

## IMPORTANT TIPS IN SECURING EVIDENCE

### 1. Witness Statements

#### 1.1 What is a witness statement?

- A witness statement is a document recording the evidence of a person, which is signed by that person to confirm that the contents of the statement are true.
- A statement should record what the witness saw, heard or felt. However, it is also important to record anything that may open up a new line of enquiry or help in corroborating other information e.g. the witness may tell you about other people who witnessed the incident.
- In order to ensure that a witness statement will be admissible in judicial proceedings without a witness attending at court to give oral evidence, the following conditions should be satisfied:
  - the statement purports to be signed by the maker;
  - the statement contains a declaration by the maker that it is true to the best of his/her knowledge and belief and that it was made knowing that, if it were tendered in evidence, the maker would be liable to prosecution if s/he wilfully stated in it anything which s/he knew to be false or did not believe to be true (known as a —perjury declaration);
- If the statement is made by a person under 18, you must ensure that the age of the witness is included on the statement.
- If the witness cannot read the statement, you should read the statement to them before they sign it, and sign a declaration that you have done so.
- If the witness statement refers to any document which may be used as an exhibit, you should try to get a copy of that document and attach it to the statement.
- You may wish to ask any person whom you have reasonable cause to believe will be able to provide information relevant to your examination of the case to answer questions that you think fit to ask and to sign a declaration of the truth of the answers.
- The witness must sign the declaration of truth, such as: —I, the undersigned, state that this is the truth to the best of my knowledge and belief.

- The witness should be asked if s/he agrees to give you a voluntary statement. If they do, you may proceed with taking the statement. If a witness is unsure as to whether they wish to provide a voluntary statement, you will need to carefully explain your reasons for interviewing him/her and that s/he is not being treated as a suspect.
- The statement may be handwritten or typed. You should ensure that the witness has the opportunity to check the contents of the statement and make any corrections before s/he signs it.
- Typing the statement will allow to make changes with ease.

### **Content of a written statement**

- The witness' name, and
- The witness' age, if under 18;
- A declaration by the witness that it is true to the best of the witness' knowledge and belief;
- If the witness cannot read the statement, a signed declaration by someone else that that person read it to the witness; and
- The witness' signature.

### **1.2 How to take the witness statement?**

- Witness statements should normally be taken as soon as possible after the relevant events to ensure that the events are still fresh in the mind of the witness. It may be useful to record the evidence before the witness is tempted/has the opportunity to discuss their evidence with others.
- All witnesses should be treated with courtesy and every attempt should be made to put witnesses at their ease. It is preferable to speak to witnesses in a private room so that there is a more relaxed environment. At the outset, you should explain to the witness that the primary aim of taking a statement from them is to find out what happened.
- It is common practice to use the term witness "interview" when taking or proposing to take a witness statement. Elsewhere in the criminal justice system the term "interview" is used to refer to the questioning of a suspect. It is important, therefore, to clearly explain to a potential witness that they are not a suspect and you propose to take a statement from them only as a witness.

- Any statement should be written and signed in ink. Witness statements should be drafted so that they are concise and to the point. They should only deal with matters within the direct knowledge of the witness. As far as is possible, you should try to record the witness's own words.
- You may find it helpful to take notes before beginning to write the statement. Once the statement has been completed, you should read it over to the witness before it is signed. If there are any alterations on the statement, these should be initialled by the witness.
- If there is any information relevant to the weight to be attached to a witness's evidence, this should be recorded in your notebook.
- It is essential that you record each witness's home address, telephone numbers (including their home) and dates to avoid for any court appearance (if known) on the form attached to the statement, so that you can contact the witnesses at any time, if necessary. It is also essential that you record the witness's date of birth on the back of the statement where indicated. This is usually a legal requirement if the witness is under 18.

## **2 Conducting an interview**

The information provided below is reproduced from the manual —*Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures*], Ministry of Justice, UK, March 2011.

### **2.1 Basic principles in conducting the interviews**

- Listen to the witness.
- Do not stop a witness who is freely recalling significant events.
- Where it is necessary to ask questions, they should, as far as possible in the circumstances, be open-ended or specific-closed rather than forced-choice, leading or multiple.
- Ask no more questions than are necessary in the circumstances to take immediate action.
- Make a comprehensive note of the discussion, taking care to record the timing, setting and people present as well as what was said by the witness and anybody else present (particularly the actual questions asked of the witness).

- Make a note of the demeanour of the witness and anything else that might be relevant to any subsequent formal interview or the wider investigation.
- Fully record any comments made by the witness or events that might be relevant to the legal process up to the time of the interview.

### **2.2 The goal of an interview**

- The basic goal of an interview with a witness is to obtain an accurate and reliable account which may be used as evidence in complaint procedures before any international, regional or national human rights monitoring body or domestic judicial proceedings.
- Generally recommended is the use of the phased approach of interviewing, starting with a free narrative phase and then gradually becoming more and more specific in the nature of the questioning in order to elicit further detail.
- However, this does not mean that all other techniques are necessarily unacceptable. For example, the phased approach may not be appropriate for interviewing some witnesses with the most challenging communication skills (e.g. those only able to respond —yes or —no to a question).
- The key to successful interviewing is flexibility. However, in order to achieve best evidence it is recommended to follow the guidelines below.

### **2.3 Phases of the interview**

For all witnesses an interview should normally consist of the following four main phases

- Establishing rapport;
- Initiating and supporting a free narrative account;
- Questioning; and
- Closure

The planning phase, which will have occurred prior to the interview, should provide guidance to the interviewer about what might be achieved in each of the four main phases of the interview. No interview should be conducted without prior, proper planning.

While research has found that the accounts of some types of vulnerable witnesses are less complete than those of other witnesses, these are not necessarily less accurate if the interviewing is conducted appropriately.

The interviewer will need to pitch the language and concepts used (see below) to a level that the witness can clearly understand, while the focus should be on recognising and working with the witness's capabilities rather than limitations.

### **2.3.1 Phase one: establishing rapport**

#### **Preliminaries**

After confirming that the recording equipment is working and has been set up correctly, the interviewer should say out loud the day, date, time and place (not the detailed address) of the interview and give the relevant details of all those present.

The interviewer should then briefly mention the reason for the interview in a way that does not refer directly to an alleged offence. Interviewers should be aware that while some witnesses will, from the outset, be very clear concerning what the interview is about, other witnesses will not.

#### **Neutral topics**

Rapport is essential, and good rapport between the interviewer and the witness can improve both the quantity and quality of information gained in the interview.

One of the reasons for rapport being so important is that the witness's anxiety, whether induced by the crime and/or the interview situation (or otherwise), needs to be reduced for maximum recollection. This is because people only have a limited amount of processing capacity and the aim is to have the witness's full power devoted to retrieving as much information as possible.

One way to achieve this is to start by briefly asking some neutral questions not related to the event which can be answered positively and, therefore, create a positive mood. It is important that the style of any questions used during this phase are consistent with those to be used during the rest of the interview (*i.e.* predominantly open) so that the witness get used to the kind of elaborated responses that will be required later.

It is important that any discussion of neutral topics in the rapport phase is completed within a relatively short space of time. Interviewers should remember that a lengthy rapport phase may result in:

- some witnesses getting tired before they are asked to provide an account, this could have an adverse impact on the quality of their evidence;
- some witnesses getting confused about the purpose of the interview, this could increase in their anxiety.

If the interview plan suggests that discussing neutral topics for a lengthy period of time may be beneficial (e.g. with very young witnesses, witnesses with a learning disability, some

traumatised witnesses) it should take place as part of witness preparation before the interview commences.

Interviewers should be aware that it is neither desirable nor essential to discuss neutral topics in every interview. Where a witness is anxious to begin their account of the alleged incident(s) as soon as possible, a discussion of neutral topics could be counterproductive by needlessly prolonging the rapport phase and thus increasing their anxiety levels.

In any event, rapport should not be regarded as something that is confined to the first phase of an interview; it begins when the interviewer first meets the witness and continues throughout the interview.

### **Ground rules**

It is important to explain to the witness what is to be expected from them, as for most witnesses an investigative interview is an alien situation. People typically fear the unexpected, and by describing the interview process this fear can be reduced.

The interviewer, therefore, needs to give an explanation of the outline of the interview. Typically the outline will take the form of the interviewer asking the witness to give a free narrative account of what they remember and following this with a few questions in order to clarify what the witness has said.

Witnesses should also be told that:

- If the interviewer asks a question they do not understand or asks a question that they do not know the answer to, the witness should say so; and
- If the interviewer misunderstands what they have said or incorrectly summarises what has been said, the witness should point this out.

Some vulnerable witnesses may be under the false impression that the interviewer already knows much or all that happened and that their role, being eager to please, is merely to confirm this. It is crucial that interviewers inform witnesses, in ways that the latter understand, that:

- They were not present at the event(s);
- They do not yet know what occurred; and
- Supplying detail is important.

It should be made clear that the witness can ask for a break at any time. These may be required more frequently for vulnerable witnesses than with other witnesses. In order for some vulnerable witnesses to have some control over a request for a break and yet not make a verbal request, a touch card may be useful. Place a card next to the witness and when they need a break they can touch the card. The break can provide an opportunity for a refreshment. Such breaks should NEVER be used as inducement to witnesses.

Toward the end of the rapport phase of an interview with a child witness, when ground rules have been explained to the child, the interviewer should advise the witness to give a truthful and accurate account of any incident they describe. This is important in case the video/audio recording may be used as evidence because it is helpful to the court to know that the child was made aware of the importance of telling the truth. This should be done in the rapport phase and not later in the interview because this might run the risk of the child concluding that the interviewer had not believed what they had said up to that point.

### ***2.3.2 Phase two: free-narrative account***

#### **Initiating a free-narrative account**

In this phase of the interview the interviewer should initiate an uninterrupted free narrative account of the incident/event(s) from the witness by means of an open-ended invitation.

Interviewers should not usually try to initiate an account by focusing on the witness's background or the general background to the incident. In most instances, interviewers should initiate a free narrative account by simply asking the witness to concentrate on the matter in issue; the incident that is the subject of the investigation.

It is essential not to interrupt the witness during their narration to ask questions; these should be kept for later.

In the free narrative phase, the interviewer should encourage witnesses to provide an account in their own words by the use of non-specific prompts such as —did anything else happen? , —is there more you can tell me? and —can you put it another way to help me understand better? Verbs like “tell”, “describe” and “explain” are likely to be useful. The prompts used at this stage should not include information known to the interviewer concerning relevant events that have not yet been communicated by the witness.

#### **Supporting a free-narrative account**

Some form of active listening is necessary, letting the witness know that what they have communicated has been received by the interviewer. This can be achieved by reflecting back to the witness what they have just communicated; for example, —The witness says “I didn't like it when he did that” and you reflect back “you didn't like it when he did that”.

The interviewer should be aware of the danger of subconsciously and consciously indicating approval or disapproval of the information just given.

### **Compliance**

Some vulnerable witnesses may be particularly compliant in that they will try to be helpful by going along with much of what they believe the interviewer wants to hear and/or is suggesting to them. This is particularly so for witnesses who believe the interviewer to be an authority figure. Some witnesses may also be frightened of authority figures. The interviewer should, therefore, try not to appear too authoritative, but should be confident and competent as a means of reassuring the witness that they can be relied on.

Many vulnerable people are very concerned to present themselves in the best possible light, and many might try to appear as “normal” as possible by, for example, pretending to understand when they do not. This is something we all do. Even though they may not understand a question, vulnerable witnesses may prefer to answer it than to say that they do not understand. Saying that one does not understand a question can be taken to be implying that the interviewer or witness is at fault.

An emerging finding is that witnesses who feel empowered may well have less of a need to demonstrate compliance. This is one reason why allowing the witness some control of the interview is likely to be beneficial.

### **Acquiescence**

Research has consistently found that many vulnerable witnesses acquiesce to “yes/no” questions. That is, they answer such questions affirmatively with “Yes” regardless of content. This can occur even when an almost identical “yes/no” question is asked subsequently but this time with the opposite meaning.

This tendency to respond positively to every question occurs particularly frequently with some people with a learning disability. However, it is not solely due to witness vulnerability. The way that the interview is conducted (e.g. in an overly authoritative way) and the nature of the questions asked (e.g. suggestive or too complex) will also influence the extent of unconditional positive responding.

### **Reticence**

In many interviews, particularly those relating to allegations of child sexual abuse, witnesses may be reluctant to talk openly and freely about incidents. This can sometimes be overcome by the interviewer offering reassurance, for example: “I know this must be difficult for you. Is there anything I can do to make it easier?”. It is quite in order for the interviewer to refer to a witness by their first or preferred name, but the use of terms of endearment, verbal reinforcement and physical contact between the interviewer and the witness are inappropriate. However, this should not preclude physical reassurance being offered by an interview supporter to a distressed witness.

If the witness has communicated something that the interviewer feels needs to be clarified, but the witness at present seems reluctant or unable to do so, it may be better that the interviewer return to the point later in the interview, rather than be insistent.

### **2.3.3 Phase three: questioning**

#### **General approach**

During the free narrative phase of an interview most witnesses will not be able to recall everything relevant that is in their memory. Their accounts could, therefore, greatly benefit from the interviewer asking appropriate questions that assist further recall.

Before asking the witness any questions it may be beneficial to outline for them what is expected of them in this phase of the interview. It is helpful for the interviewer to tell the witness that they will now be asking them some questions, based on what they have already communicated, in order to expand and clarify upon what they have said.

It can also be beneficial to reiterate a number of the ground rules outlined in the rapport phase of the interview, for example to explain to the witness that detail is required, to explain that this is a difficult task which requires a lot of concentration and to point out that it is acceptable to say "I don't know" or "I don't understand" to a question.

When being questioned some witnesses may become distressed. If this occurs, the interviewer should consider moving away from the topic for a while and, if necessary, reverting to an earlier phase of the interview (*e.g.* the rapport phase). Shifting away from, and then back to a topic the witness finds distressing and/or difficult, may need to occur several times within an interview.

#### **Interview structure**

Having elicited an account from the witness during the free narrative phase of an interview, the interviewer should divide it into manageable topics. Each relevant topic not adequately covered in the witness's account should then be:

- introduced by means of an appropriate technique (*e.g.* an open-ended invitation to the witness to focus on and recall the subject matter of the topic-area in detail); and
- systematically probed using open-ended and specific-closed questions until all the relevant material relating to it has been obtained.

Interviewers should try to avoid topic-hopping (*i.e.* rapidly moving from one topic to another and back again) as this is not helpful for the witness's remembering processes and may confuse them.

After the witness's account of the incident has been probed, the interviewer should move on to deal with any case-specific information that was identified as important to the investigation when planning and preparing for the interview. Such case-specific information should be organised into topic-areas: each topic-area should then be systematically probed in a similar way to the witness' account of the incident(s).

Overall structure of the interview recommended by this guidance should be as follows:

**Phase One** Rapport

**Phase Two** Witness' free narrative account of incident(s)

**Phase Three** a) Topic division and probing of witness' account of incident(s)  
b) Topic division and probing of case-specific information to the investigation

**Phase Four** Closure