



**safeguarding
adults at risk**
a cumbria partnership

Guidance Paper 3

Achieving Best Evidence in Criminal Proceedings

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Cumbria Safeguarding Adults Board

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Achieving Best Evidence in Criminal Proceedings

The Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses, including Children' (The Home Office) describes good practice in interviewing vulnerable and intimidated witnesses, both adults and children, to enable them to give best evidence in Criminal proceedings. It implements the Speaking Up For Justice Report.

The Youth Justice & Criminal Evidence Act, 1999 recognises 5 categories of vulnerable witnesses:

- Witnesses under the age of 17.
- Learning disabled witnesses.
- Physically disabled witnesses.
- Witnesses with mental disorder/illness.
- Witnesses suffering from fear and distress (intimidated witnesses).

The Guidance:

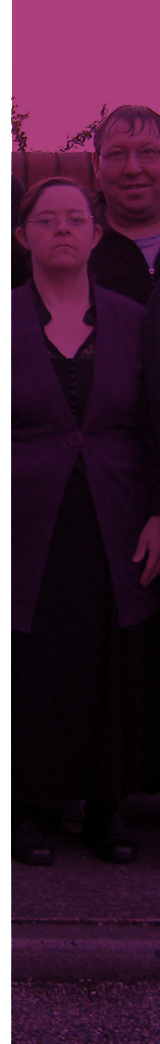
- Considers preparing and planning for interviews with vulnerable and intimidated witnesses, decisions about whether or not to conduct an interview and decisions about whether the interviews should be video-recorded or whether it would be more appropriate for a written statement to be taken.
- Covers the interviewing of such witnesses both for the purpose of making a video-recorded statement and also for taking a written statement, their preparation for Court and any subsequent Court appearance.
- Applies to both prosecution and defence witnesses and is intended for all persons involved in the investigations, including the Police, Social Workers and members of the legal profession.
- Replaces the 1992 Memorandum of Good Practice on Video Recorded Interviews for Child Witnesses for Criminal Proceedings. The Guidance is advisory and does not constitute a legally enforceable code of conduct; however, practitioners should bear in mind that departures from the guidance may have to be justified in the courts.

Special Measures Available with the Agreement of the Court

Not all adults with disabilities will necessarily be vulnerable as witnesses and would not wish to be treated as such. However, those adults who are eligible for Special Measures fall into two groups. Firstly those who have a disability or illness that the Court considers is likely to affect the quality of their evidence, and secondly, those who because of age, personal circumstance and the nature of the alleged offence, satisfy the Court that their evidence is likely to be diminished by reason of their fear or distress. In reaching a decision on whether the Special Measures should be invoked, the Courts must take account of the wishes of the individual witness.

Special Measures available are:

- Screens to shield the witness from the defendant.
- The live link to enable the witness to give evidence during the trial from outside the courtroom.
- Evidence given in private – exclusion from the Court of members of the public and the press.
- Removal of wigs and gowns by judges and barristers.
- A video/DVD recorded interview with the vulnerable witness before the trial may be admitted by the Court as the witness' evidence in chief (This evidence is not currently available in the magistrates court).
- Examination of the witness through an Intermediary who may be appointed by the Court to assist the witness to give evidence.



- Aids to communication will be permitted to enable the witness to give best evidence through a communication aid or technique provided that the communication can be independently verified and understood by the Court.

The Police, in consultation with the relevant agencies (via the Safeguarding Manager), makes the CPS aware of the need for any Special Measures. The CPS will then apply to the Court, who will decide whether to grant permission or not for the Special Measures to be available.

Mandatory measures available are:

- Mandatory protection of witnesses from cross-examination by the accused in person. An exception has been created which prohibits the unrepresented defendant from cross-examining vulnerable children and adult victims in certain classes of cases involving sexual offences.
- Discretionary protection of the witness from cross-examination by the accused in person. In other types of offences, the Court has the discretion to prohibit an unrepresented defendant from cross-examining the victim in person.
- Restrictions on evidence and questions about complainant's sexual behaviour. The Act 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.

Implications for Safeguarding Adults Practice

Adult Social Care may receive referrals from the Police or the Crown Prosecution Service asking for assistance and/or support relating to Achieving Best Evidence. Such requests should be dealt with in line with the following protocol, which has been agreed with those agencies.

Protocol for Responding to requests from Police/Crown Prosecution Service Relating to Speaking Up for Justice. The Scope of the Policy, Procedure and Guidance.

The Police or Crown Prosecution Service will request support from Services for the following reasons:

- To help make the judgement about a witness' vulnerability.
- To advise the Police on how to undertake the interview
- To be present as a support during the interview process (this is assuming no one else is available who is known to the witness).

Request for input from Health Personnel (in particular Speech and Language Therapists) may include:

- Acting as an enabler to facilitate the Police taking a statement from a person with a communication disorder.
- Acting as an enabler to assist the Police to question a person with a communication disorder.
- Providing a professional opinion of the ability of a person to understand what is required of them in relation to a Police Interview (i.e. competence as a witness).

In all of the above situations, in the first instance the Police must identify if someone is known to the Statutory Agencies. It may not be clear which service they may be known to, however the following categories are used: Learning Disability, Deaf, Mental Health, Visual Impairment, Assessment and Care Management (essentially Older People) and Physical Disability.

It is the responsibility of ASC to check whether the person is already known and to provide the Police with the name/number to contact directly to give advice/support as appropriate.

There will be a different response depending on whether the adult or adults at risk is a **victim of** adult abuse or another crime, or a **witness to** adult abuse or another crime.

Where the adult or adults at risk is a Victim of an Adult Abuse Crime (Physical, Sexual, Neglect, Psychological, Financial or Discriminatory) then the Safeguarding Adults Procedures must be followed.

If the adult or adults at risk is a Witness to an Adult Abuse Crime, this information needs to be fed into the strategy meeting/discussion regarding the victim, and plans made to access information about the alleged incident in the best possible way.

If the adult or adults at risk is a Victim or Witness to a crime other than one of adult abuse, the Police would need to seek their consent before making a referral to, or seeking information or support from, ASC or the NHS. If the adult or adults at risk is known to services, but refuses to give consent, the Police will have to make a judgement about whether to proceed with their enquires.

The level of support available to the Police in such situations will be dependent on whether the adult or adults at risk is known to the services, and has given their consent to contact being made, and resource priorities at the time.

All information given to the Police can be disclosed during the criminal proceedings.

If the person is not known, each service should provide support via referral to the relevant Adult Social Care Office

When the alleged abuse has occurred in a residential or care setting particular consideration must be given at the Safeguarding Strategy Discussion/ Meeting, to the following possibilities:

- Those initially presenting as witnesses to the alleged incidents, may later be discovered to be victims.
- Those initially presenting as witnesses to the alleged incident, may later be discovered to be implicated.
- Those initially seen as a source of support to the victim may later turn out to be implicated i.e. when members of staff are involved in the alleged abuse.

Any combination of victim/witness/implicated person/perpetrator may apply to an individual during such Safeguarding Adults Investigation.

Complex Investigations

When investigations are complex, particular consideration should be given to how they are managed. The joint Home Office and Department of Health guidance for agencies involved in the strategic management of complex child abuse investigations was published on 13 June 2002. The guidance applies equally to complex adult abuse investigations, and has been adapted and agreed by the Cumbria Safeguarding Adults Board.

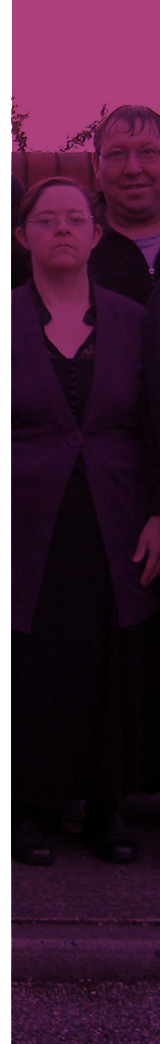
Complex abuse is defined as:

“Adult abuse involving one or more abusers and a number of victims. The abusers concerned may act in concert or in isolation, or may use an institutional framework or position of authority to target victims”. (DoH 1999)

Complexity will increase by virtue of the number of people and places involved and the period when the alleged abuse occurred. Proper investigation will be time consuming, resource demanding and will require specialist skills from both Police and Social Services/Health Care Trust staff.

The Complex Abuse Guidance covers:

- Managing and Conducting an Investigation.
- Records: Safeguarding/Preservation; Access/Information Sharing.
- Support to victims and Witnesses.
- Handling the media.
- De-brief and Closure.



Complex abuse investigations of a criminal nature should be undertaken as a joint operation involving the Police and Adult Social Care with a specialist lawyer from Crown Prosecution Service being involved at an early stage as appropriate.

The Investigation Team should have visible support from the senior management in Police and Adult Social Care (and other agencies) throughout the enquiry.

Witness/Victim Support

The statutory agencies will work together with the Witness Support Scheme to create an individual plan to facilitate preparation for Court (NB: Roles and Responsibilities below).

After Court Appearance

Best practice should extend to after the court appearance and there should be at least one debrief interview. Vulnerable witnesses need to be reassured that it is not their fault if there is not a guilty verdict. If there is a finding of guilt, witnesses may have concerns about harassment if they return to their communities and they can be given advice relating to this. At this stage they should also be given information about the Criminal Investigations Compensation Agency.

Roles and Responsibilities

The role of Supporters, Intermediaries and Interpreters is to:-

- Assist adult or adults at risk give their best evidence,
- Enable others who are perhaps not so familiar with aspects of disability, or mental illness to consider ways and means of being responsive to the special needs and receptive to the abilities of each vulnerable witness.

They should NEVER

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- Coach or rehearse the adult with their evidence, put words into their mouths, prompt them.
- Be people who are likely to be called as witnesses.
- Undertake all roles.
- Have knowledge of the evidence.

There are different types of support that can be offered, and these will depend on what the vulnerable needs and wants. Vulnerable witnesses should always be given the opportunity to discuss possible supports and decide what they feel will be most helpful.

They can be used at various stages; the Police Interview, during the Investigation, Pre-Trial preparation, at Court.

The Supporter

The supporter may have several roles to play:

At Police Interview: To offer emotional support, advise Police, particularly on communication needs, ensuring comfort, need for breaks etc. Supporters could therefore be chosen from family, friends, as well as professional health or Social Service staff.

Pre Trial Preparation: The Witness Service can co-work with Care Workers to prepare witness for what to expect in Court, how to behave, to ask for help etc.

At Trial: The CPS and Counsel can apply for special arrangements for the witness, including the presence of a supporter in the TV link room or court, providing that they are made aware of specific needs.

Intermediary

The use of intermediaries is one of the Special Measures for Vulnerable and Intimidated Witnesses introduced by the Youth Justice and Criminal Evidence Act 1999. The measure enables vulnerable witnesses to receive assistance from a qualified intermediary in giving evidence and can be involved at the start of an investigation, and is aimed at improving access to Justice for Vulnerable People. This service can be used during an ABE interview, as well as at court. As with all special measures, this provision may be used by both defence and prosecution witnesses.

The function of an intermediary is to communicate:

- To the witness, questions put to the witness, and
- To any person asking such questions, the answers given by the witness in reply to them, and to explain such questions or answers as far as is necessary to enable them to be understood by the witnesses or person in question.

Early Special Measures Meetings (ESMM)

An early special measures meeting is similar to a strategy meeting, set up to discuss how evidence will be obtained, how it will be presented to the court and any specific needs of the witness to enable them to give their best evidence.

Useful information regarding an ESMM:

- They may be convened by Crown Prosecution Services doing the Criminal Investigation.
- The Police, Crown Prosecution Service, the Safeguarding Manager, adult or adults at risk and/or their supporter can request a meeting.
- Persons present at the meeting should include; counsel, medical practitioner if appropriate or a Social Worker and the Police.
- It may not always be necessary to have a meeting.
- It should be remembered that each Vulnerable Witness is an individual, and that for Adult Witnesses, terminology such as 'mental age' is generally unhelpful.
- The views of the witness must be obtained by the ESMM to prevent presumptions being made.

It would usually be considered helpful to hold a **MEETING WITH THE WITNESS**. During this meeting, things such as procedures, roles of court officials, special measures and particular needs of the witness should be explained. This meeting could take place before or after the ESMM or there may be more than one meeting.

Terms of Reference

These meetings are to get the best evidence possible:

- It is not about discussing the evidence.
- It is not about discussing matters regarding their personal, social or health histories, unless material to the issue of giving best evidence.



Medical Examinations

There are two reasons for considering a medical examination. One is because medical treatment may be needed and the other is that the examination may provide evidence which could be used in prosecution.

When an adult at risk needs urgent medical attention or has recently been assaulted the need for a medical treatment will always precede any other consideration.

Consent must be obtained prior to any medical intervention from the person requiring the attention/examination in line with local policies on consent to medical treatment. If the person does not have the capacity to consent, reference should be made to best interest decisions using the Cumbria Multi Agency Mental Capacity Policy and Procedures.

If there is a possibility that forensic evidence can be identified, the Safeguarding Manager should seek the adult's permission to call the Police in order that they can supervise the medical examination. If the adult cannot consent on their own behalf, the Safeguarding Manager should, after taking advice, consider this course of action if the best interests of the individual and/or wider public deem it appropriate as per the Mental Capacity Act.

More details about the Mental Capacity Act can be found in the AppendixMental Capacity Act

Preserving Evidence (Excluding Police)

(The Police will follow their own internal guidelines for preserving evidence)

WHILST YOUR EFFORTS TO PRESERVE EVIDENCE MAY BE VITAL, YOUR FIRST CONCERN IS THE IMMEDIATE HEALTH AND WELLBEING OF THE VICTIM.

When Police involvement is required following suspected physical or sexual abuse, they are likely to be on the scene quickly. To enable the Police to investigate effectively, it is imperative that vital evidence is preserved. For the short time before the Police arrive, what you do or do not do can make a vital difference. What follows is a checklist which may help to ensure that evidence is not destroyed.

In all cases, the following apply:-

1. **WHERE POSSIBLE, LEAVE THINGS AS THEY ARE. IF ANYTHING HAS TO BE HANDLED, KEEP THIS TO A MINIMUM. DO NOT CLEAN UP. DO NOT TOUCH ANYTHING THAT YOU DO NOT HAVE TO.**
2. Leave weapons where they are unless they are handed to you. If you have to receive them, take care not to destroy fingerprints. Do not wash anything or in any way remove fibres, blood etc.
3. If you are handed any items of possible interest, e.g. a weapon, put them in separate paper bags which must be sealed and given unopened to a Police Officer. Note on the bags what is contained and store in a secure place.
4. Only where necessary (if they are un-wearable), change and preserve the clothing and footwear of the victim. Handle these as little as possible and store them in separate sealed bags. Hand the sealed bags to a Police Officer.
5. Preserve anything used to comfort or warm a victim, e.g. a blanket.
6. Note in writing the state of the clothing of both the victim and the alleged perpetrator. Note the injuries in writing. Make full written notes on the conditions and the attitudes of the people involved in the incident.
7. Care should be exercised that there is no cross-contamination between the victim and the alleged perpetrator. Therefore, members of staff attending to the victim should not have any contact with the alleged perpetrator and vice versa.
8. Note and preserve any obvious evidence such as footprints or fingerprints.
9. Secure the room and do not allow anyone to enter until the police arrive.
10. Any written record relating to the incident, or its surrounding circumstances, should be preserved and made available to the Police. Any decisions made by senior managers should also be recorded and made available.

In addition, in the case of alleged sexual abuse, the following apply:

1. It is crucial for both the victim and the alleged perpetrator to be medically examined for forensic evidence at the earliest opportunity. (This examination would normally be carried out at the Sexual Assault Referral Centre). Whilst respecting the wishes of the victim, they should be discouraged from washing or bathing until such time as an examination has been undertaken.
2. Try not to have any person in physical contact with both victim and alleged perpetrator as cross-contamination can destroy evidence. This may be difficult if you are alone on duty and need to comfort both parties, but be aware that any one touching both the victim and the alleged perpetrator will cross-contaminate.
3. Preserve bedding where appropriate.
4. Note and preserve any bloody items.
5. Preserve any used condoms.

In any instance where a victim is seriously injured and is taken to hospital, ask that a sample of blood be taken before any transfusion, as a transfusion will invalidate any evidence in relation to blood.

Methods of Preservation

For most things, use clean brown paper; a clean brown paper bag or a clean envelope if possible. If using an envelope, do not lick it to seal.

- For liquids, use clean glassware.
- For knives and other metal objects, use a polythene bag.
- For fire damaged materials, use a nylon bag.

These are obviously ideal solutions and may not be possible at the time of a trauma. However, do the best you can.