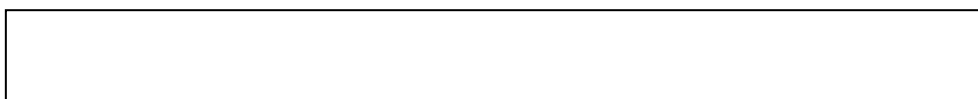




Department of
Justice
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**Summary of responses to the consultation on
best practice guidance for practitioners on achieving
best evidence in criminal proceedings: guidance on
interviewing victims and witnesses, using special
measures and provision of pre-trial therapy**

March 2011



Summary of responses to the consultation on best practice guidance for practitioners on interviewing victims and witnesses, using special measures and provision of pre-trial therapy to achieve best evidence in criminal proceedings

Background

The Department of Justice (DOJ), together with its statutory and voluntary partners represented on the Victim and Witness Steering Group (VWSG), has been reviewing the guidance for practitioners - for example, police officers, social care workers, legal representatives and therapists - on interviewing victims and witnesses, using special measures and the provision of pre-trial therapy in order to achieve best evidence in criminal proceedings.

The VWSG is a sub-group of the Criminal Justice Board for Northern Ireland. It is chaired by the DOJ and is made up of representatives from the Police Service of Northern Ireland (PSNI), Public Prosecution Service (PPS), Northern Ireland Courts and Tribunals Service (NICTS), Northern Ireland Prison Service (NIPS), Probation Board for Northern Ireland (PBNI), Youth Justice Agency (YJA), Victim Support Northern Ireland (VSNI) and the NSPCC.

Guidance on Achieving Best Evidence (ABE) was first produced in Northern Ireland in 2003. This set out procedures to be followed by police and their partners in social services in planning and conducting video recorded interviews of vulnerable and intimidated witnesses. However, it did not include detailed guidance on using special measures and procedures to be followed for witness support and preparation ahead of proceedings and on the day of trial. A need for pre-trial therapy guidance to assist practitioners in supporting adult and child witnesses was also identified.

It was decided, therefore, that the guidance should be updated to include these additions. A sub-group of the VWSG was established to draft the new guidance. It was chaired by an Assistant Director of the NSPCC and included representatives from the DOJ, PSNI, PPS, NICTS and VSNI, as well as officials from the Northern and South-Eastern Health and Social Care Trusts.

The DOJ publicly consulted on the revised guidance between 26 July and 15 October 2010.

This document summarises the responses received and provides an overview of the issues raised. Subject to the permission of the contributor, individual responses may be made available on request.

Summary of Responses

The DOJ received 26 responses to the consultation. A list of the respondents is included at **Annex A**. Overall, there was broad support for our proposals. We also received comments outside the stated purpose of the consultation exercise. This is a summary of the answers received in relation to the questions posed and the DOJ's comments on these responses.

Question 1

Is the guidance clear, accurate and readily understood?

Responses

It was generally considered that the guidance was clear, accurate, detailed, readily understood and comprehensive. It was also commented upon that it was well structured, with relevant sections clearly signposted, and that the length was unavoidable. The attention given to the issue of therapeutic support for child witnesses was welcomed and, whilst it was recognised that providing this within the context of an ongoing case was challenging, the importance of ensuring the welfare of the child was considered to be of paramount importance.

It was suggested that the typeface was relatively small and that this should be reconsidered. It was also considered that adjustments to the presentation of the information would be helpful, such as differently coloured margins or headers/footers for each section.

Comment

We have worked with the design team on the presentational aspects of the document and intend to publish the guidance in as user-friendly a format as possible, including printing in font size 12.

Question 2

Do you have any suggestions about how the draft guidance document could be improved?

Responses

A number of useful suggestions were made as to how the document could be improved. These included –

- the checklists of factors to be taken into consideration when planning for an interview should include the witness's community and political background;
- reference should be made to the United Nations Convention on the Rights of Disabled Persons;
- a paragraph on consent should be included in chapter 2;
- the guidance on using a transcript of the video recording to take a witness through their evidence in chief where an application to admit a video recording as evidence in chief is refused by the court should be revisited;
- the use of standardised assessment tools to support the identification of vulnerable witnesses' needs should be considered; and
- the guidance should have more specific references to the needs of frail older persons, and those with dementia.

Comment

We have amended the guidance to take into account the majority of suggestions as to how it could be improved. For example, we have amended the guidance in Chapter 2 to include a paragraph on consent and in Chapter 3 under the section "Witnesses with

a mental disorder” to include some further advice on interviewing persons with dementia.

The Vulnerable and Intimidated Witness Working Group (VIWWG), which has recently been established, has been asked to consider the development of standardised assessment tools for inclusion in the next edition of the guidance.

Question 3

Are there any sections of the guidance where greater clarity or more detail is needed?

Responses

A number of useful suggestions were made as to where greater clarity or more detail was needed in the guidance. These included –

- inclusion of advice in relation to young persons who have reported being sexually exploited;
- presenting the use of toys in a more positive light;
- inclusion of advice in relation to the closing stage of interviews; and
- more clarity on the issues of competence and capacity, especially given the proposed new mental capacity/health legislation, and the role that advocates can play.

Comment

We have amended the guidance to address many of the suggestions as to where greater clarity or more detail is needed. For example, we have added a new paragraph in Chapter 2 under the section “Phase four: closing the interview” to give some additional advice in relation to children who have been sexually exploited, as

well as a new section in that chapter containing guidance on using drawings, pictures, photographs, symbols, dolls, figures and props with children.

We recognise that the guidance will need to be regularly reviewed and updated as relevant developments occur. A review of the guidance on competence and mental capacity will be necessary in the near future in view of work that is currently being taken forward elsewhere, including the development of new mental capacity/health legislation. The role that advocates can play can also be further considered as part of that review.

Question 4

Has anything been left out in any of the chapters that should be included?

Responses

Several helpful suggestions were made about areas that have been left out of the chapters that could be included, such as -

- reference to the early recovery and protection of physical evidence as part of the overall investigative process and the use of subsequent forensic findings as an input into the interview process;
- guidance on witnesses with speech, language and communication difficulties and disabilities; and
- more detailed guidance on interviewing children who have been sexually abused by family members/relatives/carers and/or who have been groomed as these can present as some of the most complex cases and can prove to be difficult for police interviewers.

It was commented upon that there did not appear to be any specific guidelines regarding protective measures available in respect of child defendants and child defence witnesses.

Comment

We have amended the document to include guidance on the gathering of physical evidence and more detail on working with witnesses who have speech, language and communication difficulties and disabilities.

We will need to update the guidance in the near future to reflect the amendments to the special measures provisions in the Justice Bill and the commencement of the Intermediaries Service. During this review, we will address the concerns regarding the need for more detailed guidance on interviewing children who have been sexually abused by family members etc and/or who have been groomed, as well considering what further guidance could be included in relation to frail older persons.

The guidance covers both child and adult defence witnesses. It does not extend to defendants. They are afforded considerable safeguards in proceedings so as to ensure a fair trial and the law provides for special procedures to be adopted when interviewing vulnerable accused, including young defendants.

Question 5

Does the guidance make clear the impact and implications for practice and service delivery?

Responses

The majority of respondents considered that the guidance made clear the impact and implications for practice and service delivery. In particular it was commented upon that the guidance clearly identified the responsibilities of the various agencies involved throughout the investigation, prosecution and trial process, and that it offered pathways and solutions to address the distress to those having to give evidence. It was noted that the launch of the revised guidance will be challenging in terms of time and resources and that this should be recognised in the guidance.

Comment

We acknowledge that the publication of the revised guidance will have significant impact on our delivery partners and will work with them through the VIWWG to affect the successful implementation of the good practice contained in the guidance.

Question 6

Does the guidance help you understand how to improve practice and service provision?

Responses

The majority of respondents considered that the guidance helped them understand how to improve practice and service provision. In particular it was commented upon that the guidance was very helpful in highlighting the needs of vulnerable and intimidated witnesses, as well as defining roles and describing processes.

It was considered that the inclusion of case study examples would enable the reader to place the guidance in a contextual and/or real life framework. It was suggested that the guidance should include specimens of the forms and the supplementary documents referred to in it, and contact details for local support services. The publication of a “quick guide” was also suggested.

It was considered that Sign Language Interpreters should be used as well as aids to communication to assist persons who are deaf, deafened or hard of hearing.

Comment

The training programme resulting from the publication of the revised guidance, together with the monitoring of its implementation, will help to ensure that practice and service provision are both further improved.

Given the general consensus that the guidance document was (of necessity) lengthy, rather than add to it, we would recommend that case studies are used in the training programmes, specimens of relevant forms are available for course participants and participants are signposted to any relevant supplementary documents.

We do not propose to publish any abbreviated forms of the guidance but intend to make the document as user friendly as possible. Nor are we inclined to include contact details of support services in the guidance. Victim Support NI has a database of support services which is available to relevant organisations and will shortly be made available to the general public. The guidance has been updated to include reference to that database.

The relevant criminal justice organisations have good arrangements in place to assist persons who are deaf, deafened or hard of hearing. For example, there is a contract in place to provide sign language interpreters and the PSNI has issued guidance for police officers and interpreters. Many of the courts have loop hearing systems. Where they are not available, arrangements can be made to move cases to courts with suitable induction facilities, should the need arise.

Question 7

Do you have any concerns about the guidance contained in the document?

Responses

Two concerns were raised about the guidance in chapter 2:

- the paragraph on truth and lies was overly simplistic and greater clarity was needed regarding the discretion/role of the interviewer in relation to assessing the child's understanding of the concept of truth and lies; and
- intermediaries should be referred to in the section on significant evidential inconsistencies.

It was asked if there would be a complaints procedure which was independent.

It was also commented upon that, as a number of the special measures provisions outlined within the guidance document currently have not been implemented, critiquing best practice guidance was difficult and somewhat limited.

Comments

We have amended the guidance on truth and lies to include additional advice. We have also added that an intermediary's advice would be helpful when preparing to ask a child to explain any significant evidential inconsistencies that may have arisen during the interview.

We are publishing a revised Code of Practice for victims of crime which has a complaints' mechanism built into it. If a victim considered the Code to be breached by any of the organisations their initial complaint would be raised through the organisation's internal complaints channel and then - in the case of the PSNI, PPS, YJA and Compensation Agency - through their independent complaints procedures. If a victim remained dissatisfied with the response from any of the DOJ's agencies they would be referred to the Office of the Northern Ireland Ombudsman. The Ombudsman has no formal enforcement powers. However, where he finds maladministration and asks a public body to put the problem right, the public body will almost always accept that recommendation in full. If a Government Department or its agencies have a finding of maladministration made against them and they reject the Ombudsman recommendations, he can make a Special Report to the Assembly. Ultimately if a body or complainant disagrees with the findings in a report they can seek judicial review.

Only two of the special measures provisions in the Criminal Evidence (NI) Order 1999 have not yet been commenced. We are currently working on commencing Article 17 (Examination of witness through intermediary). When this has been achieved, we will then work on commencing Article 16 (Video recorded cross-examination or re-examination). The guidance will be updated as these Articles are commenced.

Question 8

Do you think there are any unintended consequences of the guidance?

Responses

Of those who specifically responded to this question, the majority considered that there were not any unintended consequences of the guidance. However, several respondents considered that complying with the guidance could lead to an increase in time and workload demands for the practitioners. For example, it may take more than one attempt to interview a person with dementia. In addition, it was thought that the guidance was likely to lead to an increase in the number of people requiring support through the interview process and that, initially at least, this may prove challenging, for example for Trust Adult Safeguarding Services, to provide appropriately trained and experienced staff to fulfil this role. It was also suggested that the guidance should include practitioners signposting victims and witnesses to the range of support services that are available.

Comment

We acknowledge that complying with the guidance will most likely lead to an increase in time and workload demands for practitioners, particularly as conducting an ABE interview is more time intensive than a non-ABE interview. However, we believe that it is right to take all possible steps to ensure that vulnerable and intimidated witnesses have access to justice. The VIWWG will work with all the relevant agencies to address issues around training and delivery. Where appropriate, we have included advice that practitioners could inform victims and witnesses of the range of support services that are available.

Question 9

Do you have any additional suggestions for documents that could be included in the Appendix, Useful sources?

Responses

Some suggestions of additional references that could be included in the “Useful sources” appendix were received, although it was commented upon that the appendix was already very full.

Comment

The appendix has been updated to include the additional references suggested.

Question 10

Have you any thoughts about issues that will need to be addressed during implementation?

Responses

The respondents all recognised the importance of initial and on-going training to all potential users of the guidance, including the judiciary, defence legal representatives, counsellors and therapists, both on an individual agency and multi-agency basis, to accompany its publication. It was added that there was a need for training on interviewing frail older persons, and training for legal representatives on the work of therapeutic and counselling service providers. It was also considered that the monitoring of the guidance’s implementation in practice will be central to assessing the impact of the guidance and highlighting any possible shortcomings, enabling them to be quickly identified and rectified. The need to review the guidance at an appropriate time was suggested, as was the establishment of a multi-agency group to devise a comprehensive implementation plan and clear assessment criteria for practice.

It was commented upon that recent research conducted in England and Wales highlighted significant issues in the conduct of ABE interviews and that initial discussions with NSPCC practitioners indicated that similar problems may also be present in current Northern Ireland practice. It was therefore considered that the implementation and roll-out of the guidance offered a timely opportunity to monitor and audit the practice of ABE interviews in Northern Ireland.

It was considered that the challenges involved in interviewing, especially children who have been groomed for sexual exploitation, merits a separate, second-stage training course rather than being included in the more generic ABE training.

Comment

The guidance recognises the importance of specialist training and on-going quality assurance. Planning for training, implementation and monitoring of the guidance will be a priority for the VIWWG. Many of the comments made as a response to this consultation can be incorporated into the revised training programmes, for example physical barriers to communication when interviewing frail older persons. The VIWWG has a representative from the British Association for Counselling and Psychotherapy (BACP) on it, as the guidance has major training, standards and joint working implications for counsellors and therapists, including revision of their existing protocols and guidance.

The VIWWG will also review the guidance at appropriate junctures and will be tasked to bring together a sub-group to draft specific guidance in relation to sexually exploited children and adults.

Additional Comments

1. It was considered that there was the potential for some groups to be adversely affected by the guidance and that a full equality impact assessment should be carried out.

Comment: We are satisfied from the result of the screening exercise that an Equality Impact Assessment is not required.

2. It was queried what was the degree of involvement of therapists in devising the guidance.

Comment: The guidance is based on England and Wales guidance which has been in operation for some time and would have had counsellor/therapist input. In a NI context, the NSPCC is a provider of therapeutic services to children who have experienced abuse, to children who display harmful sexual behaviour and work with adult offenders, and that organisation was closely involved in the drafting of this guidance. A representative from BACP sits on the VIWWG, which, inter alia, has responsibility for overseeing training in the revised guidance and ensuring that the related protocols are in place.

3. The application of special measures should apply to those under 18 years rather than under 17 years as at present.

Comment: The Justice Bill contains a number of amendments to the special measures provisions in the Criminal Evidence (NI) Order 1999, one of which is to raise the upper age limit under which a young witness is automatically eligible for special measures consideration from 17 years to 18 years.

4. An assessment on the use and operation of special measures by the Criminal Justice Inspection Northern Ireland would be useful and would enable any problems to be confronted early on in the process.

Comment: Criminal Justice Inspection Northern Ireland has agreed to include a review of the criminal justice organisations' performance in relation to the operation of special measures in its future inspection programme. We understand that this review is being considered for inclusion in its inspection programme for 2011-12.

5. The guidance does not address the deficiencies relating to special measures which were identified during the consultation on the effectiveness of special measures, which was carried out in 2010.

Comment: The VIWWG will have responsibility for addressing issues concerning the operational effectiveness of special measures. As part of this work, it will consider the areas that were raised as issues of concern during the special measures consultation.

6. The time taken to get a case to court should be reduced thus helping the victim to recover from the experience.

Comment: The Criminal Justice Board is leading a multi-agency programme of work to speed up justice. Within that programme there is a specific strand to identify the critical issues for victims around delay, and to look for solutions which will directly improve a victim's journey through the criminal justice process. Among the early products delivered by the programme are measures aimed at addressing the causes of adjournments before the case is in the court system and measures to improve the way cases are managed through the court process.

Next Steps

We are grateful for the very helpful responses received during this consultation and which have made this exercise so worthwhile.

We have:

- made the necessary changes to the guidance and are arranging for it to be issued in April 2011; and
- asked the VIWWG to address the issues raised about training and implementation. The VIWWG has also been tasked with keeping the guidance updated as relevant developments occur, such as the introduction of the Intermediaries Service.

List of Respondents

Barnardos

Belfast City Council

Belfast Health and Social Care Trust

British Irish Rights Watch

Committee on the Administration of Justice

Forensic Science Northern Ireland

Health and Social Care Board

Lord Chief Justice's Office

Mencap

NEXUS Institute

Northern Health and Social Care Trust

Northern Ireland Commissioner for Children and Young People

Northern Ireland Courts and Tribunals Service

Northern Ireland Human Rights Commission

Northern Ireland Prison Service

NSPCC

Police Service of Northern Ireland (two responses)

Probation Board for Northern Ireland

Public Prosecution Service

Royal College of Speech and Language Therapists

RNID

South Eastern Health and Social Care Trust (two responses)

Uniting Against Elder Abuse

Victim Support Northern Ireland