

## **Investigative interviewing - witnesses requiring special consideration**

## Table of Contents

Table of Contents	2
Executive summary	4
Purpose	4
Key things to note:	4
Related information	4
Who requires special consideration when being interviewed?	5
Defining special consideration	5
Giving evidence in alternative ways	5
Personal characteristics	5
Circumstances of the offending	5
Special procedures for some witness categories	5
Before starting interviews of witnesses requiring special consideration	7
Initial actions for all investigators	7
Initial actions for interviewer	7
Background checks	7
Intoxicated witnesses	9
Consider the best time to conduct interview	9
Witness must understand the reason for interview	9
Physical, intellectual, psychological or psychiatric conditions	10
Introduction	10
Identifying witnesses with a communication difficulty	10
Witness' own views about their condition	10
Factors affecting recall	10
Err on the side of caution if unsure	10
Procedures when interviewing witnesses with certain conditions	11
Planning	11
Room set up	11
During the interview	11
Communication aids	11
Engage and explain	12
Account	12
Questions	12
Closure	12
Specialist interviews of witnesses with certain conditions	13
Introduction	13
Physical disability	13
Intellectual disability	13
Autistic Spectrum Disorder (ASD)	13
Dyslexia	14
Mental and psychological disorders	14
Preparation	14
Additional guidance for mental disorders	14
Children and young persons	15
Introduction	15
Procedure for interviewing	15
Support people	16
Witnesses who have suffered trauma	17
Introduction	17
Two key planning issues	17
Different linguistic, cultural or religious backgrounds	18
Different backgrounds	18
Using interpreters	18
Risks of using unqualified interpreters	18

Risk of using Police employee as interpreter	18
How to access qualified interpreters and related information	19
Written statement when interpreter used	19
<b>Witnesses fearing intimidation</b>	<b>20</b>
Who are intimidated witnesses?	20
Indicators of intimidation	20
Consider the witness's views	20
Engage and explain	20
Consider using a specialist interviewer	21
Consider using a support person	21
<b>Family violence victims</b>	<b>22</b>
Policy	22
Interviewing family violence victims	22
Planning and preparation - additional matters to consider	22
Account interview phase	22
Closure	22

## Executive summary

### Purpose

This chapter outlines variations to standard interview procedures for categories of witnesses who because of their personal characteristics or the circumstances of the offending have been identified as requiring special consideration.

### Key things to note:

- No two witnesses are the same.
- Witnesses being interviewed may require special consideration because of their personal characteristics or the circumstances of the offending.
- Procedures for witnesses requiring special consideration are additional to those applying generally to all witnesses.
- Decisions about special consideration and any additional procedures to be applied during interviews should be made on a case by case basis.
- Decisions on whether witnesses requiring special consideration require support persons and/ or interview by specialist interviewers should be made on a case by case basis.

### Related information

See these related 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 witness 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](#)

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# Who requires special consideration when being interviewed?

## Defining special consideration

A witness requires special consideration when additional measures need to be taken at interview to maximise communication to allow the witness to provide an accurate account due to:

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

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

## Giving evidence in alternative ways

The [Evidence Act 2006](#) recognises some witnesses require special consideration because of their personal characteristics or the circumstances of the offending. Section [103](#) of the Act allows the prosecution to apply to the court for the witness to give their evidence in an alternative way if certain grounds exist. The Judge may direct the witness to give evidence in-chief and be cross-examined in the ordinary or an alternative way. This includes playing a visual recording of the witness's evidence in chief. If you believe your witness may be eligible for giving evidence in alternative ways, complete [initial action procedures](#) for special consideration witnesses.

## Personal characteristics

The Evidence Act 2006 is useful for determining if special consideration is required. Section [103\(3\)\(a\)](#) outlines the grounds a judge must consider when deciding if an alternative method of giving evidence should be used. These grounds are useful for determining whether the witness requires special consideration when being interviewed during an investigation:

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

Examples of witnesses requiring special consideration include children, the elderly, intoxicated witnesses, traumatised victims, witnesses with intellectual disability or mental health problems, victims of family violence and sexual assault, witnesses with communication difficulties, and witnesses with English as a second language.

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

## Circumstances of the offending

The circumstances of the offending that should be considered include:

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

## Special procedures for some witness categories

Categories of witnesses requiring special consideration, and as a result, need special procedures or variations to the usual interviewing techniques include witnesses who:

- are [intoxicated](#)
- [have a physical, intellectual, psychological or psychiatric condition](#)
- have [suffered trauma](#) due to nature of offence
- [fears intimidation](#)
- have [different linguistic or cultural backgrounds](#)
- are [children or young people](#)
- are investigatively important witnesses (see the general '[Investigative interviewing witness guide](#)').

# Before starting interviews of witnesses requiring special consideration

## Initial actions for all investigators

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

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

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

## Initial actions for interviewer

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

## Background checks

If you believe accurate and reliable communication is **not** possible:

- discuss this with your supervisor

## Investigative interviewing - witnesses requiring special consideration

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

Background checks will assist in the decision making process. If possible, and appropriate, talk to family members, relevant health professionals or caregivers to find out whether:

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



## Intoxicated witnesses

### Consider the best time to conduct interview

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

Consider these factors:

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

### Witness must understand the reason for interview

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

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

# Physical, intellectual, psychological or psychiatric conditions

## Introduction

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

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

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

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

## Identifying witnesses with a communication difficulty

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

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

## Witness' own views about their condition

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

Consider how the witness describes themselves and any difficulties they may have. Identification of a communication difficulty or disability does not rest solely on the witness' views, but their opinions are important. The court needs to take them into account when determining witnesses' eligibility for special measures.

## Factors affecting recall

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

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

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

## Err on the side of caution if unsure

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

## Procedures when interviewing witnesses with certain conditions

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

### Planning

Planning and preparation are an important part of the interview process and is vital in maximising the opportunities for the person to provide a complete and accurate account. The positive effect of thorough planning and preparation cannot be underestimated. When planning interviews with a person with physical, psychological or psychiatric conditions, follow the usual planning procedures. It may also be useful to speak with professionals involved with the person, e.g. speech and language therapists, psychologists, teachers, teacher aides, and the person's support person. Where possible, consent should be gained from the young person or adult before sharing information.

It can be particularly helpful to find out about any medication and its impact on the person, their responses to anxiety, and self-soothing behaviours they may use and how their support people respond to these. Where possible, this information should be gained from the person themselves to engage them in the process and can be done by the monitor or a colleague to reduce possible contamination for the interview.

It may be appropriate to arrange for the person to visit the interview unit on a different day to meet the people involved in their interview. This can reduce anxiety, familiarise them with the surroundings and the process and also assist interviewers to better understand the person's needs. Any interactions with the person should be noted for transparency and details of the interview topic avoided to minimise any potential contamination of the interview.

During this time with the person, discuss their needs with them and take direction from them, where appropriate, on the use of any tools or breaks during the interview. To assist their understanding of the interview process, a chart clearly outlining each step may be used.

### Room set up

When interviewing a person with a disability it may be necessary for the room set up to be altered to better accommodate their needs. The [Evidence Regulations 2007](#) must be adhered to for video recorded interviews but this still allows for changes to the room set up. For example, some people may prefer that eye contact is limited and chairs are placed side by side, whilst others may prefer chairs to be angled further apart. The person's physical needs may also require changes, e.g. if they use a wheelchair or crutches.

Also consider the accessibility of the room for people who are blind or visually impaired to allow them to move safely in the room.

Changes may also be required if there is to be a support person or interpreter present depending on the type of interpretation being provided, e.g. a NZSL interpreter would require a different set up to one interpreting between two spoken languages.

Thorough planning will assist with any changes that may be required to the room.

### During the interview

During the interview the usual procedures and appropriate interview model should be followed. (See information on interview models in the 'Account' section of the '[Investigative interviewing witness guide](#)')

### Communication aids

Communication aids might be required for certain people and whilst these can be effective, they should be treated with caution. The purpose of a communication aid is to facilitate communication to either clarify questions or assist the person in expressing themselves. However, when used inappropriately aids can confuse or impede communication. An explanation of any communication aids should be introduced during the ground rules portion of Engage and Explain when completing the required Evidence Regulations.

The person may predominantly use augmentative and alternative communication (AAC) as their preferred usual form, if so, this should be used within the interview. AAC covers a wide range of techniques and includes gesture, signing, and voice output communication aids (VOCAs) which are sometimes referred to as 'talkers'.

The use of communication aids should be explored further during the [planning and preparation](#) phase and advice on their use should

be taken from the person to be interviewed, their relevant support people or other professionals working with them.

When using any communication aids during an interview, they must be visible on camera and their use should be explained verbally as appropriate to ensure transparency.

Further information on using communication aids can be sourced from [The Advocate's Gateway](#).

## Engage and explain

During this phase, people with disabilities may require additional time before moving to the [Account](#) phase. This additional time might be due to a more detailed explanation of the ground rules for the interview, or due to the person needing longer for their practice narrative to explore the question types further. Some people may also need longer due to any anxiety, and the witness and interviewer needing additional time to fully understand each other.

Some people may require a shorter 'Engage and explain' phase due to their concentration levels. Consider this during planning to maximise the opportunities for the witness to understand the process, regulations to be followed and the types of questions to be used, whilst minimising the time spent on this phase.

## Account

Research has shown that people with mild and moderate intellectual disabilities can provide accurate accounts and a clear interview plan is important to assist with this. When reinstating the ground rules, transferring control and asking the witness to report everything, additional time may be required again to make sure the witness has fully understood. These are evidence-based instructions designed to increase the accuracy of the information to be disclosed - they also emphasise the need for the interviewee to be in control during the interview<sup>1</sup>.

Also consider memory, understanding of what has taken place and communication needs so that people are supported to provide as accurate and complete an account as they are able.

If a person is using [AAC or other forms of communication aid](#) with which the interviewer is unfamiliar, consider using an intermediary who can assist with interpreting. This should be assessed on a case by case basis.

## Questions

It is important to follow the appropriate model (see the 'Account' section of the '[Investigative interviewing witness guide](#)') and attempt to primarily use invitations during the interview. This is in line with international research around the general use of questions within interviews and people with disabilities should not be underestimated in their ability to provide information.

As with any interview, direct and option-posing questions may be required at times, however these should be followed by an invitation to ensure that the witness remains in control of the information being provided. Questions should remain simple and short, avoiding abstract concepts, multiple questions and long summaries.

The use of certain [communication aids](#) can alter the questions being asked in an interview. For example, some may require more option posing questions as the person's access to vocabulary may be more limited. In these cases:

- invitations should be returned to as soon as possible
- series of questions in which the expected response is 'yes' should be avoided
- consistent language should be used to offer alternative responses, and
- related questions should be completed before moving to the next topic.

## Closure

The closure phase should be completed as normal in line with the interview model being used.

# Specialist interviews of witnesses with certain conditions

## Introduction

Interviewers of witnesses with disabilities or communication difficulties need to recognise and work with their capabilities rather than their limitations.

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

## Physical disability

Physical disabilities may impact on an individual and the interview process in a variety of ways. For example, they may be deaf or hard of hearing, blind, or have cerebral palsy.

It is important to remember that a physical disability does not mean that an individual has an intellectual disability. A person who is deaf or blind, may have some usable hearing or sight and information around this should be gathered during the [planning](#) stages as it will likely impact on the interview plan.

In addition to the procedures for interviewing witnesses with physical, intellectual, psychological or psychiatric conditions, be aware the witness might:

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

## Intellectual disability

Intellectual disability is characterised by a limitation in intellectual functioning and adaptive behaviour. People have limited capacity to reason, understand and solve problems. This is usually measured by IQ and characterised by a significantly lower than average IQ score (70 or less). Adaptive behaviour is the collection of skills needed to live independently, for example money skills, literacy, interacting with others, following laws, safety and routines.

More information on specific intellectual disabilities may be useful to [planning](#) an interview and can be sought from the [Office for Disability Issues](#), administered by the Ministry of Social Development.

These limitations are found on a spectrum and some individuals may require a small amount of support with tasks such as housekeeping or taking the bus, while others may require support with all aspects of daily living including bathing and dressing, while others require no support at all.

## Autistic Spectrum Disorder (ASD)

The [New Zealand Autistic Spectrum Disorder Guideline \(2008\)](#) defines autistic spectrum disorder (ASD) as a new term encompassing classical autism, Asperger syndrome, and people with similar features.

The three shared characteristics of ASD are:

- impairment in the ability to understand and use verbal and non-verbal communication
- impairment in the ability to understand social behaviour, which affects their ability to interact with other people
- impairment in the ability to think and behave flexibly which may be shown in restricted, obsessional or repetitive activities.

According to the American Psychological Association (2013) people with ASD tend to have communication challenges, such as difficulty responding appropriately in conversations, misreading nonverbal interactions, or having difficulty building friendships appropriate to their age. People with ASD may be overly dependent on routines, highly sensitive to changes in their environment, or

have a special interest in or high degree of focus on a specific topic. These symptoms of people with ASD fall on a continuum and the impact of these will vary widely with some individuals requiring support with all aspects of daily living, and others requiring minimal support.

More information can be found in the [New Zealand Autistic Spectrum Disorder Guideline \(2008\)](#).

## Dyslexia

Difficulties with literacy and numeracy are a common feature of dyslexia but there are other neurobiological factors meaning that dyslexia is a broad spectrum. The most immediate attribute is a problem in decoding words and their meanings. Processing information can be affected, as can skills such as planning and organising, motor skills, short-term memory and concentration. For some people it can therefore be difficult to follow instructions or turn thoughts into words.

The [Dyslexia Foundation of New Zealand](#) provides comprehensive, evidence-based information for further reading.

## Mental and psychological disorders

When interviewing witnesses who are known to experience/or possibly be experiencing a mental disorder and/or psychological distress special care and consideration should be taken. Follow the procedure for interviewing witnesses with [physical, intellectual, psychological or psychiatric conditions](#). Also take into consideration that the witness may:

- be in compulsory care under an order from the [Mental Health \(Compulsory Assessment and Treatment\) Act 1992](#), refer to Part 2 for legislation regarding Compulsory Treat Orders
- require assessment by an expert (preferably the witness's current psychiatrist or psychologist) to determine the exact nature of the disorder and likely impact on ability to provide complete, accurate and reliable information
- also suffer from alcohol or drug abuse that can exacerbate symptoms
- be on medication which should be taken into consideration when determining the best time for interview
- be:
  - vulnerable to stress especially when recalling traumatic events
  - confused, suffer from memory loss or impaired reasoning
  - suspicious or aggressive
- want to please the interviewer and/or be susceptible to suggestion

## Preparation

Take these steps when preparing to interview.

Step	Action
1	Discuss with a professional who knows the witness and their likely behaviour and develop a strategy (with the professional) to maximise the outcomes of the interview and minimise any potential stress.  (Even within a diagnosis one person's presentation can be quite different to another's. Diagnosing a disorder is a skilled job that is carried out by professionals over a number of interactions and observations).
2	Consider using the professional or other person involved in the care of the witness as a support person, or call the Criminal Profiling Unit for assistance
3	Spend time to properly prepare the witness for interview by reducing confusion, emotional distress, and anxiety.

## Additional guidance for mental disorders

Even within a diagnosis one person's presentation can be quite different to another's. Diagnosing a disorder is a skilled job that is carried out by professionals over a number of interactions and observations.

Seek guidance from the professionals involved with the witness and what they need to take into consideration. If that is not available, consider seeking guidance from the Profiling Unit.

## Children and young persons

### Introduction

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

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

A child who has, or may have been abused or witnesses a serious crime must be interviewed and video recorded by a specialist child witness interviewer. The [Specialist Child Witness Interview Guide](#) details requirements and process.

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

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

### Procedure for interviewing

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

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

Interview phase	Actions/factors to note
Engage and explain	<ul style="list-style-type: none"> <li>- If practical and appropriate contact the witness' parent, guardian or other caregiver if they are not the person nominated as the support person. Inform them the child or young person is with you and you want to interview them as a witness, and gain their consent</li> <li>- Ask the caregiver not to question or discuss the incident with the witness. Tell them to listen and take notes of anything the witness brings up about the incident.</li> <li>- If using a support person: <ul style="list-style-type: none"> <li>- ask the witness to nominate a support person</li> <li>- arrange for the support person to attend the interview.</li> </ul> </li> <li>- Brief the support person about their role, the interview's purpose and processes involved, in the witness's presence (see 'Support persons' in the <a href="#">Investigative interviewing witness guide</a>).</li> <li>- Explain the usual ground rules for the interview.</li> </ul>
Account - free recall	<ul style="list-style-type: none"> <li>- Remind the witness about the ground rules established during the engage and explain phase.</li> <li>- Take extra care to follow the correct questioning techniques. Repeat until all witness topics have been expanded and investigatively important topics covered.</li> <li>- Avoid 'yes'/'no' questions as these elicit the least information with the lowest level of accuracy.</li> </ul> <p>(For more information see 'Account' in the <a href="#">Investigative interviewing witness guide</a>)</p>
Final summary and written statement	<ul style="list-style-type: none"> <li>- In the statement's second paragraph include the support person's name and relationship to the witness. (e.g. I am talking to Constable Brown about a fight I saw happening. Also here is my mother, Jane White).</li> <li>- Invite the witness to make any corrections or additions and endorse the statement as 'true and correct'.</li> <li>- Invite the support person to witness the statement (e.g. Witnessed by: Jane White)</li> </ul>
Closure	<ul style="list-style-type: none"> <li>- Tell the witness (or their carer if it is not appropriate for the child because of their age) that if they recall further information after the interview to make a written note of it and to contact you.</li> <li>- Advise the carer not to question the witness. If the witness volunteer's information they should just note what was said and contact you.</li> <li>- Conduct closure in the usual manner.</li> </ul>
Evaluation	<ul style="list-style-type: none"> <li>- Conduct an interview evaluation in the usual manner.</li> </ul>

## Support people

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

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

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



# Witnesses who have suffered trauma

## Introduction

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

## Two key planning issues

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

- when is the best time to conduct the interview?
- whether to have a support person present.

(For more information see 'Planning and preparation' in the [Investigative interviewing witness guide](#))

Stress or trauma can interfere with the memory process. There is no set rule as to when to interview a traumatised witness - you should ask the witness when is the best time for them, balancing the needs of the investigation and potential effect of time and trauma on memory.

## Different linguistic, cultural or religious backgrounds

### Different backgrounds

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

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

### Using interpreters

Use a suitably qualified interpreter when you consider the witness:

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

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

See '[Interpreting for the deaf](#)' for guidance on selecting and engaging interpreters for the deaf and the procedures for using interpreters in interviews.

### Risks of using unqualified interpreters

Using unqualified interpreters can be risky for investigation and prosecution outcomes. Although it sometimes may be convenient to use them, unqualified interpreters (e.g., bilingual police employees, unqualified community volunteers, or children and family members of the person being interviewed) are unlikely to have been tested for their technical and personal skills required of an interpreter.

The following risks apply to any session with an unqualified interpreter:

- confidentiality and privacy (fear of personal information could be relayed to the client's family)
- accuracy of interpretation (unqualified interpreter may have less of a command to the two languages and cultures involved)
- the unqualified interpreter may:
  - be worried by the role
  - lack the confidence to ask for clarification
  - omit vital information
  - add extra information of their own accord, thus altering the message (for example, by allowing the interpreter's own values to intrude or change the interpretation)
- bias or distortion, for example an unqualified interpreter may:
  - have no knowledge of or commitment to a code of ethics followed by qualified interpreters
  - lead to involvement with 'protection', 'taking sides', censoring or abusing their position, allowing cultural differences to influence their interpretation.

### Risk of using Police employee as interpreter

Before using a Police employee to interpret, the investigator and their supervisor need to consider the risks (to both the investigation/prosecution and the member).

In addition to the risks of using an unqualified interpreter, these specific risks also need consideration:

- any conflict of interest (real or perceived) in relation to any party
- the employee's language fluency
- is the employee a qualified interpreter
- the employee's understanding of the Police interpreting process

- facing a challenge by defence as to accuracy and lack of impartiality.

## How to access qualified interpreters and related information

See the following resources:

- Ministry of Business, Employment and Innovation provide information about [how to access telephone and video interpreting services](#) with 'Connecting Now'
- '[Interpreting Services - Connecting Now](#)' chapter in the Police Manual for guidance about 'Connecting Now' as a [Government service](#) delivering telephone and video interpreting to approved government agencies, through a syndicated agreement.

## Written statement when interpreter used

If a written statement is made from the interview:

- at the beginning of the statement include the interpreter's name, role (to interpret directly from the interviewee's language to English and vice versa) and languages they are interpreting
- using your notes as an aid, write down the statement in English
- instruct the interpreter to make a written translation of the statement into the witness's own language, this is preferably completed by leaving a space under each line written in English and writing the translation for each line in the space
- in all cases, invite the witness to read the statement in their own language and make corrections or additions
- the witness should then endorse the statement by writing in their own language: *'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.'*
- ask the interpreter to certify the translation of the full statement as accurate i.e. *'I have accurately translated this statement to the best of my ability'* and sign their name.
- endorse the statement as you usually would.

## Witnesses fearing intimidation

### Who are intimidated witnesses?

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

### Indicators of intimidation

This table gives examples to help you identify intimidated witnesses.

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

### Consider the witness's views

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

### Engage and explain

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

During the engage and explain interview phase:

- address the witness's concerns and take appropriate measures to alleviate them
- explain the investigation and judicial processes to them

- if you believe there is a real risk to the witness's safety discuss this with your supervisor immediately.

## **Consider using a specialist interviewer**

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

## **Consider using a support person**

If appropriate, give the witness the opportunity to have a support person present. (See the [Investigative interviewing witness guide](#) for more information).

## Family violence victims

### Policy

When interviewing family violence victims, you must comply with the '[Family violence policy and procedures](#)'.

### Interviewing family violence victims

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

### Planning and preparation - additional matters to consider

Cover these additional matters during the planning and preparation interview phase.

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

### Account interview phase

Use an appropriate interview model to elicit the witness's account (see 'Account' in the '[Investigative interviewing witness guide](#)').

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

### Closure

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

<sup>1</sup> Wolfman, M., Brown, D., Jose, P. (2016). Taking Stock: evaluating the conduct of forensic interviews with children in New Zealand.

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