

Investigative interviewing witness guide

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- NPIA in allowing the New Zealand Police to use this and all their other 'PEACE' related material
- Dr Rebecca Milne, for her time, expertise and advice that have contributed to the development of this guidance.

Other material comes from:

- Criminal Justice System (2007). Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and using special measures. London: Office for Criminal Justice Reform.
- Milne, R. & Bull, R. (1999). Investigative Interviewing: Psychology and practice. Wiley: West Sussex
- Ord, B., Shaw, G., & Green, T. (2004). Investigative Interviewing Explained. Lexis Nexis Butterworths: New South Wales
- Schollum, M. (Sept 2005). Investigative Interviewing: the literature. New Zealand Police: Wellington

Purpose

This document outlines the skills required to gain complete, accurate and reliable information from investigative interviews with victims and witnesses. It develops on the foundation provided by the [Investigative interviewing doctrine](#).

Related information

More information on investigative interviewing can be found at Services/CIB Crime Service Centre/Service Units/Investigative Interviewing. Other documents in this series can be found at Intranet/Police Instructions/Police Manual/Investigations/Interviewing:

- [Investigative interviewing doctrine](#)
- [Investigative interviewing suspect guide](#)

If you have any feedback please forward any comments to:

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Introduction

This document provides guidelines and procedures for:

- interviewing witnesses, including [reluctant or difficult witnesses](#)
- identifying and interviewing [witnesses requiring special consideration](#)
- the specialist interviewing of adult witnesses.

It is designed to support interviewers at all levels of the Investigative Interviewing Standards and Training framework.

Who is a witness?

Witnesses are people who have information about an alleged offence or offender. They may be an eyewitness, present at the event, or someone who can only provide peripheral information.

In these guidelines, the term 'witness'...

includes...	does not include...
victims (defined in section 2 Victim Rights Act 2002 as a person injured or suffering loss or harm as a result of an offence)	suspects Special provisions for dealing with suspects are detailed in the Investigative interviewing suspect guide .

What is the purpose of interviewing witnesses?

The purpose of interviewing witnesses is to ascertain the witness's account of the alleged event(s) and any other information that would assist the investigation.

Guidelines are not prescriptive

Every witness is different. Therefore the guidelines are not in a prescriptive format that must be rigidly followed, nor should they imply that all other techniques are unacceptable. Instead, interviewers should be flexible, utilising techniques as and when you see fit depending on the interviewee, situation and circumstance.

Merely following the guidelines will not make a good interview. Interviewing is a skilled task requiring training, practice and judgement. As the interviewer, you may decide that in the interests of justice or to promote the witness's well-being the interview requires procedures different to those described.

Any decisions of this kind should be made in consultation with an NCO and, where appropriate, the prosecuting agency.

Always behave ethically when interviewing

Regardless of what approach you take, you must still always behave ethically and with the [ten principles](#) of investigative interviewing in mind.

Treat all witnesses as individuals

As an investigator, interviewing witnesses is part of your everyday business. Witnesses come from a wide range of backgrounds and each presents you with different challenges. They all have different needs and concerns, and levels of involvement in the investigation (e.g. you may have a witness who is a victim of the crime or a witness with no links to the victim whatsoever but who saw what has occurred). There can never be a 'one size fits all' approach to the interaction with witnesses and individual circumstances should always be taken into consideration.

Give special care to victims

Treat all witnesses with empathy and sensitivity. As victims are at high risk of being traumatised, additional provisions exist to ensure special care is taken.

You must treat victims with courtesy and compassion and respect their dignity and privacy ([s 2 Victims Rights Act 2002](#)).

Multiple witnesses

If there is more than one witness to an incident care should be taken to minimise the risk of memory contamination between witnesses by:

- separating the witnesses as soon as is feasible and interviewing them individually
- if the interview is being delayed, consider asking the witnesses not to discuss the incident with other people involved and explaining to them why you are taking this action, i.e. the potential for post-event information to contaminate memory. Be aware that a more flexible approach is required with witnesses that may be stressed by the incident as discussing it with others may help therapeutically.

Witnesses who become suspects

If a witness becomes a suspect during interview [procedures for interviewing suspects](#) should be adopted including complying with all legal requirements and visually recording the interview. The Criminal Investigations (Bodily Samples) Act 1995 [section 2](#) provides a definition of a suspect:

'Suspect, in relation to an offence, means any person whom it is believed has or may have committed that offence, whether or not-

- (a) That person has been charged with that offence; or
- (b) There is good cause to suspect that person of having committed that offence.'

This means if there is sufficient evidence to charge, the interviewee should be cautioned.

Gathering intelligence from witnesses

The same [procedures for interviewing witnesses](#) should be applied when gathering intelligence.

Interviewing principles and framework

Ten principles of investigative interviewing

Ten principles provide an authoritative guide to ethical interviewing. Approach all interviews with these principles in mind and use them to actively examine your own attitudes and behaviours.

1	Interviewing is at the heart of investigation.
2	The aim of an interview is to discover the truth.
3	Information must be complete, accurate and reliable.
4	Keep an open mind.
5	Act fairly.
6	Questioning can be persistent.
7	Some witnesses require special consideration .
8	Suspects must be interviewed in accordance with the law.
9	Special care must be taken to identify suspects requiring special consideration.
10	Be sensitive to cultural background and religious beliefs.

PEACE interviewing framework

Conduct witness interviews using the PEACE interviewing framework.

Step	Action
1	Planning and preparation : Review available information and establish interview aims and objectives.
2	Engage and explain : Develop rapport and explain interview processes and procedures.
3	Account : Using an appropriate interview model gain an account of events and probe the account for more information.
4	Closure : Conclude the interview and address any concerns.
5	Evaluation : Evaluate how the information obtained impacts on the investigation and also evaluate the performance of the interviewer.

Interview models

These three interview models are used within the PEACE framework:

- [Free recall](#): encourages cooperative interviewees to give their own account of what happened in their own time and without interruptions.
- [Conversation management](#): enables the interviewer to control the interview and elicit as much information as possible from a reluctant interviewee.
- [Enhanced cognitive interviewing](#): builds on free recall using advanced techniques to assist a cooperative interviewee to recall as much high quality information as possible.

Advice

For advice on investigative interviewing related matters contact the Investigative Interviewing Unit at Police National Headquarters on extension 44662 or at investigative.interviewing@police.govt.nz.

Forms

All investigative interviewing forms are located on 'Police Forms' under 'Investigative Interviewing'.

Planning and preparing interviews

Planning and preparation is one of the most important phases in effective interviewing. Always plan and prepare, no matter what type of interview is being considered, to ensure you are ready to conduct an effective and ethical interview.

What should be covered when planning and preparing for an interview?

Step	Action
1	Consider these factors when planning and preparing for an interview: <ul style="list-style-type: none">• interview aims and objectives• investigatively important topics• witness profile: identity factors and current state• legal requirements• interview structure• contingencies for interviewee reaction• practical arrangements, including whether or not the interview should be delayed because the witness requires special consideration (e.g. due to intoxication).
2	Decide if the witness requires special consideration and if they do what initial action you should take.
3	Complete a written interview plan where possible.

Interview aims and objectives

Develop a good understanding of the investigation and the purpose of the interview by:

- examining all available evidence - witness statements, scene examination, exhibits, and other supporting documents
- setting the aims and objectives for the interview. These should focus on the investigatively important topics that need to be covered.

Investigatively important topics

Identify topics needing to be explored for the investigation, including:

- circumstances of alleged offending including what happened:
 - immediately before the alleged offence
 - during and after the alleged offence
- all physical and verbal interactions between the witness and the alleged offender or anyone else
- type and severity of alleged offence
- offence ingredients and probable defences
- identity and description of the suspect and other witnesses
- covering [ADVOKATES](#) with eyewitnesses
- descriptions of the scene, exhibits and other items of interest
- how the alleged offence came to the notice of police.

Witness profile: identity factors

Build up a profile of the witness by gaining as much information as possible about:

- name and preferred name (e.g. Matthew but prefers Matt)
- gender and sexuality if relevant
- age and maturity
- race (if Maori include Iwi and Hapu), culture, religion and first language
- any physical, intellectual, psychological or psychiatric impairment
- relationship of witness to the alleged offender
- domestic circumstances
- current or previous contact with public services such as previous police contact, CYFS, health professionals.

- employment and routines
- absence or likely absence from New Zealand.

Also:

- consider [special needs](#) the witness may have, for example, if an interpreter is required
- conduct a NIA check including criminal history and records.

Witness profile: current state

Consider the witness's emotional and physical state including:

- any trauma suffered
- fears of intimidation
- likely impact of recalling traumatic events on the witness's behaviour
- impact on behaviour of physical injuries, intoxication, tiredness and so on (delay the interview if appropriate)
- whether the witness is currently in a safe environment
- type of evidence the witness is likely to give.

It is paramount you consider the witness's well-being and investigative needs in this decision making.

Interview structure

Based on the information established about the witness and the offence decide:

- whether the witness requires [special consideration](#)
- whether the interview should be visually recorded and a specialist interviewer engaged
- what interview model to use (generally [free recall](#) model for cooperative witnesses, [conversation management](#) model for reluctant witnesses). The model adopted may need to change over the course of the interview
- how you will set the scene and your first opening question.

Contingencies for witness reaction

Consider contingencies for the witness's reaction, including:

- what to do if they are fully cooperative
- approaches to take if they become difficult to interview or reluctant, say nothing, give sparing information or lie
- whether to break the interview up over several sessions (this may be advantageous if a lot needs to be covered, the incident happened over a number of occasions, or the witness finds the interview experience traumatic).

Practical arrangements

Decide:

- who should be present during the interview, e.g. a support person or interpreter.
- where and when the interview should take place
- the pace and likely duration of the interview and need for breaks.

Let your supervisor know where you are and that you are interviewing someone and are unavailable. If possible, turn your radio and cell-phone off.

Consider what is likely to happen after the interview (medical examination, photographs, fingerprints, return home).

Timing of the interview

As a general rule the interview should be conducted as early as possible for both investigative purposes and to minimise the risk of memory contamination and forgetting.

Consider the following when making a decision when to interview a witness:

- investigative factors - what are the needs of the investigation? How quickly do we need the information?
- interviewee factors - what are the needs of the interviewee? Would the interviewee benefit from delaying the interview? Involve the interviewee in the decision.
- memory factors - the longer the delay in conducting interview, the greater the room for potential memory contamination and forgetting.

If a witness is traumatised consider delaying the interview. Check with the witness as to their preference, some witnesses may want to be interviewed straight away to get it over with. Also remember some witnesses, e.g. [family violence](#) victims, may be more forthcoming with information if interviewed immediately. In such cases it is important to interview the witness as near to the event as reasonable so the investigation can be completed with urgency. Interviews with witnesses who are tired or intoxicated should only be conducted in exceptional circumstances.

Preparing the interview location

- A quiet room that is free from distractions and interruptions allowing both you and the witness to concentrate is an ideal setting.
- Ask the witness where they prefer to be interviewed.
- Set up the interview room and arrange the seating - ten to two is the preferred position.
- Consider willingness to talk in a formal setting to a police officer.
- Check equipment.
- Make sure you have ready communication aids – including pen and paper for drawing sketch plans.
- Consider implications if a [support person](#) or [interpreter](#) is required.
- Provide refreshments and tissues where appropriate.

Engage and explain

Preparing the witness for interview

First impressions do count, so the opening phase of the interview will often determine the success of the interview as a whole. The engage and explain interview phase may be immediately prior to the interview or on a separate occasion depending on the circumstances of the case. It can also take place in person or over the telephone.

Engage the witness

Establish rapport to put the witness at ease and allow for maximum remembering by:

- introducing yourself and any others present
- asking the witness what they would like to be called
- asking when is a suitable time for interview, e.g. do they have any pressing needs or commitments?
- personalising the interview, i.e. treat the witness as an individual and talk to them in a manner and language they understand
- discussing neutral topics
- communicating empathy, i.e. addressing any concerns about events, the interview and the investigation.

Maintain impartiality to establish the foundation for a relationship of trust by:

- keeping an open mind, i.e. don't pre-judge the witness
- using open questions and not interrupting - begin with [TEDS](#) style questions to encourage the witness to start talking
- actively listening.

Explain interview procedures

Explain interview procedures including:

- reason(s) for the interview - do this in a way that makes the interview's purpose clear but does not specify the nature of the offence
- routine(s) that will be adopted - note taking and method of recording
- the interview structure - tell them they will be asked for their account and then you may ask questions to clarify their information

Ground rules for cooperative witnesses

Unless the witness is [difficult to interview or reluctant](#), explain the ground rules for the interview by explaining your expectations about each others roles.

You want the witness to...	Tell the witness...
Concentrate	you understand: <ul style="list-style-type: none">• considerable effort and concentration is required, so they will be given time to remember and provide their account• this may be difficult
Report everything	you want them to: <ul style="list-style-type: none">• give an account of all they know in as much detail as possible• not edit their account but tell you everything that comes to mind – including all the information they are not confident about or think may be trivial or partial, information they think you already know• take their own time and set their own pace

Take control	<ul style="list-style-type: none">• you weren't there so you don't know what happened• you want them to:<ul style="list-style-type: none">- do all the talking because they have information you want to know- give you as much detail as possible and tell you if they don't know something- not be influenced by what they think you or others might want them to say- correct you if they feel you have misunderstood something they have said.
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Account

Identifying a suitable interview model

Different techniques can be used to help witnesses provide a full account of events. The techniques used will depend on your interviewing skills and the witness's level of cooperation.

Use this table to help you identify the most suitable model.

Model	Interviewee	Incident	Interviewer
Free recall	Cooperative (including witnesses requiring special consideration)	All	Free recall trained
Conversation management	Difficult to interview or reluctant (including witnesses requiring special consideration)	All	Conversation management trained
Enhanced cognitive interviewing	Cooperative	Serious or complex	Enhanced cognitive interviewing trained

Changing models during interview

Witnesses can move from being cooperative to uncooperative and vice versa during interviews and you may need to change your interviewing technique as a result. Revert to free recall model where possible.

Using the free recall model

This table details the steps that should be completed when using the free recall model.

Interview stage	Actions
Set the scene and initiate free report	<ul style="list-style-type: none"> • Set the scene by using non-suggestive verbal cues to guide the witnesses' memory back to the time and place of the incident. • Initiate a free report by using an open TEDS type question. Ask the witness to give an account of everything they know about the matter under investigation. • Allow for pauses and do not interrupt the witness. Actively listen using minimal prompts that do not go beyond the witness's account. • Reflect back what was said where necessary. • Take notes of areas you wish to obtain more information about. • If appropriate, get the witness to draw a sketch plan. Ensure the witness dates and endorses the sketch plan as it may later be referred to and used as an exhibit. • If more detail is required go through another free report.
Identify and expand witness topics	<ul style="list-style-type: none"> • Break down the witness's account into manageable topics. • Systematically expand each topic of the witness's account by obtaining a free report with open TEDS type questions. When open questions are no longer fruitful use probing 5Wh + How type questions if necessary. • Try to go through the topics in the order the witness gave them in their initial free report. • Take notes of what is said to aid your memory when preparing a written statement.

	<ul style="list-style-type: none"> Repeat this process until you have covered all topics.
Identify and expand investigatively important topics	<ul style="list-style-type: none"> Introduce investigatively important topics not yet covered. Systematically expand each topic of the witness's account by obtaining a free report with open TEDS type questions. When open questions are no longer fruitful use probing 5Wh + How type questions if necessary. Repeat this process until you have covered all investigatively important topics.
Summary	<ul style="list-style-type: none"> After the witness has provided all their information, summarise back what they have told you in their own words.

Free recall questioning style

Whether or not your witness requires [special consideration](#), you should use these interviewing techniques to minimise the risk of influencing what the witness says.

Do...	Explanation /example
Keep questions short and simple	The younger or more vulnerable the person, the shorter and more simply phrased the questions need to be.
Ask questions in a language and manner the person understands	i.e. open TEDS type questions in simple language are the best for the majority of interviewees.
<ul style="list-style-type: none"> Move to more specific closed questions using 5WH's + How when open questions are no longer fruitful and more detail is required Begin with the least explicit version of the closed question 	<ul style="list-style-type: none"> Avoid why questions unless absolutely necessary and the question is couched in a very empathetic way - the victim may think you are blaming them and these types of questions are very difficult to answer with factual information. The drawback of using specific closed questions is that the witness might respond with a choice without elaborating or be tempted to guess to assist or please you in the absence of a genuine memory. Thus the quality of the information gleaned tends to be poorer than information gained from open TEDS type questions.
If a support person is present check with them wording or phrases you think the witness may find difficult or for which the witness may have a different meaning than commonly held	<p>Examples:</p> <ul style="list-style-type: none"> the term 'penis' may not be understood but the term 'dick' may. 'aunty' means parent's sister to most people but to others it may include a long-term female family friend.
Avoid topic hopping	i.e. rapidly moving from one topic to another and back again.
Avoid interrupting	Some witnesses may speak slowly and pause for longer.
Avoid repeating questions	The witness might infer their initial response was incorrect.
Avoid developmentally inappropriate questions	e.g. some witnesses might find questions relating to time, date, height, length, weight, age etc difficult.

Only use leading questions (one implying the answer or assuming facts that are in dispute) as a last resort	If a witness responds to a leading question with relevant information not led by the question, revert to open questions.
Avoid asking questions with a 'Yes'/'No' answer	The witness may want to please by saying 'Yes' and avoid discussing uncomfortable topics by responding negatively.

Question types

This table outlines commonly used question types.

Open TEDS type questions	Probing 5 Wh's + How questions
Tell Explain Describe Show	What? Where? When? Who? Why? How?

Describing people of interest

Obtain as much detail as possible when a witness describes a suspect or other person whose identity may later need to be established. There are three main reasons for this:

- their description may be your only opportunity to identify the suspect or person of interest
- once the suspect has been identified the original description may become vital evidence during any resulting criminal proceedings
- if the witness endorses the description by signature, it can be used to refresh their memory before giving evidence in criminal proceedings (which may be months or years later).

Tools to assist witnesses describe people of interest

10 point description

Cover these ten points during an interview when describing a person of interest:

Sex	Race	Age	Height	Build
Hairstyle and colour	Complexion	Distinguishing features	Clothing	Carrying anything?

Use open [TEDS](#) type questions to get the interviewee to provide a detailed description of the offender e.g. 'Describe him to me in as much detail as you can...' Go back to any details they may have missed using more open TEDS type questions and finally with probing 5Wh + How type questions if required.

ADVOKATES

Use the mnemonic 'ADVOKATES' to ensure an eye witness covers all relevant information when describing a suspect.

A	Amount of time under observation	How long did the witness have the suspect in view?
D	Distance	What was the distance between the witness and suspect?
V	Visibility	What was visibility like at the time? (including time of day, street lighting, etc)
O	Obstruction	Were there any obstructions to the view of the witness?
K	Known or seen before	Had the witness ever seen the suspect before? If so, where and when?

A	Any reason to remember	Did the witness have any special reason for remembering the suspect? (e.g., a distinguishing feature or peculiarity, or the nature of the incident itself)
T	Time lapse	How long has elapsed since the witness saw the suspect?
E	Error or material discrepancy	Are there any errors or discrepancies between descriptions given in the first and subsequent accounts of the witness?
S	Saliency	It is important to examine how salient a person is within an event scene. Were there 5 armed robbers at the scene or only 1? A person can only process so much information at one time due to limited processing capacity.

Account: notes and statements

Note taking

When conducting interviews, you face the formidable task of both actively listening and formulating questions. Notes:

- help you later to write the statement or interview summary
- can be used to brief other members of the investigation team
- are not usually discoverable as they are made as part of the investigative process (do not disclose your notes but attach them to the file should defence counsel apply to the court for disclosure).

If you do not take notes, you may:

- miss pieces of information
- make assumptions or misinterpret what was said
- use your own words or phrases rather than the interviewee's.

Be aware that taking too many notes can be a distraction for the interviewee and interfere with their concentration and ability to recall information.

Notebooks

Your notebook is a record of your duties, what you did, who you spoke to, your observations, sketch plans or diagrams, initial interview notes and, if absolutely necessary, statements from interviewees.

Courts readily accept that police may refer to notes made contemporaneously or as soon as practicable after the event when giving evidence. You must record relevant details about the interview in your notebook including:

- date, time and place of the interview
- interviewee's name and contact details.

Notebook statements

Only take statements in your notebook in exceptional circumstances, e.g. when it is impractical to conduct a formal interview or when the offence is minor in nature.

In these circumstances record the entries as you would a [written statement](#). Record these in full in notebook format before the statement commences.

Job sheets

Never record interviews in job sheet format (job sheets are official records, chronologically listed, of action taken, information gathered, people spoken to and exhibits seized).

Use a jobsheet to record a conversation with a witness when:

- they have been spoken to and it is established that they do not need to be interviewed on a more substantial basis
- a pre-interview has been conducted and the decision is made to refer the matter to a specialist interviewer
- they refuse to be formally interviewed but have provided investigatively important information.

Written statement

Most witness interviews result in a written statement at the end of the interview to:

- establish evidence the witness can provide (for both investigative and prosecution processes) or further lines of enquiry
- refresh the witness's memory should the matter proceed to court

- cross-examine the witness should they later give contradictory evidence.

The interview record is a complete record of all information the witness can provide and should also include relevant inadmissible evidence.

When to record a statement

Obtain statements from anyone who can provide investigatively important information including:

- prospective witnesses
- witnesses of doubtful reliability
- any person who can give important information in major enquiries
- spouses of suspects and offenders
- associates of suspects
- likely defence witnesses (this helps cross-examination and can prevent witnesses from tailoring stories for the defence)
- people suspected of making false complaints
- people making complaints against the police.

Procedure for recording written statements

After the final summary follow this procedure to prepare a written statement.

Step	Action
1	<ul style="list-style-type: none"> • Use police form II: WS for all witness statements. • Ideally, type the statement on the computer. Alternatively, handwrite on lined paper. (Use one side of the page only. Leave space at the top of each page for the file pin). • Only record it in your notebook if the other methods are impractical.
2	<p>In the statement's heading enter:</p> <ul style="list-style-type: none"> • the witness's name, age and occupation • date and time of the statement • your name and station. <p>(Do not repeat this information in the text of the statement itself).</p>
3	<p>Using your notes, record the statement in chronological order and narrative form in the first person. (e.g. 'I noticed a yellow car outside the bank...'). Use the person's own words, phrases and expressions.</p> <p>Cover all information the witness can provide in as much detail as possible including:</p> <ul style="list-style-type: none"> • time, date and place of the incident • circumstances of the incident • detail actions and descriptions of people involved or simply present • details of what the individuals did and said • descriptions of property stolen or damaged, and injuries caused • a description of the suspect and how they may be identifiable • any other information that may help to: <ul style="list-style-type: none"> - locate the offender - trace missing property - corroborate or refute information • further enquiries. <p>Avoid using abbreviations, jargon or correcting the person's grammar or vocabulary. If the person uses slang or colloquialisms, ask them to clarify the meaning and write the explanation in the statement (so the intended meaning can be clearly understood).</p>

4	<p>Complete the coversheet with all the witness's personal details. If relevant ask the witness to sign consent for police access to personal information relating to the investigation. Completing this task at the end of the interview will help prevent the de-personalisation of the interview through asking these administrative questions.</p> <p>To protect the witness's privacy do not disclose the coversheet without legal advice.</p>
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Do not:

- short cut this process as it will reduce the quality and quantity of information obtained
- start writing until after the witness has given their full account, i.e. an uninterrupted account has been given that has been probed for more information and they have answered all investigatively important questions.

Endorsing the statement

Once you have recorded everything take these steps to endorse the statement.

Step	Action
1	<p>Ask the interviewee to:</p> <ul style="list-style-type: none"> • read the statement (if this is not possible, follow procedure for witnesses not able to read) • make and initial any corrections or additions and sign at the end of each page
2	<ul style="list-style-type: none"> • Once the interviewee is satisfied with the content of the statement you must record the s162 Summary Proceedings Act 1957 declaration at the end of the statement: <ul style="list-style-type: none"> - 'Everything in this statement is true to the best of my knowledge and belief, and I made this statement knowing that it may be admitted as evidence for the purposes of a standard committal or at a committal hearing, and that I may be prosecuted for perjury if the statement is known by me to be false and is intended by me to mislead.' • Invite the interviewee to sign the statement with their full signature below the declaration (if they refuse to sign, note this on the statement).
3	<p>You endorse the statement by:</p> <ul style="list-style-type: none"> • initialling and numbering the bottom of each page • writing at the end of the statement: <ul style="list-style-type: none"> - 'Statement taken and signature witnessed by:' • adding your full signature, QID and finish time.

Witnesses not able to read and write

If you are unsure about a witness's ability to read and write follow this procedure.

Step	Action
1	Ask the witness to read out the first sentence or two to you. If they have difficulty, offer to read it to them or get a colleague to read it so there can be no allegation of distortion.
2	Sit beside the witness so they can see where you are reading from.
3	<ul style="list-style-type: none"> • Before endorsing the statement write the following declaration: <p>'This statement has been read to me. Everything in this statement is true to the best of my knowledge and belief, and I made this statement knowing that it may be admitted as evidence for the purposes of a standard committal or at a committal hearing, and that I may be prosecuted for perjury if the statement is known by me to be false and is intended by me to mislead.'</p> • Make a note about their reading ability in your notebook so you have a record if you are questioned in court.

4	The person reading the statement endorses the statement: 'I have read this statement to WITNESS'S NAME. I have asked them if they wish to make any alterations which I have done and initialled with READER'S NAME.' The reader signs off the statement and writes the time.
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Closure and evaluation

Closing interviews

Whatever interview model has been used close interviews by:

- reviewing information obtained and confirming that everything has been covered (open a new account phase if any information has been omitted)
- asking if the witness has any questions and answering them appropriately
- thanking the witness for their time and effort
- advising that if they recall further information about the event after the interview, they should make a written note of what they recall and contact you
- preparing for future events (e.g. referral to support services, photographs, medical examination, court or further police involvement with the witness)
- providing them with your card or name and contact telephone number
- returning to building rapport or other neutral topics
- ending in a positive, polite and prospective manner.

Evaluate information obtained

After interviewing a witness:

- review the information obtained and consider:
 - the impact of the information on the investigation
 - what evidence there is in relation to offences, ingredients and potential defences
 - descriptions of people, items and events that may be vital to the investigation
 - the urgency and need for further enquiries
- consider what follow-up action is required to prepare the witness for any future court proceedings. It may be advantageous to keep in regular contact with the witness especially as court proceedings approach.

Self-evaluation

Self-evaluate your own performance:

- what did you do well?
- what could you have done better?
- what areas can you develop?
- how will you acquire these skills?

Difficult to interview or reluctant witnesses

If the witness is difficult to interview (compliant but troublesome to interview) or reluctant (is not forthcoming with information they have that may assist the investigation) follow the usual procedures for preparing for the interview and engaging with the witness. Note that your attitude to the witness will contribute to how they respond to you and determine the success or otherwise of the interview.

Take particular care to:

- treat the witness with dignity and respect
- keep an open mind - do not assume they will be uncooperative
- be patient - it may be frustrating but the end result will make it worthwhile
- empathise with their position
- be non-judgmental - this is likely to result in further resistance.

Witness's right to decline to be interviewed

Witness interviews are always conducted with consent so a witness is not obliged to answer your questions unless there is a statutory obligation (which only exists in special circumstances e.g. under the Land Transport Act 1998). This means it is the witness's right to decline to be interviewed and you cannot and must not force someone to speak with you.

Procedure when witness refuses to talk

Follow this procedure if the witness initially refuses to talk to you or be formally interviewed.

Step	Action
1	<ul style="list-style-type: none">• Spend time building rapport with the witness. This may take several sessions.• Provide the witness with an outline of the offence(s) under investigation, and explain the potential importance of the information they may have and the processes involved with the interview. Give the witness enough information to make an informed choice as to whether to speak to you, but not provide them with specific details about the allegations or what they are believed to have witnessed.
2	<ul style="list-style-type: none">• Ask them why they do not want to be interviewed, and• Try to address their concerns. If they refuse to tell you their concerns, consider what they might be (from your planning and preparation) and address these.
3	If the witness then agrees to be interviewed, interview them as you would any other witness. If they are not forthcoming with information when using the free recall model then use the conversation management model .
4	If the witness still refuses to be interviewed but will talk with you informally about the offence, obtain as much detail as you can from them using open and, if required, closed questions.
5	If the witness refuses to talk to you at all, that is their right. Avoid over persistence and: <ul style="list-style-type: none">• ensure you get their full details so they can be summonsed if required• proceed to the closure phase of the interview.
6	Closure: <ul style="list-style-type: none">• close the interview as usual and provide them with your contact details should they change their mind or have any queries later• record in your notebook or on a jobsheet:<ul style="list-style-type: none">- any information they have provided about the offence- the reasons given for refusing to be interviewed- your opinion on why they refused.

	A detailed account of what was said is vital as the witness may later give contradictory evidence or be called by the defence. Should this eventuate your record may be needed for cross examination.
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Using the conversation management model

This table details the steps that should be completed when using the conversation management model with a reluctant witness who is not forthcoming with information when using the free recall model (you should already have covered the [ground rules](#) with the witness as usual).

Interview stage	Actions
Free report	<ul style="list-style-type: none"> • Initiate a free report using an open TEDS type question. Ask the witness to give an account of everything they know about the matter under investigation. • Allow for pauses and do not interrupt the witness. • Actively listen using minimal prompts that do not go beyond the witness's account. • Take notes of areas you wish to obtain more information about. • If appropriate, get the witness to draw a sketch plan. • If more detail is required go through another free report.
Identify and expand witness topics	<ul style="list-style-type: none"> • Break down the witness's account into manageable topics. • Systematically expand each topic of the witness's account by obtaining a free report with open TEDS type questions. When open questions are no longer fruitful use probing 5Wh + How questions if necessary. • The extent you use each question type is dictated by the level of the witness's cooperation. Encourage the witness to do all the talking by using open questions. Be patient, but if one questioning technique is unsuccessful, try another. • The level of cooperation may improve during the interview as the witness becomes used to answering questions. The witness may only initially answer closed questions but as the interview progresses become more forthcoming with information. In these circumstances, try reverting back to open TEDS type questions. This will encourage them to do more talking and save you time. • Take notes of what is said to aid your memory when preparing a written statement. • Repeat this process until you have covered all topics. <p>Giving sparing information or not telling the truth If you believe the witness is:</p> <ul style="list-style-type: none"> • being sparing with information, use probing 5Wh + How questions to elicit all the details you require • not telling the truth, use open TEDS type questions as much as possible, Note inconsistencies and deal with them at the interview's end.
Investigative important topics	<ul style="list-style-type: none"> • Repeat the above process covering all investigatively important topics not yet been addressed.
Inconsistencies	<ul style="list-style-type: none"> • Consider information obtained and the witness's current demeanour. If appropriate, seek an explanation for any inconsistencies. • Alternatively, consider holding back and conducting a second interview after more enquiries have been conducted.

Witnesses that are difficult to interview

Some witnesses may be more troublesome to interview because they have difficulty understanding what is required or continuously go off topic. In these cases you should:

- be patient. Some witnesses involve a lot more time and effort. Consider why they are difficult to interview including whether they require [special consideration](#) and if you should delay the interview. Some may go off topic because they find it upsetting to discuss the alleged offence(s) and others may simply not understand what is expected of them. Always bear in mind that different people remember things in different ways and what appears to be going off topic to you, may simply be the witness retrieving the information in the most effective way for them.
- consider re-explaining the ground rules, they may simply not understand what is required of them.
- keep using open questions but set clear parameters and re-direct the witness if they go off the topic. If this does not work introduce more probing questions. Be careful not to ask leading questions.
- a witness may not remember all the details of what happened, so do not assume that they know everything. If you keep questioning them when they do not know the answer they may make up information in an attempt to please you or get frustrated with you and the interview process.

Witnesses requiring special consideration

Defining special consideration

A witness requires special consideration when additional measures need to be taken at interview to maximise the accuracy and completeness of the information obtained due to:

- their [personal characteristics](#)
- the [circumstances of the offending](#).

Decisions about special consideration should be made on a case by case basis. No two witnesses are the same and there may be one or a variety of reasons why they require special consideration and, as a result, what additional [procedures](#) are adopted.

Always take into account your responsibilities under the Victims Rights Act 2002 by treating all witness's compassionately and catering for their well-being.

Personal characteristics

The personal characteristics that should be considered include the witness's:

- age or maturity
- physical, mental, or psychological condition
- physical, intellectual, psychological or psychiatric impairment
- linguistic or cultural background and religious beliefs.

Examples include: children and the elderly, intoxicated witnesses, traumatised victims, witnesses with learning disabilities or mental health problems, victims of family violence and sexual assault, and witnesses with English as a second language.

Due to any of these factors the witness may be more vulnerable than others and find the investigation and prosecution process stressful or even traumatic. Some may also be more susceptible to memory or communication difficulties resulting in the diminished quantity or quality of information provided. Special measures need to be taken to support these witnesses and ensure the most complete and accurate information is obtained for the investigation.

Circumstances of the offending

The circumstances of the offending that should be considered include:

- the nature of the offending
- fear of intimidation
- the investigative importance of the witness
- relationship to any party involved in the investigation.

It is especially important to maximise the accuracy and completeness of information from witnesses to serious offences and those that are central to the investigation (i.e. [investigatively important](#)). Examples include: persons that find the body in a homicide, victims of sexual or other serious assaults, victims of hate crimes, victims of recidivist family violence offenders, [witnesses who may later become suspects](#), eyewitnesses to serious offences where the identity of the offender is unknown, e.g. robbery.

All sexual assault cases should be treated with special consideration.

Giving evidence in alternative ways

The [Evidence Act 2006](#) recognises some witnesses require special consideration because of their personal characteristics or the circumstances of the offending. [Section 103](#) of the Act allows the prosecution to apply to the court for the witness to give their evidence in an alternative way if certain grounds exist. The Judge may direct the witness to give

evidence in-chief and be cross-examined in the ordinary or an alternative way. This includes playing a visual recording of the witness's evidence in chief. If you believe your witness may be eligible for giving evidence in alternative ways, complete [initial action procedures](#) for special consideration witnesses.

Evidence Act useful for determining if special consideration required

[Section 103](#)(3)(a) outlines the grounds a judge must consider when deciding if an alternative method of giving evidence should be used. These grounds are useful for determining whether the witness requires special consideration when being interviewed during investigations:

- age or maturity of the witness
- physical, intellectual, psychological, or psychiatric impairment of the witness
- trauma suffered by the witness
- witness's fear of intimidation
- linguistic or cultural background or religious beliefs of the witness
- nature of the proceeding
- nature of the evidence the witness is expected to give
- relationship of the witness to any party to the proceeding
- absence or likely absence of the witness from New Zealand
- any other ground likely to promote the purpose of the Act.

Before starting the interview process

Initial actions for all investigators

You must identify as early as possible if the witness needs [special consideration](#).

This table outlines initial actions to take relating to witnesses needing special consideration before the investigative interview commences.

Step	Action
1	Decide if you will conduct the interview or whether a specialist interviewer should be engaged (e.g. when an interview needs to be visually recorded or the witness is a victim of sexual assault). Make this decision in consultation with your supervisor. Even if you will not be conducting the interview you must still complete initial actions in a manner that maximises the quality of the evidence obtained.
2	If it is appropriate for you to conduct the interview, follow initial actions for interviewers . If a specialist interviewer is being engaged, complete the remaining actions outlined in this table, unless they are delegated to another squad.
3	Gain a brief outline of events by: <ul style="list-style-type: none"> • planning what you are going to say to the witness and how you will say it • asking no more questions than is necessary (use open TEDS type, not leading questions) to gain an understanding of what has happened, when and where it occurred, and who was involved to: <ul style="list-style-type: none"> - provide first aid or medical attention - preserve scenes or physical evidence - determine the seriousness of the offence - secure witnesses or identify and detain suspected offenders - support the witness. • listening to what the witness is telling you and not interrupting • considering while interacting with the witness, what special measures they may need at interview, (e.g. need an interpreter, professional support person, or carer). <p>Always remember a witness may be interviewed later on a more substantive basis. Take care not to contaminate the witness's evidence before that substantive interview.</p>
4	Accurately record all discussions and ensure you have recorded the witness's full personal details and, if applicable, their carer. As soon as possible, record in your notebook any discussions with the witness, including questions you asked. Include details to assist identify special needs the witness may have during interview. (This helps other officers taking over responsibility for the investigation, and may be required during court proceedings).
5	Inform a supervisor of your actions. The supervisor will ensure that all appropriate action has been taken, and that the investigating officer or a specialist interviewer is aware of all the circumstances.

Initial actions for interviewer

Before you interview a witness requiring special consideration, decide what additional interviewing procedures are necessary for the witness you are interviewing (e.g. [family violence victims](#) or witnesses with [different cultural or linguistic backgrounds](#)).

Background checks

Do background checks and, if possible, talk to family members or relevant health professionals to find out whether:

- full and fair communication with the witness is possible
- they understand the nature of and reason for the interview.

If you believe full communication is **not** possible:

- discuss this with your supervisor
- consider referral to a specialist interviewer or request assistance of an appropriately qualified medical expert (e.g., a Duly Authorised Officer for a mentally disordered person).

Should the interview be delayed?

In some cases (e.g. when the witness is intoxicated, tired or traumatised) you may need to delay the interview until the witness is in a state suitable for interview and you are fully prepared. (You want to gain as much accurate information from them as possible).

Ensure you get their full details and any information required for initial action if you believe it would be advantageous to delay the interview.

Deciding what interviewing procedures to adopt

The usual procedures for interviewing witnesses using the [PEACE framework](#) apply when interviewing witnesses requiring special consideration.

However, you may need to vary your interview approach or adopt special procedures to take account of witness's individual needs and to:

- get complete, accurate and reliable information from the witness
- minimise the trauma experienced by the witness
- provide the best evidence for court proceedings.

Interview model

[Free recall](#) is usually the appropriate interview model to use when interviewing witnesses requiring special consideration because it minimises the risk of influencing the witness.

If the witness is difficult or reluctant, consider using the [conversation management model](#).

Special procedures for some witness categories

Categories of witnesses requiring special consideration, which need special procedures or variations to the usual interviewing techniques include witnesses who:

- are [intoxicated](#)
- [suffer from a physical, intellectual, psychological or psychiatric impairment](#)
- have [suffered trauma](#)
- [fears intimidation](#)
- have [different linguistic or cultural backgrounds](#)
- are [family violence victims](#)
- are [children or young people](#)
- are [investigatively important witnesses](#).

Support persons

Introduction

Having a support person present can have many benefits such as:

- reducing the witness's anxiety
- ensuring the witness's well-being and that they understand procedures
- aiding your understanding of the witness's needs
- providing support to the witness leading up to court proceedings.

These benefits help you develop a working relationship with the witness and help to gain a complete, accurate and reliable account.

When to use a support person

When deciding whether to use a support person, ask the witness for their preference and consider:

- the witnesses' characteristics, and
- whether having a support person present will benefit the witness and/or the investigation.

Always consider using a support person when the witness:

- is under the age of 18 years or very elderly
- suffers from disability, disorder or other impairment
- is traumatised
- is a victim of sexual assault
- fears intimidation
- comes from a cultural background or has religious beliefs that may present a barrier to communication or their understanding of procedures
- is a victim to or witness of a serious offence
- is closely related to the suspect (although bear in mind the relationship of the support person to the suspect and whether they are likely to create barriers to the investigation).

If a witness falls into one of the categories above but you think it is inappropriate to use a support person discuss this with you supervisor.

Appropriate support person

An appropriate support person is someone who:

- is an adult (of or over the age of 18 years)
- is not a suspect or witness in the matter under investigation
- you believe will not attempt to pervert the course of justice
- is available within a reasonable period of time (be flexible, to get the most out of the witness it may be preferable to wait for someone they feel supported by).

Appropriate support people include a parent or guardian, carer, family or whānau member, close friend, mental health support worker, rape crisis counsellor.

Specialist support persons

Enlist the help of a specialist support person with:

- all adult sexual assault victims
- witnesses who suffer from some form of impairment (refer to the section on [impairment](#) to see who is appropriate)
- witnesses that are extremely traumatised.

Witness usually chooses support person

Usually the support person should be someone of their choice but in some circumstances it may be appropriate for you to choose, for example, with a mentally disordered person in care their mental health worker may be the most appropriate person.

Support persons who are also witnesses

Only in exceptional circumstances should the support person also be a witness in the matter under investigation i.e. a support person is required and no one else is available that can provide the witness with the support they require. In these circumstances interview the support person before interviewing the witness and explain they must not take part in the interview while acting as a support person.

Role of a support person

Support person's role during interviews

This table outlines the role of support people during interviews.

Interview phase	Support person's role
Engage and explain	<p>On the arrival of the support person, explain to them that their role is to:</p> <ul style="list-style-type: none"> • provide support to the witness and ensure their well-being • ensure the witness understands what is happening • not prompt the witness or answer questions on their behalf. <p>Also:</p> <ul style="list-style-type: none"> • explain the interview process to the witness in front of the support person • allow the support person to spend some time alone with the witness to discuss the interview process before commencement of the interview • answer any questions they have about the interview process. • If a specialist support person is present speak with them alone about the witness's needs and decide what is an appropriate interview process. • Ask the witness what role they want the support person to take - whether they want them in the interview, to monitor the interview (if this practicable) or to wait in a room nearby.
Account	<p>If the support person is present during the interview:</p> <ul style="list-style-type: none"> • inform them they are not to prompt the witness or answer questions on behalf their behalf. <p>Otherwise, arrange for the support person to:</p> <ul style="list-style-type: none"> • monitor the interview from another room if the facilities are available and this is the witness's preference, or • wait in a nearby room until the interview's completion..
Closure	<ul style="list-style-type: none"> • Ensure a support person is present during the interview's closure. If the matter proceeds to court the witness will require ongoing support. • Let them know of any counselling referrals made and possible investigation outcomes. • If a written statement is prepared from the interview, include the details of the support person and get them to endorse the statement as well. They should sign the statement: <i>'This statement was made in the presence of...'</i> • Keep the witness (or carer) updated, explain processes,

	brief them for court and arrange for counselling.
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When a support person should be present in the room during interview
[Regulation 6](#) of the Evidence Regulations 2007 stipulates when a support person should be present in the room during interview. This advice equally applies to all other interviews:

- (1) A person may be present at an interview to support a witness if the interviewer considers that-
- (a) it is in the interests of the witness; and
 - (b) the person is an appropriate person to support the witness.

Intoxicated witnesses

Consider the best time to conduct interview

When witnesses have consumed alcohol or drugs it is important you consider when to conduct the interview.

Take these factors into account:

- whether full and fair communication is possible
- the degree to which their recall was impaired
- the practicality of delaying the interview
- the impact on the investigation of delaying the interview
- the seriousness of the offence.

Witness must understand the reason for interview

Do not conduct a formal interview if the level of intoxication prevents the witness from understanding the nature of and reason for the interview.

If you decide the witness is too intoxicated to be interviewed you should still attempt to obtain brief details about the event so that [initial action](#) can be completed.

Procedures when interviewing intoxicated people

Follow the [usual interviewing procedures](#) with these variations when you are interviewing a witness who has consumed drugs or alcohol.

Interview phase	Actions/ factors to note
Planning and preparation	<ul style="list-style-type: none"> • If a person is heavily intoxicated, assess if it is appropriate to interview them. If it would be unfair, delay the interview until a more suitable time. • Consider what interview model to use as you would with any other witness.
Engage and explain	<ul style="list-style-type: none"> • Ask open questions about a neutral topic or background to encourage the witness to start talking. • Evaluate their responses to determine if they understand what is happening and will be able to provide complete, accurate and reliable information. • Explain the interview process and again, ensure they understand what is happening. • Reassess whether now is the most appropriate time to conduct the interview.
Account	<ul style="list-style-type: none"> • When addressing investigatively important topics ask the witness: <ul style="list-style-type: none"> - what substance they have consumed, the quantity and over what period of time - about their level of intoxication now and at the time of the offence - to explain how they were affected. • It may also be relevant to ask about the levels of intoxication of people they were with who are also witnesses (victims, witnesses or suspects).
Closure and evaluation	<ul style="list-style-type: none"> • Close and evaluate the interview as usual. • Contact the person again when they are sober to ask if they have remembered any additional information. (Even low levels of alcohol and drug consumption can impede recall).

Physical, intellectual, psychological or psychiatric impairment

Introduction

A number of physical, intellectual, psychological or psychiatric impairments may affect a person's ability to perform as a witness. Impairments can also make the investigation process more difficult or stressful for the witness.

It is important you identify witnesses affected by impairments who require [special consideration](#) and take appropriate steps to:

- support the witness and ensure their well-being
- ensure they understand what is happening.

The individual characteristics of the witnesses who might fall into this category should always be taken into account.

Impairment examples

Examples of people with physical, intellectual, psychological or psychiatric impairment include those:

- suffering from a mental disorder
- with significant impairment of intelligence and social functioning (e.g. learning disability)
- with physical disability or are suffering from a physical disorder.

Possible indicators of impairment

This table lists some indicators that **may** help you identify a witness with an impairment.

Characteristic	The witness...
Behavioural	<ul style="list-style-type: none"> • has difficulty or is unable to: <ul style="list-style-type: none"> - read or write - remember their date of birth, age, address, telephone number - tell the time or know the day of the week, where they are and who they are. • appears: <ul style="list-style-type: none"> - eager to please or to repeat what you say - over excited or exuberant - uninterested or lethargic - confused by what is said or happening - physically withdrawn, aggressive or violent - expresses strange ideas - not to understand certain expressions. • has difficulty communicating, for example: <ul style="list-style-type: none"> - needs assistance or interpretation - doesn't understand questions and instructions - speech is difficult to understand or the witness has no or limited speech - uses signs or gestures to communicate. • may: <ul style="list-style-type: none"> - respond inappropriately or inconsistently to questions - appear to focus on irrelevant small points but not the important points or have a short attention span.

Physical	<ul style="list-style-type: none"> • may: <ul style="list-style-type: none"> - have unusual eye appearance - angle head/eyes for viewing - fail to search visually for people - hesitate in movement or be reluctant to move in an unfamiliar environment - have uncontrollable muscle movement.
Social circumstances	<ul style="list-style-type: none"> • may have social circumstances indicating impairment, e.g.: <ul style="list-style-type: none"> - live in a group or residential home, or with a carer - take certain prescription medicines.

Identifying witnesses with an impairment

Some impairment indicators are easily identified. Others may not be immediately apparent and behaviour may not always mean what you assume. There are common misconceptions. For example, people who are unable to read do not all have learning difficulties, not all people with communication difficulties are deaf and not all children feel supported by their carers.

Take the 'context' into account when considering the significance of the witness's behaviour, physical characteristics and social circumstances. Some individuals' behaviour may be affected by outside influences, such as drugs, alcohol, anger, fear or frustration. A distressed person trying to communicate by sign language may appear aggressive to the unaware.

Witnesses own views about impairment

Not all adults with impairment require special consideration or wish to be treated differently. It will depend on the nature of the person's impairment and whether it affects their ability to perform as a witness.

Consider whether the witness has willingly identified themselves as impaired, or is hesitant to accept that label. Identification of impairment does not rest solely on the witness's views but their views are important. The court needs to take them into account when determining witnesses' eligibility for special measures.

Factors affecting recall

Intellectual, psychological or psychiatric impairments may affect the witness's cognitive processes and hence their ability to recall information. Generally, this affects the completeness of information rather than the accuracy and the witness may give less detail than desirable creating errors of omission. These witnesses are also often more vulnerable to suggestions, compliance and acquiescence, thereby making them more susceptible to the consequences or interviewer error (such as leading the witness through suggestive questioning of non-verbal encouragement cues). It is therefore essential to build rapport, explain the interview process and requirements of the witness clearly, and use appropriate questioning techniques.

The quality of the information provided is not usually compromised, with the exception of those suffering from a mental disorder that are in a state of psychosis, i.e. suffering from delusions or hallucinations and cannot distinguish between reality and imagination. This however, does not exclude them from giving reliable evidence.

Unless a witness with a physical impairment also suffers from other types of impairment, their recall will not be adversely affected. They may however, have communication difficulties and suffer from other health problems that require special measures to be taken.

Err on the side of caution if unsure

If you are unsure if a witness is impaired, err on the side of caution when interviewing them and follow procedures to help them provide complete, accurate and reliable information.

Procedures when interviewing witnesses with impairments

Follow the [special consideration interviewing procedures](#) with these variations when you interview a witness identified as having physical, intellectual, psychological or psychiatric impairments, depending on their individual needs and circumstances.

Interview phase	Factors to consider/ actions to take
Planning and preparation	<ul style="list-style-type: none"> • Planning and preparation is vital to the success of the interview. Extra time and care should be taken at this phase when the witness suffers from some form of impairment. • Establish the nature of the impairment and measures needed to assist you obtain complete, accurate and reliable information. • Consider whether a specialist interviewer who can visually record the interview is required to maximise the accuracy and completeness of the information gained. A specialist should always be used if an alternative way of giving evidence (such as using a video interview as evidence) will minimise the stress on the witness and provide the best evidence. • Ascertain if the witness is in contact with a professional, e.g. doctor, nurse, social worker, community mental health worker or legal representative, who might be able to assist them. These people may: <ul style="list-style-type: none"> - be appropriate support persons through interviews and judicial processes - provide details on the witness's impairment and how it may impact on their ability to provide complete, accurate and reliable information. • People suffering from a mental disorder or learning disability may require an early psychiatric or psychological assessment to establish how best to support them at interview. Decide this with your supervisor and where appropriate the prosecutor. (Note: reports may have to be disclosed to defence prior to trial). • Consider and seek advice when necessary about the best way of communicating with the witness (e.g. cerebral palsy victims lack muscle co-ordination, and side effects of medication can result in restlessness, shaking or loss of concentration) • Decide what communications aids are required. • Decide what is needed to manage access and personal care requirements with witnesses who have a physical impairment. • Decide the best time and location for interview. Take into account the witness's needs including the effects of medication, when they are most alert and access to the location. • Consider several shorter interviews may be required with breaks for rest or refreshment. • Establish if the witness needs a carer, support person or interpreter/intermediary at the interview.
Engage and	<ul style="list-style-type: none"> • Witnesses not used to speaking to strangers might need to

<p>explain</p>	<p>spend time getting to know you before they are ready /willing to be interviewed. Consider meeting(s) with a witness prior to the investigative interview and spending an extended period of time to establish rapport (even over several sessions).</p> <ul style="list-style-type: none"> • Focus on the witness as a person rather than on their impairment. If you feel uncomfortable, the witness will notice and may become uneasy. Plan the interview so you know what to expect, monitor your own behaviour and try to act as normal as possible. • Be reassuring and empathetic but not demeaning or patronising. • Let the witness determine personal space and be prepared for the possibility that they may prefer to sit closer to you or further away. • When explaining the ground rules to the interview ensure you emphasise: <ul style="list-style-type: none"> - that if you ask a question and the witness does not understand or know the answer, they should say so - if you misunderstand what they have said or summarise what has been said incorrectly, then they should point this out - it is their interview and they can take a break at anytime - that you were not present at event(s), do not know what occurred and providing detail is important.
<p>Account</p>	<ul style="list-style-type: none"> • Use the free recall model. • Be aware that witnesses with impairments tend to provide less information when giving a free report. • Let the witness set the pace. Witnesses with impairments may be slower at understanding and thinking than other witnesses. In these circumstances you should: <ul style="list-style-type: none"> - be patient and avoid interrupting - slow down your speech rate - allow the witness extra time to take in what has been said and respond - avoid immediately posing the next question - avoid filling in the answers for the witness • Allow the person to tell their story in their own words (it may take longer than usual). They may be forthcoming with peripheral details and hesitant to discuss more central matters. Avoid the temptation of prompting the witnesses to get straight to the point, rather use active listening including silence and pauses, and be patient when the witness provides apparently irrelevant information. • Witnesses with an impairment are more likely to be tainted by inappropriate questioning, so take extra care to use the correct questioning techniques. Speak slowly and keep questions simple and in a language the witness understands. • Avoid 'yes'/'no' type questions as the witness may have a tendency to acquiesce and want to help and answer 'yes'. • Use on-verbal language to supplement your communication when necessary. This should be done in a neutral fashion as the witness may try to be overly helpful and offer responses in an attempt to please the interviewer. • Consider factors relating to the witness's impairment that may be relevant to their ability to recall information.

- | | |
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| | <ul style="list-style-type: none">• Use more breaks if the witness tires easily. |
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Specialist interviews of witnesses with impairments

Introduction

Interviewers of witnesses with impairments need to recognise and work with their capabilities rather than their limitations.

This section provides useful guidelines for specialists interviewing different types of witnesses with impairments. Follow these guidelines in addition to the general guidance for witnesses with [physical, intellectual, psychological or psychiatric impairment](#).

Physical disability

In addition to the procedures for interviewing witnesses with impairments, be aware the witness might:

- require an interpreter, intermediary and/or communication aids. Discuss with the witness or carer to ascertain communication needs.
- require computer or other electronic communication equipment accessed via fingers, or by pointing to letters or symbols on a board, or by other means. (It is important that witnesses move or point themselves: third party involvement is likely to lead to evidence being ruled inadmissible)
- benefit from a series of short interviews spaced out with periods of rest and refreshment
- require an extended period of rapport building over several sessions.

Learning impairments

In addition to the procedures for interviewing witnesses with [physical, intellectual, psychological or psychiatric impairment](#) follow these guidelines when interviewing witnesses with learning impairments.

Type of learning impairment	Be aware the witness might...
Learning disabilities	<ul style="list-style-type: none">• suffer from one or a variety of a number of learning disabilities all of which require a response tailored to the needs of the individual• come from an environment where they are dependent on others and used to waiting for 'permission' to do anything. Try to establish their level of independence and encourage them to actively participate in the interview• discuss with a carer to ascertain the best approach to interview.
Autism	<ul style="list-style-type: none">• be frightened of emotion, shouting or close contact• be fearful of unfamiliar stimuli, including unknown people, noise, colour• not make direct eye contact• benefit from the interviewer being calm, controlled and non-expressive.
Downs syndrome	<ul style="list-style-type: none">• be disturbed or anxious if unknown people (particularly authority figures) question them (and if there is shouting or aggression)• be affected by noise. If they have a hearing loss they might, for example, confuse similar sounding words (particularly important in respect of when, where, what, and who questions).
Elderly	<ul style="list-style-type: none">• if they are an older person, suffer from dementia causing cognitive impairment.

Mental disorders

When interviewing witnesses with **all** mental disorders (including schizophrenia or other delusional disorder, anxiety, depression) follow the procedures for interviewing witnesses with impairments, and also be aware the witness might:

- be in compulsory care under an order from the [Mental Health \(Compulsory Assessment and Treatment\) Act 1992](#), refer to section 2 for a definition
- require support only at certain times due to the fluctuating nature of mental disorders (this also makes it important to visually record the interview so the witness's condition at time of interview is captured)
- require assessment by an expert (preferably the witness's current psychiatrist or psychologist) to determine the exact nature of the disorder and likely impact on ability to provide complete, accurate and reliable information
- also suffered from alcohol or drug abuse that can aggravate symptoms
- be on medication which should be taken into consideration when determining the best time for interview
- be:
 - vulnerable to stress especially when recalling traumatic events
 - confused, suffer from memory loss or impaired reasoning
 - suspicious or aggressive
 - want to please the interviewer and/or be susceptible to suggestion.

Preparation

Take these steps when preparing to interview.

Step	Action
1	Discuss with a professional who knows the witness their likely behaviour and develop a strategy (with the professional) to maximise the outcomes of the interview.
2	Consider using the professional or other person involved in the care of the witness as a support person.
3	Spend time to properly prepare the witness for interview by reducing confusion, emotional distress, and anxiety.

Additional guidance for specific mental disorders

Consider these additional factors when interviewing witnesses with these specific types of mental disorders.

Type of mental disorder	Be aware (in addition to factors outlined above) that the witness might...
Schizophrenia, delusions, hallucinations	<p>give unreliable evidence through delusional memories or by reporting hallucinatory experiences that are accurate as far as they are concerned, but bear no relationship to reality (this does not preclude them from also giving reliable information).</p> <p>Challenges to these abnormal ideas may cause extreme reactions and /or distress. Be sensitive and non-judgemental in trying to identify the components of the account that may be delusions or hallucinations verses those that may be based on reality.</p>
Anxiety disorders	<ul style="list-style-type: none"> • have phobias or panic attacks or unjustified fears of persecution if suffering anxiety through fear of authority, exposure or retribution • wish to please, tell you what they believe you want to hear or fabricate imaginary experiences to compensate for loss of memory

Depression	<ul style="list-style-type: none">• may give evidence coloured by feelings of guilt, helplessness or hopelessness if they are depressed.
Personality disorder	<ul style="list-style-type: none">• if the person has anti-social or borerline traits may have a range of behaviours including deliberately giving false information.

Children and young persons

Introduction

Special procedures should be used for children or young persons under the age of 18 years (as per [Evidence Act 2006](#) definition of a child).

Exercise patience, care and skill during interviews of children or young persons to ensure their potential as reliable witnesses is not lost.

You must also comply with [Children, Young Persons and Their Families Act 1989](#).

Procedure for interviewing

This table emphasises actions in the usual interviewing procedures important when interviewing children and young people. It also outlines additional matters to consider.

Interview phase	Actions/factors to note
Planning and preparation: witness profile	<p>Identity factors</p> <ul style="list-style-type: none"> • Age and maturity. • Cognitive abilities (e.g. memory, attention, concept of time). • Linguistic abilities (e.g. understanding and use of spoken language). • Family members/carers and nature of the relationship. • Potential support persons. • Routines - school and other activities. • Current or previous contact with public services. <p>Current state</p> <ul style="list-style-type: none"> • Any significant stress recently experienced by the witness and/or family (e.g. bereavement, sickness, domestic violence, job loss, moving house, divorce and so on)? • Whether currently in a safe environment. • Does the witness understand the significance of the interview? If you are concerned they do not, discuss with your supervisor and consider enlisting the assistance of a child forensic interviewer who has specialist training in interviewing children.
Planning and preparation: practical arrangements	<ul style="list-style-type: none"> • Consider whether the interview should be conducted on video recording by a child forensic interviewer. A specialist should be used in all cases where using a video recorded interview as an alternative way of evidence is likely (for more information refer to 'Types of witnesses requiring specialist interviewers'). • Always consider using an appropriate support person. • Advise the principal in advance if you are conducting the interview at school.
Engage and explain	<ul style="list-style-type: none"> • If practicable and appropriate contact the witness's parent, guardian or other caregiver if they are not the person nominated as the support person. Inform them the child or young person is with you and you want to interview them as a witness. • Ask the caregiver not to question or discuss the incident with the witness. Tell them to listen and take notes of anything the witness brings up about the incident.

	<ul style="list-style-type: none"> • If using a support person <ul style="list-style-type: none"> - ask the witness to nominate a support person - arrange for the support person to attend the interview. • Brief the support person about their role, the interview's purpose and processes involved, in the witness's presence. • Explain the usual ground rules for the interview.
Account - free recall	<ul style="list-style-type: none"> • Remind the witness about the ground rules established during the engage and explain phase. • Take extra care to follow the correct questioning techniques. Repeat until all witness topics have been expanded and investigatively important topics covered. • Avoid 'yes'/'no' questions as children and young persons have a tendency to want to help and answer 'yes'.
Final summary and written statement	<ul style="list-style-type: none"> • In the statement's second paragraph include the support persons name and relationship to the witness. (e.g. I am talking to Constable Brown about a fight I saw happening. Also here is my mother, Jane White). • Invite the witness to make any corrections or additions, and endorse the statement as 'true and correct'. • Invite the support person to witness the statement (e.g. Witnessed by: Jane White).
Closure	<ul style="list-style-type: none"> • Tell the witness (or their carer if it is not appropriate for the child because of their age) that if they recall further information after the interview to make a written note of it and to contact you. • Advise the carer not to question the witness. If the witness volunteers information they should just note what was said and contact you. • Conduct closure in the usual manner.
Evaluation	<ul style="list-style-type: none"> • Do not solely rely upon cues from the child or young person's behaviour as guides to the truthfulness or otherwise of their statements. • Conduct an interview evaluation in the usual manner.

Support people

Encourage the child or young person to nominate an appropriate adult family member (e.g. parent, guardian or caregiver) as their support person. They may have valuable information about the child or young person's background and cognitive development.

However, be aware that the child or young person may behave differently around family members and not provide all the information they know. If you are concerned a parent or guardian will influence the witness enlist another support person.

You should only decline the support person nominated by the child or young person if they are not an appropriate person, e.g. may attempt to pervert the course of justice or are a witness.

Children as witnesses

You can interview a child of any age but when deciding whether to interview or call them as a witness the child's welfare should be taken into account.

Children tend to recall less information than adults but they are just as accurate. Children are no more prone to telling lies than adults but are more susceptible to suggestion and the use of leading questions should be stringently avoided.

Witnesses who have suffered trauma

Introduction

People respond to stress in different ways and you should always be mindful that the witness may be suffering from trauma. Examples of types of witnesses that may be suffering from trauma include victims and witnesses to serious offences.

Two key planning issues

There are two key planning issues to consider when interviewing witnesses who are traumatised:

- when is the [best time to conduct the interview](#)
- whether to have a [support person](#) present.

Stress or trauma can interfere with the process of remembering. There is no set rule as to when to interview a traumatised witness. Rather you should ask the witness when is the best time for them.

Special procedures exist for interviewing adult victims of sexual assault.

Different linguistic or cultural background or religious beliefs

Different backgrounds

Witnesses come from different linguistic, cultural or religious backgrounds. English may not be their first language and they may behave differently and have different needs at interview.

Be sensitive to the witness's needs and if necessary, seek advice from someone else of the same culture or religion (e.g. a Police member with the same background or who is an expert in that area - Iwi liaison officer or Asian crime investigator), an interpreter or a person known to the witness. Note the interpreter can only provide information about additional measures for effective communication, common customs or usage and should not be treated as a cultural expert.

Using interpreters

Use a suitably qualified interpreter when you consider the witness:

- does not have sufficient proficiency in the English language to understand and convey their answers clearly if the interview is conducted in English
- has a communication disability, e.g. a hearing impairment.

If English is not the first language of the witness, ask them what language they prefer to be interviewed in.

Hearing impaired witnesses

If the witness is hearing impaired, contact the New Zealand Deaf Association (they offer a 24 hour interpreter service).

Procedures when using interpreters at interview

This table outlines how the [usual interview procedures](#) should be varied when interpreters are used during interviews.

Interview phase	Actions
Planning and preparation	<ul style="list-style-type: none"> • Establish if an interpreter is required. Find out the country they come from and the exact language they speak (e.g. a Chinese person may speak Mandarin, Cantonese or other various languages). • Arrange an interpreter using the contracted interpreting service or your station's list of interpreters. Provide them with: <ul style="list-style-type: none"> - an outline of the nature of the incident and the reason for interview (e.g. victim of a sexual assault, or an adult family member who is an eyewitness to inter-partner violence). • Ascertain if the interpreter is an appropriate person to assist; they must be: <ul style="list-style-type: none"> - able to write and speak the language of the witness - impartial and independent. • If they know any of the parties involved in the investigation (including the witness), they should only be used in exceptional circumstances, i.e. no one else is available and the interview cannot be delayed. The extent of the connection should also be taken into account when making this decision. If you use an interpreter who knows the parties involved make sure

	<p>you keep a record of your rationale in your notebook or on a jobsheet.</p> <ul style="list-style-type: none"> • Reschedule the interview if there is going to be an unreasonable delay. • Ask the interpreter for their qualifications and contact details or those of their organisation. Record these in your notebook. • With serious incidents it is recommended that you visually record the interview. This method will provide an accurate record of interpretation/translation should it later come into question. • Prepare for the interview in the usual manner. • When the interpreter arrives: <ul style="list-style-type: none"> - allow the interpreter the opportunity to brief both parties on their professional role and how they will conduct themselves - if necessary, inform the interpreter their role is to interpret your questions and the witness's answers back to you - their interpretation should be as direct as possible in 'first person'. They should not enter into general discussion with the witness. • Answer the interpreter's questions about the interview process. • Consider seeking advice from the interpreter about any communication issues that may arise. • Discuss the aims and objectives of the interview with the interpreter, e.g. to gain a detailed and accurate account from the witness about what happened at Travers Inn last night.
Engage and explain	<ul style="list-style-type: none"> • Using the interpreter, complete the usual engage and explain process as you would for other witnesses. • If appropriate, through the interpreter acknowledge the witness's culture or religion and ask them if they are comfortable to proceed or whether they require further special measures, e.g. a Muslim woman may prefer to be interviewed by a female police officer or have a support person present.
Account	<ul style="list-style-type: none"> • Your questions are interpreted to the witness in their language and their answers interpreted back to you. • For safety and impartiality reasons make sure the interpreter leaves the room with you if you take any interview breaks.
Written statements	<p>If a written statement is made from the interview:</p> <ul style="list-style-type: none"> • at the beginning of the statement include the interpreter's name, role (to interpret directly from the interviewee's language to English and vice versa) and languages they are interpreting • using your notes as a aid, write down the statement in English • instruct the interpreter to make a written translation of the statement into the witness's own language, this can be done in one of two ways (you should make this decision in consultation with the interpreter): <ul style="list-style-type: none"> - by leaving a space under each line written in English

	<p>and writing the translation for each line in the space</p> <ul style="list-style-type: none"> - by writing a full English version of the statement and a separate version of the statement in the witness's language (the version in the witness's own language is the statement, the English version is a copy) • in all cases, invite the witness to read the statement in their own language and make corrections or additions • the witness should then endorse the statement by writing in their own language: 'This statement is true and correct' and signing the statement • ask the interpreter to certify the translation as accurate i.e. 'I have accurately translated this statement to the best of my ability.' • endorse the statement as you usually would.
Closure	<ul style="list-style-type: none"> • Complete the closure processes as usual. • Before the interpreter leaves ensure you have their full contact details (or that of their agency).
Evaluation	<ul style="list-style-type: none"> • Conduct an interview evaluation in the usual manner. • Ensure the appropriate forms are completed to initiate payment of the interpreter.

Witnesses fearing intimidation

Who are intimidated witnesses?

Intimidated witnesses are witnesses whose quality of evidence is likely to be diminished by reason of fear or distress in connection with providing evidence or testifying in proceedings.

Indicators of intimidation

This table gives examples to help you identify intimidated witnesses.

Factor relating to...	Description/example
Witness	<p>The witness:</p> <ul style="list-style-type: none"> tells a police officer or other member of the criminal justice system (e.g. Victim Support, Victim Court Advisors) that intimidation has occurred or is likely to occur is a member of the family or extended family of the suspect asks for witness protection is reluctant to give a statement despite giving information about the offence associates with or is a member of an organised criminal gang who may view giving evidence as 'narking' resides in a small close-knit community, living in close proximity to the alleged offender or their relatives suffers from an impairment and might perceive an increased risk of intimidation or victimisation has a cultural or ethnic background that might lead to intimidation is also the victim (not sufficient on its own).
Incident /alleged offence	<ul style="list-style-type: none"> The incident occurred in or around the witness's home (not likely to be sufficient on its own). The nature of the offence indicates an increased likelihood of intimidation. Research suggests sexual assaults, physical assaults especially domestic violence, gang violence, vandalism and racially motivated and homophobic crimes are more likely to give rise to intimidation. The offence is one of a series of incidents and there might be repeat victimisation.
Alleged offender	<ul style="list-style-type: none"> The relationship between the witness and alleged offender is a personal one in which the alleged offender has some authority over the witness (e.g. a carer in a residential home). The alleged offender has previous history of intimidation or there is intelligence suggesting previous intimidation. The violent nature of the alleged offender or the offender's relative or associate. The alleged offender or offender's family or associates intend to and are able to influence or interfere with the witness. The alleged offender's influence in the criminal fraternity (this should not be based solely on anecdotal evidence).

Consider the witness's views

Consider the witness's views about intimidation. Whether or not a witness is intimidated does not rest solely on their views. However they are important and the court will eventually need to take them into account when determining the witness's eligibility for [giving evidence in alternative ways](#).

Engage and explain

Anxiety about their safety will detract from a witness's ability to concentrate and give you a complete account.

During the [engage and explain](#) interview phase:

- address the witness's concerns and take appropriate measures to alleviate them
- explain the investigation and judicial processes to them
- if you believe there is a real risk to the witness's safety discuss this with your supervisor immediately.

Consider using a specialist interviewer

If you believe that intimidation may be an ongoing problem consider using a [specialist interviewer](#) and [visually recording](#) the interview in accordance with [section 103](#) of the Evidence Act 2006.

Consider using a support person

If appropriate, give the witness the opportunity to have a [support person](#) present.

Family violence victims

Policy

When interviewing family violence victims, you must comply with the [Family Violence Policy](#).

Interviewing family violence victims

Follow the [usual interviewing procedures](#) when interviewing family violence victims and other family members who are witnesses.

Planning and preparation

This table outlines additional matters to be covered during the planning and preparation interview phase.

Matter	Ensure you cover
Witness profile: Family and relationship	<ul style="list-style-type: none"> • Current status of relationship with suspect (e.g. separated, married). • Details of other witnesses and family members. • Whether any children were present during the incident or within hearing? What was the children's reaction to this incident? • History of relationship and other incidents. • Victim's view on: <ul style="list-style-type: none"> - future of the relationship - likelihood of further violence and their own safety and that of any children. (Include discussion on any risk assessment undertaken) • Whether the victim has told anyone else about the incident (ensure consistent statements). Collect names and contact details for those people.
Investigatively important topics	<ul style="list-style-type: none"> • Details of any protection order or parenting order in place. • Cause, nature and seriousness of injuries (physical and emotional). • Descriptions of any weapons used. • Threats made before, during or since the incident. • Sexual violence. • Consider family violence risk factors (red flags). Discuss them with the victim.
Witness profile: current state	<ul style="list-style-type: none"> • Victim safety is a priority. • Emotional state. If they are distressed consider delaying the interview. Likewise, a witness may be more forthcoming with information at this time when they would otherwise not. Use your judgement. • Physical state. Ask the victim appropriate questions to determine if they are suffering any physical injury and require urgent first aid or medical treatment.
Practical arrangements	<ul style="list-style-type: none"> • Conduct interviews as soon as is practical after the incident to ensure expediency of the investigation process. Only delay the interview if there are concerns for the witness's safety or welfare. • Delay in the interview process works in the offender's interest. Family violence victims often quickly begin recanting evidence following approaches/threats by the offender or others for reconciliation or because of their desire to maintain a relationship.

Account interview phase

Use an appropriate [interview model](#) to elicit the witness's account.

Unless directly relevant to the investigation, do not bring up their residential address. If the victim is staying in a place of safety **do not** bring up the location at interview.

Closure

Prepare the witness for what will happen after the interview - e.g. referral to support services, medical examination, photographs.

Investigatively important witnesses

Witness examples

Examples of witnesses for whom it is investigatively important to maximise the accuracy and completeness of their evidence include:

- victims of and witnesses to serious offences
- family members of suspects
- witnesses who may later become suspects.

Visually recording witness interview

The best way to maximise the quality of the evidence of investigatively important witnesses is to [visually record their interview](#).

Under [section 103](#) Evidence Act 2006, police can apply to the judge for an investigatively important witness to give evidence in chief by visual record based on a number of grounds including:

- the nature of proceedings
- nature of the evidence the witness is expected to give
- relationship of the witness to any other party to the proceeding.

Selecting interview model

Level 3 specialist interviewers interviewing investigatively important witnesses may choose to use enhanced cognitive interviewing techniques provided they have been trained in those techniques.

Using specialist interviewers

Specialist interviewers

Child forensic interviewers	Specialist adult witness interviewers
<p>A specialist child interviewer:</p> <ul style="list-style-type: none"> • is a trained forensic interviewer for children and young persons aged 16 years and under • has received specialist training in how to interview children on video record according the Evidence Regulations and national standards. <p>Contact these interviewers through the Child Protection Team or the CIB.</p>	<p>A specialist adult interviewer:</p> <ul style="list-style-type: none"> • is a trained Level 3 specialist adult witness interviewer for persons aged over 16 years • has received specialist training in using enhanced cognitive interviewing and video recording interviews in accordance with the Evidence Regulations and national standards. <p>Contact these interviewers through your CIB.</p>

Use specialists when visually recording interviews

Specialist interviewers should conduct all witness interviews that need to be visually recorded.

Interviews should be visually recorded in all cases where the witness meets criteria set out in [section 103](#) Evidence Act 2006 and where an application **may** be made to give evidence by the alternative way of video record.

Advantages of visually recording evidence

The advantages of visually recording interviews can include:

- greater quality and quantity of information obtained
- minimising trauma to the witness by simplifying the process and having their interview played as their evidence in chief
- reducing contamination by the interviewer through the process of transposing the interview into a statement
- providing a valuable means for the witness to refresh their memory before judicial proceedings.

Types of witnesses requiring specialist interviewers

Always consider using specialist interviewers in these cases. These witnesses potentially meet criteria set out in [section 103](#) or [107](#) Evidence Act 2006.

Children and intellectually impaired witnesses	Adults
<ul style="list-style-type: none"> • Children and young people aged 16 years and younger • Witnesses older than 16 years but who are immature for their age or intellectually impaired and are victims/witnesses of sexual and serious physical assaults • Any case where you believe it is important to minimise the stress on the child or intellectually impaired witness, including when they are: <ul style="list-style-type: none"> - a victim - very young - the witness to a serious offence or 	<ul style="list-style-type: none"> • Adults (over 16 years) requiring special consideration especially if they: <ul style="list-style-type: none"> - suffer from some sort of impairment (other than intellectual) - are traumatised - fear intimidation - are related to the suspect - are investigatively important. • Investigatively important witnesses to serious offences such as: <ul style="list-style-type: none"> - homicides - serious assaults (including when a recidivist family violence offender is involved)

<p>an incident in which a family member is a suspect</p> <ul style="list-style-type: none"> • If you are concerned about the child or young person's ability to understand the significance of the interview. 	<ul style="list-style-type: none"> - sexual assaults - kidnapping and abduction - aggravated robberies involving firearms.
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Make decisions about using specialists case by case

Make decisions about using specialist interviewers and recording interviews on a case by case basis depending on the availability of a specialist interviewer, appropriate rooms, equipment and transcription services.

If you think a specialist should be engaged to interview your witness, discuss this with your supervisor and:

- if the witness is a child or young person seek advice from your local Child Protection Team or child forensic interviewer
- if the witness is an adult seek advice from a Level 3 specialist adult witness interviewer or the CIB.

Deciding whether to use a child forensic interviewer or a Level 3 specialist adult witness interviewer

Use a child forensic interviewer in preference to a Level 3 specialist adult witness interviewer with children aged 16 years or under and witness's who are immature for their age or intellectually impaired. Any decisions to depart from this process can be made on a case by case basis by the O/C of the case in consultation with a local child forensic interviewer, e.g. if the witness is mature for their age.

When a specialist is not available

You should not record evidence by video unless you are trained in investigative interviewing and are a specialist interviewer.

In exceptional circumstances, if a specialist interviewer is not available, a CIB NCO can authorise a suitably competent investigator to conduct and visually record the interview. Preference should be given to those trained in Investigative Interviewing Level 2, or if not available, trained in Level 1.

Procedures for visually recording interviews with adults Compliance with Evidence Regulations 2007

Visually recorded interviews used as an alternative form of evidence must comply with the procedures detailed in the [Evidence Regulations 2007](#).

For procedures for visually recording interviews with children refer to the Forensic Interviewing Manual.

Where should visually recorded interviews be conducted?

Ideally a dedicated witness interviewing suite should be used to conduct visually recorded interviews. In exceptional circumstances, other interview facilities may be approved by a CIB NCO.

In all cases ensure the room is set up for the witness and is comfortable, clean and tidy. If using a suspect room, be mindful of the possibility of cross-contamination and the well-being of the witness. For example highly traumatised victims may be sensitive to smell, and even though they are unable to articulate this, may feel unsafe in a suspect room for this reason.

Interview procedures

This table outlines how the [usual interview procedures](#) should be varied when adult witness interviews are visually recorded.

<p>Planning and preparation: practical arrangements</p>	<ul style="list-style-type: none"> • Schedule interviews to suit the witness and when facilities and specialist interviewers are available. • Arrange for the interview to be monitored. • Set up the interview room and arrange seating. • Check the equipment is working and meets requirements, i.e: <ul style="list-style-type: none"> - the record shows an analogue clock and all persons present in the room - microphone is positioned to capture all that is said.
<p>Engage and explain</p>	<ul style="list-style-type: none"> • Explain to the witness you would like to visually record the interview and: <ul style="list-style-type: none"> - the processes involved in making an electronic recording - advantages of electronic recording - the purposes for which it might be used including as an alternative means of evidence. • If the interview is being monitored, explain this to the witness and let them know you may be taking breaks to make sure everything has been covered. Introduce the witness to the monitor. • Let the witness know that the interview may be used as evidence and that to meet legal requirements you will have to get them to promise to tell the truth at the beginning of the interview. • Insert a minimum of two DVDs/tapes into the recorder (one the 'master' and the other the 'working' copy) and record the interview. • To ensure you comply with the Evidence Regulations 2007 on the video record you must: <ul style="list-style-type: none"> - state the time and date the interview starts - identify yourself and others present - ask the witness to promise to tell the truth

	<ul style="list-style-type: none"> - if an interpreter is present, ask them to promise to completely and accurately translate what is said. • Explain the ground rules of the interview.
Account	<ul style="list-style-type: none"> • Conduct the interview as usual using an appropriate interview model depending on the circumstances of the case and skills of the interviewer - free recall, conversation management or enhanced cognitive interviewing.
Breaks during the account	<ul style="list-style-type: none"> • If you take a break you must state on the record: <ul style="list-style-type: none"> - the time and fact a break is taken - the estimated duration of the break - the reason for taking it. • Stop the recording during the break. • Start recording again when the interview recommences and state: <ul style="list-style-type: none"> - the time the interview recommences - what happened during the break e.g. spoke to the monitor, had lunch... • If monitored, take a break before closure of the interview to check if anything else needs to be covered.
Closure	<ul style="list-style-type: none"> • State the time the interview finishes. • If you decide to end the interview before all the intended topics or questions are covered you must state on the record: <ul style="list-style-type: none"> - the fact that the video record is concluding without all questions covered - the reasons for that.
Evaluation	<ul style="list-style-type: none"> • Complete an interview evaluation. If monitored, the monitor should complete this. • Follow procedures for storage and transcription after visually recording interviews to comply with Evidence Regulations 2007.

Monitor's role

A monitor should be used to remotely oversee the interview when visually recording witness interviews, unless exceptional circumstances exist. Ideally the monitor should be an officer with a detailed knowledge of the investigation.

The monitor should:

- scrutinise the interview content identifying areas that are missing or which need clarifying or expanding for the purpose of the investigation
- be alert to interviewer errors and confusions in communication between the interviewer and witness
- take accurate, comprehensive and legible interview notes
- record the time at significant points throughout the interview
- provide feedback on content and/or approach to the interviewer during breaks in the interview
- only interrupt the interview if absolutely necessary e.g. if the equipment fails or a legal requirement is missed
- at the conclusion of the interview complete an [interview evaluation](#) using the appropriate form.

Interview evaluation

The interview evaluation should be completed by the monitor on the appropriate form, in consultation with the interviewer. If there is no monitor, the interviewer should complete the evaluation.

Once you have completed the form, discuss the evaluation with the interviewer and include any additional points raised. Provide constructive feedback on the interviewer's performance during interview.

The evaluation should be completed as soon as practical after the interview, while the information is still fresh in the monitor's/interviewer's mind.

Evaluation purpose

The purpose of the evaluation is to:

- provide a summary of the interview
- process the information from the interview in the context of the investigation
- identify offences, ingredients and probable defences
- establish what further enquires need to be conducted and determine urgency
- identify important descriptions of people and objects that may be vital to the investigation
- ensure dissemination of the information obtained by providing the investigating team/supervisor with a relevant summary.

Storage, transcription and the court process after visually recording

Introduction

This section outlines procedures to be followed after visually recording interviews with witnesses, including how to have the video or DVD admitted as an alternative way of giving evidence.

Storage and chain of custody

Because the video recording may be used as an exhibit, the interviewer must take these precautions to ensure that it is kept secure and the chain of custody is maintained.

Step	Action
1	Seal, label and arrange for storage of the interview records.
2	Make a minimum of two records. Mark one the 'Master' and the other 'Working' copy. If a third record is made, mark this as a 'Lawyers' copy and retain it to be used later for disclosure if required.
3	Store all copies of the interview record in a secure location. This means a locked cabinet or room as designated by your District.
4	Complete a Certificate for DVD/Video Record (Pol II: WVC) and store this with each copy of the record.

Transcripts

All witness video recorded interview records must be transcribed if they contain relevant information.

The O/C Investigation is responsible for:

- arranging for transcription of the working tape as soon as reasonably practicable
- taking into account the timelines for [initial/full disclosure](#)
- filing of [formal written statements](#)
- creating an unsigned brief of evidence from the transcript (for the prosecutor) if the witness is [giving evidence](#) in chief orally and the transcript:
 - contains large amounts of irrelevant and inadmissible material, or
 - is long and complex, or
 - does not present the evidence in chronological order.

Disclosure of video records and transcripts

If a video record of an interview exists it must be noted on the exhibits list and Disclosure Index, as well as any transcript prepared. Refer to the *Disclosure of video records and transcripts* section of the [Criminal Disclosure](#) chapter for more information.

Committal: Using the video record as a formal written statement

Refer to the *Preparing Formal Written Statements* section of the [Summary Proceedings](#) chapter for information about filing the video record as an exhibit to a formal written statement for committal.

Applications for alternative way of giving evidence

No witness can give evidence in Court by alternative means (e.g. using a video record of an interview instead of giving evidence in person). An application must be made under section [103](#) of the Evidence Act 2006.

Even where a video record is shown as the witness's evidence in chief, they are required to be available for cross-examination. You should therefore consider what the witness

might need to enable them to be cross-examined with minimum stress, e.g. screens, CCTV etc as appropriate.

Factors to consider when deciding whether to apply

Make decisions about applying to use the video record as the witness's evidence in chief on a case by case basis taking into consideration:

- the criteria set down in s103 of the Evidence Act 2006 (including the views of the witness and if they are aged under 18 years), and
- whether the video will provide the best means of evidence.

An alternative way of evidence application is required:

- in **summary matters**, if you believe the video is the best evidence for a defended hearing
- in **indictable matters**, at the committal stage only if the witness is to give oral evidence at a committal hearing, i.e. only if an oral evidence order has been made in respect of that particular witness.

An application is **not** required if there is only a standard committal or if there is a committal hearing and that witness is not required to give evidence.

For indictable matters that are committed for trial, the Crown Prosecutor may make an application for an alternative way of evidence where they believe the video is the best evidence for the jury trial.

Procedures for making applications

In all matters, applications for an alternative way of evidence must be made as early as practicable before the proceeding and well **before** the witness is required to give oral evidence in court. Procedures are detailed below.

Oral evidence at committal hearing or defended hearing		Evidence at jury trial	
Step	Action	Step	Action
1	If the witness is required to give oral evidence at a committal hearing or defended hearing: <ul style="list-style-type: none"> • the O/C Investigation must contact the prosecutor in charge of the case to advise that an alternative way of evidence application is required • the prosecutor must arrange for the alternative way of evidence application to be filed and heard prior to the committal hearing or defended hearing. 	1	The O/C Investigation must indicate to the prosecutor as early as possible that they believe an alternative way of evidence application is required for the witness and the grounds for the application (as per section 103 of the Evidence Act 2006). That view and the reasons for it should be set out clearly in the covering report on the file.
2	The O/C Investigation must prepare an affidavit outlining the grounds for the application (as per s103 Evidence Act 2006) and for complainants of sexual assault, including grounds under section 185C Summary Proceedings Act 1957). Other evidence in affidavit form may	2	The prosecutor: <ul style="list-style-type: none"> • will consider whether they believe an application is appropriate • may require evidence in support of the application, and • will make an alternative way of evidence application at the pre-trial hearing.

	also be required from other witnesses e.g. psychologist, doctor, cultural expert.	
3	Provide defence counsel with a copy of the transcript at least 7 days before the committal hearing in which the video record is being played or, if the defendant is being tried summarily, as soon as is reasonably practicable after the defendant has pleaded not guilty.	
	Obtain a receipt from defence counsel using Form Pol II: WVR to remind counsel of their statutory obligations in relation to witness's evidence.	

When a section 103 order is made

Follow the procedures in the *Disclosure of video records and transcripts* section of the [Criminal disclosure](#) chapter if a judge makes an order under section 103 Evidence Act. Note in particular, the Police policy restrictions on disclosing video recorded interviews of victims of sexual assault and violent offending.

Preparing the witness to give evidence

To refresh the witness's memory before giving evidence the O/C Investigation should arrange for the witness to view their visually recorded interview. Usually this should take place within a week of the oral hearing, but the timing will vary depending on the circumstances of the case. For complainants, consider arranging for a support person to be present when reviewing the interview.

After the conclusion of the case - destruction of records

The [Evidence Regulations 2007](#) require interview records to be destroyed as follows.

Result	Master	Working	Lawyer's copy
Criminal proceeding concluded	Courts responsibility (10 years after final result)	7 years after record made	7 years after record made
No criminal proceedings brought	7 years after record made*	7 years after record made	7 years after record made

*If 7 years has elapsed since a record relating to an unsolved investigation was made, you must retain the master copy in a secure location until the prosecution is concluded or untenable.

Enhanced cognitive interviewing

When should enhanced cognitive interviewing be used?

Enhanced cognitive interviewing should be used with cooperative adult witnesses when you need to maximise the quality and quantity of the information obtained. For example, if the witness is investigatively important.

Selection of the interviewer

Enhanced cognitive interviews must only be conducted by Level 3: Specialist adult witness interviewers who are specially trained in using these techniques. Where practical, also consider:

- the experience of the interviewer in relation to the type of offence under investigation and the characteristics of the witness
- any previous experience of the interviewer with the witness (that may aid or have an adverse effect on the interview)
- whether the witness has volunteered a preference.

Procedures for enhanced cognitive interviewing

Follow these procedures when interviewing witnesses using enhanced cognitive techniques.

Planning and preparation (monitor)

The monitor (who should be either another Level 3 specialist interviewer or someone involved in the investigation) follows these steps when planning and preparing for the interview.

Step	Actions by monitor
1	Plan and prepare for the interview as with the free recall model by developing a detailed understanding of the investigation and investigatively important topics to be covered.
2	Brief the interviewer on: <ul style="list-style-type: none">• the witnesses' profile (identity factors and current state)• a broad (i.e. not detailed) outline of the alleged offence including type of offence, approximate time and location of the offence, scene, how the offence came to notice of police and the nature of any intimidation• the practical arrangements made to date.
3	Liaise with the witness and schedule the interview for a time and place that suits the witness when the interviewer and interviewing resources are available.

Planning and preparation (interviewer)

The interviewer (who should have limited knowledge of the investigation and the information the witness is likely to provide) follows these steps when planning and preparing for the interview.

Step	Actions by interviewer
1	Plan and prepare for the interview considering the witness profile and nature of the offence.
2	Set up the interview room, interviewing equipment and communication aids and decide the best approach to the interview. Wear appropriate attire according to the characteristics of the interviewee
3	Inform the monitor of the approach being adopted. Before interview, the monitor and the interviewer should clearly define each others roles and expectations.

4	If the interviewer is also in charge of the investigation or has interviewed other witnesses in the course of the investigation, take care to avoid contaminating the interview process with previous knowledge.
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Engage and explain

Follow these steps during the engage and explain phase of enhanced cognitive interviewing.

Step	Action
1	The monitor introduces the witness to the interviewer and then leaves them in private to build rapport.
2	The interviewer : <ul style="list-style-type: none"> • builds rapport with the witness and establishes a professional working relationship • explains the interview's purpose and process • shows the witness the interview suite set-up (interview room and monitors room).
3	The interviewer: <ul style="list-style-type: none"> • assesses the witness's needs and determines the best time for interview and the strategy for conducting the interview, including whether: <ul style="list-style-type: none"> - more than one session is required to build rapport - to break the interview down into different phases over several sessions - the witness requires special measures at interview • continuously reassesses the witness throughout the interview. (If the witness becomes tired or upset, consider delaying the interview taking into account their needs, the impact of their state on the ability to recall information and investigative requirements). <p>If you decide several sessions are required make sure you take investigative needs into consideration when deciding what topics to cover when.</p>
4	Follow the engage and explain procedures for visually recorded interviews to complete introductions and outline the interview. (To comply with Evidence Regulations 2007).
5	Explain the ground rules as you would with a co-operative witness. Ensure you also explain the procedures and techniques that are unique to an enhanced cognitive interview (refer to the ECI Guide).

Account

The interviewer follows these procedures to obtain the witness's account during enhanced cognitive interviewing.

Step	Action
1	Reinstate the context of the alleged event (care is essential if the witness is suffering from trauma cases). Try to create a picture in the mind of the witness of the personal and environmental context of the alleged event. For example, ask the witness to concentrate on: <ul style="list-style-type: none"> • where they were • everything they could see • what the weather was like • the layout of the location • objects they could see • colours they could see • what they were doing • what was happening • the people • what they could hear • all the sounds

	<ul style="list-style-type: none"> • what they could smell • how they were feeling. <p>Use pauses, silence and non-verbal communication appropriately to aid the witness to concentrate and encourage them to take their time.</p>
2	Ask the witness to give an account of everything they can remember in as much detail as possible without leaving anything out (allow for pauses and do not interrupt the witness during this process).
3	Actively listen, use minimal prompts that do not go beyond the witness' account and reflect back what the witness has said where necessary. As the witness gives their first account, listen carefully and note areas you wish to obtain further details about.
4	Give the witness the opportunity to draw a sketch plan. This can often help when trying to reinstate the context and assists recall.
5	Break down the witness' account into manageable topics. Explain to the witness that: <ul style="list-style-type: none"> • you have some questions to ask and it is okay to answer I don't know • they should tell you everything, even if they think it is not important or only partially remember details • should take their time.
6	Expand on the witness's account using witness compatible questioning. Use open TEDS type questions and systematically probe each topic until the witness is unable to provide any more information. Use probing 5Wh + How type questions if required. Ensure you use the correct questioning techniques .
7	Transfer control of the interview to the interviewee. Tell them that: <ul style="list-style-type: none"> • you were not there and your job is to get as much info from them as possible • even if they know that you or Police in general have interviewed others as part of the investigation and might already have information, they should not edit anything from their account. Emphasise that they are the important one etc .
8	Use focused retrieval on important topics. Try to reinstate these 'mini-contexts' by using some of the global context reinstatement techniques referred to above in order to facilitate this process. Activate and probe the picture. If appropriate, encourage repeated attempts at recall by using: <ul style="list-style-type: none"> • change in temporal order • different senses • change in perspectives. • memory jogs.
9	Explore investigatively important topics not introduced by the witness using appropriate questioning techniques as outlined above. Discuss any inconsistencies or omissions with other evidence towards the end of the interview. Use open followed by closed questions. Sometimes leading questions may be required. Be aware that all witnesses may be liable to suggestion and follow information gained by a leading question with open questions.
10	Before closing the interview, check with the monitor if there is anything else that needs to be covered. This can also be done throughout the interview as an aid to the interview process.

For more detail on enhanced cognitive interviewing refer to '[The Enhanced Cognitive Interview: A step-by-step guide](#)' by Dr Rebecca Milne.

Dealing with significant evidential inconsistencies

For a variety of reasons there may be significant inconsistencies between the witness's account and other evidence such as:

- what the witness is previously reported to have said
- the accounts of other witnesses
- the scene examination or exhibits
- injuries of the witness or the suspect.

You must keep an open mind to the cause of the inconsistencies. They may have arisen for a variety of reasons including genuine mistakes often originating from memory failure or cross-contamination of the witness or others reporting the information, or the witness may be fabricating or exaggerating their account.

Decisions to raise these inconsistencies at interview must be made by the interviewer in consultation with the O/C Investigation taking these principles into account:

- explanations should only be sought for significant inconsistencies and where careful consideration has excluded any obvious explanation for them
- explanations should only be sought on video at the end of the interview (or at another interview) when the witness's account has been fully explored
- the purpose of seeking an explanation is to establish the truth; it is not to put pressure on the witness to change their account
- when seeking an explanation the interviewer must take into account the characteristics of the witness and extent to which they are vulnerable to suggestion, compliance or acquiescence
- questions used to seek an explanation must be carefully planned, phrased tactfully and presented in a non-confrontational manner.

Dealing with significant evidential omissions

Sometimes the investigation may suggest that the witness has no relevant information. For example, other eyewitnesses may have reported the offender carrying an object or that there was something unusual about the offender or their vehicle.

Decisions to raise omissions at interview must be made by the interviewer in consultation with the O/C Investigation taking these principles into account:

- explanations should only be sought for significant omissions and where careful consideration has excluded any obvious explanation for them
- explanations should only be sought on video at the end of the interview (or at another interview) when the witness's account has been fully explored
- when seeking an explanation the interviewer must take into account the characteristics of the witness and extent to which they are vulnerable to suggestion, compliance or acquiescence
- questions used to seek an explanation must be phrased in a manner that is least likely to impact on the evidential value of the response.