

# Advice on the Structure of Visually Recorded Witness Interviews (3<sup>rd</sup> Edition)

The National Police Chiefs' Council (NPCC) with the College of Policing has agreed to this revised strategy being circulated to, and adopted by, Police Forces in England, Wales & Northern Ireland.

It is NOT PROTECTIVELY MARKED under the Government Protective Marking Scheme and any referrals for advice and rationale in relation to Freedom of Information Act disclosure should be made to the NPCC Central Referral Unit at [npcc.request@foi.pnn.police.uk](mailto:npcc.request@foi.pnn.police.uk).

## Document information

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This revised strategy have been produced and approved by the NPCC Equality, Diversity and Human Rights Coordination Committee. Chief Constables' Council has endorsed this publication on the 22 April 2015. Guidelines/Strategy produced by the NPCC should be used by chief officers to shape police responses to ensure that the general public experience consistent levels of service. The operational implementation of all guidance and strategy will require operational choices to be made at local level in order to achieve the appropriate police response and this document should be used in conjunction with Authorised Professional Practice (APP) produced by the College of Policing. It will be updated and re-published as necessary.



Any queries relating to this document should be directed to either the author detailed above or the NPCC Business Support Office on 020 7084 8959/8958.

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First edition published in August 2010.

Second edition takes account of the changes to the legislation governing special measures (Part 2 Youth Justice and Criminal Evidence Act 1999) that took place when Sections 98 to 103 and 105 of the Coroners and Justice Act 2009 were implemented in March 2011.

Third edition takes account of the recommendations made by Lord Justice Leveson’s review of efficiency in the criminal justice system.

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## Foreword

As the National Police Lead for Investigative Interviewing I am pleased to introduce the third edition of the *Advice on the Structure of Visually Recorded Witness Interviews*. This work came about as a result of feedback from a number of sources regarding problems with the way visually recorded interviews are carried out and how this translates into evidence at court. The intention of this document is to achieve the fine balance that is required between the needs of the police, the victim or witness and the judicial process.

The ability to effectively interview victims and witnesses is of vital importance to all areas of policing and none more so than investigations involving the vulnerable. Where a visually recorded interview is required in order to achieve best evidence the need for this to be done professionally and with care and compassion is even more acute.

Across the country, highly skilled police officers and investigators are carrying out excellent interviews with vulnerable and intimidated victims and witnesses day in day out and this advice is not intended to undo all of that good work or re-write how it is done. This document should be seen as complimentary to the training and experience that interviewers have received and should be used to hone those skills to make these interviews even more effective.

As police officers our most basic functions are to prevent and detect crime and protect the vulnerable. By improving the way we interview we will better achieve all of these aims by making visually recorded interviews fit for purpose and meeting the needs of all those involved.

*Mick Creedon*

Mick Creedon  
Chief Constable



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## Executive Summary

The advice set out in this document should be read in conjunction with *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Guidance on using Special Measures* (Ministry of Justice 2011).

This document covers the following points.

### Pre-Interview Decision Making

*Vulnerable and Intimidated Witnesses (video for evidence-in-chief purposes):*

- The use of video-recorded interviews as evidence-in-chief should be viewed as an exception to the rule in which evidence is given live in court;
- Interviews should only be video-recorded for evidence-in-chief purposes where:
  - the witness is eligible for special measures and
  - it is more likely than any other special measure to maximise the quality of the witness's evidence;
- The final decision as to whether or not to admit a video-recorded interview as evidence in chief is a matter for the trial judge, no promises or guarantees should be given to the witness when ascertaining their views about special measures.

*Significant Witnesses (video for accuracy and integrity purposes):*

- Video-recorded interviews with significant witnesses cannot be played as evidence-in-chief, the material on the recording needs to be transferred into an evidential format suitable for the courts, in most cases this will be a full Section 9 Criminal Justice Act 1967 statement (MG11);
- The purpose of video-recording an interview with a significant witness is to make the most comprehensive and accurate record of the interview possible;
- Where a significant witness (who may also be vulnerable and/or intimidated) does not consent to a video or it is impractical to video-record the interview it should be audio-recorded, if they do not consent to audio-recording or where audio-recording is impractical, a written record in the form of notes should be made;
- In cases involving multiple witnesses it is important that the interviewees who are video-recorded be limited to a number that is likely to be manageable by the prosecution team.

### Planning the Interview

- Planning the interview is essential, particularly in respect of setting objectives that draw a clear distinction between the alleged incident and the additional investigative material so that the interview is properly structured.



### Conducting the Interview

- Interviews should aim to achieve all the objectives set for them while being as concise as reasonably possible;
- Where it is necessary for rapport building to last more than a few minutes (e.g. young children, adults with learning disabilities, some instances of trauma) it should take place when the witness is prepared for the interview. It should not, ideally, form part of the video-recorded interview itself;
- Urgent actions should be identified during the interview and passed without delay to the investigating officer or their nominee;
- Where the interview involves a vulnerable or intimidated witness investigative material making up information important to the investigation should be the subject of a separate recording.

### After the Interview

#### *Vulnerable, Intimidated and Significant Witnesses*

- Consideration should be given to the preparation of an accurate chronological summary of the witness's account in complex cases to assist the investigation, reviewing lawyers and the courts;
- A Record of the Visual Interview (ROVI) should be prepared for use as a guide to the interview.

#### *Vulnerable and Intimidated Witnesses*

It is important that the supervisor with responsibility for the investigation or, in the case of a major enquiry, the supervisor or interview adviser with responsibility for that part of the investigation, reviews the interview prior to any trial or pre-trial hearing and that an early special measures discussion with the CPS is arranged to consider the options for presenting the witness's evidence.

#### *Significant Witnesses*

- In most instances involving significant witnesses a full statement should be prepared as soon after the interview as possible as a means of minimising the potential effects of a lengthy delay on memory;
- The recording should be reviewed prior to transferring the relevant material onto the written statement in order to ensure that the witness's MG11 is as an accurate a reflection of what was said during the interview as possible.

A flow chart outlining these issues is set out on the next page.





# The Structure of Visually Recorded Witness Interviews

## Introduction

The role of the National Investigative Interviewing Strategic Steering Group is:

*To provide direction on the development of policy, practices and procedures to ensure that the interviewing of victims, witnesses and suspects supports professional investigation.*

One of the cornerstones of the trial process has always been the opportunity for the jury to assess the quality of a witness's evidence. Operational practice in the police service is influenced by the overall target of improving public confidence; investigations try to establish what offence(s), if any, have been committed and to identify and locate who is responsible for them in this context. Regardless of the techniques used, it is, therefore, essential that interviews with witnesses are structured in such a way that they meet the needs of the interviewee, the investigation and the court process.

The first and second editions of this document outlined the good practice derived from the many interviews that are properly planned and effectively conducted by police forces in the UK every year. In so doing they complimented *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Guidance on Using Special Measures* (Ministry of Justice 2011). This revised edition of *Advice on the Structure of Visually Recorded Witness Interviews* has been developed to build on the earlier guidance by taking account of *Achieving Best Evidence in Child Sexual Abuse Cases: A Joint Inspection* (Her Majesty's Crown Prosecution Service Inspectorate and Her Majesty's Inspectorate of Constabulary, 2014) and the Right Honourable Sir Brian Leveson's *Review of Efficiency in Criminal Proceedings* (Judiciary of England and Wales, 2015). The significant points made in this edition of the guidance are as follows:

- Supervisors should oversee the planning process in appropriate cases;
- The importance of the recording having good sound and visual quality;
- The need to keep any discussion of neutral topics intended facilitate rapport to a minimum during the interview;
- Coverage of truth and lies only where necessary;
- The separation of the witness's account of the incident(s) from the wider investigative material;
- Interviewers should only clarify and develop topics in the witness's account as far as it is necessary to do so;
- Interviewers should only summarise what the witness has said where they need to check their understanding of it;
- Recordings made for the purposes of evidence should be reviewed by a supervisor prior to an early special measures discussion with the CPS;
- Active consideration should be given to editing the recording during an early special measures discussion with the CPS so that the evidence-in-chief recorded on it can be played back succinctly during the trial.



## **Background**

Video-recorded evidence-in-chief was introduced into the criminal courts in England and Wales in October 1992 by Section 32A Criminal Justice Act 1988 (as added by the Criminal Justice Act 1991). The Youth Justice and Criminal Evidence Act 1999 (YJCEA) extended the range of victims and witnesses eligible for video-recorded evidence-in-chief. Sections 98 to 103 and 105 Coroners and Justice Act 2009 subsequently amended some of the provisions of the YJCEA.

The recording of interviews with significant witnesses became a matter of national guidance when it featured in the *Murder Investigation Manual* (ACPO 1998). It was extended to other indictable-only offences in *Guidance on the Recording of Interviews with Vulnerable and Significant (Key) Witnesses* (ACPO 2002).

Current national guidance on interviewing vulnerable, intimidated and significant witnesses<sup>1</sup> is set out in *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Guidance on Using Special Measures* (Ministry of Justice 2011)<sup>2</sup>.

## **Practice Issues: Current Situation**

While the best evidence must surely be an accurate record of the account given by the witness, the way in which it is gathered and presented must meet the needs of the investigation and the needs of the judicial process. It has, however, become apparent that this is not always the case.

The source of the problem is that the interview process is seldom as clear, concise and chronological as an account that has been formulated and reproduced on a Section 9 Criminal Justice Act 1967 statement. These problems are exacerbated when the interview is to be played as the witness's evidence-in-chief and there is no written statement to accompany the recording because the 'raw data' of the interview, with all its imperfections, becomes the evidential product. Problems with witness interviews can arise for the following reasons:

- The witness may have difficulties in providing an accurate and reliable account for a variety of reasons<sup>3</sup> or be uncooperative or hostile;
- While witnesses usually recall events in what might be generally thought of as a forward narrative order, they often report some things out of sequence, this is sometimes indicated by statements such as "Oh I've just remembered, before that happened we ...";
- Investigative interviews often take place at an early stage of an investigation. For this reason interviewers usually probe an account to a much greater extent than happens in court because they do not know what is and what is not likely to be relevant during the investigation and any subsequent proceedings;
- Some interviews lack a clear structure based on objectives properly formulated and developed during the planning process.

<sup>1</sup> See appendix for current definitions of vulnerable, intimidated and significant witnesses.

<sup>2</sup> *Achieving Best Evidence* is currently being revised; a further edition is likely in 2016.

<sup>3</sup> For example, anxiety, stress, trauma, disability.



The focus of this revised document is on improving practice by setting effective objectives, properly planning and suitably structuring witness interviews. In major and complex investigations further value can be added by deploying an Interview Adviser to develop a witness interview strategy<sup>4</sup>. The impact of the other factors listed above should not, however, be forgotten when considering the duration and quality of police interviews with witnesses.

### ***Practice Issues: the Way Forward***

The advice set out below should be read in conjunction with *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Guidance on using Special Measures* (Ministry of Justice 2011).

### **Planning and Preparation**

Interview planning consists of using information about the witness, the offence and any wider investigative material important to the investigation<sup>5</sup> to structure the interview and to determine the techniques to be used in it. Supervisors should actively oversee the interview planning process wherever appropriate.

### **Witness Information**

The kind of information about a witness that might be used to inform the planning process is fully detailed in *Achieving Best Evidence*. Suffice to say, for the purposes of this paper, that there should be enough information about the witness to determine whether they might be considered vulnerable, intimidated or significant.

### **Offence Information**

As a general principle, interviewers should only be given limited information prior to conducting an interview to ensure that they cannot contaminate the witness's account by introducing facts themselves. This does not, however, mean that the interviewer should be provided with no information at all about the matter. Witnesses usually expect the interviewer to be aware of at least the nature of the matter under investigation, where it occurred, the relationship between the witness and the other parties involved, how the witness was identified and anything that they have previously said about it.

It is accepted that the demands of operational policing are such that interviewers will usually know more about the offence than is, perhaps, ideal<sup>6</sup>. In these circumstances, interviewers should try as far as possible to avoid contaminating the interview process with such knowledge.

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<sup>4</sup> The role description for interview advisers includes the development of witness interview strategies, as described in the National Investigative Interviewing Strategy (ACPO 2009) and unit CJ301 of the National Occupational Standards.

<sup>5</sup> Wider investigative material important to the investigation was referred to as case-specific information in the earlier editions of this document.

<sup>6</sup> For example, in volume crime or child abuse investigations where the interviewer is also the investigating officer or where there are multiple witnesses and a limited number of interviewers.



## Wider Investigative Material Important to the Investigation

Any wider investigative material important to the investigation should be identified by the investigative team. Such information might include places frequented by the victim and the suspect, the routes that the victim usually takes on their way home or to work, the background to and nature of the relationship between the victim/witness and the suspect, or ownership or use of premises, vehicles, mobile phones, computers, diaries or journals.

In circumstances in which the interviewer only has minimal information about the offence they are unlikely to be aware of all the case-specific information important to the investigation. In these situations, the interviewer will need to be fully briefed about relevant investigative topics after the witness's account has been elicited and probed.

## Use of Planning Information

As a first step, the planning information should be used to set the objectives for the interview. These objectives should be specific and achievable. They should clearly identify the incident related topics and the case-specific information important to the investigation that the interview should focus on. The aim of the interview should be to achieve all the objectives that are set for it while being as concise as possible.

The planning information should then be used to inform decisions about:

- The management of the interview including the timing, potential duration and number of sessions, as well as who is to be present during the interview other than the interviewer and camera operator<sup>7</sup> (second interviewer, interview monitor, witness supporter<sup>8</sup>, Registered Intermediary, or interpreter);
- The structure of the interview (see next section) and, where multiple allegations are involved, the sequencing of the topic material;
- The techniques that might be appropriate to
  - cover truth and lies (if necessary)
  - initiate and support an account
  - clarify and develop the account through questioning.

Plans should always be mindful of the fact that the dynamic nature of investigative interviews is such that interviewers need to be able to respond flexibly to changing situations.

A full written record should be made of the planning process and retained with the case papers in accordance with the Criminal Procedure and Investigations Act 1996.

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<sup>7</sup> Paragraph M.3.3 of *Achieving Best Evidence* recommends that the recording should give a “good, clear picture of the witness’s face” because it “may help the court to determine what is being said and to assess the emotional state of the witness”. The judiciary have concerns to the effect that the camera is not always set up properly; one of the reasons for this may be that a camera operator is not always present in contravention of the guidance.

<sup>8</sup> Witness supporters are NOT appropriate adults. Appropriate adults have not been a requirement of witness interviews since Code C paragraph 11.15 of the Codes of Practice to the Police and Criminal Evidence Act 1984 was revised on 1.4.03 (paragraph 2.202 of *Achieving Best Evidence* refers).



## Witness Preparation

It is essential that witnesses are prepared for an interview. In some cases this might be fairly brief but some witnesses, particularly vulnerable witnesses and witnesses who are reluctant as a result of intimidation, may need to spend time getting to know the interviewer before they are ready and/or willing to take part in an investigative interview.

Such preparation should include a full explanation of the relevant special measures, in compliance with paragraph 1.13 on page 11 of the *Code of Practice for Victims of Crime* (Ministry of Justice 2013) and charter standard 4 of the *Witness Charter* (Ministry of Justice 2013).

Witness preparation should also include an explanation of the role of the interviewer and anybody else that will be present during the interview and an outline of the interview structure. It should also include an outline of the general structure of the interview and the ground rules<sup>9</sup>. A discussion of the offence under investigation should be avoided but any unsolicited comments made by the witness about the offence should be acknowledged and noted.

A full written record should be made of witness preparation and retained with the case papers in accordance with the Criminal Procedure and Investigations Act 1996.

## Recording the Interview

It is important to bear in mind that many recordings will be played in the large auditorium of a court room, often on large plasma screens. It is, therefore, essential that these recordings should be of a good audio-visual quality.

## Vulnerable or Intimidated Witnesses

Vulnerable and intimidated witnesses are all eligible for video-recorded evidence-in-chief (section 27 YJCEA) in magistrates, youth and crown courts (Ministry of Justice Circular 2010/09). Access to this special measure is, however, dependent on whether it is likely to improve the quality<sup>10</sup> of the witness's evidence.

In the case of children, Section 21 YJCEA (as amended by Section 100 Coroners and Justice Act 2009) establishes a presupposition that a video-recorded interview is the most appropriate way for them to give their evidence-in-chief unless they opt out. In the case of adult complainants to sexual offences where the case is tried in the crown court, Section 22A YJCEA (as inserted by Section 101 Coroners and Justice Act 2009) establishes a presupposition that a video-recorded interview is the most appropriate way for them to give their evidence-in-chief unless they withhold consent. Sections 21 and 22 YJCEA effectively create a rebuttable presumption that the most appropriate way for children and for adult complainants to sexual offences tried in the crown court to give their evidence-in-chief is via video-recorded interview unless they either do not consent or the court is satisfied that it would not maximise the quality of their evidence.

<sup>9</sup> Paragraph 2.224 of *Achieving Best Evidence* refers.

<sup>10</sup> The 'quality' of a witness's evidence is defined by Section 16(5) YJCEA with reference to its completeness, coherence and accuracy.



As is the case with the other special measures, video-recorded interviews can only be used as evidence-in-chief if three ‘tests’ are met. These ‘tests’ are set out in section 19 YJCEA as follows:

1. Whether the witness is defined as ‘vulnerable’ or ‘intimidated’ within the meaning of sections 16 and 17 YJCEA<sup>11</sup> respectively;
2. Whether any of the special measures or any combination of them are likely to improve the quality of the witness’s evidence;
3. Which of the available special measures are most likely to maximise the quality of the witness’s evidence.

The presuppositions set out in Sections 21 and 22 YJCEA mean that these tests will usually be met for children and for adult complainants to sexual offences in crown court trials. The practical effect of these tests for other witnesses is that even where they may be eligible for special measures by virtue of being ‘vulnerable’ or ‘intimidated’ it does not necessarily follow that playing a video-recorded interview as evidence-in-chief is going to be the best way of achieving their best evidence; in some cases other special measures such as live evidence-in-chief from behind a screen or via a television link may be of more assistance to them.

In cases where it is thought that video-recorded evidence-in-chief may be the best way for the witness to achieve their best evidence the witness should be given an explanation of this special measure in accordance with the *Code of Practice for Victims of Crime* (Ministry of Justice 2013) and charter standard 4 of the *Witness Charter* (Ministry of Justice 2013). It is essential that the informed consent of a vulnerable or intimidated witness is obtained before the video-recorded interview takes place.

It is important to remember that the final decision as to whether or not to make an application for video-recorded evidence-in-chief is a matter for the CPS and that the final decision as to whether or not to grant an application where it is made is a matter for the trial judge. No promises or guarantees should be given to the witness when their views about special measures are ascertained.

Where a vulnerable or intimidated witness does not consent to video-recording, consideration should be given to treating the witness as ‘significant’ and audio-recording the interview if appropriate. If the witness does not consent to audio-recording or where it is inappropriate or impractical to audio-record the interview, a written record in the form of notes should be made.

### **Significant Witnesses**

Interviews with significant witnesses should be video-recorded unless the witness does not consent or it is impractical to do so. Recording the interview in this way serves two functions; it makes for the most comprehensive and accurate record of the interview possible and allows for greater flexibility should the witness’s circumstances change and it become necessary to make an application to play the recording as evidence-in-chief (i.e. in the event of the witness becoming ‘vulnerable’ or ‘intimidated’). Where the witness does not consent to a video, the interview should be audio-recorded. If the witness does not consent to audio-recording or where it is impractical to audio-record the interview, a written record in the form of notes should be made.

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<sup>11</sup> See appendix.



In cases involving multiple witnesses it is important that the interviewees who are video-recorded be limited to a number that is likely to be manageable by the prosecution team. Such a decision should be made by the senior police officer in charge of the investigation, in consultation with the CPS where practical, and a record should be made of the rationale underpinning it, including the criteria used for determining which interviewees were visually recorded.

## Interview Structure

This section sets out the general structure that must be adopted when conducting most witness interviews. It is entirely consistent with the structure set out in *Achieving Best Evidence* and with the PEACE<sup>12</sup> framework. There are some witness interviews where this framework is inappropriate<sup>13</sup>, but it should be considered suitable in the majority of cases.

The general structure for witness interviewing advocated by this document is summarised in the diagram below.

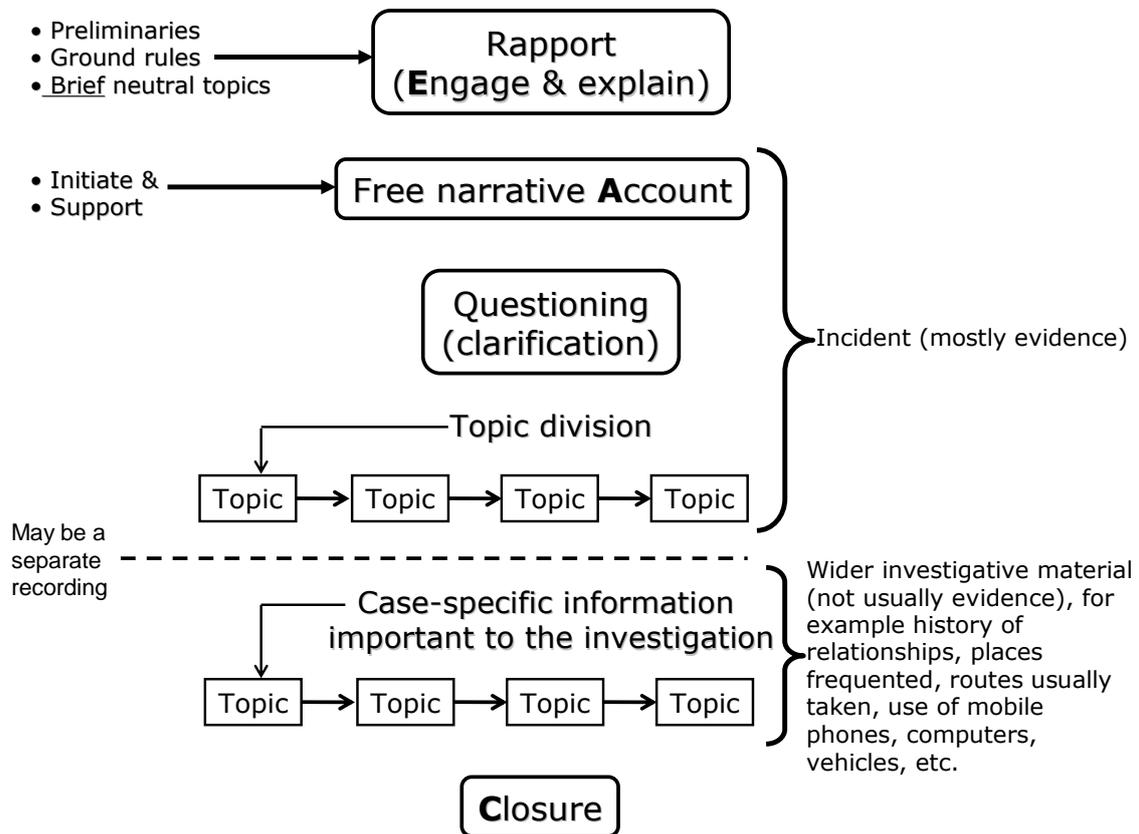


Figure 2: typical witness interview structure

<sup>12</sup> Planning and preparation, Engage and explain, Account and clarification, Closure and Evaluation.

<sup>13</sup> For example, witnesses who, as a result of disability can, only respond 'yes' or 'no' to questions.



At the outset it is important that clear objectives in the form of topic-areas are set for the interview. These topic-areas should then be divided between those relating to the incident and those relating to the wider investigation. This process usually begins by specifying realistic time-parameters for the 'incident'. Relevant topic-areas falling within the time-parameters should be designated as 'incident,' while those falling before or after the time-parameters constitute wider investigative material. The general structure of the interview flows from this process: the incident should be covered before moving on to the wider investigative material.

This paper will now consider each element within this structure.

### **Rapport (Engage and explain)**

The rapport phase of a witness interview consists of three elements:

- Preliminaries;
- Ground rules;
- Neutral topics.

The preliminaries to the rapport phase consist of personal introductions, pointing out the location of the cameras and stating the day, date, time and place of the interview for the purposes of the recording. The general purpose of the interview should also be included in this part of the interview, without referring to the details of the alleged offence.

The ground rules for witness interviews are as listed in *Achieving Best Evidence* (for example, telling the witness not to guess but to say so if they do not know the answer to a question asked by the interviewer). The witness's understanding of truth and lies should only feature here if they are under 18 or if "there is likely to be an issue as to whether they understand the value and importance of telling the truth in court"<sup>14</sup> (for example, some witnesses with learning disabilities). Truth and lies is not applicable to other witnesses<sup>15</sup>. In addition to this, witnesses should not be asked to take an oath; the court will administer the oath retrospectively<sup>16</sup>. Witnesses should not be asked to read the declaration on a Section 9 Criminal Justice Act 1967 statement<sup>17</sup>; the statutory basis for the admission of video-recorded evidence-in-chief<sup>18</sup> is quite different to that of written statements and the reading of such a declaration is not necessary for a prosecution should the investigation eventually conclude that the witness is lying<sup>19</sup>.

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<sup>14</sup> Paragraph 3.21 of *Achieving Best Evidence* refers.

<sup>15</sup> Paragraph 3.17 of *Achieving Best Evidence* refers.

<sup>16</sup> Paragraph 3.15 of *Achieving Best Evidence* refers.

<sup>17</sup> Paragraph 3.16 of *Achieving Best Evidence* refers.

<sup>18</sup> Special measures directions are covered under Section 19 Youth Justice and Criminal Evidence Act 1999.

<sup>19</sup> Prosecutions for wasting police time, attempting to pervert the course of justice etc. are not contingent on a reading of the Section 9 declaration.



A **brief** discussion of neutral topics can take place if necessary to reduce the witness's anxiety<sup>20</sup>. Neutral topics should not, however, be pursued extensively during a witness interview. Where a witness needs more time with an interviewer to establish a rapport (as may be the case, for example, with young, learning disabled, traumatised or intimidated witnesses) it should form part of witness preparation<sup>21</sup>.

### Free Narrative Account

The free narrative account phase of a witness interview consists of two elements:

- Initiation of the account;
- Supporting the account until the witness has finished.

There are too still many interviews in which the interviewer tries to initiate an account by focusing on the witness's background or the general background to the incident. Indeed, some interviewers seem reluctant to get to the heart of the matter and deal with the main reason for the interview; the incident. In the most cases interviewers should initiate free narrative account by simply asking the witness to concentrate on the matter in issue; the incident that is the subject of the investigation.

Having initiated free-narrative, the interviewer should endeavour to support the account by adopting the 'active listening' approach referred to in paragraph 3.28 of *Achieving Best Evidence*. Interviewers should not interrupt the witness, especially not by distracting them by asking questions intended to elicit case-specific information important to the investigation (e.g. the background to relationships). It is accepted that it may occasionally be necessary to tactfully intervene in order to focus what would otherwise be a rambling account that goes of at a tangent.

### Questioning

Having elicited an account, the interviewer should divide it into manageable topics<sup>22</sup>. Each relevant topic not adequately covered in the witness's account should be expanded using an appropriate technique then systematically probed using open-ended and specific-closed questions (question types as described in chapter 3 of *Achieving Best Evidence*). Interviewers should only summarise at the end of each topic where it is necessary to check their understanding of what has been said; they should not summarise at the end of every topic as a matter of routine.

### Wider Investigative Material Important to the Investigation

When the witness's account of the incident has been probed, the interviewer should move on to deal with the wider investigative material that is important to the investigation. In some cases a break between interview sessions may be appropriate so that further planning can take place, particularly where the interview monitor has noted some points that might benefit from further clarification and development. While wider investigative material can certainly

<sup>20</sup> Anxiety is likely to detract from the witness's capacity for recall by reducing their mental processing power.

<sup>21</sup> Paragraph 3.10 of *Achieving Best Evidence* refers.

<sup>22</sup> The parameters of the topics are likely to be defined in terms of periods of time (e.g. the events that occurred between the time the witness left their work-place until the time they arrived at the scene) and description (i.e. of people and/or objects).



help to bring an enquiry to a successful conclusion, it will not usually be evidence relevant to the trial. In addition to this, its inclusion at an earlier point in the interview might serve to distract the witness while they focus on their recollection of the incident. For both these reasons, wider investigative material should be covered at a point in the interview that is separate from the account of the incident, unless it was spontaneously covered by the witness earlier in the interview. Keeping the account of the incident separate from the wider investigative material should have the added benefit of making it easier to edit the recording should this become necessary.

Coverage of the wider investigative material should proceed by the interviewer systematically probing each of the topic areas that make it up by using open-ended and specific-closed questions.

### **Closure**

Interviews should conclude with the interviewer summarising if appropriate, asking the witness if they have anything else they would like to add, answering any questions that they might have and thanking them for their time. If necessary, the interviewer should return to neutral topics as a way of trying to put the witness in a more positive frame of mind before they leave the interview. The interviewer should then conclude the interview by stating the time for the record before the camera operator turns the recording equipment off.

## **Post-Interview Considerations**

### **Victim Personal Statement**

Where the witness is a victim of crime they should be given the opportunity to make a Victim Personal Statement (VPS) at the end of the interview. Where the interview has been visually recorded the VPS should also be visually recorded in accordance with the guidance set out in *Victim Personal Statements: A Guide for Police Officers, Investigators and Criminal Justice Practitioners* (Office for Criminal Justice Reform 2009)<sup>23</sup>.

### **Investigative Opportunities: Clarifying and Developing the Account**

If, after having completed the interview, the evaluation identifies that further investigative opportunities may emerge from clarifying or developing the witness's account consideration should be given to conducting a further interview. Such consideration may include the factors currently<sup>24</sup> listed under the headings 'significant evidential inconsistencies' and 'significant evidential omissions' listed in chapter 2 of *Achieving Best Evidence*. After these factors have been considered decisions should be made in respect of the necessity for a further interview, and the timing and circumstances under which any such interview is to take place. The scope of any interview conducted in these circumstances should usually be limited to the topics identified for clarification and development; the material covered in the earlier interview(s) should not normally be covered again other than where it is necessary to set the context for the further information.

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<sup>23</sup> The offer of a VPS is now a requirement under the *Code of Practice for Victims of Crime*

<sup>24</sup> It is anticipated that sections on significant omissions and inconsistencies will be amended in the next revision of *Achieving Best Evidence* to reflect the guidance set out in this document.



## Interview Product

### Urgent Actions

Urgent actions should be identified during the interview and passed without delay to the investigating officer or their nominee. In the case of live investigations, the interview monitor or the camera operator should maintain a record of urgent lines of enquiry during the interview to expedite this process.

### Chronological Investigative Summary

Some witnesses will provide a great deal of information during the interview, with key details having been obtained at different points of their account. It may be impractical for others involved in the investigation to view the visual recording but it could be essential that they have a clear understanding of what information has been provided. Once the interview has been completed, therefore, consideration should be given to the preparation of an accurate chronological 'investigative summary'. Chronological investigative summaries are provided for by paragraphs 3.94 and 3.95 of *Achieving Best Evidence*. These summaries differ from ROVIs (see below) in that their chronology is determined by the incident, not the order of recall during the interview.

An investigative summary should assist the Senior Investigating Officer/Investigating Officer to make decisions about further lines of inquiry. It should also help the suspect interviewers when they make decisions around interview plans and pre-interview briefings with legal representatives. Investigative summaries can also assist in early special measures discussions with the CPS and any later special measures applications, and may help to ensure that there are no unnecessary later requests from other members of the legal profession to convert transcripts into written statements.

### ROVI

A Record of the Visual Interview (ROVI) can subsequently be prepared for use as a guide to the interview. Appendix P of *Achieving Best Evidence* provides a detailed account of what should be included in a ROVI. It is important that the ROVI clearly identifies the beginning of each phase during the interview and the beginning of each topic during the questioning phase to aid investigative decision-making and pre-trial editing.

### Certification

Except where circumstances are such that an application to play the recording as evidence-in-chief may be considered a foregone conclusion, a **brief** written statement should be prepared for the witness immediately after the interview pointing out that the information they have given is accurate. In the event of the witness subsequently being unavailable to sign a full statement, the brief statement can be included in a discussion with the CPS as to how best to proceed (e.g. by means of exhibited transcript as set out in paragraph 2.135 of *Achieving Best Evidence*).

### Written Statement

In most instances involving significant witnesses a full statement should be prepared as soon after the interview as possible as a means of minimising the potential effects of a lengthy delay on memory (paragraph 2.136 of *Achieving Best Evidence*). It is, however, important to set enough time aside to properly review the recording together with any written notes prior to transferring the relevant material onto a written statement in order to ensure



that the witness's testimony is as an accurate a reflection of what was said during the interview as possible.

At the opening of the statement it may be useful to those subsequently reviewing the case to refer to the date and duration of any visually recorded interview.

### **Early Special Measures Discussions**

In the case of vulnerable or intimidated witnesses where an interview was video-recorded with the intention of playing it as evidence-in-chief, an early special measures discussion should be arranged between the officer in charge of the investigation and the CPS<sup>25</sup> to consider whether an application should be made for the recording to be played for this purpose. In preparation for this meeting it is important that the recording is reviewed by a supervisor with responsibility for the investigation or, in the case of a major enquiry, the supervisor or interview adviser with responsibility for that part of the investigation. If a decision is made to apply to play the recording as evidence-in-chief, consideration should be given as to the need or otherwise for editing. If a decision is made not to apply to play the recording as evidence-in-chief consideration should be given either to the witness giving live evidence-in-chief<sup>26</sup> with the assistance of other special measures (e.g. via live television link or from behind screens) or to conducting a summary interview as recommended in paragraph 250 of Lord Justice Leveson's *Review of Efficiency in Criminal Proceedings* (Judiciary of England and Wales 2015). Where a decision is made to pursue a summary interview, consideration should be given as to who is best placed to conduct it given that the focus will need to be very much on decisions that are usually taken by the CPS or Counsel as to what is and what is not relevant to the case.

### **Pre-Trial Discussions with Witnesses about Special Measures**

Discussions between the witness and the prosecution team about the arrangements for the trial should also reconsider the desirability of special measures because some witnesses may, on reflection, prefer to give live evidence-in-chief rather than have the video played.

### **Conclusion**

CJS on-line reminds us that "*witnesses play a vital role in helping the police to solve crimes and deliver justice. The criminal justice system cannot work without them*"<sup>27</sup>. An interview that has been properly planned and appropriately structured is likely to add value to an investigation and to any legal proceedings that follow from it by assisting the witness to give their best possible evidence. This paper describes a typical interview structure that is intended to meet the needs of victims and witnesses, the investigation and the courts. In so doing, it is anticipated that it will improve the general quality of witness interviews to the benefit of all involved, thus increasing public confidence in the Criminal Justice System.

<sup>25</sup> The practice guidance for early special measures discussions is set out in *Early Special Measures Discussions between the Police and the Crown Prosecution Service* (CJS 2009).

<sup>26</sup> Where a decision is made for a witness to give live evidence-in-chief the guidance in respect of the interview product for significant witness interviews should be followed (see paragraph 2.135 of *Achieving Best Evidence*).

<sup>27</sup> <http://www.cjsonline.gov.uk/witness>



## Appendix

### *Definitions: Vulnerable, Intimidated and Significant Witnesses*

#### **Vulnerable Witnesses**

“Vulnerable” witnesses are defined by Section 16 of the Youth Justice and Criminal Evidence Act, 1999 (as amended by Coroners and Justice Act 2009), as:

1. All child witnesses (under 18)<sup>28</sup>; and
2. Any witness whose quality of evidence is likely to be diminished because they
  - a) are suffering from a mental disorder (as defined by the Mental Health Act 1983) or
  - b) have a significant impairment of intelligence and social functioning or
  - c) have a physical disability or are suffering from a physical disorder.

The court must take account of the views of the witness in determining whether a witness falls into this category (Section 16[4]). In addition to this, when determining whether the quality of the witness’s evidence is likely to be diminished in these circumstances, the court has to consider the likely completeness, coherence and accuracy of that evidence (Section 16[5]).

#### **Intimidated Witnesses**

“Intimidated” witnesses are defined by Section 17 of the Act (as amended by Coroners and Justice Act 2009) as those whose quality of testimony is likely to be diminished by reason of fear or distress.

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
  - any religious beliefs or political opinions of the witness;
- Any behaviour towards the witness by
  - the accused
  - members of the accused person’s family or associates
  - any other person who is likely to be either an accused person or a witness in the proceedings.

<sup>28</sup> Child witnesses or their carers should be given the opportunity to have a video-recorded interview in accordance with the ‘opt out’ provisions described in paragraphs 2.29 to 2.39 of *Achieving Best Evidence*.



Complainants in cases of sexual assault are defined as falling into this category per se by Section 17(4) of the Act<sup>29</sup>. Witnesses to gun and knife crime are defined as falling into this category by Section 17(5) of the Act<sup>30</sup>. *Vulnerable and Intimidated Witnesses: A Police Service Guide* (Ministry of Justice 2011) suggests that victims of domestic violence, racially motivated crime and repeat victimisation and elderly and frail witnesses may also fall into this category.

### Significant Witnesses

Significant witnesses, sometimes referred to as ‘key’ witnesses, are those who:

- Have or claim to have witnessed, visually or otherwise, an indictable offence, part of such an offence or events closely connected with it (including any incriminating comments made by the suspected offender either before or after the offence); and/or
- Have a particular relationship to the victim or have a central position in an investigation into an indictable offence.

ACPO Murder Investigation Manual 2006

Paragraph 1.25 of *Achieving Best Evidence* goes on to say that:

*“While significant witnesses are usually defined with reference to indictable-only offences, investigating officers may consider designating witnesses as significant in any other serious case where it might be helpful.”*

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<sup>29</sup> Following the amendments to Section 22 YJCEA, it is recommended that all complainants to indictable only sexual offences should be offered a video-recorded interview with a view to applying to play it as evidence-in-chief. Complainants to triable either way sexual offences should be offered a video-recorded interview on a case-by-case basis.

<sup>30</sup> Witnesses to knife and gun crime should only be offered a video-recorded interview with a view to playing it as evidence-in-chief if it seems likely that it will maximise the quality of their evidence (though they may, of course, be interviewed on video as a significant witness where appropriate).

