

Planning the Interview

KEVIN SMITH AND REBECCA MILNE

Key Points

- Planning investigative interviews is an essential aspect of the interview process.
- Planning involves collating and assessing available information about the child and the suspected offence.
- Planning makes it possible to decide how the interview will proceed and what objectives it should pursue.
- Interview plans should be reviewed and modified in the light of new information.

This chapter is about the planning that an interviewer should complete before conducting an interview. Planning an interview is important in any country; however, England and Wales will be used as an example throughout this chapter. Planning is not a luxury that can be dispensed with when the interviewer is busy; it is integral to the interview process. In the absence of planning, interviewers are unlikely to have a clear idea about what they are setting out to achieve and how they might best achieve it in the interview. This is likely to have an adverse consequence on the structure of the interview, notably on the sequence in which the

various investigative topic areas are introduced, and on the efficacy of the techniques used.

On some occasions such planning will take place in the context of an interview strategy (Smith & Tilney, 2007). In England and Wales, interview strategies are the responsibility of investigating officers; they are usually developed by an interview adviser who has the responsibility for the overall management of the interview or a number of interviews within the investigation (for an outline of the tiered approach to investigative interviewing in England and Wales see Griffiths & Milne, 2005). Interview strategies set the conditions in which the interview takes place, including the topics and the sequence in which they should be covered. While interview strategies are usually the responsibility of an interview adviser, interview plans are very much the responsibility of the interviewer. An interview plan should always take account of the interview strategy. Unlike an interview strategy, an interview plan tends to focus on the detail of the interview, for example the techniques to be used to initiate and probe an account. A strategy determines *what* needs to be covered; an interview plan sets out *how* it is to be dealt with.

This chapter covers the following key concepts:

- Planning information:
 - witness assessment;
 - minimal offence information;
 - information important to the investigation.
- Using planning information:
 - objective setting;
 - decision making; and
- Interview preparation.

PLANNING INFORMATION

In a nutshell, planning consists of using information about the child and the investigation to develop an interview plan. Information about the child is established by means of a witness assessment. Finding information out about the investigation means acquiring a limited knowledge of the alleged offence and establishing what general and, so far as is possible, specific background material may be relevant to the inquiry. What is known about the witness and the investigation is then used to identify the most appropriate approach to be taken in the interview.

Witness Assessment

Witness assessment consists of:

1. Collating information about the child's circumstances;
2. Issues of consent; and
3. The welfare of the child.

The child's circumstances The information about the child that should be established for the purposes of planning the interview includes the following:

- Age of the child;
- Gender;
- Culture, ethnicity, religion and first language;
- Preferred name;
- Domestic circumstances (including whether the child is currently in a 'safe' environment);
- The implications of any physical or learning disability or mental disorder for the interview process;
- The implications of any medication taken for the interview process;
- Current emotional state, including
 - trauma
 - distress
 - fears of intimidation
 - recrimination
 - any other recent significant stressful events experienced (e.g., bereavement);
- Likely impact of recalling traumatic events on the behaviour of the witness;
- Current or previous contact with public services (including previous contact with police, the children's services department of the local authority or health professionals); and
- Relationship to the alleged offender.

Some of these factors may merit specialist advice (e.g., from a paediatrician or a psychologist). This is particularly true of culture, ethnicity and religion, and in relation to physical or learning disability or mental disorder, including the implications of any medication taken for the interview process. Specialist advice can be very useful in these circumstances but, unless the specialist knows the child well, it should always be tempered with information about the child who is to be interviewed because the broad parameters of culture and diagnostic features o

many disabilities and disorders often manifest themselves in families and individuals in different ways (Office for Criminal Justice Reform, 2007a). For this reason, it may be useful to talk to the specialist about these issues before talking to those who know the child well about them; broad cultural issues and the diagnostic features of disability can then help to guide the interviewer as to what to ask those who know the child well. For example, an understanding that children with autism are likely to have a rather inflexible approach to routine (e.g., see Attwood, 1998) may lead an interviewer to ask the child's carers how they manage a change in routine, something that could be very useful when preparing the child for the interview.

Consent Witness interviews should take place with the informed consent of the interviewee. Such consent should be obtained as soon as sufficient information has been obtained as to whether the witness can understand what they are being asked to consent to. Where a witness is under 17 years in England and Wales interviewers need to consider the guidelines specified by Lord Fraser in the case involving Victoria Gillick (*Gillick v. West Norfolk and Wisbech AHA*, 1985). The effect of the Fraser guidelines is that a child can consent in their own right if they are capable of understanding the implications of what they are being asked to consent to. If a child can understand the implications of being interviewed as a witness and, where the interview is to be video recorded, the use to which the recording is to be put they can consent in their own right. If a child cannot understand these implications the consent of a parent or a guardian is required, or the consent of the local authority where the child is the subject of a care order or interim care order unless a court has already given their permission via an Emergency Protection Order.¹ It is important to note that *Achieving Best Evidence* (Office for Criminal Justice Reform, 2007a) deals with the issue of informing a child's parents/guardians separately to consent: other than in wholly exceptional circumstances parents/guardians should be informed even where the child has the capacity to consent.

'Informed consent' in this context refers to the understanding about the purpose of the interview (e.g., to be played as evidence-in-chief or, in the case of a written statement, to help the lawyer for the prosecution guide the witness through live evidence-in-chief). Informed consent is not only a moral imperative in England and Wales, it is also a procedural requirement that arises from the *Code of Practice for Victims of Crime* (Office for Criminal Justice Reform, 2005) and the *Witness Charter* (Office for Criminal Justice Reform, 2007b). Both the *Code of*

¹Section 44 Children Act 1989.

Practice for Victims of Crime and the *Witness Charter* oblige the police to explain special measures to vulnerable and intimidated victims and witnesses. Such an explanation should include the following points in England and Wales:²

- That the witness may have access to special measures if the court agrees but that no guarantees can be given that the recording will be played;
- That video recorded evidence-in-chief is an *option*;
- That video recorded evidence-in-chief means playing the video in open court, although an application could also be made for the evidence to be heard in private³ by clearing the public gallery;
- That the witness still needs to be available for cross-examination usually via a live television link;⁴
- That the reason for video recording the interview for the purpose of evidence-in-chief is to reduce the potential stress on the witness by limiting the extent to which they might otherwise need to repeat their account;
- That the video recording will be served on the defence with the rest of the prosecution case papers (as would be the case with a written statement).

As can be seen in England and Wales, the video recorded interview forms a dual function: (i) it has an investigative purpose, to establish what has occurred (if anything) and who has committed the offence and (ii) an evidential one as a child's evidence-in-chief. This thus has to be acknowledged in the planning.

Welfare The practice issues associated with child protection and the multi-agency context in which it is investigated is covered elsewhere in this book. In situations in which the police are involved and child protection is not an obvious issue, the children's services department should still be consulted prior to the interview. The child or their family may already be known to the local authority or may warrant assessment to establish whether they are in need.

Where a child is injured or traumatized, or is already undergoing a course of medical or psychological treatment, it will be necessary

²In other jurisdictions an explanation of the purpose of conducting an interview with a child on video should take account of the legal provisions in the country where the interview is to take place.

³Section 25 Youth Justice and Criminal Evidence Act 1999.

⁴Section 24 Youth Justice and Criminal Evidence Act 1999.

establish whether they are fit to be interviewed by asking the person in charge of their treatment. If they are not fit to be interviewed an attempt should be made to find out what their prognosis is likely to be following treatment, particularly in respect of when, if ever, they are likely to be fit to be interviewed. If they are fit to be interviewed the 'terms and conditions' of the interview (e.g., maximum duration of the interview sessions, minimum period of time between interview sessions) should be established. Where a child is in hospital it may also be useful to find out whether they have said anything about the matter that is to form the basis of the interview and what, if anything, they have been told about it by visitors and those involved in their treatment because this may be of relevance when subsequently evaluating the interview for reliability. For example, a child who has been rendered unconscious as a result of an assault may wake up in hospital enquiring how they got there. In these circumstances, distinguishing between a simple repetition of what the child was told in response to such a query and a memory of the event during which the assault took place is likely to be a crucial consideration when the interview is evaluated for reliability.

Minimal Alleged Offence Information

Ideally, interviewers should only have minimal alleged offence information because of the potential of such knowledge to contaminate the interview. Such minimal information includes:

- The nature of the alleged offence;
- The time, frequency and location of the alleged offence;
- How the alleged offence came to the notice of the police;
- The nature of any threats or intimidation alleged to have been used by the suspect or their family or associates.

Limiting an interviewer's knowledge of the offence to this minimal information is desirable because it reduces the scope for confirmation bias. 'Confirmation bias' is a process in which interviewers and investigators wittingly or unwittingly guide their decision making and the questioning itself to confirm pre-existing views they may have (for more on this concept see Ask & Granhag, 2005; Savage & Milne, 2007).

While such a limited knowledge of the offence on the part of interviewers is certainly desirable, it is rarely achievable. Indeed, it can only be achieved in high profile investigations of the most serious kind (e.g., a child witness to a murder) where resources in terms of the number of potential interviewers are readily available and where an interview

adviser can drip-feed information to the interviewer at the appropriate time in the interview as and where necessary and in accordance with the interview strategy. In most cases, however, a minimal knowledge of the offence on the part of the interviewer is usually unachievable because of the extent of their involvement in the investigation. For example, in England and Wales, police officers involved in investigating allegations of child abuse within a family will usually have attended a planning meeting with social services prior to conducting an interview; in these circumstances the alleged offences are necessarily discussed in order to determine the most appropriate course of action. In such cases it can only be hoped that an awareness of the possibility of confirmation bias on the part of the interviewer will minimize its effects, although, in the absence of any research on the subject, it must be accepted that this not entirely clear how effective simply having such an awareness is likely to be.

Information Important to the Investigation

Information important to the investigation can be thought of as falling into two categories:

1. Matters of general investigative practice; and
2. Case-specific material.

Matters of general investigative practice include:

- Points to prove the offence;
- Case law (e.g., in the *R v. Turnbull* (1977) case in respect of eyewitnesses in England and Wales); and
- Good investigative practice (e.g., 'Have you told anyone else about this?').

As is suggested in the name, case-specific material very much depends on the particular circumstances of the case. It could include:

- The antecedence of the victim;
- The background to a relationship;
- A history of the alleged abuse experienced by a victim;
- The victim's usual routine;
- The ownership, control or use of property such as vehicles, mobile telephones, and computers;
- Access to weapons;
- Access to a crime scene;

- Access to material that could be used to conceal or cleanse a crime scene; and
- Significant omissions or inconsistencies between the witness's account and other material.

Matters of general investigative practice are invariably of evidential value, whereas case-specific material often has little or no evidential value (highlighting the dual role of the interview noted earlier). The principal function of case-specific material is to aid the investigative process by contributing to the investigator's understanding of the alleged offence and by generating lines of inquiry.

Interviewers should know as much as possible about matters of general investigative practice when they prepare for interview. The amount of case-specific material that interviewers can have access to prior to the interview is, however, dependent upon on how much they know about the alleged offence. The interview plan will need to take account of situations in which interviewers have only limited knowledge of the offence and thus no knowledge of some or all of the case-specific material (to help stop interviewer bias as noted earlier). In these circumstances the case-specific material might be handled either by being 'drip-fed' to the interviewers at a suitable point in the interview by someone monitoring the process (e.g., an interview adviser) or, where the case is complex, by the interview taking place in two parts separated by a break during which the interviewers can be briefed about the case-specific material.

USING THE PLANNING INFORMATION

The use of the planning information to plan the interview is a decision-making process. Such decisions should be made by the interviewers as a team effort. Where an interview plan is developed in the broader context of an interview strategy, the decisions made by the interviewers are open to amendment by their managers, or by the interview adviser appointed to develop the strategy on behalf of their managers.

Objective Setting

After all the planning information has been obtained it should be used to plan the interview. As a first step it should be used to set the objectives for the interview. These objectives should be clear, precise, and topic-based and clearly identify the incident-related topics (e.g., the child's movements at the time of the alleged offence) and the case-specific information important to the investigation (e.g., the history of

what the witness knows about the offence' are of little use in determining the ground to be covered during the interview.

Setting out the objectives in a way that clearly distinguishes the incident-related topics from the case-specific information important to the investigation reflects the dual purpose of the interview; to play the recording as evidence-in-chief and to advance the investigation. These purposes are seldom entirely consistent with each other; the kind of background material that is regarded as case-specific information important to the investigation can prove absolutely crucial in solving a crime, corroborating an account or in locating an offender but it relies on semantic rather than episodic memory (see planning 'interview structure and techniques' below) and it is not usually the stuff of evidence. For these reasons it is essential that the differences between the different kinds of objectives are taken into account during the planning phase when the structure of the interview is considered for two reasons:

1. Memory recall may become unnecessarily difficult for a witness if they are frequently asked to switch between different kinds of memory; and
2. The courts may be reluctant to permit the playing of a lengthy recording when they consider that much of the material in it is irrelevant to the proceedings (i.e., not evidence) if it cannot be edited as a result of the interview being poorly structured and the topics being muddled up.

Decision Making

The planning information should then be used to determine the following:

- The most appropriate structure and techniques for the interview;
- The method of recording the interview;
- The location of the interview;
- The equipment to be used to record the interview;
- Any props and exhibits that should be available to the interviewers;
- The people to be present during the interview:
 - interviewers;
 - camera operator;
 - interview monitor;
 - witness supporter;

- interpreter;
- intermediary;⁵
- The timing, likely duration and pace, and number of interview sessions.

Interview structures and interview techniques An interview structure describes the component parts of an interview in terms of its phases and the topic areas to be dealt with and the order in which they should be covered. Interview techniques refer to the methods to be used within each phase or while covering each topic area. Interview techniques and structures are covered elsewhere in this book.

Method of recording Video recording of interviews with children has the advantage of providing a more complete record of what was communicated, verbally and non-verbally, in the interview than is ever likely to be possible with handwritten notes alone (e.g., see Wolchover & Heaton-Armstrong, 2007). In addition to this, such a recording could also serve to reduce the stress on the child by limiting the number of times that they have to repeat their account (Home Office, 1989) because it can be played back in a variety of settings in England and Wales including the criminal courts by way of evidence-in-chief, civil court cases involved in resolving child care issues, and disciplinary proceedings concerning inappropriate behaviour by adult employees towards children (Office for Criminal Justice Reform, 2007a). Decisions about the method of recording should take account of what is known about the child, including the child's wishes and those of their carers, and what is known about the offence. For example, it is likely to be appropriate to audio record an interview with a child who consents to be interviewed but who is reluctant to appear on camera as a result of an offence involving witness intimidation in circumstances where their identity is not already known to the alleged offender and an application for witness anonymity is a realistic possibility according to the legislation in England and Wales. It is important that the witness assessment and the circumstances of the offence are considered carefully when making a decision as to the most appropriate method of recording. However, it is difficult to provide general advice on this issue because it is important that every child is treated as an individual but matters such as the chronological and developmental age of the child as well as the emotional impact the alleged offence is likely to have on them, including

⁵See definition later in this chapter and O'Mahony, Smith and Milne (in press) for more on the role of the intermediary.

the potential for recrimination and intimidation, are likely to feature in decisions as to the most appropriate method of recording.

Location Video recorded interviews should ideally take place in purpose-built interview suites because they are designed to keep background noise and visual distractions down to a minimum. Memory retrieval requires intense concentration and thus to obtain detailed accounts from interviewees appropriate distraction-free environments and a place where the victim feels at ease and safe is essential.

Portable video recording equipment should only be used where it is not practical to access a purpose-built interview suite. Where portable equipment is used all possible steps should be taken to minimize auditory distractions such as mobile telephones ringing and the sounds from radios or televisions elsewhere in the premises. In some instances it may also be worth considering the use of screens to reduce visual distractions in the background where this is practical.

Where the interview is to take place in an institution such as a hospital, finding out about the cleaning and meal-time routines may also serve to minimize auditory distractions, particularly where cleaning equipment such as vacuum cleaners and floor buffers are used.

Equipment Most interview suites in England and Wales are equipped with one Pan Tilt Zoom (PTZ) camera that is used to focus on the witness and a wide-angle lens camera that records the events in the whole room during the interview. Most portable equipment consists either of a single PTZ camera or a PTZ camera and a wide-angle lens camera. This equipment may be either analogue VHS tapes or digital DVD disks, although it is likely that digital recording will progress to storage on a secure central server in due course, when funding permits (Griffiths, 2008). This equipment is likely to be perfectly adequate for most witness interviews with children.

However, additional cameras may be necessary where a child uses an augmentative or alternative form of communication that involves the use of signs or symbols. Where a child and the interpreter or intermediary are signing a single PTZ camera may not be able to record what both are doing, given that the camera should focus on the witness (Office for Criminal Justice Reform, 2007a, Appendix H, paragraph 9) and a wide-angle lens camera is unlikely to have the resolution needed to discriminate between some of the more subtle signs. In these circumstances it may be worth considering the use of an additional PTZ camera to record what the signer is doing in order to preserve the integrity of the interview. A similar issue may arise where the child is using symbols to communicate; an additional PTZ camera placed

behind the child should be able to record more accurately which symbols are being pointed at.

Props and exhibits Props are dealt with in Chapter 17. If it is necessary to ask the child to identify an item of property as something that is of relevance to their account the interviewers will need to have it on hand. In these circumstances it will usually be appropriate to keep the property out of the sight of the child until the point in the interview when it is mentioned and then to produce it and ask the child if they can identify it. The property may be kept either in the control room or in a locked cabinet in the interview room.

People present Other than the child, the people present in the interview might include:

- Interviewers;
- Camera operator;
- Interview monitor;
- Interview supporter;
- Interpreter; and
- Intermediary.

Interviewers The training of interviewers is dealt with elsewhere in this book. In addition to training it is important to take account of the skills and experience of the interviewer and the likelihood of them being able to build a rapport with the child. The gender of the interviewer may also be important for some children in some circumstances (e.g., as a result of culture, sexuality or the nature of the offence), although no assumptions should be made about this and the child and their carers should always be consulted. Other personal qualities such as the age or cultural background of the interviewer might also be a consideration; in instances where the child or their carers express a preference it should be accommodated as far as possible in the circumstances (Office for Criminal Justice Reform, 2007a).

Interviewer welfare issues should also be considered. Such welfare issues may relate to apparently minor issues that are likely to distract or put unnecessary pressure on the interview, such as the time that they have available to conduct the interview or they might include a major event such as a bereavement that could make them less able to manage an emotionally charged disclosure. Where the interview or the potential interviewer is likely to be adversely affected by welfare concerns managers should be open to considering the use of another interviewer. In these circumstances managers will clearly need to ensure

that they act in a tactful and supportive way to potential interviewers who are not to be used as a result of the welfare issues surrounding them.

A decision should also be made during the planning of the interview as to whether a second interviewer should be present. Such a decision should take account of the complexity of the case, the age and emotional condition of the child and the resources available to the interview team. The possibility that the child might feel intimidated by the presence of too many people in the interview room must also be considered in determining whether a second interviewer should be present in the interview room, particularly where several other people also need to be there (e.g., interpreters, intermediaries and interview supporters). If a decision is made that a second interviewer is to be present it is important that there is a clear understanding about who will lead the interview and that it is agreed when and how the second interviewer will be given the opportunity to contribute towards the interview (e.g., by being explicitly invited to do so after the lead interviewer has finished probing each topic).

Camera operator A camera operator should always be present when the interview is video recorded. The practice of a lone interviewer setting up the recording equipment before the interview begins raises two difficulties:

1. The PTZ camera needs to be set up in such a way that it focuses on the child from a few inches above their head down to their waist. This is so because a clear picture of them might help the court determine what they have said and to assess their emotional state. If the camera is set up in this way and the child moves position posture, even to a small imperceptible degree, there is every chance that they will be completely or partially lost from the picture;
2. If the recording equipment fails during the interview the interviewer will not discover it until the interview has been completed, this could potentially give rise to the loss of important material.

Interview monitor There may be occasions on which it is thought helpful to have someone in addition to the camera operator to observe the interview in order to identify any confusion that arises in the communication between the child and the interviewer, to identify any gaps or inconsistencies that emerge in the child's account, to make sure that the child's needs are taken into consideration (e.g. for a break) and to ensure that everything that needs to be covered in the interview is adequately dealt with. Such an interview monitor is likely to

be particularly useful in cases where the alleged incident is a complex one or where the information important to the investigation contains much case-specific material. Where an interview monitor is used the plan should clearly identify how and when they will be given the opportunity to contribute towards the interview. This might be by the interviewer telling the child that they need to check that they have not missed anything with the monitor at the end of each major topic or just prior to the closure phase of the interview. Alternatively, wireless earpieces might be used so that the interview monitor can make suggestions to the interviewer as the interview progresses; however, such earpieces should only be used after careful consideration because they can distract both the interviewer and the interviewee. In addition, they could also be perceived suspiciously by the interviewee and be unnerving for the child.

Witness supporters A supporter may be present with the agreement of the witness to provide them with emotional support during the interview. The possibility of a witness supporter being present during the interview should certainly be a consideration where the witness assessment and the circumstances of the case suggest that the presence of a supporter might be useful. For example, where the child is young or has a learning disability and finds it more difficult than others to adjust to new people in unfamiliar environments or where the witness is particularly traumatized. Witness supporters cannot be other witnesses in the case. *Achieving Best Evidence* generally discourages the use parents or carers as supporters because they can be an additional source of stress for the witness (Office for Criminal Justice Reform, 2007a, paragraph 2.104). Witness supporters should not be confused with appropriate adults in England and Wales; appropriate adults should only to be used in interviews with suspected offenders (O'Mahony, Smith, & Milne, in press). It is important to note that the role of the interview supporter is a rather passive one in England and Wales in that they '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' (Office for Criminal Justice Reform, 2007a).

Interpreters Children should usually be interviewed in their first language unless there is a good operational reason for not doing so. For example, an immediate concern for the safety of the child who speaks an unusual language or uses an unusual dialect in addition to being able to communicate in English where the only people available to translate

for them in their first language are suspected of being involved in committing an offence against them. Where the child or their family express a preference for an interpreter of a particular gender, religious background or ethnicity and it is not possible to accommodate them the reasons should be carefully explained to them. Where the society from which the family's values originate is stratified into social groups it might be useful to obtain cultural advice to establish whether there is likely to be an issue if the interpreter comes from a different social group to the child.

Non-English language interpreters should be accredited with an appropriate body in England and Wales. Where an interpreter is not so accredited it is important that they meet the same standards as those on the national register.

A sign language interpreter who is registered with an appropriate body in England and Wales will also be required where the child is deaf. Before engaging such an interpreter, however, it is important to find out which form of sign language the child is using. The most common form of sign language used in the United Kingdom is British Sign Language (BSL), but BSL is by no means the only form of sign language. Even where the child uses BSL it should be noted that there are a number of different regional dialects in use across the United Kingdom and that it cannot be assumed that a signer proficient in one will necessarily be able to communicate with a child using another. Younger children who are deaf may not be fully proficient in BSL; in these circumstances consideration should be given to commissioning a registered intermediary⁶ (see next section) rather than an interpreter. Children who have a learning disability may use sign language as either an augmentative or alternative form of communication; in these circumstances the sign language used is unlikely to be BSL and an intermediary who is competent in the use of other signing systems such as Makaton⁷ should be called.

Whenever an interpreter is used it is important to understand that translation from one language to another is seldom literal; translation tends to take place on the basis of meaning. In view of this it is essential that interpreters are involved at some point in the planning process, perhaps after the objectives have been set and when the interviewer has a good idea of what they want to achieve but before firm decisions have been made about the use of any specific techniques.

⁶The register of intermediaries includes a number deaf people who are capable of facilitating communication in non-standard sign language.

⁷See www.makaton.org for further information.

Intermediaries Intermediaries are one of the special measures in England and Wales that are provided for in Part 2 Youth Justice and Criminal Evidence Act 1999 (YJCEA). In particular, Section 29 points out that the function of an intermediary is to communicate: (i) questions put to the witness; and (ii) answers given by the witness, and to explain such questions and answers so far as is necessary to enable them to be understood by the person asking the questions of the witness.

Intermediaries are available during the investigative interview and during any court proceedings that follow it. Where an intermediary is used during an interview it is necessary to make an application retrospectively for their use when the case comes to court (for more on the role of the intermediary see O'Mahony, Smith, & Milne, in press).

Intermediaries are professional people from a variety of backgrounds which include speech and language therapy, clinical and forensic psychology, special needs education and mental health. They are selected and trained by the Ministry of Justice in England and Wales then put on a register. The process of accessing the register is one of matching the communication needs of the child with the skills of the intermediary. The matching service is managed by the Specialist Operations Centre for the National Policing Improvement Agency.

All vulnerable witnesses are eligible for an intermediary. Section 16 of the YJCEA defines vulnerable witnesses as children, and people of any age with a mental disorder, learning disability or physical disorder or disability that has an adverse impact on their ability to communicate. Eligibility is one thing; however, actually getting access to an intermediary is another. To gain access to an intermediary it will be necessary to demonstrate to the court that the child's evidence is likely to be maximized by their use. There are no precise guidelines about how to make a judgement as to whether an intermediary is required; in practice it is likely to be a matter of witness assessment, focusing on the child's age where communication is age-appropriate and the nature of their disability where it is not.

Intermediaries need to assess the witness before the interview to ensure that they have the skills needed to facilitate the dialogue with the witness and establish the most appropriate methods of communication during the interview. A police officer should usually be present during the assessment to corroborate and act upon any unsolicited comments that might be of significance to the investigation. The details of the assessment vary according to needs of the witness but they can include:

- Extent of vocabulary (verbal/sign/symbol);
- Use of auditory memory;
- Attention span (including concentration);

- Turn-taking;
- Use of abstract concepts and concrete words;
- Understanding of questions beginning with where, what, when, why, and how;
- Likely response to open questions;
- Maximum words likely to be understood in a question;
- Use of non-verbal communication;
- Acquiescence and suggestibility;
- Causality;
- Concept of time;
- Use of narrative conventions when providing an account, including the sequencing of events; and
- Taking the perspective of others (theory of mind⁸).

This list is by no means exhaustive and is only presented to give the reader an insight into what is involved in the assessment.

Having assessed the child's communication skills it is essential that intermediaries are involved in planning the interview after the objectives have been set and when the interviewer has a good idea of what they want to achieve. Given the range of communication skills involved, children can sometimes be tired after the assessment. For this reason and because the intermediary needs to be involved in planning, the assessment often takes place on a different day to the interview.

In most cases, having conducted the assessment and been involved in planning, the role of the intermediary during an interview is quite different to the role of an interpreter. An interpreter serves as a translation point through which both the interviewer and the witness have to go whereas intermediaries often only speak during an interview when a question is asked or an answer is given that is not likely to be understood. In instances involving the use of alternative systems of communication such as the use of signs or symbols, however, it may be that the intermediary will adopt a role more akin to that of an interpreter during the interview.

Timing, duration and pace, number of interview sessions The interview should take place as soon as possible, certainly where the matter under investigation relates to a recent event (for a discussion about the retention interval in memory see Murdock, 1974). Questions may be raised about the accuracy of the child's memory if there is an unreasonable delay in conducting the interview, particularly where the child is young.⁹

⁸For example, Baron-Cohen, Leslie and Frith (1986).

⁹As was the case in *R v. Powell* (2006).

However, the need to act quickly should never be used as an excuse for failing to plan the interview properly. Given that the consequences of a failure to plan may be a poor interview and that a poor interview may have adverse consequences for the investigation and on any legal proceedings that follow it, it is incumbent on those responsible for managing interviewers to ensure that interviewers are given enough time for planning.

The timing of the interview should take account of factors such as the child's routine and the effects of any medication they are using (e.g., if they have been prescribed a slow-release drug that makes them drowsy in the afternoon the best time for the interview is likely to be the morning).

Similarly, the duration and pace of the interview must be influenced by what is known about the child, including their age, medical, mental and emotional condition. In complex cases or cases in which the witness cannot be interviewed for more than a short period of time, it may be appropriate for the interview to take place over a number of sessions. These sessions can take place over more than one day if necessary.

PREPARING THE WITNESS FOR THE INTERVIEW

It is important that the interview plan sets out the arrangements for preparing the child for the interview. In some cases preparation may take place just before the interview but in cases where the age, developmental level or emotional condition of the child is such that time will be needed to give them an opportunity to familiarize themselves with the interviewer and build some trust in their relationship preparation is likely to take place a day or two before the interview. In some cases preparation might even extend to a number of sessions several days before the interview.

Overall, interview preparation should:

1. Begin the process of rapport building between the child and the interviewer;
2. Help the child to gain an understanding of the particular conversational rules that apply in an investigative interview;
3. Give the child an understanding of the overall structure of the interview;
4. Provide the interviewer with an opportunity to supplement their knowledge of the child's developmental level and emotional condition.

Interview preparation should, therefore, include:

- An explanation of the role of the interviewer(s);
- An explanation of the purpose of the interview without discussing the details of the offence being investigated;
- The ground rules for the interview (e.g., not making any assumptions about the interviewer's knowledge of what was witnessed);
- An outline of structure of the interview without discussing the details of the offence being investigated.

In England and Wales it is rarely practical to make an electronic recording of interview preparation. Written records have routinely been made of interview preparation since video recorded interviews for use as evidence-in-chief were introduced for children in October 1992 and very few challenges suggesting that the witness was coached have been made in the English and Welsh courts. Such allegations could equally apply to other interactions with the child that are also not practical to electronically record such as initial contact with the police, the journey to the interview suite and any time taken to show the child around the facility prior to the recording equipment being switched on. Interviewers should ensure that the written record of the interview preparation and any other pre-interview contact with the child is as comprehensive as possible so that they are in a position to rebut any subsequent suggestion of coaching.

Interview preparation is not intended to include a discussion about the matter under investigation; this should be left until the investigative interview. Sometimes, however, despite the best intentions of the interviewer, children can make unsolicited comments that might be relevant to the investigation, including a reference to the allegation under investigation. In these circumstances the rules governing initial contact with the witness¹⁰ should be applied to interview. These rules may be summarized as follows:

- Listen to the child, do not interrupt them;
- If it is not necessary to ask any questions, acknowledge what the child has said and tell them that the matter will be explored further during the investigative interview;
- Only ask questions if it is necessary to take some form of immediate action (e.g., to protect another child, to ensure the recovery of forensic material);

¹⁰As set out in *Achieving Best Evidence*, Office for Criminal Justice Reform (2007a) paragraph 2.29.

- Where it is necessary to ask questions try to limit them to the type of questions commonly used in investigative interviews (e.g., open-ended and specific closed); and
- Make a comprehensive written record of what was said and the circumstances in which it was said as soon as possible.

It should always be remembered that a child witness could refer to previous conversations with the interviewer during the video recorded interview itself and that the lawyers acting for the accused person may therefore ask what was said. For this reason, in England and Wales, written records of interview preparation and any other pre-interview interaction with the child are disclosed to the Crown Prosecution Service (CPS) in the event of the matter subsequently being referred to them. The CPS will then forward a copy of these records, along with the other prosecution papers, to the lawyers acting for the accused person, thus ensuring that the whole process is as transparent as possible.

The interview plan should be reviewed and revised as necessary following interview preparation.

CONCLUSIONS

This chapter has described the process of planning an interview with a child victim or witness. In essence, planning consists of the following:

- Collating information about the child and conducting an assessment of that information (witness assessment);
- Establishing minimal information about the offence;
- Identifying what information that the child may have access to that is important to the investigation.

This information is then used to set the objectives for the interview and to make decisions about the interview process relating to:

- Structure and techniques;
- Recording method;
- Location;
- Recording equipment;
- Props and exhibits;
- People to be present; and
- Timing, duration, pace and number of sessions.

The child should then be prepared for the interview and the plan reviewed and revised if necessary.

Planning should be an integral part of the interview process; it is a luxury that can be dispensed with when the interviewer is busy. Without effective planning there can be no effective interview. If interviewers do not know who they are talking to or what they are talking about we should not be surprised if the interview has a less than satisfactory outcome.

REFERENCES

- Smith, K., & Granhag, P.A. (2005). Motivational sources of confirmation bias in criminal investigations: the need for cognitive closure. *Journal of Investigative Psychology and Offender Profiling*, 2, 43–63.
- Wood T. (1998). *Asperger's Syndrome: A Guide for Parents and Professionals*. London: Jessica Kingsley.
- Wimmer, P., & Cohen S., Leslie, A.M., & Frith, U. (1985). Does the autistic child have a theory of mind? *Cognition*, 21, 37–46.
- Wick v. West Norfolk and Wisbech AHA* [1985] 3 All ER 402.
- Wright, A. (2008). Setting digital standards. *Investigative Practice Journal* (10 March 2008), pp. 28–29.
- Wright, A., & Milne, R. (2005). Will it all end in tiers? Police interviews with suspects in Britain. In T. Williamson (Ed.), *Investigative Interviewing: Rights, Research, Regulation*. Cullompton, UK: Willan.
- Home Office. (1989). *Report of the Advisory Group on Video Evidence*. London: Home Office.
- Rock, B. (1974). *Human Memory: Theory and Data*. Potomac: Lawrence Erlbaum.
- Office for Criminal Justice Reform. (2005). *Code of Practice for Victims of Crime*. London: Office for Criminal Justice Reform.
- Office for Criminal Justice Reform. (2007a). *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Using Special Measures*. London: Office for Criminal Justice Reform.
- Office for Criminal Justice Reform. (2007b). *Witness Charter*. London: Office for Criminal Justice Reform.
- Shahony, B., Smith, K., & Milne, R. (in press). The early identification of the vulnerable witness prior to the investigative interview. *British Journal of Forensic Practice*.
- Powell (2006) EWCA Crim 3.
- Turnbull (1977) QB224.
- Shahony, B., & Milne, R. (2007). Miscarriages of justice: the role of the investigative process. In T. Newburn, T. Williamson, & A. Wright (Eds), *Handbook of Criminal Investigation* (pp. 610–627). Cullompton, UK: Willan.
- Smith, K., & Tilney S. (2007). *Vulnerable Adult and Child Witnesses*. Oxford: Oxford University Press.
- Chover D., & Heaton-Armstrong A. (2007). Woeful neglect. *New Law Journal*, 624–625.