



TITLE **PUBLICATION OF ACHIEVING BEST EVIDENCE: GUIDANCE ON INTERVIEWING VICTIMS AND WITNESSES, AND GUIDANCE ON USING SPECIAL MEASURES (3RD EDITION)**

From: Better Trials Unit
Ministry of Justice

Distribution date: 21st March 2011

Implementation Date: N/A

For further information contact: Clayton Smith
clayton.smith@justice.gsi.gov.uk
020 8334 6078

Broad subject: Criminal Justice Practitioner Guidance

Sub category: Vulnerable and Intimidated Witnesses

This circular supersedes: N/A

This circular is for: Lord Chief Justice, Deputy Chief Justice, Senior Presiding Judge for England and Wales, Chief Officers of Police in England and Wales, Director of Public Prosecutions, Chief Crown Prosecutor, Court Managers Crown Courts, HMCS Area
Directors, Clerks to the Justices, Legal Services Commission, Attorney General's Office Department of Health. Department for Education, Association of Directors of Children's Services, Association of Directors of Adult Social Services, Police Forces in England and Wales, Lords Justices of Appeal, Lords of Appeal in Ordinary, Queen's Bench Division, Crown Court Judges, Circuit Judges, Administrators and Group Judges, District

Judges (Magistrates' Courts), Chairmen of the Justices, Council of Circuit Judges, Local Government Association, Magistrates' Association, Judicial Studies Board, Sentencing Council, Bar Council, Criminal Bar Association, Law Society, Victim Support, Welsh Assembly Government and the Association of Directors of Social Services Cymru

Purpose of this Circular

1. The purpose of this circular is to communicate the online publication of the 3rd edition of practitioner guidance *Achieving Best Evidence: Guidance on Interviewing Victims and Witnesses and Guidance on Using Special Measures (2011)* in advance of the commencement of sections 98-103 & 105 Coroners and Justice Act 2009 which amend the special measures provisions in the Youth Justice and Criminal Evidence Act 1999. This guidance replaces all previous editions of *Achieving Best Evidence* and also the *Memorandum of Good Practice*. It can be found via the web link <http://www.justice.gov.uk/guidance.htm> and is not available in hard copy. A Welsh language version of the document will also be available via the same web link in due course.
2. Separate complementary guidance aimed primarily at assisting police officers identify vulnerable and intimidated witnesses *Vulnerable and Intimidated Witnesses a Police Service Guide (2011)* has also been published online. This can also be found via the web link <http://www.justice.gov.uk/guidance.htm> and is not available in hard copy.

Background

3. *Achieving Best Evidence* was first published in 2002 when the majority of the special measures provisions in the Youth Justice and Criminal Evidence Act 1999 were implemented and replaced the previous practitioner guidance *Memorandum of good practice for video-interviewing children*. The guidance was later updated and re-issued in 2007. This revised third edition of *Achieving Best Evidence* takes into account legislative changes to the Youth Justice and Criminal Evidence Act 1999 special measures provisions contained in sections 98 – 103 & 105 Coroners and Justice Act 2009 (due for commencement later this year), recent court judgments, publication of the ACPO guidance *Advice on the Structure of Visually Recorded Witness Interviews (2010)* and reinforces good practice.

4. The guidance is primarily aimed at police officers conducting visually-recorded interviews with vulnerable, intimidated and significant witnesses, those tasked with preparing and supporting such witnesses during the criminal justice process and those involved at the trial, both in supporting and questioning the witness in court. While the guidance is advisory, compliance with *Achieving Best Evidence* and effective training is likely to maximise the quality of interviews with vulnerable, intimidated and significant witnesses and is likely to benefit the interviewer, the witness, practitioners and the courts alike.

5. *Vulnerable and Intimidated Witnesses a Police Service Guide* was first published in 2002. The revised edition of this guidance aims to assist the police through a number of processes, and includes prompts to assist police officers identify

vulnerable and intimidated witnesses and advice on action once identification has been made.

Key Points to Note

- It is of crucial importance that the needs of vulnerable and intimidated witnesses are identified as early as possible during the criminal justice process and the information recorded and passed on to the CPS. Early identification of a vulnerable or intimidated witness and effective inter-agency working in support of the witness will improve the quality of an investigation by assisting the witness to give information to the police and assist the legal process by helping the witness to give their best evidence in court. This is best achieved where local criminal justice agencies work together and with other agencies to develop effective networks and local protocols for sharing information, as well as comprehensive awareness-raising and training.
- It is important to ensure that any visually recorded statement is of good quality so that where a prosecution takes place this can be conducted as effectively as possible. ACPO guidance *Advice on the Structure of Visually Recorded Witness Interviews (2010)* should be read in conjunction with *Achieving Best Evidence*. The ACPO guidance was revised as a result of feedback from a number of sources about problems with the way visually recorded interviews are conducted and how they translate into evidence at court. The intention of the guidance is to achieve the fine balance that is required between the needs of the police, the victim or witness and the judicial process.

- It is also important to note the ACPO National Investigative Interviewing Strategy guidance (2009) and the importance of workplace assessments for interviewers to assist maintaining good quality visually recorded statements as training alone is unlikely to be effective. There should be a means of quality assuring interviews on an ongoing basis while developing, maintaining and enhancing the skills of interviewers.
- Vulnerable and intimidated witnesses need support from the moment they experience or witness a crime – even before they report the crime and enter the criminal justice system. The quality of this pre-charge support is critical in building trust with the witness at the first point of contact. Support needs to be sustained throughout the whole process of reporting the crime, making a statement, pre-trial preparation, entering the court procedures and post trial.
- Practitioners should be aware of the special measures provisions available to assist vulnerable and intimidated witnesses at the discretion of the court and the categories of witness to which they apply. See paragraphs 1.14 – 1.19 of Achieving Best Evidence and Appendix B.
- The police, defence and CPS should ascertain the views of the witness about special measures and ensure that this information is given to the court in support of any special measures application.
- It is for the prosecution or defence to decide whether or not to make a special measures application to the court in respect of any eligible witness and for the

court to decide whether to make a direction, after taking into account the views of the witness.

- The third edition of *Achieving Best Evidence* takes account of amendments to the Youth Justice and Criminal Evidence Act 1999 special measures provisions contained in the Coroners and Justice Act 2009 that we are aiming to commence by the summer 2011. Details of the commencement will be the subject of a separate circular. In summary, the amendments to the special measures provisions will:
 - raise the upper age limit of child witnesses automatically eligible for special measures from those under 17 to include those under 18;
 - provide child witnesses with more choice and flexibility about how they give their evidence;
 - make specific provision for the presence of a supporter to the witness in the live link room;
 - extend the automatic eligibility for special measures to witnesses in certain gun and knife crimes;
 - relax the restrictions on a witness giving additional evidence in chief after the witness's video-recorded statement has been admitted as evidence in chief;
 - make special provision for the admissibility of video-recorded evidence in chief of adult complainants in sexual offence cases in the Crown Court