

Investigative interviewing witness guide

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Executive summary

Key things to note:

- Every witness is different.
- The guidelines are not intended to be rigidly followed. Be flexible and use techniques as and when you see fit depending on the interviewee, situation and circumstance.
- If there is more than one witness to an incident take care to minimise the risk of memory contamination between witnesses.
- If a witness becomes a suspect during interview, adopt [procedures for interviewing suspects](#) including cautioning the person and visually recording the interview.
- Three interview models are used for interviewing witnesses:
 - [Free recall](#) for cooperative interviewees
 - [Conversation management](#) for reluctant interviewees
 - [Enhanced cognitive interviewing](#); builds on free recall using advanced techniques to assist cooperative interviewees
- 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 the free recall model where possible.
- Interviews have 5 phases - Planning and preparation, Engage and explain, Account, Closure and Evaluation.
- Always plan and prepare for interviews, no matter what type of interview is being considered
- It is paramount you consider the witness's well-being and investigative needs in decision making relating to interviews.
- Consider having a support person present at an interview to support a witness if it is in the interests of the witness and the person is an appropriate person to support the witness.
- Visually recorded interviews used as an alternative form of evidence must comply with the procedures detailed in the [Evidence Regulations 2007](#).

Overview

Purpose

This chapter provides guidelines for:

- interviewing witnesses, including reluctant or difficult witnesses, using the five stages of the PEACE interviewing framework:
 - planning and preparation
 - engage and explain
 - account
 - closure
 - evaluation
- identifying witnesses requiring special consideration (see 'Investigative interviewing of witnesses requiring special consideration' for the procedures to be followed)
- deciding when specialist interviewers are required
- using [support persons](#)
- the [storage and transcription](#) of video records
- [applications for alternative ways of giving evidence](#).

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

What is the purpose of interviewing witnesses?

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

Guidelines are not prescriptive

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

Merely following the guidelines will not make a good interview or interviewer. 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 your supervisor and, where appropriate, the prosecuting agency.

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. The term includes victims as defined by section 4 Victims' Rights Act 2002.

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

includes...	does not include...
victims - <ul style="list-style-type: none"> - a person against whom an offence is committed by another person - a person who, through, or by means of, an offence committed by another person, suffers physical injury, or loss of, or damage to, property (s4 'victims' (a)(i) and (ii) Victim Rights Act 2002)	suspects <p>Special provisions for dealing with suspects are detailed in the Investigative interviewing suspect guide.</p>

Multiple witnesses

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

- separating them as soon as is practical and interviewing them individually
- if the interview is delayed, consider asking them not to discuss the incident with others involved and explain why, i.e. the potential for post-event information to contaminate memory. Note that a more flexible approach is required with witnesses who may be stressed by the incident as discussing it with others may help therapeutically.

Witnesses who become suspects

The Criminal Investigations (Bodily Samples) Act 1995 (s2) defines a suspect in relation to an offence, as any person whom it is believed has or may have committed that offence, whether or not-

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

If a witness becomes a suspect during interview [procedures for interviewing suspects](#) should be adopted including cautioning the person and visually recording the interview.

Related information

See also these related Police Manual chapters:

- '[Hate crimes and hate incidents investigations](#)' chapter for information about recognising, recording and dealing appropriately with **hate crime**, **hate incidents** and **hate speech** within the context of scene attendance, investigations, applying proportionality and using discretion
- [Investigative interviewing of witnesses requiring special consideration](#)
- [Investigative interviewing suspect guide](#)
- [Specialist Child Witness Interview Guide](#)
- [Investigative interviewing accreditation policy](#)
- Investigative interviewing doctrine (a document for training):

[Investigative interviewing doctrine - PI from November 2015.pdf](#)

625 KB

Other information on investigative interviewing can be found on the [Investigations and intelligence](#) page.

Feedback or advice

Email any feedback, comments or queries to:
investigative.interviewing.unit@police.govt.nz

Forms

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

Health and safety duties

Maximising safety and minimising risk

Maximising safety and eliminating or minimising risk at work is the responsibility of all Police employees and persons engaged by Police to provide a service including contractors and their employees, trainees, interns and volunteers. It is delivered through meeting the obligations under the [Health and Safety at Work Act 2015](#) and Police safety policies.

A key enabler is the application of the [TENR-Operational threat assessment](#) in the workplace.

The expectation of the Commissioner and the Act is that persons in the workplace will take reasonable care to ensure that their acts or omissions do not adversely affect the health and safety of other persons, comply as far as they are reasonably able to with any reasonable instruction that is given in order to comply with the [Health and Safety at Work Act 2015](#) or regulations under that Act. They will co-operate with any reasonable policy or procedure relating to health or safety at the workplace that has been notified to them and take immediate action to stop any perceived or potential breach of the act or if impractical, immediately report the matter to a supervisor.

Health and safety should be an everyday conversation.

Relevant Police instructions include:

- [Health, safety and wellbeing](#)
- this 'Investigative interviewing witness guide' in relation to safe interviewing procedures for witnesses.

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.

Planning and preparing for 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: <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.
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.

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

Witnesses requiring special consideration

A witness requires special consideration when additional measures are needed at interview to maximise communication to allow them to provide an accurate account due to their personal characteristics or the circumstances of the offending.

Examples of witnesses who may require special consideration when being interviewed include:

- children
- the elderly
- intoxicated witnesses
- traumatised victims
- witnesses with intellectual disability or mental health conditions
- victims of family violence and sexual assault
- witnesses with communication difficulties, or with English as a second language.

'[Investigative interviewing - witnesses requiring special consideration](#)' outlines factors to consider and how standard interviewing practices might be varied to cater for witnesses requiring special consideration'

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 deciding 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 showing signs of trauma consider delaying the interview. Check with the witness as to their preference - some may want

to be interviewed straight away. Also remember some witnesses, e.g. family violence victims, may be more forthcoming with information if interviewed immediately. In some 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.

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.

Preparing the interview location

- Consider the best and most appropriate location to conduct the interview.
- A quiet room that is free from distractions and interruptions allowing both you and the witness to concentrate is an ideal setting.
- Consider where the witness may prefer to be interviewed. It may be appropriate to ask them their preference.
- Set up the interview room and arrange the seating - ten to two is the preferred position.
- Check equipment.
- Make sure you have any required communication aids ready - 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 count, so the opening phase of the interview often determines the success of the interview as a whole. The engage and explain interview phase may be immediately before 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 recall 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

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 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

The phases and steps of the free recall model are fully explained and practiced within interview training at Level 1 and Level 2. 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"> - 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. 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 relevant 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 formal statement. - 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 to ensure you have understood them correctly.
Closure	<ul style="list-style-type: none"> - Ensure the witness dates and endorses any sketch plans or notes they have made as they may be referred to later and used in court.

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"> - 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. - Why questions should be couched in an empathetic way. Why questions can gain valuable information for an investigation - but can suggest blame. The context in which they are asked and tonality of the interviewer will make these questions appropriate or inappropriate.
<p>Clarify with the interviewee any wording or phrases as required.</p> <p>If a support person is present, check with them before the interview, wording or phrases you think the witness may find difficult or for which the witness may have a different meaning than commonly held</p>	<p>Examples:</p> <ul style="list-style-type: none"> - 'aunty' means parent's sister to most people but to others it may include a long-term female family friend. - the term 'penis' may not be understood but the term 'dick' may.
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	<p>If a witness responds to a leading question with relevant information not led by the question, revert to open questions.</p> <p>These types of questions may provide the interviewee with knowledge or ideas they have not previously formulated.</p>
Avoid asking questions with a 'Yes'/'No' answer	<p>The witness may want to please by saying 'Yes' and avoid discussing uncomfortable topics by responding negatively.</p> <p>However, these questions may be appropriate for clarification.</p>

Question types

This table outlines commonly used question types.

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

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	Salience	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.

If the suspect or other person is well known to the witness the description may still be of use for identification purposes when spoken about by others - but may not have to be as in depth as when the suspect is unknown.

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

Job sheets

Never record formal statements 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 preliminary 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 formal statement at the end of the interview to:

- record information the witness can provide (for both investigative and prosecution processes) or further lines of enquiry that may then be used as evidence in any court proceeding.
- 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 formal 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 formal statements

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

Step	Action
1	<p>Use Pol2150A (and associated cover sheet) for all witness statements and Pol 2150 B to record witness personal details. (located in Police Forms>Investigative Interviewing>Statements)</p> <p>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.</p>
2	<p>In the statement's heading enter:</p> <ul style="list-style-type: none"> - the witness's name, age (only if under 18 years) 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 formal statement in chronological order of the incident 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>If diagrams/maps/sketches were used by interviewee:</p> <ul style="list-style-type: none"> - record their use in the statement e.g 'I have drawn a diagram of the street, showing where the crash took place'. - ensure the interviewee signs and dates them.
5	<p>Complete the coversheet (Pol 2150 B) 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>

Do not:

- short cut this process as it will reduce the quality and quantity of information obtained
- start writing the formal statement 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 formal statement

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

Step	Action
1	<p>Ask the interviewee to:</p> <ul style="list-style-type: none"> - read the formal 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	<p>Once the interviewee is satisfied with the content of the statement you must record the s82 Criminal Procedure Act 2011 declaration at the end of the statement:</p> <ul style="list-style-type: none"> - I confirm the truth and accuracy of this statement. I make the statement with the knowledge that it is to be used in court proceedings. I am aware that it is an offence to make a statement that is known by me to be false or intended by me to mislead.' <p>Invite the interviewee to sign the statement with their full signature below the declaration. If they refuse to sign, note this on the statement and record in your notebook</p>
3	<p>You endorse the formal statement by:</p> <ul style="list-style-type: none"> - initialling and numbering the bottom of each page - endorsing at the end of the statement: <ul style="list-style-type: none"> - 'Statement taken and signature witnessed by:' - adding your full signature, <u>QID</u> 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	<p>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.</p>
2	<p>Sit beside the witness so they can see where you are reading from.</p>
3	<p>Before endorsing the statement write the following declaration:</p> <p>'This statement has been read to me. I confirm the truth and accuracy of this statement. I made the statement with the knowledge that it is to be used in court proceedings. I am aware that it is an offence to make a statement that is known by me to be false or intended by me to mislead.'</p> <p>Make a note about their reading ability in your notebook so you have a record if you are questioned in court.</p>
4	<p>The person reading the formal 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 formal statement and writes the time.</p>

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 or another officers as appropriate
- 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

General considerations

If the witness is difficult to interview (compliant but challenging 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 - being judgemental is likely to result in further resistance.

Witness's right to decline to be interviewed

Interviews are always conducted with consent as 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 a person'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	Spend time building rapport with the witness. This may take several sessions. Record your interactions in your actions.
2	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 them enough information to make an informed choice as to whether to speak to you, but do not provide specific details about the allegations or what they are believed to have witnessed
3	Ask them why they don't want to be interviewed, and try to address their concerns. If they refuse to tell you, consider what their concerns might be (from your planning and preparation) and address these.
4	<p>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:</p> <p>-</p> <p>Investigative interviewing doctrine - PI from November 2015.pdf 625 KB</p>
5	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 questions and, if required, closed questions.
6	<p>If the witness refuses to talk to you at all, that is their right. Avoid over persistence and:</p> <ul style="list-style-type: none"> - get their full details so they can be summonsed if required - proceed to the closure phase of the interview.
7	<p>Closure:</p> <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. <p>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.</p>
8	Consider revisiting the witness at another time in consultation with the <u>QC</u> case or a supervisor.

Strategies for witnesses difficult to interview

Some witnesses may be more challenging 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.

See also the '[Investigative interviewing - witnesses requiring special consideration](#)' chapter.

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
- prison/cellmate witnesses.

Visually record witness interviews

The best way to maximise the quality of the evidence of investigatively important witnesses is to visually record their interview (see 'Visually recorded interviews' in the '[Investigative interviewing witness guide](#)').

Police can apply to the judge for an investigatively important witness, excluding prison/cellmate witnesses, 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.

(s103 Evidence Act 2006)

Selecting interview model

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

Prison/cellmate witnesses

Prison/cellmate witnesses can provide important information and at times evidence that is included at a trial. Their evidence will incur a higher level of judicial scrutiny and questions regarding the veracity of the witness.

Police must ensure that the [Solicitor-General's Guidelines](#) for use of prison inmate admissions is followed.

The reputational risk posed to Police in any case where a prison or cellmate confession or information is obtained and is to be relied on at Court or to progress an investigation, requires that the relevant Territorial Detective Superintendent **must** be advised.

Each time a witness is considered for use they must be recorded in the Police Register for Inmate Witnesses (IMT File 210823/1077) via the National CHIS Manager.

See '[Target engagement tactics evidential review](#)' in 'Part 18 - Oversight, review and debrief of homicide and serious crime investigations' of the Homicide and serious crime investigations chapter for the review process.

When planning for a witness interview with a prisoner, please refer to the following link regarding [Supreme Court direction on the treatment of prisoner witness evidence](#).

Support persons

Benefits of having a support person

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 a support person may be present in the room during interview

Under regulation [6](#) of the Evidence Regulations 2007 a person may be present at an interview (that is recorded on video) to support a witness if the interviewer considers that-

- it is in the interests of the witness; and
- the person is an appropriate person to support the witness.

This advice equally applies to all other interviews.

A support person does not have to be present in the room when the interview is conducted. They can be nearby, so the interviewee can speak with them as necessary and /or can be supported in breaks.

Specialist trained interviewers and [CIB](#) staff are trained to deal with serious crime, victims and witnesses. Consideration has to be given to the victim, and the overall investigation. The impact of having another person present in the room needs to be considered.

When to use a support person

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

- whether they are a victim
- the overall investigation
- the impact of having another person present in the room
- the witnesses' characteristics, and
- whether having a support person present will benefit the witness and/or the investigation.

Remember that specialist trained interviewers and [CIB](#) staff are trained to deal with serious crime, victims and witnesses.

Always consider using a support person when the witness:

- is under the age of 18 years or very elderly
- has a communication difficulty (including a disability)
- is showing signs of trauma
- is a victim of sexual assault
- fears intimidation
- uses a language other than English as their first language
- is a victim 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 your supervisor.

Who is an 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, it may be preferable to wait for someone the witness feels supported by).

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

Specialist support persons

Enlist the help of a specialist support person with:

- adult sexual assault victims
- witnesses with communication difficulties (see 'Specialist interviews of witnesses with certain conditions' in '[Investigative interviewing - witnesses requiring special consideration](#)' to see who is appropriate)
- witnesses showing signs of extreme trauma.

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 who 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 support person's arrival, speak to them alone and explain 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's happening - not ask the witness questions about what's happened before the interview, as this will contaminate or influence memory - not discuss anything that's been said in the interview in breaks as this may contaminate or influence memory - not prompt the witness or answer questions on their behalf - participate in a briefing with Police on what has occurred, if necessary. <p>Meeting together with the witness and support person:</p> <ul style="list-style-type: none"> - Explain/re explain the interview process to the witness in front of the support person - advise the witness of the support person's role - answer any questions they have about the interview process - allow the support person to spend some time alone with the witness to discuss the interview process before commencing the interview <p>If a specialist support person is present speak with them about the witness's needs and decide what is an appropriate interview process.</p>
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 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' 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 may 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 support person's details and get them to endorse the statement as well if the interview is conducted in their presence. They should sign the statement: <i>'This statement was made in the presence of...'</i> - Keep the witness (or carer) updated as appropriate, explain processes, brief them for court and arrange for counselling, if required.

Using specialist interviewers

Specialist interviewers

Specialist child witness interviewers	Specialist adult witness interviewers
<p>A specialist child witness interviewer:</p> <ul style="list-style-type: none"> - is a trained interviewer for children and young persons under the age of 18 years - has received specialist training in how to interview children on video record according to the Evidence Regulations and national standards. <p>Contact these interviewers through the Child Protection Team or the CIB or SCWI National Trainer/Co-Ordinator based at PNHQ.</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 18 years or older - has received specialist training in using enhanced cognitive interviewing and video recording interviews in accordance with the Evidence Regulations 2007 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 adults with disabilities or communication difficulties	Adults
<ul style="list-style-type: none"> - Children and young people under the age of 18 years - Witnesses 18 years or older but with a disability or communication difficulty and who are victims/witnesses of sexual and serious physical assaults - Any case where you believe it is important to minimise the stress on the child witness, including when they are: <ul style="list-style-type: none"> - a victim - very young - the witness to a serious offence or an incident in which a family member is a suspect 	<ul style="list-style-type: none"> - Adults (18 years or older) requiring special consideration especially if they: <ul style="list-style-type: none"> - suffer from some sort of disability (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) - sexual assaults - kidnapping and abduction - aggravated robberies involving firearms.

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 specialist child witness 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 SCWI or Level 3 specialist adult witness interviewer

Use a specialist child witness interviewer in preference to a Level 3 specialist adult witness interviewer with children under the age of 18 years and witnesses who have an intellectual disability or communication difficulty. 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 specialist child witness interviewer, e.g. if the witness is mature for their age.

When a Level 3 specialist is not available

Districts should have sufficient Level 3 Adult Witness Interviewing resources to enable interviews to be carried out on any day. If necessary, consideration should be given to interviewers being called back to interview when not on duty, eg weekends.

If a specialist adult interviewer is not available, a Detective Senior Sergeant can authorise a suitably competent investigator to conduct and visually record the interview as per the guidelines below.

Consideration must be given to a variety of factors when making this decision (in no particular order) e.g:

- victim and interviewer profile
- potential for a s103 alternate modes of evidence application to play the DVD interview as evidence in chief being made
- known or unknown offender
- urgency of information from interview for investigation and requirement for transcription.

ASA Victim Interviews

The interview is authorised by a Level 4 (CSP010) trained District ASA Coordinator (Detective Senior Sergeant or Detective Sergeant Acting in the role) to be conducted by a CIB Investigator who is:

Level 2 Investigative Interviewing accredited (INT018)

AND

Level 3 ASA trained (ie completion of Detective Qualification Course post August 2013 or CSP005 (pre 2013), or ASA CSP010 (Advanced ASA - Level 4)

Other Victim/Witness Categories

The interview is authorised by a Detective Senior Sergeant (or Detective Sergeant Acting in the role) to be conducted by a CIB Investigator who is:

Level 2 Investigative Interviewing accredited (INT018)

Note:

- Victim interview rooms must be used. Suspect interview rooms/facilities must not be used to interview victims or witnesses on DVD
- Child victims must only to be interviewed by Specialist Child Witness Interviewers.
- An inactivated/expired Level 3 interviewer should only be considered if they meet the above criteria and proceed with 'normal' interview procedures for visually recording interviews with adults.

Visually recorded interviews

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 [Specialist Child Witness Interview Guide](#).

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 Supervisor.

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.

Mobile interviewing units are available in most Districts and via the PNHQ pool of units to be used in any location.

Monitor's role

A monitor should be used to remotely oversee the interview when visually recording witness interviews, unless exceptional circumstances exist. Reasons for not having a monitor should be recorded in the OC Witness or Investigation notebook. 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 and legible interview notes of the required investigative information
- 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 or interviewer on the appropriate form, in consultation with each other.

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 enquiries 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.

Management of video records

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 it is kept secure and the chain of custody is maintained.

StepAction

- 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 (in Police Forms>II>WVR) and store this with each copy of the record.

Transcripts

All witness video recorded interview records should 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 statements - see 'Formal statements' in the '[Prosecution file and trial preparation](#)' chapter for more information.
 - 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 'Disclosure of video interviews, transcripts and TASER data' in the [Criminal disclosure](#) chapter for more information.

Using the video record as a formal statement

See 'Formal statements' in the '[Prosecution file and trial preparation](#)' chapter for information about filing the video record as a formal statement at the appropriate pre-trial stage of a jury trial proceeding.

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.

Alternative ways of giving evidence

Applications for alternative way of giving evidence

Ordinarily, a witness will be required to give their evidence orally in court. A witness can only give evidence in court by alternative means (e.g. using a video record of an interview instead of giving evidence in person) if an application is made and granted 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, and discuss with the witness, what they might need to minimise the stress of cross-examination, 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' evidence in chief on a case by case basis taking into consideration:

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

An alternative way of evidence application is required:

- in a judge-alone trial, if you believe the video is the best evidence for such a hearing.
- where a pre-trial oral evidence order has been made pursuant to s90 of the Criminal Procedure Act 2011, necessitating a hearing for the taking of the evidence of a particular witness, if you believe the video is the best evidence for such a hearing.

An application is **not** required for any hearing where the relevant witness is not required to give evidence. That includes pre-trial hearings in jury trial matters, unless an oral evidence order has been made in respect of that witness for the purposes of the pre-trial hearing.

For matters that are proceeding beyond a case review hearing and toward a jury 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 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.

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). That view and the reasons for it should be set out clearly in the covering report on the file.

The prosecutor:

- considers whether an application is appropriate
- may require evidence in support of the application, and (which the OC will be responsible for obtaining/arranging that)
- makes an alternative way of evidence application at the pre-trial hearing.

When a section 103 order is made

Follow the 'Disclosure of video records and transcripts and TASER data' procedures in the [Criminal disclosure](#) chapter if a judge makes an order under section 103 Evidence Act.

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.

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 interviewer's experience 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.

Dealing with significant evidential inconsistencies and/or omissions

For a variety of reasons there may be significant inconsistencies and/or omissions 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 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
 - 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.

Further interviews

As an investigation progresses it may be necessary to clarify information/inconsistencies that have arisen with a witness. Decisions regarding how this is conducted should be made on a case by case basis. No two situations will be the same and there may be a variety of reasons why a further interview is required.

Consideration should be given to:

- mode of recording, eg video record of interview or written formal statement
- need for support person
- necessity of re-interview

Fabrication

If a further interview is required due to the original complaint being a fabrication, follow the guidance on 'Inconsistent or fabricated complaints' in the [Adult sexual assault investigation \(ASAI\) policy and procedures](#). The same principles for speaking to ASA victims regarding possible fabrication of complaint apply to other witnesses.

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