

GLOSSARY OF TERMS

Admissible evidence - evidence which is relevant to a matter which the court is deciding, and which is not excluded by rules established by the courts and statute law. Under the Youth Justice and Criminal Evidence Act 1999 video recorded evidence may be admissible even though the normal rules of evidence require witnesses to attend and give their evidence at the time of the trial. (See also **inadmissible evidence**).

Burden of Proof – In proceedings for a criminal offence the defendant is generally presumed to be innocent. This means that in order for the court to convict him, the prosecution must carry the burden of proving that the defendant committed the offence alleged, and must do so beyond reasonable doubt. In civil proceedings it is generally for the party bringing the proceedings to prove its case on the balance of probabilities.

Child witness - There are several definitions of "child" for legal purposes. For the purposes of the **special measures directions** which may be made under the Youth Justice and Criminal Evidence Act 1999 to assist **eligible** witnesses to give evidence, a child witness is a witness who is eligible because he or she is under 17 when the direction is made. Unless child witnesses are in need of special protection, there is a presumption that their **evidence in chief** will normally be received in the form of a **video recording**, with live link being used for **cross-examination** and any re-examination (as to which see **examination in chief**). A child witness is in need of special protection if the offence consists of one of a number of violent offences such as assault and kidnapping, or if it is sexual. In such cases there are further presumptions steering the court towards the use of video recorded evidence in chief and, in the case of sexual offences, pre-recorded cross-examination too.

Another relevant definition of "child" for the purposes of the Youth Justice and Criminal Evidence Act 1999 relates to the giving of unsworn evidence. A "child" under the age of 14 who is competent to give evidence does so without taking an oath or making an equivalent solemn affirmation, i.e. unsworn. (see also **competence**).

Civil Proceedings - A case at civil law is normally one between private persons and/or private organisations. Typically it will be about defining the rights and relations between individuals (for example, matrimonial proceedings and disputes about where the child of separated parents should live).

Committal proceedings - Offences which are triable only on indictment are sent immediately for trial in the **Crown Court** after a preliminary hearing by magistrates at which the evidence is not considered. Where an offence may be tried either in the Crown Court or the **magistrates' court** (an "either way" offence) the magistrates determine first whether the case is to be sent to the Crown Court for trial ("mode of trial" proceedings). If the case is to be tried in the Crown Court the magistrates also hold committal proceedings in order to give the defence an opportunity to argue that the evidence is insufficient to justify sending the case to trial. In practice this is rarely done and committal proceedings are often a formality. Witnesses are not called at committal proceedings.

Compellability (of witness) - The general rule is that if a witness is competent to give evidence they are also compellable. This means that the court can insist on them giving evidence.

Competence (of witness) – In criminal proceedings a person who is not competent may not give evidence. Section 53 of the Youth Justice and Criminal Evidence Act 1999 provides that "all persons are (whatever their age) competent to give evidence". An exception applies where a person is not able to understand questions put to him or her as a witness, and give answers which can be understood. If the question is raised it is for the trial judge (or in a magistrates' court, the magistrates) to decide whether a particular witness falls within the exception, and the party who wishes to call the witness to give evidence must prove that he or she does not. A person over 14 who is competent but who does not appreciate the significance of an oath gives evidence unsworn, as do children under the age of 14.

A second kind of exception applies to a person who is on trial (the defendant"). A defendant in a criminal trial is not permitted (and in that sense is not competent) to be called to give evidence for the prosecution. Provided that a defendant is not within the first exception, however, he or she may give evidence for the defence.

Complainant – according to section 63 of the Youth Justice and Criminal Evidence Act 1999, "complainant", in relation to any offence or alleged offence, means a person against or in relation to whom the offence was (or is alleged to have been) committed. Thus a person may be a "complainant" even where he or she did not actually make the initial complaint. The 1999 Act makes special provision for complainants in sexual cases in relation to their status as **eligible witnesses**, and in relation to the prohibition on the accused from **cross-examination** in person.

Cross-examination – the procedure in the trial after **examination in chief** where the lawyer representing the side which did not call the witness seeks to establish its own case by questioning the other side's witnesses. Among the **special measures** which the Youth Justice and Criminal Evidence Act 1999 allows for **eligible witnesses** is that they may be cross-examined by means of a **live-link**, or (where examination in chief is so conducted) by means of a **video recording**. The making of such a recording normally precludes any further cross-examination.

Sections 34 and 35 of the 1999 Act prevent the accused from cross-examining in person a witness who is the complainant in a sexual case, or a child witness where the offence is of a violent or sexual nature. Section 36 gives the court power to prevent the accused from cross-examining a witness in person in any other criminal case where to do so is justified in the circumstances of the case.

Crown Court – The criminal court that tries those charged with offences which are generally too serious for the magistrates' court to deal with. This includes the most serious offences which are triable only on **indictment**, such as rape. Trial at the Crown Court is by judge and jury; where the . The Crown Court also hears appeals against convictions or sentences imposed in the **magistrates' courts**, and from findings of guilt and orders made upon such findings by **youth courts**.

Eligible (of a witness) - "eligible" is the term used in the Youth Justice and Criminal Evidence Act 1999 to describe a witness in respect of whom a **special measures direction** may be made. A witness may be eligible (i) on the ground of age if under 17 when the direction is made; (ii) on the ground of incapacity if he or she has a physical or mental condition specified by section 16 (see Chapter 5, para.2.2) and the **quality** of the witness's evidence is likely to be diminished as a result, and (iii) on the ground that the **quality** of the witness's evidence is likely to be diminished by reason of fear or distress on his or her part in connection with testifying in the proceedings. The court in deciding eligibility must take account of the views expressed by any witness who is said to have an incapacity or to be likely to suffer fear or distress. A witness who is a complainant in relation to a sexual offence is automatically eligible unless they tell the court that they wish not to be. The accused is not an eligible witness.

Evidence in chief - The evidence which a witness gives in response to examination on behalf of the party who has brought the person forward as a witness (**see examination in chief**). Once evidence in chief has been completed, the witness is normally made available for **cross-examination** by the other party or parties to the proceedings. Under the Youth Justice and Criminal Evidence Act 1999 it is possible for a video recording to be used as a witness's evidence in chief even where he or she is not available for cross-examination, provided that the parties to the proceedings have agreed that cross-examination is not necessary.

Examination in chief - The procedure in the trial where, normally, the lawyer representing the side who has called the witness takes that person through his or her evidence (see evidence in chief). The Youth Justice and Criminal Evidence Act 1999 allows a **video recording** of an interview with an **eligible** witness to be played as the witness's evidence in chief. When such a recording is admitted, the witness is not normally examined in chief by the lawyer at the trial. Depending on the matters raised in **cross-examination**, the party who called the witness in the first place may choose to conduct a further examination in chief, or re-examination, as it is called. Thus, for example, where the prosecution calls a woman to give evidence that she has been raped by two men, she will give evidence in chief on behalf of the prosecution, and will be open to cross-examination on behalf of both defendants, with the prosecution having the option to re-examine. Where cross-examination is pre-recorded (see **cross-examination**) re-examination will take place at the same time.

Inadmissible evidence - Evidence which, though logically relevant to some disputed matter, may not legally be used to prove or disprove it. In criminal cases, the main categories of inadmissible evidence are (i) the fact that the defendant has a criminal record or is otherwise of bad character and (ii) hearsay. Broadly speaking, 'hearsay' means any statement relating to the disputed facts which is put before the court other than by means of direct oral evidence from the mouth of the person who personally experienced them. Neither category of inadmissible evidence is absolute: there are a number of exceptions to both rules. In addition section 78 of the Police and Criminal Evidence Act 1984 gives a criminal court the power to exclude any item of normally admissible prosecution evidence where the court thinks that its use would make the trial unfair. Under this provision the courts sometimes exclude evidence that was illegally obtained. In civil proceedings, the rules of evidence are more relaxed, and matters are frequently admissible which would be inadmissible in a criminal case.

Indictment – An indictment is a formal document containing the charges against the accused. Trials on indictment take place in the Crown Court. The most serious offences are triable on indictment only, while either way offences, as their name suggests, may be tried on indictment or summarily in the magistrates' court.

Intermediary - One of the special measures which the Youth Justice and Criminal Evidence Act 1999 allows for certain **eligible** witnesses is that they may give evidence (both **examination in chief** and **cross-examination**) through an intermediary. An intermediary must be approved by the court, and assists by communicating to the witness the questions which are put to him or her, and to anyone asking such questions, the answer given by the witness in reply to them. The intermediary may explain the questions or answers to the extent necessary to enable them to be understood. An intermediary may also be called upon to assist in the making of a **video recording** with a view to making it the witness's **evidence in chief**. In such a case the court will decide whether it was appropriate to use the intermediary when deciding whether to admit the recording in evidence. Only witnesses **eligible** on grounds of age or incapacity may receive the assistance of an intermediary under the Act, though the court also has inherent powers to call on an intermediary in other cases. The 1999 does not deal with the courts' powers to call on the assistance of foreign language interpreters, but it recognises that all courts have such powers.

Interests of justice – Those interests which, according to section 27 of the Youth Justice and Criminal Evidence Act 1999 may preclude a court from making a **special measures direction** for a **video recording** to be admitted as a witness's **evidence in chief**. The 1999 Act does not define “interests of justice”: it is for the court to determine in the light of all the circumstances. The court is unlikely to reject the recording on this ground unless it considers that to use it would be in some way prejudicial to the accused person (or, if there is more than one, to any accused). . A case where it might not be in the interests of justice to admit a recording is one where the witness has subsequently retracted the statement, and it is known that she or he intends to give evidence that contradicts it.

In relation to adult witnesses who are **eligible** for **special measures**, the court has a wide discretion whether to make a **special measures direction** in favour of video recording, which is limited only in the circumstances stated above. Where a **child witness** is involved, including a **child witness in need of special protection**, the strong preference which the 1999 Act expresses for evidence in chief to be video recorded is still subject to the “interests of justice” test.

If only part of the recording is objected to, the 1999 Act expressly states that the court must weigh any prejudice to an accused which might result from showing that part of the recording against the desirability of showing the whole, or substantially the whole, of it.

Live links – One of the **special measures** which the Youth Justice and Criminal Evidence Act 1999 allows for **eligible witnesses** is that they may give evidence (both **examination in chief** and **cross-examination**) by means of a live link. According to section 24(8) of the Youth Justice and Criminal Evidence Act 1999 “live link” means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there, and to be seen and heard by the judge and/or magistrates; the jury (if there is one), legal representatives acting in the proceedings and any interpreter appointed to

assist the witness. The link enables the witness to give evidence from another room, without appearing in open court in the presence of the accused, the jury and the public. The witness sits in front of a television monitor and can see the faces of those who put questions to him or her. The witness's demeanour can be observed in court, and all proper questions can be put, so that the use of the live link does not detract from the right to cross-examine. The judge or magistrates are also able to monitor the conduct of any other person who is in the room with the witness in the role of supporter. **Child witnesses** are normally cross-examined using live link, the main exception being where the case is sexual, when the cross-examination is normally pre-recorded.

Magistrates' court – The criminal court that tries most offences, specifically non-serious cases which are triable summarily only, and offences triable on indictment or summarily (either way offences) which are judged to be suitable for summary trial. Most magistrates are lay people though a minority are legally qualified stipendiary magistrates. Stipendiary magistrates may try cases alone, while lay magistrates sit in groups of at least two, usually three, and are assisted on matters of law by the magistrates' clerk. Some cases which are tried in the Crown Court commence in the magistrates' courts with **committal proceedings**.

Quality (of an **eligible witness's** evidence) - According to section 16(5) of the Youth Justice and Criminal Evidence Act 1999, "quality" means quality in terms of completeness, coherence and accuracy, and "coherence" for this purpose refers to a witness's ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively.

Special Measures - the measures specified in the Youth Justice and Criminal Evidence Act 1999 which may be ordered in respect of some or all categories of **eligible** witness by means of a **special measures direction**. The special measures are the use of screens; the giving of evidence by live link; the giving of evidence in private; the removal of wigs and gowns; the showing of video recorded evidence in chief, cross-examination and re-examination, and the use of intermediaries and aids to communication .

Special Measures Direction - the order by which the court states which, if any, of the measures specified in the Youth Justice and Criminal Evidence Act 1999 will be used to assist a particular **eligible** witness. Directions may be discharged or varied during the proceedings, but normally continue in effect until the proceedings are concluded, thus enabling the witness to know what assistance to expect. In deciding which measures to employ the court is aiming to maximise the quality of the witness's evidence so far as practicable, whilst still allowing the party challenging the evidence to test it effectively. The witness's own views are also considered. In the case of **child witnesses**, the court's powers of choice are more limited (see **child witnesses**).

Trial - Unless the defendant pleads "guilty" the prosecution must establish his guilt by calling evidence, the truth of which is then assessed ("tried"). In the Crown Court, the body that decides the disputed issue of guilt or innocence is the jury. In the magistrates' court it is the magistrates.

Video recording – according to section 63 of the Youth Justice and Criminal Evidence Act 1999, "video recording" means any recording, on any medium, from which a moving image may by any means be produced, and includes the accompanying sound-track.

Vulnerable (of a witness) - the Youth Justice and Criminal Evidence Act 1999 provides for the making of special measures directions to assist certain vulnerable witnesses in giving evidence. Vulnerability may arise through youth, incapacity or circumstances. Witnesses who qualify for such assistance under the Act are termed **eligible** witnesses.

Witness - according to section 63 of the Youth Justice and Criminal Evidence Act 1999, “witness”, in relation to any criminal proceedings, means any person called, or to be called, to give evidence in the proceedings.

Youth Court – in criminal cases accused persons under the age of eighteen are normally tried in youth courts (formerly known as juvenile courts). The youth court is a branch of the magistrates’ court, and is staffed by specially qualified magistrates. The terms “conviction” and “sentence” are not used, but are replaced by “finding of guilt” and “order made upon finding of guilt” respectively.

APPENDIX Y: GUIDANCE ON INVESTIGATIVE INTERVIEWS WITH DISABLED CHILDREN

This Appendix sets out additional considerations for effective interviewing of disabled children whose impairments affect their communication with others. References are provided for further reading and resources. Disability can take many forms and specialist advice should routinely be sought in cases where communication impairments are likely to be an issue in the interview. It is important to acknowledge that knowledge is still growing in this area and for some children it is not yet possible to proscribe techniques for communicating about possible abusive experiences in ways which are reliable and evidentially safe.

1. THE INTERVIEW

1.1. Phase one -rapport

1.1.1. It is important that adequate time is allowed for this phase. Establishing rapport between the interviewer and the child will in itself require more time and attention, especially if a third person is needed to assist communication. There are also additional functions of the rapport phase for disabled children:

- relax and inform the interviewer,
- educate the viewer about the child and their impairments
- establish additional ground rules, for example clear expectations of any additional adult taking part in the interview.
- dispel common myths and prejudices (e.g. physical impairments inevitably affect a child's intelligence) and
- allow the child to demonstrate communication and understanding .

1.1.2. It is important for the child to sense the importance of communicating clearly, and for the interviewer to develop as much skill as possible in talking with and understanding the child. Any difficulty that the interviewer or observer has in understanding the child's account at the time is likely to be magnified for any person subsequently viewing the video recording. The interviewer needs to be comfortable about referring to this and asking the child to repeat or rephrase or clarify as needed, and the supervisor needs to ensure that the recording can demonstrate the child's communication method.

1.1.3. The child will need to be given an opportunity to explain their world, especially where this might be unusual and relevant for the interview (e.g. if the child stays away from their family, if there are different adults involved with their care at home or elsewhere, if the child needs intimate care or other 'unusual' help in day to day life etc.) It is important to establish the context at this stage to give meaning to what may follow as it is often harder to go back afterwards. If, for example, a disabled child has a number of adults involved in their care, it will be important to demonstrate their ability to distinguish reliably between these different people. Alternatively, if a child needs very invasive care procedures (for example intermittent catheterisation) it will

be helpful to establish the child's comprehension of this as a process before any discussion of possible sexual abuse ensues.

1.1.4. The experiences of disabled children may make them more compliant and eager to please or to see themselves as devalued. Some children with learning difficulties may have problems understanding the concept of truth, and interpreted communication may lead to additional confusions. Some children may need explicit permission to refute adult suggestions. Even with this permission, some children may find this impossible to do. It can help if everyone in the room makes a commitment to tell the truth (including the interviewer and any additional adults). It is important to convey that the interpreter as well as the child and the interviewer should say 'I don't know how to say that' or 'I don't understand' and not to guess if they are unsure.

1.1.5. Disabled children may need very explicit permission to request breaks, and a clear, simple sign, gesture or word with which to do so. Given the concentration required by all parties, it is important to establish that the adults can request breaks as well as the child.

1.2. Phase two - free narrative account

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

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

Care should be taken to ensure that all responses are made by the child alone, without the intervention of a third party. Assisted communication is unlikely to be acceptable to the courts.

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

1.3. Phase three - questioning

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

- Disabled children may be dependent on others for intimate care; interviewers will need to be able to distinguish between necessary caring or medical procedures and abusive or criminal actions.

- Children may be receiving orthopaedic treatment or using postural management equipment that might cause pain or discomfort but should never cause injury.
- A child's condition may restrict the positions he or she can get into or be placed into and some positions may in themselves be dangerous.
- Certain physical or neurological conditions are likely to affect the sensations a child can feel.
- A child with a sensory impairment may be restricted in some of the information they can provide about the identity of the alleged suspect or details of the alleged offences.

1.3.2. With some methods of communication, such as communication boards, questions can only be asked in a closed form which demands a yes or no response. Techniques which can increase the evidential validity of closed questions include:

- Avoiding a series of 'yes' responses by suggesting less likely alternatives first
- Completing any series of linked questions, rather than halting at the first 'yes', and
- Reverting to open questions wherever possible

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

1.4. Phase four - closing the interview

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

CONSULTATION DRAFT

APPENDIX Y: STORAGE, CUSTODY AND DESTRUCTION OF VIDEO RECORDINGS

A video recording made in accordance with this Memorandum can be a highly valuable piece of evidence in any investigation. It is also a record of intimate and highly personal information and images, which in the interest of the witness, should be held strictly in confidence and for its proper purpose. It is therefore essential that adequate arrangements are made to store the recording safely and securely and that access to it or to any official copies is restricted to those authorised to view the recording.

1. OWNERSHIP

1.1.1. The video recording will be treated as a document for the purposes of criminal proceedings and the statements in it will not belong to anybody except insofar as they are the property of the person who made them. However, the medium on which they are made is likely to be the property of the police or social services (as the case may be) and the fact of ownership of the videotape itself conveys certain rights and responsibilities which if properly exercised, will help to ensure that the recording is appropriately safeguarded.

1.1.2. It is essential that *all* videotapes, whether court exhibits or copies, containing interviews prepared under joint police/social services or NSPCC investigative arrangements and conducted under this Memorandum should be kept under optimal conditions. Decisions regarding access to any tape should be taken by the principle agency or agencies involved in their preparation. Once the case has passed to the Crown Prosecution Service, decisions as to disclosure of information will be made by them. In taking such decisions, all agencies should have regard to the provisions in Section 4 below and to Annex J of this Memorandum.

2. TAPE REGISTRATION, STORAGE, MANAGEMENT AND DISPOSAL

2.1.1. It is essential that local guidelines are developed by the police in conjunction with other relevant agencies covering the registration, storage and management and disposal of video and audio material. Such guidelines should cover all of the issues reviewed in this Appendix. It is recommended that one named person, the tape librarian, should be responsible for supervision of these functions. The tape librarian should keep a logbook in which the details of all interviews would be registered and the history and movements of the tape would be recorded. The initial entry in the logbook should record the serial number of the recording, the names of the witness and the interviewer(s) and all others present, as well as the date and time of the interview. Any subsequent copying, transporting or editing of tapes would be recorded against the relevant entry in the tape logbook.

2.1. After the Interview

2.1.2. Once a recording is completed, the tape should be fully rewound and ejected from the recorder. The 'record protect' device fitted to cassettes should be activated to prevent the accidental erasure of the recording. The tape should be checked for the quality of the recording.

2.1.3. It is recommended that a brief index to the tape is prepared at this stage, in liaison with the interviewer so that the most relevant passages regarding the alleged offence can be readily located later. A specimen Index sheet is illustrated in Appendix K. The index is not a precis of the tape, but it should serve a similar purpose, enhanced by the video recording itself. The index should be carefully preserved and safeguarded along with other papers on the case. If a summary of the interview has also been prepared, a copy should be kept with the index. Paper documents should never be placed within the tape box itself because of potential damage to the tape.

2.1.4. The master tape of the video recording and all copies should be individually labelled and identified in the logbook, so that copies can be distinguished one from another and the master tape readily identified. The ownership of the tape should be treated in the same way as an exhibit for use in court and a signed exhibit label placed over the open side of the box. The seal should not be broken except in the presence of a representative of CPS and for the purposes of copying and access (see Section 2.3. below). The ownership of the master tape and any copies should be clearly indicated with a warning that none must be copied or shown to unauthorised persons. A recommended form of words for the label is shown in appendix L.

2.2. Storage

2.2.1. Video recordings will inevitably suffer deterioration and loss over time; videotape should not be considered a permanent archiving medium. New technologies, such as digital recording, may solve some of these problems. In the meantime, however, rates of deterioration can be greatly reduced by proper storage arrangements and periodic inspection. Detailed guidance on the storage and management of tapes is set out in *Video recorded interviews with child witnesses* published by the Police Scientific Development Branch (para's 6.7 to 6.7.3) from which the following guidelines are derived..

2.2.2. Tapes should be stored on edge, i.e. with the reels vertical, so that the tape is supported by the hub. They should be kept in rigid cases which are clean and impervious to dust, but they should not be sealed in airtight containers which may cause condensation damage. When taken out for viewing or copying, tapes should not be left in video recorders unnecessarily, particularly when switched off. Excessive use of the pause facility can damage or even rupture a tape. Tapes should never be left lying about where unauthorised persons can gain access to them.

2.2.3. Before long-term storage, tapes should be first wound and then rewound and checked for damage. Tapes should be kept in locked, secure containers. Videotapes should not be subjected to extremes of temperature or humidity and should be stored away from any devices which cause a strong electrical or magnetic field, such as electric motors or loudspeakers.

2.3. Copies and Access

2.3.1. Decisions about copying and access to video recordings prepared under this Memorandum should be taken individually and with careful regard to the following principles:

- Copying and access to the video or audio tape of an interview should be confined to the absolute minimum consistent with the interests of the child and justice
- No one should access to any tape unless they are able and willing to safeguard it to the standard set out in this Memorandum, and
- No persons accused or implicated in the alleged offences should have custody or unsupervised access to any tapes made in connection with the investigation.

2.3.2. Production of copies should be minimised and carried out in secure manner in accordance with locally agreed procedures. Particular attention should be paid to the quality of the audio track on any copy. It is recommended that when making copies, the hi-fi track of the original recording be used as the sound source.

2.3.3. In most criminal cases, access to a recording will be needed by the joint investigating team, the Crown Prosecution Service and the court. A further copy will be required, for disclosure to the defendant's legal representative, either because it is part or all of the case against the accused, or because it is unused material which is disclosable under the Criminal Procedure and Investigations Act (1996). When the defendant is unrepresented, access should be under strict police supervision. Applications from other individuals or agencies to view or borrow a recording should be scrutinised carefully. Any access should be authorised only in respect of named individuals. If such individuals wish to borrow a tape, they must sign a written undertaking concerning protection and safeguarding of the tape and confirm that it will be returned to the police or local authority at the end of the proceedings. A form of undertaking, based on a model developed by the Law Society, is reproduced as Appendix Z.

2.3.3. Applications to view or borrow a recording from other individuals or agencies should be scrutinised carefully. Claims to be acting in the interests of the child or justice should be validated and considered on their merits. Consideration should always be given to allowing supervised access in preference to lending a tape; and to a loan in preference to making a further copy.

2.3.4. Any persons borrowing tapes should have their attention drawn to:

- the precise ownership of the tapes
- the likelihood that such recordings will form part of a criminal trial, and that
- misuse or unauthorised retention of such tapes may constitute contempt of court or other criminal offence.

2.3.5. An entry should be made in the police logbook every time a tape is borrowed. The entry should include the name of the borrower and any other persons permitted to view the tape, together with details of the specific authority granted to them. Similar logbooks

should also be maintained by any other body authorised to have custody of copies of tapes and such logbooks should be available for periodic inspection by management.

2.4. Tape Disposal

2.4.1. The Code of Practice made under the Criminal Procedure and Investigations Act (1996) lays down that the minimum period for the retention of interview records should be six months from the date of any conviction or after a convicted person has been released from custody, whichever is the longer. Material must also be retained for the full duration of any appeal. This ruling applies both to the master copy and to any edited version of the tape approved by the court for use in the trial.

2.4.2. However, for video or audio taped interviews with witnesses, there are good reasons for extending the retention period well beyond the minimum laid down by the Code. In addition to their use in criminal investigations and applications to the Criminal Cases Review Commission, recordings of interviews with witnesses may be used in civil proceedings and for criminal injury compensation claims, where a considerable delay can ensue between the original investigation and any proceedings. In cases of alleged sexual or physical abuse, new allegations against an accused can emerge many years after the original investigation. It will be vital to both prosecution and defence to have access to as complete a record of the original interview(s) as possible. The need for the preservation of such material needs to be weighed against the understandable concern of many witnesses to close a particular chapter in their lives and to know that all recordings dealing with their allegations have been destroyed.

2.4.3. Duplicate material may be destroyed early. Once any proceedings are completed or after five years have elapsed since the interview took place, working copies of interviews can be disposed of. However, for the reasons outlined above, it is recommended that the master copy of any video or audio recording should be retained for a period of 20 years. A witness who was a juvenile at the time of the interview may request the destruction of a tape prior to this date, when he or she reaches the age of 18 years.

2.4.4. Where tapes need to be disposed of, this is best done by crushing or by burning. Strict controls must be in place to ensure that all tapes are destroyed and a certificate supplied to this effect by the organisation responsible. Tapes should never be reused: there is a risk of incomplete erasure of the original recording and deterioration in tape quality and reliability.

3. TAPES AT LEGAL PROCEEDINGS

3.1. Tapes and transcripts

3.1.1. Tape-recorded interviews are the primary medium by which vulnerable witnesses will give their evidence at court. However, it can assist the court to have a written transcription of what the witness has said in their interview. Such transcripts are produced for the Crown Prosecution Service through its video transcription agency. The timing of a request for a typewritten transcript is important. Too early a request may result in production of a transcript which is not then required. Too late a request may provide insufficient time for production and the checking of the transcript against the

video record. Such checking forms an essential step in the production of the evidence and is best conducted by the person who conducted the interview.

3.2 Collection and delivery

3.2.1. Care should be taken in the delivery and collection of tapes by court officials and legal representatives to ensure that the security of the tape is safeguarded at all times. Tapes should be sent in tamper-proof packaging and at a minimum, by means which involves the signing for the package when collected and received and provides for an audit trail while in transit. Such methods can include personal delivery over short distances, recognised security couriers or Royal Mail Special Delivery.

3.3. Tapes at court

3.3.1. Detailed procedures for the management of tape recorded evidence at court are provided in a memorandum circulated to all crown courts in 1993 by the Lord Chancellor's Department. When a tape is delivered to court, a note should be made on the court file and the tape checked to ensure it is adequately labelled. Tapes should be kept in a secure locked cupboard. A logbook should be kept with any tapes in which the movements of the tape can be recorded. The Child Liaison Officer or another nominated officer is responsible for ensuring that tapes are returned to the lockable cupboard during adjournments and overnight. After the trial, the tape should be returned in its box to the representative of the CPS who will sign alongside the appropriate entry in the logbook.

4. USE OF TAPES FOR TRAINING AND OTHER PURPOSES

4.1.1. Video recorded interviews may be used for training or for other official purposes such as audit or research, provided that specific and informed consent has been secured, preferably from the witness him or herself. Alternatively, if the witness is not in a position to provide informed consent, then the adult who discharges the principle duty of care for the witness should be consulted. The witness should be reassured that granting consent does not mean that anyone who wishes to see the video will be able to do so. Consent should not be sought before the interview, nor will it always be right to do so immediately afterward. If consent is granted, this should be recorded in a logbook or by completing a form designated for this purpose.

(use of tapes in sex offender treatment programmes to be explored further)

CONSULTATION DRAFT

APPENDIX Y: IDENTIFICATION PARADES INVOLVING VULNERABLE AND/OR INTIMIDATED WITNESSES

1.1.1. The attendance of a vulnerable or intimidated witness at an identification parade or video identification (in which the witness sees a series of video clips of different people, including the suspect) requires advance planning and liaison between the officer responsible for the identification procedure and the officer with knowledge of the witness. A pre-trial support person who is not, or is not likely to be, a witness in the investigation should accompany the witness. Officers responsible for identification procedures should consider special measures to accommodate the needs of the witness but must be able to justify in court that any deviation from standard procedure remains fair to the accused.

1.1.2. The assessment of the witness's ability [see Chapter 2, section xxx and Chapter 3, section xxx] is relevant. Explanations to the witness about the purpose of the identification procedure and the wording of instructions during the procedure itself should be considered ahead of time and tailored to the witness's level of understanding.

1.1.3. If the witness has particular communication difficulties, or requires an interpreter, someone who can communicate with the witness must attend. If the witness does not recognise numbers, consideration should be given to the use of symbols to distinguish participants. The symbols must not have any special meaning for the witness. The best evidence is a verbal identification, but if witnesses are unable or likely to be unable to speak, they should be advised that it is acceptable to point. If the witness uses spectacles, contact lenses or a hearing aid, these must be used at the identification procedure.

1.1.4. At identification parades, a one-way screen should always be used and demonstrated to witnesses before the parade itself. They should be encouraged to say if they do not understand any part of the procedure. Arrangements should be made to escort vulnerable or intimidated witnesses to and from the location where the parade is held. They should be reassured that they will not encounter anyone who took part in the line-up on leaving the building.

1.1.5. Code D of the Police and Criminal Evidence Act provides for the videotaping of identification parades; Annex B to Code D, which deals with video identifications provides only that a record be kept of the procedure on the prescribed forms. A witness giving videotaped evidence or testifying over the TV link will be unable to point out the accused person in court. It is therefore good practice to videotape any identification procedure where the witness subsequently may not be physically present in the courtroom.

CONSULTATION DRAFT

APPENDIX Y: NATIONAL STANDARDS FOR YOUNG WITNESS PREPARATION

Purpose of preparation

- to make the young witness feel more confident and better equipped to give evidence at court
- to help the young witness understand the legal process and their role within it
- to encourage the young witness to reveal their fears and apprehensions about the court process

and thus assist the young person give their best evidence in court

It must **not** involve rehearsing the evidence or coaching the witness

Key characteristics of person undertaking witness preparation

- Ability to communicate with young children and young people in age appropriate language
- Ability to demonstrate a caring, mature and supporting attitude to both the young person and their parent or carer
- Ability to deal with difficult feelings and emotions
- Willingness and ability to offer continuity of support throughout the trial
- Willingness and ability to work within a framework of Equal Opportunities
- Willingness and ability to work within a framework of confidentiality

In addition to the above the person undertaking witness preparation must:

- be seen to be independent and focusing entirely on the young person's welfare in preparing for the experience of giving evidence
- not have been involved in the preparation of the case
- not discuss the details of the case or the evidence that the young person has given or is to give
- have received basic training from local agencies

Key tasks

- obtaining information on which special measures have been ordered by the court at the PDH or pre-trial hearing to assist the young witness, including whether consideration has been given as to who accompanies the young witness while they give evidence
- liaising with police and CPS if there are any changes in circumstances which might require a variation in the court measures to be provided
- liaising with any other agencies that may be involved with the young witness and/or the family
- to undertake an assessing the young person's needs in general, in relation to a court appearance, taking account of their developmental status
- to decide when the witness preparation should begin, bearing in mind the trial date and who the young person wishes to be present when this takes place
- ensure that the young person and parent or carer has the Young Witness Pack and, if appropriate, view the Young Witness video with the young witness and their parent or carer
- help the young witness to understand the court process and their role in it. This will include discussion of the roles of the participants in the case, the importance of telling the truth and the nature of cross-examination
- prepare the young person for any possible outcomes of the trial e.g. late change of plea, adjournments or acquittal.
- liaise with the Witness Service to arrange a familiarisation visit to the court before the trial and ensuring that the young witness and their parent or carer, if appropriate, are shown whatever special measures have been ordered by the court in their case.
- provide the young person with stress reduction and anxiety management techniques
- involve the young person's parent or carer
- in conjunction with the Witness Service, communicate information (including the young person's wishes) to and from the police, CPS and courts, keeping the young person, parent or carer informed and ensure that practical arrangements are made for the young person
- co-ordinate arrangements with the Witness Service Co-ordinator or the Court Liaison Officer to ensure that the waiting time at the court is kept to a minimum

- de-brief the young witness and parent or carer and arranging for any follow-up support, including the need for specialist help
- ensure that the work with the young person is fully documented

CONSULTATION DRAFT

USEFUL SOURCES

Information for interviewers and court professionals

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Hollins, S., Sinason, V. and Boniface, J. (1994). *Going to Court*. London, St George's Hospital Medical Health Library (in association with Voice UK).

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Information for witnesses and their carers

The NSPCC (1998) Young Witness Pack series includes:

For young witnesses:

Let's Get Ready for Court. An activity booklet for child witnesses aged 5-9

Tell Me More about Court. A book for young witnesses aged 10-15

Inside a Courtroom. A card model of a courtroom with slot-in characters, for use with younger witnesses

Going to Court. Information and advice for Crown Court Witnesses aged 13-17

Young Witnesses at the Magistrates' Court and the Youth Court. For 9-17 year olds

Screens in Court. An information sheet for 9-17 year olds

NSPCC (2000). *Giving Evidence, What's It Like? – a video addition to the Young Witness Pack (1998)*. NSPCC.

For parents and carers:

Your Child is a Witness

For child witness supporters:

NSPCC *Preparing Young Witnesses for Court*

Barnardos video *So You're Going to Be a Witness*. For younger witnesses.

NSPCC video *Giving Evidence - What It's Really Like* [for 11-15 year olds

For witnesses with learning difficulties:

[picture books without words published by St George's Mental Health Library in association with VOICE UK, available from the Royal College of Psychiatrists Publication Department]

Going to Court

I Can Get Through It

General information for witnesses:

Home Office (1999). *Victims of Crime: This leaflet explains what will happen now you have reported a crime to the police*. London, Home Office Communication Directorate. (available in braille, audio tape, large print format and also in a wide range of languages)

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Additional material aimed at vulnerable or intimidated witnesses is in preparation

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National Assembly for Wales (2000). *In Safe Hands: Guidance on the Protection of Vulnerable Adults in Wales*.

Forthcoming relevant government publications

Good Practice Guidance on Pre-trial Therapy for Adult Witnesses- in preparation

Good Practice Guidance on Pre-trial Therapy for Child Witnesses – in preparation

Guidance on early strategy meeting between the police and CPS and a meeting between the prosecutor and certain vulnerable witnesses – in preparation

Home Office (in preparation). *Vulnerable Witnesses: A Police Service Guide*.