support for the witness and support during the court hearing.

Information about the witness’s needs and wishes should be available to the person preparing the witness for court. This may include relevant information obtained during the investigation and recorded in the ‘Witness Care Report’ and/or form PJ14 in the case of a child or form AJP1 in the case of an adult, together with additional information that the pre-trial supporter has gained during the preparation for court and the pre-trial visit.
Role of the witness services

5.63 The Witness Service for adult witnesses is run by Victim Support NI. It is available in all courts for all witnesses, including those who are vulnerable or intimidated. It provides a free, independent, impartial and confidential service, adapted to individual needs. The Witness Service supports victims and prosecution witnesses, and their families and friends. The Witness Service also supports and works alongside other people who may accompany a witness, for example a carer, social worker, expert witness, interpreter, intermediary or specialist witness supporter. The Witness Service provides:

- someone to talk to (but not about the evidence);
- information about court and legal processes;
- emotional support in dealing with the impact and experience of attending court;
- pre-trial visits for witnesses so that they are familiar with the courtroom, the TV link (where appropriate) and the roles of court personnel;
- support on the day of the trial;
- support in the TV link room (where appropriate);
- practical help with completing expenses forms;
- support and information during and following sentencing;
- special support for vulnerable and intimidated witnesses;
- arrangements for defence and prosecution witnesses to be kept separate;
- liaison with other statutory and voluntary agencies;
- referral to Victim Support NI’s community service or other services; and
- other arrangements such as baby changing etc.

5.64 The Young Witness Service is run by the NSPCC and performs the same role as VSNI’s Witness Service for children and young people under the age of 18 years. The service is for victims and prosecution witnesses, including their families and carers. Victim Support NI and the NSPCC have a protocol in place to help them work together to maximise the support available for victims and witnesses who may have to give evidence at court.

Role of the courts

5.65 Court Service staff will assist in coordinating the provision of facilities and will liaise with other agencies. Court Service staff will provide a range of assistance which may include pre-trial familiarisation visits, liaising with the judge to ensure that the cases progress speedily, undertaking the practical arrangements on the day of trial, meeting the witness and liaising with witness services to arrange separate waiting areas where possible. A specific member of Court Service staff will ensure that the video and TV link equipment is set up and working effectively and will be available to respond to any technical difficulties.
5.66 Legal representatives, in consultation with the judiciary, should consider the order and timing of witness attendance so as to minimise inconvenience. Such an approach will benefit vulnerable or intimidated witnesses (see Appendix M).

**Meeting the legal representative**

5.67 On the day of the trial the prosecutor or prosecuting counsel will introduce him or herself to the witness, explain what they can expect to happen at court and answer any queries. Supports should ask witnesses whether they wish to meet their legal representative prior to giving evidence. The prosecutor or prosecuting counsel may discuss the witness’s evidence and may clarify any points of ambiguity. If necessary, the prosecutor may ask the police to record a further statement.

**Meeting the judge**

5.68 An increasing number of judges, accompanied by the prosecution and defence legal representatives, meet young witnesses before they give evidence. Experience suggests that this can assist in demystifying the court process. Putting young witnesses more at ease helps them to give their best evidence.

**Support at the hearing**

5.69 The court witness supporter's role during the court hearing is principally to provide emotional support for the witness in order to reduce anxiety or stress, and therefore enable the witness to give their best evidence. If the court has approved the use of an intermediary to assist the witness, then that intermediary will be present to assist the witness in communicating their evidence to the court. Research has demonstrated that the presence of a supporter known to the witness may reduce the witness’s anxiety and improve the accuracy of their recall. As is the case for all support functions, the witness supporter during the hearing must be someone who has only basic information about the witness’s evidence and the supporter must avoid discussing the witness’s testimony with them. In addition, the court witness supporter will not be a party to the case but will have received appropriate training, and where possible, will have a relationship of trust with the witness. It is likely that the court witness supporter will work alongside the Court Crier/Tipstaff and they will administer the oath. At court, the supporter will be with the witness while they are waiting to give evidence and will then accompany the witness to the court. The supporter will sit beside the witness and provide emotional support in a neutral but sympathetic manner; they cannot influence the court proceedings in any direct way. The court witness supporter should also be able to comfort the witness should they become distressed and should have prior arrangements agreed to enable the
supporter to alert the judge in the event of problems arising while the witness gives evidence (see Appendix K). Where the live link is being used, a specific member of Court Service staff will be available to respond to any technical difficulties.

Planning for breaks in the testimony

5.70 The court witness supporter will need to make prior arrangements to enable the court to be alerted to a vulnerable or intimidated witness’s need for a break in proceedings. This may either be direct or indirect, such as through a ‘touch card’. Although judges and lawyers should invite vulnerable and intimidated witnesses to tell the court when they need a break, the witness’s ability to identify when this is necessary should not be relied on. Supporters should ensure that information is passed to the PPS or, in the case of a witness called by the defence, to the defendant’s legal representative. This will enable the judge and legal representatives to plan breaks in the witness’s testimony. Scheduled breaks are also less likely to occur at a time that would favour one side over another.

Interpreters

5.71 In some circumstances, arrangements will have been made for an interpreter to be present during the hearing. Interpreters might be required for those with limited or no understanding of English, or to assist with the use of communication devices or a form of sign language. The role of the interpreter is to facilitate communication with the witness at court and is distinct from that of the court witness supporter.

Intermediaries

5.72 The court may have approved the use of an intermediary to help the witness to give evidence. The role of an intermediary is also separate from that of the court witness supporter and they should be available during pre-trial preparation to improve the witness’s understanding. An intermediary will usually have undertaken an assessment of the witness at an early stage in the proceedings and will have produced a written report for the judge, the prosecution and the defence. That report should highlight matters such as limited concentration spans and particular types of questioning that should be avoided.
Victim Impact Statements and Victim Impact Reports

5.73 Prior to sentencing victims may have the opportunity to make a victim impact statement and/or the court may request the completion of a victim impact report. A victim impact statement provides the victim with an opportunity to say what effect the crime has had on them, and to help identify their need for help and support. A victim impact report is normally completed by an appropriate professional at the request of the court to inform the judge about the impact of the crime on the victim as part of the sentencing process.

Special provisions for children

5.74 The UN Convention on the Rights of the Child and a number of European Directives emphasise the need for adults and organisations, when making decisions that affect children, to consider their best interests and their views. Reports to the PPS should always include clear information about the wishes of the child – and those of their parents or carers – about going to court. The PPS may in any event need to seek additional information from the joint investigating team.

5.75 The general points concerning pre-trial support and preparation apply to all young witnesses. Additional guidance is provided in the National Standards for Young Witness Preparation (see Appendix L) and the advice below should be read in conjunction with that document. Some additional points are made below because of the particular needs of young witnesses. The majority of these special or added points derive from the developmental immaturity of children and the need to take this into consideration so that they can give their best evidence. Central among these developmental issues are the following:

• children’s understanding and appreciation of the world around them is not fully developed;
• children’s language and communication skills are not as developed as those of adults;
• children are dependent on adult carers to varying degrees during childhood;
• children are used to adults being in charge of their lives, and may not appreciate or be familiar with the fact that their own views, perspectives and wishes are important; and
• children’s ability to delay, postpone or inhibit their reactions to discomfort or distress may be underdeveloped.
5.76 The Young Witness Pack (NSPCC (NI), 2011) emphasises the importance of telling the truth at court. Pre-trial young witness support and preparation should include a revisiting of the difference between truth and lies. This should be in line with the guidance set out in Chapter 2, delivered in an age-appropriate manner which ensures that there is no suggestion of coaching or contamination of evidence.

5.77 Other vulnerabilities or disadvantages may compound these developmental issues, for example learning disabilities, psychological or psychiatric problems, sensory or communication difficulties, issues deriving from cultural or ethnic group differences, or extreme poverty. Furthermore, young witnesses, in addition to being developmentally immature, can be intimidated and may be subject to fear through threat, whether imagined or real. Such situations often occur in sexual abuse cases.

5.78 There may be a special vulnerability in children who have suffered maltreatment that affects their attitudes towards adults in positions of authority or power, and which might raise additional sensitivity to questions such as those which imply guilt or suggest that responsibility resides with the victim, or questions relating to a requirement to demonstrate alleged sexual activities on themselves. Child witnesses may be particularly distressed when asked to show on their own body where they were touched or to mimic sexual actions, and this should be avoided. The pre-trial supporter should discuss with the police and legal representatives whether the child may be asked to demonstrate intimate touching at court. If this is a possibility, consideration should be given to providing a doll, model or drawing to which the child can point. The judge’s agreement should be sought on the use of an alternative method before the question arises.

5.79 These particular issues make children more vulnerable to adult influences in questioning. There are a number of measures that can be implemented at different stages in order to reduce the effect of these developmental issues and enable children to give their best evidence (see Boxes 5.4 and 5.5, and Chapter 6).

5.80 Prior consultation with the witness, their parent/carer and any supporter is likely to provide information which will assist the prosecution in meeting the needs of the child witness while giving evidence. It is important that the legal representative is given information from home or school about the young witness’s attention span, bearing in mind that it is likely to be shorter in the stressful atmosphere of the court. This will enable the judge and legal representatives to plan breaks in the young witness’s testimony.
5.81 It is important to have professionals with an aptitude and skill in being able to communicate effectively with children of different ages. The skills required include an ability to prepare the child witness to give their evidence without coaching them in any way, familiarity with court procedures and the relevant legal processes, an ability to work with children of different ages and abilities, and communication skills (see also Appendix L).

5.82 All information on prosecution witness preparation needs to be communicated to the PPS in sufficient time to enable the necessary action to be taken. The PPS would only expect the preparer to disclose information that is directly relevant to the witness giving their best evidence (e.g. the need for an intermediary). Such information can be provided separately by the police with the case file by completing the section ‘Witness Care Report’, through an early meeting to discuss special measures or through the NSPCC Young Witness Service. This should include the child’s views on issues such as the gender and identity of a court witness supporter to accompany the child in the live link room; the wearing of wigs and gowns by judges and legal representatives; meeting the prosecution legal representative; and viewing the video statement before the trial. (See Victims and Witnesses Policy, Public Prosecution Service March 2007.)

5.83 The child’s stress is likely to increase with the length of time that they have to wait to give evidence on the day of the trial. The Lord Chief Justice has recommended that a child witness should not be brought to court on the first day of trial when it is normal that the opening of the case and preliminary matters will be dealt with. Where possible, the child witness should be called as the first witness on the second day, preferably in the morning. Where such a ‘clean start’ to the day is intended for child witnesses, court listing officers should avoid listing other business before a child is due to give evidence (see Appendix M for details of the Lord Chief Justice’s recommendations). The Lord Chief Justice stated ‘I am persuaded that there are significant advantages in this procedure. Certainly it will help to reduce the pressure on the young witness or victim. It is undesirable that they should be left waiting in the environs of the court where their sense of foreboding is likely to increase. Every effort should be made to bring certainty to the timing of their evidence. That can only assist in the delivery of reliable evidence and the administration of justice’.

5.84 Cases need to be managed robustly to ensure that the case is ready for trial. There is a commitment to giving high priority to child abuse cases. Child witness cases are to be given the earliest available fixed date and trial dates should only be changed in exceptional circumstances.
Box 5.4: Measures to assist child witnesses at the hearing prior to giving evidence

- minimising waiting time at court;
- standby arrangements be on call in another location nearby;
- waiting areas appropriate to the age of the child, equipped with appropriate children’s toys, books etc;
- secure waiting areas, separate from the defendant, and their families and supporters;
- entrance to the courtroom to give evidence by a side door or other arrangements so as to avoid inappropriate contact with relatives or friends of the defendant; and
- presence of a supporter throughout the waiting arrangements.
Box 5.5: Special measures and other arrangements for children at court

Part 1: Special measures

- screens – so that the witness does not have to see the defendant;
- live link – allowing a witness to give evidence from outside the courtroom, including from a live link away for the court to reduce the fear of seeing the defendant (remote link);
  - supporter in the live link room;
- video recorded evidence in chief – allowing an interview with the witness, which has been video recorded before the trial, to be shown as the witness’s evidence in chief;
- evidence given in private – clearing the court of most people in sexual offence or intimidation cases (legal representatives and certain others are allowed to remain);
- removal of wigs and gowns by judges and advocates in the Crown Court;
- video recorded pre-trial cross-examination – this measure has not yet been implemented;
- intermediary – allowing an approved intermediary (a communications specialist) to help a vulnerable witness to communicate with the police, legal representatives and the court. Pending implementation of this measure in NI the courts, under their inherent jurisdiction, can grant the use of an intermediary (see Appendix B); and
- aids to communication – allowing a vulnerable witness to use communication aids such as a symbol book or alphabet boards.

Part 2: Other arrangements

- supporter;
- interpreter;
- pre-trial familiarisation visit;
- adjustments to the layout of the witness area with respect to the height of seating arrangements;
- appropriate arrangements for breaks to take into account children’s greater tendency to tire and their reduced concentration span compared with adults; and
- arrangements for children with physical disabilities.
Special provisions for vulnerable adult witnesses

5.85  Vulnerable adult witnesses might be provided with various special measures (see Part 1 of Box 5.5) to maximise the quality of their evidence, as well as appropriate pre- and post-trial support. It is important that vulnerable witnesses are identified at an early stage so that investigators can establish whether they are likely to qualify for a special measures direction under the 1999 Order, as amended, taking account of the circumstances, the expressed wishes of the witness and the observations of anybody involved in the witness’s care. The police should take all reasonable steps to identify vulnerable victims (see PSNI Policy Directive No. 05/2006 ‘Dealing with Victims and Witnesses Service Procedure, PSNI Service Procedure No.12/2006 ‘Vulnerable and Intimidated Witnesses, the ‘Protocol for Joint Investigation of Alleged and Suspected Cases of Abuse of Vulnerable Adults’ and the ‘Safeguarding Vulnerable Adults Regional Adult Policy & Procedural Guidance’). Vulnerable witnesses are entitled to an enhanced level of service. Witness support can be received by the witness in addition to the special measures that might be available. This support can be provided at the interview, during the pre-trial period and in court. It should be noted that the Northern Ireland Adult Safeguarding Partnership and five Local Adult Safeguarding Partnerships were set up in 2010 to coordinate and develop arrangements to safeguard vulnerable adults across Northern Ireland.

5.86  Personal qualities of vulnerable adults may put them at particular disadvantage during the investigation and court proceedings. For example, some persons with a mental disorder can be particularly sensitive to perceived challenge or criticism, or may fear recurrence of traumatic events. Similarly, people with learning disabilities might have a relative lack of adaptability. These and similar differences and vulnerabilities might lead such witnesses to require longer and more extensive support and preparation. The precise type and amount will vary according to the alleged offence, the witness’s character, level of understanding and their life experience. It will also vary according to the purpose of the support, for example, whether it is designed to encourage the most reliable testimony or to reduce the trauma of proceedings on the witness, or both.

5.87  Depending on the specific vulnerability of the adult witness, it may be appropriate to adopt a similar approach to the issue of the difference between the truth and lies at the pre-trial support and preparation stage. This should be considered in relation to adults who have a learning disability or a mental/cognitive impairment, and should be assessed on a case by case basis.
5.88 Delay within the criminal justice process can add disproportionately to the stress on witnesses who are deemed vulnerable. For example, people with learning disabilities might have particular difficulty understanding the basis and reasons for a delay. For this reason, and because delay is likely to adversely affect the memory of a person with a learning disability, decision-makers should be reminded of the need to treat such cases as a priority.

5.89 Witnesses have been found to give better evidence when they have a choice about the way in which it is given. This especially applies to vulnerable witnesses, many of whom need preparation and support in order to be able to make an informed choice. Wherever possible, vulnerable witnesses should have an active role in choosing how to give their evidence. The most appropriate method of doing so will depend not only on the individual’s objective capacity but also on what they wish to do, taking into account the options that are available to them. Issues of importance to those planning support for vulnerable adult witnesses are set out in Box 5.6.

Box 5.6: Issues of special importance for those planning support for vulnerable adult witnesses

- taking account of a witness’s choices and views;
- use of an intermediary;
- amount of time needed to give evidence;
- time of day when they will give their best evidence;
- designing appropriate breaks;
- considering the best method of asking for a break;
- witness’s level of understanding concerning courts and any prejudices they may have, such as a belief that it is the witness who is on trial;
- familiarisation with the venue for the hearings;
- explanations about the video and link;
- short attention spans while giving evidence (especially for witnesses with learning disabilities);
- speech and communication aids; and
- planning approach to the oath and/or admonishing the witness.
Special provisions for intimidated witnesses

5.90 As with vulnerable witnesses, intimidated adult witnesses might be provided with special measures to maximise the quality of their evidence, including appropriate pre- and post-trial support. There are a number of precautions which officers can take when dealing with intimidated witnesses and, throughout the course of the case, the police should consider developing coping strategies to enable the witness to handle the threat of possible reprisals, and should give the witness appropriate information and advice. Intervention should be arranged where appropriate. Witnesses could suffer excessive fear or distress in a number of situations, such as domestic violence, assaults, sexual offences and crimes involving racism. They might also be intimidated because the alleged offence occurred over a long period of time or in the context of a close relationship with the accused. It is important to take account of government policy to respect the human rights of vulnerable adults when considering those adults who are specifically intimidated as a result of their position as witnesses. The Department of Justice and DHSSPS have developed a Tackling Violence at Home strategy and work is underway on a Northern Ireland equivalent to No Secrets – Guidance on Developing and Implementing Multi-agency Procedures to Protect Vulnerable Adults from Abuse (The Stationery Office, 2000). The PPS also have a Policy for Prosecuting Cases of Domestic Violence (2006).

5.91 In the period leading up to the trial, and during the trial, police officers will take account of the needs of witnesses and will be guided by police service policy and procedure for their protection and support, in particular, where the intimidation of witnesses is a risk (Article 2.4 Police Service of Northern Ireland Code of Ethics 2008). For some victims, specific risk assessments may be made and additional support for the victim provided, for example the introduction of MARAC in domestic abuse cases. National guidance on dealing with intimidation provides advice on what action could be taken (Working with Intimidated Witnesses: A Manual for Police and Practitioners Responsible for Identifying and Supporting Intimidated Witnesses (Office for Criminal Justice Reform, 2006), available at www.homeoffice.gov.uk).

5.92 The PACE Codes of Practice (NI) 2007 provide instruction to the police on dealing with suspected offenders where information has been given by witnesses that may lead to their identity. Video identification procedures is the preferred method of identification over live parades, group identifications and confrontations, and can serve to reduce stress on the witness. Witnesses should be kept informed of the progress of their case as a lack of knowledge (e.g. concerning the offender’s whereabouts) can add to feelings of fear and uncertainty.
Post-trial support

5.93 Experience has shown that witnesses appreciate support given after the close of proceedings, a time when they may otherwise feel isolated and may have difficulty coming to terms with the court verdict. The PPS will provide victims with written notification of the outcome of proceedings. Witness services have a clear remit to provide post trial support to victims and witnesses.

5.94 Contact after the hearing also provides a useful opportunity for the supporter to identify and make arrangements for continuing support, counselling and treatment in the light of the witness’s needs. The supporter can then liaise with the appropriate agency or professional to ensure that these needs are met. These tasks apply as much to those witnesses who are in the end not called to give evidence as it does to those who have provided evidence at trial.

5.95 Completion of anonymous post-trial NICTS questionnaires by the witness and the supporter will enable important feedback to be obtained for the management of future cases, and for the effectiveness and acceptability of support and preparation arrangements to be evaluated. The witness’s own views, opinions and responses to the measures taken will aid the refinement of local procedures. Such feedback should complement feedback received directly by the criminal justice agencies as well as surveys such as NIVAWS (NI Victim and Witness Survey).

5.96 Where the defendant has been convicted and sentenced, the victim may benefit from participation in the NI Prison Service’s Prisoner Release Victim Information Scheme, the Probation Board for NI’s Victim Information Scheme or the Mentally Disordered Offenders Victim Information Scheme. Witness services, the police and PPS will all direct victims to the availability of these services when appropriate.

5.97 The Prisoner Release Victim Information Scheme provides victims with information on the final discharge and temporary release of adult prisoners sentenced to six months or more. Victims may make written representations to express their concerns when a prisoner is being considered for temporary release. The scheme is voluntary and only those who choose to register will be able to receive information and avail of the opportunity to submit views. Information can be obtained via the website www.niprvis.gov.uk or by telephoning 0845 247 0002.
5.98 The Probation Board NI Victim Information Scheme provides information to a registered victim in relation to any sentence or licence which includes Probation supervision, as follows:

- information can be provided in writing, by telephone or in a face-to-face meeting;
- victims can discuss their concerns and this may inform the offender’s supervision;
- the opportunity to be involved, on a voluntary basis, in restorative contact with the offender if this would help to address issues resulting from the offence; and
- information can be obtained at www.pbni.org.uk or by telephoning 028 9032 1972.

5.99 The PBNI Victims Unit also provides reports to the Parole Commissioners. This is in relation to cases of murder where the prisoner has reached the stage of three years from tariff. These reports allow victims’ families the opportunity to provide information in relation to any concerns they may have about preparation for the prisoner’s release and the risk that they may pose.

5.100 The Mentally Disordered Offenders Victim Information Scheme applies in cases where the court dealing with an offender makes them the subject of a hospital order with a restriction order; or where the offender is given a transfer direction and a restriction direction while they are serving a sentence of imprisonment in respect of an offence. The scheme only applies to mentally disordered offenders sentenced in Northern Ireland. Under this scheme, victims of mentally disordered offenders, who wish to, will receive information about proposals for temporary leave of absence to facilitate the offender’s treatment and also information about the offender’s proposed discharge from hospital. When the offender is being considered for discharge, victims will also be invited to express their views on the effect the offender’s discharge may have on their safety or well being. The definition of a victim includes the actual victim or a close family member when the actual victim has died. If the actual victim is a vulnerable person, a close family member or legal guardian may request this information on their behalf.

5.101 Further information on the scheme may be obtained from the DOJ Mentally Disordered Offenders Unit in Criminal Law Branch, Massey House, Stormont Estate, Belfast, BT4 3SX. The dedicated telephone line for the scheme is 0845 602 5488.
Introduction

6.1 Full and accurate information about special measures and other arrangements required to assist vulnerable and intimidated witnesses is needed to inform decision-making and pre-trial planning. In the Crown Court, it is preferable for issues to be raised and resolved as far as possible at an early pre-trial hearing (or a pre-trial review in the magistrates’ and youth courts). At this hearing, initial decisions will be taken, or a date fixed for rulings to be made, about the special measures directions that are possible under the Criminal Evidence (Northern Ireland) Order 1999 (the 1999 Order), as amended by the Justice Act (Northern Ireland) 2011, and any other provisions. It is important to achieve as much certainty as possible about how the witness will give evidence and the arrangements for court attendance, preferably at an early stage in the proceedings.

6.2 Where the guidance in Chapter 5 has been followed, the needs and wishes of vulnerable and intimidated witnesses will have been identified as part of the pre-trial preparation. It is vital that legal representatives taking part in the pre-trial hearing or review are given full instructions prior to the hearing, including up-to-date information from and about the witness, so that the judge will be in a position to fully consider the need for any special measure directions or put in place any other arrangements. Judges may wish to make use of the areas outlined at paragraph 5.40 as a checklist when reviewing the arrangements for vulnerable and intimidated witnesses.

6.3 The legal representatives need to have seen any video recorded evidence in advance of the hearing/review so that decisions can be made about the admissibility of the recording and any issues, such as the need for editing, can be resolved in good time. Other issues that may depend on the admissibility of the recording, such as the steps which may be taken to refresh the witness’s memory, can then be the subject of a decision by the judge in advance of trial.
6.4  New information about a vulnerable or intimidated witness may become available after the pre-trial hearing/review and before the trial. Such information may concern, among other matters, the condition of the witness (for example, an improvement in, or a degeneration of, the witness’s health) or the occurrence of relevant events (for example, an act of intimidation directed at the witness or the fact that the witness has had a birthday, which is relevant to the age limits for eligibility for special measures). A witness’s view may also change over time, for example a witness may become more apprehensive about confronting the defendant as the trial approaches. The steps taken by the court to enable witnesses to give their best evidence may have to be reassessed in the light of changes of this sort and legal representatives have a responsibility to keep the court informed about them. This means that procedures must be in place for channelling relevant information to the legal representatives.

6.5  Where an intermediary is appointed, a pre-trial hearing with the trial judge is essential to discuss the ground rules for intermediary use and how the examination of the witness is to be dealt with. This should cover issues such as how the intermediary will signal to the court that the witness has not understood a question or needs a break in proceedings, and how questions should be phrased in order to maximise the quality of the witness’s evidence.

6.6  Where a video recording has been edited, it is important that the legal representatives should have viewed the edited version of the recording before the trial. As a general rule, material should be disclosed where it undermines the prosecution case or assists the defence. Where material meets the test for disclosure and is sensitive, the prosecutor must, after consultation with the police, assess the reasons why the material in question is sensitive, the degree of sensitivity, the significance of the material and the consequences of disclosure. The Public Prosecution Service (PPS) will consider what steps can be taken to satisfy the duty of disclosure while maintaining the confidentiality of the sensitive material. Where appropriate, this will include making an application to the court, with or without notice to the defence, for the court’s authority to withhold the material from the defence.
The court's responsibilities towards witnesses

6.7 Judges have a duty to protect the interests of the defendant at trial, as they are presumed innocent until proven guilty. However, they also have a responsibility to ensure that all witnesses, including those who are vulnerable or intimidated, are enabled to give their evidence. Judges have to strike a balance under Article 6 of the European Convention on Human Rights between protecting the defendant’s right to a fair trial and ensuring that witnesses who give evidence in the case are enabled to do so to the best of their ability (see the videos A Case for Balance – Demonstrating Good Practice when Children are Witnesses (NSPCC, 1997) and A Case for Special Measures (NSPCC, 2003)).

6.8 Judges are expected to take an active role in the management of cases involving vulnerable and intimidated witnesses, and to ensure that elements of the court process that cause undue distress to such witnesses are minimised. The 1999 Order, as amended, created an expectation that the court will be concerned that witnesses are enabled to give their best evidence and imposes an obligation on judges to raise of their own motion the question of whether special measures should be used if the party has not applied for them (Article 7(1)(b) of the 1999 Order). It is therefore important that they are alert to the possibility that a particular witness’s evidence may be adversely affected, not just by the distress of giving evidence, but by circumstances, such as the witness’s physical or mental health, that may affect that witness’s ability to recall relevant matters and to deal with questions about them. The existence of such circumstances may trigger the need for a special measures direction under the 1999 Order, as amended. Such a direction may also be required in respect of a witness, the quality of whose evidence is likely to be diminished by reason of fear in connection with testifying in the proceedings. Information relating to intimidation may be potentially prejudicial to a defendant but it must be made known to a court if it is relevant to the making of a special measures direction (even if, as is likely, it is inadmissible as proof of the offence to be tried).

6.9 The responsibilities of judges to protect the interests of vulnerable or intimidated witnesses may require the making of special measures directions in appropriate cases but may also be discharged in other ways. Some witnesses may need breaks while giving their evidence, either because they are giving distressing evidence or because they have a limited span of concentration. Such breaks can often be planned in advance if the court has been given the relevant information (for example, from witness services or the intermediary’s assessment report). Although judges and legal representatives should invite young and vulnerable witnesses to tell the court when they need a break, they should not rely on the witness’s ability to identify when this is necessary. Planned breaks are less likely to occur at a time that would favour one side over another.
6.10 The responsibilities of judges also extend to the prevention of improper or inappropriate questioning by legal representatives (or the defendant if they are conducting their own defence). Judges should have regard to the reasonable interests of witnesses, particularly those who are in court to give distressing evidence, as they are entitled to be protected from avoidable distress in doing so. The sort of questioning likely to be ruled out is anything that lacks relevance, or is repetitive, oppressive or intimidating. Questioning may be intimidating because of its content or because of the tone of voice employed. A legal representative may be asked to rephrase a question if it is in a form or manner likely to lead to misunderstanding on the part of the witness. A young witness or a witness with learning disabilities, for example, may easily be confused by questions that contain double negatives (‘Is it not true that you were not there?’) or that ask two questions at the same time (‘Is it true that you were there and you heard what was said?’). Judges should be alert to the possibility that a witness might be experiencing difficulty in understanding a question which, if not corrected, might lead to the giving of evidence that is not of the best quality that the witness could provide. Where an intermediary is used, their report will contain recommendations about what types of question are likely to lead to misunderstanding on the part of the witness.

6.11 In some cases, a witness, particularly a young witness, may benefit from meeting the judge before the case commences so that the witness can be put at ease. Some judges are prepared to meet young witnesses before they give evidence, provided that they are satisfied that this will not create an impression of bias in favour of the witness, as their experience suggests that this can assist in demystifying the court process. However, it is essential that the prosecution and defence legal representatives should be aware of the meeting and have the right to attend if they so wish in order to avoid any subsequent legal challenges.

The responsibilities of legal representatives towards witnesses

6.12 Legal representatives have a responsibility, when dealing with a witness who is nervous, vulnerable or apparently the victim of criminal or similar conduct, to ensure that those facing unfamiliar court procedures are put at their ease as much as possible. Meeting with the legal representative who is to call the witness to give evidence in chief in a calm environment may be an effective way of preparing a witness.
6.13 Legal representatives must assist the court, at any hearing where the matter arises, to make informed decisions about any special measures directions, or other steps which it may be necessary to take, to assist a particular witness. Both prosecution and defence legal representatives are expected to inform the judge of the special needs or requirements of any vulnerable or intimidated witnesses they intend to call.

6.14 Where applications are to be made for disclosure of relevant records held by third parties concerning a witness, they should be made at an early stage to avoid delay, in accordance with the recent Crown Court Judicial Committee Protocol (see Appendix N).

6.15 The legal representatives of the defendant have a duty to promote the best interests of the defendant by all proper and lawful means. This may include cross-examining vulnerable and intimidated witnesses about matters they may find extremely distressing. Such questioning is necessary, provided that it relates to matters that are relevant to the case, and is not done merely to insult or annoy the witness. Allegations of misconduct by a witness may not be made unless the legal representative has reasonable grounds for making them. Some legal representatives routinely ask young witnesses ‘Do you tell lies?’. However, this is a practice that ought to be avoided unless the legal representative has grounds for thinking that the witness is an habitual liar (other than the fact that the witness’s evidence contradicts that of the defendant). The manner in which the legal representative cross-examines a witness must not be improper or inappropriate. This may involve taking account of information about a witness’s special needs. Both the legal representative calling the witness to give evidence in chief and the legal representative cross-examining the witness should strive to avoid being the cause of a misunderstanding as a result of which the witness gives evidence that is not of the best quality that they could provide. The strategies necessary to avoid such a misunderstanding may include, for example, avoiding the use of a tone of voice which is intended only to sound firm but which might be intimidating to a vulnerable witness, and following a systematic and logical sequence of questioning.

6.16 PPS legal representatives have a duty to bear in mind the needs of a vulnerable or intimidated witness who is giving evidence for the prosecution. If the defence seeks an adjournment, the legal representative for the prosecution should draw to the attention of the court any adverse effect this may have on the witness, particularly where the witness is a child or has a learning disability. The legal representative for the prosecution should also be alert to a witness’s need for regular breaks and to the possibility that questioning in cross-examination of the witness may be improper or inappropriate. The prosecution legal representative should seek to protect the witness from such questioning by drawing it to the judge’s attention. In the same way, a defence legal representative should seek to ensure that the court bears in mind the needs of a defence witness while they are giving evidence.
6.17 Legal representatives also have particular duties with regard to the proper handling of video recordings that are to be used in court as the evidence in chief of a vulnerable or intimidated witness. The object of these special duties is to ensure that the recording does not fall into the wrong hands and is seen only by those who have a proper interest in doing so (see Appendix H).

**Competence and capacity to be sworn**

6.18 All people, whatever their age, are competent to act as witnesses unless they cannot understand questions asked of them in court or cannot answer them in a way that can be understood with, if necessary, the assistance of special measures (Article 31 of the 1999 Order).

6.19 A person who has been judged not to be competent to give evidence may not appear as a witness in criminal proceedings and cannot therefore be eligible for special measures under the 1999 Order. Where a witness’s competence is called into question, a decision will normally be required before the trial begins about whether they may give evidence at all and, if so, whether it should be sworn or unsworn.

6.20 It is the responsibility of the party calling the witness to satisfy the court that the witness is competent on a balance of probabilities. If the witness’s competence is challenged and they need to be questioned to determine competence, questions must be asked by the court, in the absence of the jury, not by the legal representative calling or cross-examining the witness. Any such questioning must, however, be conducted in the presence of both the prosecution and the defence. When the court assesses the witness’s competence, it must take into account any special measures it could grant including, for example, communication aids or the giving of evidence through an intermediary. This is to avoid a potential witness being judged not to be competent if the use of special measures would make them competent. Courts may ask for expert advice about the witness’s competence, for example from a psychologist who has examined the witness or from a lay person who has special knowledge of the witness’s abilities (Article 32 of the 1999 Order).

6.21 The question of whether a witness is eligible to swear an oath or to affirm may be raised by the prosecution, the defence or the court. The procedure used to determine this question is the same as the procedure outlined above for determining competence (i.e. in the absence of the jury, with the help of any necessary expert evidence and through questions from the court in the presence of the parties). A witness under the age of 14 is not to be sworn. Witnesses of 14 years and over are eligible to be sworn if they understand the solemnity of a criminal trial and that taking an oath places a particular responsibility on them to tell the truth. There is a presumption that witnesses of 14 and over are to be
sworn unless evidence is offered suggesting that they do not understand those two matters (Article 33 of the 1999 Order). If a witness’s capacity to give sworn evidence is challenged, it will be for the party calling the witness to prove on a balance of probabilities that they should give sworn evidence.

6.22 Anyone competent to be a witness, but not allowed to give evidence on oath, may give evidence unsworn (Article 34 of the 1999 Order). Where a witness gives unsworn evidence in the courtroom, the judge may ‘admonish’ the witness to tell the truth. A convenient form of words which may be used is: ‘Tell us all you can remember of what happened. Do not make anything up or leave anything out. This is very important.’. This admonition may be best given by the judge in the introductory exchange with the witness and prior to any evidence in chief or cross-examination.

6.23 Where the court decides a witness to whom Article 15 of the 1999 Order, as amended, applies is competent to take the oath, and their evidence in chief has been given in the form of a video recorded interview, there is no legal necessity for the witness to be sworn prior to the playing of the video at court. However, if the witness goes on to provide further evidence in person to the court, either in cross-examination or as supplementary evidence in chief, the oath must be administered before the evidence is heard. Again, any introductory exchange between the judge and witness provides an opportune moment for the administering of the oath. Failure to administer the oath does not render the witness’s evidence inadmissible. However, the fact that it has been received unsworn may lead to it being accorded less weight than if it had been given on oath.

Special measures directions under the 1999 Order, as amended

6.24 Special measures which may be available to assist eligible witnesses in the preparation and delivery of their evidence are as follows:

- screening a witness from the accused (Article 11);
- evidence by live link (Article 12);
- evidence given in private (Article 13);
- removal of wigs and gowns (Article 14);
- video recorded evidence in chief (Article 15);
- video recorded cross-examination or re-examination (Article 16) (note: this special measure is not yet available);
- examination of a witness through an intermediary (Article 17) (note: this special measure is not yet available); and
- communication aids (Article 18).
6.25 In addition, the 1999 Order affords:

• protection of witnesses in certain cases from cross-examination by the accused in person (Articles 22 to 26); and
• restriction on evidence and questions about the complainant’s sexual behaviour (Article 28).

6.26 Restrictions on the reporting by the media of information likely to lead to the identification of children under 18 and certain adult witnesses in criminal proceedings are covered in sections 44 to 52 of the Youth Justice and Criminal Evidence Act 1999.

**Witness eligibility (Articles 4 and 5)**

6.27 Witnesses are eligible for special measures to help them give evidence if they are vulnerable or intimidated.

**Vulnerable witnesses (Article 4)**

6.28 Vulnerable witnesses are defined by Article 4 of the 1999 Order, as amended, as:

• all child witnesses (under 18 years of age); and
• any witness whose quality of evidence is likely to be diminished because they have a:
  - mental disorder (as defined by the Mental Health (NI) Order 1986); or
  - significant impairment of intelligence and social functioning (witnesses who have a learning disability or autism spectrum disorders); or
  - physical disability or are suffering from a physical disorder, including deafness.

**Intimidated witnesses (Article 5)**

6.29 Intimidated witnesses are people whom the court is satisfied are likely to suffer fear or distress at the prospect of giving evidence, because of their own circumstances and those of the case to an extent that is expected to diminish the quality of their evidence.
6.30 In relation to intimidated witnesses, the 1999 Order lists a number of factors that the court should take into account when assessing whether the witness qualifies for any of the special measures. These include:

- the nature and alleged circumstances of the offence;
- the age of the witness;
- the social and cultural background, and ethnic origins of the witness;
- any religious beliefs or political opinions of the witness;
- the domestic and employment circumstances of the witness; and
- any behaviour towards the witness on the part of the defendant, their family or associates, or any other witness in the proceedings or co-defendant (this may be particularly relevant in cases of domestic abuse).

6.31 Particular groups of victims and witnesses who are likely to benefit from the provisions under this Article include:

- those who have experienced domestic violence;
- complainants in cases of sexual assault (as defined by Article 5(4) of the 1999 Order);
- victims of, and witnesses to, homophobic crime, racially motivated crime and crime motivated by reasons relating to religion;
- those who have experienced past or repeat harassment, stalking and bullying, or repeat victimisation;
- those who self-neglect and self-harm;
- frail older persons;
- witnesses to murder and the families of murder and manslaughter victims; and
- those who are making allegations against professionals or carers.

Quality of the witness’s evidence (Article 4)

6.32 Special measures for most vulnerable or intimidated witnesses can be authorised only if they are likely to improve the quality of a witness’s evidence. ‘Quality’ encompasses coherence, completeness and accuracy in the case of vulnerable witnesses. ‘Coherence’ in this sense means that the witness is able to address the questions put and give answers that can be understood, both as separate answers and when taken together as a complete statement of the witness’s evidence.

6.33 The circumstances in which special measures may be invoked can therefore, range from a case where the witness’s evidence would otherwise be unintelligible to cases where their evidence, though intelligible, would otherwise be of poorer quality than it could be.
Witnesses who do not qualify as eligible etc

6.34 The Crown Court has some limited inherent powers to make measures available to assist witnesses who do not qualify as eligible or who need measures for reasons other than age, incapacity, fear or distress. These powers pre-date the 1999 Order and are untouched by it. They extend, for example, to the granting of anonymity to the witness, the provision of screens and aids to interpretation, the removal of wigs and gowns, and the provision of a foreign language interpreter.

Child witnesses (Article 9)

6.35 The law presumes that child witnesses under 18 will normally give their evidence outside the courtroom by playing a video recorded interview as evidence in chief and cross-examination via live link unless this will not improve the quality of their evidence. However, subject to the agreement of the court, children may opt out of giving their evidence by either a video recorded interview as evidence in chief or by means of live link or both. If a child wishes to opt out of video recorded evidence in chief, they may give all their evidence by live link from outside the courtroom, if the court agrees. The child may also opt out of live link evidence, if the court agrees. Note that the law presumes that the child witness will then give evidence in the court room behind a screen. Should the child witness not wish to use a screen, they may also be allowed to opt out of using it. Ultimately this is a matter for the court to decide. However, the court must take the witness’s views into account when making its decision on whether to approve an opt out request.

6.36 The possibility of a child witness opting out of giving evidence by video recorded statement and/or live link should be explained to all child witnesses and their carers when special measures are explained. To ensure that the child witness is able to express an informed view, it is important that the explanation of the individual special measures is clear with the advantages and disadvantages of each fully explained. In relevant cases, officers should be in a position to explain why they do not consider that it is appropriate to video record the witness’s statement.

Witnesses 18 years and over (Articles 9 and 10)

6.37 If a court makes a special measures direction in respect of a child witness who is eligible on grounds of youth only and the witness turns 18 before beginning to give evidence, the direction no longer has effect. If such a witness turns 18 after beginning to give evidence, the special measures direction continues to apply (Article 9(9) of the 1999 Order).
6.38 If a witness is under 18 years when evidence in chief or cross-examination is video recorded before the trial, but has since turned 18, the video recording can still be used as evidence.

6.39 A witness who is over 18 years at the beginning of the trial but who made a video recording as their evidence in chief when they were under 18 is eligible for special measures in the same way that they would be if they were under 18, and the same presumptions apply to them.

Special measures directions (Articles 4 to 7)

6.40 Special measures directions can be made at a pre-trial hearing, before the beginning of the trial or before a ‘Newton’ hearing to which witnesses are called to settle the factual basis on which sentence will be passed. While it is important that directions be made in advance of trial where possible, it may be necessary for a court to react to a situation at a later stage of proceedings by making a direction to assist a witness to give evidence. New directions are needed for a retrial or appeal.

6.41 When courts decide, on application from the prosecution or defence, or of their own accord, that special measures might be appropriate for a witness, they must consider:

- whether the witness is eligible (i.e. falls within the scope of the definitions set out in Articles 4 and 5);
- whether special measures would improve the quality (meaning the completeness, coherence and accuracy) of the evidence of an eligible witness in the circumstances of the case (which take account of the witness’s views and the possibility that the measures might tend to inhibit the evidence being tested effectively);
- if special measures would improve the quality of the witness’s evidence, which of the measures, alone or in combination, would be most likely to maximise the quality of the witness’s evidence (again, the court has to bear in mind the views of the witness and the possibility that the special measures might tend to inhibit the evidence being tested effectively); and
- the details of where, when and how the special measures specified should be provided.

6.42 The need to take account of any views expressed by the witness when resolving the issues identified in the previous paragraph underlines the necessity for the court to be provided with up-to-date information about the witness’s preferences.
Binding directions (Article 8)

6.43 Special measures directions are binding until the end of the trial although courts can vary or discharge a direction if it seems to be in the interests of justice to do so. Either party can apply for the direction to be varied or discharged (or the court may do so of its own motion) but must show that there has been a significant change of circumstances since the court made the direction or since an application for it to be varied was last made. This provision is intended to create some certainty for witnesses by encouraging the party calling the witness to make applications for special measures as early as possible and by preventing repeat applications on grounds the court has already found unpersuasive.

6.44 The court must state in open court its reasons for giving, varying or discharging a special measures direction or refusing an application so that it is clear to everyone involved in the case what decision has been made and why it was made. This is intended to include, for example, the court’s reasons for deciding that a witness is ineligible for help. Applications for special measures are subject to Crown Court and magistrates’ court rules.

Special measures

Screening a witness from the accused (Article 11)

6.45 Screens may be authorised to shield a witness from seeing the defendant. The screen is normally erected around the witness rather than the defendant. It must not prevent the judge or jury, and at least one legal representative of each party to the case (i.e. the prosecution and each defence representative) from seeing the witness, or the witness from seeing them. If an intermediary or an interpreter is appointed to assist the witness, they too must be able to see the witness and be seen by the witness. The 1999 Order, as amended, does not specifically provide for the witness’s need to see the court witness supporter (if there is one) but the court should ensure that this need is met where a screen is erected.

6.46 The court is also authorised to provide for an ‘arrangement’ which is not a screen, but which has the same effect of preventing a witness from seeing the defendant. An arrangement used in some older cases was to require defendants to move from the dock to a position in court where they could not be seen by the witness. Such an arrangement might have the undesirable effect of making it more difficult for the defendant to communicate with their legal representatives, which could become a factor in determining whether they were accorded a fair trial within the meaning of Article 6 of the European Convention on Human Rights. Screens erected around the defendant could also have this unintended effect. Therefore, if
such an arrangement or screens are adopted, careful consideration must be given to ensuring that the rights of the defendant are properly preserved, for example by ensuring that a break in the witness’s evidence is taken in order to afford the defendant an opportunity to consult with their legal representative about any further questions which should be put in the light of what the witness has said.

6.47 Where the trial involves a jury, the judge may warn them not to be prejudiced against the defendant as a consequence. This is done as part of the judge’s duty to protect the defendant from the unfairness that would ensue if, for instance, the jury were to assume that the defendant must have done something wrong to merit the erection of a screen.

Evidence by live link (Article 12)

6.48 ‘Live link’ usually means a closed circuit television link but also applies to any technology with the same effect. The essential element of a live link is that it enables the witness to be absent from the courtroom where the proceedings are being held but at the same time to see and hear, and be seen and heard by, the judge or jury, at least one legal representative of each party to the case, and any intermediary or an interpreter appointed to assist the witness. The judge or court clerk controls the equipment. They should be comfortable with it and familiar with any likely difficulties, such as the distorted image which may appear on the witness’s monitor if those in court lean too close to the camera. Judges must also ensure that the witness understands what is happening. This is most obviously of importance for a child witness or a witness who has learning disabilities but it should not be assumed that any witness is conversant with the equipment. It may be useful for the judge to inquire as to whether the witness has had a pre-trial visit to the court at which the facility has been explained and demonstrated.

6.49 There is a presumption that a witness who gives evidence by live link for a part of the proceedings will continue to give evidence by this means throughout. Where a party to the proceedings argues that the method of receiving the witness’s evidence should change, the court can make a direction to this effect if the interests of justice so require.

6.50 If there are no live link facilities at the court where the proceedings would normally be held, the proceedings may be transferred to another court where a live link is available. Alternatively, if the witness is an adult and screening them is considered to be equally likely to enable them to give their best evidence, then the court may choose to screen the witness instead. A young witness, who is required by Articles 9 or 10 of the 1999 Order, as amended, to give all or part of their evidence by live link, must do so.
6.51 The 1999 Order, as amended, makes the live link available to vulnerable and intimidated witnesses whether or not their evidence in chief is presented in the form of a video recording and there may be some witnesses for whom the live link is the only special measure required to enable them to give their best evidence. Even in the case of a child witness who is subject to a presumption that a recording will be used as evidence in chief, it may be necessary to resort to the use of the live link alone if no recording is available or an available recording has been ruled inadmissible. Consideration should be given to whether use of a live link away from the court house where the trial is taking place could be used for a witness. This could be at another court or a separate ‘remote’ facility which has live link capability. In all cases, this will need to be agreed by the court.

Choosing between live link and screens

6.52 Where the witness who is eligible for special measures is not a young witness to whom the presumptions in Article 9 or Article 10 apply, the court making a special measures direction will be able to choose between a screen and a live link as a means of assisting the witness to give their best evidence. The live link has the advantage that the witness does not have to be physically present in the courtroom. It may also be more accessible for some witnesses with physical disabilities, including wheelchair users. However, the screen is not necessarily an inferior alternative to the live link. Screens are flexible, easy to use and permit the witness to stay in court. It is also easier for the jury or judge to gain an impression of some physical attributes of the witness where this is relevant, for example in a case where the issue is whether the defendant used reasonable force to restrain the witness. Screens can be particularly helpful in situations where the witness does not want to be seen by the defendant for reasons of fear or intimidation.

6.53 The views of the witness are likely to be of great importance in deciding which of the two very similar measures is most suitable. A witness who is greatly distressed at the prospect of being in the same room as the defendant is likely to give better evidence if permitted to use the live link. However, it should be carefully explained to the witness that the defendant will be able to see them on the television screen in the court (which may be a large plasma screen). This should be pointed out during the pre-trial visit to enable the witness to make an early and informed choice.

6.54 Where the witness is a child witness, or a witness over 18 years to whom Articles 9 or 10 apply, there is normally no choice to be made between live link and screening as live link is taken to be the more appropriate measure. The court does retain discretion to allow a child to use a screen instead where the interests of justice would be best served by so ordering.
Evidence given in private (Article 13)

6.55 The principle of open justice normally requires that evidence is given in open court; in other words, in the presence of representatives of the press and members of the public who wish to attend. There are statutory restrictions on attendance and reporting in the youth court for the protection of children and young people.

6.56 In sexual offences cases, a further exception is justified partly because the evidence may be of an intimate nature and partly because the presence of the defendant’s supporters or members of the public with a prurient interest in the proceedings may make the giving of evidence exceptionally difficult. Another exception is made in cases where the court believes that someone, other than the defendant, may take advantage of their entitlement to attend the proceedings in order to intimidate the witness. In such cases, Article 13 permits the courtroom to be cleared of everyone apart from the defendant, legal representatives and anyone appointed to assist the witness. The special measures direction will describe individuals or groups of people who are excluded. The court has to allow at least one member of the press to remain if one has been nominated by the press. The freedom of any member of the press excluded from the courtroom under this Article to report the case will be unaffected unless a reporting restriction is imposed separately. Courts should give active and early consideration to this special measure due to the confidence it can give to eligible witnesses.

6.57 The court also has the power under Article 168 of the Children (NI) Order 1995 to clear the public gallery when a person under 18 gives evidence in proceedings relating to conduct that is indecent or immoral.

Removal of wigs and gowns (Article 14)

6.58 The courts have traditionally exercised a direction to dispense with the wearing of wigs and gowns by the judge and by legal representatives in the Crown Court in cases where child witnesses are concerned. The inclusion of this power as a special measure in the 1999 Order makes it clear that the same dispensation can be made in the case of vulnerable and intimidated adult witnesses. Not all witnesses want the court to depart from its traditional way of dressing; some feel more comfortable if the judge and legal representatives are dressed in the way which is most familiar to them, perhaps from watching television drama.
Video recorded evidence in chief (Article 15)

6.59 A video recorded interview can take the place of a witness’s evidence in chief. References in this chapter to an ‘interview’ should be taken to include, where appropriate, any case where a court is also asked to receive a supplementary interview or interviews.

6.60 Video recordings can be excluded and edited if the interests of justice so require. In deciding whether any part of a recording should not be admitted, the court must weigh the prejudice to the defendant of admitting that part against the desirability of showing the whole video.

6.61 It may be contrary to the interests of justice to use a video, or part of a video, in evidence where the interviewer has neglected to follow the instructions on interviewing in this guidance. It should not be supposed that courts will exclude or edit recordings as a sanction for non-compliance with a minor detail. Before making a decision to exclude or edit a recording, a court will consider the nature and extent of any breaches which have occurred, and the extent to which the evidence affected by the breaches is supported by other evidence in the recording which is not so affected, or by other evidence in the case as a whole. If there has been a substantial failure to comply with the guidance, the consequence may well be that video evidence is excluded altogether or the relevant parts edited out. If substantial editing has occurred, the witness should be informed of this so that they are not surprised when they view the video again to refresh their memory.

6.62 An interview with a witness which is conducted entirely properly may still be excluded in the interests of justice, for example where the witness subsequently retracts the statements made in the video and it is clear that they no longer associate themselves with the views expressed in it.

6.63 Where a special measures direction has been made for a recording to be shown to the court, the court can later exclude the recording if there is not enough information available about how and where the recording was made, or if the witness who made the recording is not available for further questioning (whether by video, in court or by live link) and the parties to the case have not agreed that this is unnecessary. Such a recording might be admissible under the hearsay provisions in Article 20 of the Criminal Justice (Evidence) (NI) Order 2004, depending on the reason for not calling the witness (for example, if they have become too ill to attend as a witness – see Appendix P).
6.64 The video recording (as edited, where that is required) normally forms the whole of a witness’s evidence in chief and will be watched by the witness before cross-examination takes place. The witness will usually have had an opportunity to see the recording on a previous occasion too in order to refresh their memory in preparation for the trial. Some witnesses may require breaks when watching the recording.

6.65 Where a witness gives their evidence in chief through a video recorded statement, the witness may be asked additional questions both about matters not covered in the video recorded statement and also matters that are covered in the recorded statement, provided that the court gives permission.

6.66 If a witness is asked to give further evidence, then the court can direct that the evidence will be given by the live link. As in other circumstances where a live link is provided, the 1999 Order allows temporary facilities to be authorised for magistrates’ courts. In the case of witnesses who are not subject to the special rules that apply to young witnesses, the court may decide that the witness can give the further evidence in the courtroom, protected if necessary by a screen.

6.67 Witnesses aged 14 or over, who make a video recording that is intended to be their evidence in chief, are not expected to take the oath before making the recording although they will be required to do so before cross-examination or any supplementary evidence in chief. The one exception to this is if it has been decided that they will give unsworn evidence instead. The most convenient point to administer the oath may be as part of an introductory exchange between the judge and the witness. Under the 1999 Order, a witness’s evidence may be received unsworn even though they are capable of giving evidence on oath so the absence of an oath at the time of the recording does not render it inadmissible.

6.68 A recording of an interview with a witness, which is not used as evidence in chief, may be used for other purposes, primarily by the other side. If a witness gives evidence at trial and has previously made a video containing statements which are inconsistent with the evidence given at trial, the video recording may be used in cross-examination to detract from the credit to be given to the evidence at trial.

6.69 The Police and Criminal Evidence Codes of Practice (NI) 2007 provide instructions on dealing with suspected offenders where information has been given by witnesses that may lead to their identity. It may be necessary to supplement the witness’s video recorded evidence in order to include the outcome of such a procedure. A positive identification of a defendant by a prosecution witness may be important evidence in the case and a witness who gives evidence in chief in the normal fashion at trial would normally be asked to confirm that such identification took place. Although it is possible to prove that the identification was made by relying on
evidence other than the testimony of the witness in a case where the correctness of the identification of the defendant is contested, it is helpful if there is evidence on the point from the witness. Appendix J outlines some of the special considerations for identification parades involving vulnerable and intimidated witnesses.

6.70 Where an application to admit a video recording as evidence in chief is made under Article 15 of the 1999 Order, as amended, but is refused by the court, the police should draft a section 1 Criminal Justice (Miscellaneous Provisions) Act (NI) 1968 statement for the witness. It is essential that the video is properly reviewed as part of the drafting process to ensure consistency between what was said during the interview and what is recorded on the draft statement. The witness need not be present while the statement is drafted. After the statement has been drafted, the witness should be invited to check and sign it. The video should be readily accessible in case the witness questions whether the draft written statement correctly reflects what was said in the video interview. Where minor amendments are required, they may be incorporated into the draft statement before it is signed. If changes of a more substantial nature are required, the PPS should be consulted with a view to considering a further interview.

Video recorded cross-examination or re-examination (Article 16)

(NB this special measure had not been implemented at the time this guidance was written.)

6.71 Where the court has already decided that a video recording can be used as the witness’s evidence in chief, it may also decide that the witness should be cross-examined before trial, and that cross-examination, and any re-examination, be recorded on video for use at trial.

6.72 The cross-examination is not recorded in the physical presence of the defendant although they have to be able to see and hear the cross-examination, and be able to communicate with their legal representative. This can be achieved through a live link or earpiece receiver, for example.

6.73 The video recorded cross-examination may, but need not, take place in the physical presence of the judge, and the defence and prosecution legal representatives. However, a judge has to control the proceedings. It is intended that the judge in charge of this process will normally be the trial judge. All the people mentioned in this paragraph have to be able to see and hear the witness being cross-examined, and communicate with anyone who is in the room with the witness (such as an intermediary or a witness supporter).
6.74 As with video recorded evidence in chief, a video recording of cross-examination may afterwards be excluded if there have been serious departures from the rules of evidence governing the cross-examination.

6.75 Witnesses who have been cross-examined on video are not to be cross-examined again unless the court makes a direction permitting another video recorded cross-examination. It may do so if the subject of the proposed cross-examination is relevant to the trial and something which the party seeking to cross-examine did not know about at the time of the original cross-examination (and could not reasonably have found out about by then) or if it is otherwise in the interests of justice to do so. Information that has not yet been disclosed to the other party would usually count as information that the party could not reasonably have known. It is envisaged that a direction permitting further cross-examination will occur only in exceptional cases and that the cross-examiner will make all reasonable efforts to be ready to deal with all the issues at the first attempt. The likelihood of further cross-examination will need to be taken into account if therapy is offered subsequent to the recorded cross-examination.

Choosing between video recorded and live cross-examination

6.76 The advantages of video recorded cross-examination include reducing the stress involved when a witness has to come to court to give evidence, and minimising the delay between evidence in chief and cross-examination. The witness is also not affected by postponement or adjournments in the trial itself. The matters with which the witness will be expected to deal will be the same as those dealt with in cross-examination at trial in the normal way. Witnesses who have had their cross-examination video recorded will (other than in exceptional cases where it is necessary to put further questions at a later stage) be able to put the experience behind them and take advantage of therapy without the risk of a claim being made that this will distort their evidence.

6.77 Although procedural constraints, such as the rules governing disclosure of material to the defence, may lead to the cross-examination being conducted some time after the evidence in chief was recorded, research in other jurisdictions suggests that the availability of pre-recorded cross-examination may still have the advantage that the witness’s evidence is completed significantly earlier than if it were given at trial. This measure may therefore offer worthwhile advantages for those vulnerable and intimidated witnesses for whom it is an option, as well as for child witnesses in cases involving sexual offences for whom the 1999 Order provides this as the normal method of undergoing cross-examination (further rules and guidance on video recorded pre-trial cross-examination will be issued on implementation of the special measure).
Examination of a witness through an intermediary (Article 17)

(NB: implementation of this special measure was still pending at the time this guidance was written.)

6.78 Certain vulnerable witnesses may be assisted by an intermediary:

• during an investigative interview;
• during evidence in chief and cross-examination in court or via the live link; and
• during any pre-trial familiarisation visit.

6.79 The intermediary (a specialist in assessing communication needs and facilitating communication breakdowns) communicates to the witness questions asked by the court, defence and prosecution, and then communicates the answers the witness gives in reply. The intermediary is allowed to explain the questions or answers so far as is necessary to enable them to be understood by the witness, the questioner and the court but without changing the substance of the evidence. The intermediary is allowed to explain questions and answers if that is necessary to enable the witness and the court to communicate. The intermediary does not decide what questions to put. However, the intermediary will provide a written report to the court, explaining any difficulties the witness may have with certain types of questioning, to assist those putting questions to the witness. The use of an intermediary does not reduce the responsibility of the judge, or of the legal representative, to ensure that the questions put to a witness are proper and appropriate to the level of understanding of the witness.

6.80 Intermediaries must be approved by the court (retrospectively if they have assisted with the video recorded interview that is being played as the witness’ evidence in chief) and declare that they will perform their function faithfully. They have the same obligation as interpreters to refrain from wilfully making false or misleading statements to the witness or the court.

6.81 The use of an intermediary is not available to witnesses eligible for special measures on the grounds of fear or distress alone. Deaf witnesses can choose to rely on administrative arrangements for the provision in court of interpreters for deaf people or, if it is more appropriate to their particular needs, to apply for an intermediary or communication aid under the 1999 Order provisions.

6.82 When an intermediary is used at trial, the judge, and at least one legal representative for both the prosecution and the defence, must be able to see and hear the witness giving evidence and be able to communicate with the
intermediary. Also, the jury have to be able to see and hear the witness unless the evidence is being video recorded, in which case they will see the recording when it is shown to them later.

6.83 Where intermediaries are used at an early stage of an investigation or proceedings, and an application is subsequently made to admit as evidence in chief a video recorded interview in which they were involved, then a special measures direction to admit the recording can be given despite the judge or legal representatives not having been present. Before the recording can be admitted, however, the intermediary must be approved by the court retrospectively.

6.84 Detailed procedural guidance will be issued when this special measure is implemented.

**Communication aids (Article 18)**

6.85 The use of communication aids, such as sign and symbol boards, can be authorised to help vulnerable witnesses overcome physical difficulties with understanding or answering questions. Communication aids can be used in conjunction with an intermediary. The use of a communication device is not available to witnesses eligible for special measures on the ground of fear or distress alone.

**Other assistance for witnesses**

**The presence of a court witness supporter**

6.86 The presence of a court witness supporter is designed to provide emotional support and helps reduce the witness’s anxiety and stress, and contributes to the witness’s ability to give their best evidence. A court witness supporter can be anyone known to the witness who is not a party to the proceedings and has no detailed knowledge of the evidence in the case. If evidence is to be given by live link, or if it is proposed that a supporter sit near the witness in court, it is a matter for the judge to determine who should accompany the witness. The identity of a supporter in the live link room or at the remote location must be the subject of an application to the court. It is normal practice for supporters from the Victim Support NI’s Witness Service or the NSPCC Young Witness Service to accompany witnesses in the live link room without the need for a member of the Northern Ireland Courts and Tribunals Service (NICTS) to be present in the room. Where a supporter from either witness service is not available, a suitably trained member of Court Service staff will be available to accompany the witness in the live link room.
The address of the witness

6.87 Witnesses should not be asked to give their address aloud in court unless for a specific reason. Witnesses are not normally asked to give their address unless this is necessary. Witnesses, who are nervous about the possibility of retaliation, should be advised of this. If the witness’s address is necessary for evidential purposes, it should be possible for it to be written down rather than read out in open court.

The use of a sign language interpreter

6.88 When a witness gives evidence assisted by a sign language interpreter, all persons present in the courtroom (including the defence representative) should be able to see the witness and the interpreter. If it is decided that such a witness should not give evidence in open court either the TV link should be used, ensuring the picture includes a view of the witness’s hands, or screens should be used in combination with a video camera giving the defence representative a view of the witness.

6.89 Allowance should be made for proceedings to take longer than usual. Sign language interpretation is very tiring. Depending on the length of testimony and the number of witnesses using the interpreter, it will be necessary to take frequent breaks or to have more than one interpreter available.

Protection of witnesses from cross-examination by the accused in person (Articles 22 to 26)

6.90 It is a general rule in criminal trials that a defendant may choose to conduct their own defence and may cross-examine the witnesses for the prosecution. The 1999 Order provides exceptions to the principle that the unrepresented defendant (as such a defendant is called) may cross-examine prosecution witnesses. If the defendant fails to appoint a legal representative, then the court is empowered to appoint a representative to act for the defendant so that the witness’s evidence will not go untested (Article 26 of the 1999 Order).

Complainants in proceedings for sexual offences

6.91 Article 22 of the 1999 Order prevents defendants charged with rape or other sexual offences from personally cross-examining the complainant of the offence. The ban is absolute in order to provide a measure of reassurance to complainants that in no circumstances will they be required to undergo cross-examination by the alleged offender. It extends to any other offences with which the defendant is charged in the proceedings. It was brought about by cases in which defendants sought to abuse their position as cross-examiner by, for example, dressing in the clothes which were worn at the time of the rape to intimidate the witness.
Complainants and other witnesses who are children

6.92 Under Article 23 of the 1999 Order, unrepresented defendants are prohibited from cross-examining in person any child who is a complainant of, or a witness to sexual offences, offences of violence, cruelty, kidnapping, false imprisonment or abduction.

6.93 The prohibition on cross-examining child witnesses extends to witnesses who were children when they gave their evidence in chief even if they have passed that age by the time of cross-examination. For the purposes of this provision, witnesses count as children if under 18 years in the case of sexual offences and if under 14 in the case of the other offences to which the provision applies.

Other cases

6.94 Article 24 of the 1999 Order gives courts the power to prohibit unrepresented defendants from cross-examining witnesses in any case other than those already covered by the mandatory ban described in the paragraphs above. Before exercising the power, the court must be satisfied that the circumstances of the witness and the case merit the prohibition, and that it would not be contrary to the interests of justice to impose it.

6.95 Article 25 of the 1999 Order provides that directions made under Article 24 are binding unless and until the court considers that the direction should be discharged in the interests of justice. Courts will have to record their reasons for making, refusing or discharging directions.

Restrictions on evidence and questions about the complainant’s sexual behaviour (Articles 28 to 30)

6.96 Article 28 of the 1999 Order restricts the circumstances in which the defence can bring evidence about the sexual behaviour of a complainant in cases of rape and other sexual offences. A House of Lords’ judgment (in R v A [2001] UKHL 25; [2002] 1 AC 45; [2001] 2 Cr App R 21) has subsequently qualified these restrictions. Restricting the use of such evidence serves two functions: it protects the complainant from humiliation and the unnecessary invasion of their privacy, and it prevents the jury from being prejudiced by information that might divert them from the real issues they have to consider. Their Lordships accepted the need for such restrictions but acknowledged that in some cases the evidence of a complainant’s sexual behaviour might be so relevant that to exclude it would endanger the fairness of the defendant’s trial. This may be particularly so where the previous sexual behaviour is with the defendant. In such a case, it would be the duty of the court to interpret Article 28 so as to admit the evidence. The courts have to find a balance between protecting the interests of the complainant and ensuring that the trial is fair.
The restrictions in Article 28 apply to all complainants in cases involving sexual offences, whether male or female, adult or child. The defence may not normally ask any questions or bring any evidence about the complainant’s sexual behaviour on occasions other than those that are the subject of the charges at trial. This includes questions and evidence about the complainant’s previous relationships with the defendant. Article 28 does not restrict the provision of relevant information by the prosecution about a complainant: for example, where it is the prosecution’s case that the defendant raped his own wife, and his defence is consent, there would be no difficulty about informing the jury of the previous relationship between the defendant and the complainant as it would be relevant to the background of the case.

If the defence wishes to introduce evidence or ask questions about the complainant’s sexual behaviour, they will have to make an application to the court. The court may grant leave in a case where:

- the evidence/question relates to a specific instance (or specific instances) of alleged sexual behaviour by the complainant;
- to refuse it might have the result of rendering unsafe a conclusion on any relevant issue (such as a conviction by a jury arrived at in ignorance of the complainant’s sexual behaviour);
- one of the following four conditions is also satisfied:
  - the evidence/question is relevant to an issue in the case that is not an issue of consent (such as whether intercourse took place). The defendant’s honest but mistaken belief in consent, which is currently a defence to a crime such as rape where lack of consent is an element of the offence, falls into this category, as it is not an issue of consent as such;
  - the issue is whether the complainant consented and the evidence/question relates to sexual behaviour that took place at or about the same time as the event which has given rise to the charge. This might cover cases where a couple were seen in an intimate embrace shortly before or after one is alleged to have sexually assaulted the other;
  - the issue is whether the complainant consented and the evidence/question relates to behaviour which is so similar to the defendant’s version of events at or about the time of the alleged offence that it cannot reasonably be dismissed as coincidence. The House of Lords in R v A decided that this exception would have to be given a broad interpretation to cover any case where the evidence is so relevant to the issue of consent that to exclude it would endanger the fairness of the defendant’s trial. It was accepted that this might involve stretching the language of the Order. The particular concern of the House in R v A was whether the defence should be able
to allude to a previous sexual relationship between the complainant and the defendant where consensual intercourse had taken place some time before the alleged rape. It was thought that there were cases where this would be necessary to ensure a fair trial even though it could not strictly be said that the previous behaviour was so similar that it could not be dismissed as coincidence. It does not follow that in every case where the defendant and the complainant have had such a relationship that it will fall within this exception. However, the House of Lords accepted that it is more likely that the court will need to be told about a previous relationship between the complainant and the defendant than between the complainant and a different person; or

- the evidence/question is intended to rebut or explain evidence advanced by the prosecution about the complainant’s sexual behaviour. This might include a case where the prosecution adduce evidence to show that the complainant had no previous experience of penetrative sex and the evidence the defence wishes to bring shows the contrary.

6.99  An application for leave to ask questions/bring evidence about the complainant’s sexual behaviour is made in private and the complainant is not allowed to be present, although the defendant may attend. The court must give reasons in open court for allowing or refusing an application, and specify the extent to which they are allowing any evidence to be brought in or questions to be put. This makes it clear to the complainant, as well as to the legal representatives, how far the questioning can go and in relation to which issues.

6.100  As the issue of whether evidence or questions relating to sexual behaviour can only be resolved by a court, and at a stage of proceedings where the defence case is fairly clearly defined, it is highly unlikely that any assurances can be given to a complainant that their sexual history will not be subject to cross-examination at trial. In the light of the decision in R v A, it is advisable that a complainant should be warned to expect that any claims by the defendant that they have had a sexual relationship are likely to be scrutinised by the court.
Witnesses are fundamental to the success of the criminal justice system. Children and other vulnerable witnesses should be able to give their best evidence in criminal proceedings with the minimum of distress. Vulnerable or intimidated witnesses, which include child witnesses, should not be denied the emotional support and counselling they may need both before and after the trial.

This guidance is based on guidance for England and Wales produced by the Department of Health, the Crown Prosecution Service and the Home Office.

The guidance is primarily for the assistance of child care professionals and legal representatives involved in making decisions about the provision of therapeutic help for child witnesses prior to a criminal trial. It makes clear that the best interests of the child are paramount when deciding whether, and in what form, therapeutic help is given. We hope that it will be helpful for all practitioners, especially those in the criminal justice system, Health and Social Care Trusts, education services, other statutory agencies, voluntary child care organisations and those in private practice.

The guidance has been produced following widespread and lengthy consultation within the criminal justice system and with those professionals who provide therapeutic help to abused children. The use of this guidance will enable children who need therapy to receive it at an appropriate time and to give their best evidence in criminal proceedings.
Introduction

7.1 Concern has been expressed that witnesses, and in particular child witnesses, have been denied therapy pending the outcome of a criminal trial for fear that their evidence could be tainted and the prosecution lost. This concern may conflict with the need to ensure that child victims are able to receive, as soon as possible, immediate and effective treatment to assist their recovery. In the context of this potential conflict, the following matters are relevant:

- many child victims express the wish to see their abuser convicted and punished;
- there is a wider public interest in ensuring that abusers are brought to justice to prevent further abuse; and
- all defendants are entitled to a fair trial.

7.2 It follows therefore that both child care professionals and forensic investigators have a mutual interest in ensuring, wherever possible, that children who receive therapy prior to a criminal trial are regarded as witnesses who are able to give reliable testimony.

Purpose and use of this guidance

7.3 The guidance is primarily aimed at therapists and legal representatives involved in making decisions in cases where the provision of therapy for child witnesses prior to a criminal trial is a consideration. However, it is hoped that the guidance will be helpful for everyone who comes into contact with child victims of abuse, particularly teachers, health visitors, counsellors, psychotherapists, social workers and the police who are often the first to hear an allegation.

7.4 It is recognised that decisions made in individual cases will depend on the particular considerations which apply to those cases. The guidance is intended to be practical in nature to avoid assumptions based on perceptions which may be unfounded. It is also acknowledged that practice will continue to evolve. The guidance simply aims to support this process by providing information based on current thinking about these issues.

7.5 In particular the guidance which follows seeks to:

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

7.6 The UN Convention on the Rights of the Child states:

- Article 3. “When adults or organisations make decisions which affect children they must always think first about what would be best for the child”.
- Article 12. “Children too have the right to say what they think about anything which affects them. What they say must be listened to carefully”.
- Article 39. “Children who have been abused or neglected must receive assistance to promote their recovery and social reintegration. This must be done in an environment which fosters the health, self respect and dignity of the child.

7.7 Until now, this guidance has not been issued in a Northern Ireland format although the England and Wales version has been widely used to guide good practice.

7.8 Co-operating to Safeguard Children (DHSSPS, May 2003) sets out the inter-agency processes to be followed when a child is considered to be likely or is suffering significant harm. If, following enquiries under Article 66 of the Children (NI) Order 1995, there is a subsequent child protection conference and a child’s name is placed on a child protection register, a child protection plan must be constructed. This plan should, along with other requirements, “describe all aspects of the needs of the child, giving particular attention to his safety and well being” (paragraph 5.72 of Co-operating to Safeguard Children). If, during this planning phase, it is known that the child is to be a witness at a criminal trial, consideration should be given to the child’s therapeutic needs. This must include consideration of the possible impact the provision of therapy might have on the criminal trial, balanced with the consequences for the child of proceeding with the therapy or not (see paragraphs 7.65, 7.66 and 7.71).

7.9 Once the video recorded interview is complete, it should be possible for appropriate counselling and therapy to take place. It should be standard practice to inform the police and the Public Prosecution Service (PPS) about the nature and content of the therapy in each case. The defence may justifiably wish to know about both the nature and content of the therapy that has taken place before the child gives evidence in cross-examination. Introducing therapy before the interview is recorded has not been encouraged as the likelihood of a prosecution being jeopardised is thought to be greater, primarily due to the risk of contaminating evidence and/or the risk of coaching (perceived or actual).
7.10 The NSPCC Young Witness Pack (NSPCC (NI), 2011) focuses on the preparation of the child witness for giving evidence in a criminal trial. The first section of Chapter 6 of Preparing young witnesses for court: a handbook for child witness supporters makes the distinction between preparation and therapy prior to a criminal trial, and sets out some of the issues to be considered regarding the provision of therapy in this context.

What is therapy?

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

7.12 A precise definition of psychotherapy is not straightforward, but Kazdin (1990) defined it in the following way: “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)”.

7.13 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

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

(i) Counselling
This 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.
(ii) Psychotherapy
This will address a number of issues, including:
- treatment of emotional and behavioural disturbance, for example post traumatic stress disorder; and
- treatment of a child who has been highly traumatised and shows symptoms which give rise to concern for the child’s mental health.

Both counselling and psychotherapy may require long term involvement with the child, depending on the degree of the trauma suffered and the child’s cognitive ability.

Preparation for court

7.15 Preparing a child for court prior to the criminal trial commencing may be undertaken. This should be done by someone who does not have detailed knowledge of the case and is independent of the parties involved to avoid the risk of contamination or a perception of coaching. For this reason, it is advisable that counsellors and therapists do not engage in structured preparation for court but rather leave this work to the NSPCC Young Witness Service (see paragraph 7.47). The purpose of preparation for court 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; and
- reduce anxiety.

The timing of the preparation for court is important. If it is carried out too soon before 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 can be benefits from a break in therapy in the lead up to trial when support from the NSPCC Young Witness Service is in place, on the understanding that the child can see the therapist if required. Close liaison between the NSPCC Young Witness Service and the therapist is important to ensure that support in the lead up to a trial is tailored to the needs of the individual child.

7.16 Appendix T includes materials which will assist with the preparation of the child witness for giving evidence in court. The NSPCC Young Witness Pack (2011), which is aimed at both children and young people, provides booklets for specific age groups. There is a video addition to the Pack entitled ‘Giving Evidence - What’s It Really Like?’ (NSPCC 2000) which is suitable for older children. The Barnardo’s video ‘So, You’re Going to be a Witness’ (1996) is suitable for younger children.
What are the consequences of therapeutic help being given to a child witness prior to a criminal trial?

7.17 A criminal court can only convict a defendant of an offence if it is satisfied, on the basis of the evidence brought by the prosecution, that the defendant is guilty. Evidence is something that tends to prove or to disprove any fact or conclusion.

7.18 Each witness will give their evidence which is then cross-examined, to test its accuracy and truthfulness. The jury (in a Crown Court trial) decides the weight to be attached to the evidence when assessing whether guilt is proved.

7.19 Discussions prior to a criminal trial with or between all types of witness have been held by the courts in a number of cases to give rise to the potential for:
- witnesses giving inconsistent accounts of the events in issue in the trial; and
- fabrication, whether deliberate or inadvertent. For example, a witness may:
  - become aware of gaps or inconsistencies in his or her evidence, perhaps when compared with that of others; and
  - become more convinced (or convincing) in his or her evidence but no less mistaken.

7.20 Therapy is one kind of discussion which may take place prior to a trial. Other examples of discussions which may give rise to the evidence of adults and children being challenged include:
- informal contacts (for example, with friends and family);
- operational de-briefing by police officers (for example, after a large public disorder incident); and
- training.

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

7.21 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 this to happen. These may include allegations of coaching and, ultimately, the failure of the criminal case. It should also be borne in mind that the professionals concerned may themselves be called to court as witnesses in relation to any therapy undertaken prior to the criminal trial.
7.22 The issue raised by all discussions undertaken prior to the criminal trial, including therapy, is whether the process can affect - that is to say undermine - the actual or perceived reliability of that witness’s evidence and the weight the 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 explored in paragraphs 7.40 to 7.64 below, which set out guidelines on the use of therapy.

Records of therapy and confidentiality

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

7.24 The rules of disclosure place certain responsibilities on the investigator, prosecutor and also third parties, that is to say individuals or bodies who are not part of the prosecution. Therapists will generally be third parties for this purpose. Those responsibilities mean that all material that may be relevant to the issues disputed in the case must be preserved.

7.25 The PPS must provide the defence with copies of, or access to, any material which might reasonably be considered capable of undermining the prosecution case or of assisting the defence case. This is a continuing duty throughout the trial process. Where a prosecutor believes that a third party has material or information which might be relevant to the prosecution case, prosecutors should take what steps they regard as appropriate in the particular case to obtain it. Similarly, there is a duty for the police to pursue all reasonable lines of enquiry, whether these point towards or away from the suspect. A third party has no obligation to reveal material to the police or prosecutor, nor is there any duty on the third party to retain material, which may be relevant to a future investigation. Organisations and independent practitioners will have policies for the retention and destruction of client records, which are compatible with data protection legislation and good practice. Therefore, particularly in the case of historic inquiries, it is conceivable that records may no longer be available. However, therapeutic records should be maintained in line with the advice in paragraph 7.68. Organisations and independent practitioners will have policies for the retention and destruction of client records, which are compatible with data protection legislation and good practice. Therefore, particularly in the case of historic inquiries, it is conceivable that records may no longer be available. However, therapeutic records should be maintained in line with the advice in paragraph 7.68. If the police, namely the Disclosure Officer, alerts the prosecutor to the possibility that the third party has material that has a bearing on the case, the prosecutor should consider whether it is appropriate to advise the police to
seek access to the material as part of their duties to explore all reasonable lines of enquiry. Where a third party refuses to provide material voluntarily, consideration may be given to making application for a witness summons. If the prosecutor decides that it is not necessary to take steps to obtain third party material, the defence may likewise seek a witness summons. The witness is not obliged to agree to the release of material but the Investigating Officer must explain to the witness that, if the court concludes that it is necessary that the defence should have access to the material in order to ensure a fair trial, its release will be ordered. The witness should be informed that the court will only order the disclosure of such material as is necessary to enable a fair trial, to take place and that in deciding whether to order the release of the material the court will take into account the witness’s rights under Article 8 of the European Convention of Human Rights and Fundamental Freedoms (the right to respect for private and family life).

7.26 Disclosure should not be viewed as a tool to enable the prosecution or defence to satisfy their curiosity. It is a principle designed to ensure that information that is of genuine relevance to a criminal case is available to the parties and the court.

7.27 This guidance does not set out the detailed provisions relating to disclosure but aims to highlight some of the issues that may affect the handling of those cases. The Crown Court Judicial Committee protocol on third party disclosure can be found in Appendix N.

7.28 Requests for information to be obtained from third parties may be made at various stages in a criminal case by:

- the police;
- the prosecutor;
- the defence; or
- the court.

7.29 The requests should explain the issues in the case, so far as they are known, and be reasonably precise. Speculative inquiries are discouraged. The purpose should be to elicit a genuine and focused search for relevant documents or information. Careful maintenance of records of therapy will facilitate this focused approach. Where a therapist receives a request for information or documents, legal advice should be obtained before complying with the request. If, for example, the therapist is employed by a Health and Social Care Trust the legal department of the Trust will provide advice.
In addition to informal requests for information, if there are real grounds to believe that material which could affect the outcome of the prosecution is being withheld, an application may be made to the court for a witness summons to obtain the material. If, as will usually be the case, a therapist, having taken appropriate legal advice, believes that the material should not be disclosed, he or she may oppose the witness summons application. In that case the court may hold a hearing at which the therapist’s employer may be legally represented. The court, having heard representations from the advocate representing the applicant for the witness summons and the advocate for the therapist’s employer, will decide whether or not to issue a summons requiring the disclosure of the material.

Due to 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 in the paragraph above. Those aspects of the therapy that have no material relevance to criminal proceedings should not have to be disclosed. However, the issue of relevance may need to be reviewed at different stages of the criminal case, as more becomes known about the prosecution and defence cases. Confidentiality cannot 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 treatment may be required to be disclosed. The limits of confidentiality in relation to information that identifies child care concerns or a risk of harm to self or others must be borne in mind and all work should be carried out in accordance with the Regional Area Child Protection Committee (ACPC) Policy and Procedures and, where appropriate, Safeguarding Vulnerable Adults: Regional Adult Protection Policy and Procedural Guidelines.

**Decision making**

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

The PPS is responsible for reviewing and conducting the majority of criminal cases involving child victims and witnesses. Once a prosecutor considers that there is a realistic prospect of conviction, the public interest must be considered. A primary consideration for prosecutors when taking decisions in these circumstances is the best interests of the child.
7.33 The prosecution in these criminal cases must do what it can to:

- identify cases in which the provision of therapy before the criminal trial might be thought to have some material impact on the evidence;
- assess the likely consequences for the criminal trial in these cases;
- ensure that these cases are dealt with as quickly as possible; and
- safeguard the confidentiality of therapy sessions wherever possible whilst ensuring that the defence and the court are aware of the existence of information which might undermine the prosecution case or assist the defence.

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

7.34 Whether a child should receive therapy before the criminal trial is not a decision alone for the police or the PPS. Such decisions can only be taken by professionals from all of 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.

7.35 The best interests of the child are the paramount consideration in decisions about the provision of therapy before the criminal trial. In determining what is in the best interests of the 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.

7.36 If there is a demonstrable need for the provision of therapy and it is possible that the therapy will prejudice the criminal proceedings, consideration may need to be given to abandoning those proceedings in the interests of the child’s wellbeing. In order that such consideration can be given, it is essential that information regarding therapy is communicated to the prosecutor.

7.37 Alternatively, there may be some children for whom it will be preferable to delay therapy until after the criminal case has been heard, to avoid the benefits of the therapy being undone.

7.38 While some forms of therapy may undermine the evidence given by the witness, this will not automatically be the case. The PPS will offer advice, as requested in individual cases, on the likely impact on the evidence of the child receiving therapy.
Communication

7.39 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

7.40 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 criminal proceedings but may receive general support to help them through the process of appearing in court.

7.41 All people who work with children before a criminal trial should be aware of the possible impact of their work on subsequent evidence in the trial. Some types of therapeutic work are more likely to be seen as prejudicial and therefore 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 on past abuse, presents less of a problem than interpretive psychodynamic psychotherapy. Therefore, there is a spectrum of evidential risk to the criminal trial which should be considered.

7.42 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; and
- the treatment of associated emotional and behavioural disturbance that does not require the rehearsal of abusive events.

7.43 Careful recording is essential and, prior to therapy beginning, the child’s need for such therapy should be clearly stated.
Who are the therapists?

7.44 Professionals offering therapy may be working within Health and Social Care Trusts, other statutory agencies, the voluntary sector or privately.

7.45 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 criminal trial.

7.46 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 may require modification of techniques.

7.47 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. See Appendix L.

Assessment of the need for therapy

7.48 Assessment of the need for therapy of any child during the pre-trial period (when that child may become a witness in the subsequent trial), should only be undertaken following consultation with the relevant other 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.

7.49 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 it, for example by bringing the child to appointments and working with the family.
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 on the conduct of the criminal case should also be fully discussed. The PPS 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. Where a criminal case is at an advanced stage, it may be possible to consult the judge in chambers as to the potential consequences of a proposed course of action.

It is vital that a trained professional person 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. This could be as part of an assessment undertaken according to the UNOCINI assessment framework.

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**

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.

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 criminal trial.

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, and hearing and speech impairments, should be conducted in conjunction with specialist workers who are trained in these areas of work. This is an area where the use of an intermediary should be considered.
7.56 The issue of possible 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 less vulnerable or older children. Particular care, therefore, should be taken in the assessment of such vulnerable children to use short, plain, words, to ask open questions where possible and to avoid convoluted, hypothetical or other leading questions.

7.57 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.

7.58 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.

7.59 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.

7.60 This may, in some cases, mean delaying therapy until the criminal proceedings are at an end (though in such cases prosecutors will wish to do all that they can to expedite the proceedings). This does not, however, preclude the important provision of general support for the child and family or briefer forms of more focused therapy.
Potential problem areas

7.61 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.

7.62 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.

7.63 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.

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

Conclusion

7.65 It should be understood that those involved in the prosecution of an alleged offender have no authority to prevent a child from receiving therapy.

7.66 The police and the PPS should be made aware that therapy is proposed, is being undertaken, or has been undertaken.

7.67 The nature of the therapy should be explained so that consideration can be given to whether or not the provision of such therapy is likely to impact on the criminal case. There should be a locally agreed mechanism for communicating this information and enabling it to be routed through the police to the PPS 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.
7.68 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.

7.69 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 criminal proceedings will not have to be disclosed. However, what is “relevant” may change as the case progresses and so confidentiality cannot be guaranteed.

7.70 In newly arising allegations, therapy should not usually take place before a witness has provided a statement or, if appropriate, before a video recorded interview has taken place. However, in existing cases where therapy is already under way, a decision about how to proceed may be best made after discussion at a multi-disciplinary meeting which includes the 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.

7.71 If the prosecutor advises that the proposed therapy may prejudice the criminal 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.

7.72 The therapist should be made aware of any pending criminal proceedings before commencing the therapy and should also be aware of the implications of using techniques which may result in the child’s evidence being discredited.

7.73 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.
Prior to the criminal trial, group therapy where the specific recounting of abuse takes place is best avoided. The particular danger of this kind of group therapy is that the witness may adopt the experiences of others taking part in the therapy. Structured group therapy approaches, which help in a neutral way to improve the 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 trial.

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 the criminal case is almost certain to fail as a consequence of this type of therapeutic work. This should be differentiated from the accepted practice of allowing witnesses, prior to giving evidence, to refresh their memory by reading their statements or viewing their video recorded interview.

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 instructed. 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.

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.

Any disclosure of materially new allegations by the witness undergoing therapy, including possible disclosures of their own abusive behaviour, should be reported to the police, the relevant Health and Social Care Trust and any other statutory agency in accordance with the Regional Area Child Protection Committee (ACPC) Policy and Procedures and where appropriate Safeguarding Vulnerable Adults: Regional Adult Protection Policy and Procedural Guidelines. Because therapists will avoid discussion of evidence in pre-trial therapy it will be difficult for them to know if a witness introduces any material, departure from or inconsistency with the original allegations in the context of the therapeutic work. Should the therapist suspect that this may have occurred they should seek supervisory support and discuss their concerns with the police. Decisions about further therapy should be made with reference to paragraphs 7.70 and 7.71. It may be appropriate to halt any further work until a multi-disciplinary discussion has taken place which includes input from the police and the PPS. Risks to the criminal trial must be weighed in any decision making process about continuing therapy but the welfare of the child will be the paramount consideration in any decision.
7.79 Prosecutors must be informed that the witness has received therapy. Prosecutors must then obtain an assurance that the witness did not, in the therapy session(s), say anything inconsistent with the statements made by the witness to the police. Prosecutors may need to be made aware of the contents of the therapy sessions, as well as other details specified in the above paragraph, when considering whether or not to prosecute and their duties of disclosure.

7.80 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.
Background

Witnesses are fundamental to the success of the criminal justice system. Vulnerable or intimidated adult witnesses should not be denied the emotional support and counselling they may need both before and after the trial.

This guidance is based on guidance for England and Wales produced by the Department of Health, the Crown Prosecution Service and the Home Office.

The guidance is primarily for the assistance of therapists, those who commission or arrange therapy, and legal representatives involved in making decisions about the provision of therapeutic help for vulnerable or intimidated adult witnesses prior to a criminal trial. The guidance makes it clear that the best interests of the witness are paramount when deciding whether, and in what form, therapeutic help is given. It is intended to be helpful for all practitioners, especially those in the criminal justice system, health and social care agencies, education services, other statutory agencies, voluntary organisations and those in private practice. The guidance complements the good practice guidance for child witnesses which is contained in Chapter 7.

The guidance has been produced following consultation within the criminal justice system and with many professionals from a range of different disciplines. Its use will enable vulnerable or intimidated adult witnesses to receive the therapeutic help necessary both to assist their recovery and to give their best evidence in criminal proceedings.
Introduction

8.1 Concern has been expressed that witnesses, including vulnerable or intimidated adult witnesses, have been denied therapy pending the outcome of a criminal trial for fear that their evidence could be tainted and the prosecution lost. This fear may conflict with the need to ensure that vulnerable or intimidated adult victims are able to receive, as soon as possible, immediate and effective treatment to assist their recovery. In the context of this potential conflict, the following matters are relevant:

- many victims express the wish to see the alleged offender convicted and punished;
- there is a wider public interest in ensuring that offenders are brought to justice to prevent further offences; and
- all defendants are entitled to a fair trial.

8.2 It follows therefore that victims, service provision professionals and forensic investigators have a mutual interest in ensuring, wherever possible, that those who receive therapy prior to a criminal trial are regarded as witnesses who are able to give reliable testimony.

8.3 In June 1998, the Report “Speaking Up For Justice” (“the Report”) was published in England and Wales. The Report was produced by an interdepartmental working group that considered the treatment of vulnerable or intimidated witnesses in the criminal justice system. Recommendation 28 of the Report said that vulnerable or intimidated witnesses should not be denied the emotional support and counselling they may need both before and after the trial. In the subsequently issued implementation programme document “Action for Justice” (England and Wales), it was said that good practice guidance on the provision of therapy prior to trial for vulnerable or intimidated adult witnesses would be issued.

8.4 The Report also recommended that there should be special measures to enable vulnerable or intimidated witnesses in a criminal trial to give their best evidence. That recommendation was enacted by Articles 4 – 21 of the Criminal Evidence (NI) Order 1999 in this jurisdiction. These Articles provide for a range of special measures, for example the giving of evidence by means of a live TV link (Article 12) and the giving of evidence by way of pre-recorded video interview (Article 15), to enable a vulnerable or intimidated witness to give their best evidence. However, it will be for the court to decide which, if any, of the special measures will be made available to the particular witness.
As mentioned in the paragraph above, one of the special measures introduced by the 1999 Order is the possibility of admitting, as evidence, a video recorded interview with a vulnerable or intimidated adult witness. Wherever possible, pre-trial therapy should not take place before such a video recorded interview is completed.

Article 4 of the 1999 Order states that adult witnesses may be deemed to be vulnerable if the court considers that the quality of evidence given by the witness is likely to be diminished because:

(a) the witness suffers from mental disorder within the meaning of the Mental Health (NI) Order 1986 or otherwise has a significant impairment of intelligence and social functioning; or
(b) the witness has a physical disability or is suffering from a physical disorder.

Article 5 of the 1999 Order states that a witness may be deemed to be intimidated if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress in connection with testifying.

Purpose and use of this guidance

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

It is recognised that decisions made in individual cases will depend on the particular considerations which apply to those cases. The guidance is intended to be practical in nature and to avoid assumptions based on perceptions which may be unfounded. It is also acknowledged that practice will continue to evolve. The guidance simply aims to support this process by providing information based on current thinking about these issues.

In particular the guidance which follows seeks to:

- improve understanding of the difficulties for criminal prosecutions associated with the provision of therapy for vulnerable or intimidated adult witnesses prior to a criminal trial;
- clarify the roles of those involved in making decisions about the provision of therapy prior to a criminal trial;
- explain the use of terminology, and provide advice on the appropriateness of different therapeutic techniques; and
- set out a framework for good practice which highlights the important issues.
8.11 Until now, this guidance has not been issued in a Northern Ireland format although the England and Wales version has been widely used to guide good practice.

**What is therapy?**

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

8.13 A precise definition of psychotherapy is not straightforward but the definition used in the guidance for child witnesses came from Kazdin (Psychotherapy for child and adolescent (1990) Annual Review of Psychology 41, 21-5) and is set out below: “Psychotherapy includes interventions designed to decrease distress, psychological symptoms and maladaptive behaviour, or to improve adaptive and personal functioning through the use of interpersonal interaction, counselling or activities following a specific treatment plan. Treatment focuses on some facet of how clients feel (affect), think (cognition) and act (behaviour”).

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

**Types of therapeutic work undertaken prior to a criminal trial**

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

- **(i) Counselling**
  This will address a number of issues, including:
  - the impact of the incident on the adult;
  - improving the self-esteem and confidence of the adult; and
  - providing the vulnerable or intimidated adult with information with regard to dealing with and avoiding abusive situations. The purpose of this is to help the adult to protect him herself and to access appropriate help.

- **(ii) Psychotherapy**
  This will address a number of issues, including:
  - treatment of emotional and behavioural disturbance, for example post-traumatic stress disorder; and
  - treatment of an adult who has been highly traumatised and shows symptoms which give rise to concern for his/her mental health.

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

8.16 A vulnerable or intimidated adult witness may have no previous experience of giving evidence in court and some preparation work prior to the criminal trial is likely to be of considerable value. This should be done by someone who does not have detailed knowledge of the case to avoid the risk of contamination or a perception of coaching. For this reason it is advisable that counsellors and therapists do not engage in structured preparation for court and leave this work to the Victim Support NI (VSNI) Witness Service (see Chapter 5).

8.17 The purpose of this work will be to:

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

The timing of the preparation for court is important. If it is carried out too soon before evidence is given, the witness’s anxieties may be increased. On the other hand, if it is carried out at the last minute, the witness may feel rushed and be unable to assimilate the information given. There can be benefits from a break in therapy in the lead up to trial when support from the VSNI Witness Service is in place, on the understanding that the witness can see the therapist if required. Close liaison between the VSNI Witness Service and the therapist is important to ensure that support in the lead up to a trial is tailored to the needs of the individual witness.

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

8.19 Guidance on pre-trial preparation can be found in Chapters 5 and 6. What are the consequences of therapeutic help being given to a vulnerable or intimidated adult witness prior to a criminal trial?

8.20 A criminal court can only convict a defendant of an offence if it is satisfied, on the basis of the evidence brought by the prosecution, that the defendant is guilty. Evidence is something that tends to prove or to disprove any fact or conclusion.

8.21 Each witness will give their evidence which is then cross-examined to test its accuracy and truthfulness.
8.22 Discussions prior to a criminal trial with or between all types of witnesses have been held by the courts in a number of cases to give rise to the potential for:

- witnesses giving inconsistent accounts of the events at issue in the trial; and
- fabrication, whether deliberate or inadvertent. For example, a witness may:
  - become aware of gaps or inconsistencies in his or her evidence, perhaps when compared with that of others; or
  - become more convinced, or convincing, in his or her evidence, but no less mistaken.

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

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

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

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

**Records of therapy and confidentiality**

8.25 The administration of justice and the need to ensure a fair trial demand that any information and evidence, which could have an impact on the decision to prosecute, the conduct of the case, or the outcome of proceedings, is made available to the police and the Public Prosecution Service (PPS).

8.26 The rules of disclosure place certain responsibilities on the investigator, prosecutor and also third parties, that is to say individuals or bodies who are not part of the prosecution. Therapists will generally be third parties for this purpose. Those responsibilities mean that all material that may be relevant to the issues disputed in the case must be preserved.
8.27 The PPS must provide the defence with copies of, or access to, any material which might reasonably be considered capable of undermining the prosecution case or of assisting the defence case. This is a continuing duty throughout the trial process. Where a prosecutor believes that a third party has material or information which might be relevant to the prosecution case, prosecutors should take what steps they regard as appropriate in the particular case to obtain it. Similarly, there is a duty for the police to pursue all reasonable lines of enquiry, whether these point towards or away from the suspect. A third party has no obligation to reveal material to the police or prosecutor, nor is there any duty on the third party to retain material which might be relevant to a future investigation. Organisations and independent practitioners will have policies for the retention and destruction of client records, which are compatible with data protection legislation and good practice, so, particularly in the case of historic inquiries, it is conceivable that records may no longer be available. However, therapeutic records should be maintained in line with the advice in paragraph 8.76. If the police, namely the Disclosure Officer, alerts the prosecutor to the possibility that the third party has material that has a bearing on the case, the prosecutor should consider whether it is appropriate to advise the police to seek access to the material as part of their duties to explore all reasonable lines of enquiry. Where a third party refuses to provide material voluntarily, consideration may be given to making an application for a witness summons. If the prosecutor decides that it is not necessary to take steps to obtain third party material, the defence may likewise seek a witness summons. The witness is not obliged to agree to the release of material but the Investigating Officer must explain to the witness that if the court concludes that it is necessary that the defence should have access to the material in order to ensure a fair trial its release will be ordered. The witness should be informed that the court will only order the disclosure of such material as is necessary to enable a fair trial to take place and that, in deciding whether to order the release of the material the court will take into account the witness’s rights under Article 8 of the European Convention of Human Rights and Fundamental Freedoms (the right to respect for private and family life).

8.28 Disclosure should not be viewed as a tool to enable the prosecution or defence to satisfy their curiosity. It is a principle designed to ensure that information that is of genuine relevance to a criminal case is available to the parties and the court.

8.29 This guidance does not set out the detailed provisions relating to disclosure but aims to highlight some of the issues that may affect the handling of those cases. The Crown Court Judicial Committee protocol on third party disclosure can be found in Appendix N.
8.30 Requests for information to be obtained from third parties may be made at various stages in a criminal case by:

- the police;
- the prosecutor;
- the defence; and
- the court.

8.31 The requests should explain the issues in the case, so far as they are known, and be reasonably precise. Speculative inquiries are discouraged. The purpose should be to elicit a genuine and focused search for relevant documents or information. Careful maintenance of records of therapy will facilitate this focused approach. Where a therapist receives a request for information or documents, legal advice should be obtained before complying with the request. If, for example, the therapist is employed by a Health and Social Care Trust, the legal department of the Trust will provide advice.

8.32 In addition to informal requests for information, if there are real grounds to believe that material which could affect the outcome of the prosecution is being withheld, an application may be made to the court for a witness summons to obtain the material. If, as will usually be the case, a therapist, having taken appropriate legal advice, believes that the material should not be disclosed, he or she may oppose the witness summons application. In that case the court may hold a hearing at which the therapist’s employer may be legally represented. The court, having heard representations from the advocate representing the applicant for the witness summons and the advocate for the therapist’s employer, will decide whether or not to issue a summons requiring the disclosure of the material.

8.33 Due to the recognition that maintaining trust is central to the provision of therapy, it will usually only be appropriate to breach confidentiality in compliance with a court order, as outlined in the paragraph above. Those aspects of the therapy that have no material relevance to criminal proceedings should not have to be disclosed. However, the issue of relevance may need to be reviewed at different stages of the criminal case, as more becomes known about the prosecution and defence cases.

8.34 Confidentiality cannot therefore be guaranteed in advance. Bearing this in mind, it is important that an understanding is reached with the vulnerable or intimidated adult witness (and, where appropriate, any other emotionally significant person) at the outset of any therapy undertaken of the circumstances under which material obtained during treatment may be required to be disclosed. The limits of confidentiality in relation to information that identifies or a risk of harm to self or others must be borne in mind and all work should be carried out in accordance with, where appropriate, Safeguarding Vulnerable Adults: Regional Adult Protection Policy and Procedural Guidelines.
**Decision making**

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

**8.35** The PPS is responsible for reviewing and conducting the majority of criminal cases involving vulnerable or intimidated adult witnesses. Once a prosecutor considers that there is a realistic prospect of conviction, the public interest must be considered.

**8.36** The prosecution in these criminal cases must do what it can to:

- identify cases in which the provision of therapy before the criminal trial might be thought to have some material impact on the evidence;
- assess the likely consequences for the criminal trial in these cases;
- ensure that these cases are dealt with as quickly as possible; and
- safeguard the confidentiality of therapy sessions wherever possible whilst ensuring that the defence and the court are aware of the existence of information which might undermine the prosecution case or assist the defence.

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

**8.37** Whether a vulnerable or intimidated adult witness should receive therapy before the criminal trial is not a decision for the police or the PPS. Such decisions can only be taken by the witness, in conjunction with the professionals from the agencies providing service to that witness.

**8.38** The best interests of the vulnerable or intimidated adult witness are the paramount consideration in decisions about the provision of therapy before the criminal trial. In determining what is in the best interests of the witness, will be essential to consider the wishes and feelings of the witness and, where appropriate, their carers or those who are emotionally significant to the witness. The witness will need to be given information on the nature of the therapy proposed in a form which is accessible. Account should be taken of issues associated with gender, race, culture, religion, language, disability and any communication difficulties both in initial discussions about the proposed therapy and in the provision of the therapy itself.

**8.39** While some forms of therapy may undermine the evidence given by the witness, this will not automatically be the case. The PPS will offer advice, as requested in individual cases, on the likely impact on the evidence of the witness receiving therapy.
8.40 If there is a demonstrable need for the provision of therapy and it is possible that the therapy will prejudice the criminal proceedings, consideration may need to be given to abandoning those proceedings in the interests of the wellbeing of the vulnerable or intimidated adult witness. In order that such consideration can be given, it is essential that information regarding therapy is communicated to the prosecutor.

Communication

8.41 Clear lines of communication are required to ensure that everyone involved in the process is fully and reliably informed. Named contact points should be established in each agency involved in a particular case.

8.42 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.

8.43 Inter-agency information exchange will need to comply with Human Rights Act 1998 and the Data Protection Act 1998. Decisions on exchange of information will need to be made on a case by case basis and carefully documented.

Guidelines on the use of therapy

8.44 Set out below are guidelines on the use of appropriate therapy with vulnerable or intimidated adult witnesses. The stated principles mark the distinction between the use of psychotherapy and counselling by qualified practitioners and formal preparation of the witness for the giving of evidence in court. Where such preparation takes place, the witness should not discuss or be encouraged to discuss the evidence which s/he is to give in the criminal proceedings but may receive general support to help them through the process of appearing in court.

8.45 All people who work with vulnerable or intimidated adult witnesses before a criminal trial should be aware of the possible impact of their work on subsequent evidence in the trial. Some types of therapeutic work are more likely to be seen as prejudicial and thereby undermine the perception of the credibility and reliability of a witness, or to influence memory of the witness as to events or the account they give.

8.46 Preparation for court and carefully planned preventive work which does not focus on past abuse presents less of a problem than interpretive psychodynamic psychotherapy. Therefore, there is a spectrum of evidential risk to the criminal trial which should be considered.
8.47 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; and
- the treatment of associated emotional and behavioural disturbance that does not require the rehearsal of abusive events.

8.48 The need for therapy should be clearly stated before it begins, and both therapist and vulnerable or intimidated adult witness should be aware of the related criminal case, which may or may not have already been commenced. Careful recording is essential.

Who are the therapists?

8.49 Professionals offering therapy may be working within Health and Social Care Trusts, other statutory agencies, the voluntary sector or privately. Therapists may specialise in work with particular groups, for example people with learning disabilities or with victims of particular offences, for example rape.

8.50 There is, at the moment, no centrally available register of those qualified to provide therapy to vulnerable or intimidated adult witnesses. Vulnerable or intimidated adult witnesses are not a homogeneous group and may have a wide range of needs. Professionals qualified to work with one group of witnesses may not be qualified to work with other witnesses who have different disabilities or problems. Treatment responses will need to draw on both general therapeutic skills and specialised knowledge of the particular cause of vulnerability. Skills in communication with the particular witness will always be important.

8.51 Providers and purchasers of therapy for vulnerable or intimidated adult witnesses must ensure that any therapist or counsellor has appropriate training and supervision, according to the level of work undertaken. Membership of an appropriate professional body or other recognised competence would be expected. The therapist or counsellor must also have a good understanding of how the rules of evidence for witnesses in criminal proceedings may require modification of techniques. Agencies involved in the provision of therapy should consider the need for the training for therapists and counsellors who work with vulnerable or intimidated adult witnesses prior to the criminal trial.

8.52 Vulnerable or intimidated adult witnesses may receive preparation for the experience of giving evidence in court. This must be done by suitably trained individuals, who will need to be aware of the clear distinction between the preparation of the witness for the experience of giving evidence in court and the provision of therapy or counselling to address trauma (see Chapters 5 and 6).
Assessment of the need for therapy

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

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

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

8.54 If it is judged desirable, a meeting of all relevant professionals might be convened for the purpose of discussing an assessment and treatment strategy. This assessment and treatment strategy should take into account the special measures which might be available under the 1999 Order, so that an early application to the court can be made. However, it is important to remember that it will be for the court to decide which, if any, special measures will be made available to the witness. Accordingly, it is essential that unrealistic expectations on the part of the witness are not raised.

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

- who is to fund the therapy;
- who will, if necessary, transport the witness to appointments; and
- who will work with the family. Mechanisms for communication between all those involved should be agreed and recorded at this stage.

8.56 The views and wishes of the witness and their carers and those who are emotionally significant to the witness must be taken into account. If not present at the decision-making meeting, there should be a means of ensuring that the informed views of the witness, and those who are emotionally significant, are sought and used as part of the decision-making process. Communication should take account of any special needs of the witness and how to meet these.
8.57 Priority must be given to the best interests of the vulnerable or intimidated witness. The impact of any therapy on the conduct of the criminal case should also be fully discussed and this discussion should include the witness, if not previously consulted on this issue.

8.58 The PPS will advise, if requested, on the likely effect of a particular type of therapy on the evidence of witnesses in individual cases. Where a criminal case is at an advanced stage, it may be possible to consult the judge in chambers as to the potential consequences of a proposed course of action.

8.59 It is important that anyone involved in an assessment, or in subsequent therapy, should be a trained professional person with a recognised competence, such as a social worker, psychiatrist, psychologist, psychotherapist, nurse or other relevant qualified person. On occasions, an assessment may be carried out by a different professional from the one who will undertake the therapy. It is for the agency funding or commissioning assessment and therapy to satisfy itself of the relevant competence of those undertaking either assessment or therapy.

8.60 Assessment for possible therapy may require more than one interview to determine whether, and in what way, the witness is emotionally disturbed and whether this problem can best be helped by the provision of therapy. Not all witnesses who are assessed in this way will need therapy.

8.61 Final recommendations from the assessment will indicate the type of therapy or intervention, if any, required by the particular witness. Decisions should be documented and findings made available to the agencies that need to know, as soon as possible after the assessment is completed.

Important issues regarding an assessment

8.62 A whole range of issues may arise in the course of any assessment but for those undertaking pre-trial assessment of vulnerable or intimidated adult witnesses, who may require therapy, some issues are particularly important to address.

8.63 Assessment of witnesses with special needs requires particular consideration. Special needs include:

• physical or learning disabilities;
• hearing or speech difficulties; and
• the need for an interpreter, where the first language of the witness is not English.
8.64 It is important that an accurate picture of the needs and wishes of the witness is obtained. This is likely to require input from professionals skilled and trained in work with the particular special need. For some witnesses, there may be a need for a particular method of communication, for example sign language. Attention should be given to the patterns of communication and use of language and expression by the witness, so that misunderstanding is avoided.

8.65 For a witness whose first language is not English, it will be important to identify an interpreter who is not only competent in the relevant language and dialect but who is also aware of the vocabulary used in the criminal justice system and the need to ensure that no coaching of the witness takes place.

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

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

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

8.68 Problems may arise during therapy when the therapist attempts to distinguish fantasy from reality in the responses made by the witness. In this kind of situation, the therapist should be as open to the idea that the material presented as factual truth may be a distortion (even though real and meaningful to the witness), as they are to a fantasy being a representation of reality.

8.69 Some of the concerns in this area have been clarified by the report ‘Recovered Memories’ published by the British Psychological Society (BPS). More recently, recommendations for good practice were published, with the approval of the Royal College of Psychiatrists, in the October 1997 edition of Psychiatric Bulletin under the title “Reported recovered memories of child sexual abuse – Recommendations for good practice and implications for training, continuing professional development and research”. See also guidelines issued by the BPS in The Psychologist May 2000 under the title “Guidelines for Psychologists working with clients in contexts in which issues related to recovered memories may arise”.

8.70 Interpretative psychotherapy may present evidential problems even if carefully conducted. The professional background and training of the therapist, the provision of adequate supervision arrangements, the appropriateness and robustness of the policies of the agency providing therapy will all help to obviate problems.

8.71 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.

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

Conclusion

8.73 It should be understood that those involved in the prosecution of an alleged offender have no authority to prevent a vulnerable or intimidated adult witness from receiving therapy.

8.74 The police and the PPS must be made aware that therapy is proposed, is being undertaken, or has been undertaken.
8.75 The nature of the therapy should be explained so that consideration can be given to whether or not the provision of such therapy is likely to impact on the criminal case. There should be an agreed mechanism for communicating this information and enabling it to be routed through the police to the PPS, using named contact points assigned to each individual witness. Direct consultation between the professionals involved may be desirable in some circumstances and should be arranged in the same way.

8.76 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.

8.77 At the outset of therapy an understanding should be reached with the witness and, where appropriate, their carers or those who are emotionally significant to the witness, of the circumstances under which material obtained during therapy might be required to be disclosed. Maintaining trust will remain important and it can be confirmed that those aspects of the therapy that have no material relevance to criminal proceedings will not have to be disclosed. However, what is “relevant” may change as the case progresses and so confidentiality cannot be guaranteed.

8.78 In newly arising allegations, therapy should not usually take place before a witness has provided a statement or, if appropriate, before a video recorded interview has taken place. However, in existing cases where therapy is already under way, a decision about how to proceed may be best made after discussion at a multidisciplinary meeting which includes the therapist. Clearly, when therapeutic work is in progress, disruption of therapy should be avoided even if new investigations must be conducted. If it is decided that leading questions or interpretations must be used to help a witness in psychotherapy, then the evidential implications of this should be understood and made clear.

8.79 If the prosecutor advises that the proposed therapy may prejudice the criminal case, this should be taken into account when deciding whether to agree to the therapy. It may still be in the best interests of the witness to proceed with the therapy.

8.80 The therapist should be made aware of any pending criminal proceedings before commencing the therapy and should also be aware of the implications of using techniques which may result in the evidence of the witness being discredited.
8.81 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.

8.82 Prior to the criminal trial, group therapy where the specific recounting of abuse takes place is best avoided. The particular danger of this kind of group therapy is that the witness may adopt the experiences of others taking part in the therapy. Structured group therapy approaches which help in a neutral way to improve the witness’s self esteem are less likely to cause difficulties. As a general principle, group therapy should not be offered to the vulnerable or intimidated witness prior to the trial.

8.83 Witnesses may derive therapeutic benefits from talking about their experiences, but any detailed recounting or re-nactment of the offending behaviour may be perceived as coaching. Therapists should recognise that the criminal case is almost certain to fail as a consequence of this type of therapeutic work. This should be differentiated from the accepted practice of allowing witnesses, prior to giving evidence, to refresh their memory by reading the statement or viewing the video recorded interview.

8.84 Professionals should avoid the use of jargon and take care to use language that will not be perceived, if repeated by a witness, as evidence of the witness being instructed. The language content of the therapy and counselling sessions is guided by the witness but equally it must be recognised that witnesses do use different forms of language in differing situations and contexts.

8.85 During therapy, witnesses should never be encouraged to extend their account of the offending behaviour which they have suffered. However, it is acceptable to offer general reassurance and support to a witness during this difficult process.

8.86 Prosecutors must be informed that the witness has received therapy. Prosecutors must then obtain an assurance that the witness did not, in the therapy session(s), say anything inconsistent with the statements made by the witness to the police. Prosecutors may need to be made aware of the content of the therapy sessions as well as other details specified in the paragraph above, when considering whether or not to prosecute and their duties of disclosure.

8.87 Discussions at local level between the agencies concerned and 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** – For the purposes of special measures directions made under the Criminal Evidence (NI) Order 1999, as amended by the Justice Act (NI) 2011, to assist eligible witnesses to give evidence, a child witness is a witness who is eligible because they are under 18 when the direction is made.

**Civil proceedings** – A case at civil law can either be one of private law between people and/or organisations when it is typically about defining the rights and relations between individuals (e.g. matrimonial proceedings and disputes about where the child of separated parents should live) or it can be one of public law, where proceedings are brought, for example in order to remove a child from the care of its parents.

**Compellability (of a witness)** – The general rule is that, if a witness is competent to give evidence, they are also compellable. This means that the court can insist on them giving evidence.

**Competence or competent (of a witness)** – In criminal proceedings, a person who is not competent may not give evidence. Article 31 of the Criminal Evidence (NI) Order 1999 provides that ‘all persons are (whatever their age) competent to give evidence’. An exception applies where a person is not able to understand questions put to them as a witness and to give answers which can be understood. If the question of competence is raised, it is for the judge to decide whether a particular witness falls within the exception and the party who wishes to call the witness to give evidence must prove that they do not. A person over 14 years, who is competent but who does not appreciate the significance of an oath, gives evidence unsworn, as do children under the age of 14.

**Complainant** – According to Article 2(2) of the Criminal Evidence (NI) Order 1999, ‘complainant’, in relation to any offence or alleged offence, means a person against or in relation to whom the offence was (or is alleged to have been) committed. Therefore, a person may be a complainant even where they did not actually make the initial complaint. The 1999 Order makes special provision for complainants in sexual cases in relation to their status as eligible witnesses and in relation to the prohibition on the defendant from cross-examination in person.
**Cross-examination** – The procedure in the trial after examination in chief where the legal representative for the side that did not call the witness seeks to establish its own case by questioning the other side’s witnesses. The Criminal Evidence (NI) Order 1999 allows eligible witnesses to be cross-examined by means of a live link or (where examination in chief is so conducted) by means of a video recording. The making of such a recording normally precludes any further cross-examination. Articles 22 and 23 of the 1999 Order prevent the defendant from cross-examining in person a witness who is the complainant in a case involving sexual offences or a child witness where the offence is of a violent or sexual nature. Article 24 gives the court power to prevent the defendant from cross-examining a witness in person in any other criminal case where to do so is justified in the circumstances of the case.

**Crown Court** – The criminal court that tries those charged with offences which are generally too serious for the magistrates’ court to deal with. This includes the most serious offences which are triable only on indictment, such as rape. Trial at the Crown Court is by judge and jury.

**Defendant** – A person who is on trial in criminal proceedings. Under the Criminal Evidence (NI) Order 1999, a defendant is not normally eligible for special measures, even though they would be so eligible if they gave evidence as a witness at the trial of another person.

**Eligible** (of a witness) – The term used in the Criminal Evidence (NI) Order 1999, as amended, to describe a witness in respect of whom a special measures direction may be made. A witness may be eligible (i) on the grounds of age if under 18 when the direction is made; (ii) on the grounds of incapacity if they have a physical or mental condition specified by Article 4 and the quality of the witness’s evidence is likely to be diminished as a result; and (iii) on the grounds that the quality of the witness’s evidence is likely to be diminished by reason of fear or distress on their part in connection with testifying in the proceedings. In deciding eligibility, the court must take account of the views expressed by any witness who is said to have an incapacity or to be likely to suffer fear or distress. A witness who is a complainant in relation to a sexual offence is automatically eligible unless they tell the court that they wish not to be. The defendant is not an eligible witness.

**Evidence in chief** – The evidence that a witness gives in response to examination on behalf of the party who has brought the person forward as a witness. Once evidence in chief has been completed, the witness is normally made available for cross-examination by the other party or parties to the proceedings. Under the Criminal Evidence (NI) Order 1999, it is possible for a video recording to be used as a witness’s evidence in chief even where they are not available for cross-examination, provided that the parties to the proceedings have agreed that cross-examination is not necessary or where a special measures direction provides for the witness’s evidence on cross-examination to be given other than by means of testimony in court.
Examination in chief – The procedure in the trial where, normally, the legal representative for the side that has called the witness takes that person through their evidence. The Criminal Evidence (NI) Order 1999 allows a video recording of an interview with an eligible witness to be played as the witness’s evidence in chief. When such a recording is admitted, the witness is not normally examined in chief by the legal representative at the trial. Depending on the matters raised in cross-examination, the party who called the witness in the first place may choose to conduct a further examination in chief, or re-examination, as it is called. For example, where the prosecution calls a woman to give evidence that she has been raped by two men, she will give evidence in chief on behalf of the prosecution and will be open to cross-examination on behalf of both defendants, with the prosecution having the option to re-examine. Where cross-examination is pre-recorded, re-examination will take place at the same time.

Interests of justice – Those interests which, according to Article 15 of the Criminal Evidence (NI) Order 1999, may preclude a court from making a special measures direction for a video recording to be admitted as a witness’s evidence in chief. The 1999 Order does not define ‘interests of justice’: it is for the court to determine in the light of all the circumstances. The court is unlikely to reject the recording on these grounds unless it considers that to use it would be in some way unfairly prejudicial to the defendant (or, if there is more than one, to any of the defendants). Another example of a case where it might not be in the interests of justice to admit a recording is where the witness has subsequently retracted the statement and it is known that they intend to give evidence that contradicts it. In relation to adult witnesses who are eligible for special measures, the court has a wide discretion as to whether to make a special measures direction in favour of video recording, which is limited only in the circumstances stated above. Where a child witness is involved, the strong preference that the 1999 Order expresses for evidence in chief to be video recorded is still subject to the ‘interests of justice’ test. If only part of the recording is objected to, the 1999 Order expressly states that the court must weigh any prejudice to a defendant which might result from showing that part of the recording against the desirability of showing the whole, or substantially the whole, of it.

Intermediary – One of the special measures which the Criminal Evidence (NI) Order 1999 (Article 17) allows for certain eligible witnesses is that they may give evidence (both examination in chief and cross-examination) through an intermediary. An intermediary must be approved by the court. They assist by communicating to the witness the questions which are put to them, and to anyone asking such questions, the answer given by the witness in reply to them. The intermediary may explain the questions or answers to the extent necessary to enable them to be understood. An intermediary may also be called on to assist in the making of a video recording with a view to making it the witness’s evidence in chief. In such a case, the court will decide whether it was appropriate to use the intermediary when deciding whether to admit the recording in evidence. Only witnesses eligible on grounds of age or incapacity may receive the assistance of an intermediary under the Order, although the court also has inherent powers to call on an intermediary in other cases.
**Intimidated witness** – ‘Intimidated’ witnesses are defined by Article 5 of the Criminal Evidence (NI) Order 1999 as those whose quality of testimony is likely to be diminished by reason of fear or distress. In determining whether or not a witness falls into this category, the court will take account of a number of factors, including the nature and circumstances of the offence, the age and circumstances of the witness and the behaviour of the defendant or their family/associates. Intimidated witnesses are sometimes included under the umbrella term ‘vulnerable’ witness and are sometimes excluded from it, depending on whether a narrow or broad definition of ‘vulnerability’ is applied.

**Legal representative** – In this guidance, the term ‘legal representative’ is used both generally, to cover all legal advisers to any party to the proceedings, and more specifically, to refer to advocates appearing in court on their behalf. A legal representative will normally be a qualified solicitor or barrister.

**Live link** – One of the special measures that the Criminal Evidence (NI) Order 1999 allows for eligible witnesses is that they may give evidence (both examination in chief and cross-examination) by means of a live link. According to Article 12(6) of the Criminal Evidence (NI) Order 1999, ‘live link’ means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there, and to be seen and heard by the judge, the jury (if there is one), legal representatives acting in the proceedings and any interpreter appointed to assist the witness. The link enables the witness to give evidence from another room, without appearing in open court in the presence of the defendant, the jury and the public. The witness sits in front of a television monitor and can see the faces of those who put questions to them. The witness’s demeanour can be observed in court and all proper questions can be put, so that the use of the live link does not detract from the right to cross-examine. The judge is also able to monitor the conduct of any other person who is in the room with the witness in the role of supporter. Child witnesses are normally cross-examined using live link.

**Magistrates’ court** – The criminal court that tries most offences, specifically non-serious cases that are triable summarily only, and offences triable either on indictment or summarily (either-way offences) which are judged to be suitable for summary trial. District Judges try cases alone in the magistrates’ court, while a youth court consists of one District Judge and two lay magistrates.

**Newton hearing** – Where a defendant pleads guilty to a charge, it may still be necessary to hold a hearing to establish the facts that are relevant to sentencing, particularly where there is a conflict between the prosecution and the defence as to what actually occurred. The hearing at which evidence is called to establish a factual basis for sentencing is called a ‘Newton’ hearing after the case in which the procedure was established.
**Pre-trial hearing (or review)** – Hearings before a trial in the Crown Court or a contest in the magistrates’ or youth court are focused on resolving pre-trial issues and managing the case. In the Crown Court such hearings are called ‘pre-trial hearings’; in the magistrates’ or youth court they are called ‘pre-trial review’. This guidance emphasises the importance of an early pre-trial hearing/review to make decisions in relation to special measures and ensure that the needs of victims and witnesses have been properly considered.

**Quality** (of an eligible witness’s evidence) – According to Article 4(5) of the Criminal Evidence (NI) Order 1999, ‘quality’ means quality in terms of completeness, coherence and accuracy, and ‘coherence’ for this purpose refers to a witness’s ability when giving evidence to give answers that address the questions put to them and can be understood both individually and collectively.

**Special measures** – The measures specified in the Criminal Evidence (NI) Order 1999, as amended, which may be ordered in respect of some or all categories of eligible witnesses by means of a special measures direction. The special measures are the use of screens; the giving of evidence by live link; the giving of evidence in private; the removal of wigs and gowns; the showing of video recorded evidence in chief, and aids to communication.

**Special measures direction** – The order by which the court states which, if any, of the measures specified in the Criminal Evidence (NI) Order 1999 will be used to assist a particular eligible witness. Directions may be discharged or varied during the proceedings but normally continue in effect until the proceedings are concluded, therefore enabling the witness to know what assistance to expect. In deciding which measures to employ, the court is aiming to maximise the quality of the witness’s evidence so far as practicable, while still allowing the party challenging the evidence to test it effectively. The witness’s own views are also considered.

**Trial** – Unless the defendant pleads guilty the prosecution must establish their guilt by calling evidence, the truth of which is then assessed (tried). In the Crown Court, the body that decides the disputed issue of guilt or innocence is the jury. In the magistrates’ court it is the District Judge.

**UNO-CINI (Understanding the Needs of Children in Northern Ireland)** – The multidisciplinary assessment of need framework for use in Northern Ireland, used primarily by Health and Social Care agencies but suitable for use by other agencies working with children.

**Video recording** – According to Article 2(2) of the Criminal Evidence (NI) Order 1999, ‘video recording’ means ‘any recording, on any medium, from which a moving image may by any means be produced, and includes the accompanying sound-track’.
Vulnerable witness – The Criminal Evidence (NI) Order 1999, as amended, provides for the making of special measures directions to assist certain vulnerable witnesses in giving evidence. Vulnerability is effectively defined in two ways. In the narrow sense it can be confined to witnesses defined as ‘vulnerable’ under Article 4 of the 1999 Order because they are under 18 or have a mental disorder, significant impairment of intelligence and social functioning, or a physical disorder/disability; when the term ‘vulnerable witness’ is used in this way, ‘intimidated’ witnesses (see above) tend to form a separate category.

Youth court – The youth court deals with most young people aged between 10 and 17 who are prosecuted for criminal offences. However, young people who are accused of homicide are heard in the Crown Court. The youth court can also send young people accused of very serious crimes, such as sexual assault or cases where an adult could be sent to prison for 14 years or more, to the Crown Court if it thinks its own powers are not sufficient. Magistrates who sit in the youth court receive specialised training.
In an unreported judgment in Northern Ireland involving an adult victim who suffered from Cerebral Palsy and who also had learning difficulties, the prosecution successfully sought leave to adduce the victim’s video interviews and her social worker’s interpretation of her speech as the victim’s evidence in chief and also that the social worker was permitted to act as interpreter during cross-examination.

The defendant was charged with a number of sexual offences which had been committed over a number of years. The victim had been video interviewed and, by reason of her disability, she had been accompanied by her social worker who, by reason of her occupation and experience, was able to interpret for the victim. The prosecution submitted that, in the absence of the social worker’s interpretation, the evidence would be unintelligible.

Article 7(2) of the 1999 Order provides “Where the court determines that the witness is eligible for assistance by virtue of Article 4 or 5, the court must then

(a) determine whether any of the special measures available in relation to the witness (or any combination of them) would, in its opinion, be likely to improve the quality of evidence given by the witness; and etc.”

Quality is defined in Article 4(5) as “in terms of completeness, coherence and accuracy; and for this purpose coherence refers to a witness’s ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively”.

It was submitted by the prosecution that the case in question was directly analogous with R-v-Duffy [1998] Crim LR 650, although, in this case, the victim and the social worker would be available for cross-examination. It was further submitted that permitting the social worker to interpret would not offend the rule in R –v- Mitchell [1970] Crim LR.

The prosecution submitted that the social worker’s ability to interpret the victim’s speech was based on both her professional competence and her experience of working with the victim, and, as a result, it would not be possible to obtain an interpreter who had not worked with the victim. It was further submitted that it would be in the interests of justice that the social worker’s interpretation be adduced in evidence, otherwise it would not be possible for the victim to give any comprehensible evidence.
Understanding the Needs of Children in Northern Ireland (UNOCINI)

Assessment Framework

Child’s Needs
- Health and Development
- Education and Learning
- Identity, Self-Esteem and Self-Care
- Family and Social Relationships

Parents’ or Carers’ Capacity to Meet the Child’s Needs
- Basic Care and Ensuring Safety
- Emotional Warmth
- Guidance, Boundaries and Stimulation
- Stability

Family and Environmental Factors
- Family History, Functioning and Well-Being
- Extended Family and Social & Community Resources
- Housing
- Employment and Income
Levels of Need

Level 1: Base Population
Children 0-10 living in Northern Ireland, including children and families who may require occasional advice, support and/or information

Level 2: Children with additional needs
Vulnerable children who may be at risk of social exclusion

Level 3: Children in need
Children with complex needs that may be chronic and enduring

Level 4: Children with complex and/or acute needs
Children in need of rehabilitation; children with critical and/or high risk needs; children in need of safeguarding (inc LAC); children with complex and enduring needs.
Relevant extracts from R v Momodou & Limani [2005] EWCA Crim 177; [2005] 2 All ER 571; [2005] 2 Cr App R 6 are set out below. This is an important judgement which is worth studying in full.

It was an agreed fact between the prosecution and the defence at trial that, the training offered by Bond Solon was “wholly inappropriate and improper”. The judge took a particularly robust view of what had happened and unusually directed that he should there and then be expressly associated with that agreed fact. In the case of one defendant against whom the evidence largely consisted of witnesses who had been so trained, he withdrew the case from the jury. In relation to the present appellants, and other defendants, his directions to the jury were uncompromising. In a broad ranging, stinging, criticism, he ended this part of his directions to the jury:

“There is no place for witness training in our country, we do not do it. It is unlawful.”

We have however further examined whether the information about witness treatment or training which, with the assistance of the prosecution, became available by the end of the trial, should lead us to doubt the safety of the conviction. Again, no criticism can be directed at the way the judge summed up these issues. To the contrary he was at the greatest pains to give lengthy, unequivocal and robust support to every aspect of the conduct of Group 4 which was rightly criticised before the jury by the prosecution and the defendants. We have no reason to doubt that the jury would have been fully alert to those directions and the judicial concern which led to their expression.
Witness Care

ICAS

57 The ICAS [Independent Counselling and Advisory Service] arrangements were not improperly motivated. As employers, Group 4 provided this facility for members of their staff who wished to have it, or thought they needed it. Two potential dangers were identified. First, discussions between those who had been grouped together during specific parts of the incident might influence individual recollections, and second, there would be no means of checking whether this had happened.

58 We understand the submission, but we are unimpressed with it as a matter of complaint. It was not unreasonable for employers to do everything they could to alleviate the pressures and stresses endured by those members of their staff who were involved in or witnessed this incident. In its immediate aftermath, we can well understand why little, if any, thought was given to the position of potential witnesses who might become involved in any subsequent prosecutions of any detainees. At that time there was no process to be abused. Litigation, civil or criminal, would have been far from the mind of any of these potential witnesses. Many of them had endured a ghastly experience. Provided that no attempt was made to conceal what had happened from the jury (and none was), it was not abused. Each relevant witness for the prosecution was cross-examined about his or her involvement in the ICAS arrangements, and the jury was properly informed of the relevant facts.

McGurk

59 The later cognitive therapy is more troublesome because, by then, the employees who needed such treatment included witnesses in the forthcoming prosecution. The potential conflict between necessary pre-trial treatment for a witness or victim of crime and the possible contamination of that evidence by constant out of- court reiteration or aspects of treatment which consciously or unconsciously involved the prodding of memory is well-recognised. Without treatment, some victims and witnesses may suffer serious continuing psychological ill-health. On the other hand, treatment which involves discussion and analysis of the incident which is the subject of the prosecution may affect the clarity and accuracy of the witnesses’ memory. The dilemma is most frequently observed in cases where the victim has endured serious, sometimes prolonged, sexual crimes. Early treatment would help the victim to come to terms with what she (as it usually is) has suffered. The treatment process however does sometimes lead to a reduced possibility of conviction. In some cases therefore the conundrum resolves itself into a decision about priorities. The correspondence encapsulates this dilemma. Where, as here,
the court was not involved in the decision about priorities, the critical requirement is that the court should be properly informed of any witness who has received pre-trial treatment of any kind. That enables its possible impact on the evidence to be investigated at trial, as appropriate. The trial then proceeds on the basis of the known facts, which can be properly assessed.

60 In the present case, by the time the jury retired, it was fully informed of precisely which prosecution witnesses had attended for the McGurk cognitive therapy, and when it happened, and the identity of others who received treatment at the same time. With the judge’s directions, and in the context of very modest levels of therapy which actually took place, and the very limited possibility of cross-contamination of evidence which related to the participation of either appellant in the violent disorder, a proper evaluation of their evidence could be made.

**Witness training (coaching)**

**Bond Solon**

61 There is a dramatic distinction between witness training or coaching, and witness familiarisation. Training or coaching for witnesses in criminal proceedings (whether for prosecution or defence) is not permitted. This is the logical consequence of well-known principle that discussions between witnesses should not take place, and that the statements and proofs of one witness should not be disclosed to any other witness. (See Richardson [1971] CAR 244; Arif, unreported, 22nd June 1993; Skinner [1994] 99 CAR 212; and Shaw [2002] EWCA Crim 3004.) The witness should give his or her own evidence, so far as practicable uninfluenced by what anyone else has said, whether in formal discussions or informal conversations. The rule reduces, indeed hopefully avoids any possibility, that one witness may tailor his evidence in the light of what anyone else said, and equally, avoids any unfounded perception that he may have done so. These risks are inherent in witness training. Even if the training takes place one-to-one with someone completely remote from the facts of the case itself, the witness may come, even unconsciously, to appreciate which aspects of his evidence are perhaps not quite consistent with what others are saying, or indeed not quite what is required of him. An honest witness may alter the emphasis of his evidence to accommodate what he thinks may be a different, more accurate, or simply better remembered perception of events. A dishonest witness will very rapidly calculate how his testimony may be “improved”. These dangers are present in one-to-one witness training. Where however the witness is jointly trained with other witnesses to the same events, the dangers dramatically increase. Recollections change. Memories are contaminated. Witnesses may bring their respective accounts into what they believe to be better alignment with others. They may be encouraged to do so, consciously
or unconsciously. They may collude deliberately. They may be inadvertently contaminated. Whether deliberately or inadvertently, the evidence may no longer be their own. Although none of this is inevitable, the risk that training or coaching may adversely affect the accuracy of the evidence of the individual witness is constant. So we repeat, witness training for criminal trials is prohibited.

62 This principle does not preclude pre-trial arrangements to familiarise witness with the layout of the court, the likely sequence of events when the witness is giving evidence, and a balanced appraisal of the different responsibilities of the various participants. Indeed such arrangements, usually in the form of a pre-trial visit to the court, are generally to be welcomed. Witnesses should not be disadvantaged by ignorance of the process, nor when they come to give evidence, taken by surprise at the way it works. None of this however involves discussions about proposed or intended evidence. Sensible preparation for the experience of giving evidence, which assists the witness to give of his or her best at the forthcoming trial is permissible. Such experience can also be provided by out of court familiarisation techniques. The process may improve the manner in which the witness gives evidence by, for example, reducing the nervous tension arising from inexperience of the process. Nevertheless the evidence remains the witness’s own uncontaminated evidence. Equally, the principle does not prohibit training of expert and similar witnesses in, for example, the technique of giving comprehensive evidence of a specialist kind to a jury, both during evidence-in-chief and in cross-examination, and, another example, developing the ability to resist the inevitable pressure of going further in evidence than matters covered by the witnesses’ specific expertise. The critical feature of training of this kind is that it should not be arranged in the context of nor related to any forthcoming trial, and it can therefore have no impact whatever on it.

63 In the context of an anticipated criminal trial, if arrangements are made for witness familiarisation by outside agencies, not, for example, that routinely performed by or through the Witness Service, the following broad guidance should be followed. In relation to prosecution witnesses, the Crown Prosecution Service should be informed in advance of any proposal for familiarisation. If appropriate after obtaining police input, the Crown Prosecution Service should be invited to comment in advance on the proposals. If relevant information comes to the police, the police should inform the Crown Prosecution Service. The proposals for the intended familiarisation programme should be reduced into writing, rather than left to informal conversations. If, having examined them, the Crown Prosecution Service suggests that the programme may be breaching the permitted limits, it should be amended. If the defence engages in the process, it would in our judgment be extremely wise for counsel’s advice to be sought, again in advance, and again with written information about the nature and extent of the training. In any event, it is in our judgment a
matter of professional duty on counsel and solicitors to ensure that the trial judge is informed of any familiarisation process organised by the defence using outside agencies, and it will follow that the Crown Prosecution Service will be made aware of what has happened.

64 This familiarisation process should normally be supervised or conducted by a solicitor or barrister, or someone who is responsible to a solicitor or barrister with experience of the criminal justice process, and preferably by an organisation accredited for the purpose by the Bar Council and Law Society. None of those involved should have any personal knowledge of the matters in issue. Records should be maintained of all those present and the identity of those responsible for the familiarisation process, whenever it takes place. The programme should be retained, together with all the written material (or appropriate copies) used during the familiarisation sessions. None of the material should bear any similarity whatever to the issues in the criminal proceedings to be attended by the witnesses, and nothing in it should play on or trigger the witness’s recollection of events. As already indicated, the document quoted in paragraph 41, if used, would have been utterly flawed. If discussion of the instant criminal proceedings begins, as it almost inevitably will, it must be stopped. And advice given about precisely why it is impermissible, with a warning against the danger of evidence contamination and the risk that the course of justice may be perverted. Note should be made if and when any such warning is given.

65 All documents used in the process should be retained, and if relevant to prosecution witnesses, handed to the Crown Prosecution Service as a matter of course, and in relation to defence witnesses, produced to the court. None should be destroyed. It should be a matter of professional obligation for barristers and solicitors involved in these processes, or indeed the trial itself, to see that this guidance is followed.

66 On the facts apparently established, alternatively on the factual assumptions made at trial, so far as these appellants were concerned this guidance was not complied with in relation to two witnesses, Wakefield and Burns. As already indicated, their names were among those provided to the defence as having attended for training.

67 We have closely examined the relevant material. We have already noted the facts agreed by the Crown at trial and the judge’s directions. The fact of and the arrangements for the training programme organised by Group 4 with Bond Solon reflected adversely not on the defence but on the Crown. Legitimate and powerful forensic criticism of the facts was made by the defence: the Crown conceded its justification: the judge unequivocally endorsed it. In Wakefield’s case, his contemporaneous notes of the incident were made on the following day. If his evidence drifted away from those notes, there was ample scope for cross-
examination. In Burns’ case, her evidence was not wholly critical of Limani. In any event, the way in which the “training” issue was left to the jury meant that it was damaging to the creditworthiness of every witnesses who received it. In the result, looking at the evidence overall, the arrangements for training for Burns and Wakefield do not undermine the safety of the conviction.
Preliminaries

E1  The following guidance sets out the basic recommendations about the equipment that should be used to achieve a standard of recording that is adequate for use in court and is likely to meet the requirements of court rules. The general specifications for equipment purchased before September 2010 can be found in Visual Recording of Evidence within the Criminal Justice System – Equipment Specification Private Standard (2004). The specifications for new equipment purchased after September 2010 fall within the scope of the Information Systems Improvement Strategy (ISIS). A list of approved suppliers of this equipment is available from ISIS at ISIS@npia.pnn.police.uk. Basic hand-held equipment should not be used and more reliable tripod-mounted portable equipment should only be used in exceptional circumstances, for example when the witness has severely limited mobility and is in hospital or residential care. Preference should always be given to the use of a fixed interview suite over the use of portable equipment. It should also be noted that, if the use of portable recording equipment is decided on, then the rationale for such deployment must be clearly recorded by the investigating officer. When this equipment has to be used, follow the guidance in paragraphs E17 to 20.

E2  For the purposes of this guidance, video recorded interviews may be carried out using either analogue (VHS tape) or digital (currently DVD disk; however, this may change with the development of digital technology) recording equipment. This is permissible by virtue of the meaning ascribed to ‘video recording’ in Article 2 of the Criminal Evidence (NI) Order 1999. The use of two cameras is recommended: one pan, tilt, zoom (PTZ) camera to record the picture of the witness, and one wide-angle lens camera to capture the view of the whole room.
Whatever equipment is chosen, it must only be operated by properly trained staff (equipment operators). The equipment operator has the overall responsibility for the quality of the captured image, and for the smooth and effective running of the recording equipment. The recording equipment should be properly maintained and regularly tested. Such testing should involve making a short recording using sound and vision, and replaying the recording on another machine to confirm that the quality is adequate. Testing should be the responsibility of a local technician or other suitably trained person, and should be governed by local procedures.

Interviews should not normally be conducted in an operational police station, but in a specifically equipped interview room. However, where it is impractical to locate the interview room in a building other than a police station, consideration should be given to having a separate entrance for witnesses attending the interview suite. If this is not possible, then care should be taken to avoid operational areas such as custody suites and suspect interview rooms, and the interviewing officer should arrange to meet the witness so that they can be escorted straight to the interview suite without any undue delay, or any need to explain themselves to station reception officers or other police staff. The room should be selected to ensure a reasonably quiet location away from traffic or other sources of noise such as offices, toilets and banging doors. It should have a carpeted floor and curtains on the windows. Ideally, the room should be rectangular (not square) and no larger than necessary (less than 5m by 4m). When furnishing the room for the interview, consideration should be given to simplicity in order to avoid a cluttered image on the screen. The furniture should be set out in advance in relation to camera angles and the light source, and to obtain the best view possible.

It is very important that the furniture, cushions and, in the case of children, any toys or props do not provide a source of noise or distraction. Furniture filled with polystyrene chips (such as beanbags) should not be used and care should be taken to avoid intrusive noise from other sources, such as rustling papers.

**Equipment operator**

The equipment operator must remain in control of the recording equipment at all times during the interview process until the final recorded media (DVD or VHS) is ejected. It is their responsibility to ensure that the quality of the recorded media is acceptable. Guidance for this can be found in paragraphs E7 to 16. The equipment operator’s role may also include the completion of evidential statements as to the reliability and function of the equipment, and the preparation of any ‘Index to video recorded interview’. The equipment operator’s role should, therefore, be independent from that of the interviewer.
Vision

E7  For the purposes of this guidance, video recorded interviews may be carried out using one or two cameras. However, while the use of a single fixed camera need not produce a recording of inferior quality, it will provide less assurance to the courts as to who was present in the room throughout the interview. This requirement can most easily be satisfied by the use of two cameras: one PTZ camera that is focused on the witness, and one wide-angle lens camera giving a general view of the room. If only one camera is to be used, the requirement of the rules may need to be satisfied by evidence from those who were present at the interview. A single-camera system is unlikely to be suitable for very young witnesses who are more likely to move around the room.

E8  If a two-camera system is adopted, each camera should record to independent tapes, disks, or video streams: this option has the advantage of producing an unobscured recording of the witness. Alternatively, a vision-mixing unit can be used to allow the image from the camera that is recording the whole room to be inset within a corner of the screen that is relaying the image from the camera focused on the witness (picture-in-picture (PIP)). When operating with a PIP system, mounting the cameras close together may avoid a disorientating effect when the images are displayed on the screen. The exact placement of the cameras can best be determined by factors such as the location of doors and windows.

E9  As far as it is technically feasible, the first camera (PTZ) should aim to show the witness’s head, face and upper body clearly. If this camera is fixed, care should be taken to ensure that is not set too high or so low that the view of the witness is obstructed. A good, clear picture of the witness’s face may help the court to determine what is being said and to assess the emotional state of the witness. Every reasonable effort should be made to ensure the definition and quality of the image of the witness’s face throughout the interview. The second camera (wide-angle lens) should provide as full a picture as possible of the whole room. The court may need to be reassured that any part of the interview room that was not recorded by this camera was unoccupied: the placing of fixed furniture in any blind spot could provide that reassurance and should prevent the witness from straying into the ‘blind’ area.

E10 Some younger child witnesses may want to wander around the room. By careful placement of the furniture in a small room, it may be found that the child can be encouraged to settle in one spot and not move far from it during the interview. However, some children might find it more difficult to remain in one place. This problem might be overcome by the first camera having PTZ facilities, although using these features requires considerable skill. Although the equipment operator has no editorial function with regard to what the witness is saying or doing, care should
be taken to ensure, for instance, that particular parts of the witness's statement are not highlighted by the use of close-up. Close-ups using the first camera (PTZ), however, can be useful if the child is drawing a plan or picture, or is demonstrating with dolls or other props where the information being conveyed would otherwise be obscured. The second camera should maintain the overall view of the room.

E11 A different two-camera system to that described above has been found useful in clinical applications dealing with young and psychologically disturbed children. This system comprises two colour cameras mounted on the wall diagonally opposite each other, at eye level. The effective use of such a system is likely to require specialised, skilled resources; and, for criminal proceedings, particular care will be needed to ensure that any decisions about the editing or selection of the camera images are fully consistent with evidential objectives, and do not distort or detract from the testimony in any way.

E12 Modern video equipment does not normally require special additional lighting. Natural daylight may be perfectly adequate, particularly if enhanced by pale-coloured walls and a white ceiling. However, shafts of light, or sudden changes in natural light, can present problems for the automatic iris of the camera and should be avoided if possible. If natural daylight proves insufficient or unsuitable, normal fluorescent light can be used effectively. Ideally, the main sources of light should be either side of the camera. A mixture of natural, tungsten and fluorescent light should be avoided. This can cause unnatural effects when colour equipment is used.

Acoustics

E13 The evidential value of the video recorded interview will depend very much on the court being able to discern clearly what was said, both by the interviewer and the witness. Provided that a room of the dimensions and furnishings recommended above (see paragraphs E4 and 5) has been selected, acoustics should not present a problem. However, the selection and placing of microphones will require very careful attention if a satisfactory recording is to be made.

E14 The video recorder should preferably be capable of two-track sound recording. Ideally there should be manual recording-level controls for each sound channel so that these can be set at an appropriate level for the facilities and there should be a sound-level meter.
Microphones of the type normally used for recording interviews with suspects (i.e. boundary layer microphones) will also be suitable for the purpose of this guidance, provided that the system is correctly installed. Preferably, a minimum of two microphones should be used, with the aim of locating one close to the conversation (within two metres) to provide the main sound recording. The use of ceiling-mounted microphones is inappropriate and must be avoided. A small pre-amplifier should be used with each microphone to bring the signals up to normal audio line input levels.

Care is also needed in the placing of remote microphones if they are not to obtrude, distract or otherwise impede the witness’s communication. Witnesses may find them inhibiting and some children may be drawn to them as playthings. A further problem is that some witnesses (e.g. children) might move around the room and away from the intended location for which the equipment has been installed. A recommended solution is to mount further microphones unobtrusively on the wall to provide better recording. The use of multiple microphones will also ensure that some sound is recorded if one microphone should fail.

Portable equipment

In the event that exceptional circumstances dictate that the recording is made with a portable system, a good-quality recording may still be possible if sufficient care is taken. VHS and digital portable units with hi-fi sound are available, and 8mm VHS recorders have digital sound recording that allows for high-quality sound reproduction.

Some portable cameras will have built-in microphones and normally these will have to be used, although separate microphones should be used if they are available. The composition of the visual image that is recorded might not be ideal where the built-in microphone is used because the camera will probably need to be located near the witness to get a clear sound recording. In these circumstances, some compromise on picture content may be necessary to meet the paramount aim of obtaining a clear recording of the witness’s speech. This problem can be eliminated with the use of separate microphones on long leads so that the camera(s) can be placed in an optimum recording position.

Where the recording is made in locations other than the interview room, there may be particular problems with poor lighting or extraneous sounds which should be resolved, if possible.
Portable equipment may be less reliable than fixed systems due to damage in transit, careless handling or storage in poor conditions (e.g. exposure to heat and humidity). Where the equipment is brought in from the cold into a warm environment, condensation will form. The equipment should therefore be allowed time to warm up before it is used. Another cause of difficulty can be lack of familiarity with the controls. Again, only a properly trained equipment operator should operate this equipment. Batteries should not be relied on, but care must be taken with trailing cables to ensure that they do not present a hazard.

**Recorders and tapes**

The format of the equipment should be such as to produce recordings of suitable quality which can be played in court.

Use of a generator to insert the time and date into the picture should avoid the need to demonstrate to the court for each video recording both when the recording was made and the continuity of the interview. Such devices are therefore strongly recommended. Nevertheless, oral statements of the time and date should still be made at the beginning and at the close of the interview to confirm that the device is accurate.

The equipment should ideally be capable of making two simultaneous recordings during the interview: the master copy, that should be sealed after the interview, and the working copy. The master copy should be played only once to check its quality before its submission for criminal proceedings. If two recordings are not made during the interview, all copies required must be made in a secure and verifiable way, with a statement of where and by whom the copy was made and confirming that no further copies were made.

Where two recorders are used, the video and audio should not be looped through one recorder to the other in case of failure of one of the recorders.

Only good quality video tapes and digital disks from a reputable manufacturer, which are consistent with the specifications issued by the supplier of the recording equipment, should be used. No more than one interview should be recorded on a new, unused, sealed tape/disk. Ideally, the working copy should also be recorded on a blank tape/disk.
F1.1 A video recorded interview may replace the first stage of a vulnerable or intimidated witness’s evidence in court in a criminal case. The video recording will count as evidence of any fact stated by the witness which could have been given in evidence in court. This means that, in principle, the rules that govern procedure in court may be applied to the video recorded interview.

F1.2 There are rules that can render certain matters inadmissible irrespective of their truth, so that they cannot form part of the case. A criminal court has no power to depart from such rules. However, there are also conventions of the court which the court may relax where the need arises. The most obvious example of such a convention is the avoidance of leading questions.

F1.3 The court will not expect video recorded interviews exactly to mimic examination of a witness by counsel in court. But rules of evidence have been created in order to ensure a fair trial for the defendant, and they cannot be ignored. Where the recording that is being made is likely to form part of the prosecution’s case, early consultation with the Public Prosecution Service (PPS) should assist in identifying potential areas of difficulty. If the recording may be tendered in evidence for the defence, the defendant’s legal representative should be consulted.

F1.4 It is good practice to conduct an interview as far as possible in accordance with the rules that would apply in court. Interviewers who ignore these rules are likely to produce video recordings that are unacceptable to a criminal court. They will therefore fail to spare the witness from having to give the first stage of their evidence in person. As the provisions for video recording cross-examination and re-examination under the Criminal Evidence (NI) Order 1999 will apply only to cases in which a video recording has been given in evidence as the witness’s evidence in chief, the rejection by the court of a video recording as evidence in chief means that these further provisions will also be unavailable at trial.
F1.5 This appendix explains the rationale behind those rules most likely to affect a video recorded interview – leading questions, previous statements showing consistency or truth, and statements about the bad character of the defendant. As with most rules, there are circumstances in which they need not be applied. This is easier to determine when a child is being questioned in court and the legal representatives can agree at the time with the judge what is acceptable. The interviewer has no such opportunity and should therefore err on the side of caution but, as this appendix goes on to describe, there are circumstances when the rules can properly be disregarded.

F2 Leading questions

F2.1 It is not generally permissible to put leading questions to a witness. A leading question is one which either suggests the required answer, or which is based on an assumption of facts that have yet to be proved. Therefore, ‘Daddy hurt you, didn’t he?’ is an example of the first type of leading question, and ‘When did you first tell anyone about what Daddy did?’, put to a child who has not yet alleged that Daddy did anything, is an example of the second type.

F2.2 Where a leading question is improperly put to a witness in court, the answer is not inadmissible but may be accorded little or no weight because of the manner in which it was obtained. When witnesses testify live in court, a leading question can be objected to before a witness replies. The party objecting to such a question in a video recorded interview has no such opportunity and so may ask for part of the video recording to be edited out.

F2.3 However, there are circumstances where leading questions are permissible:

- A witness is often led into their testimony by being asked to confirm their name and address or some other introductory matter, because these matters are unlikely to be in dispute. More central issues may also be the subject of leading questions if there is no dispute about them. For example, where it is common ground that a person, X, has been killed at a particular time, it is not inappropriate to ask a witness ‘What were you doing when X was killed?’ However, at the interview phase it may not be known what facts will be in dispute at the trial, and so it will be safer to assume that most matters are still in dispute.

- The courts also accept that in certain cases other than the above it is impractical to ban leading questions. This may be because the subject matter of the question is such that it cannot be put to the witness without leading, as for example when the witness is to be asked to identify the person who
hurt them. Or it may be because the witness does not understand what they are expected to tell the court without some prompting, as in the case of a very young child or a person with a learning difficulty.

F2.4 An interviewer who follows the provisions in the guidance as to the conduct of an interview will avoid leading questions. As the courts become more aware of the difficulties of obtaining evidence in an interview with a vulnerable or intimidated witness, particularly from witnesses who are very young or who have a learning difficulty, and of counteracting the pressure on some witnesses to keep silent, a sympathetic attitude may develop towards necessary leading questions. A leading question that succeeds in prompting a witness into providing information spontaneously beyond that led by the question will normally be acceptable. However, unless there is absolutely no alternative, the interviewer should never be the first to suggest to a witness that a particular offence was committed or that a particular person was responsible. Once this step has been taken, it will be extremely difficult to counter the argument that the interviewer put the idea into a suggestible witness’s head and that the witness’s account is therefore false.

F2.5 If leading questions are judged by the court to have been improperly used during the interview, it may well be decided not to show the whole or that part of the recording to the court, so that the witness’s answers will be lost. Alternatively, the whole interview may be played, leaving the judge to comment to the jury, where appropriate, on the weight to be given to that part of the evidence that was led. Neither outcome is desirable, and both can be avoided if interviewers avoid leading questions.

F3 Previous statements

F3.1 A witness in court is likely to be prevented by the court from giving evidence of what they have previously said or what was said to them by another person. If allowed in evidence, previous statements might have two functions. First, in the case of the witness’s own statement, the court might be asked to take account of the fact that the witness has consistently said the same thing in deciding whether they are to be trusted. Secondly, in the case both of the witness’s own statements and of statements made to them by others, the court might be asked to take the further step of deciding that what was said out of court was true. In a criminal trial, both functions are frowned on: the first because, in law, it says little for the reliability of a witness to show that they have been consistent; and the second because courts are reluctant to accept statements as true unless made in court and subject to the test of cross-examination.
F3.1 Previous statements showing consistency

F3.1.1 Although consistency adds little to the credibility of the witness, it will always be proper for the interviewer to ask the witness if they have told anyone about the alleged incident(s), who they told, when they told them and why. But the interviewer must not ask the witness details of what was said except in certain circumstances. These circumstances are as follows:

- when a witness has voluntarily given details of an alleged sexual offence soon after that offence took place; and
- when a witness has previously made a positive identification of the defendant. Identification may be formal (in the course of an identification parade) or informal, for example where a child points out the defendant to a teacher and says ‘This man tried to push me into his car’. Where such a prior identification has been made, it may be referred to in the video recorded interview.

F3.1.2 A case that may give rise to difficulty is where there is some doubt as to the fairness of admitting the identification. If, for example, a child tells her father that she has just been sexually assaulted by a man in a leather jacket, and the father apprehends the first leather-clad man he sees and demands ‘Is this him?’, a court might be understandably reluctant to admit the child’s positive answer as a positive identification, and therefore it should not be mentioned in the video recorded interview. The interviewer must be aware of the circumstances of any identification made by the child before the interview.

F3.2 Previous statements showing truth

F3.2.1 The technical name for an out-of-court statement that is used in court to prove that what was said is true is ‘hearsay’. The admissibility of hearsay is now governed by the Criminal Justice (Evidence) (NI) Order 2004. Article 18 of the 2004 Order provides that hearsay statements are generally inadmissible, unless:

- it can be brought under a statutory provision;
- it is admissible under common law – which is set out in Article 22;
- the parties agree; or
- the interests of justice require it to be admitted.

F3.2.2 The statutory grounds of admissible hearsay statements in Article 21 cover business or professional documents, where it is a specific previous statement of a witness or where the witness is unavailable.
F3.2.3 Words (and conduct – e.g. nodding in agreement) are only hearsay if used to prove their truth. There may be other reasons for proving that words were spoken, in which case the hearsay rule is not broken. For example, a witness’s report of a child’s statement ‘Dad taught me to fuck’ would be admissible to demonstrate a child’s use of age-inappropriate language but inadmissible as evidence that the child’s father had had intercourse with her.

F3.2.4 The use of a video recording of an interview with a witness as part of the witness’s evidence is itself an example of a statutory exception to the rule against admitting hearsay evidence. Without a detailed appreciation of the scope of the provisions, it will be difficult for an interviewer to gauge the chances of a hearsay statement being regarded as admissible in court, and it is best to aim to avoid the inclusion of previous statements in the interview so far as possible. There are a couple of rules of thumb which should assist:

- With the exception of inconsistent statements, or statements of identification or complaint that are respectively referred to in Articles 23 and 24 of the Criminal Justice (Evidence) (NI) Order 2004, most statements made by the witness about the alleged offence prior to the interview are likely to be hearsay and should not be deliberately elicited from the witness during a video recorded interview. If the witness spontaneously begins an account of what has been said to them, the interviewer may decide that it is best not to interrupt. If so, it should be remembered that this section of the recording is likely to be edited so it will be necessary to go over any relevant non-hearsay information gleaned at this point at a later stage of the interview.

- The video recording should capture the witness’s responses directly, as the interviewer’s description of the witness’s response is itself hearsay. For example, if a child is asked where she was touched by an abuser and in response she points to her genitals, that action should be captured by the camera. It will not be enough for the interviewer to say ‘She is pointing to her genitals’, as this is a statement of the interviewer, not the child. Once this is understood, it should be relatively easy to ensure that the relevant evidence comes from the witness.

F4 Character of the defendant

F4.1 An important rule of evidence concerns the previous bad character of the defendant. The Criminal Justice (Evidence) (NI) Order 2004 significantly expanded the circumstances in which the bad character of the defendant may be admissible at trial. ‘Bad character’ is defined as evidence of or of a disposition towards misconduct. ‘Misconduct’ means the commission of an offence or ‘other reprehensible conduct’ and includes previous convictions, previous charges and other trials pending and may include evidence of bullying or racism.
A basic understanding of the expanded circumstances should assist interviewers in deciding what evidence may be admissible at trial. Article 6 of the 2004 Order sets out the circumstances in which bad character evidence that is relevant to the issues in the case may be admissible. There are seven ‘gateways’ to admissibility. These include evidence that is ‘important explanatory’ evidence (e.g. evidence about motive) and evidence relevant to an important matter in issue (for Article 6 purposes, whether the defendant have a propensity to commit offences of the type with which they are charged or to be untruthful).

Despite the change in the law, the interviewer should be cautious when witnesses mention such discreditable facts. It is important to remember that the admission of evidence of bad character in these circumstances is very much a matter for the court and should not be taken for granted at the time of the interview. The court will not, in particular, admit bad character evidence relevant to an important matter in issue if it thinks it would have an adverse effect on the fairness of the proceedings.

In many cases, the line between admissibility and inadmissibility is a difficult one to draw. Complex legal considerations are involved. All that can be done before the trial when making a video recording that may be put in evidence by the prosecution is to estimate the chances that the court will be prepared, say, to hear that a schoolteacher has been accused of buggery by four of his pupils, or a father of incest by two daughters. This presents no difficulty for the interviewer if the evidence of one witness is quite separate from that of another. However, it may be that the victim of one offence claims to have witnessed the occurrence of another offence against a different victim. In such cases it might be advisable, following consultation with the PPS, to record separately the witness’s account of (i) offences allegedly committed against them; and (ii) what they know about offences involving other victims.

The court’s discretion to exclude evidence

A court trying a criminal case has a general power to exclude evidence tendered on behalf of the prosecution, even if the evidence complies with the strict rules of admissibility. Under Article 76 of the Police and Criminal Evidence (NI) Order 1989, the court may exclude evidence on the grounds that, because of the way in which it was obtained or for any other reason, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it. Courts may also exercise a common law power (i.e. one supported by previous decisions of the courts) to exclude evidence, the prejudicial effect of which outweighs its probative value. The definition of these powers is deliberately broad in order to preserve their flexibility.
Specifically in relation to out-of-court statements (hearsay), Article 30 of the Criminal Justice (Evidence) (NI) Order 2004 provides the courts with a discretion to exclude ‘superfluous’ statements if they are satisfied that the value of the evidence is substantially outweighed by the undue waste of time that its admission would cause. Where the prosecution wishes to adduce evidence of the defendant’s bad character either under the gateways relating to an important matter in issue or when the defendant attacks another’s character, and the defendant applies to exclude it, the court must exclude that evidence if it would have an unfair effect on the proceedings.

It is unlikely that the powers described above will be invoked with regard to video recorded evidence, as the court has the duty, under Article 15(2) of the Criminal Evidence (NI) Order 1999, to exclude a recording that in the interests of justice ought not to be admitted. This duty applies equally to video recordings tendered in evidence by the prosecution and those tendered by the defence. It also empowers a court to exclude part of a recording only. The court is likely to refer to Article 15(2) first when ruling on whether a video recording should be received in evidence, and it is unlikely that a recording that the court decided to admit under Article 15(2) would be found to be objectionable by applying either the common law power or the power in Article 76 of the Police and Criminal Evidence (NI) Order 1989 described above. A court might, however, invoke its discretion under Article 76 or common law to exclude other evidence, for example the evidence of what occurred when a witness attended an identification parade that was adjudged to have been unfair.
G1 Introduction

G1.1 The purpose of this guidance is to identify the functions served by the compilation of an Index to Video Recorded Interview (IVRI) with a vulnerable or intimidated witness, and to assist those completing IVRIs to include all the relevant points and details.

G1.2 An IVRI is distinct from a ROTI, which is a Record of Taped Interview with a suspect. It is not:
- a statement;
- a transcript;
- a replacement for the video; or
- an exhibit.

G1.3 An IVRI should not be confused with any notes that might be taken by an interview monitor during an interview for the purpose of determining any immediate investigative action that might be necessary.

G1.4 The functions served by an IVRI are such that one should be compiled in every case where a vulnerable or intimidated witness is interviewed on video, irrespective of whether or not a transcript is subsequently created.

G2 Functions of an IVRI

G2.1 The overall function of an IVRI is to contribute towards the effective investigation and management of a case, by guiding investigating officers and prosecutors through their viewing of the interview.
G2.2 During the pre-charge investigation, an IVRI should assist informed decision-making as to:
• whether the witness should be re-interviewed;
• what further enquiries should be conducted;
• planning interviews with alleged offender(s); and
• pre-charge advice/charging decisions.

G2.3 Following a decision to charge, an IVRI should assist:
• prosecutors to make decisions about editing;
• prosecutors to prepare for a pre-trial interview with the witness;
• prosecutors at bail applications and guilty pleas;
• transcribers at the PPS Video Transcription Unit (VTU); and
• prosecuting and defence advocates in the preparation of their case.

G3 Content of a IVRI

G3.1 General content

G3.1.1 IVRIs must always be recorded on the appropriate form, typed where possible, and should meet the following specifications:
• all fields at the top of the form should be completed or deleted as appropriate (e.g. the exhibit box should be deleted or marked ‘not applicable’);
• all time entries should be recorded in hours, minutes and seconds using the clock shown on the video; and
• speakers should be identified against the relevant time entry and text.

G3.2 Descriptive content

G3.2.1 Although each interview is unique, as a general rule an IVRI should be as succinct as possible. Most of what is reported should be in indirect speech, but direct speech should be used where local, idiosyncratic or potentially ambiguous language is reported.

G3.2.2 The finished IVRI should, as far as possible, give a chronological account of the conduct of the interview and include the following:
• rapport (engage and explain), including ground rules and, where appropriate, truth and lies. Simply identifying that a rapport phase took place will usually be all that is required in an IVRI. However, there may be occasions when further information needs to be included, for example where the witness’s appreciation of distance, colour, number and times are relevant;
• identification issues, such as detailed descriptions or identifying features of suspects. This should include the identification points raised in the R v Turnbull and Camelo (1976) case;
• details of the location of the event witnessed;
• points to prove the offences;
• details of the time, frequency, dates, locations and those present when the offence(s) occurred;
• the extent of any injuries;
• any threats and admissions made;
• key statements made by the witness, the suspect or other witnesses;
• anything that negates a potential defence (e.g. consent);
• any aggravating factors (including racial, homophobic, gender, etc.);
• any corroborative evidence identified (witnesses, CCTV, forensic, etc.); and
• any issue that undermines the prosecution case or supports the defence case.

G3.2.3 Where a Victim Impact Statement has been made on the same tape/disk, reference to that fact should be made on the IVRI, and a short summary included.

G3.2.4 Background material of no apparent relevance should be summarised in general terms as far as possible.

G4 Distribution of an IVRI

G4.1 Copies of the IVRI should be provided to all parties in the proceedings, including prosecution and defence counsel, and the judge.
H1 Introduction

H1.1 A video recording made in accordance with this guidance can be a highly valuable piece of evidence in any investigation. It is also a record of intimate and highly personal information and images, which, in the interest of the witness, should be held strictly in confidence and for its proper purpose. It is therefore essential that adequate arrangements are made to store the recording safely and securely in a steel cabinet, and that access to it or to any official copies is restricted to those authorised to view the recording.

H2 Ownership

H2.1 The video recording will be treated as a document for the purposes of criminal proceedings, and the statements in it will not belong to anybody except that in so far as they are the property of the person who made them. However, the medium on which they are made is likely to be the property of the police or social services and the fact of ownership of the recording itself conveys certain rights and responsibilities which, if properly exercised, will help to ensure that it is appropriately safeguarded.

H2.2 It is essential that all recordings (analogue tape or digital disk), whether master or working copies, containing interviews prepared under joint police/social services or NSPCC investigative arrangements, and conducted under this guidance, should be kept under optimal conditions. Decisions regarding access to any recording should be taken by the principal agency or agencies involved in their preparation. Once the case has passed to the Public Prosecution Service (PPS), decisions as to disclosure of information will be made by them. In taking such decisions, all agencies should have regard to the provisions in this appendix.
H3 Tape/disk registration, storage, management and disposal

H3.1 It is essential that local guidelines are developed by the police in conjunction with other relevant agencies covering the registration, storage and management, and disposal of recordings and any associated audio material. Such guidelines should cover all of the issues referred to in this appendix. Wherever practicable, one named person should be responsible for supervision of these functions. They must keep a movement log in which the details of all interviews are registered, as well as a record of the history of the recordings. The initial entry in the logbook should record the serial number of the recording, the names of the witness and the interviewer(s) and all others present, as well as the date and time of the interview. Any subsequent copying, transporting, viewing or editing of recordings must be registered against the relevant entry in the movement log. The movement log should be regularly supervised by a manager who has been specifically given responsibility for it.

H4 After the interview

H4.1 Once a recording is completed, in the case of VHS, the tape should be fully rewound and ejected from the recorder. The ‘record protect’ device fitted to cassettes should be activated to prevent the accidental erasure of the recording. The tape should be checked for the quality of the recording and the master copy should be sealed in the presence of the interviewee. The seal should then be signed by all those present.

H4.2 In the case of a digital recording, the disk should be removed from the recorder, the label completed and the disk checked for audio and visual quality. It should then be placed in a box to minimise the risk of damaging the recorded surface of the disk and the master copy or copies should be sealed in the presence of the interviewee. The seal should then be signed by all those present.

H4.3 It is recommended that during the course of the interview the equipment operator prepares a brief index of the recording so that the most relevant passages regarding the alleged offence can be readily located later. The index is not a précis of the tape, but it should serve a similar purpose, enhanced by the video recording itself. The index should be carefully preserved and safeguarded along with other papers on the case. If a summary of the interview has also been prepared, a copy should be kept with the index. Paper documents should never be placed within the recording box itself because of potential damage to the recorded media.

H4.4 The master tape of the recording and all copies should be individually labelled and identified in the logbook, so that copies can be distinguished one from another and the master copy readily identified. The seal should not be broken except with the authority of the court or the PPS, in the presence of a representative of the PPS.
and for the purposes of copying or editing. The ownership of the master tape and any copies must be clearly indicated, with a warning that none must be copied or shown to unauthorised persons. A recommended form of words for the label is shown in Appendix R.

**H5 Storage**

H5.1 Video recordings will inevitably suffer deterioration and loss over time; video tape should not be considered a permanent archiving medium. New technologies, such as digital recording, may solve these problems. However, rates of deterioration can be greatly reduced by proper storage arrangements and periodic inspection.

H5.2 Tapes should be stored on edge, that is with the reels vertical, so that the tape is supported by the hub. They should be kept in rigid cases, which are clean and impervious to dust, but they should not be sealed in airtight containers, which may cause condensation damage. When taken out for viewing or copying, tapes should not be left in video recorders unnecessarily, particularly when switched off. Excessive use of the pause facility can damage or even rupture a tape. Digital disks must be kept in their box when not in use and should not be placed face-side-down on any surface, as this could inadvertently cause damage to the recorded surface by scratching. Recordings (tape or disk) must never be left lying about on desks or in players, where unauthorised persons can gain access to them.

H5.3 Before long-term storage, tapes should be first wound and then rewound, and checked for damage. All recordings must be kept in locked, secure containers. They should not be subjected to extremes of temperature or humidity, and should be stored away from any devices that cause a strong electrical or magnetic field, such as electric motors or loudspeakers.

**H6 Copies and access**

H6.1 Decisions about copying and access to recordings prepared under this guidance should be taken on an individual basis and with careful regard to the following principles:

- copying of and access to the recording of an interview should be confined to the absolute minimum consistent with the interests of the witness and justice;
- no one should have access to any recording unless they are able and willing to safeguard it to the standard set out in this guidance; and
- no persons accused or implicated in the alleged offences should have custody of, or unsupervised access to, any recording made in connection with the investigation.
H6.2 Production of copies should be minimised and carried out in a secure manner in accordance with locally agreed procedures. Particular attention should be paid to the quality of the audio track on any copy. It is recommended that, when making copies, the hi-fi track of the original recording be used as the sound source.

H6.3 In most criminal cases, access to a recording will be needed by the joint investigating team, the PPS and the court. A further copy will be required, for disclosure to the defendant’s legal representative, either because it is part or all of the case against the defendant, or because it is unused material which is disclosable under the Criminal Procedure and Investigations Act 1996. When the defendant is unrepresented, access should be under strict police supervision. Applications from other individuals or agencies to view or borrow a recording must be scrutinised carefully. Any access should be authorised only in respect of named individuals. If such individuals wish to borrow a recording, they must sign a written undertaking concerning protection and safeguarding of the recording and confirm that it will be returned to the police or local authority at the end of the proceedings. A form of undertaking, based on a model developed by the Law Society, is reproduced in Appendix S of this guidance.

H6.4 Applications from other individuals or agencies to view or borrow a recording should be scrutinised carefully. Claims to be acting in the interests of the witness or justice should be validated and considered on their merits. Consideration should always be given to allowing supervised access in preference to lending a recording; and to a loan in preference to making a further copy.

H6.5 Any persons borrowing recordings must have their attention drawn to:

- the precise ownership of the recording;
- the likelihood that such recordings will form part of a criminal trial; and
- the fact that misuse or unauthorised retention of such recordings may constitute contempt of court or other criminal offence.

H6.6 An entry must be made in the police movement log every time a recording is borrowed. The entry should include the names of the borrower and any other persons permitted to view the recording, together with details of the specific authority granted to them. Similar logbooks should also be maintained by any other body authorised to have custody of copies of recordings, and such logbooks should be available for periodic inspection by management.
H7 Disposal of recordings

H7.1 The Code of Practice made under the Criminal Procedure and Investigations Act 1996 lays down that the minimum period for the retention of interview records should be six months from the date of any conviction or from the date on which a convicted person was released from custody, whichever is the longer. Material must also be retained for the full duration of any appeal. This ruling applies both to the master copy and to any edited version of the recording approved by the court for use in the trial.

H7.2 However, for video recorded interviews with witnesses, there are good reasons for extending the retention period well beyond the minimum laid down by the Code. In addition to their use in criminal investigations and applications to the Criminal Cases Review Commission, recordings of interviews with witnesses may be used in civil proceedings and for criminal injury compensation claims, where a considerable delay can ensue between the original investigation and any proceedings. In cases of alleged sexual or physical abuse, new allegations against an accused can emerge many years after the original investigation. It will be vital to both prosecution and defence to have access to as complete a record of the original interview(s) as possible. The need for the preservation of such material needs to be weighed against the understandable concern of many witnesses to close a particular chapter in their lives and to know that all recordings dealing with their allegations have been destroyed.

H7.3 Duplicate material may be destroyed early. Once any proceedings are completed or after five years have elapsed since the interview took place, working copies of interviews can be disposed of. However, for the reasons outlined above, it is recommended that the master copy of any analogue, digital or audio recording should be retained for a period of six years where the witness was an adult at the time of the interview, or six years after the witness has attained the age of 18 years where they were a child at the time of the interview. A witness who was a child at the time of the interview may request the destruction of a recording prior to this date, when they reach the age of 18 years.

H7.4 Where tapes need to be disposed of, this is best done by crushing or by burning. Strict controls must be in place to ensure that all tapes are destroyed and a certificate must be supplied to this effect by the organisation responsible. Tapes or disks must never be reused: there is a risk of incomplete erasure of the original recording and deterioration in tape quality and reliability.
**H8 Recordings in legal proceedings**

**Recordings and transcripts**

**H8.1** Video recorded interviews are the primary medium by which vulnerable and intimidated witnesses will give their evidence in chief in court. However, it can assist the court to have a typewritten transcript of what the witness has said in their interview. The timing of a request for a typewritten transcript is important. Too early a request may result in production of a transcript which is not then required. Too late a request may provide insufficient time for production and checking of the transcript against the recording. The preparation of transcripts of such interviews for use in criminal proceedings is the responsibility of the PPS, and should not be prepared by police officers as a matter of course. Local guidelines should be established to effectively monitor and control the preparation of any transcripts initiated by the police. The checking of transcripts of interviews is an essential step in the production of the evidence and is best conducted by the person who conducted the interview.

**Collection and delivery**

**H8.2** Care should be taken in the packaging, delivery and collection of recordings by court officials and legal representatives to ensure that the security of recordings is safeguarded at all times. Recordings should be sent in tamper-proof packaging, and must be signed for when collected and received to ensure an audit trail while in transit. Wherever possible, interviews containing sensitive information or relating to evidence from children should be delivered to the PPS by hand. However, other acceptable methods for delivery of recordings can include delivery by recognised security couriers that are governed by local policies and procedures.

**Video recordings at court**

**H8.3** When a video recording is submitted to court as an exhibit in a Crown Court trial, it should be kept securely until the case is concluded.

**H9 After the court hearing**

**H9.1** At the conclusion of the case, the court will retain the tapes for an eight week period to allow for any appeal, at which point the tapes will be returned to the PPS who will sign on receipt. The police officer-in-charge will be responsible for collection from the PPS of all master tapes/disks and copies that have been produced as a result of the criminal proceedings. The movement log must then be updated to reflect the return of such recordings.
**H10 Use of recordings for training and other purposes**

**H10.1** Video recorded interviews may be used for training, or for other official purposes such as audit or research, provided that specific and informed consent has been secured, preferably from the witness themselves. Alternatively, if the witness is not in a position to provide informed consent, the adult who discharges the principal duty of care for the witness must be consulted. The witness should be reassured that granting consent does not mean that anyone who wishes to see the recording will be able to do so. Consent must not be sought before the interview, nor will it always be right to do so immediately afterwards. If consent is granted, this should be recorded in a logbook or by completing a form designated for this purpose, and should only be done at the conclusion of any criminal or civil proceedings, or when no proceedings are to be instigated.

**H11 Lost or mislaid recordings**

**H11.1** Should any recording become lost or mislaid, an internal investigation must be instigated by the last recorded agency to have possession of the recording (this should be governed by local guidance and procedures). Further copies of the recording(s) must not be routinely made to replace any lost recording(s) until the whereabouts of the lost recording(s) have been established and steps taken to recover them.
Identification parades involving vulnerable and intimidated witnesses

J1 The attendance of a vulnerable or intimidated witness at an identification parade or video identification (in which the witness sees a series of video clips of different people, including the suspect) requires advance planning and liaison between the police officer responsible for the identification procedure and the officer with knowledge of the witness. A pre-trial supporter who is not, or is not likely to be, a witness in the investigation should accompany the witness. Officers responsible for identification procedures rely on investigators to keep them apprised of any particular issues relating to witnesses and will consider measures to accommodate the needs of the witness but must take care to ensure that the procedure remains fair to the accused.

J2 The assessment of the witness’s ability is relevant. Explanations to the witness about the purpose of the identification procedure and the wording of instructions during the procedure itself should be considered ahead of time and tailored to the witness’s level of understanding. If necessary, intermediaries can assist with this.

J3 If the witness has particular communication difficulties, or requires an interpreter, someone who can communicate with the witness must attend. If the witness does not recognise numbers, consideration should be given to the use of symbols to distinguish participants. The symbols must not have any special meaning for the witness. The best evidence is a verbal identification but if the witness is unable or is likely to be unable to speak, they should be advised that it is acceptable to point. If the witness wears spectacles or contact lenses, or uses a hearing aid, these can be worn or used at the identification procedure.

J4 At identification parades, a one-way screen should always be used and should be demonstrated to witnesses before the parade itself. They should be encouraged to say if they do not understand any part of the procedure. Arrangements should be made to escort vulnerable or intimidated witnesses to and from the location where the parade is held. They should be reassured that they will not encounter anyone who took part in the line-up on leaving the building.
Code D of the Police and Criminal Evidence (NI) Order 1989 provides for the identification of persons by the police. Annex B of Code D sets out the procedures for identification parades and provides that either a colour photograph or a video film should be taken of the parade. Code D provides for other forms of identification procedure such as video identification (now the primary source of identification evidence), group identification and confrontation, which may be video recorded. The procedures are set out in Annex A. A witness giving video recorded evidence or testifying over a live link will be unable to point out the defendant in court. In the absence of a requirement in the code to video record the procedure, it is good practice to video any identification procedure where the witness subsequently may not be physically present in the courtroom. It is essential that investigating officers appraise identification staff of this requirement.
Standards for the Court Witness Supporter in the Live Link Room

(These standards are based on the ‘National Standards for the Court Witness Supporter in the Live Link Room’ set out in the England and Wales version of Achieving Best Evidence. This is an equivalent standard which has been amended to reflect Northern Ireland policy and practice.)

K1 Role of the court witness supporter

The role of the court witness supporter is, by their presence, to provide emotional support to the witness and to reduce their anxiety and stress when giving evidence, therefore ensuring that the witness has the opportunity to give their best evidence. It is normal practice that, where a court witness supporter is available, they will act as the ‘accompanying officer’ which in practice means that a member of Court Service staff will not need to be present in the live link room. However, it is for Court Service staff to ensure that the equipment in the live link room is working correctly.

K2 Identity of the court witness supporter

If the witness expresses a wish to be supported in the live link room, there can be benefits, both in reducing the stress suffered and in the quality of the witness’s evidence, if this wish is granted. However, in each individual case, it is a matter for the judge to determine who should accompany a witness in a live link room. An application by the prosecution or defence for the witness to give evidence by means of live television link may be made in advance of the trial for determination at a pre-trial hearing/review. The key characteristics of anyone acting in this capacity should be as follows:

- someone not involved in the case, who has no knowledge of the evidence and who has not discussed the evidence with the witness;
- someone who has received suitable training in their role and conduct (depending on the court witness supporter’s identity, consideration needs to be given to their training); and
- someone with whom the witness has a relationship of trust. Ideally, this should be the person preparing the witness for court, but others may be appropriate.
When the court has decided on the identity of the court witness supporter in any particular case, the prosecution, the defence, the police and the relevant witness service should be informed. The witness should be informed by either the police or the court witness supporter themselves.

**K3 Skills required by the court witness supporter for a child or vulnerable or intimidated adult witness**

Required skills include:

- impartiality;
- communication skills (including with parents/carers, professionals and young people), particularly listening skills;
- awareness of the needs of abused children and adults, the effects of crime and the effects of the court appearance on the witness;
- flexibility;
- knowledge of the criminal justice system;
- confidence of the police, the Public Prosecution Service (PPS), defence legal representatives, legal representatives and the court;
- ability to liaise and work with other agencies; and
- familiarity with the basic rules of evidence and awareness of the danger of contaminating or discrediting the evidence of the witness.

**K4 The court witness supporter's conduct**

The court witness supporter will need to act according to agreed standards of conduct, covering communication with the witness, both within and outside the live link room, ensuring the witness’s comfort and alerting the judge to any problem arising while the witness is giving evidence. Court witness supporters should be familiar with the guidance for Accompanying Officers in Appendix Q. The suggested behaviour to be observed in this role is as follows.

**K4.1 Before the witness gives evidence**

- If required, liaise with the local court office or relevant witness service to arrange a pre-trial visit.
- Liaise with the relevant witness service (where the court witness supporter is not from one of the witness services).
- Accept and follow the instructions of the judge with regard to witnesses and procedures to be observed.
• Ensure that the live link room is available and ready for the witness.
• Take the witness (and any carer) to the waiting room and ensure that they are comfortable.
• Remain with the witness at all times while in non-public areas of the court building.
• Be present in court to take the oath as required.
• Escort the witness to the live link room.

K4.2 In the courtroom

It may be necessary for the court witness supporter to be in the courtroom in which case the following would apply.

• Do not attend the trial prior to the witness giving evidence.
• Dress appropriately whilst in court.
• Enter the courtroom quietly during proceedings ensuring that there is no prohibiting noise.
• If supporting more than one witness, ensure that confidentiality is maintained and that evidence is not discussed.
• Do not make any notes whilst in court.

K4.3 In the live link room

• Sit the witness in the chair.
• Place the warning notice in the corridor and close the door.*
• As directed by the judge, swear in the witness by enabling them to repeat the oath or promise, as appropriate.*
• Communicate relevant concerns (through the agreed procedure) to the court.
• Be present throughout the time that the witness is in the room.
• Communicate if the witness cannot clearly see and hear the transmission.
• Sit beside the witness and in view of the camera, remaining visible to the judge.
• Ensure that the witness can be clearly seen by the courtroom at all times.
• Hand any exhibits to the witness without comment.
• Where requested remain with the witness during any breaks, ensuring that evidence is not discussed.
• Remain with the witness in the event of failure of the equipment.
• Prevent any unauthorised person entering the room.
• Communicate any interruption in the live link room to the court.

NB - Court Service staff performing the role of Accompanying Officer should refer to Circular 17/1996 for further guidance (see Appendix Q).
K4.4 Contact with the witness

- Do not speak to the witness about the case, or about their evidence, before or during the proceedings or in any interruption to the proceedings.
- Do not explain, interpret, guide or make comments about the evidence in the case.
- Do not interrupt or intervene while court proceedings are taking place, unless it is to alert the judge to a problem.
- Do not prompt or seek to influence the witness in any way.
- Ensure that any other person in the room observes these prohibitions.
- Maintain a neutral but sympathetic manner, in order to provide comfort and reassurance, and help the witness to give their evidence clearly, with a minimum of stress.
- If the witness becomes distressed and the proceedings are interrupted, the court witness supporter may listen if the witness talks about the case, and may make comforting gestures to ease the witness’s distress.
- When requested by the judge, direct the attention of the witness to the questioner.

K4.5 In case of difficulties

- In the event of a problem, contact the court through the agreed procedure.
- If necessary, speak to the judge via the live link (according to the procedure previously agreed with the court).

K4.6 After the evidence has been given

- After completion of the evidence, return with the witness to a safe place.

* Tasks which could be carried out by the court witness supporter, but which would be more appropriate for a member of the court staff, if one is present.

K5 Key steps, responsibilities and considerations for the court witness supporter in the live link room

The six steps below set out some of the key roles and responsibilities involved for agencies and organisations responsible for assisting witnesses to make an informed decision about the court witness supporter where there is a likelihood that a live link special measures application will be made - supporters in the live link room. This should be seen as good practice.
K5.1 Police investigation

The role of the witness supporter in court and views of the witness should be discussed initially with them (and, where appropriate, their parent or carer) during the explanation of special measures during the police investigation. The police should ensure that their explanation covers the following key points:

- that the role of the court witness supporter is to provide emotional support and not to discuss the evidence with the witness;
- the supporter cannot be a party to the case and must not have a detailed knowledge of the case;
- the supporter should have a relationship of trust with the witness; and
- it is a matter for the court to make the decision on the supporter after taking into account the views of the witness and the presence of a preferred supporter cannot be guaranteed.

Where possible and in appropriate circumstances, the police should provide examples about who the witness may consider might act as their supporter. The police should also provide the witness with information about pre-trial support and appropriate local support organisations.

It is acknowledged that in view of the early stage of the case, some witnesses may not be able to express a view about the identity of a court witness supporter in court during the police investigation. Nevertheless, the police should endeavour to provide the witness with basic information about the role of the supporter so that the issue can be pursued at a later time.

K5.2 Communicating the information

Once the views of the witness have been obtained by the police, this information should be recorded as part of any information to be passed to the PPS for the purposes of a special measures application. This information should include the name of any individual nominated by the witness, together with their contact details.

If necessary, the police should have a meeting with the PPS to discuss the views of the witness in further detail.

If the witness’ views have not been obtained at the interview or statement taking stage, the police should discuss the issue with the witness (and, where applicable, their carer) at a suitable time afterwards and pass the information to the PPS. Where there is an organisation offering pre-trial support, the court witness supporter should be discussed as part of the pre-trial preparation or at the pre-trial court familiarisation visit.
If the views of the witness change about special measures or the court witness supporter after initial discussions during the police investigation, the PPS should be informed by the police as soon as practicable, ideally before submission of a special measures application.

**K5.3 Special measures application**

The PPS or defence submit a special measures application to the court. In the event that the witness is unable to provide the name of an individual or does not have a view on the matter, with prior agreement, the name of the relevant witness service should be submitted on the special measures application form.

**K5.4 Court determination of application**

The Court considers the special measures application, taking into account the views of the witness and determines who will accompany the witness as a supporter in the live link room.

In the event that the special measures application is not determined at an early stage, the investigating police officer or pre-trial supporter should continue to review and ascertain the views of the witness about the supporter in the live link in case they have changed by the time the special measures application is determined.

**K5.5 Communicating the Court’s decision**

The Court notifies the PPS or defence practitioner of the decision. This information is then passed on to the witness.

If the court decides that the witness supporter should be a member of one of the witness services, necessary pre-trial arrangements should follow.

If the court directs that the witness supporter should be the individual submitted on the special measures application form, that individual should be informed by the witness, their parent/carers, support organisation or defence practitioner, as applicable.

If the supporter is not from one of the witness services, they should be given relevant guidance by the relevant witness service on the role of a supporter, which should cover the court process in the Crown Court, magistrates’ courts or youth court, as applicable.

There should be a continuation of pre-trial support/witness preparation for giving evidence in court.
K5.6 Informing the court witness supporter of the trial date and arrangements on the day

The witness, their parents/carers or defence practitioner, as applicable, will notify their court witness supporter of trial dates and any arrangements on the day. Supporters should ensure they have a basic knowledge of any local protocols.
Standards for Young Witness Preparation

(These are based on the ‘National Standards’ in Achieving Best Evidence for England and Wales, and have been amended to be compatible with Northern Ireland policy and practice.)

**L1 Purpose of preparation**

- To help the young witness feel more confident and better equipped to give evidence at court.
- To help the young witness understand the legal process and their role within it.
- To encourage the young witness to share their fears and apprehensions about the court process and therefore assist the young person in giving their best evidence in court.

Preparation must not involve rehearsing the evidence or coaching the witness.

**L2 Key characteristics required by person undertaking witness preparation**

- Have experience and training in child development.
- Have experience of direct work with children.
- Ability to communicate with young children and young people in age-appropriate language.
- Ability to demonstrate a caring, mature and supporting attitude to both the young person and their parent or carer.
- Ability to deal with difficult feelings and emotions.
- Willingness and ability to offer continuity of support throughout the trial.
- Willingness and ability to work within a framework of equal opportunities.
- Willingness and ability to work within a framework of confidentiality.
In addition to the above, the person undertaking witness preparation must:

- be seen to be independent and focusing entirely on the young person’s welfare in preparing for the experience of giving evidence;
- not have been involved in the preparation of the case;
- not discuss the details of the case or the evidence that the young person has given or is to give; and
- have received basic training from local agencies.

**L3 Key tasks**

- Obtaining information on which special measures have been ordered by the court at a pre-trial hearing to assist the young witness, including whether consideration has been given as to who accompanies the young witness while they give evidence.
- Liaising with the police and the Public Prosecution Service (PPS) if there are any changes in circumstances which might require a variation in the special measures to be provided.
- Liaising with any other agencies that may be involved with the young witness and/or the family.
- Undertaking an assessment of the young person’s needs in general in relation to a court appearance, taking account of their developmental status.
- Deciding when the witness preparation should begin, bearing in mind the trial date and who the young person wishes to be present when this takes place.
- Ensuring that the young person and parent or carer has the Young Witness Pack (NSPCC (NI), 2011) and, if appropriate, viewing the Young Witness video ‘Giving Evidence – What’s it Like?’ with the young witness and their parent or carer.
- Helping the young witness to understand the court process and their role in it. This will include discussion of the roles of the participants in the case, the importance of telling the truth and the nature of cross-examination. Question and answer role play on non-evidential subjects is likely to help young witnesses to understand the rules for answering questions in court.
- Preparing the young person for any possible outcomes of the trial such as a late change of plea, adjournments or acquittal.
- Liaising with the NSPCC Young Witness Service to arrange a familiarisation visit to the court before the trial and ensuring that the young witness, and their parent or carer, if appropriate, are shown whatever special measures have been granted by the court in their case.
- Providing the young person with stress reduction and anxiety management techniques.
• Involving the young person’s parent or carer, if appropriate.
• Checking with the young witness that they have had the opportunity to refresh their memory by viewing the video recorded police interview and, if not, bringing this to the attention of the police or the PPS or the defence representative (if called by the defence).
• If special measures have not previously been identified and the young witness may benefit from them, bringing this to the attention of the person who has called the young witness, for example the prosecution or defence representative.
• Checking the young witness’s preferred special measures and discussing if these are most appropriate (e.g. giving evidence in court but screened from the defendant rather than by live link, or giving evidence in private, where applicable).
• Informing the officer-in-charge if the need for an intermediary is identified (where this need has not already been identified).
• Communicating information (including the young person’s wishes) to and from the police, the PPS (or defence) and the courts, keeping the young person, parent or carer informed and ensuring that practical arrangements are made for the young person.
• Co-ordinating arrangements with the court to ensure that the waiting time at the court is kept to a minimum.
• De-briefing the young witness and parent or carer and arranging for any follow-up support, including the need for specialist help.
• Ensuring that the work with the young person is fully documented.
Guidance issued to Northern Ireland Judiciary by the Lord Chief Justice on 12 May 2009 in relation to young witnesses and victims.

- Young witnesses and victims should not attend court on the first day of trial.
- If the Crown is opening the case on the first day of the trial, the young witness or victim should begin their evidence on the second day. He or she should be in the TV link room at 10.30 am. If the Crown intends to open the case on the second day, the judge should address the issue of the timetable on the first day. If it is likely that the opening will take some time and could result in the child’s evidence being disrupted by lunch, then the child should be asked to come to the TV link room (or the court) at a time when it is likely that he or she will start their evidence (this may be after lunch).
- It is recognised that this approach may not be possible in every case but the Lord Chief Justice would like to see the practice applied as widely as possible.
- The practice of introducing a child or young person to the environs of the court and of Crown counsel consulting with him or her prior to the hearing is strongly encouraged. This should preferably occur in both instances well before the date fixed for hearing.
- The judge should ask the court staff to test the equipment prior to the trial starting and also to check each morning well in advance of the court starting. There can sometimes be difficulties with the TV link equipment and a daily test will avoid the young witness or victim being disrupted in giving their evidence due to technology problems.
- The above approach might also be adopted for other vulnerable witnesses or victims.
Crown Court Judicial Committee protocol on third party disclosure

The purpose of this protocol is to ensure that third party disclosure applications are made promptly, well in advance of scheduled trial dates and that trial dates are not vacated by reason of late applications. Defendants’ legal representatives must address the issues of third party disclosure early and obtain the relevant information from the prosecution to enable them to draft applications. The procedure provided for in this protocol is designed to ensure that the necessary information is available at an early stage.

The officer in charge of the case should, at an appropriate time, (which in any event should be no later than the service of the committal papers) inform the complainant of the matters outlined in the paragraphs that follow. In cases involving young children this information should be provided to their parents. However, in the case of children over the age of 14 the officer should provide the information to the young person as well as to his/her parents.

1. The officer should explain to the complainant that the defendant’s legal advisers may make an application to the court to see their medical notes, and any records from any counsellor they are attending as a result of the incident(s) that are the subject of the charge(s). The complainant should be asked to provide their date of birth (so that the correct medical notes and records can be obtained); the name of their doctor; the hospital (if any) they attended; the name of the counsellor and the name and address of the counselling organisation they have attended. The officer should ascertain whether the injured party has made a criminal injury application and whether there has been any social services intervention with the complainant. It should be explained that the purpose of obtaining this information at this stage is to identify the persons or bodies who might have such material. If the complainant is unwilling to provide the information sought at this stage it should be explained that this information may be obtained by other means.
2. Having obtained the names and addresses of those persons or agencies that may hold material which might be the subject of an application, the officer in charge should proceed as follows:

(i) The officer should explain to the complainant that he or she is not obliged to agree to the release of material from these sources but that if the court concludes that it is necessary that the defence should have access to that material in order to ensure a fair trial its release will be ordered.

(ii) The complainant should be informed that the court will only order the disclosure of such material as is necessary to enable a fair trial to take place and that, in deciding whether to order the release of the material, the court will take into account the complainant’s rights under Article 8 of the European Convention on Human Rights and Fundamental Freedoms (the right to respect for private and family life).

(iii) The complainant should then be asked whether he or she is agreeable to the release of the material to the legal representatives of the defendant(s). He or she should be informed that if they are not agreeable to the disclosure of this material an application might be made by the defendants’ legal advisers for an order of third party disclosure. The complainant should be told that they are entitled to make representations to the court on such an application. These representations can be made in writing or in person at the time that the application to the court is made.

3. The prosecution should then inform the magistrate and the defendant’s solicitor (in writing) at the committal stage (or the judge at first hearing in the Crown Court) of the complainant’s date of birth, name of GP, and the name of any psychiatrist, counsellor or counselling organisation that the complainant has attended. The court should also be informed if the complainant has made a criminal injury application at this stage.

4. The solicitor seeking a third party disclosure order on behalf of a defendant should, in the first instance, write to the third party indicating clearly the category of documents sought and the reasons why disclosure is being sought. He or she should ask for confirmation that the proposed third party holds such documents. The letter should then state that an application will be made to the judge, who if he or she makes an order will direct the production of the documents to the court, and not to the solicitor for the defendant, and that only documents which are relevant to the trial will be disclosed by the judge. The third party against whom the order is sought should be informed that they are entitled to appear and object to any disclosure being made.
5. The defence should lodge and serve their application 7 days after the committal, or after direction of the court, so that any party objecting to disclosure has 7 clear days notice of the application and the opportunity to be heard on the issue.

6. Third parties should be informed of the time and date of the third party application by the applicant. The applicant should send a copy of the notice and supporting affidavit to the Public Prosecution Service for transmission to the complainant(s).

7. Third party disclosure applications shall be heard at the initial arraignment application or as soon thereafter as the court directs.

8. The order, if made, will then issue with a court return date, which will be at least 7 clear days after the making of the third party disclosure order.

9. The third party disclosure order should be drawn up by the court. The party applying for the order should then obtain a copy of the order and serve it on the third party. Each court office should have and maintain a register recording the date that third party documents are lodged with the court and the date when they are returned to the third parties.
Admissibility of video recordings under other provisions of the Criminal Justice (Evidence) (Northern Ireland) Order 2004

P1 Even in circumstances where it is thought that a vulnerable or intimidated witness may not give evidence at trial, there may still be value in video recording their interview. Under Article 20 of the Criminal Justice (Evidence) (NI) Order 2004 (the 2004 Order) a video recorded statement will be admissible provided that the witness is unavailable to testify for a specified reason.

P2 The hearsay provisions set out in the 2004 Order (which came into operation on 18 April 2005) allow for certain assertions made by a person outside the courtroom to prove the facts alleged in those assertions. A statement (whether written or oral) can be put in evidence provided that it was made by an identifiable person and that the evidence would have been admissible if they had been available to give evidence. Certain further conditions must be met. Firstly, the witness cannot simply be unwilling to give oral evidence. They would have to be unavailable owing to:

- death;
- ‘unfitness’ because of a bodily or mental condition (the availability of special measures under the Criminal Evidence (NI) Order 1999, as amended by the Justice Act (NI) 2011, will be considered in determining this);
- being outside the UK and it not being reasonably practicable to secure their attendance; or
- not being found despite taking such steps as are reasonably practicable to locate them.

P3 Another ground of admissibility is where the witness does not give or (once proceedings have commenced) does not continue to give oral evidence through fear. The court must give leave and can only do so if it is in the interests of justice. Fear is to be construed widely and includes fear of the death or injury of another person or of financial loss.
If the above conditions are met, the evidence will not be allowed if a party (or someone acting on their behalf) is the cause of that person not being available to give evidence.

Article 6 of the European Convention on Human Rights provides that, as part of a fair trial, a defendant has a right to cross-examine all witnesses called against them, and that includes the right to obtain the attendance of witnesses. Article 28 of the 2004 Order preserves the right of a defendant to challenge the credibility of the maker of a statement who does not give oral evidence in the proceedings. Furthermore, Article 30 provides a discretion for the court to exclude ‘superfluous’ statements that may waste time and substantially outweigh the case for admitting them. The court can also exclude evidence that is otherwise unfair under Article 76 of the Police and Criminal Evidence (NI) Order 1989.
ACCOMPANYING a child in a TV Link case

Notes for guidance

1. You must abide by any instructions given to you by the Judge/Resident Magistrate [District Judge] at the Briefing before the commencement of the case.

2. If a pre-trial visit to the courthouse is arranged for the child, you should meet the child so that you are familiar to the child on the day of the trial.

3. Before the proceedings commence you must satisfy yourself that the TV link equipment is fully operational and that the child can see and hear the transmission and can be seen and heard in the courtroom.

4. You must be present in the remote witness room with the child throughout the time that he/she is required to be there. It is your duty to ensure that no other person enters the room or makes any attempt to interrupt, intervene or intimidate the child. You must not yourself interrupt or intervene during the giving of evidence or cross-examination via the TV link, unless to report to the Judge/Resident Magistrate [District Judge] that an attempt at interruption, intervention or intimidation is taking place, in which case you must do so immediately you suspect anything untoward.

5. You must refrain from prompting the child in any way, offering him/her any explanations, interpretations or guidance and from making comments or signals to the child, except to direct his/her attention to the questioner if the child appears not to be concentrating. Any exhibits should be handed to the child without comment. You must sit in such a position in relation to the child so that the transmission to the courtroom shows you both clearly.
6 In the event of interruption in transmission from the courtroom or failure of the equipment you must remain with the child. You must on no account speak to him/her about the case or his/her evidence during any interruption in the proceedings. This also applies to any interruption due to the child becoming distressed or unable to continue to give evidence.

7 On termination of the child’s evidence and cross-examination you must ensure that he/she is safely delivered into the care of a responsible person.

Extract from NI Court Service Circular 17/1996
Warning label for video recordings

This video recording is the property of PSNI [PRINT NAME AND ADDRESS OF DISTRICT COMMAND UNIT].
It has been prepared pursuant to the Criminal Evidence (NI) Order 1999 and must NOT be copied or shown to unauthorised persons.

UNAUTHORISED USE OR RETENTION MAY LEAD TO A FINE OR A PERIOD OF IMPRISONMENT OR BOTH.
Specimen form of receipt and undertaking for video recorded evidence

Form of undertaking recommended when receiving recorded evidence of witnesses prepared to be admitted in evidence at criminal trials in accordance with Article 15 of the Criminal Evidence (NI) Order 1999.

Name of person(s) who it is proposed should have access to recording

Position in organisation

Organisation

Address

Telephone      email

I/We acknowledge receipt of the recording marked “evidence of”

I/We undertake that, whilst the recording is in my/our possession, I/we shall:

a) not make, or permit any other person to make, a copy of the recording;
b) not release the recording to [name of the defendant];
c) not make or permit any disclosure of the recording or its contents to any person except when in my/our opinion it is strictly necessary in the interests of the witness and/or the interests of justice;
d) ensure that the recording is always kept in a locked, secure container and not left unattended in vehicles or otherwise unprotected;
e) return the recording to [name of person receiving recording] when I am/we are no longer professionally involved in the matter; and
f) record details of the name of any person allowed access to a recording together with details of the source of the authorisation granted to him or her.

Signed

For and on behalf of

Date
Useful sources

Information for professionals

Advocacy Training Council (2011) Raising the bar: the handling of vulnerable witnesses, victims and defendants in court.


Katz, C. & Hershkowitz, I. 2009 The effects of drawing on children’s accounts of sexual abuse paper presented at iIRG conference: Putting theory into practice: the dilemmas of law and psychology University of Teeside.


Nuffield Foundation (2011) Young witness in criminal proceedings: a progress report on “Measuring up?”.


Pre-trial therapy


Independent Counselling Service for Schools Operating Handbook (2009). DENI.


The Psychologist Vol 13 No.5, May 2000 Guidelines for Psychologists working with clients in contexts in which issues related to recovered memories may arise.

Information for witnesses and their carers

The NSPCC (NI) (2011) Young Witness Pack series includes:

For young witnesses:
Let’s Get Ready for Court: an activity booklet for child witnesses aged 5–9
Tell Me More about Court: a book for young witnesses aged 10–15
Inside a Courtroom: a card model of a courtroom with slot-in characters, for use with younger witnesses
Going to Court: information and advice for Crown Court witnesses aged 13–18
Young Witnesses at the Magistrates’ Court and the Youth Court: for 9–18-year-olds
Screens in Court: an information sheet for 9–18-year-olds

For parents and carers:
Your Child is a Witness

For child witness supporters:
Preparing Young Witnesses for Court

For witnesses with learning difficulties:
Picture books without words published by St George’s Hospital Mental Health Library in association with Voice UK, available from the Royal College of Psychiatrists’ publication department:
Going to Court
I Can Get Through It

Videos:
Giving Evidence – What’s it Really Like?: a video addition to the Young Witness Pack for 11–15-year-olds
Barnardo’s, So You’re Going to Be a Witness: for younger witnesses
 Relevant government publications


Department of Health, Social Services and Public Safety UNOCINI (Understanding the Needs of Children in Northern Ireland): Thresholds of Need Model.


Ministry of Justice (2011) Vulnerable and intimidated witnesses: a police service guide


Legislation

The Children (Northern Ireland) Order 1995
Children’s Evidence (Northern Ireland) Order 1995
Criminal Evidence (Northern Ireland) Order 1999
Criminal Justice (Evidence) (Northern Ireland) Order 2004
Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968
Criminal Justice (Northern Ireland) Order 2008
Data Protection Act 1998
Disability Discrimination (Northern Ireland) Order 2006
Justice Act (Northern Ireland) 2011
Mental Health (Northern Ireland) Order 1986
Police and Criminal Evidence (Northern Ireland) Order 1989

Useful websites

Northern Ireland
The Bar of Northern Ireland: www.barlibrary.com
Compensation Agency: www.compensationni.gov.uk
Department of Justice: www.dojni.gov.uk
Health and Social Care in Northern Ireland: www.hscni.net
Judicial Studies Board for Northern Ireland: www.jsbni.com
Law Society of Northern Ireland: www.lawsoc-ni.org
Northern Ireland Courts and Tribunals Service: www.courtsni.gov.uk
NI Direct (government services): www.nidirect.gov.uk
Northern Ireland Prison Service: www.niprisonservice.gov.uk
Police Service of Northern Ireland: www.psni.police.uk
Probation Board for Northern Ireland: www.pbni.org.uk
Public Prosecution Service: www.ppsni.gov.uk
Victim Support NI: www.victimsupportni.co.uk (Note: VSNI has a database of organisations offering support services)
Youth Justice Agency: www.youthjusticeagencyni.gov.uk

**Other UK**

British Association for Counseling & Psychotherapy: www.bacp.co.uk
ChildLine: www.childline.org.uk
NSPCC: www.nspcc.org.uk
Royal College of Speech and Language Therapists: www.rcslt.org
United Kingdom Council for Psychotherapy: www.ukcp.org.uk
NSPCC: www.nspcc.org.uk
Royal College of Speech and Language Therapists: www.rcslt.org
Scottish Government: www.scotland.gov.uk
Victim Support: www.victimsupport.org.uk
Voice UK: www.voiceuk.org.uk