



# Child Talk

**D**o current investigative interviewing practices assist child witnesses to give their best possible evidence? DS Martin Vaughan, ACPO-approved interview advisor explores the argument and offers best practice advice.

Research conducted by psychologists over the last 30 years has established that children of all ages are able to produce accurate accounts of events if they are interviewed properly (Milne and Bull 1999).

However, children can be influenced by the manner of the questioning they face. Several major investigations into child abuse in the United Kingdom since the 1980's have all served to focus society on the maltreatment of children and manner in which children are forensically interviewed by those charged to investigate such crimes.

Children may be interviewed as either victims of the maltreatment or witnesses regarding other forms of crime. In either case the process of gathering information within the forensic interview is the same. However, inappropriate interview techniques contribute to the contamination of the child's

evidence

The importance of effective investigative interview training cannot be over emphasised. Police investigators agree that eyewitnesses and victims usually provide central leads in their investigations (Berresheim and Webber, 2003; George and Clifford, 1992; Kebble and Milne, 1998).

However, it is the quality of the information that has been subject of much criticism (Kebble & Milne 1998). The lack of adherence to recommended guidance has contributed to the failure of the interview process not only in United Kingdom but also in the United States of America, Canada, Sweden, Finland, Norway and Israel even though there is a clear international consensus regarding the most effective way of conducting an investigative interview surrounding the abuse of children (Lamb, Hershkowitz, Osbach and

Esplin, 2008; Granhag, 2010; Powell, Wright and Clark, 2010).

### Review

The quality of the product obtained from a forensic interview has been the subject of much interest since the increased awareness of child abuse (Wilson & Powell, 2001; Westcott & Kynan, 2006). The U.K. Government first published guidance on how to interview children for criminal proceedings in 1992 with the issuing of the Memorandum of Good Practice.

This was revised in 2002 with the publication of 'Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses, Including Children'. Both of these publications provided advice on the structure and procedural aspects of interviewing. Common to both documents is a four phased method of constructing the actual forensic interview with the child which includes, rapport, free narrative, questioning and a closure phase.

The Achieving Best Evidence publication remains the current guidance document on interviewing children in the U.K. and is currently on its 3rd Edition having been updated and re-launched in March 2011.

The current guidance suggests that the basic goal of an interview with a witness is to obtain an accurate and reliable account in a way which is fair, in the interests of the witness and which is acceptable to the court (Ministry of Justice 2011).

The document includes a new concept in respect of Phase Three and suggests that this phase should be subdivided as outlined in figure 1 below. This change comes eleven years after a review of the admissibility and sufficiency of evidence in child abuse prosecutions described the extreme difficulty facing forensic interviewers when attempting

to balance the needs of the criminal and child protection investigations with the needs of the courts (Davis, Hoyano, Keenan, Maitland, & Morgan, 1999).

The change in the guidance on how to structure Phase Three comes as a result of numerous studies which examined the manner in which the child's evidence is received by the court. Wade, Lawsen and Aldridge (1998) identified four issues associated to visually recorded testimony from children who provided their evidence at court.

They observed a lack of specific important evidence, increased concentration levels were needed by those listening to the evidence, the inclusion of facts not generally admitted through live examination and problems with the lack of neutrality of the interviewer.

The issues contributed to the fragmented mechanism of the evidence presentation to the court and made it difficult to follow the evidence. This study was supported by Davis, et al., (1999 p.x) when describing the child's account in the interviews they had observed as 'rambling and incoherent'. They suggested the interview has three purposes;

- To ascertain whether an offence has been committed and by whom at an early stage in the investigation
- To establish if the child is in need of protection and from whom
- The examination-in-chief of the child at trial and compliance of the rules of evidence

Both studies demonstrate that the interview process places unrealistic demands on the investigator in their attempt to reconcile the above processes.

It is this very issue that has been the source of debate in recent years between the police service and the judiciary within the U.K. and has been the catalyst for the change in the

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guidance in respect of phase three is an attempt to achieve the fine balance that is required between the needs of the police, the victim or witness and the judicial process. To date there has been little discussion in literature regarding the process of reconciling the conflicting demands of the interview. Most of the prior research has concentrated in the main on the rapport phase of the interview process and identified that this phase was an essential part of the interview process.

During the interview phase children are often asked to provide an intimate detailed description of the abuse they have suffered and these personal experiences are examined by investigators who are complete strangers to the child. It is therefore essential that the interviewers' invest sufficient time from the outset so that meaningful and personal rapport can be established between them and the witness.

Children are not used to being treated as important informants therefore it is incumbent upon the interviewer to clearly communicate their expectations regarding the child's roles and responsibilities within the interview.

The one issue that all the commentators agree with is that good rapport between the interviewer and the witness can improve the quantity and quality of information gained in the interview. Interviewers should strive to build rapport with children by asking open-ended questions about neutral, everyday events before questioning them about

sensitive topics.

#### **Question type**

During the free narrative phase of an interview most witnesses will not be able to recall everything relevant that is in his or her memory.

The interviewer through the use of appropriate questions will be able to aid this process and obtain an account of the event witnessed by the interviewee. Interviewers should appreciate that there are various types of question which vary in how directive they are. The current guidance in the U.K. promotes the use of open-ended questions before introducing more specific closed questions.

Forced-choice questions and leading questions are promoted as last resort question types (Ministry of Justice 2011 p.78). This approach has become known as the 'funnel' approach and one that is promoted in the U.K and other countries around the world. Lamb & Brown, (2006, p. 219) suggest that:

*“Such a questioning style provides support for children by encouraging exhaustive retrieval of information and increases the communicative value of their reports by helping children structure their reports in a coherent manner.”*

The quality of the information obtained has also been the focus of much research with the type of questions asked to elicit information becoming the focal point of

debate.

Children are just as capable of being influenced by questioning as adults are and a vast body of research has established that information obtained from open-ended questions will be more accurate and of a more superior quality than information using more focused prompts.

However, several researchers have found that these types of questions are rarely used in a forensic interview setting, for example, Sternberg, et al., 2001, found that interviewers asked only 4% open questions, as compared to 33% specific and 20% closed question instead.

A specific-closed question is one that allows only a relatively narrow range of responses which usually consist of one word or a short phrase. Closed questions are generally referred to as the second best type of question (Milne & Bull, 1999) and should be used to obtain information not already provided by the witness following the use of open-ended questions.

The danger of using closed questions is that they produce more incorrect responses compared to open-ended questions. The current guidance to interviewers suggests that the use of specific-closed questions allows the interviewer to control the interview and minimise irrelevant information being provided (Ministry of Justice, 2011, p.78).

One of the issues facing forensic interviewers

is the ability to understand the difference between question types. An interview is a learning experience, especially if the witness has limited or no knowledge of the interview situation. As a consequence any interviewer behaviour is likely to have an immediate effect on the interview process.

By opening an interview with a series of closed questions the interviewee will learn very quickly to answer with short answers and come to expect this for the remainder of the interview. Open-ended questions on the other hand allow for more elaborate and accurate responses.

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However, it appears from current research that closed questions are still being used more frequently than open-ended questions but confirms the raft of research that makes it clear that open-ended questions elicit more detailed information (Thoresen, Lonnum, Melinder & Magnussen, 2009). This pattern of question is likely to increase the

disjointed nature of the child’s evidence, with most of the talking being performed by the interviewer rather than the interviewee.

The current guidance for forensic interviewers within the UK identifies the following question types as being less accurate and ones that should be avoided if possible;

- Forced-choice questions
- Multiple questions
- Leading questions

Questioning styles have been found to be a major factor in how a jury interpret a child's evidence during the court process.

Interviewees have been shown to be adversely influenced by the way the interviewer structured a particular question (Milne & Bull 1999).

By constructing an appropriate interview strategy and interview plan, which incorporates an acceptable questioning structure, then information will be obtained without contamination of the witnesses account and should be a contributory factor in improving understanding of utterances at the court arena.

#### Presentation of evidence at court

While the best evidence must present an accurate record of the account given by the witness, the gathering of the evidence and the manner in which it is presented at the court must meet the needs of the investigation and the needs of the judiciary. It has, however, become apparent that this is not always the case.

Several factors have been identified as potentially problematic when a witness's account is played in court as evidence in chief:

- Difficulty in providing an accurate and reliable account due to anxiety, stress, trauma or disability,
- Failure to report events sequentially,
- Presentation of matters regarding the witness which by the time of the court appearance are not relevant,
- Lack of quality of the interview structure with no apparent objectives.

The quality of the evidence-in-chief is dependent upon the skill of interviewer to make the child's evidence intelligible. A child's story is often presented in the forensic interview as confused, incoherent and lacking

in detail.

In contrast to the position of the barristers in the court and the trial judge, the officer conducting the forensic interview has no clear idea of what the child is about to say during an interview which is mainly conducted at an early stage in the investigation.

One of the clearest opinions which are at odds with the current criticism from the judiciary is that presented by Davis, et al., (1999, p. 21), when they comment:

“Many of the issues which would later be raised in court had not yet emerged and so could not be covered. With no clear idea of the specific nature of the allegations, it is difficult for interviewers to maintain an overview of the child's allegation during an interview so as to ensure that all the questions that could be asked are asked.”

A chronological portrayal of abusive events is not always achievable in a child's forensic interview especially if the witness is reluctant or embarrassed to discuss intimate details of the abuse inflicted upon them.

The introduction of a 'story-telling' framework creates a communication avenue which allows barristers, jurors, witnesses and the judge to present, hear and make sense of evidence presented within the court arena (Westcott & Kynan, 2004; Bennett & Feldman, 1981).

A successful account will therefore have an identifiable setting, concern and resolution. A significant flaw in the components of the 'story-telling' interview structure is that no mention is made of obtaining case specific information.

The method concentrates on the alleged abuse act including the actions of the perpetrator and the consequences of the

perpetrators actions and fails to address the wider implications of investigatory important information which may serve to bring the investigation to a successful conclusion.

What emerges from the weight of research that has been conducted surrounding the analysis of children's evidence in the court room is that child's account presents as inadequate, unclear and disordered.

By following a detailed structure the witness will be adequately prepared to provide a detailed sequential account of the event and also present their evidence at a subsequent court hearing. The key to a successful interview is the adherence to the training the forensic interviewer received and how this training is applied within the interview framework.

### **Training**

Police training in the area of witness interviewing has historically been relatively minimal not only in the U.K. but also throughout America, European countries and Australia, all of which have had some form of training programmes in existence for the last 20 years. Investigative interviewing is a highly complex skill which needs appropriate training both in quantity and quality.

There have been several attempts to produce a structured training programme for child interviewers which have included the need to include a number of methods such as lectures, reviews of interview transcripts viewing real life interviews and conducting role plays. Other suggestions have included a process of mentoring newly trained interviewers by more experienced practitioners.

I would endorse the above processes and would include the practice of regular monitoring of interview products to ensure

that nationally approved guidance is being adhered to and that there is transference of skills obtained in the training environment to the work place.

Despite best practice guidance being available in several countries and having been available in the U.K for 20 years most research indicates that interviewers do not implement the guidance during the forensic interview for example, the distinct lack of appropriate questioning structure.

In fact the evidence from research suggests that much of the training has had little impact on manner in which interviewer's conduct an interview. All of the outlined literature acknowledges that the interviewing of children is a highly specialised skill. I would contest that without an acceptable understanding of the best practice guidance material and how to sustain that level of knowledge then interviews will continue to fail children.

In an attempt to professionalise the standard of investigative interview training the National Policing Improvement Agency (NPIA) published for the first time, in 2008, a national curriculum for a training course that would comply with the requirement of National Occupational Standards.

The course is designed to equip officers to deal with complex and serious crime including the interviewing of child witnesses and additionally provides a consistent approach to training for the first time within the UK. The structure of the course builds on the experience of the interviewer obtained in lower tier training.

In addition the interviewing element NPIA has also developed a Specialist Child Abuse Investigator Development Programme which aims to achieve, develop and maintain professional competence and registration as

a child abuse investigator.

The researcher acknowledges that due to the infancy of these programmes no evaluation exists and would welcome researchers' involvement in reviewing these programmes so that meaningful development can take place.

Powell et al., (2010, p. 221) suggests that, 'The introduction of specialist qualifications for forensic interviewing could offer immediate and localised benefits to police organisations as well as broader benefits to the community'.

One such benefit is that the NPIA course is a competency based training programme and in order to complete the programme the candidate has to provide evidence in relation to particular learning descriptors.

Having achieved the requirements of the programme which includes a course and work place assessments the candidate receives a certificate of competence. Several universities are now accepting these certificates as entry qualifications enabling the student to enrol on specified investigative related course.

However, there has been a lack of consistency in the approach to training across the country. It is clear that training is essential but there is considerable difficulty in identifying what that training should comprise and how should be delivered.

A further issue arises in the current economic climate with training budgets being cut or significantly reduced which could have the potential to hinder the progress that has been made in the investigative interviewing arena.

### **Conclusion**

The process by which reliable, accurate and

detailed information is obtained from children who have either been subject to abuse or have witnessed some form of abuse is a complex one which requires specialised skills in forensic interviewing.

I am currently conducting research that will seek to address the limitations of the current volume of research by examining the link between all three processes of the needs of the interviewee, the investigation and the court process, as identified by ACPO (2010) and Davies et al (1999), and establish if the methods adopted to interview the witness are both ethical and 'best practice' compliant and as a consequence able to meet the requirements of the judiciary.

The police services of the U.K. are acknowledged as leading lights in interviewing for investigative purposes. Milne & Bull, (1999, p. 191), postulates that: Society cannot afford investigative interviewing to be poor. This affects people's perceptions of the criminal justice system.

The guilty get away, the innocent are convicted, justice for children and vulnerable adults is inadequate. Poor interviewing is of no value to anyone; it is a waste time, resources and money.

I concur with the weight of literature that identifies that investigative interviewers are not following the published best practice guidance. Interviewers require clear incentives to improve their interview products and this can be obtained through effective supervision and regular monitoring of their performance within the work place.

An interview that has been properly planned and appropriately structured is likely to add value to an investigation and to any legal proceedings that follow from it by assisting the witness to give their best possible evidence.