



Diogelu Gwent
Gwent Safeguarding

Witness Interview Planning Booklet

526/10

(Youth Justice & Criminal Evidence Act 1999
(As amended by the Coroners and Justice Act 2009)
and Criminal Law Act 2003)

Regina-V:
OIC:
Exhibit No:

(Revised | Feb 2022)

Name of Witness:
Date of Birth:
NICHE Occ No.:
STORM Log No:
URN Reference No.:

Notes for Guidance

This interview booklet has been prepared in accordance with the requirements of the Youth Justice and Criminal Evidence Act 1999 (as amended by the Coroners and Justice Act 2009) and Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Guidance on Using Special Measures (2022). It should be used to plan and conduct an interview with any of the following categories of witness:

- Vulnerable witnesses
- Intimidated witnesses
- Significant witnesses
- Reluctant witnesses
- Hostile witnesses
- Defence Witnesses

The interview booklet has been prepared to ensure defensible decision making in relation to the:

- Planning and preparing of the investigative interview
- Conducting the investigative interview(s)
- Preparing the witness for court

There is a requirement to make a record of contact with the witness from initial contact with the police, right through to any subsequent court proceedings. Any contact (telephone, personal, written, e-mail etc) should be recorded in Section 9 of this booklet.

When evidencing your decision making you need to consider:

- What are the advantages/disadvantages for the witness?
- How am I going to evidence it?
- What is my reasoning to support my decision?
- What details am I going to record?
- The evidence I record must be factual

This booklet will be used to support the application for special measures and the relevant section should be completed.

The booklet should accompany the court file.

This booklet is subject to disclosure should be submitted to the CPS along with the statement (visual or written) of the witness. Some material may need to be treated as sensitive and included on the MG6D otherwise it should be recorded on the MG6C.

CONTENTS

SECTION 1

Record of Contact with the Witness

This section of the booklet should be used by ALL officers to record the initial contact between the investigator and the witness.

SECTION 2

Category of Witness

Please identify category of witness. The witness may fall within one or more categories.

SECTION 3

Planning Information

This section should be used to summarise the information arising from the planning process and the decisions made as a result of it. When completed, a copy of this form should be forwarded to the CPS as soon as possible in order that any necessary Special Measures applications can be made.

SECTION 4

Special Measures

The section explains all available special measures and the witness's views in relation to use of such measures and the views of the witness should be documented.

SECTION 5

Consent to Visual Recording

This section should be completed prior to interview.

SECTION 6

Record of Decision on Interviewing Method

This section should be completed by both the investigating officer and supervisor once a decision has been made on the most appropriate method of recording the witnesses account.

SECTION 7

The Interview Plan

The interview plan should detail the aims and objectives of the interview. Use PLAT (people, location, action and time) to consider the information required. Investigative Important questions may need to be considered.

SECTION 8

Outcome of Interview

This section should be used to record the outcome of the interview.

SECTION 9

Record of Contact with Witness

This section should be used to record any contact with the witness such as the preparation of the witness for prior to interview (e.g. rapport phase).

SECTION 10

Refreshing the Memory of a Witness who has been Visually Recorded

Please refer to the guidance in this section in relation to refreshing the memory of a witness.

APPENDIX A

Viewing of Visually Recorded Evidence Prior to Trial

SECTION 1

Record of Contact with the Witness

(Note: Complete a new log for each separate contact with witness)

Name:	D.O.B:
Contact Date:	Time:
Location:	
Persons Present:	

Initial Account Provided by Witness (ABE Paragraph 2.4-2.7)

Initial questioning should be intended to elicit and record a brief account of what is alleged to have taken place. Such a brief account should include:

- What has happened? (Enough details to establish what offence has taken place)
- When did it happen? (In order to prioritise action)
- Who is involved or was otherwise present? (Enough information to take immediate steps to trace suspect(s))
- Where did it happen? (Enough information to identify all the relevant scenes)

This information is likely to influence decisions made in respect of forensic and medical examination of the victim, scene of crime examination, interviewing of other witnesses and witness support.

A more detailed account should not be pursued at this stage and should be left until the investigative interview takes place. On completion, the log **MUST** be signed by all persons present authenticating the accuracy of the record unless impracticable to do so by virtue of age/disability. (NOT Child or Vulnerable Adult witnesses)

As full a record as is possible should be made of the questions asked of and responses given by the witness.

Extra considerations for child and vulnerable adult witnesses:

- 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 be open ended or specific-closed questions. Avoid 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 notes of the demeanour of the witness and anything else that might be relevant to any subsequent formal interview or 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.

Initial Account Provided by Witness

[illegible]

The above has been read to me and is a true and accurate account:	
Signature of Witness:	Date:

Initial Account Provided by Witness (Cont.)

[illegible]

The above has been read to me and is a true and accurate account:	
Signature of Witness:	Date:

Initial Account Provided by Witness (Cont.)

[illegible]

The above has been read to me and is a true and accurate account:	
Signature of Witness:	Date:
Name of Other Person(s) Present:	Date:
Signature of Other Person(s) Present:	Date:
Signature of Officer:	Date:

Initial Account Provided by Witness (Cont.)

[illegible]

The above has been read to me and is a true and accurate account:	
Signature of Witness:	Date:

Initial Account Provided by Witness (Cont.)

[illegible]

The above has been read to me and is a true and accurate account:	
Signature of Witness:	Date:
Name of Other Person(s) Present:	Date:
Signature of Other Person(s) Present:	Date:
Signature of Officer:	Date:

SECTION 2

Category of Witness

(Please refer to Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Guidance on Using Special Measures (2022) for more detailed guidance on categories of witness)

Please Tick Relevant Box

Section 16 YJ&CEA (Vulnerable Witness)	
Person Under 18 (All Offences)	
Adult with Mental Disorder (Mental Health Act 1983, as amended by the Mental Health Act 2007)	
Adult with a Learning Disability	
Adult with a Physical Disability or Disorder	

Section 17 YJ&CEA (Intimidated Witnesses) Those likely to experience fear or distress about testifying to such an extent that special measures are necessary to maximise the quality of their evidence	
Sexual Offences (S17.4)	
Modern Day Slavery Act, 2015, Section 1 or 2 (S17.4)	
Gun and Knife Crime (S17.5)	
Other Contributory Factors (see para's 1.11 and 1.12 ABE 2022 for details)	

To make an application for the record of an interview with a vulnerable or intimidated witness to be played as evidence-in-chief, the interview must be visually recorded. However, as is the case with the other Special Measures, video-recorded interviews can only be used as evidence-in-chief if three 'tests' are met. These 'tests' are set out in Section 19 Youth Justice and Criminal Evidence Act 1999 as follows:

1. Whether the witness is 'vulnerable' or 'intimidated' as defined by Sections 16 and 17 Youth Justice and Criminal Evidence Act 1999;
2. Whether any of the Special Measures or any combination of them are likely to improve the quality of the witness's evidence;
3. Which of the available Special Measures are most likely to maximise the quality of the witness's evidence.

Other Categories of Witness as Defined in ABE (Not eligible for Special Measures unless Vulnerable or Intimidated)	
Significant Witness (SIO Decision)	
Reluctant Witness	
Hostile Witness	
Defence Witness	

SECTION 3

Planning Information

(This section is applicable to all categories of witness and as much of the following information should be obtained about the witness as possible)

Age	
Gender	
Race Culture Ethnicity	
First Language	
Interpreter Required?	
Religion	
Preferred Name	
Sexuality (if applicable) - Any sensitive issues around gender / sexual preference? Is it public knowledge or known to family?	
The nature and extent of any disabilities or disorders and the implications of this for the interview process	
Any specialist health or mental health needs? (Any counselling received or use of a psychiatrist, CPN or Social Worker)	
Any medication being taken and its potential impact on the interview?	
Domestic circumstances (including whether the witness is currently in a 'safe' environment (Where is the person living and with whom? Is it supported Living?))	

Planning Information

Relationship of the witness to the alleged perpetrator	
Current emotional state (including trauma, distress, shock, depression, fear or intimidation/ recrimination and significant stressful events experienced	
Likely impact of recalling traumatic events on the behaviour of the witness	
Current or previous contact with public services (including previous contact with the police, social services or health professionals)	
Can the person Read?	
Can the person Write?	
Preferred make up of interviewers- All victims of sexual violence, gender based or domestic violence must be given the opportunity to have their interview conducted by a person of the same sex (VCOP 1.6)	
What support is required for the Witness?	
Source of the information provided above	
Officers Signature	

Planning Information | CHILD or YOUNG PERSON OR PERSON WITH A LEARNING DISABILITY

(Where the Witness is either a child or has a learning disability, the following information should also be obtained)

Ability to recall: • Can they remember and recall an event? • Can they chronologically sequence an event? • Concept of time? • Logical answers to specific questions?	
Are there any communication issues?	
Any suggestibility issues?	
If child witness – is he/she educationally statemented (Please provide details) (What School are they attending or did they attend?)	
If child witness – is child known to his/her School Psychological Services (please provide details)	
If child witness information to be considered as to whether an Intermediary is required. (Criminal Practice Directions (2013) Paragraph 3F.5 states: 'for children ages 11 years and under in particular, there should be a presumption that an Intermediary assessment is appropriate') NCA-0845 000 5463	See Achieving Best Evidence (ABE) - Box 2.7 (Shown page 36)
Source of the information provided above	
Parent or Guardians Signature (This is to provide consent to carry out the interview of the child or dependent)	
Officers Signature	

Ability to recall: • Can they remember and recall an event? • Can they chronologically sequence an event? • Concept of time? • Logical answers to specific questions?	Neutral Topic Discussion
Are there any communication issues? (Considerations for use of intermediary. Questioning Typology Tested TEDS/5WH)	
Any suggestibility issues?	

Preliminaries (See Advocate's Gateway) Mental Disorder 2.80 – 2.82 & 2.136 – 2.138) Significant Impairment of Intelligence and Social Functioning (Learning Disability) (2.83 – 2.86) Physical Disability (2.87-2.88 & 2.120)	
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Support Witness with a Mental Disorder (2.89 – 2.96) Witness with a Significant Impairment of Intelligence and Social Functioning (Learning Disability) (2.97 – 2.103 & 2.132) Witness with a Physical Disability (2.104 - 2.110) Autism (2.127 – 2.129) Down Syndrome (2.130)	
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Consent (2.112) It is a general principle that all witnesses should freely consent to be interviewed and to have the interview recorded on video. For this reason, interviewers should explain the purpose of a video-recorded interview to the witness in a way that is appropriate to their understanding. Such an explanation should include: • The nature of video-recorded evidence-in-chief (including the distinction between it and cross-examination); • The benefits/disadvantages of having or not having the interview video recorded. • Who may see the video-recorded interview (including the alleged offender both before the trial and at court) • The different purposes to which a video-recorded interview may be put (e.g. if it appears the video may be useful in disciplinary proceedings against a member of staff who is suspected of abusing a vulnerable adult in their care).	
Source of the information provided above	
Interviewers Signature	

Achieving Best Evidence ABE (2022)

Box 2.10: Some possible effects of abuse and neglect

These include:

- Poor self-esteem
- PTSD
- Self-injury or suicidal behaviour
- Increased emotional problems (E.g. Anxiety and Depression)
- Decreased cognitive functioning
- Sexualised behaviour and negative social behaviour
- Increased aggression, non-compliance and criminal activity

Box 2.11: Some possible effects of racism

These include:

- Fear
- Poor self-esteem
- Fear of betrayal of community
- Mistrust of people outside own community
- Difficulty in establishing positive (racial) identity
- Increased vulnerability to racist abuse

Box 2.12: Some possible effects of discrimination based on disability

These include:

- Fear for safety of self and others in family;
- Sadness/depression, possibly reflected in self-harm or suicidal tendencies;
- Anger, which may be demonstrated in aggressive behaviour;
- Negative impact on health (e.g., asthma, eczema or eating disorders); and
- Negative impact on behaviour (e.g., aggression).

Box 2.13: Some possible effects of domestic violence

These include:

- Fear for safety of self and others in family
- Sadness/depression, possibly reflect in self-harm or suicidal tendencies
- Anger, which may be demonstrated in aggressive behaviour
- Negative impact on health (asthma, eczema or eating disorders)
- Negative impact on behaviour (aggression)

Box 2.7: General factors to be explored via an assessment prior to interview

These include:

- The child's preferred name/form of address
- The child's ability and willingness to talk within a formal interview setting to a police officer, children's social care worker or other trained interviewer
- An explanation to the child of the reason for an interview

- The ground rules for the interview
- The opportunity to practice answering open questions
- The child's cognitive, social and emotional development (e.g. does the child appear to be 'streetwise' but in reality has limited understanding?)
- The child's use of language and understanding of relevant concepts such as time and age (as a general rule of thumb, an intermediary may be able to help improve the quality of evidence of any child who is unable to detect and cope with misunderstanding, particularly in the court context, i.e. if a child seems unlikely to be able to recognise a problematic question or tell the questioner that they have not understood, assessment by an intermediary should be considered)
- Any special requirements the child may have (e.g. do they suffer from separation anxiety or have an impairment? Are they known to have suffered past abuse, or to have previously undergone an investigative interview?)
- Any apparent clinical or psychiatric problems (e.g. panic attacks, depression) that may impact upon the interview, and for which the child may require referral for a formal assessment
- An assessment of the child's competency to give consent to interview and medical examination

Officers Signature

Officers Signature

Officers Signature

SECTION 4

Special Measures

The Code of Practice for Victims of Crime places a responsibility on the police to identify Vulnerable and Intimidated witnesses and to explain the special measures available to them to assist when giving evidence. The YJ &CEA places a duty on the court to take into account the views of the witness in the context of all the circumstances of the case when considering whether special measures are likely to maximise the quality of the witness evidence. An application for special measures should be detailed on the MG2, MG6 and MG11.

SPECIAL MEASURES MUST BE EXPLAINED TO THE WITNESS SO THEY CAN MAKE INFORMED JUDGEMENTS ABOUT THEM.

Section 23 – Screens

Screens or curtains are positioned around the witness box so as to prevent the defendant from seeing the witness and vice versa. The witness will still be able to see and be seen by the judge or magistrate, at least one legal representative of the prosecution and defence and if the case is being heard in the Crown Court, the jury.

Benefits:

- The impact of the defendant's presence of the witness is minimised by virtue of them being out of sight
- The witness is not exposed to the defendant's non verbal reactions.

Limitations:

- The defendant can still hear the witness and might, therefore recognise their voice.

Section 24 – Evidence by Live Link

The witness gives their evidence from a room outside the courtroom. The witness testimony is relayed live into the court room via TV link.

Benefits:

- The impact of the defendant's presence on the witness is minimised by virtue of them being out of sight.
- The witness is not exposed to the defendant's non-verbal reactions.
- The witness gives evidence in a less intimidating environment than the court room.
- Section 102 of the Coroners and Justice Act 2009 makes statutory provision for a witness supporter in the live link room.

Limitations:

- The defendant will see the witness on live TV screen and therefore might recognise them.

Section 25 – Evidence Given in Private

Members of the public are excluded from the court while the witness is giving evidence. Only one nominated member of the media is allowed to be present. This is for use predominantly in sexual offences cases.

Benefits:

- Has the potential to reduce the embarrassment likely to be experienced by the witness when giving sensitive evidence.
- The witness may feel less intimidated that he/she would if the defendant's family or associates were present in the public gallery.

Limitations:

- Members of the witnesses' family or associates who might lend emotional support are also excluded from the public gallery while the witness is giving evidence.

Section 26 – Removal of Wigs and Gowns

The judge and lawyers remove their wigs and gowns.

Benefits:

- The removal of wigs and gowns may serve to reduce the formality of the situation leading to a reduction in anxiety experienced by the witness.

Limitations:

- The witness might prefer the formality of the situation enhanced by wigs and gowns wanting their day in a 'proper court'.

Section 27 – Video Recorded Evidence-in-Chief

The visually recorded interview conducted during the investigation is played as the witnesses' evidence in chief.

Benefits:

- The witness does not have to repeat what was said during the police interview.

Limitations:

- The defendant will see the video recording as part of the pre-trial defence preparation when it is played in court.
- The witness has still to go to court for cross examination, although such cross examination usually takes place via live link.

Section 28 – Video Recorded Cross-examination

Available in all crown courts in England and Wales for section 16 Youth Justice and Criminal Evidence Act “vulnerable” witnesses. Also commenced for adult complainants to sexual offences and offences contrary to section 1 or section 2, Modern Slavery Act, 2015 in the crown courts at Durham, Harrow, Isleworth, Kingston-upon-Thames, Leeds, Liverpool and Wood Green, with commencement to all crown courts planned.

Section 29 – Examination of Witness through Intermediary (Vulnerable Witnesses Only)

Intermediaries are communication specialists (not supporters or expert witnesses) whose role is to facilitate communication between the witness and the court, including the advocates. Intermediaries are independent of the parties and owe their duty to the court. The Youth Justice and Criminal Evidence Act 1999 recognises that certain witnesses are ‘vulnerable’ and makes them ‘eligible for assistance on the grounds of age or incapacity’.

Child Witnesses – Assessment should be considered if a child or young person under 18 seems unlikely to be able to recognise a problematic question or, even if able to do so, may be reluctant to say so to a questioner in a position of authority. Studies suggest that the majority of young witnesses, across all age groups, fall into one or other of these categories. **For children aged 11 years and under in particular, there should be a presumption that an intermediary assessment is appropriate.**

Benefits:

- Witnesses whose communication might have previously been either misunderstood, misrepresented, or ignored by those involved in the investigative or trial process can be given the assistance that they might need to communicate more effectively within the Criminal Justice System. This should make the administration of justice more effective by reducing the confusion sometimes experienced by the witness, investigators, the courts and lawyers. It should open up access to justice to some of those who were previously denied it.

Limitations:

- A third party is involved in the process of communication.

Section 30 – Aids to Communication (Vulnerable Witnesses Only)

Witness communicates via a ‘device’ when giving evidence.

Benefits:

- Witnesses whose communication might have been previously disregarded by those involved in the Criminal Justice System can now use the aids that they use on an everyday basis or that they have recently been introduced to in order to help them communicate.

Limitations:

- Communication takes place on an indirect basis.

Child Witnesses – Consent Regarding Witness Interviews and ‘Opt-Out’ Considerations

The implementation of Section 100 Coroners and Justice Act 2009 means that the ‘Primary Rule’ for Child Witnesses has been amended. As a direct consequence of that section the following procedures should now be considered for children on a case by case basis.

ABE- Page 29: ‘The law presumes that child witnesses under 18 will normally give their evidence outside the court room by playing a video-recorded interview as evidence-in-chief and cross-examination via live link unless this will not improve the quality of their evidence. Subject to the agreement of the court, however, children may opt out of giving their evidence by either a video-recorded interview as evidence-in-chief or by means of live link or both. Where a child opts out of participating in a video-recorded interview, they should be given the opportunity to make a written statement.

In coming to a view about video-recorded evidence-in-chief children and/or the carers who have parental responsibility for them should be given enough information for them to come to an informed decision. Interviewers should, therefore, take steps to explain the purpose of any proposed video-recorded interview to the child and/or their carers, at a level appropriate to their age and understanding. Such an explanation should include the following:

- The benefits/disadvantages of having or not having the interview video-recorded;
- Who may see the video-recorded interview (including the alleged offender both before the trial and at court);
- The different purposes to which a video-recorded interview may be put (e.g. if it appears the video may be useful in disciplinary proceedings against a member of staff who is suspected of abusing or neglecting a child in their care); and
- That the child may opt out of video-recorded evidence-in-chief if they wish to do so.

The child should be advised that, should the case proceed, whether a videorecording is made or not, they may be required to attend court to answer further questions directly (e.g. cross-examination). A live link facility will normally be available to enable the witness to give best evidence at court. There is a presumption that this aid will normally be required by the child. The existence of a video-recorded interview does not by itself guarantee that it will be used.

If a child wishes to opt out of video-recorded evidence-in-chief, they may give all their evidence by live link from outside the courtroom, if the court agrees. The child may also opt out of live link evidence, if the court agrees but the law presumes that they will give evidence in the court room behind a screen. Should they not wish to use a screen, they may also be allowed to opt out of using it. Ultimately this is a matter for the court to decide but the court must take the witness' views into account when making its decision on whether to approve an opt out request.

It is important that the Special Measures proposed are tailored to meet the individual needs of the witness rather than being based on the nature of the offence. In no circumstances should it be assumed that all child witnesses are the same and they will want to give evidence by video-recorded statement and live link.

It is not uncommon for a child witness to change their views about giving evidence using particular Special Measures. Therefore, Special Measures discussions should be ongoing and discussed at the police interview stage, before submission of a Special Measures application and reviewed again after a pre-court familiarisation visit.

Written consent to be video-recorded is not necessary from the child, but it is unlikely to be practicable or desirable to video-record an interview with a reluctant or hostile child. The interviewers are responsible for ensuring that, as far as possible, the child is freely participating in the interview, and not merely complying with a request from adult authority figures. In cases where an adult with parental responsibility refuses to allow a child to be interviewed, whether that interview was to have been video recorded or not, and the child is not competent to consent of their own accord the interview cannot take place.

A strategy discussion between the police and the social services should consider whether it is appropriate to make an application for an Emergency Protection Order under section 44 Children Act 1989 and to seek a direction from the court under section 44(6)(b) for an interview to be carried out as part of an assessment of the child.

If, after having considered the circumstances of the child, an interviewer comes to the conclusion that a video-recorded interview is not the best way of presenting the child's evidence to a court they should explain this to the child and/or their carer. It is important that the explanation is based on a consideration of the circumstances. A full written record should be made of any such explanation.

If a child and/or their carer disagrees with an interviewer's explanation for concluding that a video-recorded interview is not the best way of presenting the child's evidence an Early Special Measures Discussion between the police and the CPS should take place, ideally before the interview (see Early Special Measures Discussions between the Police and the Crown Prosecution Service, CJS 2009). If the prosecutor agrees with the interviewer's view it should be explained to the child and/or their carer and no video-recorded interview should take place. If it is not practical to hold an Early Special Measures Discussion before the interview it should be video-recorded and the child and/or their carer informed that advice will be sought from the CPS at the earliest opportunity'.

SECTION 5

Consent to Visual Recording

Please read carefully and cross out any statement that you do not agree with.

1. I give my consent to be visually interviewed and the process of applying for special measures has been explained to me.
2. I give my consent for.....to have their interview visually recorded **(Carer consent required for young children only)**.
3. For**(name)** to be present during the interview in addition to the police officer/social worker.
4. For the interview to be disclosed for the purpose of Civil Proceedings **(if appropriate)**.
5. The officer has explained:
 - The benefits/disadvantages of having or not having the interview visually recorded;
 - Who may see the visually recorded interview;
 - The different purposes to which a visually recorded interview may be put.

Name:			
Signature:			
Date:		Time:	

Parent/Carer (If required)

Name:			
Signature:			
Date:		Time:	

SECTION 6

Record of Decision on Interviewing Method

Based on my assessment of the witness and discussion in relation to available special measures (where applicable), considering their preferences and their informed consent to be interviewed, I recommend that the witness should provide his/her evidence in the following format:

Visually Recorded Interview

☐

Witness Statement

☐

Reason for Decision:

--

If any specialist interview technique other than the four-phased approach is to be used, please document reason:

--

Proposed time and date of interview:	
Proposed location of interview:	
Person conducting interview:	
Witness Supporter (if required):	
Intermediary (if required):	
Interpreter (if required):	
Other persons to be present and role (i.e. social worker, interview adviser, interview monitor):	

Name of Officer Conducting:			
Signature:			
Rank:		Collar No.:	

Name of Officer Supervisor:			
Signature:			
Rank:		Collar No.:	

SECTION 7

The Interview Plan

Aims and objectives of the interview:

Topics to be avoided (Detail why if applicable):

Any other information to be considered (i.e. breaks, dietary requirements, use of props etc)?

SECTION 8

Outcome of Interview with Witness

Was the interview conducted? Yes ☐ | No ☐

If No, please give reasons:

--

If Yes:

Time:	Date:	Location:
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Interviewer's Name:

How was the interview conducted?

Visually Recorded Interview ☐ Witness Statement ☐

Completed by:

Name:			
Signature:			
Date:		Collar No.:	

SECTION 9

Record of Contact with Witness

[illegible]

Record of Contact with Witness (Cont.)

[illegible]

CONTINUE ON SEPARATE SHEET IF NECESSARY

SECTION 10

Refreshing the Memory of a Witness who has been Visually Recorded

ABE, page 125 (2022) states that: 'Witnesses are entitled to see a copy of their statement before giving evidence. Where the investigative interview of the witness has been video-recorded, the recording is often used to refresh the witness's memory before the trial – the equivalent of reading the statement beforehand. Viewing the video ahead of time in more informal surroundings helps some witnesses familiarise themselves with seeing their own image on the screen and makes it more likely that they will concentrate on the task of giving evidence. The arranging of memory refreshment for child witnesses is one of the items on the PCMH questionnaire. For further information from case law relevant to memory refreshment see R v B [2011] Crim.L.R. 233 and R v R [2010] EWCA Crim 2469.

It is CPS policy that a video-recorded interview may be shown to the witness before the trial for the purpose of refreshing memory unless the video has been ruled inadmissible. If such a ruling is made, the court will need to give guidance at the PCMH or pre-trial hearing on an acceptable alternative method of refreshing the witness's memory. Decisions about admissibility should be made in sufficient time to allow other steps to be taken. If the witness is to give live evidence-in-chief, the prosecutor should consider seeking a ruling on whether it is appropriate to allow the witness to see the video before evidence is given. Supporters should be informed promptly about any decisions on video admissibility and editing.

The issues involved in planning for refreshment of a witness's memory will be raised at the PCMH by the legal representatives. If memory refreshment is to proceed, the hearing will allow a decision to be made as to how the vulnerable witness should be supported during the process, and the implications for the supporter's role in any subsequent trial. A decision can be reached about the person who is best placed to support the witness while their memory is refreshed. Consideration will need to be given to any competing requirements for the witness supporter during the remainder of the criminal justice process.

It is the responsibility of the police to arrange for prosecution witnesses to read their statements or view video-recorded interviews. They should consult the prosecution about where this should take place and who should be present and keep a record of anything said at the viewing. In exceptional cases, such as those involving very young children or children with learning disabilities, the prosecutor should consider whether a videorecording should be made when the witness refreshes their memory from the video-recorded interview.

Witnesses need to receive appropriate explanations about the purpose of watching the video before the trial, and their views about this must be taken into account. Sometimes videos will be edited for legal reasons, for example if the video contains irrelevant material or inadmissible matters of fact or law. Witnesses need to be alerted to any editing so that they will not be surprised, suspicious or confused when the recording does not match precisely their recollection of the interview.

Witnesses are entitled to refresh their memory from their statement or visually recorded interview. The court should enquire at the PTPH or other case management hearing about arrangements for memory refreshing. The witness's first viewing of the visually recorded interview can be distressing or distracting. It should not be seen for the first time immediately before giving evidence. Depending upon the age and vulnerability of the witness several competing issues have to be considered and it may be that the assistance of the intermediary is needed to establish exactly how memory refreshing should be managed.

Best Practice in refreshing the memory of the witness

- The recording will be shown to the victim/witness ideally by the original interviewing officer between 48/72 hours before the hearing unless specific advice has been provided as to time of the viewing.
- The CPS have suggested that the edited disc will be available 10/14 days prior to the court case.
- Where possible, the witness interview suite should be utilised to conduct this viewing and the presenting officer should be prepared to answer questions at court regarding the venue/persons present and any conversation between the parties involved during the showing. If it is not practicable to facilitate the viewing at a witness interview suite, consideration can be given to utilising a laptop computer so that the interview can be shown to the witness at their home address. The form at Appendix A must be completed and forwarded for inclusion on the prosecution file.
- The person(s) present should not be connected with the case and every effort MUST be taken to ensure only those who actually have to view the interview are present (i.e. Witness Supporter).
- This process will apply to all Magistrates and Crown Court cases

APPENDIX A

Viewing of Visually Recorded Evidence Prior to Trial

On at you made a visual recording to the police.

The matter is to be heard at Magistrates/
Crown Court on

The visual recording you made is being shown to you now in order that you may refresh your memory.

Persons present during viewing:

Date:		Time:	
Location of Viewing:			

Any comments made by the interviewee during viewing:

Signature of Officer present during viewing:

Name:			
Signature:			
Date:		Collar No.:	