



# GUIDANCE ON JOINT INVESTIGATIVE INTERVIEWING OF CHILD WITNESSES IN SCOTLAND



The Scottish  
Government

GUIDANCE ON JOINT INVESTIGATIVE  
INTERVIEWING OF CHILD WITNESSES  
IN SCOTLAND

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## ABBREVIATIONS

ACPOS	Association of Chief Police Officers in Scotland
ADSW	Association of Directors of Social Work
COPFS	Crown Office Procurator Fiscal Service
DPA	Data Protection Act 1998
ESDU	Electronic Service Delivery Unit (SCS)
GIRFEC	Getting it Right for Every Child
GPMS	Government Protective Marking Scheme
JII	Joint investigative interview
JIIT	Joint investigative interview training
NICHD	National Institute of Child Health and Human Development
NSG	National Steering Group
PF	Procurator Fiscal
SCRA	Scottish Children's Reporter Administration
SCS	Scottish Court Service
SE	Scottish Executive; the name of the Scottish Government during the research period; references to the Executive are retained throughout
SG	Scottish Government
SPR	Standard prosecution report (and SPR2) which the police complete
SW	Social work
VWA	Vulnerable Witnesses (Scotland) Act 2004

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## Ministerial Foreword

The Scottish Government is committed to ensuring that the justice and children's hearings systems develop in a way that keeps pace with modern life and ensures appropriate support is in place for victims and witnesses to allow them to participate effectively in the process. It is widely recognised that child victims and witnesses can be particularly vulnerable, especially in the circumstances which lead to a joint investigative interview being necessary. When gathering information from children, who are often already extremely traumatised, we must ensure the interview is as child-focused and stress-free as possible.

*Guidance on Interviewing Child Witnesses in Scotland* was published in 2003. Since then, *On the Record*, an independent evaluation of two police and social work-led pilots undertaking visually recorded joint investigative interviews, established that there is no good reason why the majority of such interviews with children should not be visually recorded. To maintain momentum, the Scottish Government set up a multi-agency National Strategic Group to: revise the guidance to include visual recording of interviews; purchase and roll-out visual recording equipment; and consider training requirements.

The work to introduce and develop visual recording of joint investigative interviews with child witnesses complements our ongoing work to support child and other vulnerable witnesses to give their best evidence, and the *National Guidance for Child Protection in Scotland* which was launched on 13 December 2010. In particular, visually recorded accounts from child witness can be used as prior statements, an alternative way in which vulnerable children in the most serious cases can give their main evidence.

The revised *Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland* also promotes the latest best practice for police and social work practitioners undertaking JIIs with children. It makes clear that every decision made about interviewing a child must be made on the basis that the paramount consideration is the best interests of the child. The guidance continues to be based on the principle that every child has the right to protection from harm, abuse and exploitation. In the words of Kofi Annan:

*"There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they can grow up in peace".*

I firmly endorse this guidance as a step towards achieving that and would like to extend my thanks to all the agencies and individuals who have worked tirelessly, in partnership with the Scottish Government, in producing the revised guidance.



KENNY MACASKILL, MSP  
Cabinet Secretary for Justice

## PART 1: INTRODUCTION

1. This good practice guidance is for police officers and social workers who are carrying out joint investigative interviews (JIIs) with children (aged under 16 on commencement of the initial interview). Its principles may also be relevant to organisations whose staff (e.g. Procurators Fiscal precognition officers) are involved in interviewing children. The guidance may also be useful as an approach to interviewing persons who are being treated as vulnerable adult witnesses under the provisions of the Vulnerable Witnesses (Scotland) Act 2004 (VWA), and people aged 16 and 17 years old who are subject to supervision requirements in terms of section 70 of the Children (Scotland) Act 1995.
2. This guidance updates previous interviewing guidance (Scottish Executive, 2003) and incorporates guidance on visual recording of JIIs, based on unpublished draft guidance (Richards et al, 2006) and on piloting in 3 areas already using visual recording. It should also be read in conjunction with the [National Child Protection Guidance](#) which embeds the 'Getting it Right For Every Child' (GIRFEC) approach.
3. The premise of this guidance remains that every child has a right to protection from harm, abuse and exploitation. Where a child may have suffered such treatment, and agencies involved in child protection are called to intervene, the child's welfare should be of paramount importance. Under GIRFEC, the interests of other children should also be considered. From the outset, every decision made about interviewing the child must be made on the basis that the paramount consideration is the best interests of the child. Care must be taken that children do not suffer any undue distress during investigations into allegations or reported information. Agencies should also endeavour to treat children as individuals, and where possible, involve them in making decisions. These principles are founded on the United Nations Convention on the Rights of the Child 1989, and the Children (Scotland) Act 1995.
4. This guidance aims to make the interview more child-focused and less stressful for the child. It also aims to:
  - improve the quality of investigative interviews
  - enhance the sharing of information
  - improve the quality of the interview record
  - keep to a minimum the number of times the child is interviewed, in the best interests of the child
  - set out principles of good practice for any organisations who may be involved in interviewing children as witnesses, whether as part of a criminal, civil or children's hearing related proceedings
  - set out good practice for the visual recording of JIIs.

5. The main changes are:

- Introduction of visual recording (paragraphs 18-20)
- Clarification of consent (paragraphs 41-44)
- Role of 2<sup>nd</sup> interviewer (paragraphs 45-53)
- Pre-interview transportation (paragraph 76)
- Clarification of ground rules - now Interview principles (paragraphs 97-99)
- Removal of truth and lies (paragraphs 100-102)
- Greater prominence to practice interview (paragraphs 107-108)

Other minor changes have also been made to the guidance.

6. The guidance covers all JII cases regardless of the allegation under investigation, including child sexual abuse, physical and emotional abuse. It illustrates best practice for conducting JIIs, to ensure that the interview record is of a quality that can be used during any subsequent proceedings, including as evidence in court if necessary. (The guidance does not cover interviews with children who are suspects; see paragraphs 185-188)
7. This guidance underpins and supplements the provision and content of Joint Investigative Interviewing Training (JIIT) and complies with the revised (2009) *National Curriculum on Joint Investigative Interviewing of Child Witnesses Training in Scotland*. Work is ongoing in moving towards a training and development strategy which will set out national standards of practice and consideration of competence and accreditation issues. Some agreement has been reached and we are now progressing towards the agenda being taken forward in the future by relevant bodies (Association of Directors of Social Work (ADSW), Association of Chief Police Officers Scotland (ACPOS) etc.).

### ***Investigative interviewing***

8. This guidance is concerned primarily with the formal interviews carried out by investigative interviewers, mainly for evidential purposes and to assess any necessary action in relation to that or any other child. The investigative interview is a formal, planned interview with a child, carried out by staff trained and competent to conduct it, for the purposes of eliciting the child's account of events (if any) which require investigation. It is important to bear in mind that interviewers must always be objective as, at the time of interview, it will not be known what proceedings, if any, the interview may be used in i.e. criminal, civil or both.
9. The main purposes of the investigative interview are to:
- learn the child's account of the circumstances that prompted the enquiry
  - gather information to permit decision making on whether the child in question, or any other child, is in need of protection
  - gather sufficient evidence to suggest whether a crime may have been committed against the child or anyone else

- gather evidence which may lead to a ground of referral to a children's hearing being established.
10. Although children may first approach and communicate with those people who are around them daily (e.g. teachers, parents), these discussions are not to be confused with the JII. Police officers who are not trained in joint investigative interviewing may also be the first to talk to a child, and their interaction with the child should also be regarded as quite different from the JII.
  11. Similarly, a child may reveal incidents, such as sexual or physical abuse unexpectedly during counselling or assessment sessions held to address other issues (e.g. behavioural problems the child has been displaying at school). Discussions within these settings should not be confused with investigative interviews. In such circumstances, the child should be allowed to provide any voluntary account, however, should not be interviewed or questioned in detail by the professional as this may undermine the reliability or admissibility of any information subsequently provided at interview.
  12. Details of any revelations made to a police officer should be noted in the officer's personal notebook, as soon as practicably thereafter any corroborating officer or social worker should be required to countersign it. In the event that the revelation is not made in the presence of a police officer, the social worker or other professional should record details of what was said by the child, those persons present and the time, date and location in written format as soon as reasonably practicable and the police notified as soon as possible thereafter to enable child protection procedures to be considered and implemented if necessary.
  13. Nor should JIIs be confused with interviews conducted for therapeutic purposes. Therapy-focused interviews must be undertaken with care to ensure as far as possible that they do not compromise the investigative function; therefore a therapy-focused approach (e.g. clinical approach to interviewing) should not be adopted during an investigative interview. The provision of therapeutic support can, however, be an important part of the response to child physical or sexual abuse. Guidance on how to provide therapeutic support without potentially contaminating evidence is given in the [\*Code of Practice to facilitate the provision of therapeutic support to child witnesses in court proceedings\*](#) (Scottish Executive, 2005a).
  14. Nevertheless, the manner in which an investigative interview is conducted is likely to have an impact on the child and their capacity to begin to overcome any adverse events or experiences. Interviewers should always be aware of the potential effects of their techniques and use this guidance as appropriate to minimise adverse affects on the child.

### ***The decision to carry out a joint investigative interview***

15. The [National Child Protection Guidance](#) makes clear that any notification of concern must result in the consideration of relevant information and indicate a need to make decisions on a number of issues. One of these is whether a joint investigative interview is required and, if so, the arrangements that need to be put in place.
16. On receipt of information indicating that a child has suffered or may be at risk of abuse or neglect, information should be gathered from all relevant agencies who know the child and/or the child's parents or carers, including any relevant health or education information and information from any adult services involved. Where it is decided by police and social work that a child protection response is required health colleagues must be involved in any decisions about the health needs of the child. Managers with designated responsibility will be responsible for planning, co-ordinating and liaising on any joint investigation and interview. There may be occasions an immediate risk is identified and there will be a need to make dynamic and quick time decisions based on the information available. Interviewers should be aware of and follow the [National Child Protection Guidance](#)

### ***Overview of the joint investigative interview process***

17. A joint investigative interview process will include:-
  - Pre-interview briefing meeting to plan the approach to the investigation, and to ensure that those who undertake the interview are fully aware of all the issues;
  - The investigative interview, including a practice interview (paragraphs 107-108), involving police and social work staff;
  - A de-briefing meeting to allow those involved to fully explore and access the information elicited during the interview.

### ***Recording the interview***

18. Best practice is that when it has been decided that a JII is appropriate, the vast majority of such interviews carried out will be visually recorded. Appendix C sets out the benefits of visual recording. Where equipment is available, all IIIs must be visually recorded unless there are specific reasons why this may be inappropriate e.g. the alleged offence involved video-recording or photography of the victim. If interviews have to take place on an emergency basis and recording equipment is not available or able to be used, then the interview should be recorded in a hand written format. The questions and answers noted verbatim. In all cases, the date, start and end times must be noted in the interview record(s). The practice interview (following on from rapport building) should also be recorded (see paragraphs 107-108); paragraphs 80 and 88 may also have implications for what is recorded.

19. The use of visual recordings needs to be balanced by firm reassurances to children and parents or carers that all recordings will be safely and appropriately used, stored and disposed of in accordance with police and local authority policies. Guidance on copying visual recordings is set out in paragraphs 205-212, the accommodation and technical standards expected for operating JII equipment are at Appendix F while Appendix G outlines the rules for handling and storage of data with a restricted classification.
20. Where a JII is not visually recorded, the reason for not visually recording the interview must be documented in case files and verified by an agency supervisor.

## **PART 2: PLANNING THE INVESTIGATIVE INTERVIEW**

21. The police and social work services are responsible for the planning and conduct of JIIs (see paragraph 16). The decision as to how to conduct the interview (the Interview Plan) will be made by the interviewers following detailed briefing by a relevant supervising officer from either the police or social work service. It is extremely important to plan the interview properly and, while there may be time limitations in exceptional circumstances, the best interest and needs of the child must always be the overriding principle. Appendix B provides an overview on the role of supervisors and managers in briefing and debriefing practitioners.
22. The briefing of interviewers is an essential part of the investigative planning process since it requires a supervising officer from either the police or the social work service to provide the interviewers with all detailed information gathered to that point and leading to the decision to conduct a joint investigative interview. This information is crucial to the development of an Interview Plan and to maintaining proper focus on the matter under investigation and the needs and interests of the child. The inter-agency planning process will decide which officer of the relevant service will conduct the briefing. That officer will then carry out a proper briefing, preferably in person, with the allocated interviewers. The briefing will take place as soon as possible after the joint decision meeting has decided that a JII is required and always before the JII takes place.
23. A planning meeting (called a pre-interview briefing in some areas) involving those allocated the task of conducting the JII prior to the interview is essential. This can be done either face to face or by telephone and has several benefits, enabling interviewers to:
  - discuss the needs of the child (see part 4 on additional support needs) and/or any complicating factors in the case (see part 5 on complicating factors)
  - agree on the interview location – subject to consultation with the child and carer – and the procedure, recording of interview details, and the roles and responsibilities of each interviewer
  - allow for speedier and more informed progress in the investigation since risk assessments can be carried out together and reduce the number of interviews that need to be conducted.
24. A detailed record should be taken of every planning meeting, in particular noting all decisions made, who was involved in making them and justifications for making them. Copies of this record should be kept by both agencies.

### ***Key points for planning***

25. Appendix A (Quick Guide: Conducting the investigative interview) summarises the issues that need to be considered when planning, conducting and concluding the investigative interview. The list is not exhaustive; rather interviewers should view it as an aid for developing more comprehensive lists

of issues to be considered when interviewing child witnesses. Interviews should always be tailored to the child, and to the circumstances of the investigation. Key planning points include:

- The child's age and gender
- The child's race, culture, religion, ethnicity, first language, sexual orientation/identity and whether an interpreter is required
- The child's cognitive (e.g. attention and memory) and linguistic (e.g. comprehension and speech, vocabulary) abilities and range of behaviours
- What information the child has already provided
- The child's present emotional state
- Any fears the child may have e.g. fears about deportation
- Any mental and/or physical health requirements
- Any mental, physical or learning impairments that require specialist input/attention or additional support and the potential for therapeutic support to influence and therefore contaminate the evidence
- Any supervisor/specialist input that may be required
- Whether a support adult may need to be present and if so, who would be best placed to undertake this role
- Whether any alleged abuse involved the use of video or cameras. (This does not necessarily mean that visual recording is not possible. It does mean however that if the decision is taken to record, then a particularly sensitive approach to informing the parent and child will be necessary.)
- The child's family composition and living arrangements
- The nature of the child's relationships with family members and/or carers
- Any sources of stress for the child and/or the family (e.g. bereavement, marriage break-up, redundancy, house move, bullying, sickness/incapacity, domestic abuse)
- Any previous involvement with the police or local authority social work services – if so, the nature of such
- Details of previous action taken and support provided
- Whether the child has been subject to any medical examinations in relation to this, or any other, case
- Whether the child has been subject to any other investigations or inquiries in relation to this, or any other case
- Other sources of information (such as parents, carers, teachers, GPs, child psychologists) and any relevant health/medical examinations or assessments
- How to build rapport and undertake a practice interview
- Whether any drawings or other aids or props are to be used in the course of the interview and, if so, for what purpose
- Contingency plans (e.g. for retraction of earlier statement, change in lead interviewer, or where the child becomes a suspect during the interview as well as or instead of a potential witness)
- Any potential areas of inconsistency and how they might be addressed
- The need to take an overview if the case involves multiple child witnesses and/or multiple suspects, e.g. to have one observer common to all interviews, to liaise with other police forces, or obtain access to more than one interviewing suite
- Decisions about any other observers should be taken at this stage

- Whether the child has been subject to a JII in the past
- The other available evidence in the case
- Timing
- Location
- Transportation arrangements
- Visual recording equipment availability (if mobile equipment, arrangements for collection)
- Who is available to debrief the interviewer
- Who is available to support the child following the interview

26. Such factors may affect the strategy to be employed in the interview itself and the lines of enquiry that may be necessary to follow. Where the investigative interview is undertaken as part of a criminal investigation, the investigating police officers should, in the first instance, consult with their supervisor or manager and consider whether to seek the advice of the procurator fiscal (PF) on any aspect of the investigative interview or the approach to be taken.
27. In particular, investigating police officers should consider the merit in seeking advice from the PF where they consider:
- It is necessary to seek clarification on the legal or evidential requirements which must be satisfied
  - a child witness to have a mental, physical or learning impairment which may affect their ability to recount what occurred
  - there is a potential requirement for the child to be seen by a relevant expert such as psychologist, speech language therapist etc.
  - that records are available (such as medical records or social work records) which may be beneficial to the criminal investigation.

### ***Purpose of the interview***

28. The main purposes of the Investigative Interview are set out in paragraph 9. The interview, generally, provides a structured opportunity for a child to give their account of the circumstances which prompted the attention of the investigating agencies. This may involve for example, suspicion or concern that the child (or any other child) may be at risk of harm or have suffered harm. The information the child provides will help make a decision about the need for protection and establish whether a crime has been committed.
29. All those involved in the investigation must also, among themselves, clarify and define the purpose of the specific interview(s) to be conducted and also the topics to be explored. From a police perspective the purpose of the interview is generally to establish whether a crime may have been committed, and if so what evidence is available from the child. From a social work perspective the purpose of the interview is generally to gather evidence to determine the source and level of any risk of harm the child might face and to

support any necessary decisions regarding the child's needs and any measures required to protect the child.

30. It is important to bear in mind that the Procurator Fiscal will be critically assessing the JII and looking to ensure that: the content is sufficient to support a charge (clarity about dates, clear about language e.g. what the child said and meant about body part(s) or what happened etc.); any discrepancies with other evidence have been explored; the JII was conducted in line with this guidance; and whether any gaps, inconsistencies or problems identified can be rectified.
31. The Children's Reporter is also interested in the interviewed child and whether the events raise concerns for any other children (e.g. sibling, child who lives with perpetrator) and for that purpose: corroboration is not required (unless there is evidence that a child *committed* an offence in which case the same standard of proof required in criminal proceedings applies); there is a lower standard of proof (balance of probabilities); it is not essential to prove who, where or even when the incident occurred. In addition, the interview may provide concerns regarding the child's care and therefore other grounds for referral may be considered. As hearsay evidence is admissible in children's hearings court proceedings and the evidence of the interview is likely to replace the child in court it may therefore be more open to challenge. SCRA's policy on child witnesses states that the Reporter will not ask any child to give evidence in person in court where there is other evidence available that will satisfy a court as to the fact or facts in issue. A crucial factor in this assessment will be the quality of the interview of the child.
32. It is vital that both interviewers enter the interview situation with an open mind and a clear view of the approach they intend to take to assist the child to give any account of the facts and circumstances relevant to the investigation. They must also be sure that interviewing the child is necessary and proportionate to the issues under investigation. Naturally, there will be a degree of uncertainty as to what will emerge during the interview. But by familiarising themselves with all the background information and taking a strategic approach to the interview, investigative interviewers should minimise the need to re-interview the child.

### ***Timing of the interview***

33. When planning the interview, the child's routines (e.g. mealtimes, bedtime, bath time) and any religious practices (e.g. prayer times, holy days, or if fasting) should be taken into consideration. Interviewers may also wish to avoid taking children out of their school classes or from other locations where their removal might be conspicuous and/or cause embarrassment (e.g. youth or sports clubs). It is recognised that there will be situations where this is unavoidable.
34. The availability of recording suite or equipment should also be a key factor in planning the interview. However, in certain situations where there are clear

grounds for concern over the child's welfare and safety, it may be imperative to talk to the child immediately.

35. Where possible, it is beneficial for both the interviewers and the child to have an approximate idea of how long the interview is likely to last. This will depend primarily on the child – their pace, attention span, specific needs, willingness to talk, etc.
36. This helps determine the pace and length of interview, and any required breaks in accordance with and recognising the needs of the child. Interviewers should never persist in interviewing a child beyond a point where the child is no longer capable of sustaining concentration and shows signs of tiredness or of being overly distressed.

### ***Number and duration of interviews***

37. One of the major aims of the planning stage is to ensure that those conducting the JII are in possession of all available information which will allow them to elicit all requisite facts from the child, thus reducing the overall number of interviews conducted. It is preferable if all the necessary information was gathered from just one single interview. This is not always possible. Sometimes it may take more than one interview to build rapport with the child or an interview may need to be terminated and rescheduled if a child becomes too upset (see paragraphs 155-159 on debriefing and further interviews).
38. Where more than one interview is to be conducted, it is important that the interests of justice are carefully balanced with the needs of the child, e.g. the emotional trauma and stress that the child may endure from repeatedly recalling the event(s) could have serious repercussions for their wellbeing. Interviewers should aim to conduct these at an appropriate time, keeping the child fully informed, thus reducing the child's feelings of uncertainty.
39. Further information may come to light during the course of the enquiry which would necessitate a further interview of the child. Further interviews should be avoided where possible. In deciding whether a further interview is necessary, account should be taken of the welfare of the child, the public interest, (including the risk to other children) and the interests of justice.
40. Another problem interviewers must be aware of, particularly with multiple interviews, is that of *confirmation bias*; suggestions might be instilled in the child's mind and then reinforced within and across interviews and interviewers. A biased interviewer is one who holds prior beliefs about the occurrence or non-occurrence of certain events. Consequently this may shape the interviewer's line of enquiry such that they obtain statements from witnesses that are consistent with prior beliefs (e.g. see White, Leichtman & Ceci, 1997). Biased interviews are not just restricted to professionals who interview children but can include parents, teachers and others, such as interpreters or experts who are not trained/experienced in talking to children.

## ***What consent is needed?***

41. There must be transparency in the process between interviewers and parents or carers when telling them about the variety and types of usage recordings can be put to, and who might be able to view the recordings in certain circumstances. Additionally, interviewers must be aware of the differing circumstances where consent is, or is not, required, and must ensure that consent is obtained when necessary. The views of children and those with parental responsibility should be taken into account if appropriate, and they should be kept appropriately informed of progress. They should also be familiar with the [National Child Protection Guidance](#) which contains more detailed advice on consent and data protection issues.
42. **Consent is not legally required** from parents or children before interviewing them or before visually recording the interview. Nor is consent required to view a recording of an interview when:-
  - it is necessary to view a recording of the interview for the purpose of investigation of a criminal complaint, or by the children's reporter for the purpose of investigating a child protection concern.
  - the content of a recording (or more accurately, an interview) materially affects the conduct or outcome of an investigation, e.g. when aspects of the investigation may have to be re-visited or re-done.
  - There is a Court Order requiring disclosure.
43. **Consent is legally required** to view recordings where for example, the reason to view does not form a direct part of the purpose for obtaining (as outlined in paragraph 8) the recording, such as: -
  - Competence Evaluation - a formal process of monitoring the professional and technical competence of interviewers to assist professional development, support professional qualification, inform performance assessment, or facilitate a registration scheme;
  - Complaint - a notification from an interested party of dissatisfaction with aspects of the conduct of an investigation or interviews, which may require formal investigation in respect of possible disciplinary or professional misconduct procedures, or the monitoring of standards.
44. In Scotland, a person of twelve years or more is presumed to be of sufficient age and maturity to give consent. Where consent is required to view a recording, agreement should be sought and obtained from the child where appropriate and interviewers should explain the reasons behind this. They may find it helpful to read the information leaflet at Appendix D which sets out a variety of potential uses, and use the form provided at Appendix E of this guidance to obtain written consent.

## ***The lead and second interviewers (including switching roles)***

45. The lead interviewer may be from **either** the police **or** social work and roles will be agreed at the planning stage after due consideration of all relevant

factors. This may include consideration of who the child/young person may best relate to.

46. The second interviewer will have a clear, active role. When the interview is visually recorded, their role will be to monitor the dialogue and demeanour of both the child and lead interviewer. This includes looking for inconsistencies or gaps in the child's account, and any misinterpretations on the interviewer's or child's part. The second interviewer may, as required, intervene in the interview to clarify or enable the child to add to their account, particularly where gaps or inconsistencies have been identified. Where it is agreed by the interviewers during the planning stage, the second interviewer's queries may be raised during or at the end of the interview, as agreed. When the interview is not visually recorded, part of the second interviewer's role will be to record the interview verbatim.
47. It may be necessary, on occasion, for the agreed roles of the interviewers to be transferred in the course of the interview. This may be because it is clear that the child indicates a strong preference to communicate directly with the second interviewer rather than the lead interviewer. This may denote a change in the 'lead' interviewer role for the remainder of the interview and is more than the expected interventions ascribed to the second interviewer (as per paragraph 46 above)). Where it is necessary to change roles interviewers should ensure that this is undertaken in as seamless a fashion as possible. It is recommended that interviewers always plan for this exigency in their interview planning discussions and agree how this will be managed if and when necessary. This can be done, for example, through using a pre-agreed 'signal' between the interviewers or by using a brief break in the interview and resuming with changed roles. It is very important that this should not be done if it will disrupt the flow of information which the child is able to give or if it is to the detriment of the child and their capacity to participate effectively in the interview.
48. Where the interview is visually recorded, the second interviewer may make some written notes to facilitate the conduct of the interview as it proceeds, and note any interjections and salient points. Any such written note may form the basis of any urgent child protection action needed, and must always be retained and submitted along with the visual recording as a production.
49. For visual recording, when the supervisors responsible for planning the enquiry decide who will conduct the interview, they have the option of deciding whether both interviewers will sit in the interview room, or whether one should sit in the control room, observing and communicating using the technology. The control room houses the visual recording equipment, including a TV screen to allow simultaneous viewing of the interview, and an audio link to the interview room. This facility allows for the possibility for the second interviewer to be sited here, in communication with the lead interviewer via an earpiece (see paragraph 53). It is recognised that there may be occasions where the recording site does not have a control room as such, or the interview is visually recorded using mobile equipment.

50. An appropriate system of communication between the interviewers should be agreed beforehand, especially if an earpiece is to be used, which will allow the lead and second interviewer to address/revisit/expand upon particular issues or adapt the prepared interview strategy according to the developing needs of the child or the information being given by the child. Interviewers should familiarise themselves with this technique and practice using earpieces prior to undertaking a JII. Contingency plans in case of equipment failure should also be confirmed.
51. Whether the second interviewer is in the interview room or control room, they should be monitoring the progress of the interview, noting salient points only, which would include any disclosure made. Making very detailed notes defeats the objective of visual recording of focussing on the child. The second interviewer's role is to devote attention to monitoring the progress of the interview, the child's reactions, and communicating to the lead interviewer any issues requiring follow up.
52. The second interviewer (where present in the room) may also directly question the child. If the second interviewer has an issue that needs to be raised, this should be indicated to the lead interviewer during an appropriate pause. This can be done by a physical signal if the second interviewer is in the interview room, or using a pre-agreed phrase if the second interviewer is communicating via an earpiece from the control room. The pre-agreed phrase could be a single word, with the second interviewer saying nothing more until the lead interviewer is able to pause and signal readiness to listen, e.g. by using a phrase such as "I'll just look at my papers".
53. The interjections or suggestions made by the second interviewer (where communicating by ear-piece from the control room; see paragraph 49) should also be noted as part of the recording process. Where interviews are conducted in this way, at all times it should be ensured that the interjections of the second interviewer are properly noted (and audio recorded for the avoidance of any doubt) and available as part of the complete interview record.

### ***The presence of a 'support person' at interview***

54. The number of people present at interview should be kept to an absolute minimum, to avoid intimidating or inhibiting the child. This would normally mean the interviewer(s) but the presence of some professionals such as an interpreter may be essential. In certain cases, however, a child may wish for, and benefit from, having a supportive adult present. Where this is deemed necessary, the reasons for this (or the reasons for refusal when this has been requested) must always be recorded.
55. The need for the presence of a 'support person' should be considered, when relevant or appropriate, during the planning of the investigative interview. There is no legal requirement to have one present during the interview. The need for a support person will depend entirely on the circumstances of the

case. If a support person is deemed necessary, careful consideration must be given as to who can fulfil this role. Care must be taken when considering relatives as they may have their own issues and concerns. The underlying principle is to get the best information from the child, not to create concerns or to cause difficulties/divisions within families.

56. Every effort should be made to establish that any support person identified is not a witness or potential witness, nor someone who has a personal interest in the case. Ideally the support person should not be the child's parent or carer. This is important where, for example:
  - the parent/carer is suspected of being directly involved in the offence
  - the parent/carer's relationship with the offender is likely to lead to a conflict of interest (see also part 4, paragraphs 180-182 on personnel at interviews with children who have additional support needs in the JII setting)
  - their presence may adversely influence the capacity of the child to participate in the interview, or adversely influence the content of any information the child might provide.
57. It must be noted, also, that the presence of a support person might be more of a hindrance to the child if that adult is someone the child has a particular relationship with (e.g. teacher, parent) and the child feels uncomfortable about that adult knowing intimate details about their personal life and/or what may have happened to them.
58. Under no circumstances should the interview be conducted in the presence of the person alleged or suspected to be causing the child harm; or who may use any information to which they may become party; to further harm the child, or others, or prejudice the enquiry or its outcome.
59. Where the presence of a support person is deemed necessary, interviewers should always appropriately and fully explain their role as the support person to them before the interview commences. This includes any advice about when the support person might best leave the interview (if he or she is not to remain throughout). The support person should be given any available information leaflet which further outlines the purpose of their presence as the support person. They must be made aware that they are not to participate in the interview itself, i.e. no answering of questions, or prompting of the child. Efforts should be made to ensure that the body language and facial expressions of the support person avoid conveying any emotions or intentions towards the child. Their role is to support the child so that the child has sufficient composure or confidence to engage in the interview process. The presence of the support person during the interview should be comforting and reassuring.
60. If the presence of a support person is necessary, they should preferably sit out of the line of the child's vision but can be prepared to move to comfort/reassure the child if the need arises. However, any form of physical contact between the support person and the child should be avoided where possible.

61. Visual recording within an interview suite opens up the possibility of having observers sited outwith the room, so one possibility, if the child is willing, is to have the adult sit in an adjacent room. This can often placate the worries of both the child and the adult, while ensuring the interview remains focused. The child should be informed that the adult is nearby and on hand should they be needed to support the child and should be reminded of this as required throughout the interview.
62. When visually recording, it is important to keep everyone, including any support persons and interpreters, within the view of the widescreen camera's view. The faces of everyone present should also be visible, but this needs to be balanced with orientating adults to create a supportive and communicative relationship with the child. A supervisor/manager/interview adviser may observe from the control room or give advice in a particularly complex case (see part 5 on complicating factors).
63. In many interviews, the presence of the support person may only be required to 'settle' the child in such a way that helps the child achieve sufficient composure or confidence to engage with the interview. Normally this would be achieved during the introduction and rapport phases of the interview. In such circumstances, a judgement needs to be made by interviewers as to whether it is necessary or beneficial for the support person to remain in the interview for its duration. If not, then some arrangement should be made to enable the support person to absent themselves at an appropriate juncture without either distracting or disconcerting the child. This should be addressed with the support person before the interview begins. Where it is necessary to have a support person present the requirement for them to remain throughout the interview should be considered on a case by case basis. Where a support person leaves the interview (having successfully reassured and settled the child), they should remain nearby in case their re-introduction becomes necessary, **either** in the interview **or** during any temporary break.
64. The presence of the support person, and its benefit (or otherwise) for the interview, should always be discussed in the debriefing conducted by supervisors after the conclusion of the interview.

### ***Interview that does not produce relevant information***

65. While one of the main purposes of the investigative interview is to gather sufficient evidence to establish whether or not a crime may have been committed against the child or anyone else, ***interviewers must never enter the interview with the intention of only seeking information that substantiates a suspicion/allegation. Interviewers must always keep an open mind.*** Accordingly, they should aim to obtain all relevant information from the witness, irrespective of whether this confirms or refutes the matter under investigation. Confirmation bias must be avoided (see paragraph 40).

66. When a child does not give evidentially relevant information during an interview, this is an acceptable outcome, not a failure on anyone's part, especially the child's. It may be that the child is not yet willing or able to give such information, that the conditions in the interview were not conducive to it being provided, or that the child did not witness the act under investigation. Where no evidentially relevant information is provided, interviewers should remember to properly conclude the interview in accordance with the guidance (set out in paragraphs 149 and 150 on the closure phase).
67. It is quite common for children to deny or retract earlier statements at subsequent interviews, although no inferences should be drawn from this. Judgements should not be made at this stage regarding the child's ability to give evidence. Even if children appear confident during an investigation, the passage of time, second thoughts, possible intimidation and other factors can alter a child's ability to give evidence subsequently. Research suggests that the evidence children give will be the most fresh and accurate on first telling, closest to the original disclosure (Plotnikoff & Woolfson, 2001).
68. Interviewers should prepare and plan for all such eventualities. Where interviews are being conducted following previous retractions, these should be approached and prepared for in line with this guidance. Previous retractions should not therefore adversely influence the open-minded approach of interviewers nor their interview strategy or practice.

### **PART 3: CONDUCTING THE JOINT INVESTIGATIVE INTERVIEW**

69. While planning a JII is underway, it is still possible to record information offered by children in response to open prompts for information, while arrangements are being made for urgent action such as placing the child in a place of safety, or making medical examinations. Indeed, any police officer or social worker could do this, acting in the same way as any person who is an initial receiver of the child's information.
70. All interviewers should be trained in accordance with the revised National Curriculum on JIIT and deemed competent through recognised competence evaluation/accreditation arrangements.

#### ***Implications of visual recording for conducting the interview***

71. Visual recording provides a far superior record of an interview than 'verbatim' note taking, and frees the second interviewer to devote more attention to the child and interview. It is for the discretion of procurators fiscal or children's reporters whether or not to use the recordings; however, the recording must be disclosed to the defence if the content is to be used in a criminal prosecution as evidence of a suspect's guilt or if the content is classified by procurator fiscal/children's reporter as relevant material for the purpose of disclosure (set out in paragraphs 213-215 on points of principle). In terms of disclosure the recording will have to be disclosed to all parties involved. Information gleaned during the course of the visually recorded interview may be useful in other contexts, e.g. actions to safeguard the child's welfare and/or the welfare of other children.
72. Using visual recording offers opportunities to improve the quality of interviews, and also makes the standard more apparent. This has several implications, and generally means that it is clearer whether or not best practice has been followed.
73. The recording includes all of the statements, pauses, body language and demeanour of the interviewer(s), as well as those of the child and any supporters present. As well as the information provided by the child that may be of evidential value, this also gives a clear impression to the viewer of how evidence was obtained.
74. It is acknowledged that safeguarding the child supersedes forensic requirements (see paragraphs 3 and 38). If the interview develops in a way that is likely to make use of the interview as evidence difficult because, for example, the child alludes to an alleged offence that may not be pursued, the interview should continue. The fact that an interview is being visually recorded must not alter good practice on such issues in order to attempt to meet forensic requirements.
75. Further proceedings should not be seen as the 'aim' of visually recording an interview, just as when carrying out a non-visually recorded JII. The main

reason for recording is to provide an accurate and full record of the interview, and there are a range of appropriate courses of subsequent action. However the fact that a recording may be viewed in a court with the rules of evidence that this entails should always be borne in mind by interviewers, and form a key part of their specialist training. This will include the need to note reasons for decisions made throughout the interview process.

### **Immediately pre-interview**

#### Transportation to interview

76. As far as possible any conversation about the case should be avoided during the journey to the interview. If however the child raises issues material to the case or its circumstances, the conversation should be directed back to neutral topics. A comprehensive written record of any conversation that took place during transportation should be made at the earliest possible time after the journey as this is a potential area for cross-examination in court.

#### Technical checks

77. At the planning stage, contingency plans for technical difficulties should be agreed. If the problem is anything other than minor, that is to say where there is no immediate obvious cause which can be easily remedied, it may be better to postpone the interview and reschedule it, rather than keep re-starting or leaving the child waiting.

#### Information to record at the start

78. The time and date, the personnel involved, the location of the interview, the name and age of the child, the reason for the interview and the identities of anyone else present need to be recorded. These should be stated by the interviewer before the child enters the room.

### ***The phases of the interview***

79. All investigative interviews with a child should include the following broad phases

- Introductions
- Rapport
- Practice Interview (when appropriate – see paragraph 108)
- Free Narrative
- Questioning
- Closure

80. When visually recording, if any of these phases are missed, or the pace is too fast, then it is obvious to anyone watching the recording. For this reason, if a phase has already taken place, for example rapport building on the journey to the interview suite, the interviewer should mention this for the benefit of those viewing or listening to the recording.

81. The interview framework described here is similar to other interview formats described in the literature about interviewing children (e.g. the National Institute of Child Health and Human Development (NICHD) structured investigative interview protocol). The general principle behind this approach is to elicit as accurate and comprehensive an account as possible of event(s) from a child, an account that may withstand scrutiny of the court as legally sound testimony. Although there are six distinct phases to the interview, there may be some overlap between these and interviewers should be prepared to switch back and forth between them as appropriate.
82. To apply effectively the techniques described in this guidance in an actual interview setting requires a considerable amount of skill and practice from interviewers. Therefore, JII training (as per the National Curriculum) *must* have been undertaken before live interviews are conducted, and this should be up-to-date involving proper practice and feedback from other practitioners and trained supervisors, with the visual recordings as a valuable tool in this. JI interviewers should not attempt to use other interviewing techniques in investigative interviews with child witnesses, unless they have received specific training, and that it can be clearly demonstrated that another interviewing technique is more appropriate for a particular child than the approach set out in this guidance.

### ***Introductions and explaining purpose***

83. When in the interview room, the lead interviewer should sit with an unobstructed view of the child. If the second interviewer is also in the interview room, then since the child's focus is likely to be directed towards the lead for the substantive part of the interview, the second interviewer should be seated somewhere convenient for observing and making notes of key points. The second interviewer should be listening to the child and actively intervening as necessary but not in a fashion that might come across as confrontational or detrimental to the flow of the interview. As a general rule the second interviewer should keep any interjections to a minimum during the interview and ideally should wait until invited to participate by the lead interviewer. The preferred method should be agreed by the interviewers during the planning phase (see paragraph 50).
84. Interviewers should introduce any persons present in the interview room to the child and explain, in age-appropriate language, why each person is in the room. Any preconceptions or misperceptions about the police and social workers (e.g. police only come to see people when they are in trouble, or social workers will take children away from their parents) can be addressed at this time. The child's preferred name or mode of address should be established. The purpose of the interview should be explained clearly and simply to the child, who should also be given an opportunity to ask questions. However, generally it is not advisable to spend inordinate time clarifying factual biographical details with the child. Such information should already be available prior to the interview taking place.

### EXAMPLE

"Hello (*child's name*). My name is \_\_\_\_\_. I am a police officer/social worker/etc. Part of my job is to listen to children and young people. Sometimes they have things that they want to tell me"

85. Children respond to interviews more successfully when they have a better understanding of the interview purpose. To avoid bias, interviewers should be careful not to introduce the allegation being investigated. Even where the initial concern originated from something the child had said, it is important for the interviewers to hear the child speak freely on this during the course of the interview with minimal prompting. The aim is to obtain the child's memories of the event(s), ***in their own words***.
86. Another point to explain to the child is that the interview will be visually recorded.

### EXAMPLE

"We are going to record this interview, because what you say is very important to us and we don't want to miss anything you tell us. Do you have any questions?"

87. The child's understanding of the recording arrangements should be checked and the child offered the chance to ask questions. This should be done regularly throughout the explanation of the interview recording arrangements. Most often the child will be shown the visual recording equipment, the control/monitoring room and how the technology operates (in simple, child-friendly and age-appropriate terms). The intention is to achieve some confidence that the child understands the basic implications of visual recording and how it will work in the course of the interview and not to introduce further areas of concern to the child. However, it is important to check out (by asking the child) that the child is comfortable with the recording arrangements and if they have any other questions about how this works or will be used after the interview is concluded. The focus however should remain on *enabling* the child to participate effectively so the child should not be burdened with information about the recording arrangements to the detriment of their capacity to participate in the interview. If the child indicates that visual recording worries them, the interviewer should ask what worries them about recording. Whether or not to continue with visual recording should be based on the child's responses and the success or otherwise of the interviewers' efforts to answer questions and reassure the child in respect of their worries or concerns.

### ***Interview atmosphere***

88. It is important that interview process is not discussed with the child on the journey to and from the interview centre as all pre-interview contact needs to

remain scrupulous and can be subject to critical and or difficult examination later. On arrival, there should be a child friendly waiting area available to accommodate them until the JII interviewers are ready to commence. It is also important that if more than one child is being interviewed they should not have time together between interviews.

89. The child should be enabled to feel as relaxed and comfortable as possible before beginning the interview. Interviewers should try not to over-emphasise their authority in relation to the child as this might cause the child to clam up or to simply agree with whatever the interviewer says. Police interviewers should wear plain clothes rather than uniform. Research suggests that more information can be obtained from a child when the interviewer is *not* in uniform (Powell, Wilson & Croft, 2001).
90. One possible approach for a very young child is to be sitting down on the floor at eye-level, to shift the balance of control in favour of the child. If this approach is taken, the need to retain the child and interviewer within view of the camera should be addressed during planning, and use of the camera controls by the second interviewer if they are in the control room.
91. ***The pace of the interview should be dictated primarily by the child.*** Their developmental age, attention span, the time it takes for them to overcome any initial misgivings they might have, and so on will all affect the length and pace of the interview. The number and complexity of alleged incidents will also impact on the overall duration of the interview.
92. Interviewers should speak slowly and clearly and allow for *pauses*. They should refrain from interrupting the child or immediately 'jumping in' when the child appears reluctant/unable to talk. In fact, pausing and not interrupting the child is the best technique for allowing the child to search their memory effectively. Interviewers should also speak in a normal voice tone - an affected tone might be construed as trying to impress the child or influence their responses, may convey a sense of worry, or be perceived as patronising.
93. It is acceptable for the interviewer(s) to ask the child to speak up if the child cannot be heard, although the microphones are sensitive. If the second interviewer is monitoring from the control room, this is something they can notify to the lead interviewer. Children are, generally speaking, used to technology and a stilted interview atmosphere is likely to have much more effect on the child than the presence of cameras (Richards et al, 2007). There is no need to ask the child to speak up 'for the camera', since this will repeatedly draw attention to it.
94. Interviewers must be vigilant for signs of fatigue in the child, or the need for a refreshment or toilet break. If the child does wish to take a break, this should never be withheld or offered as a reward in an effort to extract or confirm information. Interviewers should not attempt to drive proceedings along or continue questioning a child who has become very distressed or restless. At

the same time, interviewers should not be hasty in providing breaks when the topic turns to something difficult or embarrassing.

95. If the child leaves the room for a refreshment or toilet break the lead interviewer must state for the recording what is happening. The note of salient points made by the second interviewer should include times and reasons for breaks, how long they lasted, what the child was doing during the break, who they spoke to, what was said, and so on.
96. Taking into account all the factors above emphasises the need for flexibility to meet the individual circumstances as presented in each case.

### ***Interview principles***

97. While the interviewer must make clear to the child the underlying principles of the interview, there is substantial information in research and literature to indicate that “ground rules” are most effective when dispersed across the interview at salient/relevant junctures, rather than listed as a ‘litany’ at the outset. There are strong suggestions that the litany approach is, in fact, counter-productive and unnecessary (see Berliner and Conte, 1995; Saywitz and Faller, 2006). This information should be regarded as “things a child might need to know about the interview” rather than as ‘ground-rules’ and be proffered in this manner.
98. It is recommended that interviewers do not just ask whether the child understands the information but check by giving examples. Interviewers should also use language appropriate to the age/ability of the child.
99. Appropriate principles which should be communicated to the child are:

- The interviewer is there mainly to listen. This is the child’s chance to do most of the talking.
- The interviewer needs the child’s help to understand what (if anything) has happened.
- Even if the child thinks the interviewer already knows something, they should still tell them anyway.
- If the interviewer asks a question that the child does not know or remember the answer to, it’s OK for the child to say “I don’t know/remember”.
- If the interviewer asks a question that the child finds too difficult or unclear, the child should let the interviewer know so they can say it in a different way.
- The child should not try to guess the answers. They should only talk about true things, things that really happened.
- If the interviewer makes a mistake, or says something that is not true, it is okay for the child to correct the interviewer.
- Sometimes the interviewer will ask the child the same question again. This does not mean that the child gave the wrong answer the first time, it is just to help the interviewer remember what has been said. The child should always tell the truth.

## **Telling the truth**

100. Section 24 of the Vulnerable Witnesses (Scotland) Act 2004 abolished the competence test in respect of all witnesses, removing the court's requirement to ask questions of child or vulnerable adult witnesses designed to establish that they had a sufficient understanding of the truth, understood the duty to tell the truth and had the ability to give coherent testimony. However, Chapter 11 of the Vulnerable Witnesses Guidance Pack (Scottish Executive, 2006), on Stand Alone Provisions acknowledges the role of investigative interviewers in clarifying the child's level of understanding:

*"While the Act prohibits the use of the competence test in criminal and civil court proceedings, this may raise the question for practitioners about its application to other stages of proceedings, in particular the investigative interview. It is no longer expected that a child or vulnerable adult (for example an adult with learning disability) needs to demonstrate their understanding of the need to tell the truth or the difference between telling the truth and telling a lie. However, the court will still have to make a judgement of the witness's truthfulness and reliability, therefore any interview should still clarify, in age appropriate ways, the witness's level of understanding. This exploration will assist the court in determining issues of credibility and reliability." (Scottish Executive, 2006: Chapter 11, p3)*

101. The child does not have to take the oath for an investigative interview but it is advisable to make them aware at the outset of the importance of giving their own, true account. By 'true account', that is saying what actually happened. Interviewers should not ask for definitions of what is a truth or a lie as this is a difficult task. Instead, the interviewer should emphasise that they want to know what the child actually saw. It is important that throughout the interview, interviewers note their assessment of the abilities of the child in how they perceive and communicate any distinctions between events that have actually happened and those that are pretended.

### **EXAMPLE**

"I want you to tell me what really happened, even if you said something different to somebody else at some other time"

- Tell me what you saw
- Tell me what you heard
- Tell me what happened

102. Where there is sufficient doubt over the level of understanding of a witness the interviewers should take steps to ensure that questions are put to the child in a way that they can understand.

### ***Rapport; establishing a 'child-centred' interview***

103. The rapport phase is an excellent opportunity for the interviewer to gain a better understanding of the child's communication skills and current stage of cognitive, social and emotional development.
104. From the rapport building, the interviewer can also learn more about the child's use and understanding of vocabulary and adjust their own accordingly. The interviewer should also encourage the child to give an open-ended account (and detailed description). They should avoid questions that will prompt brief one-word answers as much as possible, to set the form of the substantive phase of the interview.
105. Even in cases where the child is already familiar with the interviewer(s) through previous contact, time should be taken for fresh rapport building before commencing the interview. How long is spent on this phase is up to the discretion and experience of the interviewers.
106. The rapport phase should, of course, be recorded along with the rest of the interview. This can easily be done if the interview is visually recorded. Until this is widely introduced, practitioners should record the broad areas discussed in rapport building. But they should take a verbatim record if the child alludes to anything (which may be) of material or evidential relevance to the matter of concern during any "neutral" discussions).

### ***Undertaking a practice interview***

107. Many JII interviewers find it helpful to use a 'practice interview' as a precursor to the investigative interview itself. A practice interview is recommended as good practice (Sternberg et al (1997), Brubacher, Roberts & Powell (2011) as it has a number of distinct advantages, the most important of which are:-
  - To allow the interviewer to help the child to become accustomed to the interviewing situation and techniques. This involves the interviewer regularly using 'invitations' or 'prompts' such as "tell me about..." or "tell me more about that". These 'prompts' ought to feature regularly throughout the interview itself since they are the most effective way of eliciting detail and free narratives from children. The use of such 'prompts' throughout the interview should be a central practice technique in effective interviewing of children.
  - To enable the interviewer to "rehearse" the consistent use of 'prompts'. This allows the interviewer to become more familiar in their use and more comfortable in this interviewing technique before entering into the interview itself (in respect of the topic(s) of concern).
  - To allow the interviewer to gather ancillary information about the child's communication abilities/recall/non-verbal communication and to promote a level of reassurance and composure.

108. It should be noted that a practice interview may not always be appropriate e.g. where it is clear that the child wants to talk about the topic of concern right away. This will always be a matter for professional judgment. However, in reaching a decision interviewers must ensure that they always act in the best interests of the child.

### A PRACTICE INTERVIEW

A practice interview should normally follow on from Rapport Building with a child. The practice interview should include the following:-

- Ask child to identify a favourite topic or event, e.g. television programme (this should be a 'neutral' event or topic not directly related to the suspected topic of concern);
- Use open-ended questions to get details: Who, What, Where, When, How
- Use open-ended prompts to encourage the child to keep talking: e.g., "Tell me more about"

### *Raising topic of concern*

109. Once the practice interview is complete, the interviewer should then make efforts to raise the 'topic of concern' with the child, remembering to use open-ended prompts (as used in the practice interview), as a key technique throughout the rest of the interview. This should be done in a way that encourages the child spontaneously to come up with information, and is free from suggestive influence. In the rapport phase, the 'entry' into the topic of concern is often created or touched upon. This can be used as a direct device into establishing the topic of concern. So, for example, a good opener would be;

### EXAMPLE

"Now, it's time to talk about something else, Do you know why you are here today?...tell me about that?"

110. A **bad** opener would be,

"I hear you've been having problems with Uncle Johnny, is that right?"

111. Not all children will be able or willing to respond with relevant information to general prompts (especially when the initial allegation has come from a source other than the child, or where the child has additional support needs), so interviewers may have to progress to more specific ones.

## **Free narrative**

112. The free narrative phase is the most reliable source of accurate and untainted information provided the child has not been subject to interviewer bias in earlier interviews, and has not been coached. A free narrative is the child's own uninterrupted account of what has taken place. Professionals will know from the literature and from experience that, due to their developmental stage, younger children may be less likely to provide spontaneously information than older children and adults. Interviewers should always provide children, of *all* ages, with sufficient opportunity to describe their version of events, *in their own words*.
113. There are several ways of obtaining this free narrative. For example, when the child mentions the topic of concern, the interviewer can simply ask, "Tell me about that".
114. Interviewers should resist 'jumping in' to clarify any comments or follow up evidentially relevant statements with focused questions during this phase of the interview. Instead, interviewers should adopt the position of an active listener – that is, let the child know that the interviewer hears what the child is saying and is taking it seriously.
115. If the child begins to falter, the interviewer should be patient and allow for pauses. If it is clear that the child has finished, the interviewer can use a number of strategies, including facilitative prompts.

### **FACILITATIVE PROMPTS**

- A neutral acknowledgement ("uh huh")
- Repeat back the child's last comment (*Child*: "And then we went into the bedroom ...") (Pause) *Interviewer*: "I see, so you went into the bedroom ...")
- "Tell me more"
- "Then what?"

116. If the child is pained to speak about the topic then reassure them ("It's alright. Take your time, I'm listening" or "Is there something that would make you more comfortable today?"). Interviewers can be sympathetic but not too personal – avoid using terms of endearment (e.g. "dear", "sweetheart") and initiating physical contact (e.g. leaning over and hugging a child).
117. All personnel present at the interview should ensure that verbal reinforcement is given sporadically and is not contingent on a given response. Never offer the child anything that could be regarded as a form of bribe or inducement (e.g. "If you just tell me what he did you can go home"). Do not indicate satisfaction or dissatisfaction with the information the child is giving. The interviewer should maintain neutrality in facial expression and body language, as well as verbally. The child should not be given the impression that the

interviewer is keen to receive information of any particular nature or that a particular statement is welcome or unwelcome. Care should be taken to ensure that the interviewer does not introduce something that the child has not said or lead the child to associate the response of the interviewer with the making of disclosure.

118. If the child has not given any information regarding the incident being investigated, either spontaneously or after prompting (using the recommended prompts and facilitators), interviewers should jointly consider whether to continue the interview further. Decisions made at the planning phase should be referred back to. The child may not be ready to speak yet, but it may also be the case that the incident did not take place or that the child did not witness everything anticipated. If, in the light of information obtained (or not) during the interview and the strength of the original referral, the interviewers decide it is in the best interests of the child and justice to terminate the interview here, they should then proceed to the Closure Phase.

### **Prompts**

119. Even when the child has provided a fairly substantial account of the event(s) from free narrative, it is likely to be necessary to expand what has been said so far with further detail, or to clarify ambiguities. These prompts should ideally be built around what the child has said in the free narrative.

### Open-ended prompts

120. Open-ended prompts are phrased in such a way that they invite a more detailed response and do not lead or pressurise the child into giving a particular answer. Research shows this form of question can yield up to 3–4 times longer responses from children.

#### **EXAMPLE**

“You said earlier that you and this man played a game. Please tell me everything you can remember about that”.

121. Not only do open-ended prompts result in more detailed responses, the evidence obtained in this way is least likely to be challenged in court. The other advantage of open-ended prompts is that they serve to give children control over what they want to divulge.

## BENEFITS OF OPEN-ENDED PROMPTS

- Responses to open-ended prompts are more accurate than responses to specific questions. This is assuming the child has not previously been subjected to multiple interviews involving persistent and erroneous suggestions.
- Open-ended prompts avoid putting the child in a position where they may try to answer a specific question even when they do not have the details requested.
- Open-ended prompts also avoid the possibility of a yes/no answer. A child who does not understand a question can often try to provide a response even when they are unsure of what is being asked – repeating phrases used by an interviewer, giving a stereotypical answer, providing a yes answer because that is what they think the interviewer wants.
- Specific questions do not allow the child to collect their thoughts; it takes time to search memory.

### **Questioning**

#### Style of questions

122. There may be times during the interview when a question is more appropriate than an open-ended prompt (see paragraph 119-121). Questions can be posed in several ways and consideration should be given to both the style and content of questions. Interviewers should always aim to phrase questions in a way that will produce the most detailed response, and is least likely to influence the child's answer in a particular direction.

123. The three main types of question are:

- Specific
- Closed
- Leading

124. This can be seen as a hierarchy of interview questions, from most preferable down to least preferable, and interviewers should always strive to return to free narrative (or open-ended prompts) as much as possible throughout the interview.

#### Specific Questions

125. Specific questions probe for clarification or a fuller and more detailed account of the event(s) the child has *previously mentioned*.

### **EXAMPLE**

“Where were you when you played this game?”

126. If a child's initial response to a specific question is deemed incomplete, interviewers can pose the question again but in a different form. Persistently

repeating a question is not advisable as the child may come to believe their first answer was wrong, and consequently alter their response to something they think the interviewer wants to hear. Where a child has provided information as a response to a Specific Question it is advisable to follow this up with an open-ended prompt (“You said this happened in the bedroom ... tell me as much as you can about the bedroom ...”).

127. It may become clear that there were multiple incidents of alleged abuse or matters of concern (these episodes are most likely to stand out in the child’s mind as distinct events). It might be helpful once the incident is described, to give it a unique label that the child understands and associates with. This can be used as a reference point for accessing memories of other (subsequent/prior) incidents. Interviewers should note that this technique might not be so beneficial with children who have a learning disability and whose understanding of temporal terms such as ‘the first time’, ‘the last time’ is often limited.

#### EXAMPLES

Did that happen one time or more than one time?

Tell me everything about the last time [*first time/time in [location]/the time you [some specified activity]*] something happened.

#### Closed Questions

128. Closed questions provide the child with only a limited number of response options, usually “yes”, “no” or “don’t know”. When used inappropriately, such questions tend to yield *less* accurate information. This is particularly so when there are sequences of closed questions asked in succession since this might be construed by the child (and others) as interrogative.

#### EXAMPLE

“Was anyone else in the house when this happened?”

129. Children are less likely to say “I don’t know” to a closed question and more likely to guess or be misled by the interviewer. Thus, interviewers must take care if using closed questions and should always remember to follow immediately with *open-ended* prompts for a spontaneous provision of information.

#### Leading Questions

130. A leading question is one which is presented in such a way that it suggests a certain answer to the child or one which makes assumptions about facts yet to be confirmed.

#### EXAMPLE

“So then he touched you, didn’t he?”

131. Whether a question is construed as leading or not depends on a number of factors: e.g. the nature of the question; whether the child has already mentioned, for the above example, any physical contact or not; the tone of the interviewer's voice when asking the question; and so on. Generally, leading questions on a particular point should only be asked at a point where interviewers have approached the matter by asking open-ended prompts, specific or closed questions but require to probe the issue further. By exhausting other means of approaching the issue first, it should be possible to view and assess the answers to the leading questions. It is important to ensure that any questioning which is ultimately assessed to have affected the child's evidence on the point is minimal, isolated and comes at a point when it does not risk affecting the whole of the child's evidence and any questions which might follow the leading question. (see also paragraph 143 about evidence gaps which may need to be probed)
132. It may be more useful to draw a distinction, and create two categories: 'leading' and 'misleading' questions. The former can lead a child to give a correct response whereas the latter leads a child to give an incorrect response. To return to the above example, if the child had actually been touched then an affirmative response would be a true response. However, if no physical contact had taken place yet the child gave an affirmative response, the nature of questioning could be directed away from true events. Note the previous reference to confirmation bias (paragraph 40). The danger of such questioning is that interviewers rarely know the answer, therefore cannot be sure whether they have asked a leading or misleading question.
133. A misleading question can also be based on an incorrect interpretation/reiteration of what the child has said. An example would be where a child mentions getting into a blue car with a stranger and the interviewer then asks, "Tell me more about this green car", to which the child responds with a fuller description. Such questioning might jeopardise the credibility of the child's statement. It is vital therefore that interviewers listen carefully to the child witness and that the second interviewer actively monitors the child's responses.
134. A leading question that is based on something a child said during a free narrative stage may be acceptable. A response to a leading question based on an interviewer's hunch is not to be trusted. Leading questions, if ever used during an interview, should be immediately followed with an open-ended prompt to get a free response. Out of the three main question types, leading questions are most likely to lead to answers that will be considered unreliable in court. Consequently, extreme care should be taken when using this type of question, especially where they relate to identification or a description of the act and are material to the case.
135. Interviewers should bear in mind the significant risk that answers to leading questions may be rejected in evidence. Added to that, the asking of a leading question may result in a later statement by the child being rejected as unreliable on the ground that the child has been influenced by the question

itself. The result of leading questions may be that the child's later statements may be viewed as "contaminated" by the content of such questions.

### Content of questions

136. Interviewers should aim to keep questions as unambiguous, simple and as short as possible.

#### **TYPES OF QUESTIONS TO AVOID**

- Double negatives: "Don't you remember whether you said no or not?"
- Multiple propositions: "Did you think that you would get into trouble if you didn't go along with it, or did you think that it was a cool thing to do, because you were told that all the other boys had done it?"
- Very long questions
- Questions containing legal jargon
- Abstract or hypothetical questions: "Do you think this would still have happened if...?"

#### **SOME (DEVELOPMENTALLY) TROUBLESOME CONCEPTS FOR CHILDREN, WITH POSSIBLE SOLUTIONS**

- "Behind", "in front of", "beneath", "above": Might need to ask child to demonstrate what they mean
- Dates and times: Can use memorable or routine events as reference markers such as birthday, school or television schedules (thus can pin-point the event to a particular month, week, day, or even time of day)
- Estimates of length, height and weight: Can be specified relative to another object or person familiar to the child
- Estimates of age: Again, can be specified relative to another person the child knows
- Frequency of events: Young children may have trouble estimating frequency; specific examples may help
- Use of "he", "she" and "they": Better to say their specific name(s)
- "Anything": Better to say "all" or "everything"
- When there is a change of topic: To reduce confusion or misunderstandings, signal change with a phrase such as "I'd now like to go on to talk about something else..."
- Passive voice: Better to use the active voice, e.g. "Person X hit Person Y" rather than "Person Y was hit by Person X"

137. If the interviewer feels that they have used a question that may be deemed inappropriate then the reasons for using the question should be noted. Where an inappropriate question is used in error, then the steps taken to mitigate the error should also be noted.

## Seeking clarifications

138. Some of the child's own use of vocabulary may cause problems for the interviewer. Young children often *over-* and *under- extend* the meaning of words. That is, they may use the term "private parts" to encompass body parts other than the genitals which are also usually covered under clothing (e.g. knees), or deny being touched but later admit to having been kissed as they consider touching to involve the hands.
139. Imprecise anatomical terms (e.g. "front bottom") will need to be explained – for crimes such as rape, the interviewer will need to know *exactly* what parts of anatomy were involved. Moreover, if a child uses certain sexual terms during their statement, the interviewer cannot assume that the child fully understands them. The child might simply have overheard adults using them or come across them in magazines, without ever finding out their true meaning. Where there is ambiguity, the interviewer should ask gently for clarification.
140. Children should never be asked to use their own or the interviewer's body to demonstrate an action or body part to clarify something they said. However, children may *spontaneously* point to their body. The interviewer should also identify the child's preferred name for the body part and repeat it back to them for clarification purposes. It is also beneficial to ask the child for the proper or other names of the relevant body part. The use of anatomically-correct dolls or pre-formatted diagrams should be used with caution and preferably after suitable training (see paragraphs 145-148).
141. Clarification is also important when a child's statement contains fantastical or bizarre elements, e.g. the mention of "glue" during a sexual act. Interviewers should ask, "Where did the glue come from?" Seemingly bizarre elements may turn out to be quite rational, e.g. "glue" meaning semen.
142. It should be highlighted that children sometimes reveal new and different information across statements and interviewers. ***It is important to bear in mind that differences are not necessarily inaccuracies.*** It is also possible that a child makes genuine mistakes, or cannot recall case-relevant information, because of memory loss or recall failure. However, on occasion, children may also be motivated to fabricate or exaggerate their accounts. In addition, what a child has said may be inconsistent with or omit other information already gathered in the course of an investigation for example, from other witnesses.
143. If there are *significant* and unexplained evidential inconsistencies, these should be probed during the interview. Dealing with inconsistencies at the time is more effective and does not need to imply that the child was deliberately misleading. It could be a result of poor or confused interview technique or, indeed, a signifier of more serious circumstances that the child is struggling to reveal. Interviewers must take care not to assume or imply that the child is lying. Assessing the appropriate questioning approach

requires a delicate balance to be struck. If necessary, interviewers should be prepared to break the interview to discuss the appropriate approach. Such issues should be identified at the earliest possible stage and ideally at the planning stage. Interviewers should agree a strategy for approaching issues which are likely to result in inconsistencies arising in the course of interviews. Any inconsistencies should be probed after the child has finished their free narrative or at the end of the interview as appropriate.

144. Similarly, if gaps in evidence are to be probed (e.g. significant information already known from the investigation has been omitted from the child's account) then this should only be done with consideration, and after the child has finished their free narrative. All such probing questions, particularly when concerning evidential inconsistencies, should be asked in a tactful and non-confrontational manner, bearing in mind that the child may be susceptible to suggestion or acquiescence. If leading questions are required then this may be of limited evidential value unless a more detailed response can be elicited through a follow-on open-ended prompt.

### **Props**

145. Research raises concerns about the reliability of evidence gathered with the use of anatomically-correct dolls or pre-formatted diagrams during investigative interviews with children, especially very young children. Research (e.g. Bruck et al., 1995; Stewart & Stewart, 1996) shows dolls and toys used in this way may increase inaccuracies especially in younger children. The use of anatomically-correct dolls or pre-formatted diagrams should be used with caution and preferably after suitable training (see paragraph 140). In the main, anatomically accurate dolls should only be used as an adjunct to the interview to allow the child to demonstrate the meaning of terms used by them or to clarify verbal statements.
146. Props should never be used in conjunction with leading questions nor should their use be instigated by the interviewer. Interviewers should always be clear and explicit about *why* particular props or drawing were introduced or used and the reasons for doing so at particular junctures in the interview. This should always be explicitly considered in the planning of an interview and, where such props or drawing have been used or made, the reasons recorded by the interviewers in their records following the interview.
147. It is acceptable for children to hold on to items that they themselves have brought along to the interview as comforters, e.g. 'safety' blanket. This also includes dolls or stuffed animals but interviewers should not use these as props nor try to interpret the child's behaviour with the toy in the context of their evidence.
148. Along with all props, any drawings made during, or brought along to, the interview should be recorded in the interviewer's notes and shown to the camera at the end. Particular reference should be made to when and how the prop/drawing was introduced and how it was used. At the end of the

interview, any drawings should be signed and dated on the reverse side by both interviewers and retained by the police as productions.

### **Closure**

149. It is essential to end every interview properly with a closure phase, even if an interview has had to be terminated prematurely or no disclosure has been made. The following features should be included:

<b>CLOSURE</b>
<ul style="list-style-type: none"><li>• The lead interviewer should summarise (using the child's language as much as possible) the important evidential points in the child's statement, confirming that those aspects have been understood correctly.</li><li>• The lead interviewer should check with the second interviewer whether any additional questions or clarifications are required.</li><li>• The child should be asked if they have any questions they want answered, or something else which they wish to add.</li><li>• The child should be informed of what, if anything, will happen next. Explanations should be honest and realistic but appropriate for the child's age and level of understanding. Commonly asked questions include "Will [the alleged offender] go to prison?" Interviewers should be prepared to answer such questions but should avoid making promises that cannot be kept.</li><li>• The child and/or their guardian should be provided with a contact name and number plus advice on where they can seek help. This should include a contact from the police or social work but some children and/or their families may also need further support from voluntary agencies or professional counsellors or therapists (see paragraph 13 on guidance for therapeutic support).</li><li>• Interviewers should thank the child for their time and effort – but take care not to thank the child for the information given – and show that they have taken the child's account seriously.</li><li>• Interviewers should inform the child of the possibility of further interviews.</li><li>• Finally, children should be given time to compose themselves. The main aim of closure is that the child leaves the interview in a positive frame of mind, not distressed. Neutral topics, such as those covered in the rapport phase, can be discussed in order to help achieve this state</li></ul>

150. No child should ever be made to feel that they have failed or disappointed the interviewers if they do not impart any details of apparent evidential value during the interview.

### **Action immediately afterwards: Creating the recording log**

151. At this stage consent forms can be signed by the parent or carer if the child is aged under 12 (and the child's views obtained) or by the child if aged 12 or over.

152. A note of salient points or 'guide' to the full recording should be agreed by the two interviewers immediately afterwards. Any drawings made should also be preserved.
153. The recording should be assigned a unique number from a 'recording log', to be kept by a responsible officer and used to track the location of recordings at all times, and to safeguard them.
154. Further guidance about handling and storing recordings is at paragraphs 205-212, Appendix F and Appendix G.

### ***Debriefing and further interviews***

155. Once the interview has been completed, a debriefing session should be arranged between the interviewers and the nominated senior social worker and/or police supervisor overseeing the investigation. The debriefing session is an important part of the process of joint planning and management of child protection enquiries. The findings from the interview and any further action can be discussed and decided upon. This may include the need for another interview and/or arrangements for a medical examination. The debriefing session can also provide an opportunity to identify operational and practice issues that require to be addressed externally to the enquiry (e.g. training needs, procedural gaps, Trauma Risk Management). A record of the debriefing session and all decisions made should be taken, and copies kept by both agencies. Appendix B provides an overview on the role of supervisors and managers in briefing and debriefing practitioners.
156. The complete visual recording provides an ideal opportunity for interviewers to assess their performance. This will not always be possible at the debriefing session, but it may be decided at this session that the interview should be reviewed later, if consent has been or can be obtained.
157. Although the joint approach aims to reduce the number of times a child is interviewed, there are a number of reasons why further interviews may be necessary. These are when:
  - a child who did not give information for whatever reason in the initial interview is now willing and able to provide information
  - new information comes to light from sources other than the child
  - new allegations emerge (and therefore, wider implications) in the course of the initial interview, and extra time is needed to investigate them fully
  - the child and interviewers have not built up a good rapport
  - the interviewer has not yet gained the child's trust
  - the child is currently too distressed to talk
  - it becomes apparent during the interview that the child may have additional support needs requiring specialist input.
158. When such circumstances arise, the different agencies should decide whether conducting another interview would be in the best interests of the child.

159. Interviewers and those overseeing enquiries should always consider carefully whether further interviews are necessary and appropriate. The guidance set out here should be followed each time a JII is conducted.

## **PART 4: ADDITIONAL SUPPORT NEEDS**

160. Children in the JII setting with additional support needs arising from disabilities, sensory impairments or illnesses, should be identified through preliminary checks at the referral stage with parents, carers, health professionals or educational professionals. Where appropriate, further clarification of additional support needs should be sought by contacting those professionals working directly with the child and family, e.g. the primary health care team, education professionals, community paediatrician, child psychiatrist, psychologist or therapists.
161. Facilities for visually recorded interviews should be designed and constructed to comply with disability access requirements and the Equality Act 2010. They should also fully enable any investigative interviews with children with additional support needs or disabilities. Accommodation standards are set out at Appendix F.
162. Very young children, those with first languages other than English, and children from ethnic minority backgrounds may also have additional support needs in the JII setting, particularly communication needs. 'Cultural' issues arising from belonging to specific communities (including in relation to deaf children and deaf culture) may also indicate that a child has additional support needs.
163. These factors should be considered and additional support needs identified should be taken into account and addressed at the planning stage. This part of the guidance does not cover all the circumstances or factors which may indicate additional support needs. Instead, it focuses on issues around interviewing arising from:
- disabilities, impairments and illness
  - very young age
  - where English is not the first language
  - ethnic considerations.
164. Paragraphs 173-182 below set out guidance for planning an interview where additional support needs have been identified.

### ***Disabilities and illnesses***

165. Disabilities and illnesses vary widely in terms of type of impairment (e.g. physical, sensory, learning, social, communication) and severity of impact on the child. Therefore interviewers should usually seek specialist advice from expert professionals familiar with that specific disability and with the child and the family. Expert opinion can advise on how to tailor the interview to the child's particular needs – including the physical setting –to make the experience as suitable and as comfortable as possible for all involved. All specialists brought in to assist in preparing for the interview should be

independent from the investigation, qualified, be accredited in their role, and have appropriate experience that includes talking to children.

166. When assessing/considering the child's needs, the focus should always be: "So what are their abilities?" Even if the child cannot communicate through the usual communication media, this should not prevent investigative agencies from attempting to obtain their account. The child should not be excluded automatically from the investigative process. Section 3 of *The use of special measures for vulnerable witnesses with special support needs* in the guidance pack on the Vulnerable Witnesses (Scotland) Act 2004 (Scottish Executive, 2006a) provides more detail about supporting child witnesses with additional support needs.

### **Very young children**

167. Considerations for this group include the fact that very young children can be very attached to familiar figures, particularly a parent or carer. They can be distrustful of strangers and become distressed or avoid contact when left alone in rooms with unfamiliar adults. Unfamiliar surroundings can heighten their distress. Furthermore, pre-school children are more used to interacting with adults in play situations rather than serious formal sessions; building rapport will be essential and more time may be needed when explaining the principles of the investigative interview.
168. Additional communication needs have to be addressed when interviewing very young children, especially through awareness and understanding of how very young children use and interpret language. Young children may still be able to provide important evidential information despite providing shorter 'free narrative' accounts than older children. Nevertheless, each child may differ in this respect and interviewers must always employ the use of free narrative opportunities in interviews, remembering that this generally provides the most productive and reliable accounts from child witnesses.

### **When the child's first language is not English**

169. A child should, wherever possible, be interviewed in their first language (or, if bilingual, the one of their preference). Only in special circumstances, i.e. where an interpreter is not available and there is an immediate need to talk to the child, should an exception be made. Such circumstances do not include the JII, but rather would be about establishing whether there are sufficient grounds to proceed to a JII or about whether immediate intervention is necessary. Interviewers should be aware that some children who use English everyday, for example at school, may revert to using their first language for certain terms, e.g. parts of the body.
170. If an interpreter is required, then they should be someone independent of the child's family and community. They should be fully briefed as to their role and remit during the interview and to the principles of the phased interview. The

interpreter should also have an understanding of the child's cultural context as well as being able to speak the relevant language. Further, they should be suitably vetted and appropriately accredited if required to appear in court.

171. The interpreter should be fully aware that they must interpret exactly the interviewer's questions and the child's responses, and that they should avoid making inferences. Moreover, interpreters should understand their role is not to add in or omit anything, but just report what has been said. Where the use of idiom poses a problem in interpretation/translation the interpreter should be aware of the need to alert the interviewers and explain the implications for the translated version of a question or response. Such occurrences should be recorded in the note of key points.

### ***Ethnicity***

172. When interviewing children from different backgrounds and heritage, interviewers might encounter beliefs and values that are different to their own. The child's culture and customs must always be respected. The following are some points to consider:

- certain rituals or customs might affect the scheduling of the interview (e.g. prayer times, holy days, fasting)
- behaviour towards authority figures can vary from culture to culture. In some cultures it is inappropriate for a child to question anything an authority figure says. In this situation, it is essential that the interviewer makes especially clear the interview principles described in paragraphs 97-99, for example that the child should correct the interviewer if the interviewer makes a mistake
- beliefs and practices regarding child rearing can also vary from culture to culture. Interviewers should respect that and avoid passing judgement.

### ***Planning an interview for a child with additional support needs***

173. More time will be needed during the planning phase to gather and assess information from all relevant sources. Detailed guidance is available in *Information about child, young and vulnerable adult witnesses to inform decision-making in the legal process* (Scottish Executive, 2005).
174. Planning the interview accommodation for a child with additional support needs is particularly important. The interview should take place in a suitable setting – i.e. one able to accommodate any equipment (e.g. a wheelchair), free from distractions and noise, with good lighting, etc. Seating arrangements should reflect the needs of the child, as set out in the accommodation standards.
175. If communication boards, other visual aids or signing are to be used, interviewers should ensure:

- that a statement is made, before the child enters the room, as to the type/model of aid being used
  - that, if a person is signing, then particular care needs to be taken as to the positioning of the interviewer and the child, so that signing can be understood by someone watching the recording.
176. Interviewers should always be conscious that others may wish to observe the completed recording and, without compromising the experience of the child, do all that is possible to facilitate understanding by those observers. This will include providing an appropriate vocabulary of what the child is being asked.
177. Very young children and children with learning disabilities may not always respond to open-ended prompts. That being the case, the free narrative stage of the interview involves careful planning so that the interviewer may begin with a specific question and then follow it with an open-ended prompt. Interviewers should still take care to avoid leading the child or influencing their responses.
178. With certain conditions, children may struggle with abstract concepts (including 'trust', 'yesterday', 'tomorrow', 'hot', 'cold', 'soft') therefore the investigative team will need to consider carefully how to frame suitable questions and seek advice.
179. Children with additional support needs may have a shorter attention span, requiring more breaks and shorter sessions.
180. Consideration of other persons to be present at interview should be part of the interview strategy in line with the guidance in paragraphs 54-64. If a need for a facilitator (e.g. an interpreter) is identified, additional time will have to be set aside to ensure they are clearly briefed about their role and remit for the interview. This will require some flexible scheduling, not only for planning meetings but also for the interview itself.
181. The facilitator should be independent of the child (not a family member or another witness in the investigation). Planning should include the time needed for the facilitator to be introduced to the child and take full part in the rapport building stage. Facilitators should be clear as to their interview role, and the child should be made aware that the police officer or social worker is the lead interviewer and that all responses should be directed towards them, not the facilitator.
182. In some cases, for instance with a very young child with an impairment, it may be that the only person with whom the child will and can communicate successfully is the person to whom they are closest and with whom they are most familiar, i.e. a parent or carer. Those planning the interview must consider the known or alleged circumstances of the case and decide whether the parent or carer can be a suitable facilitator. Reasons for having a parent, carer or other close relative present to facilitate the interview should be documented at the planning stage, and their role during the interview made clear. Consideration should be given to having them in the control room to

perform this role with the second interviewer, who can use an earpiece to communicate with the lead interviewer.

## **PART 5: COMPLICATING FACTORS**

183. As well as the additional needs of some children in the JII setting outlined in Part 4, investigations may involve complicating factors to be taken into account. Insofar as possible, these should be identified during the pre-interview planning phase, although some factors may only become apparent during the interview stage. If any complicating factors are highlighted then the supervisor/manager should be consulted, and if necessary an alternative approach initiated.
184. Some possible complicating factors include:
- where the child gives information about further instances of abuse/other allegations
  - when the child witness becomes a suspect
  - presence of multiple witnesses or suspects in a case
  - institutional abuse
  - children who have been coached before interview
  - trafficked children or refugee/unaccompanied asylum seeking children
  - lengthy time-lapses
  - family and community loyalty
  - forced or arranged marriages

### ***When the child witness becomes a suspect***

185. During the course of the JII, the child may impart some information that implicates them in the commission of a criminal offence or suggests they may have been complicit in the offence. If the interviewers conclude that the child's status has changed from that of a witness to that of a suspect, the interview should not be terminated immediately. It should be explained to the child that the offence disclosed is a separate matter and will be dealt with later. This will be dependent on the nature of the offence disclosed by the child. Should the interview require to be terminated this should not happen abruptly; the child should be allowed to finish any statement they wish to make in relation to the subject matter of the joint investigative interview. Interviewers will require to, carefully, strike a balance between eliciting as much information as possible in relation to the subject matter of the investigation, while ensuring that any incriminatory statements have not been elicited unfairly. Interviewers should always remember to end the interview in line with guidance on the closure phase.
186. The decision to bring an investigative interview to a close under these circumstances should always be considered very carefully. The paramount consideration for the purpose of the interview is the welfare of the child. A child who may have committed an offence may require protection and may have important information regarding their own victimisation and experiences.

187. In such circumstances, a further interview will normally be conducted relating to the child's involvement in the newly emerged alleged criminal offence, following established police procedures.
188. It is impossible to know exactly how an interview will unfold. Nevertheless, it is wise to anticipate such eventualities in the planning phase, and interviewers should attempt to have contingency plans prepared. The predominance of the child's needs and welfare in any question of balance with the interests of justice must still be borne in mind. If the child's account as a victim/witness is considered the main priority and the interview is to continue, it should proceed in accordance with this guidance.

### ***Multiple witnesses/suspects***

189. The need for strategic overview of the interview process with children in cases involving multiple witnesses or suspects was raised in the Social Work Inspection Agency report *The care and protection of children in Eilean Siar* (Scottish Executive, 2005c). This is to ensure cross-referencing both within and between the programmes of suspect interviews and witness interviews.
190. While it may not be possible for the same interviewers to be present at each interview, a member of the investigating team should have responsibility for the strategic overview, usually the senior investigating officer. This could be a trained police interview adviser, or could be the police officer or social worker supervising the joint interviewers.
191. Decisions about the need for strategic overview of the JIIs, alongside cross referencing should be taken as soon as multiple witnesses/suspects are identified by the investigation. Nevertheless, each interview in the process should be conducted in line with the guidance.
192. While clarification relating to other children's evidence may be needed, there is a particular danger of interviewer bias arising in such cases, and of (mis)leading a child. The guidance in the section on questioning (paragraphs 119-144) should be followed in questioning children considerately, and only after they have finished their own free narrative and giving their own account.

### ***Institutional abuse***

193. This includes allegations of 'in care' abuse. These are likely to involve multiple witnesses and multiple interviews of single witnesses. They also require careful planning of interviews and cross referencing of witness allegations and statements (see paragraph 189 above). These interviews also involve serious consideration of repercussions for children in disclosing, which needs to be addressed during the planning and debriefing stages. Equally there are issues for timescales for conducting interviews if suspects may still have contact/charge of children or vulnerable people.

194. Where abuse is alleged to have occurred in an institutional setting for which the local authority concerned has responsibility, all steps should be taken to ensure that the management of the enquiry within the social work service, or other responsible agency is not undertaken by those with direct line or any previous management responsibility for the unit/institution concerned.

### ***Children who may have been coached before interview***

195. There is a need for all interviewers to consider explicitly the possibility or probability that a child may have been subject to coaching prior to the interview process. This issue may arise where a parent or carer is involved in the allegations, and also may arise if there are any ongoing divorce, separation, child abduction, residence or contact issues in the family. For these reasons, it is very ill-advised ever to have any third party present at JII who has an interest in the custody of the child or in the parental relationship. Care should be given in relation to the presence of third parties such as grandparents or any person who may have an interest in the outcome of the interview. Paragraphs 56-58 above give further guidance on this.
196. Consideration of coaching needs to be addressed at both the planning and debriefing stages. The emphasis should be on asking appropriate questions. (see paragraph 102).

### ***Children trafficked or refugee/unaccompanied asylum seeking children***

197. Any fears that the witness may have as a result of speaking about what happened need to be explicitly considered, including fears about leave to remain/retribution/deportation. As well as being considered such fears need to be specifically addressed during the rapport building phase and when setting out the interview guidelines. Interviewers should be aware that children can be trafficked from within their own country, not just abroad. Scottish Government guidance on *Safeguarding Children in Scotland who may have been Trafficked* can be found at - <http://www.scotland.gov.uk/Publications/2009/02/18092546/0>
198. There may be certain barriers to communication other than language. Some children from asylum-seeking families, for example, may have had previous negative experiences of law enforcement or social services in their country of origin. Such issues should be considered in advance of the JII (i.e. during the planning stage) and also at the debriefing stage and be treated with due care and consideration.

### ***Lengthy time-lapse***

199. In time-lapse cases the child may have serious difficulties in providing detailed recall of events, especially in relation to multiple incidents (i.e. re-victimisation by different perpetrators in separate or unrelated incidents in the intervening period). Time-lapse is also a factor in historical abuse cases.

200. Planning the interview in such cases should include strategies for questioning in the event that the free narrative technique cannot be fully used.

***Family and community loyalty***

201. The potential for public or familial shame can be a major determinant of how co-operative the child and family are with the investigation (a child disclosing allegations of abuse might fear retribution from the family and the community).
202. In smaller or rural communities, additional care needs to be taken when considering specialist assistance, particularly when selecting people to help with communication needs. In such communities, it may be difficult to identify suitable specialists locally; as noted earlier (see paragraph 170) specialists must be independent of the investigation in order to ensure accuracy of the child's communication, and to avoid any potential intimidation of the child. It may also prove difficult to recruit local specialists who are accredited for the role, and who have sufficient experience in talking to children, in which case suitable specialists may have to be recruited from elsewhere.

## **PART 6: USE OF AND AGENCY RESPONSIBILITIES FOR VISUAL RECORDINGS**

203. The aim of this section is to describe the uses of the recordings, and the responsibilities that agencies have when using them and making them available. It sets out national guidance that should be applied.
204. On occasions where, after the initial investigative phase, after thorough investigation there is an insufficiency of evidence in law for the police to report the circumstances to the PF; and it is decided that a referral to the children's reporter is not required, the recording should be retained according to police or local authority retention policy. In other cases a report will be made to the PF, children's reporter or both, depending on the circumstances. Where a police report has been passed to the PF /Children's Reporter, this must also include the note of salient points taken during the interview and agreed between the police officer and social worker following the interview

### ***Handling and copying recordings***

205. At the conclusion of each interview the recording equipment will simultaneously produce 2 DVD discs. One disk will be a master copy and the other a working copy. **It must be noted that the master copy will remain as an unedited version of the original interview and be preserved at all times.**
206. In addition a third copy may be required. It is not possible to predict all the circumstances where this may occur, however they may include:
- copy for the defence or other party in civil proceedings where a court instructs a copy be made available to the defence
  - copy for the Children's Reporter where a referral has been made to the Reporter as a result of a JII.
207. Third (or subsequent) copies require authorisation of at least the rank of Police Inspector.
208. The Initial Referral Discussion should consider if, based on existing information, a third copy will be required and arrange for this to be obtained. The content of all interviews must be reviewed at their conclusion and consideration given to what agencies require a copy of the interview. In all circumstances additional copies must only be made where there are very good reasons for doing so. If there is a case made out for a copy to be provided, the copying should be done by the police, with the copy itself released only against a receipted signature. The default position will **always** be for two copies.
209. It is vital that the production of additional copies is documented and an audit trail maintained to clearly show the location of all copies at all times. It should also record when the copies have been destroyed.

210. By their very nature, JII recordings may contain an element of inadmissible evidence such as hearsay evidence that would not be shown in criminal court proceedings. Similarly, there may be a need to edit recordings where the interview contains sensitive and or immaterial information. Under the terms of a protocol agreement between COPFS and ACPOS, editing of JII recordings must only be carried out by ACPOS under instruction from COPFS.
211. Under the terms of the Data Protection Act 1998 (DPA), any organisation holding a JII recording has a duty to keep them safe, secure and to prevent any unauthorised use or access. The Police, Procurator Fiscal and the Children's Reporter should have their own security, retention and disposal procedures in place to ensure compliance with DPA.
212. Handling and storage of disks will be in accordance with the handling of RESTRICTED material under the Government Protective Marking Scheme (GPMS). Definition of RESTRICTED and obligations under GPMS are outlined in Appendix G.

### ***Points of principle***

213. Visual recordings of joint investigative interviews require to be properly protected in order prevent them being viewed inappropriately and to reassure children who are interviewed and those with parental responsibility for such children.
214. Visual recordings must be made available where material and relevant in order to facilitate proper preparation of a defence in criminal cases and proper representation of parties in other cases, unless there are overriding considerations that justify non-disclosure. This is necessary in order to ensure compliance with the right to a fair hearing in terms of article 6 of ECHR.
215. Where decisions about family life fall to be taken on the basis of an investigative interview, the families of the children concerned must have access to the visual recording to the extent necessary to allow them involvement in the decision-making process, in order to ensure respect for their family life in terms of article 8 of ECHR, unless there are overriding considerations which would justify interference with such rights which may result in non-disclosure of the recording. In reaching a decision the clear focus must always be the paramount welfare of the child.

### ***Practice to be followed***

216. In criminal cases, when COPFS decide that a recording is to be used as a production, the police will prepare a transcript of the recording and COPFS will decide what in their view is disclosable to the defence. In cases where it is alleged that a sexual crime has been committed an accused person will be

represented and solicitors are under a professional obligation in relation to sensitive material (see Criminal Code of Conduct, article 11).

217. In criminal cases in which the recording is disclosable, COPFS will provide the defence with details of the recording and its location, in order to allow the defence to make arrangements to view the recording, or an edited copy (if any non-disclosable information requires to be withheld). Access to view the recording will be given to the defence solicitor, counsel and any expert instructed. Access will be given on further occasions if necessary (unless a request for access is unreasonable).

### ***Requests to view recordings***

218. Requests for the accused or other persons to see the visual recording may be made to COPFS. The sensitive nature of the recording means that it should only be shown to the accused where this is necessary in the particular circumstances of the case. All issues of timing should be carefully considered.
219. Where there are circumstances which require the accused to see the recording, access will be provided. A request for access will be refused if it is not in the public interest to accede to the request, or if disclosure will put the child at risk of harm or interfere with the child's right to privacy in terms of article 8 of ECHR. If a request is refused the person seeking access may make an application to the appropriate court.

### ***Viewing of recordings***

220. If it has been agreed that the accused should see the recording, or the court has ordered access for the accused, the disclosable version of the recording will be made available for viewing only by the accused together with the defence solicitor and if appropriate counsel and any expert instructed.
221. Practical arrangements will be required for viewing the recording for persons in custody or otherwise unable to attend to see the recording. The recording should not be released to any person although the accused, solicitor, counsel and expert should be given an opportunity to view the recording in private. Suitable arrangements should be made to ensure that recordings are not made while viewing takes place and after the viewing, the recording should be returned to safe storage.

### ***Precognition***

222. All parties should seek to minimise or avoid the need for precognition of the child. The defence should be encouraged to view any recording before arranging for a precognition of the child witness and to consider whether precognition is necessary and appropriate. Where only certain points require

to be clarified by the defence, consideration should be given to the option of asking the Procurator Fiscal to investigate those matters as part of any Crown precognition. Procurators Fiscals have a crucial role in facilitating this.

### ***Copies of recordings held by other agencies***

223. Other persons who have copies of the recordings, such as social work departments or the Children's Reporter, will be expected to operate on a similar basis to that outlined in paragraph 218.

### ***Family life concerns***

224. Practitioners should bear in mind the current guidance of the European Court of Human Rights in *TP and KM v United Kingdom* (2002) 34 EHRR 2. In principle this will mean that in cases where respect for family life is involved (i.e. where the child may be removed from home or contact with the child restricted, in circumstances that are a matter of dispute) recordings should generally be made available at an early stage for viewing by persons with parental responsibility for the child.
225. In cases in which there is also an ongoing criminal investigation, where criminal proceedings are under consideration or where there are live criminal proceedings the Procurator Fiscal should be consulted prior to any decision on access to the recording being taken. In such cases consideration will require to be given to the need to balance the rights of families, victims and those accused.
226. There will be cases where the authority holding the recording does not consider it appropriate to give access. The matter should be put before the court for adjudication as soon as practicable. The application should, where practicable, be made by the authority holding the recording. Access should generally be provided via solicitors who will be expected to give undertakings to supervise all client access and not to permit clients to retain or make copies or transcripts of recordings.

### ***Use of recordings by the Children's Reporter***

227. In children's hearings court proceedings, the Children's Reporter will generally give access to the recording only if information in the recording forms evidence, or part of the evidence, in grounds for referral and those grounds for referral are being contested before the sheriff. The Reporter will only give access to the persons who are parties to these proceedings. Access should generally be provided via solicitors, as outlined in paragraph 226 above.

## ***Adjudication***

228. It is recognised that visual recordings of interviews are a new departure and that guidance cannot cover every situation in which they may or may not be disclosed. It is to be expected that the court will be required to adjudicate and that the position will become clearer as case law emerges.

## ***Using the recordings for other child protection purposes or other court proceedings***

229. There may also be a need for on-going social work involvement to manage any risk, supervise the child, or further assess need. There may also be a need for other court proceedings such as, residence, contact disputes, child abduction or divorce proceedings though the list is not exhaustive.
230. Recordings should be used as a means of bringing new case workers up to date, especially if this will avoid the need for the child to be interviewed again. Any such use should be agreed with the officer in charge of the log, and also recorded in it.

## ***Transcription***

231. Transcription is a very time consuming process and is not routinely required.
232. Where there is a good reason to require a transcript (e.g. for use court proceedings), great care must be taken to ensure that the transcript not only captures the verbal content of the interview but also includes references to any non-verbal actions or responses. The contents of the transcript should be checked and confirmed by the interviewers.
233. If the case is going to proceed to court then it is essential that transcripts are checked with great care. The full transcript will require to be lodged prior to the production of any edited copies. It is useful for the sheriff or judge and jury members to have a transcription of the evidence to be presented. If there are to be Children's Hearings court proceedings, then a full transcript may need to be lodged (see paragraph 232)
234. If the recording is edited, for example to remove hearsay evidence or evidence relating to a different alleged offence, only the edited version of the transcript will be required for those who will view the recording.
235. There is always the possibility that a plea will be entered. This means there is a balance of timing to be struck. If in doubt however, a transcription should be undertaken. Defence requests for transcriptions should also be made to the PF.
236. In children's hearings court proceedings, when the application is in relation to grounds which involve an allegation of an offence by the child, the criminal

standard of proof is required. In these cases the need for transcription will be the same as for criminal proceedings.

237. Maximising audio quality helps minimise the need for transcription. Any transcriptions made must be stored securely with the recordings and other records. Under the terms of the Data Protection Act 1998, any organisation holding JII recordings (or transcriptions) has a duty to keep them safe, secure and to prevent any unauthorised use (see Appendix G).

### ***Using recordings in court***

238. The use of a visual recording as evidence in chief in criminal trials is a special measure under the VWA, and applications to deal with the child's evidence in this way should be included in the child witness notice.
239. The other special measures available to child witnesses under the VWA should not be overlooked for use when a child is watching the recording and/or being cross-examined. These will also need to be sought on the child witness notice in advance and can include, giving evidence from behind a screen in the court room; over a live CCTV link from another room in the court or other building; using a support person in court; or by precognition.
240. Almost all Scottish courthouses have facilities to play DVDs, but not all courtrooms are permanently equipped and the availability of live TV links and remote locations particularly may be limited. This means that facilities need to be 'booked' and this is done through the Electronic Service Delivery Unit (ESDU) of the Scottish Courts Service (SCS).
241. Allowing a witness to refresh his or her memory by showing the witness the recording the day before the hearing is common practice in courts in England and Wales. Section 85 of the Criminal Justice and Licensing (Scotland) Act 2010 makes provision for witnesses to refresh their memory by seeing their witness statement when giving evidence. Under the VWA, if a previous statement is to be used as evidence-in-chief, there is no need for the witness to adopt the statement. However, the child may be asked to watch the recording, or an edited version before being asked questions in cross examination
242. Admitting the recording as evidence-in-chief does not remove the requirement for the child to be available for cross examination in criminal proceedings unless there are exceptional circumstances (under section 259 of the Criminal Procedure (Scotland) Act 1995). If a visual recording is to be played, then the Crown is aware of the possibility that a child witness's first experience of giving evidence might be cross examination. Therefore the prosecution may assist the child witness by clarifying part of their evidence in examination in chief.
243. In civil proceedings, visual recordings can be used as evidence because the use of hearsay evidence is permissible. They can be routinely used by the children's reporter for instance, as the main evidence in court proceedings

relevant to Children's Hearings where the burden of proof is lower and evidence does not need to be corroborated. The exception to this is in relation to a ground of referral which involves an offence by the child, where the standard of proof is the criminal standard. Cross examination may still be required. In other forms of court proceedings the use or otherwise of the visual recording will be subject to application to the sheriff of judge.

244. A change to both Court of Session and Sheriff Court civil rules has been requested to ensure that access to these sensitive productions is limited to appropriate persons (for example the defence and relevant expert witnesses), they are not borrowable from court processes without the consent of the Judge/Sheriff and that any viewing takes place at an appropriate location under specified conditions.

## PART 7: REFERENCES AND FURTHER READING

245. The guidance set out in this document is based on extensive psychological research as well as studies of actual investigative interviews including those undertaken in the Scottish visual recording pilots. The practices and principles mirror those set out in current training guidelines for professionals who interview children throughout Western Europe and North America.
246. This section provides a list of further reading and also contains references to the research and policy documents cited in this guidance.
247. For ease of reference these texts are listed under the following headings:
- Reviews of the literature
  - Scottish legislation
  - Scottish policy documents
  - Scottish guidance
  - Research and review reports
  - England and Wales guidance

### **Reviews of the literature**

- Aldridge, M. and Wood, J. (1998) *Interviewing Children: A Guide for Child Care and Forensic Practitioners* Chichester: Wiley (Series on Child Care and Protection)
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## **Scottish legislation**

Children (Scotland) Act 1995

[http://www.opsi.gov.uk/acts/acts1995/Ukpga\\_19950036\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1995/Ukpga_19950036_en_1.htm)

Criminal Procedure (Scotland) Act 1995

[http://www.opsi.gov.uk/acts/acts1995/Ukpga\\_19950046\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1995/Ukpga_19950046_en_1.htm)

Vulnerable Witnesses (Scotland) Act 2004

<http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts2004/20040003.htm>

Sexual Offences (Scotland) Act 2009

<http://www.legislation.gov.uk/asp/2009/9/contents>

Criminal Justice & Licensing (Scotland) Act 2010

<http://www.legislation.gov.uk/asp/2010/13/contents>

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Law Society of Scotland (undated) *Code of Conduct for Criminal Work*

<http://www.lawscot.org.uk/rules-and-guidance/section-f/division-a-criminal-work/guidance/the-code-of-conduct-for-criminal-work>

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Visual Recording Pilots National Steering Group (2005) *Draft protocol on disclosure, editing, precognition and transcription*, 25 March 2005, unpublished

## **Scottish guidance**

### **Guidance on support for child witnesses for practitioners**

- Scottish Executive (undated) *Supporting Child Witnesses Guidance Pack*  
<http://www.scotland.gov.uk/Topics/Justice/law/victims-witnesses/guidance-information/child-witnesses-1>
- Scottish Executive (2003) *Guidance on interviewing child witnesses in Scotland*  
<http://www.scotland.gov.uk/Publications/2003/09/18265/27033>
- Scottish Executive (2003a) *Guidance on the questioning of children in court*,  
<http://www.scotland.gov.uk/Resource/Doc/47176/0025085.pdf>
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<http://www.scotland.gov.uk/Resource/Doc/47049/0025079.pdf>
- Scottish Executive (2004) *Guidance on child witness court familiarisation visits*,  
<http://www.scotland.gov.uk/Publications/2004/05/19308/36511>
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<http://www.scotland.gov.uk/Resource/Doc/35596/0024976.pdf>
- Scottish Executive (2005b) *Guidance on the conduct of identity parades with child witnesses*, <http://www.scotland.gov.uk/Resource/Doc/77843/0018526.pdf>
- Scottish Government (2010) *National Guidance for Child Protection in Scotland*  
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### **Guidance on support for child witnesses for parents and carers**

- Scottish Executive (2005) *Your child is attending a video identity parade: a booklet for parents and carers*,  
<http://www.scotland.gov.uk/Publications/2005/10/14104354/43553>

Scottish Executive (2005) *Your child is a witness: a booklet for parents and carers*, <http://www.scotland.gov.uk/Resource/Doc/54357/0014186.pdf>

### **Guidance on support for vulnerable witnesses**

Scottish Executive (2006) *Being A Witness: the use of special measures, a booklet for adult witnesses in criminal and Children's Hearing court proceedings*, <http://www.scotland.gov.uk/Resource/Doc/113145/0027428.pdf>

Scottish Executive (2006) *Being a Witness: I am a Witness in Court- a guide for people with learning disabilities*, <http://www.scotland.gov.uk/Resource/Doc/152425/0040997.pdf>

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### **Guidance on support for vulnerable witnesses for practitioners**

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## APPENDICES

**Appendix A** - provides an overview of conducting the investigative interview. Current research indicates that interviewers find a *highly structured interview protocol* easiest to use and most effective.

**Appendix B** - provides an overview on the role of supervisors and managers in briefing and debriefing practitioners.

**Appendix C** - outlines the benefits of visually recording joint investigative interviews.

**Appendix D** - provides an information leaflet on consent for children, their parents or carers.

**Appendix E** - provides a sample of a 'child friendly' consent form.

**Appendix F** - outlines the categories of interview suites, the accommodation standards expected and the level of equipment to be installed in each category.

**Appendix G** – provides guidance on the restricted classification of visual recordings along with data handling standards.

## APPENDIX A: Quick Guide: Conducting the investigative interview

### 1. At the planning meeting

- any reason not to visually record?
- any special needs?
- equipment available/location?
- is this a complex case needing special arrangements?
- agree who will lead, and signals if one interviewer is to be in the control room
- discuss whether support person is necessary

### 2. Prepare the interview setting

- ensure there will be no interruptions (e.g. unplug telephones, switch off mobiles)
- remove any distracting material
- ensure adequate seating and equipment are available and laid out in a 'child-friendly' arrangement
- insert new DVDs
- check camera angles and focus and carry out other technical checks
- record reasons, time and date, officers involved, child's name and age

### 3. Information about the interview and its record

- inform the child and their parent/carer that an interview is being undertaken and how it is to be recorded
- check understanding and allow child to ask questions
- do not imply that recording means no further interviews
- if child objects, reconsider visually recording – may use audio recording only option and/or written record instead
- brief support person where one is to be present for any part of the interview

### 4. Introductions

- state date and start and end times for the record
- introduce yourself to the child, giving name, occupation and role (in a general way; don't mention words such as "risk" and "child protection")
- allow child to settle; have brief "icebreaker" chat about neutral event (e.g. TV) Avoid using reference to school as an "icebreaker" chat as the child's experience of school is unlikely to be known to the interviewer
- ***avoid mentioning the allegation and avoid instilling any stereotypes about the alleged perpetrator***

## **5. Establish the interview principles; not just a litany at start but throughout**

- the child will do most of the talking
- the interviewer wasn't there so needs the child's help to understand what happened
- it is OK to say "I don't know/remember/understand" and to correct the interviewer when they get something wrong
- the child should not guess, or make up any answers. They should always tell the truth (i.e. what they know from having seen with their own eyes, heard with their own ears, etc.)
- if questions are repeated this does not mean the child's first answer was wrong or thought to be a lie

## **6. Reminders for interviewers**

- the recording includes pace, pauses, questions and body language of both interviewer and child, and anyone else (such as a supporter) present
- the interview should follow the child's pace
- be tolerant of pauses; don't interrupt the child
- be aware of signs of fatigue or loss of concentration. Let the child know how long the interview might take and when breaks will be available
- *keep an open mind*

## **7. Second interviewer**

- take note of salient points only; remember that these will be submitted in evidence
- focus on monitoring the interview, welfare of the child, alerting lead interviewer of points to probe
- agree to use prearranged signals to contribute when invited
- if in control room, check one camera focused on child's face throughout and other shows a view of the whole room including everyone present

## **8. Complete rapport building with a practice interview**

- ask the child to recall a neutral personally-experienced event (e.g. a holiday)
- tell them to report everything they remember about the event from beginning to end
- avoid specific questions
- encourage a spontaneous narrative from the child using facilitators, e.g. "That sounds interesting, tell me more"

## **9. Raising topic of concern**

- raise the topic, beginning with the least suggestive prompt
- if this is not successful, proceed gradually onto more specific prompts

- *avoid suggesting any wrongdoing (e.g. by using words such as “hurt”, “bad”)*

## **10. Free narrative**

- encourage a spontaneous account from the child using general probes, e.g. “Tell me about that”
- use open-ended prompts to follow when the child has finished speaking, e.g. “And then what happened?”
- also use facilitators to keep the narrative flowing, e.g. “uh huh”

## **11. Questioning**

- refer back to things that the child has mentioned previously in free narrative
- try to determine whether the episode of abuse was single or repeated
- try to cover the sequence of topics in the same order as the child raised them
- use the least direct/specific types of questions wherever possible
- clarify any ambiguities, inconsistencies, or unfamiliar terms/names used by the child, in a way that does not imply suspicion, disbelief or mockery

## **12. Closure**

- summarise main evidential points using child’s language as much as possible
- check whether second interviewer has any questions
- ask child if they have any questions
- don’t make promises that cannot be kept
- provide contact names/addresses/numbers
- thank child for their time
- revert to neutral topics

## **13. Afterwards**

- ask parent, carer or child to sign the consent form
- obtain recording number from log
- seal master copy of DVDs with evidence labels
- store in secure location
- arrange the debriefing session with further action to be considered

## APPENDIX B: Briefing and Debriefing - role of Supervisors and Managers

Planning a Joint Investigative Interview is the responsibility of both police and social work services and should take account of the key planning points listed after paragraph 25. Along with considering planning issues, it is important that Supervisors/Managers fully brief and debrief staff both prior to and following a JII.

### Briefing

Supervisors/Managers should share with the selected interviewers the information gathered regarding the allegation and should remind interviewers of the interview model phases:

- **Introduction:** General information about the names and roles of the interviewers and how the interview will be recorded.
- **Rapport Phase and Practice Interview:** Remind interviewers of the purpose and format of this phase and the need to rehearse the use of open prompts
- **Interview principles:** Remind interviewers to interweave these in the phases and to reiterate them throughout the interview as appropriate
- **Free Narrative:** Interviewers should be reminded that this is best evidence as it is the uninterrupted account by the child. Open-ended prompts will encourage this and interviewers should be reminded to use these e.g. “Tell me about...”; “Tell me more about...”; “And then?”
- **Questioning:** Managers should ensure that the interviewers are aware of the level of forensic information that may be required in relation to the information available about the concern.
- **Closure:** Managers must ensure that interviewers understand the need to carry out this phase and that they should:
  - Summarise the main evidential points using the child’s language where possible;
  - Check if the second interviewer has any questions;
  - Check if the child has any questions;
  - Make the child aware of the possibility of further interviews;
  - Provide the child and/or family with contact details for police or social work and if appropriate support agencies contact details;
  - Thank the child for their time and effort (not for the information given)
  - Revert to a neutral subject to give the child time to compose themselves.

Interviewers should also be reminded:

- To be aware of the child’s needs during the interview such as breaks if the child is tired or needs to use the toilet.
- Consent of the child is generally tacit/ assent rather than a formal consent.

## **Following the interview**

Following the interview the Supervisor/ Manager must check that the Interviewers:

- Make sure that the consent form has been signed
- Review the visual recording as necessary
- Check and agree the manual record- original to be held by police
- Provide a copy of the manual record to the social work interviewer
- Seal the master copy of the visual recording
- Check and label any productions from the interview

## **Debriefing**

The debriefing session undertaken is also an important part of the process of joint planning and management of child protection enquiries. Areas covered should include:

- Findings from the interview- level of risk to this child and /or any other child
- Further action to be taken and by whom
- Consideration as to whether another interview should be undertaken
- Arrangements for a medical examination if required
- Identify any practice or operational issues (e.g. training needs; procedural gaps)
- Record of the debriefing is completed to include decisions taken and copies kept by both social work and police services

## **APPENDIX C: Benefits of visually recording the interview**

There are many benefits of visually recording compared to taking contemporaneous verbatim written notes of an interview, many of which the Lord Advocate's Working Group identified (Plotnikoff & Woolfson, 2001 and see also Reid Howie Associates, 2002 and Richards et al 2007):

- the recordings increase fairness and transparency for all parties, showing how information was obtained;
- visual records provide a complete, accurate record of an investigative interview, which includes exact words, body language, tone of voice, demeanour and non-verbal communication by the interviewer, child and anyone else present;
- during the interview, the interviewer and second interviewer are freed from having to make detailed notes, allowing them to maximise their focus on the child and on the gathering of information;
- using the technology also offers further possibilities, such as siting the second interviewer outside the interview room;
- for such reasons, visual recording has the potential to improve the experience of the interview for the child and interviewers;
- research supports the view that interviewing a child once, as soon after disclosure or expression of concerns as possible, is likely to capture the most accurate information, so recording the interview improves the quality of evidence;
- conversely, multiple interviews have been found to have a potentially harmful effect on the child and on evidential quality. Multiple interviews can be a significant source of stress for the child and can result in the child's evidence changing over time;
- recordings have the potential to reduce the number of times children are interviewed;
- after being produced in an investigation, recordings can be used in other settings to safeguard children, such as in the referral of a case to other social work (SW) teams;
- recordings can be used by other agencies in the course of legal proceedings. They may reduce the level of detail needed in precognitions by the procurator fiscal (PF) and may help eliminate the need for precognitions by defence agents and by children's reporters;
- the viewing of a child's evidence and their demeanour by defence agents before court proceedings begin has the potential to encourage early pleas;
- there is the possibility of using high quality visual recordings as evidence-in-chief in court and in children's hearing court proceedings;
- visual recordings allow not only an assessment of the reliability and credibility of the witness to be made by professionals throughout the justice system, but in the case of a recording being shown in court, by the sheriff or judge and jury, especially in the new context of courts not being required to conduct competency testing; and
- recordings are a highly effective tool for investigative interviewers and their supervisors to use in reviewing and assessing performance, for consolidation of good practice and professional development.

Research (e.g. Warren & Woodall, 1999) shows that professional interviewers tend to misremember the questions they asked in an interview even when questioned immediately after the interview. This can have serious consequences if an interviewer obtained a response from a child as a result of asking a leading or misleading question but failed to remember that.

In England and Wales, visual recording has been used for some time and has been evaluated. Research into videotaped children's evidence has indicated no significant difference in the proportion of guilty verdicts from juries viewing videotaped evidence as opposed to hearing evidence from the child in person (Davies et al, 1995).

Child witnesses who have given evidence in court in England, Wales and Northern Ireland have found having video-recorded statements useful, and they also found it helpful, if sometimes distressing, to watch the recording to refresh their memory (Hamlyn et al, 2004 and Plotnikoff & Woolfson, 2005). Although some judicial respondents in another evaluation felt a conviction was less likely with recorded evidence in chief, no prosecutors claimed lower conviction rates because of using video recordings (Burton et al, 2006).

## APPENDIX D: Information leaflet on consent

Throughout Scotland, police forces and social work departments who interview children together now record these interviews on DVD or store them on secure servers. This provides a better record than writing notes, and the questions asked and the child's reactions are fully recorded as well. It also means that the interviewers can spend more time concentrating on the welfare of the child during the interview.

We seek the child's views on recording before the interview starts.

Using a recording may help to reduce the number of times a child needs to be interviewed by other people. The recording, like any other statement taken by the police, may be shown to:

- Social workers dealing with the child's case
- The procurator fiscal
- The children's reporter
- The defence lawyer and sometimes the accused (under supervised circumstances) before the trial
- The solicitor for the relevant persons and or children in children's hearings court proceedings
- Solicitors representing parties in other related civil court proceedings
- The child's safeguarder
- Curators *ad litem* appointed by the court to represent the interests of the child or an adult relevant person who has a mental disorder and is unable to represent himself or herself in the proceedings
- A judge or sheriff and a jury, in court
- Skilled/Expert witnesses cited by the crown/defence or solicitors on behalf of other parties in other non criminal proceedings.
- Other family members

Some of these people may not need to speak to the child again because they have the recording available instead.

If a child has to go to court to give evidence, the recording could be played as part of the evidence but the child may still have to be cross-examined in a criminal trial, though not necessarily in a children's proof or other civil proceeding. Under the Vulnerable Witnesses (Scotland) Act 2004, some children may be able to use special measures when being cross examined or attending court, including screens or TV links. These may help, if available.

There are very strict rules concerning the safekeeping and copying of recordings. They are kept by the police and only the procurator fiscal, children's reporter, **the defence** or the court may use them. In criminal proceedings the defence (or any skilled/expert witnesses) are only allowed to view them at the procurator fiscal's office e.g. in solemn court proceedings. Solicitors (or any skilled/expert witnesses) for the relevant persons or children, the child's safeguarder, curators *ad litem* for the child or adult relevant persons, can only view the recording at offices of the Scottish Children's Reporter Administration.

## APPENDIX E: Consent form (to be provided after the interview)

### Information for Professionals

#### Consent is not legally required;

from parents or children before interviewing them or before visually recording the interview. Nor is consent required to view a recording of an interview when:-

- it is necessary to view a recording of the interview for the purpose of investigation of a criminal complaint, or by the children's reporter.
- the content of a recording (or more accurately, an interview) materially affects the conduct or outcome of an investigation, e.g. when aspects of the investigation may have to be re-visited or re-done.
- there is a Court Order requiring disclosure.

#### Consent is legally required;

to view recordings where, for example, the reason to view does not form a direct part of the purpose for obtaining the recording, such as:

- Competence evaluation - a formal process of monitoring the professional and technical competence of interviewers to assist professional development, support professional qualification, inform performance assessment, or facilitate a registration scheme;
- Complaint - a notification from an interested party of dissatisfaction with aspects of the conduct of an investigation or interviews, which may require formal investigation in respect of possible disciplinary or professional misconduct procedures, or the monitoring of standards;
- Practice review- a process undertaken by senior or peers with the objective of professional development and continuous improvement.

#### Child's ability to give consent:

In Scotland, a person of twelve years or more is presumed to be of sufficient age and maturity to give consent. Where consent is required to view a recording, agreement should be sought and obtained from the child where appropriate and interviewers should explain the reasons behind this.

### Information for young people, parents and carers

#### Interviewers MUST ensure that this form is completed at the end of each interview or subsequently

To help keep children safe a small number of people will be allowed to see the interview that has taken place. This may include the Children's Reporter or the Procurator Fiscal, who are involved with the law or any other person involved in the enquiry

However, it is helpful for other people to see the interview to help police and social workers get better at interviewing children and young people, and help to identify any training issues. This can only happen if you agree. If you do agree, the people who are allowed to watch the interview will keep it confidential.

I agree/ do not agree (*delete as appropriate*)

for the recording of the interview with \_\_\_\_\_

to be used to help Social Workers and police get better at interviewing children and young people

signature \_\_\_\_\_ Date \_\_\_\_\_

(for child who is 12 years and over may be presumed to be able to give their own consent)

signature \_\_\_\_\_ Date \_\_\_\_\_

relationship to child \_\_\_\_\_

(for parent/carers /guardian where the child is not of age or maturity to give their own consent)

If at some time in the future you wish to change your decision please contact one of the interviewers or social work or police services.

## APPENDIX F: Accommodation and technical specification

Joint investigative interview suites are categorised as A, B and C. There is a mix of suites across the country. Location and category of suite were determined as a result of local consultation.

The following table provides the accommodation standard expected in each category along with the level of equipment to be installed in each. The requirements are not prescriptive and may vary between locations. For example some category A suites may not have a dedicated waiting room and in relation to technical standards the number of microphones will be dependent on factors such as the size and acoustic properties of the room.

All JII suites should comply with disability access requirements and the Equality Act 2010. They should also fully enable any investigative interviews with children with additional support needs or disabilities.

Category	Accommodation standard	Technical standard
<b>A</b>	<ul style="list-style-type: none"> <li>• Suite will consist of a dedicated interview room, monitoring room and waiting room</li> <li>• There will be a fixed digital recorder assigned to the suite</li> <li>• These suites will be dedicated to joint investigative interviews</li> <li>• These suites will give the flexibility to have one or both interviewers within the interview room</li> </ul>	<ul style="list-style-type: none"> <li>• Desktop PC with monitor sited within the dedicated monitoring room</li> <li>• Wide angled cameras (x2)</li> <li>• Pan, tilt &amp; zoom camera (x1)</li> <li>• Omni directional microphones (x6)</li> <li>• Covert earpiece and transmitter</li> <li>• Transcription kit</li> </ul>
<b>B</b>	<ul style="list-style-type: none"> <li>• Suite will consist of an interview room fitted with cameras and microphones</li> <li>• Typically these suites will be in areas where they will not be in regular use (or it has not been possible to identify premises with space for a dedicated monitoring room)</li> <li>• The digital recorder will be provided by one of the mobile recorders, which will plug into a data point within the</li> </ul>	<ul style="list-style-type: none"> <li>• Wide angled cameras (x2)</li> <li>• Pan, tilt &amp; zoom camera (x1)</li> <li>• Omni directional microphones (x6)</li> <li>• Covert earpiece and transmitter</li> </ul>

	<p>room</p> <ul style="list-style-type: none"> <li>Both interviewers will be within the interview room with one performing the role of second interviewer</li> </ul>	
<b>C</b>	<ul style="list-style-type: none"> <li>These are rooms, which have been pre-identified as suitable to set up mobile equipment</li> <li>Rooms will be in quiet locations to minimise disruption to recordings by external noise</li> <li>There will be no equipment installed in these rooms</li> </ul>	<ul style="list-style-type: none"> <li>No equipment will be installed in these rooms</li> <li>Mobile kit will be set up within these rooms.</li> </ul>
<b>Mobile</b>	<ul style="list-style-type: none"> <li>Mobile kits provide full operational flexibility with the ability to be set up in any location</li> </ul>	<ul style="list-style-type: none"> <li>Laptop digital recorder</li> <li>2 cameras (with built in microphones)</li> <li>Omni directional microphone</li> <li>Robust carry case</li> <li>Tripod (desktop and floor).</li> <li>Power from single socket</li> </ul>

## APPENDIX G: Restricted Media handling and storage

Discs containing interview material will be given the security classification of RESTRICTED in line with the Government Protective Marking Scheme (GPMS).

### **Restricted classification**

The test for classification of RESTRICTED is as follows: Would accidental or deliberate compromise of information assets marked RESTRICTED be likely to:

- Cause substantial distress to an individual;
- Prejudice the investigation of / or facilitate the commission of serious crime;
- Breach proper undertakings to maintain the confidence of material provided by third parties;
- Disadvantage government or the police service in commercial or police negotiations with others
- Undermine the proper management of the public sector and its operations?

If some or all of the above are likely the material will be classified as RESTRICTED.

### **Data Handling Standards**

The following table contains a summary of GPMS requirements relevant to the handling of DVD disks.

<b>Actions</b>	<b>Restricted rules</b>
Storage	Protected by one barrier, e.g. a locked container within a secure building.
Disposal	DVD disks – destroy completely – disintegrate, pulverise, melt or shred.
Movement within Police force	In a sealed envelope with protective marking shown. A transit envelope may be used if sealed with a security label.
Movement between forces / partner agencies.	By post or courier, in a sealed envelope. <b>Do not show</b> protective marking on the envelope.
Force Data Network/ Criminal Justice Extranet	May be used.
Internet	<b>Not to be used</b> without Government approved encryption.



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