Vulnerable and Intimidated Witnesses
A Police Service Guide

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Alternative format versions of this report are available on request from 020 3334 6078 or clayton.smith@justice.gsi.gov.uk
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Foreword

All victims and witnesses are entitled to receive a high quality service from the police, from their initial contact with the first officer or member of police staff that they meet, throughout the investigation and beyond to the pre-trial and trial processes. Vulnerable and Intimidated Witnesses: A Police Service Guide makes an important contribution towards providing a standard of service that meets this entitlement by describing good practice for police officers and police staff who are the first point of contact for vulnerable and intimidated victims and witnesses. To this end it sets out a number of prompts intended to aid the identification of victims and witnesses who may be vulnerable or intimidated and describes the special measures for which they may be eligible.

In focusing on the initial point of contact between vulnerable and intimidated victims and witnesses and the criminal justice system this document complements Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Guidance on Using Special Measures (Ministry of Justice 2011) which describes good practice in the treatment of vulnerable and intimidated victims and witnesses from the investigation stage onwards.

This edition of Vulnerable and Intimidated Witnesses: A Police Service Guide takes account of the changes to the special measures provisions as a result of the Coroners and Justice Act 2009 and the ACPO (2010) “Advice on the Structure of Visually Recorded Interviews with Witnesses”. In so doing it equips police officers and police staff with the kind of up to date information and guidance that they need to discharge their responsibilities in the Code of Practice for Victims of Crime (Office for Criminal Justice Reform 2005) and the Witness Charter (Office for Criminal Justice Reform 2008).

If we are to meet the expectations of the most vulnerable members of our society we need to embrace the contents of this important document.

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1. Introduction

1.1 The Code of Practice for Victims of Crime (Office for Criminal Justice Reform 2005) places an obligation on the police to identify vulnerable or intimidated victims and to provide them with an enhanced service. Where vulnerable or intimidated victims are also witnesses, the code obliges police to explain the special measures set out in the Youth Justice and Criminal Evidence Act 1999 to them. The Witness Charter (Office for Criminal Justice Reform 2007) sets a similar standard for the police in respect of all witnesses.

1.2 This guidance is designed to assist the police through a number of processes that will afford a vulnerable or intimidated witness equal access to the criminal justice system and provide them with an opportunity to give their best evidence at any subsequent trial. The police are the gateway to the system and it is imperative that these witnesses are identified and assisted from the very first point of their contact with it, otherwise they might not have access to the special measures that they could need.

1.3 In the course of their work, the police often interact with people who might be vulnerable or intimidated.

1.4 Some people with disabilities may have particular difficulties with receiving information, communicating and/or entering into dialogue. Indeed some individuals experience multiple disabilities which may make communication even more difficult. This, however, should not prevent the individual receiving the quality of service that is expected from the police. Vulnerable witnesses are entitled to a service that is comparable to any other witness; they must be given equal access to the criminal justice system. While some disabilities might have precluded a victim or a witness from being considered credible in the past, steps have now been taken to change matters so that the criminal justice system is more supportive and able to accommodate disabilities up to and including the trial.

1.5 People who are intimidated by their circumstances or those of the offence may also find it difficult to give evidence. Intimidation will not always be an obvious reason for a witness’s reservations about giving evidence, particularly where low level threats or harassment form the basis of their fears, but it must be considered if they are to be given equal access to justice and achieve their best evidence in court.
1.6 This guidance has been designed as a practical document and is not intended to be overly prescriptive. It cannot cater for all situations; it cannot include all signs of vulnerability and intimidation and it is important to remember that some people may display atypical behaviour. Its aim is to heighten the awareness of police officers and police staff to the issues in order to lay the foundations for identifying those eligible for special measures and thus to facilitate a better quality of service for vulnerable and intimidated witnesses.

1.7 The identification of a vulnerable or intimidated witness at an early stage of an investigation is of paramount importance. It will improve the quality of an investigation by assisting the witness to give information to the police; it will assist the legal process by helping the witness to give their best evidence in court. It can help to ensure that the witness has been adequately supported so that they turn up at the trial to give evidence and is, therefore, likely to maximise the likelihood of fair and equitable trials.

1.8 In particular, the guidance which follows seeks to:

- Advise on prompts to assist officers in identifying vulnerable and intimidated witnesses;
- Improve the understanding of a variety of difficulties that may be experienced in communication, not only that originate from the witness and their circumstances, but in the way the police express themselves;
- Advise on action once identification has been made.
2. Recognition

Who may be Vulnerable or Intimidated?

2.1 Definitions of witnesses who may be vulnerable or intimidated for the purposes of special measures assistance are contained in the Youth Justice and Criminal Evidence Act 1999.

Definition of Vulnerable Witness

2.2.1 Vulnerable witnesses are defined by Section 16 as:
- All child witnesses (under 18\(^1\)); and
- Any witness whose quality of evidence is likely to be diminished because they:
  - Are suffering from a mental disorder (as defined by the Mental Health Act 1983);
  - Have a significant impairment of intelligence and social functioning;
  - Have a physical disability or are suffering from a physical disorder.

The court must take account of the views of the witness in determining whether a witness falls into this category (Section 16[4]). In addition to this, when determining whether the quality of the witness's evidence is likely to be diminished in these circumstances, the court has to consider the likely completeness, coherence and accuracy of their testimony (Section 16[5]).

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

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

2.2.4 Assistance can be provided both before and during the trial. In the case of court measures, a witness under the age of 18 (including those who turn 18 before the end of the trial) will always be eligible for help, unless the court does not think that the measure will improve the quality of their evidence.

\(^1\) The Youth Justice and Criminal Evidence Act 1999 originally defined a child witness as being under 17, the Coroners and Justice Act (2009) increased this to under 18.
Definition of Intimidated Witness

2.3.1 Intimidated witnesses for the purposes of special measures assistance are defined by Section 17 as those whose quality of evidence is likely to be diminished by reason of fear or distress. In determining whether a witness falls into this category, the court should take account of:

- The nature and alleged circumstances of the offence;
- The age of the witness;
- Where relevant
  - the social and cultural background and ethnic origins of the witness
  - the domestic and employment circumstances of the witness
  - any religious beliefs or political opinions of the witness;
- Any behaviour towards the witness by
  - the accused
  - members of the accused person’s family or associates
  - any other person who is likely to be either an accused person or a witness in the proceedings.

2.3.2 Complainants to sexual offences are defined by Section 17(4) of the Act as automatically falling into this category unless they wish to opt out. Witnesses to certain offences involving guns and knives are similarly defined as automatically falling into this category unless they wish to opt out by Section 17(5) of the Act (as inserted by the Coroners and Justice Act 2009).

2.3.3 Witnesses who might be regarded as intimidated include:

- Victims and witnesses in cases that involve
  - domestic violence
  - racially motivated crime;
  - crime motivated by reasons relating to religion;
  - crime motivated by reasons related to disability;
  - homophobic and transphobic crime;
  - violent crime, particularly that involving guns or knives;
  - gang related violence;
- Victims and witnesses who have experienced past or repeat harassment or bullying;
- Victims and witnesses who are elderly and frail.
3. Prompts

3.1 This section sets out some prompts that have been developed to assist police officers and police staff to assess the potential vulnerability or intimidation of a witness. Police officers and police staff are asked to be mindful of their existence when interacting with witnesses because they can serve as a ‘trigger’ to facilitate appropriate assistance through the criminal justice system (e.g. by giving the witness access to special measures during any subsequent trial). It is important to remember, however, that the prompts are only intended as a guide; the things that make a witness vulnerable or intimidated are very varied. Some witnesses will not want to readily disclose a disability, mental ill health or that they have been intimidated. It is the job of the police to try to establish these facts and the Code of Practice for Victims of Crime (Office for Criminal Justice Reform 2005) makes this a statutory obligation.

Prompts to Assist in Identifying Vulnerable Witnesses

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

3.2.2 Behavioural characteristics might include circumstances in which the witness:

• Has no speech or limited speech;
• Is difficult to understand;
• Finds it difficult to communicate without assistance/interpretation;
• Uses signs and gestures to communicate;
• Appears to have some difficulty in understanding questions;
• Responds inappropriately or inconsistently to questions;
• Seems to focus on what could be deemed irrelevant small points rather than important issues;
• Appears to have a short attention span;
• Cannot read or write;

2 It is important to remember that an angry or distressed person trying to sign may appear aggressive.
• Has difficulty in telling the time;
• Has difficulty in remembering their date of birth, age, address, telephone number;
• Has difficulty knowing the day of the week, where they are and who they are talking to;
• Appears very eager to please;
• Repeats what is said to them;
• Appears over excited/exuberant;
• Appears uninterested/lethargic;
• Appears confused by what is said or happening;
• Is physically withdrawn;
• Is violent;
• Expresses strange ideas;
• Does not understand common everyday expressions.

3.2.3 Observable behaviour may also be evident but it should be remembered that what is seen as ‘odd’ may not be what it seems. While the actions of an individual can be difficult to interpret, the following behaviour may warrant further consideration:
• Unusual appearance of the eye;
• Angling head/eyes for viewing;
• Failing to search visually for people;
• Hesitant in movement/reluctant to move in unfamiliar environment;
• Uncontrollable muscular movements.

3.2.4 While it is not proposed that the witness be questioned on these matters, the following are likely to warrant further consideration when they are evident:
• In receipt of Disability Living Allowance;
• Resident at a group home or institution or employed in a sheltered workplace;
• Living in a group home or residential home or attending a specialist day service or sheltered employment;
• In possession of certain prescription medicine;
• Receiving support from a carer;
• Receiving support from a social worker or Community Psychiatric Nurse.
Prompts to Assist in Identifying Intimidated Witnesses

3.3.1 There are various reasons for a witness feeling intimidated ranging from the nature of the offence to their living conditions to the behaviour of the suspect or their family or associates. It is important to try to understand the basis on which a witness might be thought of as 'intimidated' so that their safety can be considered and the Crown Prosecution Service and the court can make various decisions about case management, including access to special measures. These prompts are intended as a cue that might lead police officers and police staff to make further enquiries to establish the basis and extent of any potential intimidation.

3.3.2 The following prompts might indicate that the witness is intimidated:

- The witness says that intimidation has occurred or is likely to occur;\(^3\)
- The witness refuses to talk to the police even though other material gathered during the investigation (e.g. CCTV film, statements from other witnesses) suggests that they saw or heard something of evidential value;\(^4\)
- The witness gives information about the offence but is reluctant to provide a statement;\(^5\)
- The witness lives on a medium to high density housing estate where there is a history of antisocial behaviour and conflict with the police;
- The witness lives in a small, close knit community and this results in the witness living alongside or in close proximity to the suspect or their relatives;\(^6\)
- The nature of the offence could indicate an increased likelihood of intimidation. Research has shown that sexual offences, assaults, particularly domestic violence, vandalism and racially motivated crimes are more likely to give rise to intimidation;
- The suspect has some authority over the witness (e.g. where the suspect is a carer in the setting in which the witness resides);
- The offence is one of a series of incidents and there is some indication of repeat victimisation;
- Where there are grounds to believe that intimidation might occur as a result of the cultural, ethnic or religious background or sexual orientation of the witness, or because the witness has a physical or mental disability;

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\(^3\) This is not a prerequisite to categorizing a witness as 'intimidated'.

\(^4\) There may be reasons other than intimidation for a witness being reluctant (e.g. concerns about being treated badly in court, not wanting to commit the time that might be involved in being a witness).

\(^5\) As in the previous footnote, there may be reasons other than intimidation for a witness being reluctant.

\(^6\) This is not likely to be sufficient on its own.
• Where police intelligence suggests that the witness may be intimidated;
• The violent nature of the suspect or their relatives or associates;
• The suspect has a previous history of witness intimidation or there is intelligence which suggests that witness intimidation has occurred in the past;
• The suspect or their relatives or associates are believed to have the intention and ability to influence or interfere with the witness;
• The influence of the suspect within the criminal fraternity.7

3.3.3 While it is accepted that some claims of intimidation may be false, it is important to remember that a failure on the part of the police to investigate and to deal with threats and intimidation properly is likely to undermine public confidence and the support of witnesses for the prosecution process.

7 This should be based on more than anecdotal evidence.
4. Initial Contact with Vulnerable and Intimidated Witnesses

4.1 The need to consider an investigative interview may not always be immediately apparent either to the first police officer who has contact with the witness or other professionals involved prior to the police being informed. Even where it is apparent, the need to take immediate action in terms of securing medical attention and making initial decisions about the investigation might be such that some questioning is necessary. Any initial questioning should be intended to elicit a brief account of what is alleged to have taken place, a more detailed account should be left until the formal interview takes place. Such a brief account should include where and when the event is alleged to have taken place and who was involved or otherwise present. This is because this information is likely to inform decisions in respect of the following aspects of the initial investigation:

(i) Forensic and medical examination of the victim;
(ii) Scene of crime examination;
(iii) Interviewing of other witnesses;
(iv) Arrest of suspect(s);
(v) Witness support.

4.2 Early discussions with the witness should, as far as possible, adhere to the following basic principles:

A. Listen to the witness;
B. Do not stop a witness who is freely recalling significant events;
C. Where it is necessary to ask questions, they should, as far as possible in the circumstances, be open-ended or specific-closed rather than forced-choice, leading or multiple (see Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Guidance on using Special Measures, Ministry of Justice 2011);
D. Ask no more questions than are necessary in the circumstances to take immediate action;
E. Make a comprehensive note of the discussion, taking care to record the timing, setting and people present as well as what was said by the witness and anybody else present (including the actual questions asked of the witness);
F. Make a note of the demeanour of the witness and anything else that might be relevant to the investigation; and
G. Fully record any comments made by the witness or events that might be relevant to the legal process up to the time of the interview.
5. Special Measures

5.1 As noted in the introduction to this document, the *Code of Practice for Victims of Crime* (Office for Criminal Justice Reform 2005) places an obligation on the police to take all reasonable steps to identify vulnerable or intimidated victims and to explain the special measures set out in the Youth Justice and Criminal Evidence Act 1999 to them when they are likely to be witnesses so that their views can be taken into account by the Crown Prosecution Service and the court when considering special measures applications. The *Witness Charter* (Office for Criminal Justice Reform 2007) sets a similar standard for the police in respect of all witnesses.

5.2 The “special measures” are:
- The use of screens (Section 23);
- The use of live TV link (Section 24);
- Giving evidence in private (limited to sexual offences and those involving intimidation) (Section 25);
- The removal of wigs and gowns (Section 26);
- The use of video recorded interviews as evidence-in-chief (Section 27);
- Communication through an intermediary (Section 29);
- The use of special communication aids (Section 30).

The use of video recorded cross-examination is also provided for under Section 28 but this has not been implemented yet.

5.3 Vulnerable witnesses are eligible for all the special measures referred to above. Intimidated witnesses are eligible for all the special measures except communication through an intermediary and the use of special communication aids. Being eligible for special measures, however, does not mean that the witness will automatically be given access to them; courts have to satisfy themselves that the special measure or combination of special measures in question is likely to maximise the quality of the witness’s evidence before granting an application. Therefore, at no point during the police investigation or discussions with the witness should special measures be guaranteed to the witness. Instead it should be emphasised that the court must take their views into account when making a decision.
5.4 Police officers and police staff should only explain the special measures that are available and appropriate to the needs and circumstances of the witness that they are dealing with. For example, there is little point in explaining the use of special communication aids⁸ if the witness does not use them.

5.5 As is the case with the other special measures, video-recorded interviews can only be used as evidence-in-chief if three ‘tests’ are met. These ‘tests’ are set out in section 19 YJCEA as follows:

a) Whether the witness ‘vulnerable’ or ‘intimidated’ as defined by sections 16 and 17 YJCEA respectively;

b) Whether any of the special measures or any combination of them are likely to improve the quality of the witness’s evidence;

c) Which of the available special measures are most likely to maximise the quality of the witness’s evidence.

The practical effect of these tests is that even where a witness may be eligible for special measures by virtue of being ‘vulnerable’ or ‘intimidated’ it does not necessarily follow that playing a video-recorded interview as evidence-in-chief is going to be the best way of achieving their best evidence; in some cases other special measures such as live evidence-in-chief from behind a screen or via a television link may be of more assistance to them.

5.6 When special measures are discussed it is imperative that witnesses are not given the impression that expressing a preference for them will inevitably result in an application being made by the Crown Prosecution Service or in the court granting an application if it is made. While prosecutors and courts will certainly take account of the views of the witness and the police they also have to consider all the other aspects of the case when making a decision about whether to pursue or grant an application for special measures.

5.7 When special measures are explained it is important that the witness is told enough about them to express an informed view. What follows is a description of each special measure. The language used to cover each of these points should be tailored to the needs of the witness (and their carer’s where appropriate). Police officers and police staff should ensure that they are familiar with the facilities in their local courts prior to explaining special measures.

⁸ A communication aid is defined in the 1999 Act as a device that enables questions or answers to be communicated to or by the witness despite any disability or disorder or other impairment which the witness has or suffers from.
Vulnerable and Intimidated Witnesses Special Measures

Screens

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

Live TV Link

5.7.2 The witness gives live evidence from a room outside the courtroom. The live TV link room from which they give evidence is usually in the court building but not in the courtroom itself. Some courts have access to live TV link rooms outside the courts and in appropriate cases arrangements can be made to set up live link equipment in one off locations such as nursing homes or residential premises (remote sites). The witness’s testimony is relayed live into the courtroom via TV link. This measure is intended to reduce the stress experienced by witnesses while they give evidence by taking them out of the potentially intimidating auditorium of the court-room and out of the presence of the accused.

Witnesses giving evidence by live link, particularly child witnesses, will usually be accompanied in the live TV link room by a witness supporter (see below) and also sometimes by a court usher.

It should also be noted that the accused and members of the public will be able to see the witness on the television screen. The screen could be very large so that the witness’s image is enhanced and easier for the jury and other court attendees to see than if the witness were present in person. The witness should be made aware of this in advance as it could affect their view of what special measures are likely to be the most appropriate for them. It is not unusual for a witness to change their mind once they have visited the court and seen how the special measures will work. It is, therefore, important that police officers and police staff are familiar with the court layout so that they are in a position to provide advice on how the various special measures work in practice.

Evidence in Private

5.7.3 Members of the public are excluded from the court while the witness is giving evidence. Only one nominated member of the media is allowed to be present. This measure may only be used in sexual offence cases where very personal and sensitive evidence may be given and cases where there is actual or likely intimidation of the witness. It is intended to reduce the embarrassment and/or sense of intimidation that might be experienced while witnesses give sensitive evidence.
The Removal of Wigs and Gowns

5.7.4 The judge and lawyers remove their wigs and gowns with the intention of creating a less formal environment in the court leading to a reduction in the anxiety experienced by the witness. This is particularly relevant in the case of young children or vulnerable adults. However, this measure is only of use where the witness does not prefer the formality of the situation to be enhanced by wigs and gowns; some witnesses might express the view that they want “their day in a proper court”.

The use of Video-Recorded Interviews as Evidence-in-Chief

5.7.5 The video interview with the police is played as the witness’s evidence-in-chief. The purpose of this special measure is to reduce the stress experienced by the witness as a result of reducing the number of times that they have to repeat their account. It is important to remember that the witness must be available to attend court for cross-examination, although cross-examination usually takes place via live TV link in these circumstances. It is important to make clear to the witness that video-recorded interviews are served on the defence as part of the prosecution case where they are to be played as evidence-in-chief (the image can only be pixilated and the voice recording can only be modulated in exceptional cases where an application is made for witness anonymity). The witness should also be made aware that when the video recording is played in court it will be seen by all those in the courtroom including the accused and members of the public.

Video Recorded Cross-Examination

5.7.6 Cross-examination is video recorded prior to the trial and played at the trial. This special measure had not been implemented at the time of writing.

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9 A video-recorded interview can only be played in court where the witness is not available for cross-examination in the wholly exceptional circumstances set out in the hearsay provisions described in Section 116 Criminal Justice Act 2003.
Communication through an Intermediary

5.7.7 The function of an intermediary is to assist vulnerable witnesses to communicate by explaining the questions put to and the answers given by them. This special measure should be considered for young witnesses or witnesses who would benefit from the assistance of a communication specialist such as a speech and language therapist, a clinical psychologist, a mental health professional or a special needs education professional. It is available during the investigation in the witness interview, during court familiarisation visits and while giving evidence during legal proceedings, although applications for use of intermediaries at the trial are more problematic in cases where the police have not deemed them necessary for the police interview. The register of intermediaries can be accessed by contacting the Specialist Operations Centre at the National Policing Improvement Agency on 0845 000 5463. The use of an intermediary does not replace a young witness supporter.

The use of Communication Aids

5.7.8 This special measure is intended to help vulnerable witnesses who need to use a “device” to communicate when giving evidence. This includes computers and voice synthesizers; it might also include symbol boards and books.

Presence of a Supporter

5.8.1 With the approval of the court, a witness may have a supporter present when being cross examined in a live link room for the purposes of providing emotional support to reduce anxiety and distress and improve the accuracy of their recall. Amendments to the 1999 Act made by the Coroners and Justice Act 2009, provide that when making a live links direction and after taking into account the views of the witness the court may also direct that a person specified by the court can accompany the person when giving evidence by live link. The role of the supporter is to provide emotional support. The supporter does not have to be a court official but must comply with the National Standards relating to witness supporters. Victim Support and other support organisations locally may provide this service and it may prove useful for officers to have a basic knowledge about the services they provide. The supporter should have a relationship of trust with the witness, must not be a party to or a witness in the case and must only have basic information about the case. They must also have received appropriate training. In the case of child witnesses some areas have Child Witness Support and Preparation Services available and police officers and police staff would benefit from knowing about these services when discussing the presence of a supporter with a witness, their carer or a family member.
5.8.2 The role of the witness supporter should be discussed with the witness and their parent or carer where applicable during the explanation of the live link special measure and any views expressed by the witness about the supporter should be recorded on the MG2 form and passed to the CPS. This is particularly important for child witnesses i.e. those under 18 years. If the witness gives the name of a suitable witness supporter this information should also be recorded on the MG2 form but it should be made clear to the witness that special measures and the identity of the witness supporter are matters for the court to determine. In the event that the witness or their carer do not express a view about a witness supporter in court at this stage, with witness consent, the Witness Service or another local support organisation should normally be recorded on the MG2 as the supporter for the purposes of a special measures application. This should form part of any later discussions with the officer in the case or a support organisation.

**Child Witnesses: Opting out of Special Measures**

5.9.1 When considering the needs of child witnesses police officers and police staff should:

- Consider each child as an individual;
- Assess their individual needs regardless of the offence;
- Take account of the following characteristics of the child
  - Age
  - Gender
  - Culture
  - Religion
  - Physical and/or learning disability
  - Confidence and developmental level;
- Consider the views of the child and their carer.

5.9.2 When considering the needs of child witnesses police officers and police staff should **not**:

- Treat all children the same;
- Assume that an older child will necessarily be more confident than a younger one;
- Assume that an older child will always want to give evidence live in the court room;
- Pre-judge a mood (for example, sullenness or bravado).
5.9.3 The law presumes that child witnesses under 18 will normally give their evidence outside the courtroom by playing a video-recorded interview as evidence-in-chief and cross-examination via live link unless this will not improve the quality of their evidence. It is essential that the child and their carer’s views and the rational for all decisions relating to how interviews with a child witness are to be recorded are fully documented.

5.9.4 It is important to remember that children have a choice. Subject to the agreement of the court, children may opt out of giving their evidence by either a video-recorded interview as evidence-in-chief and/or by means of live link or both. If they do wish to opt out there is a presumption that they will give evidence in the court room behind a screen. Should they not wish to use a screen, they may also be allowed to opt out of using it.

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

5.9.6 The possibility child witnesses opting out of giving evidence by video-recorded statement and live link should be explained to all child witnesses and their carers when special measures are explained. To ensure that the child witness is able to express an informed view, it is important that the explanation of the individual special measures is clear with the advantages and disadvantages of each fully explained.

5.9.7 Nothing in this document is intended to suggest that the court’s permission is required before a video-recorded interview takes place. The court’s permission is only required to play the recording as evidence-in-chief after a video has been made.

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

5.9.9 If, after having considered the circumstances of the child and the case, an interviewer comes to the conclusion that a video-recorded interview is not the best way of presenting the child’s evidence to a court they should explain this to the child and/or their carer. It is important that the explanation is based on a consideration of the circumstances; it should not be based solely on resource considerations. A full written record should be made of any such explanation.
5.9.10 If a child and/or their carer disagrees with an interviewer’s explanation for concluding that a video-recorded interview is not the best way of presenting the child’s evidence an early special measures discussion between the police and the CPS should ideally take place before the interview (see Early Special Measures Discussions between the Police and the Crown Prosecution Service, CJS 2009). If the prosecutor agrees with the interviewer’s view it should be explained to the child and/or their carer and no video-recorded interview should take place. If it is not practical to convene an early special measures discussion before the interview it should be video-recorded and the child and/or their carer informed that advice will sought from the CPS at the earliest opportunity.

**Intimidated Witnesses**

5.11 Additional guidance in respect of intimidated witnesses is available in Working with Intimidated Witnesses: A Manual for Police and Practitioners Responsible for Identifying and Supporting Intimidated Witnesses (Office for Criminal Justice Reform 2006) and on the website for the National Centre of Applied Learning Technology (NCALT) at: http://mle.ncalt.com/mle/lang-en-gb/NCALT/NCALT_Login.aspx#

**Witness Anonymity**

5.12 Where anonymity is an issue see the Witness Anonymity (ACPO 2009) briefing paper. Witness anonymity may be available during the trial in exceptional cases under the provisions in Part 3, Chapter 2 of the Coroners and Justice Act 2009. Separate provisions relating to witness anonymity during certain investigations have been introduced in Part 3 Chapter 3 of the Coroners and Justice Act 2009, and are available during investigations into gang-related homicide where a gun or knife has been used. ACPO guidance on this will be developed in due course.

**Early Special Measures Discussions between the Police and the Crown Prosecution Service**

5.13 An early special measures discussion should take place between the police and the Crown Prosecution Service whenever it is believed that it would assist case progression or where there is any doubt about the issues (for example, whether an interview should be video-recorded, the identity of a witness supporter, the provision of pre-trial therapy or whether an intermediary ought to be appointed). Early special measures discussions may be called for by the police or by the prosecutor. Practice guidance on early special measures discussions may be found in Early Special Measures Discussions between the Police and the Crown Prosecution Service (Office for Criminal Justice Reform 2009 available at http://frontline.cjsonline.gov.uk/guidance/victims-and-witnesses/).
Pre-Trial Therapy

5.14 In the event that the witness is in receipt of therapy prior to the interview, their views and those of their carers should be respected. The guidance set out in *Provision of Therapy for Vulnerable or Intimidated Adult Witnesses Prior to a Criminal Trial: Practical Guidance* (CPS and the Department of Health with the Home Office, 2001) should be adhered to.

Interviewing Vulnerable and Intimidated Witnesses

5.15 Staff interviewing vulnerable and intimidated witnesses must be trained to do so. Further guidance on interviewing vulnerable and intimidated witnesses, including pre-interview preparation and assessment, is available in *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Guidance on using Special Measures* (Ministry of Justice 2011). It is important that the guidance in Achieving Best Evidence is followed to ensure that the video statement is of good quality and the interview structured in such a way as to make it acceptable to the court. If the video is poor there is a possibility that the court will not authorise its use as a special measure and the witness may be caused undue distress by having to give oral evidence in chief.

Victim Personal Statements

5.16 Interviewers should plan to give witnesses who are victims the opportunity to make a Victim Personal Statement (VPS) at the end of the interview. The purpose of a VPS is to give a victim of crime the chance to say what effect the crime has had on them and to help identify their need for information and support. The statement should be taken in the same format as the witness statement – e.g. where a visually-recorded interview has taken place, the VPS should also be visually-recorded. For further details of the scheme see *Victim Personal Statements: A Guide for Police Officers, Investigators and Criminal Justice Practitioners* (Office for Criminal Justice Reform, October 2009).
6. Working with Intimidated Witnesses

6.1 During the initial needs assessment police officers and police staff should seek to establish if a witness is, or is likely to be, intimidated. By undertaking an assessment of risk, they will be in a much stronger position to consider the appropriateness of bail or the application of bail conditions either at point of charge or through the courts. Police officers and police staff should inform the prosecution if any witness has concerns about the grant of bail or if the defendant has a history of witness intimidation.

6.2 The assessment of risk cannot solely be confined to the knowledge of the witness, as many witnesses will not know the accused or their background. Police forces may hold information crucial to assessing risk and that information should be used proactively to prevent intimidation occurring.

6.3 Where risk factors are present, police officers and police staff must seek to mitigate those risks. Consideration should be given to the need for reassurance measures to support the witness, such as additional beat patrols in the area, CCTV cameras in the home, panic alarms, mobile phones, additional locks and fireproof letterboxes.

6.4 In cases involving child witnesses under 18 the court usually imposes restrictions on the media that are intended to prevent to reporting of any material likely to identify the witness (Sections 44 and 45 YJCEA). On application, the court can impose similar reporting restrictions in cases involving certain intimidated adult witnesses (Section 46 YJCEA). A discussion should take place between the police and the CPS where it is thought that an application for reporting restrictions may be appropriate.

6.5 Where the intimidation is so serious that the witness may need to be moved for their own safety, assistance and advice can be provided by the National Witness Mobility Service at nwms@npia.pnn.police.uk.

6.6 Police officers and police staff should remember that the offence of witness intimidation can be prosecuted and sentenced separately to the original offence regardless of what the finding of that case subsequently is. Witness intimidation offences (s.51 of the Criminal Justice and Public Order Act 1994) apply to any witness assisting in the investigation of an offence or giving evidence at court and can be committed up to one year after the conclusion of the court proceedings.
6.7 There is national guidance on tackling intimidation which sets out a framework of action that can be taken by the police and other criminal justice agencies to minimise the risk of intimidation and deal effectively with it when it occurs. This is available at http://www.justice.gov.uk/guidance.htm
7. Conclusion

7.1 This guidance was designed as a practical document and is not intended to be overly prescriptive. Its overall aim is to increase the awareness of police officers and police staff to vulnerable and intimidated witnesses in order to facilitate a better quality of service to them. In so doing, it is anticipated that it will help the police service to meet its obligations in *The Code of Practice for Victims of Crime* (Office for Criminal Justice Reform 2005) and the *Witness Charter* (Office for Criminal Justice Reform 2007).
Alternative format versions of this report are available on request from 020 3334 6078 or clayton.smith@justice.gsi.gov.uk