

ACHIEVING BEST EVIDENCE IN CHILD SEXUAL ABUSE CASES – A JOINT INSPECTION

DECEMBER 2014

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FOREWORD

This inspection took place against the background of a significant increase¹ in reported child rape, rising by over a third in the last five years, and in light of the continuing concern about all aspects of child sexual abuse, highlighted by recent high profile cases and investigations. There has also been strong criticism of the way that the criminal justice process has failed victims of child sexual abuse. In this context, a decision was taken to look at the quality of the video recorded evidence of child abuse victims and its use in the prosecution process. This was to ascertain whether its suitability still stood up to scrutiny. It was also to determine whether it met the aims intended at its inception, to produce the best quality evidence for the trial.

Working together allows the Inspectorates to address issues that involve more than one criminal justice agency and which have a direct impact on the people who use the criminal justice system. It also produces a more rounded examination of issues that cut across the system and enables us to achieve more jointly than if just one Inspectorate acted alone.

This report sets out the findings from our inspection of both the police service's adherence to the *Achieving Best Evidence* (ABE) Guidance and Crown Prosecution Service's (CPS) evidential use of the resultant ABE recorded interview. It also determines whether the Guidance is providing children who have been raped and sexually exploited with the means of giving their best evidence, leading to a successful outcome.

In short, the inspection found that the Guidance is not achieving what it set out to do, which is achieving the best evidence. This is due in part to poor compliance by interviewers and the failure to properly record decisions and actions, with the rationale underpinning these. Immediate improvements could be achieved through better planning at the outset, supplemented by improved supervision of interviewers and better quality assurance of the recording. In turn, the CPS needs to improve feedback to the police about the quality of individual ABE interviews viewed for pre-charge advice, and subsequently about their use and effectiveness as evidence from the advocate to the case lawyer and police officer in charge. There is also an underlying tension between the need to obtain investigative material and the evidential package,² which will invariably form the child witness's key evidence in the case. Although the Guidance is clear about how to obtain both elements with a degree of separation, this is currently not happening in practice. This lack of clarity needs to be addressed through improved training and additional guidance.



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1 The rise in recorded rape offences committed against those under 16 years for the year ending March 2014 is a 37% increase when compared to the year ending March 2010 (5,679 in 2009-10 to 7,775 in 2013-14).

2 Evidence required for the file in order to consider the case at the pre-charge stage; and if charged, to present the case in court.

1 EXECUTIVE SUMMARY

- 1.1 It is over 20 years since a video recording of a child's interview could be presented at trial as their 'evidence-in-chief'.³ Guidance was originally drafted and published;⁴ it was intended to assist those responsible for conducting video recorded interviews with vulnerable, intimidated and significant witnesses as well as those tasked with preparing and supporting witnesses during the criminal justice process. The latest revised Guidance *Achieving Best Evidence in Criminal Proceedings* (ABE) was published in March 2011.⁵ Other practices have been introduced to assist witnesses giving evidence, such as advice on the structure of visually recorded interviews,⁶ the introduction of intermediaries⁷ to assist the interview process and at court, and the introduction of various special measures.⁸ Since the latest revision there have been a number of high profile child sexual abuse cases; this has been the impetus for, amongst other things, the launch of CPS child sexual abuse guidance⁹ and specialist training for the police and CPS. It is important to remember however, that all these measures supplement what is at the heart of the Guidance, the ABE recorded interview of the child witness containing the evidence-in-chief and investigative material. Despite all the other positive work in the criminal justice system, the quality of the ABE interview needs improvement. Many ABE interviews are not best evidence because the questioning techniques used are not those recommended by the Guidance and audio and visual quality can be variable.

Key findings

- 1.2 Inspectors found that there was poor compliance with the Guidance; this was despite many interviewers viewing it as prescriptive rather than best practice. Where there was a departure from the Guidance, the rationale was not recorded. Inspectors were told about elements of the Guidance that could constitute good practice, but often that practice had fallen out of use or was not used as a platform to drive improvement.
- 1.3 The quality of accommodation where children are interviewed needs improvement: in general it was not child-friendly. On a more positive note, where there had been feedback in the past from the CPS, or the judiciary, improvements had been made or the accommodation in question had ceased to be used.

3 The purpose of examination-in-chief is to adduce by putting proper questions which are not in leading form, relevant and admissible evidence which supports the contentions of the party who calls the witness.

4 The Criminal Justice Act of 1991 determined that a child's evidence-in-chief could be presented at trial by means of a videotaped interview held by a police officer and a social worker. The *Memorandum of Good Practice on Video Recorded Interviews with Child Witnesses for Criminal Proceedings* (1992) contained the initial guidance, which was subsequently updated by *Achieving Best Evidence* in 2002.

5 *Achieving Best Evidence in Criminal Proceedings*, Ministry of Justice, 2011. www.justice.gov.uk/downloads/victims-and-witnesses/vulnerable-witnesses/achieving-best-evidence-criminal-proceedings.pdf

6 The revised edition of ABE (2011) incorporates guidance set out in *Advice on the Structure of Visually Recorded Witness Interviews* (Association of Chief Police Officers (ACPO) 2010, revised 2013). This was produced following discussion between ACPO and senior members of the judiciary. <http://library.college.police.uk/docs/APPREF/ACPO-Witness-Interview-Structure-2013.pdf>

7 Registered Intermediaries can assist vulnerable witnesses and victims who need assistance with communication during an investigation and at trial in order to achieve their best evidence.

8 The Youth Justice and Criminal Evidence Act 1999 provides for a range of special measures to enable vulnerable or intimidated witnesses in a criminal trial to give their best evidence; measures include screening in court; giving evidence via 'live link'; evidence given in private; removal of wigs and gowns; examination through an intermediary; aids to communication; and, currently being piloted, video recorded cross-examination and re-examination.

9 *Guidelines on Prosecuting Cases of Child Sexual Abuse*, CPS, 2013. www.cps.gov.uk/legal/a_to_c/child_sexual_abuse/

- 1.4 Intermediaries are not generally being used during the interview process, even for very young children. The reasons for this varied, but police forces need to promote their use and effectiveness at operational level. This links with the need to conduct better assessments of the child prior to the interview. The absence of an assessment was compounded by poor planning. There was a paucity of plans and record keeping was generally poor. The absence of effective planning was the root of the many failings observed, from establishing rapport and ensuring all ground rules are covered, through to dealing appropriately with the importance of telling the truth. The lack of planning meant that interviewers did not deal with the free narrative¹⁰ as well as they might, and questioning often blurred the lines between the evidential and investigative packages. Little thought was given in advance to dealing with the way the child might present in interview and what approach would be adopted if this became an obstacle.
- 1.5 Better planning would improve the manner of questioning and summarising. It would also limit the need for an interviewer to consult a colleague outside the interview room, leaving the child alone, or speaking, sometimes inappropriately, through an ear piece. There is little formal review or feedback by police supervisors on the conduct of ABE interviews and many supervisors had neither the capacity nor formal training to undertake the task.
- 1.6 In turn, there was very little early investigative advice from the CPS, which could have been used to speed up the process and prevent lengthy delays between arrest and charge. The CPS pre-charge advice did not refer to the quality of the ABE recorded interview, nor was there any quality assurance of these interviews by CPS managers. There was limited feedback between the CPS and police about the quality of individual ABE interviews viewed for pre-charge advice, and subsequently about their use and effectiveness as evidence from the advocate to the case lawyer or police. Although there was greater awareness by the CPS than the police of the benefits of intermediaries at trial, special measures meetings with the child about how their evidence would be given, which were often combined with court familiarisation visits, were conducted in the absence of the lawyer due to resource issues.

Conclusion

- 1.7 The evidential importance of the ABE interview cannot be overstated; this is often the key element underpinning a prosecution. In this context it is vital that there is a quality product because it invariably forms the evidence-in-chief of the witness. Currently the failure to apply the Guidance and adhere to the underpinning principles means that the best evidence is not always achieved. There is a tension between the need to obtain evidence as examination-in-chief for court and the need to obtain material for an effective investigation; the police tend to emphasise the latter, the legacy of training for statement taking and suspect interviews. The Guidance is clear that both can sit comfortably within the ABE recorded interview format, but there needs to be a clear separation. This would result in discrete recorded evidence for court, distinct from the investigative aspect of the interview, which in turn would require limited editing. The benefits are better and clearer evidence which flows, better case management by reducing the time needed to undertake editing requirements for trial, and a better service for child witnesses. The key to this is ensuring that officers understand the dual purpose of the interview process and the importance of sound planning to achieve it.

¹⁰ The Guidance states that interviews should consist of the following four phases: establishing rapport; initiating and supporting a free narrative account; questioning; and closure.

- 1.8 The starting point is to ensure that those most suited to this type of evidence gathering are trained and accredited by their force. However, police forces should cease training large numbers of officers who do not take part in sufficient interviews to maintain or improve their skills. Improved training within forces should include the rationale for the Guidance, with better understanding of the evidential and advocacy aspects required, with greater input from the CPS or counsel who undertake this specialist area of casework. The CPS also has a responsibility in driving up quality by feeding back to the police where there are deficiencies, as well as ensuring that the benefits derived from the intervention of an intermediary during the investigation and trial are optimised.
- 1.9 There needs to be greater emphasis on planning. There appears to be better planning for suspect interviews and statement taking than this equally skilled form of interviewing. It is also worth noting that the final package is intended as the evidence of a key witness; it would be a foolhardy advocate who adopted the practice of undertaking examination-in-chief of a vulnerable witness without any preparation.
- 1.10 Any future revision of the Guidance needs to address a number of issues. Officers we spoke to during the inspection asked for more guidance on how best to conduct interviews with children in child sexual exploitation cases, which can be complex and involve a series of interviews over a period of time. There is currently no guidance as to the optimum length of interviews. Longer interviews can sometimes lead to unfocussed accounts and more opportunities for inconsistencies, which will obviously impact on the editing process. Finally, the police clearly see the ABE interview as a tool for wider evidence gathering to produce the investigation package, whereas those using it at court require it to be probative evidence in the case, with greater emphasis on the evidential package; reconciling this dichotomy has to be at the core of any revision.
- 1.11 With the advent of pre-recorded cross-examination, which is currently being piloted, it is vitally important that the ABE recorded interview is conducted properly at the outset in order to enable the defence advocate to cross-examine in advance of the trial effectively; ultimately this avoids the need for the child to attend the trial altogether. To achieve this aim, the current practice in relation to ABE recorded interviews requires significant improvement.
- 1.12 We inspected a limited number of police force areas, but the key themes (highlighted above) are likely to be relevant for all force areas. In the light of our findings we make the following recommendations:

-
- 1 The Ministry of Justice should ensure that any further revision of the *Achieving Best Evidence* Guidance should include:
- advice to assist police officers dealing with complex cases and where a series of interviews are undertaken;
 - advice on the process of opting out of the video interview to ensure it is used and explained where appropriate, and the provisions when a child changes their mind prior to the trial; and
 - a booklet or aide memoir to assist police staff in their pre-assessment and planning for interview to improve recording of: the pre-assessment; considerations on engaging an intermediary; the consent of the child to be interviewed; the explanation of opting out of video interview as evidence-in-chief; planning the interview; ground rules; and demonstrating truth and lies (paragraph 4.44).
-

2 All police forces should ensure interviewers and interviews better adhere to *Achieving Best Evidence* Guidance:

- all forces need to ensure that some structured self-evaluation by interviewers takes place, including a review of the interview recording and plan, and that these evaluations are assessed on a regular basis by interview advisors, or by accredited supervisors; and
 - supervisors should monitor and review interviews and paperwork appropriately, for example they should be involved in the development of interview plans for complex investigations and should review video recordings prior to any trial where it is intended they be played as evidence-in-chief (paragraph 4.44).
-

3 Police forces should review Achieving Best Evidence suite provision, capacity and accessibility with children in mind to ensure:

- the suites are suitably sited;
 - the quality and reliability of both fixed and portable recording equipment;
 - the availability of appropriate interview props and communication aids; and
 - suitable facilities are available for children and police staff to watch their interviews and to refresh their memories before attending court (paragraph 5.14).
-

4 Police forces should ensure:

- intermediaries are considered and used where appropriate; and
 - the rationale and decision for their use or not are recorded (paragraph 6.7).
-

5 The CPS should ensure intermediaries are considered for use at court in every case involving a child witness and a written record is maintained of the decision, particularly of the rationale where an intermediary is not used (paragraph 6.8).

6 Police forces and the CPS should ensure that:

- the Achieving Best Evidence interview is of sufficient visual and sound quality for the prosecution team, defence and court;
 - arrangements are in place to enable feedback to be given by the reviewing lawyer to the interviewing officer on the quality of the interview with the child; and
 - local arrangements for the joint management of the investigation and prosecution of cases of child sexual abuse use shared data to systematically monitor performance and drive improvements in accordance with the recommendations in this report and other relevant reports and guidance (paragraph 7.24).
-

- 7 Police forces should ensure that there is proper labelling, tracking and storage of Achieving Best Evidence (ABE) recorded interviews:
- every copy of an ABE interview (master, original and edited) should have a unique reference number;
 - each force should review its storage of the master and the exhibited edited copy of the ABE interview, and all further copies of the interview which are made should be registered; and
 - each force should ensure those who are video interviewed should be given clear undertakings for how their interview will be retained and used (paragraph 8.6).
-
- 8 The CPS should ensure that there is proper labelling, tracking and storage of Achieving Best Evidence (ABE) recorded interviews and that every copy of the ABE interview (original and edited) is tracked and a record is maintained of all movements (paragraph 8.6).
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- 9 Police forces should ensure that the officer in charge is consulted about the editing of Achieving Best Evidence interviews (paragraph 8.12).
-
- 10 The CPS should ensure that the reviewing lawyer is consulted about the editing of Achieving Best Evidence interviews and that any editing is undertaken prior to trial to allow the witness to refresh their memory (paragraph 8.12).
-
- 11 Police forces should:
- review their current practice and training to ensure that it supports and is compliant with the *Achieving Best Evidence* (ABE) Guidance 2011;
 - incorporate opportunities for police officers and staff to improve interview skills through practice interviews with children and young adult role players;
 - ensure that, in order for police officers and staff to maintain their accreditation, attendance at refresher training is available and mandatory, and involves the evaluation of ABE interviews with feedback provided; and
 - involve the CPS in training courses, particularly in relation to interview structure and questioning style (paragraph 10.3).
-

2 INTRODUCTION

Background

- 2.1 It is over 20 years since the *Memorandum of Good Practice on Video Recorded Interviews with Child Witnesses for Criminal Proceedings* was originally drafted and published: this was subsequently updated by *Achieving Best Evidence (ABE)* in 2002. Compliance with *Achieving Best Evidence* supported by effective training is likely to maximise the quality of interviews with child witnesses and is likely to benefit the interviewer, witness, practitioners and the courts. Whilst the Guidance is advisory, “*Significant departures from the good practice advocated in it may have to be justified in the courts*”.¹¹
- 2.2 In July 2009, the NSPCC and the Nuffield Foundation published a report: *Measuring up? Evaluating implementation of Government commitments to young witnesses in criminal proceedings*¹² setting out government policies and comparing them to the experiences of young witnesses in 74 courts across England, Wales and Northern Ireland. They concluded that the reality faced by young witnesses in court fell short of the standards set out in government policies and made recommendations for improvement. In response to the recommendations the Ministry of Justice (MoJ) drew up an action plan, leading to the 2011 revision of ABE Guidance and other measures.
- 2.3 The revised third edition of *Achieving Best Evidence* took into account the publication of the Association of Chief Police Officers’ (ACPO) guidance *Advice on the Structure of Visually Recorded Witness Interviews* (2010). The ACPO guidance was revised as a result of feedback from a number of sources about problems with the way visually recorded interviews are conducted and how they translate into evidence at court.
- 2.4 The revision also considered the ACPO *National Investigative Interviewing Strategy* guidance (2009) and the importance of workplace assessments for interviewers to maintain good quality visually recorded statements, because training alone was unlikely to be effective. It recommends a means of quality assuring interviews on an ongoing basis while developing, maintaining and enhancing the skills of interviewers. It also takes account of amendments to the Youth Justice and Criminal Evidence Act 1999¹³ special measures provisions which:
- raised the upper age limit of child witnesses automatically eligible for special measures from those under 17 to include those under 18; and
 - provided child witnesses with more choice and flexibility about how they give their evidence.

11 *Achieving Best Evidence*, paragraph 1.1.

12 *Measuring up? Evaluating implementation of Government commitments to young witnesses in criminal proceedings*, Joyce Plotnikoff and Richard Woolfson, 2009. www.nspcc.org.uk/globalassets/documents/research-reports/measuring-up-report.pdf

13 As amended by the Coroners and Justice Act 2009.

Context

- 2.5 On 6 March 2013 the then Director of Public Prosecutions (DPP), Sir Keir Starmer KCB QC delivered a speech¹⁴ which highlighted the review into Operation Span (the Rochdale grooming case),¹⁵ the Savile report¹⁶ by Alison Levitt QC, the then CPS Principal Legal Advisor and the Yewtree report.¹⁷ In that speech he also made reference to Baroness Stern's report dated March 2011,¹⁸ which, although predominantly dealing with allegations of rape, concluded that "*policies are not the problem. The failures are in the implementation*".
- 2.6 The DPP referred to a swift review conducted by ACPO that revealed there were 19 practice guidelines dealing with child sexual abuse (CSA) which dated from 2002 through to 2013; some were national and some were for police and partner agencies. The Director agreed with the ACPO view that an overarching and consistent approach to dealing with cases of CSA was needed, and announced that this would be promulgated by the then newly established College of Policing.
- 2.7 In summary, the aim was to promote three measures:
- to produce an overarching single set of guidelines to replace previous guidance and policies;
 - to deliver specialist training to the police and CPS; and
 - to set up a national scoping panel.
- 2.8 Draft interim guidelines were produced in June 2013 and a three month public consultation followed. The final CSA guidelines were published in October 2013¹⁹ (and implemented on 1 January 2014). On the same day, the joint protocol for information sharing²⁰ in child abuse cases was published, whereby police and prosecutors are expected to share and seek appropriate information about vulnerable youngsters with and from Social Services, schools and family courts in accordance with the protocol and a good practice model.

14 *The criminal justice response to child sexual abuse: time for a national consensus*, Sir Keir Starmer KCB QC, Director of Public Prosecutions.

15 On 6 May 2012, the CPS secured convictions in Operation Span in Rochdale, the first case to start a serious debate about grooming and sexual exploitation of young and vulnerable victims. The defendants in that case were found guilty of serious serial sexual abuse, including multiple rapes, and sentences as long as 19 years were imposed on the main protagonists. But the case only succeeded because an earlier decision not to proceed, taken in 2009, was re-examined and reversed.

16 *In the matter of the late Jimmy Savile. Report to the Director of Public Prosecutions*, Alison Levitt QC, 2013. www.cps.gov.uk/news/assets/uploads/files/savile_report.pdf

17 *Giving Victims a Voice. Joint report into sexual allegations made against Jimmy Savile*, Metropolitan Police Service and the NSPCC, 2013. www.nspcc.org.uk/globalassets/documents/research-reports/yewtree-report-giving-victims-voice-jimmy-savile.pdf

18 *The Stern Review. A report by Baroness Vivien Stern CBE of an independent review into how rape complaints are handled by public authorities in England and Wales*, Government Equalities Office/Home Office, 2011. http://webarchive.nationalarchives.gov.uk/20110608160754/http://www.equalities.gov.uk/PDF/Stern_Review_acc_FINAL.pdf

19 *Guidelines on Prosecuting Cases of Child Sexual Abuse*, CPS, 2013. www.cps.gov.uk/legal/a_to_c/child_sexual_abuse/

20 *2013 Protocol and Good Practice Model. Disclosure of information in cases of alleged child abuse and linked criminal and care directions hearings*. The senior judiciary (the President of the Family Division and the Senior Presiding Judge) are signatories to the 2013 protocol. The protocol is also formally supported by the Association of Chief Police Officers, Association of Directors of Children's Services, Association of Independent Local Safeguarding Children Board Chairs, Department for Education, HM Courts and Tribunals Service, Local Government Association, and the Welsh Government. www.cps.gov.uk/publications/docs/third_party_protocol_2013.pdf

- 2.9 The College of Policing commenced delivery of a training package aimed at providing guidance and practical advice to front-line police. Alison Levitt QC also delivered national training to police and CPS specialists using her report as a basis for that training.²¹ The two-part master class involved training for lawyers regarding decision-making and the lessons arising out of the Savile case for existing rape specialists. During 2013 the CPS also developed a new e-learning course following the publication of the CSA guidelines; this is mandatory for all prosecutors.
- 2.10 The National Child Sexual Abuse Panel was set up in March 2013 to review previous allegations of child sexual abuse in which the police or CPS previously decided no action should be taken. The panel of five experts consists of a Chief Crown Prosecutor, an ACPO rank police officer, a specialist prosecutor, an experienced child abuse police investigator, and an independent representative from either the NSPCC or the Office of the Children’s Commissioner for England.
- 2.11 In addition, further training for CPS CSA specialists has been developed and there are also plans to update the CPS special measures legal guidance²² during 2014. Measures have been undertaken to improve the victim and witness experience during trial through the ‘ticketing’²³ of prosecution counsel for rape and child sexual abuse cases. Advocates prosecuting cases on behalf of the CPS are required to fulfil the panel requirements of experience, specialism and regular training.
- 2.12 A number of toolkits have been developed to support advocates in response to a recommendation of the Advocacy Training Council report, *Raising the Bar: the Handling of Vulnerable Witnesses, Victims and Defendants in Court* (2011).²⁴ These provide advocates with general good practice guidance when preparing for trial in cases involving a witness or a defendant with communication needs; these are available on the Advocate’s Gateway.²⁵
- 2.13 Finally, the new Criminal Procedure Rule 3.8(4)(d) requires courts to take every reasonable step to facilitate the participation of the witnesses and defendants; this includes ground rules hearings to discuss how a vulnerable person should be questioned. The hearings have been obligatory in trials involving an intermediary since 2010 but the new guidance emphasises that they need to be scheduled in any case involving a vulnerable witness or defendant.

Intermediaries

- 2.14 The Ministry of Justice recruited and trained Registered Intermediaries for the criminal justice system to provide assistance in communicating with witnesses before trial and during the witness’s evidence.²⁶ If a police officer identifies that a child’s communication might benefit from the use of an intermediary, the intermediary can assess the witness and help the police officer plan the best means of communicating in the ABE recorded interview. The intermediary should then write a report for court enabling the trial judge to set ground rules with the advocates on how to question the witness.

21 *Lessons learnt from the decision not to prosecute Jimmy Savile.*

22 www.cps.gov.uk/legal/s_to_u/special_measures/

23 Prosecution advocates are selected from a panel of trained and experienced specialists.

24 Recommendation 13: “All advocates be issued with ‘toolkits’ setting out common problems encountered when examining vulnerable witnesses and defendants, together with suggested solutions...” www.advocacytrainingcouncil.org/images/word/raising%20the%20bar.pdf

25 Free access to practical, evidence-based guidance on vulnerable witnesses and defendants. www.theadvocatesgateway.org

26 Best practice is set out in the *Registered Intermediary Procedural Guidance Manual*, Ministry of Justice, 2011. www.cps.gov.uk/publications/docs/RI_ProceduralGuidanceManual_2012.pdf

2.15 One intermediary service describes its aims as: “*Not to speak for children, but to reposition children and young people in society as competent communicators and active agents in their own lives.*”²⁷

2.16 Research on very young victims and witnesses shows:

- very young children can give reliable and accurate evidence;
- very young children are particularly vulnerable, both to maltreatment and to inept adult questioning; and
- the communicative competence of very young child witnesses depends heavily on the competence of interviewing teams, intermediaries, advocates and the judiciary.²⁸

2.17 The Right Honourable Lord Judge, the Lord Chief Justice of England and Wales, speaking about the evidence of child victims in the Toulmin Lecture 2013 said:

- “*First we have yet to establish the full use of the intermediary systems in these cases.*
- *Second we have not yet fully answered the question whether it is necessary for the child witness ever to come to court at all, and whether for some of them, at any rate, attendance at trial cannot be arranged in a more congenial place, with necessary safeguards to ensure judicial control over the trial process and the safeguarding of the interests of the defendant.*
- *Third we have not yet, established full judicial insistence that questions of a young witness should be open ended.....*
- *Fourth we must make sure that all the provisions which have been introduced as best practice are in fact implemented.*”²⁹

These issues need to be addressed to improve the quality of evidence obtained and the experience of the criminal justice process for child witnesses.

2.18 In addition to the use of intermediaries as support whilst giving evidence, Victim Support currently provide a Young Witness Service at eight locations,³⁰ which delivers intense pre and post-trial support to young witnesses, as well as other projects specifically aimed at young victims and witnesses.

27 Triangle - www.triangle.org.uk

28 *How Young Is Too Young? The Evidence of Children Under Five in the English Criminal Justice System*, Ruth Marchant in *Child Abuse Review* vol 22 issue 6, 2013. <http://onlinelibrary.wiley.com/doi/10.1002/car.2273/abstract>

29 *Half a Century of Change: The Evidence of Child Victims*, The Right Honourable the Lord Judge Lord Chief Justice of England and Wales, Toulmin Lecture in Law and Psychiatry, King's College London, 2013. www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Speeches/lcj-speech-law-and-psychiatry.pdf

30 Young Witness Service (Essex & Hertfordshire, Greater Manchester, Kent, Nottinghamshire, Surrey, Sussex, South Yorkshire, Thames Valley).

Next steps

- 2.19 The CPS is working closely with the Ministry of Justice to pilot pre-recording of cross-examination³¹ for witnesses aged under 16 to enhance the quality of their evidence. A protocol between the police and CPS is in place, as is a process model for the pilots currently underway in Liverpool, Leeds and Kingston-Upon-Thames. Evaluation of the pilot will take place upon its conclusion.
- 2.20 It is understood that a further revision of the ABE Guidance will take account of the findings and recommendations of this joint inspection.

The report structure

- 2.21 This report follows a case through the investigation, with the police input to the ABE interview process to the prosecution and presentation of the case at court where the ABE interview is reviewed and used as key evidence in the case. We have dealt with the facilities for, and evidential quality of, the ABE interview and with intermediaries in separate sections because they overlap both the investigation and prosecution aspects of a case. We conclude by looking at the current landscape of police and CPS training.

Methodology

- 2.22 The joint inspection team visited six police force areas and interviewed operational staff and leads within the CPS and police force who handle child sexual abuse cases. Ten files from each area were viewed by both Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) inspectors against agreed criteria. A number of these files contained more than one recorded ABE interview because there was more than one witness in the case; HMIC inspectors reviewed 69 recorded ABE interviews while HMCPSI inspectors studied the same interviews and an additional two (71 in total). The methodology is set out in Annex A, the file reading data is set out at Annex B and the glossary at Annex E. In addition, a copy of a feedback form to the police dealing with the quality of an ABE interview is included at Annex C and issues highlighted in relation to third party material, not within the scope of this inspection, are detailed at Annex D.

³¹ Section 28 Youth Justice and Criminal Evidence Act 1999 for witnesses aged under 16 or witnesses suffering from a mental disorder, have a significant impairment or have a physical disability. The objectives behind the introduction of section 28 are: to facilitate improvement in the experience of witnesses by enabling them to give evidence at an earlier stage in proceedings, when their recollection of events is likely to be fresher; and to maximise the potential for earlier resolution of hearings as cross-examination might strengthen the prosecution case, thus encouraging the entering of a guilty plea, or it may result in the conclusion that there is no longer a realistic prospect of conviction.

THE INVESTIGATION

3 PRE-INTERVIEW

Policy

- 3.1 All of the six forces inspected required officers to comply with the national Ministry of Justice *Achieving Best Evidence in Criminal Proceedings* Guidance on interviewing victims and witnesses and guidance on using special measures (the Guidance). Although the latest Guidance has been in place since March 2011, inspectors found that some officers were still following earlier versions.
- 3.2 Overall, inspectors found greater coherence and consistency in ABE interview practice and related investigations in forces with a centralised and specialist model for the management of child protection. There was less consistency of approach where child sexual exploitation and/or child rape were dealt with by non-specialist officers.
- 3.3 One force visited had reviewed the demand for ABE interviews (in 2011 and again in 2013), to ensure that it had both the capability and the capacity to conduct interviews to the required standard. Officers were asked about the currency of their training and experience. In some cases, accreditation was removed from officers whose knowledge and experience was dated, or who were judged to have acted inappropriately in interview. Inspectors regarded this as good practice. All forces should consider regularly reviewing their capability and capacity to complete ABE interviews to the required standard. Accreditation should be suspended or removed where necessary, and the specialist skills of sufficiently trained interviewers should be routinely refreshed and maintained through training and practical application.

Planning

- 3.4 In only 13 of the 69 interviews viewed by inspectors was there evidence that the interviewer had completed a pre-interview assessment. In 28 of the 69 interviews, no assessment of the needs and capabilities of the child had been completed and in a further 28, the absence of a record on the case file made it impossible to determine whether such an assessment had taken place. If assessments were undertaken they were rarely recorded in investigation logs, or disclosed within case files. There were only ten interviews in the sample of 69 where the specific needs of the child (physical, sexual, social, cognitive or linguistic) were recorded as being considered and in 53 interviews there was no record of the specific needs of the child having been considered.
- 3.5 The Guidance is clear that “*The witness’s gender, race, culture and ethnicity must always be given due consideration....Where the witness expresses a particular preference for an interviewer of either gender or sexual orientation or from a particular race, cultural or ethnic background, this should be accommodated as far as is practical*”.³² Inspectors observed interviews where the gender of the interviewer appeared to adversely influence the child’s willingness to speak: in some cases the interview had to be stopped.

32 *Achieving Best Evidence*, paragraphs 2.180-2.181.

- 3.6 In 30 interviews there was a record that the child had consented to participate. One force regularly asked for the child's consent (following a decision by the force to incorporate this as part of the ground rules within the child's interview). However, in the other five forces, inspectors saw no clear evidence that children had made informed choices about whether to participate in a video interview or make a statement.
- 3.7 Inspectors saw few records of discussions with children about their right to opt out of participating in a video interview in favour of giving a written statement (detailed at paragraphs 2.31 and 2.32 of the Guidance), although by the nature of this inspection, only files which contained ABE interviews were considered. Two forces had created a presentation for staff with a step-by-step process for establishing opt out provisions for a victim. However, the majority of forces inspected did not have a structured approach to ensure that opt out was explained and used where appropriate, nor was there guidance for officers dealing with children who changed their mind prior to court, deciding to give evidence-in-chief by participating in a video interview.
- 3.8 For the most part the view of the judiciary and lawyers spoken to was that the recorded interview was the default position and special measures were not being assessed in full. However, in view of the risks it may be appropriate to conduct an ABE recorded interview in all cases, leaving the informed decision as to the method of giving evidence for the special measures meeting with the prosecution team (paragraph 9.5), particularly given the implementation at pilot sites of the provisions for pre-recorded cross-examination under section 28 of the Youth Justice and Criminal Evidence Act 1999.
- 3.9 In forces where there was structured guidance, in the form of a booklet for completion prior to an ABE interview, inspectors considered that officers completed better assessments and formally considered and recorded the child's competency to give evidence. These booklets were also often used to record interactions and rapport building with the child. However, in several booklets examined there were many pages where details of the child's account were recorded. In one booklet, inappropriate and detailed closed questions had been used in advance of formal interview; this is neither relevant nor necessary when an interview is due to take place shortly thereafter.
- 3.10 In one of the booklets assessed, guidance stated that ground rules completed prior to interview should be recorded again on DVD. In practice, this did not always happen, particularly in relation to the child's awareness of truth and lies.
- 3.11 Police officers in focus groups provided a range of explanations for failure to record assessments prior to interview or interview planning:
- the majority of officers cited time pressures, the fact that ABE interviews are generally completed quickly, sometimes due to lack of trained staff or the availability of ABE interview suites, and pressure from managers to complete investigations expeditiously and arrest suspects;
 - the assessment of the child is completed in joint visits and strategy meetings with children's social care staff and recorded elsewhere other than in case files; and
 - the assessment and planning is recorded elsewhere and either not disclosed, or disclosed but not found with the court case papers reviewed as part of this inspection.

- 3.12 Some officers said that planning was ineffective because a good interviewer needs to be flexible and respond to the child's narrative. Prosecutors and the judiciary interviewed were critical of the lack of planning which contributed to or resulted in a poor and unfocussed interview; for example, points to prove were overlooked or there was no strategy for dealing with difficult answers or non-responses during interview. This had, in one of the interviews, resulted in the need for re-interview. In 49 of the 69 interviews viewed there was no record of a pre-interview plan.
- 3.13 The Guidance is clear; no interview should be conducted without proper planning. Some of the ABE interviews viewed by inspectors were indicative of insufficient or no planning. This is equivalent to the court advocate undertaking examination-in-chief without any preparation.
- 3.14 We deal with the consideration and use of intermediaries during the investigation (and at trial) at chapter 6.

Timeliness

- 3.15 Most interviews viewed by inspectors were completed shortly after the crime was reported, although in one case, inspectors considered the interview to have been conducted too soon.

Case study: The nine year old complainant was medically examined and straight after that examination the police attempted to conduct an ABE recorded interview. The needs of and support for the child in this case were secondary to the process and progress of the investigation. The pre-charge decision referred to the fact that one would not expect this in relation to an adult complainant.

- 3.16 In rare cases inspectors saw long delays, including a delay of five months before the interview of a five year old boy.

4 THE INTERVIEW

- 4.1 The Guidance recommends the use of a phased approach for the interviews of children and vulnerable witnesses.
- 4.2 The Guidance states that interviews should consist of the following four phases:
- establishing rapport;
 - initiating and supporting a free narrative account;³³
 - questioning; and
 - closure.
- 4.3 Some flexibility around the phased approach may be appropriate in cases where there are particular communication challenges. However, the process provides a clear legal framework and should not be departed from by interviewers unless there are sound reasons for doing so, which in turn should be recorded.

Establishing rapport

Preliminaries

- 4.4 Of the 69 interviews reviewed by inspectors, 65 were conducted by a lone police officer. When there were two police personnel in the interview room, typically one was present only to operate the equipment and take notes.
- 4.5 Police officers in focus groups told inspectors that lone interviewing was general practice, this was said to be because too few trained staff were available, or in some forces, concern that children could feel overwhelmed by the presence of two interviewers. There were no examples where a second interviewer, either a police officer or a social worker, took an active and effective role in the interview process.
- 4.6 In the majority of cases, in line with the Guidance (at paragraph 3.7) the interviewer stated the day, date, time and place of the interview and gave details of those present.

Social workers

- 4.7 There were nine occasions where a social worker was present in the interview suite when a child was interviewed. In five of these, the social worker was present in the interview room as support but overall, inspectors found little evidence that social workers were involved in interviews with children. There were several reasons cited by police officers during interview, including: the lack of trained social workers; the movement or promotion of social workers once trained; and social workers' lack of confidence even where they had been trained. This, in turn, was attributed to limited experience of interviewing. Local Authority areas where trained social workers conducted ABE interviews on a rota basis completed joint interviews more frequently.

33 The free narrative is where the witness is asked to give an uninterrupted account in their own words of what they remember, without specific prompts from the interviewer.

- 4.8 Forces should review their current interview procedure with children's social care services within their force area to ensure that it is in line with the Guidance. Where social workers are not regularly interviewing or monitoring interviews with children, arrangements need to be in place to ensure that they are still able to gather the information required to safeguard the child, without requiring the child to repeat their story.

Neutral interview topics

- 4.9 In the majority of cases, interviewers moved swiftly from introduction, through ground rules, straight to free narrative and questioning. Interviewers rarely engaged the child in neutral questions unrelated to the event. Where neutral topics were included at the start of the interview, discussions were completed in an appropriately short space of time.

Ground rules

- 4.10 The Guidance states that clear ground rules should be set out at the start of the interview. Witnesses should be informed that they should say if they do not understand or do not know the answer to a question, and that they should point out where the interviewer has misunderstood or incorrectly summarised. The Guidance also states that it is crucial that the interviewer informs the witness that the interviewer was not present at the event therefore does not know what occurred and so supplying detail is important.
- 4.11 There was significant variation within and across the forces inspected in the extent to which ground rules were fully covered in opening discussions. In many cases, some, but not all elements of the ground rules were outlined to the child. The Guidance was followed fully in only ten interviews, seven of which were from the same force area. There were also ten interviews where none of the ground rules were covered. The data can be found at Annex B.
- 4.12 Different pro-forma templates, logs and prompts were being used in each of the forces we inspected, and in some cases there were different approaches within forces.

The importance of telling the truth

- 4.13 The Guidance states that child victims and witnesses should be advised to give a truthful and accurate account of any incident they describe and that suitable examples should be used in order to gauge the child's understanding and commitment.
- 4.14 There was little consistency in the way the forces we inspected approached this. Truth and lies assessments were undertaken in 41 of the interviews reviewed. Of these, 25 interviewers used the example recommended within the ABE Guidance. It was common for interviewers to replace assessments carried out in line with the Guidance with simple statements about the importance of telling the truth.
- 4.15 In one force, interviewers were observed (on video) tearing up a piece of paper and throwing it onto the floor, then discussing a hypothetical account with the witness to assess their understanding of truth and lies. Interviewers did not always then go onto to demonstrate the intent to deceive in accordance with the Guidance. Another example involved a ten year old being asked, "*so in your own words what do you think the truth means?*".

- 4.16 In some cases, interviewers mentioned speaking to the witness prior to the interview about ground rules and truth and lies; however, in some cases where the force's own guidance stated that discussions about ground rules completed prior to interview should be recorded again during the interview, compliance was inconsistent. Overall, compliance with ABE Guidance in relation to truth and lies was poor.
- 4.17 Paragraph 3.18 of the Guidance states: "*There is no legal requirement to do this, but since the video may be used as evidence, it is helpful to the court to know that the child was made aware of the importance of telling the truth*". Inspectors were told of a successful challenge in one area to the admissibility of the interview based on the competence of the witness where truth and lies was not recorded; this resulted in the case being discontinued. We understand there have been further challenges in other cases. Members of the judiciary interviewed supported the view that truth and lies assessments should be conducted on camera, because of the significance to the jury in assessing the credibility of the complainant's first detailed account. The Guidance would benefit from revision to further emphasise the importance of recording truth and lies assessments as part of the ABE interview.

Free narrative account

Initiating a free narrative account

- 4.18 A free narrative account of events was invited by interviewers in 62 of the 69 interviews. Similarly, in the majority of interviews (53), witnesses were allowed to speak freely without interruption when delivering their opening account.

Supporting a free narrative account

- 4.19 There were some good examples in several of the interviews examined, where interviewing officers supported a free narrative. In some, officers actively encouraged witnesses to continue with their account and expand on information already provided. However, there were examples of unwarranted and unnecessary interruption and little evidence of active listening. In contrast, there were also examples where there was too much free narrative and the interviewer failed to control the interview. Many officers adopted an over-prescriptive approach to this aspect of the Guidance resulting in long pauses.
- 4.20 It was rare for interviewers to reflect back the statements of the witness or encourage further free recall. Interviewers tended to move to specific and detailed questioning at the earliest opportunity. Even when witnesses made disclosures about key incidents and offences during their free narrative, interviewers tended to concentrate on background information before returning to the offence(s) at the end of the interview.

Case study: The free narrative was interrupted but for the right reasons. The interviewer controlled the witness well and tried to keep her mind focused on giving evidence in a chronological way "*tell me about that in a moment – let's just talk about the first time now*". The interviewer had a very effective approach with the witness and clearly listened to what she was being told. The interviewer focused on the evidence throughout. Although it was a relatively lengthy interview, she kept the witness focused so that the evidence came chronologically and was easy to follow.

Questioning

4.21 In most cases, interviewers told the witness that they would be asking them some questions about what they had already said to expand upon it and clarify relevant points. The Guidance highlights it may be beneficial to restate a number of the ground rules outlined in the rapport stage, but inspectors found that it was very rare that these ground rules were re-iterated at this stage or that the witness was advised that it was acceptable to say that they didn't understand or didn't know the answer to a question.

Structure

4.22 The Guidance recommends that having taken an account from the witness during the free narrative phase, the interviewer should organise the interview in manageable topics. The Guidance goes on to say that where a topic needs further coverage, the interviewer should use an appropriate technique, such as an open-ended question, to gain additional information. The interviewer should then probe systematically until all relevant material has been obtained.

4.23 In most of the 69 cases reviewed, interviewers were adept at identifying key events and incidents and witnesses were encouraged to provide detail. Interviewers were less effective in probing the events and incidents described to obtain further information (this occurred in 48 interviews) and in covering all key evidential points (which occurred in 53 interviews). In one case there had been a failure in the original witness interview to determine whether the suspect had known the age of his victim; lawyers requested a re-interview to clarify this point. This resulted in an unnecessary ordeal for a witness that could have been avoided.

4.24 The Guidance is clear that interviewers should try to avoid rapidly moving from one topic to another and back again; this is not helpful for the witness's recall processes and may confuse them. However, many interviews assessed by inspectors were disjointed and lacked an established chronology. Interviewers repeatedly moved between topics, often without obtaining all potential information or evidence relating to each key event or incident.

4.25 There were no cases assessed by inspectors where a separate interview was used for obtaining case specific information; this information is important to an investigation. The Guidance makes clear that this should be kept as separate as possible from the witness's account of the incident. Such questioning was always conducted within the main body of the evidential interview. It was very rare for a break to be offered during the interview. It was also common for interviewers to weave background and case specific information into the evidential part of the interview. Distraction of the witness from key evidential areas was apparent throughout such interviews.

4.26 Many interviewers allowed too much time to elapse before focusing on key evidential areas about the alleged incident or events. In some cases, witnesses became visibly anxious or tired, thus key aspects of evidence were covered when the witness was not in the best position to offer full and open recall.

Questions

4.27 Many interviewers used open-ended questions effectively. Questions beginning with words such as "tell" or "describe" were regularly used. Nevertheless, there was a widespread tendency to also pose specific closed questions throughout the interview, which tended to elicit shorter and less detailed responses. There were 30 interviews where specific closed questions were used, although the opportunity for continued open-ended questioning was apparent. There

was an over use of forced choice questions.³⁴ Where such questions were used, they were typically posed with a two option choice of response for the witness. It was rare for a forced choice question to be posed with the offer of a “don’t know” or “don’t remember” response, in addition to yes or no.

Case study: The free recall of a five year old witness was very short and blunt due to her age. However, she disclosed very early into the interview that she was orally, vaginally and anally raped and the evidence was largely obtained. She shut down after 30 minutes and lost interest in the questions yet the officer continued to question her.

4.28 The use of leading questions was common where a more open style of questioning would have been appropriate. This was observed in 58 interviews and affects the quality and potential admissibility of the evidence provided. In 24 cases, interviewers asked inappropriate, perception based or judgemental type questions.

Summarising

4.29 The Guidance states that interviewers should only summarise what the witness has said at the end of each topic if it is appropriate to do so and that interviewers should not simply summarise as a matter of routine. In the interviews assessed by inspectors, it was common for interviewers to summarise at the conclusion of each stage and at the conclusion of the interview. In some cases, interviewers inappropriately and consistently repeated intimate details of events back to the witness.

4.30 Members of the judiciary interviewed confirmed that the free narrative was generally good but that it was also usually followed by a lengthy recap of the evidence; this is seen as pointless, is invariably edited out and could be an unnecessary ordeal for the witness. Interviewing officers often misrepresented the evidence whilst summarising; this could be used to damaging effect in cross-examination to highlight perceived inconsistencies in the account.

Special considerations

4.31 In most cases, interviewers asked one question at a time and allowed time for the witness to answer fully before asking a further question. There were many examples of the good use of silence and several instances where interviewers demonstrated an understanding of the needs of the witness. However, some interviewers appeared impatient and regularly interrupted the witness. The quality of evidence in several interviews was adversely affected by oppressive interviewing, or by an interviewer’s reluctance to allow the witness to relay their account freely in their own time, in response to questions.

4.32 In 47 interviews key words used by witnesses to identify intimate body parts and sexual acts were clarified. In cases involving younger children, interviewers were generally consistent in using the witness’s own words throughout the remainder of the interview. Where appropriate, and normally with older children, interviewers typically clarified biological terms for body parts and sexual acts. Members of the judiciary indicated that it was inappropriate to ask a young child to explain sexual acts and colloquialisms which are obvious to older children, or adults; the use of body maps and diagrams should be used where there is ambiguity.

³⁴ Forced choice questions are closed questions which allow only a relatively narrow range of responses from the interviewee. This type of questioning should only be used as a last resort in ABE recorded interviews.

- 4.33 Too often interviewers focussed on concepts which present difficulties for children,³⁵ such as dates and times, length and frequency of events, and weight, height and age estimates. This was evident even in cases involving very young children.
- 4.34 The ABE Guidance states that when interviewers decide to repeat one or more questions later in an interview, even with changed wording, they should explain that it does not indicate that they were unhappy with the witness's initial responses but want to check their understanding of what the witness said. There were many instances where such reassurance was not given to the witness, including when interviewers returned from a conversation with a colleague acting as the interview controller.
- 4.35 An alternative approach was adopted in one force where interview controllers were sometimes linked to the interview room by an intercom or earpiece. This allowed controllers to liaise with interviewers in the presence of the witness. This was viewed as a better alternative to leaving a young witness alone by some practitioners but in practice could lead to intimate and personal matters being discussed whilst the witness could hear the conversation. In some such cases inspectors noted that, as a result, witnesses were visibly uneasy and uncomfortable.
- 4.36 Proper planning and a clear strategy at the outset may avoid either of these scenarios. In the absence of such planning, or where something unexpected arises, one option would be for the interviewer to be confident enough to stop the interview after free narrative, allowing the child a break and allowing the interviewer to gather his/her thoughts. The interview could then be resumed to clarify any necessary points. Some officers felt that this could lead to the defence arguing that a witness had been coached leading to inadmissibility arguments; a clear record of what occurred during the break should withstand such a challenge.

Closure

Recapping

- 4.37 There was little consistency within and across forces regarding the summarising of accounts during the final stages of the interview. Some interviewers resolutely summarised each aspect in detail, others provided no summary.
- 4.38 The interviewer provided the witness with an opportunity to ask questions or to add any further detail at the end of the interview in only half of the 69 interviews viewed by inspectors.

Closure

- 4.39 The closure stage of most interviews reviewed was brief. There was little evidence of interviewers ensuring that the witness was not distressed and it was rare for a witness to be thanked for their contribution. Interviewers rarely returned to a neutral topic before concluding the interview; this occurred in only 14 interviews.
- 4.40 Inappropriate praise or congratulations were communicated to the witness in several cases. Members of the judiciary and prosecutors interviewed were very critical of this judgemental practice.

³⁵ *Achieving Best Evidence*, box 2.7 (page 27).

Supervision

- 4.41 There was little consistent formal review or feedback of ABE interviews by supervisors or staff in the forces inspected. In general supervisors said they had neither the capacity, nor in some cases the relevant training, to enable them to oversee or review ABE interviews.
- 4.42 Although spot checks of ABE interviews had been completed in the past by some forces, officers do not generally receive feedback. All forces need to ensure that some structured self-evaluation by interviewers takes place, including a review of the interview recording and plan, and that these evaluations are assessed on a regular basis by interview advisors,³⁶ or by accredited supervisors.

Conclusion

- 4.43 The Guidance is a lengthy document, which reflects the fact it needs to cover all of the necessary elements for the interviewing of vulnerable, intimidated and significant witnesses. There is, however, a short discrete section dealing with child witnesses. The Guidance is clear about the expectations for interviewing children and what constitutes best practice. The interviews assessed by inspectors illustrated failures in compliance rather than inherent problems with the Guidance itself. Compliance could be improved through better awareness, training and supervision. Interviewers would also be assisted by a booklet to be used as an aide memoire throughout the various phases of the interviewing process.
- 4.44 The Guidance is due to be revisited to consider whether there is a need for further revision. It is in that context we make a recommendation to include additional guidance where advice or clarity would assist operational staff.

RECOMMENDATION 1

The Ministry of Justice should ensure that any further revision of the *Achieving Best Evidence* Guidance should include:

- advice to assist police officers dealing with complex cases and where a series of interviews are undertaken;
 - advice on the process of opting out of the video interview to ensure it is used and explained where appropriate, and the provisions when a child changes their mind prior to the trial; and
 - a booklet or aide memoir to assist police staff in their pre-assessment and planning for interview to improve recording of: the pre-assessment; considerations on engaging an intermediary; the consent of the child to be interviewed; the explanation of opting out of video interview as evidence-in-chief; planning the interview; ground rules; and demonstrating truth and lies.
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³⁶ An interview adviser has been trained to a higher level of competence enabling them to advise on the quality of interviews.

RECOMMENDATION 2

All police forces should ensure interviewers and interviews better adhere to *Achieving Best Evidence* Guidance:

- all forces need to ensure that some structured self-evaluation by interviewers takes place, including a review of the interview recording and plan, and that these evaluations are assessed on a regular basis by interview advisors, or by accredited supervisors; and
 - supervisors should monitor and review interviews and paperwork appropriately, for example they should be involved in the development of interview plans for complex investigations and should review video recordings prior to any trial where it is intended they be played as evidence-in-chief.
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5 FACILITIES AND EVIDENTIAL QUALITY

Storage

- 5.1 All forces inspected confirmed appropriate storage of the master ABE interview disc. All but one force confirmed that an edited copy of the disc used in court was also kept in case of any appeal against conviction. Across all forces and focus groups, officers spoke of regular and repeated requests from the CPS for further copies of the interview disc. In one area when the police raised it with their CPS office, local investigations concluded the recordings had been misfiled. Forces were aware of the issue, and one force had raised it at a senior level with the CPS. We deal with this further at paragraph 8.6.

Interview rooms

- 5.2 Interview rooms should be made as child-friendly as possible. Children should not be interviewed where they live and the interview should never be conducted at the location of exploitation or where the child was found.³⁷
- 5.3 Interview rooms appeared to inspectors to be designed to be sterile, with little thought at putting children at ease; this was particularly evident in the case of younger children. In 59 interviews the accommodation or interview suite was assessed by inspectors as not being child-friendly. During the inspection, the majority of forces had plans in place to improve their interview suites.
- 5.4 Some 'older' interview rooms were seen within forces where the camera angles and footage obtained were poor and the sound was muted. Recordings in one force were on VHS videotape, which then needed conversion to DVD. In some cases the tape machine was located within the interview room, when the tapes expired there were long delays in the interview flow when they required changing. Examples were provided where feedback was given by the CPS on the poor sound quality which resulted in an upgrade to the suite or the particular accommodation no longer being used.

Audio and visual quality

- 5.5 The ABE interview is often the key element underpinning a prosecution; therefore it is vital that the audio and visual quality is good because it invariably forms the evidence-in-chief of the witness.
- 5.6 HMCSI inspectors assessed the visual quality as sufficient in 49 of the 71 interviews and audio quality sufficient in 50 interviews. In the area visited where the ABE interviews are still recorded on VHS format, the use of this technology often results in recorded interviews which have a lot of static and horizontal lines running up the screen.
- 5.7 Feedback from areas and survey responses was generally critical about the angle of the cameras and failure to focus on the child's face, which was borne out by the review of ABE interviews by inspectors. It can be a substantive issue when the recording is played in court and the visual display screens are a considerable distance from the jurors viewing them. As a consequence, the images lack clarity, which means that a jury is not able to see and assess the facial expressions of the witness during interview.

³⁷ *Anti-Human Trafficking Manual for Criminal Justice Practitioners*, United Nations Office On Drugs And Crime, 2009. www.unodc.org/unodc/en/human-trafficking/2009/anti-human-trafficking-manual.html

- 5.8 Interviewees also suggested background noise can be an issue and is distracting from the evidence being given by the witness. The main criticism in relation to sound was that the microphone was not sited close enough to the witness to ensure the evidence was captured clearly. When the interview is played on court equipment the evidence can be inaudible and requires a transcript to assist the jury; this detracts from the quality of evidence being given.
- 5.9 In the forces we inspected, it was apparent that the audio visual quality of the recording was not always checked by interviewers. There was a tendency to launch into the interview proper once the equipment started recording. The use of a 'dummy run' as an opportunity to check the equipment was overlooked.
- 5.10 Feedback from the judiciary interviewed suggested that it was desirable to have a much shorter product with 45 minutes being a suitable length, but this would depend on the complexity of the case. This is a realistic time for the majority of cases. Better planning would improve structure, which in turn may shorten the interview or the evidential aspect of the interview that could stand alone with limited editing.

Viewing the ABE interview

- 5.11 Inspectors observed that facilities for child witnesses to refresh their memories by viewing their interview prior to the court case were not always adequate. In one force there was no ability to view the recorded interviews once completed. In another, the viewing facilities were sited within a photocopying room, and elsewhere officers would go to the victim's home. Some practitioners felt this latter practice was inappropriate.
- 5.12 In areas where it was reported that the witness was able to watch their recorded interview before trial, it was unclear whether the edited version was viewed; this is not recorded on CPS files as a matter of course. The CPS needs to monitor this in view of the late editing of interviews. In one area the practice is for the witness to view the ABE for the first time when it is played to the jury, although we were informed that the trial judge will advise the witness why there may be editing of the original recording.

Facilities at court

- 5.13 Feedback from the judiciary was that the facilities at court are not good; the witness suites are often small, clinical rooms and there are significant problems with the playback equipment, which can vary between court rooms in the same building. Given the concerns about playback facilities at court it is important that the audio and visual quality of the interview is good at the outset, with clarity of sound and a clear image of the witness's face.
- 5.14 It was common for the edited version of the DVD not to play on the court system which was rarely picked up until the day of trial, and even where CPS paralegal officers tested DVDs at the plea and case management hearing they may not subsequently work in another court room at trial. This causes a delay at the start of the proceedings and leads to an extended period of time at court for the witness. It is important that DVDs are checked by the prosecution team on the equipment in the appointed trial court room prior to the witness attending the court building.

RECOMMENDATION 3

Police forces should review Achieving Best Evidence suite provision, capacity and accessibility with children in mind to ensure:

- the suites are suitably sited;
 - the quality and reliability of both fixed and portable recording equipment;
 - the availability of appropriate interview props and communication aids; and
 - suitable facilities are available for children and police staff to watch their interviews and to refresh their memories before attending court.
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6 INTERMEDIARIES

- 6.1 If a police officer identifies that a child's communication might benefit from the use of an intermediary, the intermediary can assess the witness and help the police officer plan the best means of communicating in the ABE recorded interview. The intermediary should then write a report for court enabling the trial judge to set ground rules with the advocates on how to question the witness.

The investigation

- 6.2 No Registered Intermediaries were used in the interviews examined by inspectors, even for very young children aged four or five. Of the 69 interviews HMIC reviewed, four involved children under six years old. In two of the four a decision was made not to involve an intermediary and in the other two there was no record that consideration had been given to the use of an intermediary. Inspectors did not see any formal request to a supervisor to authorise funding for an intermediary.
- 6.3 Review of case files showed that the services of a Registered Intermediary were not always sought because there was a tendency by some interviewers and their managers to over-estimate their own skill levels and/or underestimate the communication needs of vulnerable witnesses.
- 6.4 Focus groups of officers across all of the forces inspected were aware of the role of Registered Intermediaries. There was consensus amongst officers who had observed them in court that they were 'invaluable'. However, interviewers said they were deterred from using intermediaries for children because it delayed the interview. For example, a child with a particular issue was matched with an intermediary based a considerable distance away. It took three weeks for the intermediary to become available for the ABE interview. When the child met the intermediary she would not speak to him because he was a male, as was her alleged abuser.
- 6.5 Intermediaries will often complete an assessment of the child and return later for interview. In appropriate circumstances intermediaries may consider combining the assessment and interview to reduce delays in interviewing child witnesses and thereby avoid the possibility of putting a child under extended stress needlessly.
- 6.6 In one case assessed by inspectors, the CPS lawyer had suggested that a five year old complainant would benefit from an intermediary and asked if this had been considered. The officer took the view that an intermediary was not required because the child could respond well to age appropriate questions. However, this is unlikely to be the case for all five year old witnesses and each case needs proper consideration based on the needs of the child.
- 6.7 In all of the forces inspected, supervisors were required to authorise the use of an intermediary. Requests would be considered on a case by case basis and funding would usually be approved. However, officers indicated that covering the cost of intermediaries in lengthy child sexual exploitation cases, with multiple victims, could be very challenging for forces.

RECOMMENDATION 4

Police forces should ensure:

- intermediaries are considered and used where appropriate; and
 - the rationale and decision for their use or not are recorded.
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The prosecution

6.8 In comparison to police officers, there was greater awareness by lawyers of how intermediaries can be used at court to assist a witness to give their best evidence, and where intermediaries are used at trial the results are usually positive. However, in the course of this inspection, inspectors received feedback from interviewees which suggested they were not used as much as expected where the issue was simply the age of the child. In one area the failure to consider the use of intermediaries for young children has led to the court making it clear in strong terms that they expect an intermediary assessment will be carried out on all cases for children under 12 and that it should be mandatory for under nines. This may be too prescriptive and not meet the needs of the witness; some younger witnesses may not need the assistance of an intermediary and other older witnesses who would benefit from such support may be overlooked. The use of an intermediary at court should be considered by the reviewing lawyer for every case involving a child witness, taking account of all the relevant factors, and a written record of the rationale behind the decision not to use an intermediary should be maintained.

RECOMMENDATION 5

The CPS should ensure intermediaries are considered for use at court in every case involving a child witness and a written record is maintained of the decision, particularly of the rationale where an intermediary is not used.

Conclusion

6.9 There are currently fewer than 100 Registered Intermediaries and not all of these have the skills to assist children; this needs to be increased to match the growing demand. The CPS and the police need to work with the Ministry of Justice to ensure additional suitable intermediaries are identified and registered to help improve access and availability where required for ABE recorded interviews and subsequently at court.

THE PROSECUTION

7 DECISION-MAKING

Early investigative advice

- 7.1 The centralisation of CPS offices and the Rape and Serious Sexual Offences (RASSO) units has resulted in less local availability of advising lawyers and impacted on the previous existing relationship between police officers and prosecutors. The main contact is through the pre-charge decision or the action plan, which specifies any further work to be undertaken by the police with an agreed date for completion. It is clear that poor relationships can have an adverse impact on a case. We were told that it is now impractical in some CPS areas for officers to travel lengthy distances for appointments, reducing the opportunity for face-to-face discussions. Officers are also reluctant to telephone lawyers who are not known to them for advice.
- 7.2 We found in general that very little early investigative advice is sought where it could have been used to speed up the process and prevent lengthy delays between arrest and charge. However, early investigative advice is used effectively where there were specific and complex operations.

Case study: The complainant was six at the time of the ABE interview but three at the time of the alleged offence. The case was stayed³⁵ because of the delay between reporting of the offence and the matter getting to court. It took over a year before pre-charge advice was sought.

- 7.3 Early special measures discussions are not being held at this stage. The first time a lawyer will instruct an officer in relation to special measures will be in the MG3 (record of charging decision) authorising charge. We found that in the main if these discussions are taking place, it is post-charge and the discussions are being driven by lawyers, resulting in the ABE recorded interview as the default option. Opportunities to discuss the use of intermediaries are also missed.

CPS Direct

- 7.4 There is a disparity between what is expected by the police and CPS areas and what CPS Direct (CPSD) can and should deliver in practice. This is in need of clarification and communication to areas.
- 7.5 The view of CPS areas visited was that CPS Direct³⁹ did not view ABE interviews, even where available, relying on summaries and often only authorised holding charges, where there was clear evidence of a substantive offence; the holding charges were often inappropriate. We were told that these issues were fed back through the RASSO lead in the areas visited. In the few CPSD charged cases in the file sample there was no review of the ABE interview.

38 The courts have an overriding duty to promote justice and prevent injustice. From this duty there arises an inherent power to 'stay' an indictment (or stop a prosecution in the magistrates' courts) if the court is of the opinion that to allow the prosecution to continue would amount to an abuse of the process of the court.

39 This is the CPS area which takes the majority of CPS decisions as to charge under the Charging scheme. Lawyers are available on a single national telephone number at all times so that advice can be obtained at any time.

- 7.6 The majority of police in the areas visited had a different perception to the local CPS, which was that even when provided with an interview summary, CPSD would refuse to give charging advice prior to the ABE interview being viewed; this meant that in some cases suspects were bailed until the interview could be viewed in the local CPS office.
- 7.7 The reality is that CPS Direct is designed to deal with 'volume' crime cases and have no facilities for watching ABE interviews. Inspectors were told that during office hours CPSD prosecutors complete an area based charging referral form and pass the case onto the area. Out of hours, where it is appropriate to apply the threshold test,⁴⁰ duty prosecutors rely on the police summary and ensure that the action plan refers the police to make contact with the area and supply them with ABE interviews within tight deadlines. All out of hours duty prosecutors have been trained to the agreed CPSD rape specialist level.

Pre-charge advice

- 7.8 The quality of CPS decision-making at the pre-charge stage in the 60 cases in the file sample was sound; the *Code for Crown Prosecutors*⁴¹ was applied correctly in each case. Feedback from prosecutors and CPS managers suggested that the quality of MG3s has improved due to lawyer continuity in the RASSO units; this is especially so where the pre-charge advice is used to set the strategy for the Crown Court case. The work is front-loaded saving the need for duplication further down the line as the case progresses.
- 7.9 Most cases contained a comprehensive action plan but in some instances the opportunity to alert the officer in the case to what needed to be done to strengthen the case was lost. It is apparent from the files and from interviews that the CPS faces certain challenges in securing evidence from the police after the first hearing date.
- 7.10 Inspectors found that although the charging decision was sound, many MG3s did not contain a proper case analysis. The absence of a proper review of the evidence, and therefore an effective strategy, means that the opportunity to remedy any deficiencies is lost. This increases the risk of impacting adversely on court proceedings and ultimately on the victims and witnesses. In addition, there was limited written appraisal of the evidential value of the recorded interview on the MG3. The charging lawyer considered admissibility in relation to the ABE interview in only two cases in the file sample and in most it was not even clear if it had been viewed.
- 7.11 Victim and witness issues were not always properly considered and it was not always clear if the charging lawyer was a RASSO specialist. In one area lawyers considered that due to the lack of resources and substantially increased caseloads, issues that should be included in the pre-charge advice can be missed, but they confirmed that the admissibility and content of ABE interviews should be mentioned.

40 The threshold test is applied where a suspect presents a substantial bail risk if released and not all the evidence is available at the time when he or she must be released from custody unless charged.

41 *Code for Crown Prosecutors*, CPS, 2013. www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html

Case study: In an allegation involving sexual grooming of, and sexual activity with, a 14 year old complainant, the charging advice was very short consisting of nine lines of text. There was neither proper analysis of the evidence nor any clear strategy; there was no discussion of the grooming and subsequent sexual activities, no consideration of victim and witness issues and no mention of the ABE interview. In addition, there was no action plan.

- 7.12 In one area we were told that only in exceptional cases would they charge a case without watching the ABE interview, whereas in another area lawyers considered that they had at times little choice but to advise charge on the basis of the interview transcript or summary, without watching the ABE interview due to time pressures.
- 7.13 Many of the subsequent reviews on cases did little more than endorse the pre-charge advice, without having viewed the ABEs, or were an electronic copy and paste of the previous decision.

The police file

- 7.14 All areas had appropriate systems in place to provide pre-charge advice; however, in some there was a backlog of cases awaiting consideration. The backlog is exacerbated by the quality of the police file. Poor quality files are leading to delays in charging. In one area visited there are four or five charging appointments until the file contains all the information necessary for the charge to be authorised. We also discovered that some initial files are often over-built (in the sense that they contain evidence and information ancillary to the main issues) and yet still lack in key evidence. This impacts on the prosecutor's ability to properly progress the case.
- 7.15 In one area police officers work in the RASSO unit and act as gatekeepers; the co-location of these posts means that any file deficiencies can be remedied quickly. Elsewhere the view held by many prosecutors is that the police are using the CPS to perform a quality assurance role, and the absence of such gatekeeping, in addition to the perceived lack of police supervision, is adversely impacting on quality and timeliness in cases which should take priority.
- 7.16 The lawyers in an area visited are advised to do a 'triage' of the file before they start to review the ABE interviews, whereby files are checked and returned to police if deficient or prioritised for review where the file is sufficient. Another area moved from triage, which was no longer operable due to resources, to a checklist and only on its completion will a charging appointment be offered. Other areas have created similar checklists (good practice). Using a checklist to ensure files are ready before being submitted has led to some improvement; however, some lawyers felt that the checklist appeared to have been completed by an administrator undertaking the compliance checks. It became apparent the right work has not been done when the file was reviewed by the lawyer, adding further delay whilst additional material was sought.

The evidential quality

- 7.17 The ABE interview forms part of the police file submitted for consideration. The evidential importance cannot be overstated; this is often the key element underpinning a prosecution. In this context it is vital that there is a quality product as it invariably forms the evidence-in-chief of the witness.

- 7.18 The legal inspectors assessed the evidential quality of the ABE interviews and found that: “truth and lies” was dealt with appropriately in 41 interviews, although sometimes there was too much preamble: the tone was appropriate for the age of the child in 60 interviews; but the interviewer asked inappropriate leading questions in 24 of the interviews considered.
- 7.19 Many of the interviews merged the structure; they moved back and forth between the evidential material of the alleged incident and the background material important to the investigation. At times there was too much emphasis on the investigation instead of retaining the balance of the interview ensuring the evidence has been obtained and the necessary points to prove covered. The Guidance is clear; case specific information important to the investigation should follow the evidential account of the incident(s). To emphasise the necessary degree of separation the Guidance also states this may be done on a separate disc; this was not apparent in the interviews considered by inspectors.
- 7.20 We refer to the audio and visual quality in detail at paragraphs 5.4-5.9.

Quality assurance and feedback

- 7.21 Quality assurance of the pre-charge advice forms part of the CPS Core Quality Standards Monitoring (CQSM) process. This is not always undertaken by the RASSO lead and may be conducted by a manager in the Crown Court team. Therefore this may not be an effective mechanism to pick up any themes or deficiencies to be fed back to the police by the RASSO leads at joint performance meetings. In addition, the ABEs are not viewed as part of the CQSM process or when a file requires the second opinion of a specialist.⁴²
- 7.22 All lawyers spoken to stated that they would record deficiencies in the ABE interviews in their pre-charge advice, but there was limited evidence of this on the MG3s reviewed. Lawyers also reported that any themes would be fed back through their line managers. The feedback process varied across the areas and it was not clear if the mechanism was effective in driving up the quality of the ABE interview. In one area we saw a feedback form to record quality attached to the disc; however, since centralisation of the CPS offices it had fallen out of use and the lawyers spoken to were not familiar with it. A copy of this form can be found at Annex C. We consider that, if used correctly and consistently, this would be good practice. An alternative mechanism for feedback to the officer in charge would be to ensure that the MG3 has a specific section to record the quality of the recorded interview.

Case study: The interviewer encouraged the witness to touch the officer on the bottom to demonstrate the alleged offence as well as failing to adhere to the Guidance and missing evidential points to prove. The charging lawyer failed to record anything about these failings in the pre-charge advice and the feedback form attached to the DVD had been completed to say that the ABE interview was good.⁴⁰

42 A second opinion is required where a specialist is considering taking no further action, dropping a case or substituting lesser charges in a rape case.

43 Inspectors provided feedback to the relevant police force.

- 7.23 All police forces reported good relationships with their local CPS offices with both formal and informal means of escalating issues, although it was felt there was little feedback at either a strategic or operational level on the quality of ABE interviews.
- 7.24 Within focus groups, some police officers raised concerns about CPS training and knowledge of the ABE guidelines. In some cases officers reported that they had been asked to remove the demonstration of truth and lies from the recorded interview, and not to complete sketches to assist with the child's recall unless absolutely necessary. Some officers spoke of an unwritten 45 minute rule and those officers were concerned that there was an unrealistic expectation that a child could provide a 45 minute 'snap shot' of their abuse, particularly if the offending was protracted or complex. Communication between the CPS and the police on the quality of ABE interviews needs significant improvement.

RECOMMENDATION 6

Police forces and the CPS should ensure that:

- the Achieving Best Evidence interview is of sufficient visual and sound quality for the prosecution team, defence and court;
 - arrangements are in place to enable feedback to be given by the reviewing lawyer to the interviewing officer on the quality of the interview with the child; and
 - local arrangements for the joint management of the investigation and prosecution of cases of child sexual abuse use shared data to systematically monitor performance and drive improvements in accordance with the recommendations in this report and other relevant reports and guidance.
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8 CASE PREPARATION

- 8.1 The creation of RASSO teams in each CPS area is a positive step. RASSO unit staff and external stakeholders interviewed considered that the quality of decision-making and case management has improved, cases are dealt with quicker and there are fewer backlogs for pre-charge advice, although it has had some impact on local working relationships. There is individual file allocation to lawyers, which provides for consistency throughout the life of a case; inspectors and external stakeholders were of the view that it is this continuity which has contributed to the reported improvement in quality.
- 8.2 The models for other personnel in the RASSO unit vary from ring-fenced dedicated paralegal officers who deal only with RASSO cases to a shared resource with general Crown Court casework. Even where there is a dedicated paralegal officer they do not attend court with their cases; this is an issue in terms of continuity of CPS personnel at court in cases involving child witnesses and for case progression at court.

Editing

- 8.3 Editing of interviews is not timely. This was evident from the ABE cases reviewed and from all of the areas inspected. We were informed by some lawyers that they would refer to suggested edits in their MG3s, but inspectors only saw consideration of appropriate edits by the charging lawyers in two cases. We were also told that some lawyers refer to edits in their instructions to counsel; inspectors saw no evidence of this.
- 8.4 In one area transcripts of interviews were sometimes served late on the defence, this delayed obtaining defence edits and subsequently delays in editing the ABE interview. As a consequence transcripts are now obtained at the pre-charge stage, which speeds up the process. This may appear to be an unnecessary resource burden for the police but the majority of cases of this type go to trial and it is preferable to receiving the transcript late, which has implications for the editing required prior to trial.
- 8.5 What is apparent, and may cause delay in subsequent editing, is the number of misplaced DVDs or requests for additional copies. The ABE interview discs/tapes are invariably kept in a locked cabinet with limited access, prosecuting counsel and defence have to sign an undertaking in order to have access to the recorded interview. Despite these stringent security arrangements, all forces raised concerns about the high level of additional DVDs required by the CPS. Inspectors also encountered problems in obtaining the DVDs for the file sample from the CPS office.
- 8.6 Only a small number of DVDs viewed had labels which captured all the relevant information (good practice), many had no information on the cover linking it with a specific case file; this may be the cause of any misfiling leading to requests for additional copies. The CPS needs to ensure each copy of an ABE interview has a unique reference and a record is maintained of the location of each copy in order to make individuals accountable and address the problem of lost or misplaced DVDs. We deal with storage by the police at paragraph 5.1.

RECOMMENDATION 7

Police forces should ensure that there is proper labelling, tracking and storage of Achieving Best Evidence (ABE) recorded interviews:

- every copy of an ABE interview (master, original and edited) should have a unique reference number;
 - each force should review its storage of the master and the exhibited edited copy of the ABE interview, and all further copies of the interview which are made should be registered;
 - each force should ensure those who are video interviewed should be given clear undertakings for how their interview will be retained and used.
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RECOMMENDATION 8

The CPS should ensure that there is proper labelling, tracking and storage of Achieving Best Evidence (ABE) recorded interviews and that every copy of the ABE interview (original and edited) is tracked and a record is maintained of all movements.

- 8.7 It has been suggested that centralisation of CPS offices has made it more difficult for the defence to sign the relevant undertaking (to ensure safekeeping of the DVD) in order to obtain their copy of the ABE interview. The concept of the undertaking is currently being revisited by the CPS in conjunction with the Law Society in order to capture the requirements under existing professional obligations. In the interim the CPS needs to ensure that the defence obtain a copy of the ABE interview at the earliest opportunity under the current framework; this could include consideration of an alternative location for collection, such as police stations or court centres.
- 8.8 Most of the editing requirements are left to prosecution counsel (in consultation with the defence). Directions in relation to time limits for notifying editing requests are usually given by the court, but it was felt that these were not always complied with by the defence and there was no sanction for non-compliance. The RASSO paralegal officers spend a significant amount of time dealing with the editing of interviews and sometimes have to prepare two versions where suggested editing is not forthcoming from the defence; there are clear resource implications for this practice. A quality ABE interview at the outset would limit the editing requirements by all parties.
- 8.9 All police focus groups said that edits were requested by the CPS at the last minute and that there was no discussion about proposed editing. ABE interviewers felt that editing sometimes compromised the flow of the interview and that when children refreshed their memory from edited versions they struggled to understand why omissions had been made. Police officers felt removed from the process because the CPS liaised directly with the video units where editing takes place.

Case study: The police collected the ABE interviews for editing four days before trial and were going to take them to court on the morning of the trial.

- 8.10 There is variation across the areas as to who is responsible for editing the disc, from the police taking responsibility to the area sending the disc to an external provider. In turn, the quality of service received can be variable.
- 8.11 Once editing has been completed the edited ABE interview should be checked for accuracy. There is no process for this and as a consequence there are instances where the first time the edited interview is checked is during the trial; the implications for this are obvious if the editing is inaccurate. A paralegal officer may play the edited version in court to ensure that it plays on the equipment, but there was no evidence that the advocate was watching the edited ABE interview to ensure it was correct.
- 8.12 The delays in editing also have consequences for the witnesses who cannot always watch the edited version because it is often not ready in advance of the trial. In one area the victim only watches the edited ABE at the point in time it is played to the jury; this goes against the ethos of the guidelines.

RECOMMENDATION 9

Police forces should ensure that the officer in charge is consulted about the editing of Achieving Best Evidence interviews.

RECOMMENDATION 10

The CPS should ensure that the reviewing lawyer is consulted about the editing of Achieving Best Evidence interviews and that any editing is undertaken prior to trial to allow the witness to refresh their memory.

Unused material

- 8.13 There was no issue in relation to the handling of unused material relating to earlier or additional witness accounts where an ABE interview has been conducted and no concerns were raised about any omissions in the disclosure of relevant and disclosable material. There were significant concerns raised in relation to third party material; these are captured at Annex D.

9 CASE PRESENTATION

Instructions to the advocate

- 9.1 Instructions to the advocate tended to reflect the template format with a cut and paste from the review at the pre-charge stage. The added value was dependent on the quality of the case analysis; we have already highlighted that this was often lacking in the pre-charge advice. There were no instructions about viewing the recorded interview or undertaking the relevant editing. In turn, counsel do not always watch the ABE interview early enough and in many instances do not view the ABE at all but rely on the transcript, and as already discussed the editing is not always timely. The expectations need to be clearly laid out in the instructions to the advocate.
- 9.2 In one area the lawyers said that myths and stereotypes⁴⁴ are addressed in the pre-charge advice because not all police officers will be experienced in such matters. In turn, this is sent to counsel as part of the brief. One lawyer spoke of requesting to see the opening note prepared by counsel (to open the case to the jury at the start of the trial) to ensure that myths and stereotypes are addressed when the case is opened to the jury (good practice).

Timeliness and continuity

- 9.3 There is variable practice across the areas in the timing of selection and instruction of the prosecution advocate, ranging from identifying counsel early to only carrying out the process after the plea and case management hearing. There were also some issues about the late return of briefs from counsel instructed in the case to the new counsel allocated, often at short notice just prior to trial. These practices impact on editing of the recorded interview and also the quality of service to the witness where a meeting has taken place with counsel. It is vital that advocates are instructed early and that there is continuity to avoid subsequent case management issues. More feedback is required from the prosecution advocate at court to the CPS reviewing lawyer about the quality, use and impact of ABE recorded interviews.

The special measures meeting

- 9.4 Early discussions between the police and the CPS about special measures are generally not taking place, although lawyers are instructing police officers to ask the witness what special measures they want post-charge. Feedback suggested that ABE recorded interviews are the default option with little or no consideration about the alternatives.
- 9.5 Any discussions about how a child witness will give evidence are usually led by the trial advocate at the special measures meeting prior to trial. This meeting is usually combined with the court familiarisation visit and can also be combined with viewing of the ABE recorded interview as a memory refreshing tool. It is unrealistic to expect the reviewing lawyer to attend due to the current level of lawyer resource and the length of time it can take to visit some courts in the new centralised areas. Paralegal officers may attend the meeting but do not necessarily have any connection with the case. We found that there is little feedback from the advocate who attends the meeting to the CPS lawyer and limited evidence of any audit trail on the case file. In the absence of a CPS presence at the meeting there needs to be an improved feedback mechanism.

44 There are a number of common myths and stereotypes surrounding this type of offending. It is important that prosecutors use their best endeavours to ensure that 'myths and stereotypes' about child sexual abuse are challenged in court. If left unchallenged, it may lead to members of the jury approaching the victim's evidence with unwarranted scepticism.

- 9.6 It was clear that the advocates and judiciary prefer child witnesses to give evidence in person, rather than by using ABE pre-recorded evidence. The shared view is that it can impact directly on achieving a successful outcome in a case, but there is a risk that the victim may not speak or will be damaged by the process of giving live evidence. There is a clear tension with safeguarding children. Witnesses need to make an informed choice which is why it is vitally important to hold special measures discussions. In one area counsel meet the victim at the pre-court visit and lead discussions about special measures. As a result of these meetings witnesses, including children, have chosen to give evidence behind screens in court as opposed to using 'live link' (enabling a witness to give evidence in person through a television link to the court), following the playing of the recorded interview. Lawyers felt that this allowed the witness an informed choice and supported the principle of Achieving Best Evidence by increasing the likelihood of a successful outcome.
- 9.7 We deal with the facilities at court to view the ABE interview at paragraphs 5.13-5.14.

10 TRAINING

Police Service

- 10.1 Each force inspected had a training programme in place with the aim of ensuring that sufficient, accredited police officers and staff were available to conduct ABE interviews. However, at the time of the inspection, some forces were unable to tell inspectors how many officers were trained in ABE interviewing or whether they had received refresher training. The majority of forces did not review officers' accreditation to complete ABE interviews even in circumstances where officers had not completed such an interview for some years or had not received refresher training.
- 10.2 Generally when the rape or sexual exploitation of a child is dealt with within the remit of child protection or protecting vulnerable people, it has the added benefit of officers being trained in serious and complex investigations to enhance their role.⁴⁵ Overall, inspectors saw a marked disparity in the quality of interviewing which could reflect the quality of training. One force inspected had a staged approach to training. Over a five day period, police officers receive training in three methods of witness interviewing, namely: the written statement; the significant witness interview; and ABE. This is aimed at delivering ABE support to frontline officers dealing with less serious offences. When officers move to a more specialist role, for example in a Child Abuse Investigation Team, this short course is supplemented by further specialist training.⁴⁶ In the majority of focus groups police officers and staff said that training principally involved practicing skills and techniques with adults assuming the role of children, although some forces do involve children in their ABE interview training.
- 10.3 The CPS contributed to training in one force. Another force had worked with the Local Safeguarding Children Board to develop and deliver a presentation highlighting key aspects of ABE, including the legislative framework and significant changes to the special measures regime. Development days and additional training, where those involved in interviewing vulnerable adults receive additional guidance to interview children, ensures that those who attend receive relevant updates on new guidance. However, formal ABE refresher training was not taking place consistently in any of the six forces inspected. Refresher training is important to ensure that police officers and staff have up to date knowledge of the Guidance.

45 PIP 2 - The investigation of serious and complex crime/incidents. The supervision of serious crime investigations/incidents for supervisors. The management of serious crime investigations/incidents for managers.

46 Further courses are also available to develop specialist interviewing techniques, such as for vulnerable adults.

RECOMMENDATION 11

Police forces should:

- review their current practice and training to ensure that it supports and is compliant with the *Achieving Best Evidence* (ABE) Guidance 2011;
 - incorporate opportunities for police officers and staff to improve interview skills through practice interviews with children and young adult role players;
 - ensure that, in order for police officers and staff to maintain their accreditation, attendance at refresher training is available and mandatory, and involves the evaluation of ABE interviews with feedback provided; and
 - involve the CPS in training courses, particularly in relation to interview structure and questioning style.
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10.4 We discuss at paragraph 4.7 the role of the social worker in the ABE interview. Because of the concerns set out there, two of the forces inspected had decided to suspend full ABE training of social workers in favour of shorter joint training inputs for police and social workers. Conversely, one force was in the process of creating a new joint interview course having gone several years without such training. The remaining forces visited still complete some type of joint ABE interview training with social workers. All forces recognised the value and importance of joint investigative training with Social Services.

10.5 Although jointly conducted ABE interviews appear to be the exception in the force inspection, inspectors saw evidence of positive partnership working; strategy discussions and meetings were being held, information exchanged and joint visits taking place.

The Crown Prosecution Service

10.6 Most RASSO lawyers received training about six years ago in order to become specialists. The RASSA (rape and serious sexual assaults) course, which is mandatory to be eligible to be a CPS rape specialist and continues to be available, includes content on the admissibility, use and editing of ABE interviews, and also refers to the ABE Guidance. A half day RASSA refresher course has been developed that can be delivered anywhere across the areas in a face-to-face format; this will refer to ABE interviews in the context of the SARC (Sexual Assault Referral Centre) as a venue to hold them, and the ABE Guidance in the context of witness support.

10.7 During 2013 the CPS developed a new e-learning course following the publication of the child sexual abuse (CSA) guidelines.⁴⁷ The course aims to provide guidance on some basic issues which may be encountered at the start of a prosecution involving CSA and refers to ABE interviews in passing; this course is mandatory for all prosecutors. A further e-learning course has been developed: Prosecuting Child Sexual Abuse for Specialists, which contains specific sessions on the planning, use and review of video evidence.

10.8 The majority of the current training available is e-learning provided by the Prosecution College. There are a number of courses that contain a module on the use of ABE interviews, some of which are mandatory for lawyers.

47 An Introduction To Child Sexual Abuse.

- 10.9 In addition to the new Prosecuting Child Sexual Abuse for Specialists other e-learning courses are in development (Teenage Relationship Abuse and Older Women e-learning courses), these are likely to refer to the use of ABE interviews and options to enable the victim give their evidence.
- 10.10 There is also training aimed specifically at advocates. The Crown Advocacy RASSO course contains an exercise on editing ABE interviews; the Criminal Bar Association has provided training on the questioning of children and vulnerable witnesses and the Advocacy Training Council has developed materials, with the assistance of Registered Intermediaries, for dealing with vulnerable witnesses. There are also toolkits on the Advocates' Gateway for the questioning of vulnerable witnesses and defendants.
- 10.11 We are aware of input by individual lawyers into specific police training or with other partners, for example one lawyer explains the role of the RASSO unit as part of the CID course; this course takes place at least five times annually. They also provide assistance to their local SARC on an ad hoc basis to help induct new members of staff through use of a case study. There are other such examples of joint training across the areas.
- 10.12 It is clear that despite the range of training available to police forces there are a number of issues that still need to be addressed to ensure compliance with ABE Guidance. This includes promoting better understanding of the distinction between the evidence and the investigation, and the use of intermediaries during the investigation and at court. There are some positive developments, for example CPS or counsel input into police training. However, far more could be done to build understanding of how the ABE recorded interview will be used in court and what constitutes best evidence in that context. This in turn needs to be reinforced through more robust supervision, rigorous quality assurance and consistent feedback between trial advocates, lawyers and police officers.

ANNEX A - METHODOLOGY

The joint inspection team visited six police force areas: Gwent (CPS Wales), Avon and Somerset (CPS South West), Humberside (CPS Yorkshire and Humberside), Northumbria (CPS North East), Staffordshire (CPS West Midlands) and London (CPS London). Prior to visiting the areas we requested ten child sexual abuse files from each with ABE DVDs.

The team

The team comprised of two HMCPSI inspectors, including the lead inspector, and two HMIC inspectors. In addition, HMCPSI seconded three CPS lawyers with specialist training to the team, two of whom were Crown Advocates.

File examination

A sample of finalised child sexual abuse cases, which had ABE evidence, was requested for review before going on-site to the areas. The sample was limited to ten files from each of the six areas due to the volume of the material usually contained on these files and the length of time that it can take to view the recorded ABE interview. The sample included cases where no further action was directed at the charging stage as well as cases involving successful and unsuccessful outcomes.

The file sample included not only the CPS file but the corresponding police investigative file. The file sample was reviewed by both HMIC and HMCPSI inspectors to assess the quality and compliance with the Ministry of Justice revised Guidance on *Achieving Best Evidence in Criminal Proceedings* March 2011.

A number of the 60 files reviewed contained more than one recorded ABE interview because there was more than one witness in the case. HMIC inspectors reviewed 69 recorded ABE interviews while HMCPSI inspectors studied the same interviews and an additional two, giving a total of 71. The file sample was assessed against set criteria and the data from the file examination is set out in Annex B.

Survey

Electronic questionnaires on key aspects of this area of practice were sent to various defence solicitors and prosecution counsel suggested by the CPS areas as well as national third sector organisations such as Victim Support, NSPCC, Barnardo's, The Children's Society and the Children's Commissioner. Eight responses were received from the third sector and six from counsel.

The fieldwork

Interviews were conducted in each police force and relevant CPS area with operational staff and leads within the CPS and the police force who handle child sexual abuse cases. In addition interviews took place with the ACPO portfolio holder, the co-authors of the ABE Guidance, CPS policy holders, a national intermediary service and members of the judiciary in each area.

We are grateful to all who gave their time, either in responding to our survey or making themselves available for interview.

ANNEX B - FILE EXAMINATION DATA

Cases reviewed	60
HMIC ABE interviews viewed	69
HMCPST ABE interviews viewed	71

HMIC ABE file reading results

No	Question	Yes	No	Not known	Not applicable	Total
Prior to interview						
1	Is there evidence that the interviewer(s) completed an interview plan?	29.0%	46.4%	24.6%	0.0%	100%
2	Is there evidence that the interviewer(s) completed a pre-interview assessment?	18.8%	40.6%	40.6%	0.0%	100%
3	Have they considered the needs of the witness, including physical, psychological, sexual, social, cognitive and linguistic needs?	14.5%	5.8%	76.8%	2.9%	100%
4	Have they considered any special needs including race, religion, culture and ethnic factors?	8.7%	4.3%	14.5%	72.5%	100%
5	Have they arranged any additional specialist equipment/ personnel (include intermediary/interpreter)?	4.3%	40.6%	20.3%	34.8%	100%
6	'Child-friendly' suite/accommodation?	5.8%	85.5%	1.4%	7.2%	100%
Phase 1 – rapport						
7	Lone officer interviewing?	94.2%	5.8%	0.0%	0.0%	100%
8	Social worker present as (co)interviewer?	0.0%	97.1%	0.0%	2.9%	100%
9	Social worker present as supporter?	14.5%	78.3%	0.0%	7.2%	100%
10	Did the interviewer explain the purpose of interview?	68.1%	30.4%	1.4%	0.0%	100%
11	Did the interviewer explain the ground rules?	68.1%	26.1%	2.9%	2.9%	100%
12	Did the interviewer explain about 'Don't know/ Can't remember'?	53.6%	43.5%	2.9%	0.0%	100%
13	Did the interviewer explain about 'Don't understand'?	68.1%	29.0%	2.9%	0.0%	100%
14	Did the interviewer explain about 'Don't guess'?	43.5%	53.6%	2.9%	0.0%	100%
15	Did the interviewer explain it was okay to correct them?	49.3%	47.8%	2.9%	0.0%	100%
16	Did the interviewer explain about asking for a break?	44.9%	52.2%	2.9%	0.0%	100%
17	Did the interviewer explain the need to tell everything/ detail/ 'I wasn't there/don't know what happened'?	40.6%	56.5%	2.9%	0.0%	100%
18	Did the interviewer confirm consent for the interview?	43.5%	49.3%	4.3%	2.9%	100%
19	For all under 18s did the interviewer assess the witness's understanding of truth and lies?	59.4%	34.8%	4.3%	1.4%	100%
20	Did the interviewer use the correct example and reiterate the importance of telling the truth in interview?	36.2%	58.0%	2.9%	2.9%	100%

No	Question	Yes	No	Not known	Not applicable	Total
Phase 2 – free narrative						
21	Did the interviewer elicit the issue of concern in non-leading fashion?	89.9%	8.7%	0.0%	1.4%	100%
22	Did the interviewer allow the witness to describe what happened at own pace?	76.8%	21.7%	0.0%	1.4%	100%
23	Did the interviewer avoid leading questions?	84.1%	10.1%	0.0%	5.8%	100%
Phase 3 – questioning						
24	Did the interviewer encourage the witness to provide detail?	92.8%	7.2%	0.0%	0.0%	100%
25	Did the interviewer identify topic areas and probe each topic fully?	69.6%	30.4%	0.0%	0.0%	100%
26	Did the interviewer make good use of open questions, moving from general to more specific?	66.7%	33.3%	0.0%	0.0%	100%
27	Open questions - tell, explain and describe, funnelling down to the 5 specifics of who, why, what, when, where.	73.9%	26.1%	0.0%	0.0%	100%
28	Did the interviewer avoid using leading questions whilst trying to obtain more specific detail?	55.1%	43.5%	0.0%	1.4%	100%
29	Did the interviewer avoid using information obtained from other sources (statements/logs)?	79.7%	20.3%	0.0%	0.0%	100%
30	Did the interviewer clarify witness’s words for body parts and used witness’s words throughout?	68.1%	23.2%	0.0%	8.7%	100%
31	Did the interviewer check the witness’s understanding of body parts and acts described?	63.8%	26.1%	1.4%	8.7%	100%
32	Did the interviewer query any inconsistencies in witness’s statement in gentle, non-threatening manner?	73.9%	4.3%	0.0%	21.7%	100%
33	Did the interviewer identify topic areas for case-specific/ background information (separate DVD if necessary)?	59.4%	34.8%	0.0%	5.8%	100%
34	Did the interviewer cover ‘Points to prove’?	76.8%	18.8%	0.0%	4.3%	100%
35	Did the interviewer cover <i>R v Turnbull</i> / ADVOKATE throughout? ⁴⁸	44.9%	29.0%	0.0%	26.1%	100%
36	Was any introduction of necessary “interview aids”, i.e. drawings, sketch plans etc, done in an appropriate manner and correctly referred to - shown to the camera and exhibited?	2.9%	11.6%	0.0%	85.5%	100%
Phase 4 – closure						
37	Did the interviewer ask the witness if they had any questions and answered them honestly?	49.3%	44.9%	4.3%	1.4%	100%
38	Did the interviewer return to a neutral topic?	20.3%	69.6%	8.7%	1.4%	100%

48 *Achieving Best Evidence*, paragraph 2.156.

HMCPSI ABE file reading results

No Question						Total
1	Who was present at ABE (suite) apart from victim and interviewing officer?	Other police			35.2%	} 100%
		Social worker			12.7%	
		Parent/guardian			0.0%	
		Police and social worker			4.2%	
		Police and parent/guardian			1.4%	
		Social worker and parent/guardian			1.4%	
		Police and social worker and parent/guardian			2.8%	
		Not known			0.0%	
		Not applicable			42.3%	
No Question		Yes	No	Not known	Not applicable	Total
2	Was the sound quality sufficient?	70.4%	22.5%	7.0%	0.0%	100%
3	Was the visual quality of the ABE satisfactory?	69.0%	24.0%	7.0%	0.0%	100%
4	Was truth/lies dealt with appropriately?	57.7%	42.3%	0.0%	0.0%	100%
5	Was tone of questions appropriate for the age of the child?	84.5%	14.1%	1.4%	0.0%	100%
6	Were any props/aides used?	16.9%	83.1%	0.0%	0.0%	100%
7	Did the interviewer ask inappropriate leading questions?	33.8%	66.2%	0.0%	0.0%	100%
		Open	Closed	Mixed	Not known	Total
8	Were the majority of the questions open/closed etc?	70.4%	22.5%	7.0%	0.0%	100%
		Yes	No	Not known	Not applicable	Total
Charging decision						
9	Did the charging decision comply with the Code for Crown Prosecutors?	100%	0.0%	0.0%	0.0%	100%
10	Was the correct Code test applied?	93.0%	0.0%	7.0%	0.0%	100%
11	Did the charging lawyer consider any admissibility questions in relation to the ABE – i.e. did they consider appropriate edits of the ABE?	2.8%	95.8%	0.0%	1.4%	100%
Post-charge						
12	Is there evidence the edited ABE was reviewed before the trial?	21.1%	12.7%	66.2%	0.0%	100%
13	Who if anyone considered/agreed edits to the ABE?	Advocate			26.8%	} 100%
		Reviewing lawyer			2.8%	
		Not done			14.1%	
		Not known			32.4%	
		Not applicable			23.9%	

ANNEX C - QUALITY FEEDBACK FORM

Visually Recorded Interview – Quality Feedback Form

Interview Details

To be completed by Tape Librarian

Video Ref No:		Case URN:	
Witness Name:		Defendant Name:	
Date of Interview:		Start Time:	
VIW Suite:		Finish Time:	
Interviewer:		Controller:	

Interview Quality Review

To be completed by CPS Prosecutor

Tick box in all cases Use comments below if required	Far Too Short	Too Short	About Right	Too Long	Far Too Long
Length of Rapport Stage					
Length of Interview					

Tick box in all cases Use comments below if required	Very Poor	Poor	Satisfactory	Good	Very Good
Camera positioning					
Witness positioning					
Quality of picture					
Sound level (witness)					
Sound level (interviewer)					
Sound quality					

Comments on the Demeanour of Witness:-

Comments on the quality/content of visual interview:-

ANNEX D - THIRD PARTY MATERIAL ISSUES HIGHLIGHTED DURING THE INSPECTION

There were significant concerns raised in relation to third party material. All CPS areas reported difficulties in dealing with third party disclosure and concern was expressed by some areas that the police were abrogating their responsibility under the Criminal Procedure and Investigations Act 1996 (CPIA) to examine third party material and assess its relevance before scheduling the material for CPS review. Lawyers felt that they did not have the time or resources to review third party documents and the role should be undertaken by a specially trained police officer as stated in the *Attorney General's Guidelines*.⁴⁹

A new joint protocol⁵⁰ for sharing information in child abuse cases came into force on 1 January 2014, following a project led by the CPS to re-invigorate the previous national model protocol dating back to 2003. It is necessary for local stakeholders to sign up to a local protocol to give effect to the 2013 Protocol and Good Practice Model. The protocol covers all aspects of information exchange from a Local Authority and/or Family Court to the police and CPS, and vice versa. It applies to all cases of alleged child abuse (sexual and non-sexual abuse), ensuring that disclosure takes place from the outset of the investigation to the maximum extent permitted and required by law.

There is an inconsistent approach to the protocol. Although nationally a high percentage of Local Authorities have signed up to a local protocol and thereby give effect to the 2013 protocol, there have been difficulties getting certain Local Authorities to sign up and instances where Local Authorities seemed unaware of the protocol or refused to co-operate until served with a court order. In one CPS area all records from Social Services are required prior to charge regardless of relevance to the case, in practice the approach needs to be proportionate and lawful.

The RASSO managers in two areas visited have issued file checklists for the police in order to encourage them to consider third party disclosure at an early stage. In one office the manager has instructed the team to return files that do not contain confirmation that the police officer has checked for the existence of relevant third party material. In another area the reviews indicated that disclosure has been considered by the lawyer at the pre-charge stage.

In one area file builders are uploading entire files of third party material onto the CPS case management system (CMS); therefore the unedited, confidential information is available for all with access to the electronic files. We also saw evidence of sensitive third party material being kept on hard copy files. CPS managers need to ensure these unacceptable practices are stopped.

49 *Attorney General's Guidelines on Disclosure for investigators, prosecutors and defence practitioners*, Attorney General's Office, 2013. www.gov.uk/government/uploads/system/uploads/attachment_data/file/262994/AG_Disclosure_Guidelines_-_December_2013.pdf

50 *2013 Protocol and Good Practice Model. Disclosure of information in cases of alleged child abuse and linked criminal and care directions hearings*. The senior judiciary (the President of the Family Division and the Senior Presiding Judge) are signatories to the 2013 protocol. The protocol is also formally supported by the Association of Chief Police Officers, Association of Directors of Children's Services, Association of Independent Local Safeguarding Children Board Chairs, Department for Education, HM Courts and Tribunals Service, Local Government Association, and the Welsh Government. www.cps.gov.uk/publications/docs/third_party_protocol_2013.pdf

In addition, indecent images are rarely reproduced in hard copy but when it does occur, we were told that there are secure storage facilities for retaining them. However, inspectors observed hard copies of indecent images on a file. Areas need to ensure such material is retained by police and not kept on hard copy files or uploaded to the electronic file.

Feedback from the judiciary suggested there are concerns that lawyers lack understanding of the civil procedure inherent where there are concurrent civil proceedings such as Local Authority care proceedings. In particular, that prosecutors have little or no understanding of the Family Procedure Rules or how they relate to the disclosure of material in any parallel proceedings relating to a young witness. It was suggested that there should be a specialist within the CPS to act as an adviser to lawyers who have cases where there are issues relating to this area of disclosure and can bridge the divide between criminal and civil proceedings. The CPS has planned further training for area leads and specialist prosecutors.

ANNEX E - GLOSSARY

ABE (Achieving Best Evidence)

The visually recorded statement of young victims and witnesses with the police is usually described as the “ABE DVD”. It is usually played as their evidence-in-chief at trial.

ACPO

Association of Chief Police Officers.

Action plan

A list of instructions from the CPS to the police on the MG3 charging advice with completion dates.

Case management system (CMS)

IT system for case management used by the CPS. Through links with police systems CMS receives electronic case material. Such material is intended to progressively replace paper files.

Code for Crown Prosecutors (the Code)

The public document that sets out the framework for prosecution decision-making. Crown Prosecutors have the Director of Public Prosecutions’ power to determine cases delegated to them, but must exercise them in accordance with the Code and its two stage test - the evidential and the public interest stages. Cases should only proceed if, firstly, there is sufficient evidence to provide a realistic prospect of conviction and, secondly, if the prosecution is required in the public interest. See also *threshold test*.

Core Quality Standards Monitoring (CQSM)

A CPS system of internal monitoring against the standards, whereby each area undertakes an examination of a sample of completed cases to assess compliance.

Counsel

Barristers in practice at the independent Bar who are instructed to present cases for the CPS.

Crown Advocate (CA)

A lawyer employed by the CPS who has a right of audience in the Crown Court.

CPS Direct (CPSD)

This is the CPS area which takes the majority of CPS decisions as to charge under the Charging scheme. Lawyers are available on a single national telephone number at all times so that advice can be obtained at any time.

Disclosure

The prosecution has a duty to disclose to the defence material gathered during the investigation of a criminal offence, which is not intended to be used as evidence against the defendant, but which may undermine the prosecution case or assist the defence case. See also *unused material*.

Early investigative advice (EIA)

Prosecutors may provide guidance and advice in serious, sensitive or complex cases and any case where a police supervisor considers it would be of assistance in helping to determine the evidence that will be required to support a prosecution or to decide if a case can proceed to court. Specific cases involving a death, rape or other serious sexual offence should always be referred to a prosecutor as early as possible. The advice or decision of the prosecutor will be set out in an MG3 and an action plan will precisely specify any further work with an agreed date for completion.

Early special measures meeting

An opportunity for the investigating police officer and the CPS prosecutor to discuss the needs of prosecution witnesses who may be considered vulnerable or intimidated. In particular the eligibility of witnesses to benefit from special measures will be discussed. See also *special measures applications* and *vulnerable and intimidated witness*.

Intermediaries

A Registered Intermediary is a professional communications specialist who has been recruited, selected and accredited by the Ministry of Justice, and whose details are recorded on the Intermediary Register, the Witness Intermediary Scheme’s national

database. Registered Intermediaries assist young witnesses and witnesses with a variety of disabilities communicate during an investigation and at any subsequent court hearings.

MG3

A charging report form initially completed by the police to request a charging decision, then completed by the CPS prosecutor to record the decision or other investigate advice.

Paralegal officer

A member of CPS staff who deals with, or manages, day-to-day conduct of a prosecution case under the supervision of a Crown Prosecutor and, in the Crown Court, attends court to assist the advocate.

Pre-charge decision (PCD)

The process by which the police and CPS decide whether there is sufficient evidence for a suspect to be prosecuted. The process is governed by the *Director's Guidance on Charging*.

Plea and case management hearing (PCMH)

The purpose of the hearing, which takes place at the Crown Court, is twofold: to take a plea from the defendant, and to ensure that all necessary steps have been taken in preparation for trial or sentence and that sufficient information has been provided for a trial date or sentencing hearing to be arranged.

RASSO

Rape and serious sexual offence.

Review, (initial, continuing, summary trial etc, full file)

The process whereby a Crown Prosecutor determines that a case received from the police satisfies and continues to satisfy the legal test for prosecution in the *Code for Crown Prosecutors*. One of the most important functions of the CPS.

Sensitive material

Any relevant material in a police investigative file not forming part of the case against the defendant, the disclosure of which may not be in the public interest.

Serious sexual offence

Serious sexual crime includes rape, sexual assault, sexual activity offences, abuse of children through prostitution or pornography, and trafficking for sexual exploitation.

Special measures applications

The Youth Justice and Criminal Evidence Act 1999 provides for a range of special measures to enable vulnerable or intimidated witnesses in a criminal trial to give their best evidence. Measures include giving evidence through a live TV link, screens around the witness box and intermediaries. A special measures application is made to the court within set time limits and can be made by the prosecution or defence. See also *early special measures meeting* and *vulnerable and intimidated witness*.

Threshold test

This test is used in serious cases where key evidence is not yet available and where the prosecution want to apply to keep the defendant in custody to protect the public from offending and/or to secure the attendance of a defendant for trial.

Unused material

Material collected by the police during an investigation but which is not being used as evidence in any prosecution. The prosecutor must consider whether or not to disclose it to the defendant. See also *disclosure*.

Vulnerable and intimidated witness

Witnesses who may be vulnerable or intimidated for the purposes of special measures assistance include, all child witnesses (under 18) and any witness whose quality of evidence is likely to be diminished because they are suffering from a mental disorder (as defined by the Mental Health Act 1983) or have a significant impairment of intelligence and social functioning, or have a physical disability or are suffering from a physical disorder. Complainants to sexual offences are automatically defined as an intimidated witness unless they wish to opt out. See also *early special measures meeting* and *special measures applications*.

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