



ACPO Position Statement: The Use of 'Truth and Lies', Declarations and Oaths in Video-Recorded Interviews with Witnesses

**National Investigative Interviewing
Strategic Steering Group (NISSG)**

THE USE OF 'TRUTH AND LIES', DECLARATIONS AND OATHS IN VIDEO-RECORDED INTERVIEWS WITH WITNESSES

Introduction

Over recent years it has become apparent that interviewers are sometimes asking adult witnesses to demonstrate their understanding of truth and lies when it is not appropriate to do so. In addition, some interviewers have erroneously been asking witnesses to read out the declaration at the start of a section 9 Criminal Justice Act 1967 statement (MG11) or to take something akin to an oath before the commencement of a video-recorded interview. The purpose of this paper is to address these misunderstandings.

Background

Truth and Lies

It seems likely that interviewers who ask adult witnesses to demonstrate their understanding of the concepts of truth and lies do so because they are confused as to the limitations of this requirement as set out in *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Using Special Measures* (Office for Criminal Justice Reform 2007). It may possibly be the case that some interviewers who were originally trained to interview children do not realise that it is not applicable to most adult witnesses¹. It may also be the case that some interviewers have misread the section about truth and lies in the vulnerable witnesses' chapter of *Achieving Best Evidence* (chapter 3, paragraphs 3.175 to 3.177) and wrongly concluded that it is applicable to all vulnerable witnesses.

Criminal Justice Act Declarations

Interviewers who ask adult witnesses to read out the declaration at the start of an MG11 may be confused about the difference between conducting an interview and preparing a statement. They may also believe that the requirement for a

¹ For example, The Stern Review (Home Office 2010) claims that some that some interviewers who are trained to interview children use the same techniques when interviewing adult complainants in rape cases.

written statement to include such a declaration also applies to a video-recorded interview when it is to be played as evidence-in-chief². It is also possible that some interviewers believe that if a witness is subsequently found to be lying that the only way in which a charge of perjury, wasting police time or attempting to pervert the course of justice can be pursued is for a declaration to be made at the beginning of the recording. All of these beliefs are incorrect.

Oaths

Interviewers who have attempted to administer the oath are probably mistakenly assuming that the requirement for doing this when the evidence is given live also applies to pre-recorded evidence-in-chief.

The ACPO Position

Truth and Lies

The requirement to cover truth and lies in witness interviews stems from assumptions made about the competency of certain witnesses prior to the implementation of the Criminal Justice Act 1991. In essence, it was assumed that children and some witnesses with learning disabilities may not be competent because they might not have sufficiently developed the concepts of truth and lies.

While the legal requirement to discuss truth and lies was removed as a result of the Criminal Justice Act 1991 it was nevertheless seen to be a matter of good practice in the *Memorandum of Good Practice on Video-Recorded Interviews for Child Witnesses in Criminal Proceedings* (Home Office 1992) and in the *Achieving Best Evidence* guidance that succeeded it in 2002 (revised in 2007). *Achieving Best Evidence* has, however, always been clear that a discussion of truth and lies is only applicable to children³ and to vulnerable adult witnesses “where there is an issue as to whether the vulnerable witness understands the value and importance of telling the truth” (paragraph 3.176, *Achieving Best Evidence* 2007). Vulnerable adult witnesses are defined as those with a mental disorder,

² For example, page 1, paragraph 1 of *Achieving Best Evidence*.

³ Currently under 17, will be under 18 when section 98 Coroners and Justice Act 2009 is implemented.

significant impairment of intelligence and social functioning (commonly interpreted as meaning learning disability) or a physical disability or disorder having an impact on the person's ability to communicate (Section 16 Youth Justice and Criminal Evidence Act 1999). In practice, the issue of whether or not a vulnerable adult understands truth and lies is only usually linked to adults with a learning disability. *Achieving Best Evidence* goes on to make it clear that "this is **not** an issue for **all** adult witnesses who have disabilities or a mental disorder" (paragraph 3.176). Truth and lies should certainly not feature in interviews with intimidated adult or significant witness interviews.

Criminal Justice Act Declarations

National guidance has consistently drawn a distinction between conducting an interview and preparing a statement (see for example, *The Practical Guide to Investigative Interviewing*, ACPO 2004). A statement is invariably the product of the process of interviewing. It may be that some interviewers who ask witnesses to read out the declaration at the beginning of Criminal Justice Act statement do so because they do not fully comprehend the distinction between the process of interviewing and what is often its product, an MG11.

Interviewers who ask witnesses to read out the declaration at the beginning of Criminal Justice Act statement because they think it is necessary to do so either to render the evidence on the video-recording admissible or so that a prosecution can proceed if the witness is subsequently found to be lying may have an incomplete grasp of the legislation that underpins witness interviewing. Section 9 Criminal Justice Act 1967 provides for the admissibility of a written statement in lieu of oral evidence provided that certain conditions apply; these conditions include the requirement that the statement contains a declaration along the lines of the one featured on an MG11. Section 9 only applies to written statements; it does not apply to video-recordings. Interviews with witnesses are video-recorded for two reasons; with a view to playing them as evidence-in-chief as is the case for vulnerable or intimidated witnesses or for accuracy and integrity purposes as is the case with significant witnesses. Where a video is made for evidence in chief purposes the application for the admit the recording as evidence-in-chief is made under section 19 Youth Justice and Criminal Evidence Act 1999, NOT under section 9 Criminal Justice Act 1967. There is no

requirement in Section 19 Youth Justice and Criminal Evidence Act for a declaration. Where the witness is significant and the interview is video-recorded for accuracy and integrity purposes an MG11 is subsequently prepared from it and signed by the witness. In these circumstances, the MG11 is the witness's evidence and the video-recording is unused material. The witness signs the declaration on the MG11 when the statement has been prepared after the interview; there is no requirement for a declaration on the video-recording. In any event it is not usual practice to ask a witness to sign a declaration at the beginning of any interview, whether video recorded or not, before a statement is prepared; the declaration is usually signed when the statement is prepared after the interview has been concluded.

Interviewers who believe that the only way in which a charge of perjury, wasting police time or perverting the course of justice can be pursued in the event that the witness is subsequently found to have been deliberately engaging in falsehoods is for a declaration to be made at the beginning of the recording are quite simply incorrect. Charges of perjury, wasting police time and perverting the course of justice have never been contingent on section 9 Criminal Justice Act 1967 declarations.

Oaths

Interviewers who attempt to administer an oath are mistaken because the witness is sworn retrospectively in court when the video-recorded interview is played as evidence-in-chief (paragraph 3.175 *Achieving Best Evidence*). Indeed *Achieving Best Evidence* quite emphatically states that "there should be no attempt to get the witness to swear an oath, either before or after an interview" (ibid).

Acknowledgement

This position statement was prepared by Dr. Kevin Smith, an ACPO Approved Interview Adviser and the National Vulnerable Witness Adviser from the Specialist Operations Centre of the National Policing Improvement Agency.

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