

VULNERABLE WITNESSES

A POLICE SERVICE GUIDE

The Government is committed to improving the treatment of victims of crime. This document is issued as part of *Action for Justice*, the implementation programme for *Speaking up for Justice*, the report of the interdepartmental review of vulnerable or intimidated witnesses. That report made a series of recommendations covering the investigation through to the trial and beyond, with the aim of assisting vulnerable or intimidated witnesses to give their best evidence.

The identification of vulnerable witnesses at the investigation stage is fundamental to the operation of the whole *Speaking up for Justice* scheme. This document is designed to assist the police in such identification, through a series of prompts, and to provide guidance on making an overall assessment of the needs of an individual witness. My particular hope is that its use will help to ensure that every vulnerable witness will be treated as an individual, consulted and enabled to give their evidence in the best way possible.

I am grateful to all those concerned for their contributions to this valuable document. I believe that the use of this guidance will help to enhance access to justice for all vulnerable witnesses.



Keith Bradley

FOREWORD TO VULNERABLE WITNESSES A POLICE SERVICE GUIDE
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Witnesses should receive as a matter of right a quality of service from the judicial system that meets their needs.

The operational police officer is invariably the first point of contact and often the one figure that provides continuity, from the initial reporting to the final disposal by a Court, and perhaps even beyond.

Witnesses may be vulnerable for a number of different reasons and the consequent challenges facing the Police Service need to be addressed. The Home Office publication “Speaking up the Justice” helped to identify the key issues. This document – “Vulnerable Witnesses – A Police Service Guide” is intended as a practical guide to operational police officers.

If we are to meet the diverse needs and realistic expectations of the most vulnerable members of our society we need to embrace and champion the contents of this guide. I commend it to you as a helpful working document.



AT Burden

VULNERABLE WITNESSES

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This guidance is designed to assist you through a number of processes that will afford a vulnerable or intimidated witness equal access to the criminal justice system. You are the gateway to the system and it is imperative that these witnesses are identified and assisted by officers from the very first point of contact, otherwise they will not have access to the special measures they might need.

1. Introduction

- 1.1. Local arrangements need to be made to implement 'Speaking Up for Justice', and legislative changes in the Youth Justice and Criminal Evidence Act 1999. The Act is part of a coherent scheme to afford vulnerable individuals access to the criminal justice system and this guidance has a direct relevance to that aim.
- 1.2. In their dealings with the public, police invariably interact with those individuals who are deemed vulnerable, either by the nature of the circumstances that they find themselves in or due to a disability of some nature. To date there has been limited and local training in identification and interviewing methods. The Police Service strives to provide a high quality of service and this should be reflected in their dealings with all members of society. It is time to consider how to effectively allow all individuals to access the criminal justice system.
- 1.3. In the course of their daily duties officers may be used to dealing with vulnerable persons. However they are likely to be less experienced in dealing with issues involving people with disabilities, despite the fact that such individuals and their carers represent approximately 17% of the population. Difficulties in communication between the service and some of these members of the public may lead to allegations of unprofessionalism. For example, some members of the public have misconceived notions about what is learning difficulty and about what people's support needs are, with the result that the police may, in their dealings with them, reflect these attitudes.
- 1.4. Some people with disabilities may have particular difficulties with receiving information, communicating and/or entering into dialogue. Indeed some individuals experience multiple disabilities which may make communication even more difficult. This, however, should not prevent the individual receiving the quality of service that is expected from the police. The service that vulnerable witnesses are entitled to must be comparable to any other witness, whether completing a crime report, complying with the Victims Charter, or where a witness enters the arena of the courts to give evidence. We must ensure that these individuals receive equal treatment in the criminal justice system.

- 1.5. Identification of how best to facilitate communication poses the officer with dilemmas. “Identification of intellectual disability is one of the most difficult issues for personnel in the criminal justice system”, (New South Wales report p 81). It is compounded by the fact that intellectual disability is not necessarily obvious from a person’s appearance.
- 1.6. This guidance is the result of consideration of the issues by an interdepartmental working group. It is designed as a practical document and is not overly prescriptive. The guidance cannot cater for all situations; it cannot include all signs and symptoms of vulnerability and some people may display atypical behaviour. Its aim is to heighten officers’ awareness of such issues, in order to facilitate a better quality of service overall and to lay the foundations for identifying those eligible for special measures under the Youth Justice and Criminal Evidence Act 1999.
- 1.7 It is primarily aimed at officers who interact on a regular basis with the public, and also at support staff, who, due to the nature of the duties they now undertake, are placed in a similar role. In practical terms this will include the majority of serving police officers.

The identification of a vulnerable or intimidated witness at an early stage is of paramount importance. It will assist the witness to give information to the investigating officer and later to the court, and also the investigation, improving the process of evidence gathering. It is, therefore, likely to emphasise the likelihood of fair and equitable trials. It can also help to ensure that the witness has been adequately supported to give evidence.

- 1.8 In particular, the guidance which follows, seeks to:
 - Advise on prompts to assist officers in identifying vulnerable witnesses
 - Improve the understanding of a variety of difficulties that may be experienced in communication, not only that originate from the witness, but in the way the officer may express her/himself
 - Advise on action once identification has been made

RECOGNITION

2. Who may be vulnerable or intimidated?

Definitions of those who may be vulnerable are contained in the Youth Justice and Criminal Evidence Act 1999

2.1 The guidance is applicable to:

- Children under 17 at the time of the hearing
- Individuals with a mental disorder (as detailed under the Mental Health Act)
- Individuals with an impairment of intelligence and social functioning (disorders of communication)
- Individuals who have a physical impairment, (including sensory impairments) or who are experiencing a physical disorder
- Individuals who have become vulnerable due to circumstances, including:
 - Those who have experienced domestic violence
 - Those who have experienced past or repeat harassment or bullying
 - Those who self neglect and self harm
 - Due to the nature of the offence (e.g. sexual offences, rape, witnessing murder, where this involves allegations against carers/professionals)
 - Racially aggravated offences
 - The racial or ethnic origin or religious beliefs of the witness, which may include refugees and asylum seekers
 - The domestic, social and employment circumstances of the witness
 - Any religious beliefs or political opinions of the witness
 - Those who are eligible due to their age, including the elderly and frail
- Individuals who are likely to be or who have been subject to intimidation due to:
 - The behaviour of the defendant, his family or associates or anyone who is likely to be a defendant or a witness in the proceedings
 - The relationship of the witness to the defendant

2.2 Vulnerable people are not a homogenous group. Officers must remain mindful of the fact that not all of those with a disability will be vulnerable as a witness, or would wish to be regarded as such. This will depend on the nature of their disability and whether it affects their ability to perform the functions of a witness.

The views of the witness and the supporter, where applicable, as to their perception of the witness's vulnerability should be taken into account. Officers must consider whether the witness has willingly identified him/herself as such or is hesitant to accept that 'label'.

Assistance can be provided both before and during the trial. In the case of court measures, a witness under the age of 17 (including those who turn 17 before the end of the trial) will always be eligible for help, unless the court does not think that the measure will improve the quality of the child's evidence. Complainants in sexual offence cases will be considered eligible unless they inform the court that they do not want to be eligible.

2.3 **Circumstances**

There are circumstances that automatically lead one to make an assessment that those involved have been made vulnerable by their experience, but conversely there are individuals whose personal circumstances may exacerbate their vulnerability. The purpose of this guidance is to prompt officers to consider all the relevant circumstances.

- 2.4 For this 'consideration process' a number of prompts have been devised and officers are asked to be mindful of their existence when interviewing witnesses. They act as a 'trigger' to facilitate appropriate assistance through the criminal justice system.

3. Documentation

What documentation already exists?

Victims with Learning Disabilities: Negotiating the Criminal Justice System, Andrew Sanders, Jane Creaton, Sophia Bird and Leanne Weber – University of Oxford, Centre for Criminological Research 1997

Disability Awareness – assessing the needs of operational officers and recommendations for training. Police Research Award Scheme, ACPO, 25 Victoria Street, London SW1

ACPO Guidelines for Dealing With Witness Intimidation ACPO, 25, Victoria St, London SW1

Competent to Tell the Truth – VOICE UK, 1998 (ISBN 0-952.6085-1-0)

Action Guide to Identifying and Combating Hate Crime – ACPO 25, Victoria Street, London SW1.

No Secrets: The Protection of Vulnerable Adults' Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse – Department of Health, March 2000

In Safe Hands: Implementing Adult Protection Procedures in Wales' – National Assembly for Wales, July 2000

'Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses including Children' – Home Office (in preparation)

'Perspectives on the Memorandum: Policy, Practice and Research in Investigative Interviewing' Marchant, R and Page, M (1997).Aldershot, Arena.

'Silenced Witnesses' a report on people with mental health problems and the criminal justice system. – MIND May 2000.

Multi-Agency Guidance for Addressing Domestic Violence – Home Office

Home Office Circular No: 19/2000 Domestic Violence.

Early Special Measures meetings: consultation between police and CPS, and subsequent meetings between the prosecutor and certain vulnerable or intimidated witnesses (Police and CPS guidance– in preparation)

PROMPTS

4. Issues to be considered/prompts to assist in identifying vulnerable witnesses:

Purpose:

To assist the police in identifying a potentially vulnerable witness. Such witnesses may need to be interviewed using special techniques and/or require assistance with communication. They may also require particular support before a trial, and the assistance of special measures when giving evidence in court.

The prompts are intended only as a guide, as the features that make a witness vulnerable may be very varied, and a witness may have more than one area of vulnerability. (If an officer considers that the witness is potentially vulnerable or he/she needs assistance in confirming that this is the case, he should seek further advice as indicated in communication flow chart A {for forces to map local services})

The Police and Criminal Evidence Act 1984 Codes (PACE) Code C: The Detention, Treatment and Questioning of Persons by Police Officers sets out the circumstances under which a person suspected of having a mental or physical handicap, disorder or illness should be accompanied by an appropriate adult when being questioned. However, the Code is unclear in defining the role of the “appropriate adult” in relation to witnesses as opposed to suspects. PACE Code C is currently being reviewed. This review will include a consultation process which will propose amending Code C to clarify that all the provisions, including the requirement for the presence of an appropriate adult during interview, apply only to suspects and not to witnesses. But, as recommended in ‘Speaking up for Justice’ a vulnerable witness should be able to benefit from being accompanied by a supporter while being interviewed.

4.1 Prompts to assist in identifying vulnerable witnesses

Outwardly similar behaviour from different witnesses may be the result of different causes. It is important to stress that, while there may be physical or psychological reasons for different sorts of behaviour, it is possible that they may also result from the use of drugs, alcohol, emotional states of frustration, irritability, anger, fear, acute anxiety or a combination of emotions and outside influences.

4.1.1 Behavioural characteristics

- Difficulty in communicating without assistance/interpretation
- Difficulty understanding questions and instructions
- Their speech is difficult to understand/no or limited speech
- Uses signs and gestures to communicate
- An angry or distressed person trying to sign may appear aggressive
- Responding inappropriately or inconsistently to questions
- May appear to focus on what could be deemed irrelevant small points, but not the important points
- Short attention span
- Inability to read/write
- Difficulty in telling the time
- Difficulty in remembering their date of birth, age, address, telephone number

- Difficulty knowing the day of the week, where they are and who you are
- Appearing very eager to please, or to repeat what you say
- Appearing over excited/exuberant
- Appearing uninterested/lethargic
- Appearing confused by what is said or happening
- Physically withdrawn
- Physically violent
- Expressing strange ideas
- Does not understand certain expressions

4.1.2 Physical Characteristics

Observable behaviour may be evident, but what is seen as 'odd' behaviour does not always mean what you may assume. The actions of an individual may be difficult to interpret:

- Unusual appearance of the eye
- Angling head/eyes for viewing
- Failing to search visually for people
- Hesitant in movement/reluctant to move in unfamiliar environment
- Uncontrollable muscular movements

Officers will need to be sensitive to an individual's position, and should consider enquiries to elicit the following information to aid their assessment. It is not proposed, however, that the witness be questioned on these matters:

Are they:

- In receipt of disability benefit/Disability Living Allowance/independent Living Fund Award
- Resident at a group home or institution or employed in a sheltered workplace

- Living in a group home or residential home or attending a specialist day service or sheltered employment.
- In possession of certain prescription medicine
- Having problems with their carer or do they seem threatened by their situation or reluctant to testify against a carer, family member, friend or neighbour
- Receiving support from a social worker or Community Psychiatric Nurse
- In the case of children: are they in foster/adoptive care, or otherwise separated/alienated from family group

Consider:

- Note their personal presentation
- Have they a personal assistant? i.e: someone who is generally employed (but may be a volunteer), who assists a disabled person in the tasks of daily living
- How the witness travels around

4.2 Overcoming Common Misconceptions

- People often confuse the terms “mental illness” and “learning disabilities”
- People who are unable to read do not all have learning disabilities
- Not all people with communication difficulties are deaf
- The nature of visual impairment can vary, e.g. there may be people registered blind who can see clearly directly ahead but have no peripheral vision
- Some violent behaviour can be caused by a medical condition
- Slurred speech is not necessarily the result of drinks or drugs
- It is wrong to assume that children do not understand what is going on
- Not all children are unable to express themselves clearly
- Not all children feel supported by their carers

Further information, within the parameters of the Data Protection Act, may be available from Social Services.

4.3 Communication Skills

Officers will need to be aware of:

- The need to simplify the language and concepts used to a level which will be understood. It may be necessary to use non-verbal language to supplement communication
- The need to take extra time when interviewing
- Being patient with the witness
- The risk of the person's special susceptibility to authority figures, including a tendency to give answers that the person believes are expected
- The dangers of leading or repetitive questions
- The need to allow the person to tell the story in his or her own words
- The persons likely short attention span, poor memory and difficulties with details such as times, dates and numbers
- The need to ask the person to explain back what was said
- Where appropriate, repeating back to the witness what the police officer understands the witness has said
- The need to check that the witness has been able both to read and understand any witness statements that they may sign
- The possibility that the person may be taking medication which may affect his or her ability to answer questions
- Communication problems that may exist arising from interaction between individuals of different cultures or where first language is not English.
- Gender issues and sensitivity

The thread of communication weaves its way through the entire process and will be reinforced in 'Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses, including Children' (referred to as Achieving Best Evidence) that makes recommendations on the interview stage.

4.4 Intimidation

Prompts:

- The witness tells the Police Officer or other member of the criminal justice system (for example Witness Service, Victim Support, CPS etc.) that intimidation has occurred or is likely to occur. (Not a prerequisite)
- The witness, although giving information about the offence, is reluctant to provide a statement, there being, therefore, an implicit fear of the consequences of giving evidence. One of the reasons could be the fear of intimidation.
- The witness lives on a medium to high density housing estate where there is a history of antisocial behaviour and conflict with the police, or in a small, close knit community where, for example, an extended family network exists. This results in the witness living alongside, or in close proximity to, relatives of the offender or the offender in person.
- The incident occurred in or around the witness's home (not likely to be sufficient on its own)
- The nature of the offence could indicate an increased likelihood of intimidation. Research has shown that sexual offences, assaults, particularly domestic violence, vandalism and racially motivated crimes are more likely to give rise to intimidation.
- The relationship between the defendant and the witness should be considered e.g. a personal relationship where the defendant is in authority over the witness such as a carer in a residential home
- The offence is one of a series of incidents, and there might be evidence of repeat victimisation.
- The witness is a 'vulnerable' witness who might perceive an increased risk of intimidation or victimisation.
- Where there is evidence that intimidation might occur on account of cultural or ethnic background of the witness.
- The defendant has a previous history of witness intimidation, or there is intelligence which suggests that witness intimidation has occurred in the past.
- The defendant, and/or their relatives or associates, have the intention and ability to influence or interfere with the witness.

- The violent nature of the defendant, relative or associate could suggest an increase likelihood of intimidation.
- The influence of the defendant(s) within the criminal fraternity; however, this should be more than just anecdotal evidence.
- The fact that the witness is also the victim might give rise to an increased likelihood of intimidation (not sufficient on its own).

4.5 Police officers need to keep in mind when assessing witnesses that some claims of intimidation may be false

4.6 Recognition that a witness has a specific need will be the key. Addressing incorrect perceptions of a disability or ensuring the vulnerable or intimidated witness has the correct type of support; officers should place an emphasis on recognising the individual's capabilities as a witness and not make wider judgements.

4.7 Officers may need to seek further advice and guidance in this area. It is recommended that individual areas conduct a mapping of local services so that officers are able to access the correct one quickly.

Further to Recommendations 26 and 27 of Speaking up for Justice, guidance is being developed to deal with the early special measures meeting between the police and the CPS prosecutor (Rec. 26) and the subsequent meeting between the witness and the CPS prosecutor (Rec. 27).

The meeting between the investigating police officer and the CPS prosecutor is an opportunity to discuss the needs of prosecution witnesses who may be considered vulnerable or intimidated and, in particular, their eligibility for special measures.

The purposes of the meeting between the witness and the CPS prosecutor are:-

- to establish a link between them, to ensure the witness's needs will be taken into account .
- to confirm that the special measures identified at the early special measures meeting are appropriate.
- to confirm the views of the witness as to which of the special measures should be applied for.
- the meeting may also provide an opportunity to assess the likely performance of the witness when giving evidence.

[Locally – insert details of officer or post where reference could be made].

5. Considerations

5.1 Officers Conduct

Officers need to be aware of their reactions to a witness. People with certain disabilities are sensitive to the reactions of others, e.g. some may attempt to appease a person they see as in authority. This means that they will often try to give the answers that they think the person in authority wants. Officers need to be aware of this and consider how they may be perceived by persons with a learning difficulty during questioning. More detailed guidance on interviewing such witnesses for the purpose of making video recorded statements may be found in “Achieving Best Evidence in Criminal Proceedings: Guidance on Vulnerable or Intimidated Witnesses, including Children”.

Witnesses may find their vulnerability exacerbated due to certain settings and physical surroundings. Problems can be caused by the social interaction expected of them rather than by something innate in the witness

5.2 Reporting

Difficulties in communication when reporting allegations should not be a barrier to an individual receiving a service from the police. Dangers exist where obtaining information proves so complicated that the witness does not get the service s/he is entitled to. This is commented on in the Rocher Institute report “...violence against people with disabilities is effectively decriminalised; criminal issues are dealt with as social service and staffing issues”. (1993:49) The Speaking Up for Justice Report (1998) commented further, “The victim themselves may not recognise that a crime has occurred and, in the case of those in institutional care, a number of studies have noted that there is a tendency for social services to decriminalise incidents by describing offences of violence as “abuse”, or calling rape or sexual assault “sexual abuse” and categorising theft as “financial abuse”. Children, in particular, could be uncertain as to whether a crime has been committed and could feel protective of the alleged perpetrator.

The need to recognise such incidents as crimes and treat them accordingly by involving the police accords with ‘No Secrets: The Protection of Vulnerable Adults’, the Department of Health guidance on the development and implementation of multi-agency policies and procedures. See also ‘In Safe Hands’ issued by the National Assembly for Wales.

5.3 **Gender Issues**

All officers should have an awareness of the sensitivity of gender issues when dealing with certain types of offences. Consideration needs to be widened to include the wishes of any vulnerable witness they may encounter. Difficulties may arise for a cultural reason, the nature of the offence, e.g. describing details of a sexual nature, or because of shyness in relation to a disability of some kind. The wishes of the individual as to which gender of officer deals with them are paramount and are another method of affording easier access to the system.

5.4 **Differences in racial or ethnic origin or religion**

Reference is made in the Statement of National Standards of Witness Care in the Criminal Justice System to the need for sensitivity when dealing with witnesses from ethnic minority groups. Officers must be aware of differences in the use of language (particularly where English is not the first language) and in the use of body language and expressions. Words are also used differently in some non-UK English dialects from their significance in British English. For example, responding “yes” might mean simply that the person has understood the question, not that s/he agrees with it.

Witnesses from particular ethnic minority groups may not be at ease with contact with the police, or they may be stigmatised by others in the community for that contact. Relations between family members may be informed by very different parameters than the officer’s own. Religious commitments, for example a need to pray at a number of times throughout the day, may interrupt the passage of the evidence-gathering stage. Witnesses from some cultures and young witnesses will find the requirement to give (sometimes very personal) details to a complete stranger an alien concept, and one with which they are not at all at ease.

5.5 **A Suitable Setting**

In all of these instances heed must be taken of the good practice set out in ‘Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses, including Children’. The document emphasises the need for careful consideration to be given to the selection of a suitable and sympathetic setting for the interview. A similar approach should be adopted when taking written statements. The location where the account of events is taken can be very important for both mentally and physically vulnerable witnesses, particularly with regard to accessibility and comfort. The officer must take into account the needs and wishes of the individual when deciding on a setting.

5.6 Pace of Obtaining Information

Be mindful of the emotional process involved in reporting a matter to the police. Make allowances for time and adequate breaks when gathering information from a vulnerable witness. You will need to understand that to simply gather information may take much more time than usual.

5.7 Competence

Officers should not make early judgements on whether the witness is likely to be accepted as a competent witness by the courts and should act on the general presumption that they will be regarded as competent. [If the officer has concerns on this issue, this can be discussed with the CPS at the Early Special Measures Meeting (Recommendation 26)]. The Youth Justice and Criminal Evidence Act 1999 sets out the general rule that all people, whatever their age, are competent to act as witnesses unless they cannot understand questions asked of them in court and answer them in a manner which can be understood (with, if necessary, the assistance of special measures that the court has the power to grant). The legislation additionally provides that evidence must be given unsworn by children under 14 and may be given unsworn by those over 14 years in certain circumstances.

5.8 Carers

Carers are people who may fulfil different caring responsibilities, including those who devote their time to look after a relative, friend or neighbour. They can have an important role to play in the investigative process, by utilising their knowledge and understanding; officers can be greatly assisted. The officer involved will need to explain to the carer what role they are asking the carer to perform. There are a number of key issues for the officer to be aware of:

- A carer will have considerable knowledge of a person's history and needs, and may assist with communication and provide emotional support
- Carers may themselves be vulnerable
- It is important to remember that carers are often also service users (if they are family members etc.) so will have their own individual needs
- If carers have to be used to communicate with vulnerable witnesses it will be necessary to try and ensure that the real needs of the vulnerable person are being taken into account
- If the carer has been involved in any abusive relationship with the vulnerable witness it will be impossible to use them as a facilitator. The carer may also be a suspect or may be caught in a conflict of interest

- If the witness is unable or refuses to give consent to their carer being involved, it may be better to involve an independent person
- Officers must ensure that the witness him/herself is enabled to communicate and the carer does not talk for them.

5.9 Advocates

Citizen Advocacy is a partnership between one individual who has a disability and another who does not. It is used to put an individual in touch with a person from their community who will listen to their point of view, respect their wishes and stand with them to defend their rights. An Advocate's loyalty will be to the person they represent. Citizen's Advocates do not receive any payment or compensation for the function that they perform and should not be confused with Legal Advocates. The relationship they engage in may be over the short or the long term.

There are other types of advocacy services, for example those run by voluntary organisations, where advocates are employed to provide a professional, but independent service.

6. Communication

- 6.1 There are a number of conditions that could make communication difficult between the witness and the officer. (see appendix A for further details)
- 6.2 Communication can be affected by:
 - a) Muscle/Co-ordination difficulties e.g. for someone with cerebral palsy
 - b) Conditions that have affected the brain in some way. For example, brain damage arising from a road traffic accident or a stroke. This may not have resulted in any other intellectual deficit or mental illness. People may appear slow to understand, unable to write, may speak in a telegraphic style, searching for words. Alternatively they may speak at a normal pace and rhythm but use nonsense words or speak a lot while conveying little meaning.
 - c) Problems with cognition. There might only be subtle clues that the person has a problem.
 - d) Body Language Issues e.g. an individual who has Parkinson's disease may not have an expressive face.
 - e) Physical effects of communication.
 - f) Side effects of medication such as restlessness, shaking, jaw trembling or loss of concentration
 - g) Emotional and/or psychological problems which may exist because of the effect of the incident.
 - h) Poverty of vocabulary. An individual may only be able to use terms such as 'I was sad'.

- i) English not being the first language
- j) The abilities of the police officer
- k) The age of the witness

At this early stage, you, as an investigator, may need to seek advice on the best method of communication and way of recording evidence. **This should be done with the consent of the witness if at all possible.** Where communication difficulties do exist the witness' family, friends or carer are likely to be those with the most knowledge of the witness's needs. The Achieving Best Evidence Guidance will advise further, but at this point you must consider that your actions may affect the courtroom process later on. The offer of a translation/interpretation by a non-family member should be made in the following circumstances:

- (i) where English is not the first language
- (ii) where the witness has a learning disability and requires communication support
- (iii) where the witness has a sensory disability and requires a signer or tactile signer

7. Recollection of Events

- 7.1 Consideration needs to be given to the cognitive ability of a victim. Certain disabilities may cause the victim to have difficulties sequentially reciting, in a manner that the police may be used to, the nature of the events surrounding the offence, and may not be able to recall sufficient detail to satisfy the police investigation.

Officers may be assisted by using simple pictorial techniques aided by advice on their use from their local social services and health services, or, where available, the use of symbol software packages. This is a specialist area and officers should enlist the help of local speech and language therapy services

- 7.2 Officers may note that individuals have problems recalling events in the expected order, this may confuse the recall of events and lead officers to misunderstand the sequential nature of events surrounding an allegation.
- 7.3 There may be difficulties in absorbing, understanding and categorising information. However officers must appreciate the abilities of individuals, some often have very good memories and can prove to be excellent witnesses in criminal investigations. A person may have a particularly fine visual memory but just have difficulty in communicating that information. It may help to encourage them to act out or draw the information that they are trying to convey (detailed information on this point is available in the Achieving Best Evidence Guidance). Communication may be thwarted by a lack of confidence and ability to express themselves because they don't know the officer or person interviewing them. The interviewer needs to establish trust between the witness and her/himself.

- 7.4 “People with a learning disability are sometimes unable to remember an event clearly because they have a problem with encoding, storing or retrieving of information, and the memories they do have stored may be confused, selective or intermittent. Recall of detail, which differentiates one event from another, can be problematic – leading to different events being confused or merged in the memory.” (Sanders et al p.7)

If you experience difficulties in communication consider the actions outlined in flow chart A.

WITNESS SUPPORT AND FOLLOW UP

8. Support Mechanisms

- 8.1 One of the recommendations from the interdepartmental working group was the benefit to an individual of having a supporter present throughout the ‘interview’ process. This is particularly relevant when dealing with someone with learning disabilities or mental health problems. The report said, the witness ‘..should be able to benefit from being accompanied by someone, preferably someone familiar to them. This ‘supporter’, whose role would need to be clearly defined, would need to be independent of the police and not a party to the case being investigated.’ The witness needs to be consulted as to who they would like. It will be one of your responsibilities to ensure that, when desired, a supporter is in attendance. See flow chart B. Further guidance on witness support may be found in ‘Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses including Children’

9. Follow on Action

- 9.1 Decisions will be made, in line with normal investigative procedures, as to whether the witness needs to be interviewed further, either to gain a clearer account of events or for the purpose of obtaining documentary evidence. Further guidance is contained in the Achieving Best Evidence guidance about this process. The important role for you to play is to find out as much information regarding the witness, their capabilities, needs and fears, as possible, to enable this process to run more efficiently. The information you provide at this stage will also be included in documentation made available to the Crown Prosecution Service to assist them in the decision making process, and eventually to the Witness Support services within the courts. It is vital that emphasis is placed on the accuracy of this information, because it will be instrumental in enabling the witness to give the best evidence that they are capable of.

10. Keeping People Informed

- 10.1 This is already one of the requirements of the Victims Charter and is an area of activity that can become even more important when dealing with a person who is vulnerable or intimidated. Being a victim of crime alone is stressful, but if an individual feels that they have some control over their environment, they are able to cope better because they perceive that they have some control over it (Bower and Higdard, 1981). It is important to keep the witness fully informed and to take their wishes into account, where possible. This will help them cope better with their stress. Officers should be aware of the content of Home Office Circular 55/1998 and apply that guidance, where reasonable, in these circumstances. The manner in which update information is conveyed is of paramount importance. Where systems following the model of a 'One Stop Shop' exist, officers need to have alerted the administrators of that process to the needs of the particular witness and request that they amend their systems accordingly. The method by which information is conveyed where witness or family liaison officers are involved will clearly differ.

11. Pre-trial Preparation and Measures

The Youth Justice and Criminal Evidence Act 1999 enables a range of 'special measures' to be made available to certain witnesses at the trial, subject to the approval of the court. See flow chart C. Those eligible fall into two categories:

Witnesses who:

11.1 Age or Incapacity

- Are under 17 at the time of the hearing
- The court considers that the quality of evidence given may be diminished because the witness;
 - Suffers from mental disorder
 - Otherwise suffers from significant impairment of intelligence and social functioning
 - a physical disability or is suffering from a physical disorder.

11.2 Fear or Distress About Testifying

- The court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in proceedings. In particular the court must take into account:
 - The nature and alleged circumstances of the offence to which the proceedings relate

- The age of the witness
- Relevant matters including;
 - The social and cultural background and ethnic origins of the witness
 - The domestic and employment circumstances of the witness
 - Any religious beliefs or political opinions of the witness
- Also, any behaviour towards the witness on behalf of
 - The accused
 - Members of the family or associates of the accused, or
 - Any other person who is likely to be an accused or a witness in the proceedings
- It will be possible for a witness to be eligible for more than one special measure and on more than one ground.
- The court must consider any views expressed by the witness.
- Presumptions:
 - Child witnesses (under 17) in cases of sex or violence will give their evidence-in-chief by means of a video-recorded statement unless the court considers that it is not in the interests of justice for the recording to be admitted.
 - Child witnesses in violent offence cases will be cross-examined through live TV link.
 - When facilities are available child witnesses in sex offence cases will be cross-examined at a video-recorded pre-trial hearing unless the child prefers to be examined via live link on the day of the trial.
 - All other child witnesses will be able to give evidence-in-chief by means of a video-recorded interview, if the court considers it necessary to maximise the quality of their evidence, and there is a presumption that if they do give live evidence at the trial this will be done by live TV link.
 - Adult victims of sexual offences will be presumed eligible for special measures unless they inform the court that they do not wish to be regarded as such.

11.3 Special Measures include the following:

- Screening the witness from the accused
- Evidence by means of a live TV link
- Evidence given in private in cases involving sex offences or intimidation
- Removal of wigs and gowns
- Video recording of an interview to be admitted as evidence- in – chief

- Video recorded cross-examination or re-examination (when facilities are available)
- Examination of the witness through an intermediary (when facilities are available)
- Aids to communication

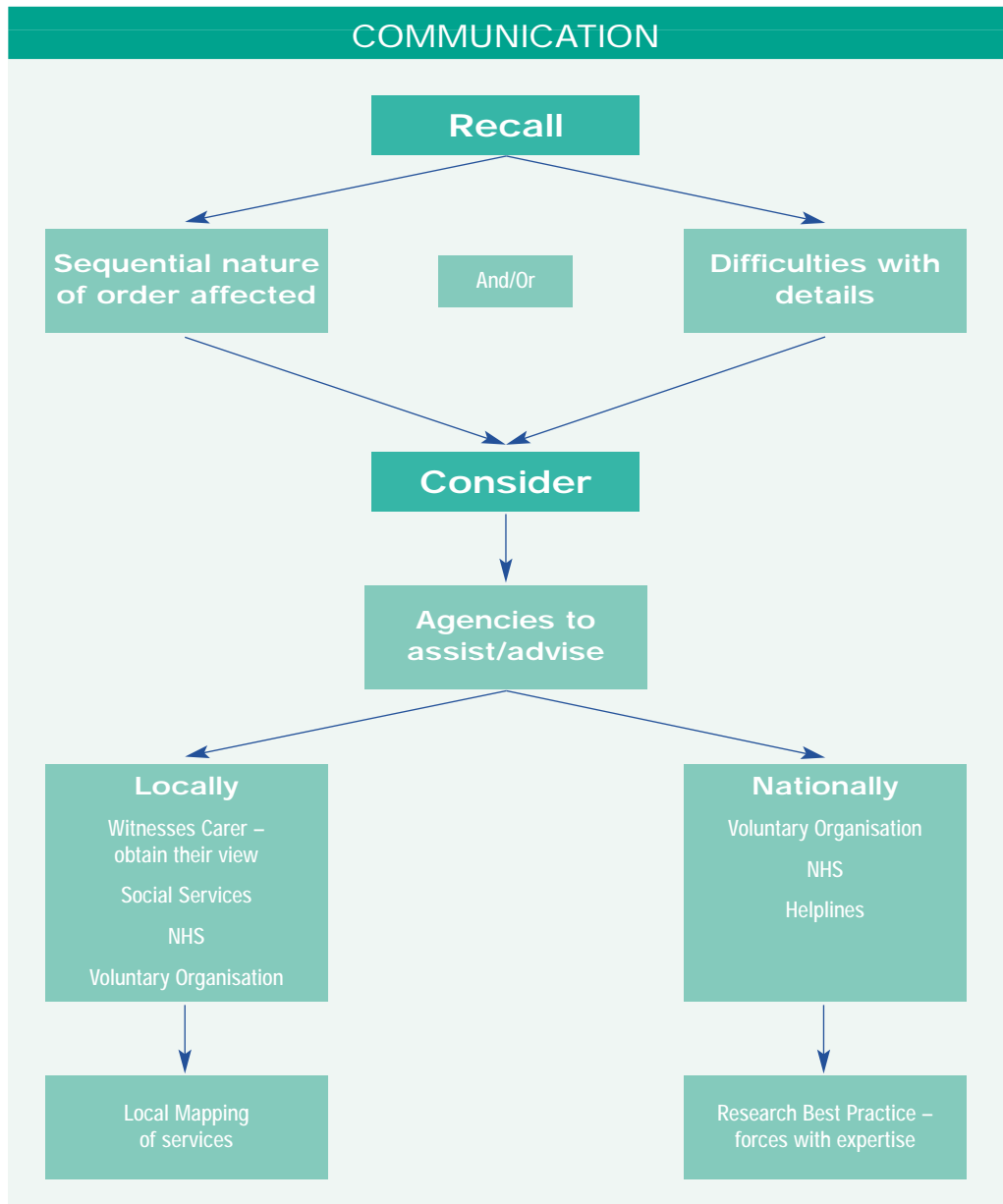
- 11.4 Officers need to be aware of the measures that may be available in order that they can give information and reassurance to the victim and commence a course of action that would identify the individual's eligibility. Consider the presentation of evidence – in what form the statement might best be taken e.g. written or by video (decision will be influenced by consultation with the witness). For example, where a witness uses British Sign Language, the only way to record exactly what they say is by using a video recording. The ability of the witness to give evidence in court must be appreciated. The assessment at this, the investigation stage must encompass an understanding of whether the witness will be entitled to special measures, since the court will only admit the taped interview if the witness meets the criteria under the legislation. Also, other elements of procedure under the Youth Justice and Criminal Evidence Act 1999 – the right to pre-trial cross-examination – will only be available in cases where the interview was videotaped. See further guidance in “Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses, including Children”.
- 11.5 At an early stage in the investigation the witness' views need to be obtained on what support measures are likely to assist them give their best evidence. The witness may wish to involve a friend, supporter or advocate in such discussions. These views should be passed on to the prosecutor and considered at the early planning meeting between the police and prosecution (see separate guidance) and should also be included in the MG6 form. This information will be needed to inform a decision on the way the witness' statement should be taken i.e. written or video-recorded.
- 11.6 Officers need to be in a position to provide accurate and realistic information regarding the problems that could arise as a case involving a vulnerable or intimidated witness progresses through the courts.
- 11.7 The witness may be reassured by court visits and the support of the Witness Service prior to trial. A pre-court visit is particularly important for people with a learning disability. It will be beneficial to notify the Witness Service of the impending involvement of a vulnerable witness at an early opportunity.

12. Support at the Trial

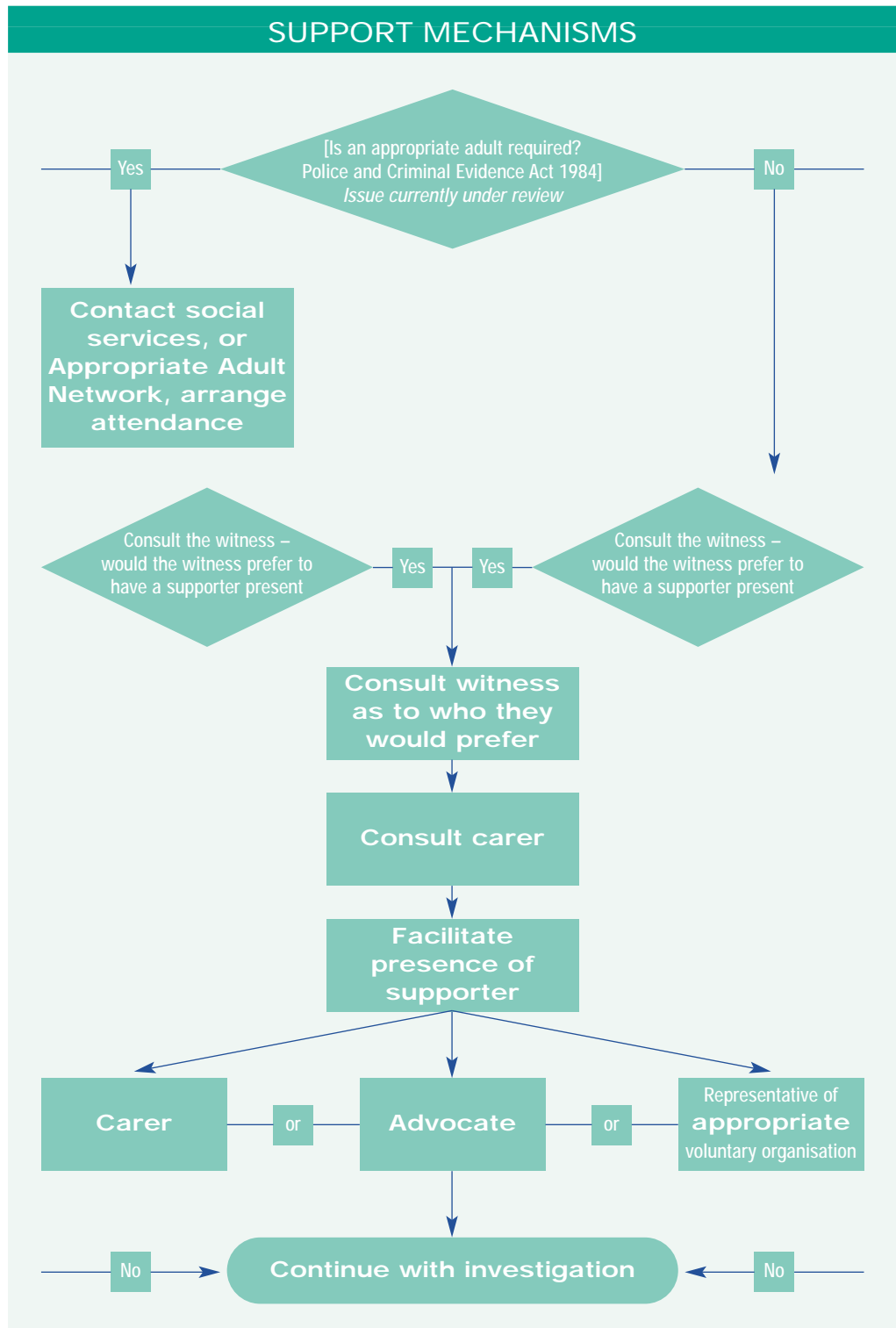
In addition to ensuring that the witness, and individuals representing their interests, are acquainted with the courtroom and procedures associated with it, officers should be mindful of the ability of the witness to refresh their memory from their written statement or video recording, where appropriate prior to giving evidence in court. Some assistance may be required, where an individual is learning disabled, in recapping on evidence they previously recorded.

It is important for vulnerable and intimidated witnesses to be given the maximum help and opportunity to enable them to act as witnesses and obtain justice under the law. All efforts should be made to avoid treating them in such a way that will lead to them receiving a second class and unequal service. People who are vulnerable witnesses remain vulnerable in many other parts of their lives. Poor experience of the criminal justice system may lead to discontent and under-reporting of further crimes, increasing vulnerability, and to exaggeration of existing conditions, possibly leading to self harm. This is a state of affairs that can and should be avoided.

FLOW CHART A



FLOW CHART B



APPENDIX A

Common conditions including those which could affect communication

| Condition | |
|------------------------------|---|
| Arthritis | Condition which deteriorates the bone and cause joint pain. The most common condition in the country. |
| Asperger syndrome | Shares many of the same traits as autism, but certain traits, such as clumsiness, an almost obsessive interest in a hobby or collection and the love of routines, are typical of people with Asperger syndrome. |
| Autism | An abnormality of childhood development affecting language and social communication |
| Profound blindness | As defined by the World Health Organisation, the inability to count fingers at a distance of ten feet or less. |
| Registered blind | Visual activity is 3/60 or worse, or 6/60 if field of vision is very restricted. |
| Registered partially sighted | Visual acuity is between 3/60 and 6/60 with a full field of vision. Or up to 6/18 if field of vision is very restricted. |
| Severe low vision | The inability to count fingers at twenty feet or less. |
| Brain Damage | People with brain damage can exhibit a wide range of symptoms: memory loss, inappropriate, uninhibited behaviour, severe mood swings and can have little or no understanding of their own condition. They may have communication difficulties and be unable to fully understand what is said to them, appreciate the implications for them and be able to express their ideas properly. |
| Cerebral Palsy | Is a disorder of movement and posture. It is due to a damage to a small part of the brain, which controls movement. |
| Cystic Fibrosis | A genetically inherited disorder which affects the lungs and the digestive system. |
| Deafblind | People are regarded as deafblind if they have a severe degree of combined visual and hearing impairment. Few deafblind people are both profoundly deaf and totally blind. |
| Deafness | A breakdown of the physiological mechanisms of hearing. May be congenital or the result of an accident or illness. |
| Dementia | Is the progressive loss of the powers of the brain. Common causes/types include Alzheimer's disease, multi infarct dementia, alcohol-related dementia's, Lewy Body dementia and Pick's disease. |
| Disability | 'A physical or mental impairment which has a substantial and long term effect on a person's ability to carry out normal day-to-day activities.' The Disability Discrimination Act, 1995. |
| Dysarthria | Commonly associated with stroke or neurological disorders, a muscle speech disorder, results in slurred/imprecise/spasms in speech. |
| Dyslexia | Is a difficulty in processing and storing information in the brain and affects writing, spelling and reading. It cannot be cured; it is more prevalent in males and covers all social classes. It varies very much in severity and every person with dyslexia is different. |
| Dysphasia | A serious disorder of language where the intellect remains intact but the person loses his/her ability to use language. |
| Dyspraxia | A condition in which the person is unable to carry out planned or purposeful movement. One indicator of dyspraxia is uncertain, struggling movement. A person may be found looking at their hand trying to remember what to do with it. |
| Epilepsy | A symptom of cerebral dysfunction. There are several types of epilepsy and many types of attack, some are major and may involve collapse or convulsions, others less severe involving only a momentary loss of awareness or some twitching in a part of the body. |
| Huntingdon's Disease | Is a hereditary disorder of the central nervous system. It usually develops in adulthood causing physical and mental control to steadily deteriorate. There is no cure. |

Common conditions including those which could affect communication (contd)

| Condition | |
|---------------------------------------|--|
| Learning disabilities or difficulties | Can be classed as mild, moderate or severe and will usually have affected an individual since birth. Over a million people in Britain (2% of the population) have mild learning disabilities, while 200,000 (0.4%) have severe learning disabilities for which they require support from education, health, social and financial services. |
| Mental Disorder | Is defined in Section 1(2) of the Mental Health Act, 1983 as 'mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind'. |
| Neurosis | The more common form of mental illness whereby someone will be depressed, anxious or tense to a higher degree than is usual. It exists within around 1 in 7 of the population at any one time. The individual will recognise the presence of their maladaptive behaviour and the effect that it has on their personality. |
| Psychosis | A relatively rare form of mental illness, which less than 1% of the population experience, it is more serious than neurosis. The illness may involve delusions, hallucinations, the inappropriate expression of emotion, hyperactivity, social withdrawal and fragmented thinking. There is also a lack of realisation by a person that their behaviour is abnormal. Schizophrenia is a psychotic illness. |
| Personality Disorder | There are a number of categories of personality disorder which cover a wide range of attitudes and behaviour, from ruthless exploitation to fear of other people and social withdrawal. |
| Multiple sclerosis | Is the most common neurological disorder among young adults and affects around 85,000 people in the United Kingdom. It is the result of damage to the protective sheath surrounding all the nerve fibres in the brain and spinal cord. The damage can affect nerves in the eyes, parts of the brain and spinal cord. Damage to sensory nerves can result in numbness or tingling. |
| Paraplegic | A person whose lower extremities and the lower part of the torso are paralysed from an injury to the back. |
| Polio | Is an infectious disease caused by one of three viruses. If the virus attacks the nerves supplying the arms and legs, they can become weak or paralysed. The virus can affect any part of the body. The most serious cases are those involving the breathing muscles. Any of these symptoms can result in permanent disability. |
| Rheumatism | Pain in soft tissue, such as muscles, tendons and ligaments. |
| Spina bifida | Literally means 'split spine', is a congenital deformity of the vertebrae, some of which fail to close. Damage to the spinal cord or spinal nerves may cause varying degrees of paralysis and lack of sensation below the level of damage. |
| Tetraplegic | A paraplegic person with additional paralysis of the hands and part of the arms resulting from an injury to the neck. |
| Usher Syndrome | A genetic sight-hearing condition. |