

**Exploring the use of the Cognitive Interview
(and other Special Measures) in questioning
Vulnerable Witnesses in preparation for court
and in a court of law**

1807684

SSM 116 Dissertation

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2019

Robert Gordon University

MSc. Applied Psychology

WORDS 12,707

*Dissertation submitted in fulfilment of the requirements of the degree
of MSc in Applied Psychology, Robert Gordon University, Aberdeen.*

Declaration

I affirm that this dissertation contains no unacknowledged copying of words or ideas from any publication or from any work written by another student or any other person. I affirm that any raw data collected during this research dissertation has not been falsified or duplicated, and is available for inspection if required.

Acknowledgements

The Author thanks the National Crime Agency for providing insights about the use of the Cognitive Interview with Vulnerable Witnesses. The Author would also like to thank the Registered Intermediaries, Psychologist and Psychiatrist who participated in this research, giving of their time and knowledge about the process and systems related to working with vulnerable people before court and in a court of law.

Finally, the Author would like to thank their Supervisor, Dr Sarah Henderson.

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Abstract

Research has shown that the Cognitive Interview is able to support the needs of Vulnerable Witnesses when being interviewed. The Cognitive Interview is one of the Special Measures used during police interviews as part of the Youth Justice and Criminal Evidence Act 1999 in Achieving Best Evidence and should be video recorded. It allows the Vulnerable Witness, who is supported by a Registered Intermediary, to recall more facts and more accurate facts when being questioned. The Registered Intermediary assesses the needs of the witness and facilitates communication. The ABE is then re-played prior to court to provide an opportunity for memory refresh for the witness and also in court for the jury to review the evidence.

This exploratory, qualitative study explored the use of the Cognitive Interview and other Special Measures being used to support Vulnerable Witnesses in preparing for court and in a court of law. This research sought to understand the extent to which the use of the Cognitive Interview and other Special Measures are being used, when they are being used, and if their use supports Vulnerable Witnesses to be more credible in their witness statements in preparation for court and in a court of law. Five participants were interviewed. These included a Psychiatrist, and four Psychologists with different roles. Two were Registered Intermediary's, one was a National Witness Advisor and the final one had worked as a Probation Psychologist. Each participant was interviewed the interview was recorded and then fully transcribed. The interviews were analysed through thematic analysis.

Whilst the findings of this research are not significant they provide some indication of interesting themes that would warrant further research. The themes were training; complexity and variation in the

application of processes across regions in the UK; other challenges related to the processes, language and support mechanisms for Registered Intermediaries and finally, the role of the Registered Intermediary.

What this research has shown is that the Cognitive Interview and other Special Measures are used but this use is variable across counties in the UK. Also that their use, in particular the support of the Registered Intermediary, can help to allow the Vulnerable Witness to be more credible in a court of law. Further research would be required to explore these findings from the perspectives of the interviewers, both pre-court and in court.

Introduction

Whilst research discusses the benefits of the use of the Cognitive Interview (and other Special Measures) when interviewing vulnerable people, both witnesses and suspects, prior to going to court (Crane, Henry, Maras & Wilcox, 2015, Maras & Bowler, 2010, 2012, Milne & Bull, 2006, O'Mahony, 2009, O'Mahony, Milne & Grant, 2012) there is little research that discusses the importance of that process in a court of law. This study will explore the use of the Cognitive Interviewing technique (and other Special Measures) being used to support Vulnerable Witnesses in preparing for court and in a court of law. This research will seek to understand the extent to which these techniques are being used, when they are used, and if their use supports vulnerable witnesses to be more credible in their statements in a court of law. This will be achieved through interviews with psychologists, psychiatrists, registered intermediaries and interviewees who are involved in working with vulnerable witnesses before and in a court of law.

The reason why this research is important is that the Cognitive Interview is known to elicit more facts and more accurate facts about an incident and is less manipulative. It is more likely to support the needs of the vulnerable witness if it is well planned and guided by a registered intermediary. This process also allows the ABE (Achieving Best Evidence) recorded interview to be reviewed as part of a court proceeding. However, it is still not clear the extent to which this is used in preparation for court and in a court of law.

There are several key concepts used throughout this research, which require further clarification; the Cognitive Interview technique, vulnerable and Vulnerable Witness, credible and Registered Intermediary.

The Cognitive Interview (CI) technique or process is an interviewing technique introduced into police interviewing of Vulnerable Witnesses in the 1980's. It is an interviewing technique that is believed to elicit more accurate and relevant details about a crime or event. Figure 1, below, represents the process developed by Fisher and Geiselman (2014) Cognitive Interviewing technique. The audio and video recording of all suspect interviews allows all interviews to be scrutinised by third parties. The Police Service is now making use of Cognitive Interviewing techniques in England (Home Office, 2002, Marras & Bowler, 2010) when interviewing vulnerable adults, and all witnesses. The Youth and Criminal Justice Act, 1999 provides further guidance on this.

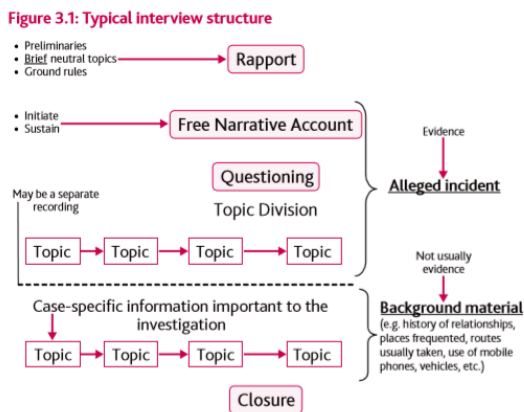


Figure 1: Typical Structure for Cognitive Interview
(Ministry of Justice, 2011, P.69)

At this point it is important to define two more terms and how they are referred to in this research. They are 'vulnerable' and 'credible'. Bull (2010) states that there is no internationally agreed definition for the word vulnerable in relation to a witness. By the law, in the UK, the Police and Criminal Evidence Act 1984 and the Youth Justice and Criminal Evidence Act 1999 refer to vulnerable people. The Youth Justice and Criminal Evidence Act 1999 states that a witness in

a criminal proceedings is eligible for assistance as a Vulnerable Witness from a 'personal' or a 'situational' perspective.

Section 16 Youth Justice and Criminal Evidence Act, 1999 states vulnerable from a personal perspective (due to who they are) as:

- (i) Children under 17 years of age at the time of the court hearing.
- (ii) People whose quality of evidence is likely to be diminished because they have a mental disorder, or have a significant impairment of intelligence and social functioning, or have a physical disability or are suffering from a physical disorder.

Section 17 (enacted 2006/7) Youth Justice and Criminal Evidence Act, 1999 states vulnerable (due to the actual crime or alleged offence) such as:

- (i) Intimidation, fear or stress that is caused by the alleged offence or crime.
- (ii) Serious sexual assault, radically motivated attacks, murder/manslaughter, elderly abuse, domestic violence.

For the purpose of this research it refers to a vulnerable as a person who may also have mental illness, cognitive impairment, autism, personal disorder and Attention Deficit Hyperactivity Disorder (O'Mahony, Milne & Grant, 2012).

Gudjonsson (2006) defines psychological vulnerabilities as:

'psychological characteristics or mental state which render a witness prone, in certain circumstances, to providing information which is inaccurate, unreliable or misleading'

(Gudjonsson, 2006, p.68).

In this context the psychological vulnerabilities represent potential 'risk factors' rather than definitive markers for unreliability – see Code C of the Practice and Criminal Evidence Act (Home Office, 2008b) which states:

'Although people who are mentally disordered or otherwise mentally vulnerable are often capable of providing reliable evidence, they may, without knowing or wanting to do so, be particularly prone in certain circumstance to provide information that may be unreliable, misleading or self-

incriminating. Special care should always be taken when questioning such a person (Home Office, 2008b, P.80).

There are also different categories of Vulnerable Witnesses. A witness refers to someone who observed or was involved in a crime. The Youth Justice and Criminal Evidence Act 1999 define these categories as:

- Children
- People with learning disabilities or who are mentally disordered
- People with a physical disability or disorder
- People suffering from fear or distress as a result of the crime (e.g. sexual offence, domestic violence) or as a result of intimidation.

(Burton, Evans & Sanders, 2006, P.5)

For the purpose of this research, all these categories will be considered in gathering data (see Appendix 1: Equality Treatment Bench Book, 2013).

Definitions for credibility vary a bit, and can particularly depend on the nature of the justice system. In adversarial systems, such as the National Crime Agency, they are based on the doctrine (Friedland, 1989) and mock-jury research (Hohl & Conway, 2017) (shared by National Vulnerable Witness Advisor, email 24/06/19). It is important to remember that it is the jury who decide if a case goes to trial. Therefore, the jury have to listen to the witness statements and decide if they are credible, are they believed? Bell and Loftus (1989) found that juries found statements more credible if the detail was vivid and less credible if any small amount of detail were left out. There are terms know as; 'trivial persuasion' and 'discrediting effect' where any inaccuracy can discredit the witness and the whole case (Hohl & Conway, 2017). During cross-examination the defence Lawyers will use a range of techniques to highlight inconsistencies or errors. Therefore one can see how important the police interviews are, and how important every fine detail is recorded. The police investigators and the Crown Prosecution Service will build or dismiss

cases with a jury in mind (Hohl & Conway, 2017). According to Freidland (1989) credibility is the value a jury will place on a witness' testimony and the credibility is placed on the assessment of the perceived accuracy or truthfulness of that testimony. The introduction of intermediaries was part of the Special Measures available to help facilitate communications between police, courts and Vulnerable Witnesses. It was first proposed into England and Wales in 1987, drawing on the Israeli model. The Criminal Justice Act 1991 then brought in the idea of making some childrens' videoed police interviews being admissible in court. Finally, the Youth Justice Criminal Evidence Act 1999 brought in the package of Special Measure to assist Vulnerable Witnesses (Plotnikoff and Woolfson, 2015). This is why Registered Intermediaries acquired a role within the judicial system. A Senior Crown Prosecutor stated that:

'The role of the Registered Intermediary is an outstanding tool. Their expertise, enthusiasm and professionalism have been outstanding and played a vital role in the successful outcome of some difficult and protracted enquiries. I am a strong advocate of their use, encouraging my colleagues to employ where necessary, the outstanding skills they bring to a criminal investigation'

(Plotnikoff & Woolfson, 2015, P.3).

By 2007, a Registered Intermediary could be asked to assist with police communication with Vulnerable Witnesses, take part in pre-trial meetings and court familiarisation visits and assist with communication for the Vulnerable Witness at a trial (O'Mahony, 2009). A police officer stated that:

'We were unable to communicate at all with the witness. The intermediary assisted us greatly'

(Plotnikoff & Woolfson, 2015, P.8).

The role of the intermediary has now been rolled out for all witnesses, and is also available for some defendants in a court of law.

The research aim is to explore the use of the Cognitive Interview technique (and other Special Measures) that supports the Vulnerable Witnesses in preparing for and in a court of law. The Research Questions were designed to help understand the training required and the experiences of those who do support Vulnerable Witnesses and the extent to which the Cognitive Interview might allow Vulnerable Witnesses to respond in ways that would be more credible in a court of law and would allow them to respond to the challenges of questioning in a court case.

This thesis now presents the literature review, the methodology, findings, discussion and finally a conclusion. The literature review outlines the process for the Cognitive Interview technique, and the evidence that supports it as an interview technique in providing more relevant and accurate information. It will then go on to contrast it to the standard interview. Having outlined the benefits of the Cognitive Interview, it will highlight why its use was introduced into police interviews with Vulnerable Witnesses in the 1980s. It will discuss some of the other supporting mechanisms in place for Vulnerable Witnesses. In outlining the challenges and exploring some of those challenges discussed by Burton et al. (2006) it will highlight the importance of this research and the need for further research in this area.

Throughout this thesis the following acronyms will be used after first being introduced at the start of each section:

- Cognitive Interview (CI)
- Vulnerable Witness (VW)
- Registered Intermediary (RI)

Literature Review

Geiselman and Fisher (2014) state that the Cognitive Interviewing (CI) is an innovative process designed to enhance witness statements. They claim it is a systematic technique with the goal of achieving as much relevant and accurate information as possible whilst reducing the risk of inaccurate recall (Appendix 2 outlines the process in more detail). This technique was designed based on the theory of communication and memory, and extensive analysis of law enforcement interviews. It was rigorously tested in more than 100 laboratory studies where volunteer witnesses studied live videotapes of simulated crimes. These studies were shown to elicit 25-50% more accurate information than in control (standard) interviews. The context reinstatement is thought to aid this process (Geiselman & Fisher, 2014). In another empirical study by Geiselman, Fisher & Amador (1989) sixteen police detectives from Florida were put into two groups, one group trained in CI technique and the other group not trained. They found that those detectives that were trained elicited 63% more information and 48% more facts than the untrained group (Geiselman & Fisher, 2014). Another study in England (George & Clifford, 1992, 1996) showed that police investigators who were trained in the CI process were asking a larger number of open questions, fewer leading questions, fewer questions and using longer pauses. They were also eliciting 55% more information (Geiselman & Fisher, 2014). Studies with vulnerable adults (those with learning difficulties and cognitive deficit) have also shown that the CI technique elicits more information and slightly higher accuracy of that information than the control interviews do (Brown & Geiselman, 1990, Geiselman & Padilla, 1988, Milne, Clare & Bull, 1999).

It is believed that the CI to an observer, who has listened to taped interviews of CI and Standard interviews by police (Fisher, Mello & McCauley, 1999), was less manipulative than the standard interview (Geiselman & Fisher, 2014). In addition, Westera, Kebbell and Milne (2011) found police judged complainants as more credible when interviewed using the CI technique (Geiselman & Fisher, 2014). The benefits of the CI technique; such as, greater credibility, more accurate statements, a better experience for both those being interviewed and those interviewing; were found repeatedly by different researchers (Geiselman & Fisher, 2014) across a range of settings and populations.

There are other processes similar to the CI technique but this technique is thought to be more encompassing. The other techniques include conversation management, memorandum of good practice, and the step-wise method (see glossary).

Milne and Bull (2006) wrote about the importance of helping witnesses and victims of crime being supported to provide a full account as possible of what happened and who did it, as well as acknowledged that it was a complex process. They argued that those involved in the interview process need to have an understanding of memory process. They go on to state that the CI process was design to recognise that memory is fragile and that the CI helps the interviewee to provide a full and detailed account of the crime as possible whilst maintaining the quality.

Milne and Bull (2006) discussed the importance of retaining the authenticity of the interview information through electronic recordings, stating it allows the interview to be re-visited, from the interviewee perspective, and that it can be used within any ensuing court case more accurately. In England and Wales legislation and national directives stipulate that the interviews with adult witnesses should be video recorded (Milne & Bull, 2006). This is known as

Achieving Best Evidence (ABE). The Youth Justice and Criminal Evidence Act, 1999, sought to achieve justice for vulnerable adults, in line with that justice provided for children. The Criminal Justice Act, 2003 (Section 137) allows that any interview, regardless of vulnerability, may be afforded a video interview as their evidence-in-chief in a court of law in indictable offences (Milne & Bull, 2006). Achieving Best Evidence (ABE) in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses was introduced in England in 2002 (Home Office 2008a, 2011) and focused on how to best interview witnesses who are children and vulnerable adults. It highlighted that this process needs more time (Milne & Bull, 1999 in Milne & Bull, 2006). However, there are other challenges with the CI which are discussed later in more detail later.

In contrast though, Milne and Bull (2006) also reported that the standard interview *'tends to involve poor questioning strategies that are not conducive to maximum retrieval (Clarke & Milne, 2001, Fisher, Geiselman & Raymond, 1987, McLean, 1995)'* (Milne & Bull, 2006, P.11). Fisher et al. (1987) had found that the typical (standard) police interview was disruptive to the witness narrative. Having started with a broad opening question, such as; 'tell me what happened', followed by a series of short-fired questions that required yes/no responses (Gisher, Geiselman & Raymond, 1987, George & Clifford, 1992) curtailed the information gleaned. This has been found to be true across a number of other studies in different parts of the world (Geiselman & Fisher, 2014). It was in the 1980's that CI technique was introduced to police interviewing. Geiselman and Fisher (2014) saw an opportunity to develop and refine the CI when the US Department of Justice sought to find a process that could be used by law enforcement to interview victims and witnesses. At that time, the most favoured method was the Reid and Associates

confrontational interrogation technique (see glossary) that was only used to interview suspects.

The CI had significant impact on cases such as 'The Cardiff Three' Case in 1988, when Mr Miller had confessed to murdering a sex worker. Miller had a low IQ and high levels of anxiety. This led to the subsequent development of interview training for police in the early 1990s (O'Mahony et al., 2012). In 1985, Geiselman, Fisher, MacKinnon and Holland had conducted a laboratory experiment with 89 subjects due to the high number of wrong convictions reported due to unreliable questioning procedures (Loftus, 1975, Loftus, Miller & Burns, 1978). Geiselman et al. (1985) found that the CI and hypnosis (as an interviewing technique- see glossary) were more effective in eyewitness memory retrieval than standard interviewing techniques.

Credibility is key to a successful trial and the meaning is outlined in the introduction. The credibility of a witness, who is vulnerable, is seen in terms of providing them with the suitable and required support for that witness to provide as much relevant and accurate information as possible, and reduce the risk of any inaccurate recall (Geiselman & Fisher, 2014). Thus reducing the opportunities for suggestibility, acquiescence and compliance during interviewing (O'Mahony et al., 2009). There needs to be opportunities to demonstrate consistency in their interview statements and it is believed that Vulnerable Witnesses are at a disadvantage with coping with traditional interviewing strategies (Gudjonsson, 2010) as the reliability of their statements is often questioned. It is believed that the interviewing of witnesses in a court of law by Lawyers is a deeply entrenched practice. What the Lawyers have to do is re-learn ways to question Vulnerable Witnesses to ensure they do not include TAG questions (such as 'we met last week, did we not?' – the witness may agree even if they do not agree); that questions are short,

clearly expressed, presented as one idea at a time, include a six seconds rule to pause between receiving a response, that they keep their tone neutral and maintain eye contact, plus ensure their body language does not alienate the witness (Criminal Bar Association, 2019).

It is because vulnerability is linked to false confession due to suggestability, acquiescence and compliance during interviewing (O'Mahony et al. 2009) that it is even more important that Vulnerable Witness (VW) statements are credible and this is where the CI comes into play in supporting the VWs. Suggestability is defined by Gudjonsson and Clark (1984, P.84) as *'the extent to which with a closed social interaction, people come to accept messages communicated during formal questioning, as the result of which subsequent behavioural response is affected'* (in O'Mahony et al., 2012). Milne et al. (1999) stated that research has shown that people with learning difficulties are prone to suggestion. Acquiescence is when the interviewee will say 'yes' even if that response is 'no'. Compliance is when the interviewee wishes to go along with what has been said, so they agree. Ambiguity and length of questions can also influence responses. Vulnerable adults will struggle to encode and reflect on questions due to slow processing skills (O'Mahony et al. 2012). Therefore, the CI process and other measures are aimed at reducing those elements of inconsistency and thus improving the credibility of the witness statements.

This is why support mechanisms for VW are so important. They include the use of initial CI, discussed above, and other Special Measures according to Achieving Best Evidence in Criminal Proceedings (Ministry of Justice, 2011). These special measures include:

- The Youth Justice and Criminal Evidence Act 1999 introduced a range of Special Measures that can be used to facilitate the

gathering and giving of evidence by vulnerable and intimidated witnesses.

- The Special Measures that are available to vulnerable and intimidated witnesses with the agreement of the court are:
 - The use of screens (Section 23);
 - The use of live TV link (Section 24);
 - Giving evidence in private (Section 25) (limited to sexual offences and those involving intimidation);
 - The removal of wigs and gowns (Section 26);
 - The use of video recorded interviews as evidence-in-chief (Section 27)

- Vulnerable Witnesses are also eligible for the following Special Measures:
 - Communication through intermediaries (Section 29);
 - and
 - The use of special communication aids (Section 30).

- The Special Measures listed above have now all been implemented. Section 28 video-recorded cross-examination has not been implemented.

(Ministry of Justice, 2011, P.6)

The Registered Intermediary (RI) plays a key role in ensuring the VW can provide a credible statement. The RI may be called to support a VW during a police interview and can be called to support them for the subsequent court case if it goes to court. An intermediary may be able to help improve the quality of evidence of any vulnerable adult (stated in Section 16 of the Youth Justice and Criminal Evidence Act 1999), who is unable to detect and cope with misunderstanding, or clearly express their answers to questions, especially in the context of an interview or while giving evidence in court. Whilst Section 29 of the Youth Justice and Criminal Evidence Act 1999 makes it clear that an intermediary can assist a witness to communicate by explaining questions and answers given by the VW, this rarely happens in practice. It is more likely they are involved in the planning stages of the interview to ensure miscommunication is minimised. This will vary from witness to witness. They are only there to assist with communication (Home Office, 2008a).

There is an intermediary registration board (IRB) and RIs are accredited by the Ministry of Justice and IRB. They are checked by Criminal Records Bureau (CRB) enhanced disclosure level and selected and trained against a set of core competences. The intermediary will attend a series of assessment meetings with the witness. They consider the witness communication needs and design strategies and recommendations. They build rapport with the witness to check if they are the right intermediary for that witness' needs. They are never left alone with the witness. Discussions with the intermediary will outline their role in proceedings (Home Office, 2008a). Research has shown that the introduction of intermediaries has been valuable in getting VW to testify. It has also been shown that through effective questioning that accurate reports of events by VW can be provided (Milne & Bull, 2001).

O'Mahony et al. (2012) explored best practices when interviewing vulnerable adults and provided a brief history of interviewing techniques used in the UK. In this study they explored current processes and treatments being used in police stations and courtrooms. They explored the impact of some of the legal safeguards put in place to support vulnerable people and found that whilst there is guidance for this role that legislation had not yet been implemented fully by 2012. Roy Bull (2010) also reported that court proceedings seem to be largely unaware of constructive findings in psychological research related to the effective questioning of Vulnerable Witnesses.

Even with all that evidence, discussed above, there are challenges in relation to making use of the CI, which includes training, time and the extent to which it can meet the varying and diverse needs of VW. The challenges with the CI are that the interview skills need to be mastered by all those involved, but in particular Barristers and Lawyers need to master these in a courtroom. For a while now the

CI has been taught across a range of police agencies in United States, UK, Hong Kong. Research shows that Lawyers interviewing VWs often subject them to questioning that contains negatives, complexity and double negatives (Kebbell, Hatton & Johnson, 2000). Witnesses cannot be interviewed with TAG questions (described earlier), which are also often used.

The police in the UK have found the CI is difficult to implement in its entirety as it requires more time than that available as well as better training for officers and those using it (Kebbell & Wagstaff, 1999, Kebbell, Wagstaff & Milne, 1999). However, this does not need to happen and Davis, McMahon and Greenwood (2005) and Danado et al. (2009a, 2009b) have both produced a shorter version which Geiselman and Fisher (2014) view as a healthy development. There are other challenges related to time, such as time delays between an initial and follow up interview due to things like witnesses being stressed and tired, which requires more time.

CI is not effective with witnesses diagnosed with Autistic Spectrum Disorder (Maras & Bowler, 2010), but witnesses with learning difficulties or impaired cognitive function need to be identified in the first place and this is not always easy (Geiselman & Fisher, 2014). Although the CI is deemed as not being effective with those diagnosed with Autism (Maras & Bowler, 2010) there has been some follow up research that suggests taking these witnesses physically back to the scene and context can help them to mentally reconstruct events (Maras & Bowler, 2012). Police interviewing of witnesses with autism has been under review and under further development in recent years (Crane et al. 2015).

According to Burton et al. (2006) early identification by the police and the Crown Prosecution Service (CPS) is vital but the police continue to have difficulty in identifying VWs, particularly those with learning disabilities, mental disorders or those who are intimidated.

In addition, the CPS rarely identified VWs if they were not first identified by the police, even those that are categorically vulnerable. Many VWs were identified for the first time by the Witness Service, after they had arrived at court, which was often too late for them to benefit from the measures (Burton et al., 2006).

Burton, Evans and Sanders (2006) showed that in practice treatment of VWs has improved, but the implementation of Special Measures has been inconsistent. Therefore has not achieved what was originally intended. This was a Home Office Study (2006) conducted in two phases (phase 1 2000/1 and phase 2 2003/04) in relation to 'standing up for justice'. In this study Burton et al. (2006) considered the extent to which the new provisions have been implemented by the criminal justice agencies and how they were operating at the practical level. They examined whether the systems had improved the identification and support for VW in helping them to give best evidence. They did this as a companion to a national survey of VWs, published in June 2004. It involved interviews with the police, CPS, courts and Witness Service, tracking of a sample of prosecution cases, and screening interviews with witnesses in trial prosecution cases to see if the VWs had been correctly identified. Burton et al. (2006) set out to understand if Special Measures for VWs are working and what evidence from the criminal justice agencies existed for that. The main intention was to assess whether the Youth Justice and Criminal Evidence Act 1999 and accompanying best practice guidance issued by the Home Office had been achieved. Burton et al. (2006) found evidence that the police were usually the first agency to provide a VW with information about the Special Measures available to them and ascertain their views, but that the police do not often flag this up with other agencies so they can make their own assessment (Burton et al., 2006). As well as pre-court visits being potentially the most useful of non-statutory measures

Burton et al. (2006) found these but were often not applied. Burton et al. (2006) found video recordings were made of only a minority of VW interviews. This may be in part due to the magistrates' courts not having the facilities to use videos as evidence during the Phase 2 fieldwork. Police and CPS working in the area included in Burton et al. (2006) research claimed that they held strategy meetings, but there was a lack of evidence or paperwork found in the VW cases sampled. They found that the CPS prosecutors rarely met VWs, and made little use of recorded interviews with VWs in prosecution decisions. In general, much police and CPS decision-making focused on Special Measures (Burton et al. 2006). But in most cases CPS applied for Special Measures at a late stage. This was accepted practice in relation to measures such as screens, clearing the public gallery, and the removal of wigs and gowns. This ignored the value that VWs of knowing what will happen in court well in advance of the hearing. The CPS did not make applications for some prosecution witnesses as defendants where they were also VWs. If Special Measures were available to defendants then this would not be the case. Judges generally granted applications and the trial Judges rarely disagreed with the decisions made in the earlier stages of cases.

Some of the challenges highlighted by the literature in relation to supporting VWs in preparing for court and in a court of law reveals that Lawyers cross-examination is not always in line with getting the best evidence (ABE). VWs may not even be identified in the first instance or not until a later stage. The ABE process is not adhered to consistently in terms of being video recorded. The process is time consuming and requires the expertise of a RI to facilitate communication. The extent to which the CI is used varies and is dependent on the skills of the interviewer, the ability of the interviewer to adapt the process according to the needs of the VW

and the advise of the RI. Pre-trial visits do not always take place and there are inconsistencies across different regions of the England and Wales in relation to the treatment of VWs.

Methodology

This next section outlines the research approach and methods used to collect the data along with the rationale for those methods and materials used. Ethical considerations and means of analysis are discussed and finally, the consequences of this research are presented.

This research sought to understand the extent to which Special Measures are being used, when they are used, and if their use supports Vulnerable Witnesses (VWs) to provide more credible witness statements in preparation for court and in a court of law.

Design: The design for this study is exploratory. This study explores the use of the Cognitive Interviewing (CI) (and other Special Measures) being used to support VW in preparing for court and in a court of law. A range of perspectives were sought through interviews with psychologists, psychiatrists, registered intermediaries and interviewees who were involved in working with VW before court and in a court of law. However, the final recruitment of participants meant that interviewers were not recruited. The interview schedule was designed to guide the interview process in gaining insights from a variety of perspectives.

The interview schedule was designed to ask broad and inductive questions (Wood et al., 2012) with the idea of interviewing psychiatrists, psychologists, Judges, Barristers and Lawyers. However, the interview with the first participant (psychiatrist) acted as a pilot and established that whilst the Cognitive Interview process is a valuable part of the adversarial court process, that the Cognitive Interview takes place prior to the court hearing. Therefore, the decision was made to interview psychologists, registered intermediaries and interviewees (national crime agency) who had

experience of the CI process where possible. Whilst insights from VWs would have been interesting it was deemed unethical to conduct interviews with these participants in the process. The original interview schedule was streamlined after the first pilot interview that proved the original interview schedule was too complicated.

The interview provided opportunities for further probing and flexibility that a questionnaire would not have afforded. However, this option was also time consuming. One hour of interviewing tends to take 8-10 hours of pre and post interview preparation, including transcription (Wood et al., 2012, Bell, 1996). The interview schedule (Appendix 6) was deemed to provide an opportunity for the participants to talk about their experiences in working with VWs in preparing for court and in a court of law. Along with their understanding of how and when the CI process and other Special Measures are used to support this. The pilot discussion helped clarify this (Bell, 1987). Whilst using such a small number of participants would provide individual subjective perspectives, based on their context, any findings drawn from the analysis could not be deemed as significant across the United Kingdom. However, there are some limited opportunities for triangulation due to interviewing of a range of professionals within the field of psychology. This is known as triangulation of sources (Denzin, 1978, Patton, 1999). The findings may highlight areas that could be explored further through further research.

Research Questions:

- Are Special Measures, including the use of the CI, being used to support the VW to provide more credible statements in preparation for and in a court of law?
- When are these Special Measures used?

- Does the use of the Special Measures lead to VWs offering more credible witness statements?

Interview Questions:

The interview questions were designed to help answer the research questions:

1. Have you experienced the use of the Cognitive Interviewing Technique when working with vulnerable people?
2. What training have you undertaken, if any, that allows you to work with vulnerable people?
3. What training have you undertaken, if any, in (supporting or) the use of the Cognitive Interviewing process?
4. Tell me about your experiences/role of working with vulnerable people and/or the use of the Cognitive Interviewing Technique? In particular, how does this feed into the court process?
5. How do you feel about working with Vulnerable Witnesses (in and out of a court of law)? How important is your role?
6. How well are vulnerable people able to respond to questions using the CI Technique, in your opinion?
7. What other types of support are available (excluding CI) to support Vulnerable Witnesses to be effective witnesses in a court of law (in your opinion)? Please provide an example if that helps.
8. In our opinion, does the Cognitive Interviewing technique lead to vulnerable people being more credible witnesses in a court of law? Why is/ isn't that? Please provide an example if that helps.
9. Are there other things that should be considered when interviewing Vulnerable Witnesses in a court of law (what are they, why is that?)
10. What are the things that might block the use of the Cognitive Interview technique in a court of law with Vulnerable Witnesses?
11. Do you believe Vulnerable Witnesses can offer credible witness statements? Why is that?

12. What are the attitudes and experiences of other Lawyers/ Psychologists/ Psychiatrists who work with vulnerable people who act as witnesses in a court of law?

Data Collection and Analysis: All email communication and interviews were recorded. The interviews were digitally recorded and transcribed. Once the interviews had been transcribed thematic analysis allowed for key themes to be drawn out that helped to understand the extent to which the CI (and other Special Measures) were being used, when they were being used, and if their use supported Vulnerable Witnesses to provide more credible witness statements in preparation and in a court of law. Thematic analysis was viewed as appropriate as it allowed looking at the narrative, discursive data in a flexible and inductive way (Braun & Clarke, 2006).

Participants: Five participants were to be recruited based an opportunist sampling approach. Using six participants was deemed an appropriate sized sample for the scale of this study (Wood et al., 2012). However, with only five participants recruited with the perspectives of psychologists, including RIs, this research was unable to capture the perspectives of the interviewers (Police or Court Barristers). This is a limitation of this study and further research would be needed for a better triangulation (Denzin, 1978, Patton, 1999).

Whilst random sampling would be preferred there are limits with time in getting this data collected and this methodology provides the easiest access to data. The National Crime Agency was the route to accessing interviewees within the Police Force. However, the National Witness Advisor was unable to secure any interviewees for this research. The first participant, a Psychiatrist, who worked in the Civil Courts with VWs, allowed the researcher to pilot the interview schedule and clarified further understanding of the Judicial System

and how the interview schedule might work. The fifth participant, a Psychologist who had worked for the Probation Service as a Forensic Psychologist put the researcher in touch with a Registered Intermediary. This RI (participant 2) allowed the researcher to request more participants for the research project by posting a request on the RI discussion forum. This led to the recruitment of one further RI. Final participants included a psychiatrist, a psychologist, two registered intermediaries and one National Crime Agency National Witness Advisor. All participants had experience of working with Vulnerable Witnesses and had all been involved in using the CI process.

Table 1: Participant Demographic Data

Group	Gender	Number
A - general (psychiatrist/psychologist)	Female	2
B - specialist (registered intermediaries)	Female	2
C - specialist (interviewers NCA)	Male	1

Materials: The materials used in this research included the open-ended interview schedule. Open-ended interview questions were used as it allowed for free recall that was guided. So it acted more as a conversation between the researcher and participant (Creswell, 2009). A questionnaire or survey was not used as the researcher was not collecting primary data (Cohen, 2013) but needed to gain a deeper understanding as to if and how the CI and other Special Measures were being used and whether this could help a vulnerable person be more credible in their witness statement.

During this interview participants were asked to refer to the Cognitive Interview Process adapted from Geiselman and Fisher

(2014) Cognitive Interview Step-by-Step Sequence of the CI (Appendix 2), along with the Ministry of Justice (2011) typical interview structure, in Figure 2 below:

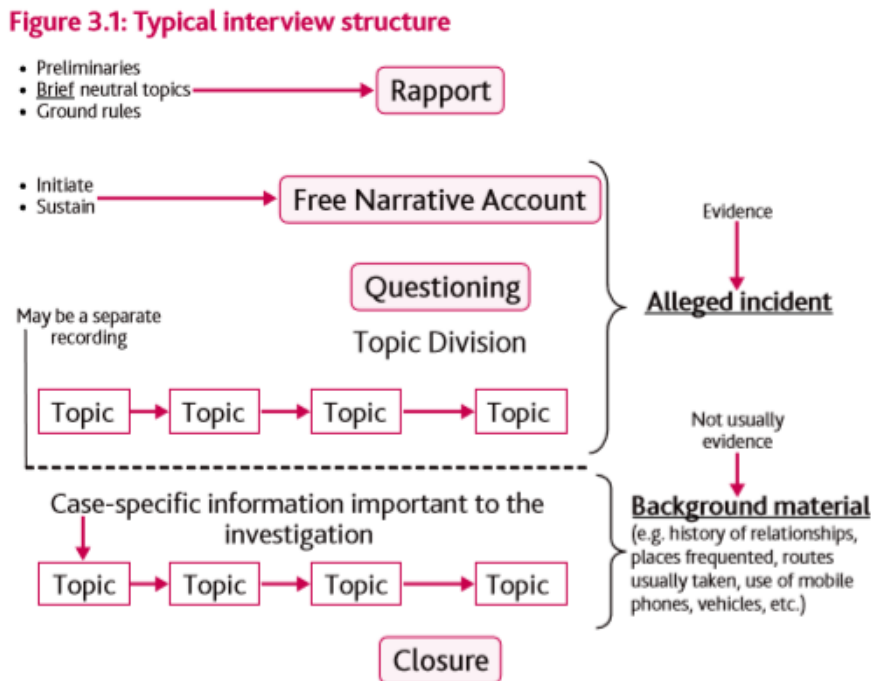


Figure 2: Typical Structure for Cognitive Interview

(Ministry of Justice, 2011, P.69)

Procedure: The participants were emailed and they agreed to an initial conversation (sample email Appendix 3). During that initial conversation the project was outlined, their role was clarified and a date and time for the interview was agreed upon. All interviews were audio recorded and took no longer than an hour. The participant read the participant information sheet (Appendix 4) and returned the consent form (Appendix 5). Once this was all in place, the interviews could proceed. The interviewed were audio recorded and transcribed (Appendix 8 and 11). The interview schedule guided the interview process. The transcripts were returned to the participant for approval as an accurate record, and the debriefing took place.

The interview was framed around the CI technique by initially building rapport, asking the participant to provide a free narrative about their work and role within the Judicial System. The interview schedule used open-ended questions that could be elaborated on. There were points when clarification was sought using reverse order questioning. If there were any inconsistencies these were challenged through further probing. Finally the insights were reviewed and a closing statement provided an opportunity to thank the participant. The transcribed interviews were returned to the participant for their approval and at this point a debriefing took place (Appendix 7). Following transcription the data was analysed using thematic analysis (Appendix 11).

Ethics: This research required ethical approval sought through the Robert Gordon University Ethics Committee. A SPER was submitted and approval received. The age group of participants did not require any special ethical considerations (Appendix 9). A safety protocol was followed (Appendix 10).

The research participants, psychologist and psychiatrists were provided with a participant information sheet and consent form before the study began which was signed. After the interview the participants were de-briefed. The participants were not named. No data was able to identify the individual. All computers where the data was stored is kept safe, with personal secure sign in that is not accessible to anyone else. All data will be protected and properly destroyed in line with University and British Psychology Society (BPS) requirements within two years of completion. All information that was collected from the individual during the course of the research will be kept strictly confidential. Any information about unnamed individuals, which is used, will have their personal details removed so that they cannot be recognised from it. All data will be stored,

analysed and reported in accordance with the Data Protection Act 2018.

There may have been some reference to individual clients when the participant was describing specific cases in making their claims during interviews. In these cases, pseudonyms were used in the transcripts. Whilst confidentiality in these professions (psychology psychiatry and law) is integral, the participants were asked to provide specific examples. Where examples were provided it was made clear to not use names or examples where individuals could be identified. The interviewees were also asked to not draw on specific examples where the specific clients could be identified even with the use of pseudonyms in the transcript. As the research outputs for this research are for the purposes of this MSc dissertation, the chances of this will also be minimise. However, should any part of the dissertation be used in a publication in the future, further permission will be sought from the interviewees. Before the interview the participant will have been informed of their rights, and that if they are not comfortable in answering a question then they do not have to.

Consequences of the Research: The consequences of this research should be positive, as it will provide insights into ways in which VWs are or should be supported in preparation for a court and in a court of law. Whilst this research has limitations in scope, which affects the number of participants interviewed and the range of perspectives gained, it can contribute to further research discussions and information for practitioners in the field.

Findings

This section reiterates the purpose of the study and presents the findings that have been revealed in light of that purpose. Through the interviews and reading of the literature a process for supporting Vulnerable Witnesses (VWs) in preparing for court proceedings and in a court of law is outlined in Figure 3 below. The themes of interest that were drawn out from the transcribed interviews are presented and elaborated on using extracts from the interview transcripts. Further discussion of these themes is continued in the following section.

The RIs and psychologists interviewed for this research do believe that the use of, and the adapted use of the CI, and other Special Measures do support VWs to provide more credible witness statements in preparation and in a court of law. Participant 3 stated that: *'yes, with support and good planning...and the necessary support and what the witness needs... absolutely possible.'* It may require adapting (Participant 2, Qu. 6).

The purpose of this study was to understand if and when the Cognitive Interview (CI) and other Special Measures are being used, and whether their use supports VWs to provide more credible witness statements in preparation for court and in a court of law. Figure 3 below represents a process for the different stages for the interviewing of VWs that is understood by the Registered Intermediaries (RI) interviewed in this research. This is the type of process that tends to be followed in the majority of cases, but not all cases.

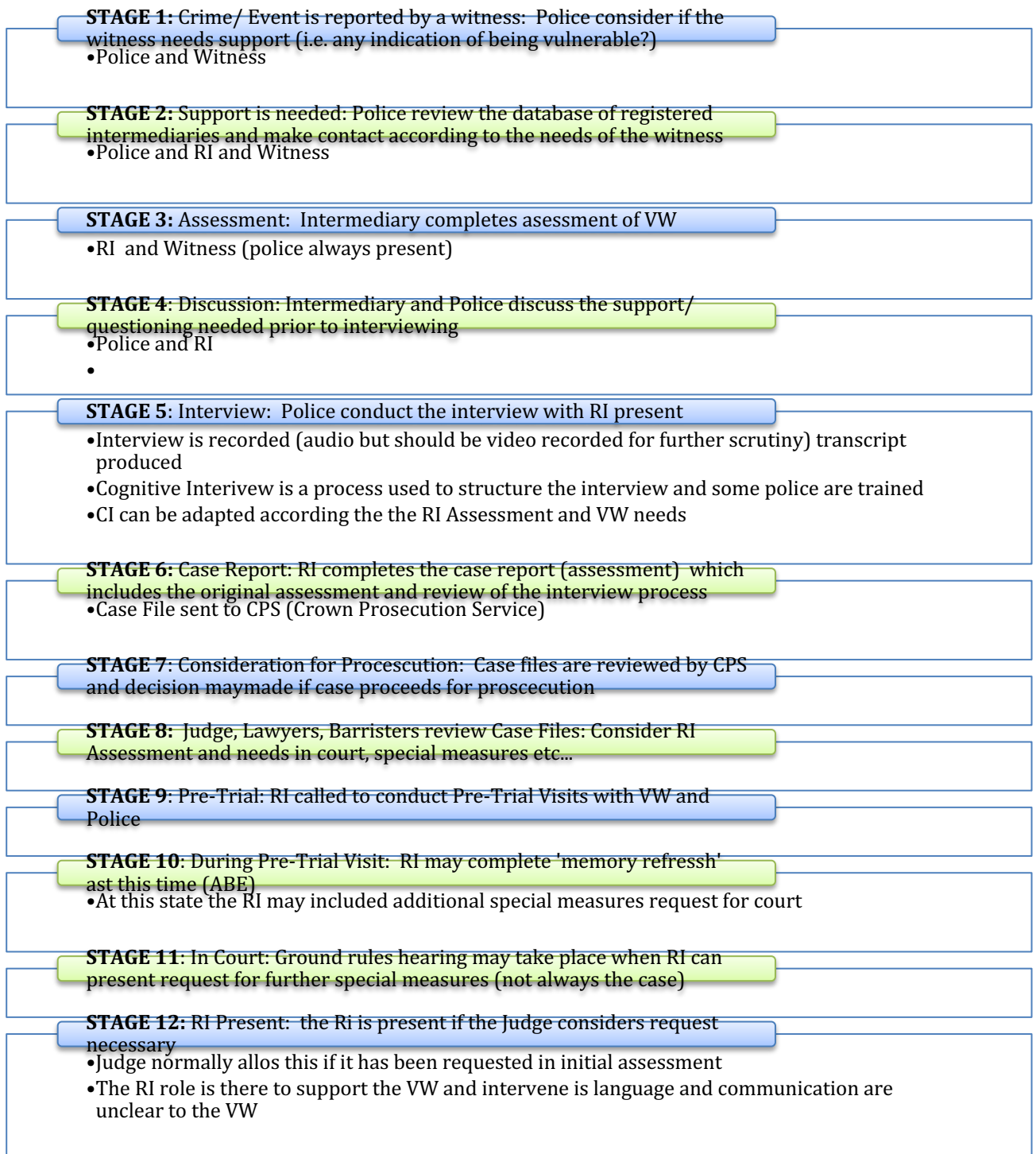


Figure 3: Process for ensuring well-planned, supportive interviewing with a Vulnerable Witness in preparation for court and in a court of law

For example, whilst the CI and other Special Measures are being used across police forces during initial police interviews, not all police have been trained in the CI process (email 5 July, Participant 5). Where police are trained in the use of the CI, the RIs interviewed for this research indicated that some police interviewers liked to follow that process and are reluctant to adapt it (Participant 2 and 3, Appendix 8). However, the RI has the role that allows them to talk to the police and get them to adapt their questioning and introduce Special Measures according to the specific needs of the VWs (Participant 3).

This research highlights some key themes explored, that relate to the effective support for VWs, in more detail in the next discussion section. But first, each theme will be elaborated on by taking excerpts from the interview data.

The first theme is about training in relation to those working with Vulnerable Witnesses (VWs) in understanding their needs in terms of memory processes when providing witness statements but also in training related to the use of special measures that might support the VWs, such as the Cognitive Interview (CI).

The second and third themes relate to understanding that this is a complex process and that not one solution fits all. In terms of it being a complex process, there needs to be clarity for all parties at each stage of the process. In terms of variations in application of the process across regions, that whilst flexibility is required to ensure that things are adapted to meet the varying needs of different vulnerabilities the guidelines and requirements of the ABE still need to be followed. There may also be some good practices in one region that could be shared across regions.

The fourth theme, challenges, overlap with the complexity issues in relation to the Judicial System, process and terminology but what this research has indicated is that the role of the RI helps to navigate that complexity for the VWs. However, saying that the RIs then have a very informal network system that supports them.

The fifth them, the role of the RI, is a significant one. However, it must be noted that the data collected for this research is biased towards the perspective of the psychologist. Further interviews would be required to gain an understanding from the interviewers perspective, police interviewers and barristers or lawyers who interview in court.

Finally, there was some acknowledgement that progress has been made since the introduction of Special Measures and role of the RI.

Key Themes:

- Training
- Understanding the complex process
- Understanding the variations across regions of the UK
- Challenges
 - Judicial system, process and terminology
 - RI Support Network
 - Time
- RI Role:
 - Communication
 - Assessment
 - Court
- Recognition for the huge progress

Training

RIs are trained by various training organisations approved by the Ministry of Justice to work as RIs. These include the City Law School. Both RIs interviewed had been trained in this way. Participant 2 had a BSc and MSc in Forensic Psychology. Once trained an RI is put on to a police database/ register, which police can refer to when they require an RI to be present for an interview with a witness. This database will define the RI geographical location, their area of expertise, specialist expertise i.e. speak and language specialist, age groups they support (Participant 3, Qu.1, 2 and 4). RIs may have specialist knowledge in terms of how to question VWs and their RI training gets them to explore ways to support witnesses with their language and communication. They are not the interviewer, but they can help to adapt the interview process to allow the VW to answer the questions without introducing new materials (Participant 3, Qu.3).

Any psychologist will have been trained in understanding of and use of the Cognitive Interview. As well as the importance of the free

recall, particularly with VWs whose recall may be disorganised but will *'give weight to the honesty and credibility of the testimony because it is free recall rather than a lead recall through questions'* (Participant 4, Qu. 2).

For the police the training is variable for the CI.

'The problem is that training courses for interviewing vulnerable adults don't have anything in them about the Cognitive Interview'

(Participant 5, email).

Participant 4, a trained probation psychologist, noted that when she was trained in the use of the CI with a VW that there were also police undertaking training at the same time.

It proved difficult to find an interviewer to interview. Participant 5, the National Vulnerable Witness Advisor who worked for the Witness Intermediary Matching Service for England and Wales and regularly designed and developed interview strategies and plans with interviewers and Registered Intermediaries indicated he saw the CI as a useful tool but that the most effective support for a VW during an interview was the RI (Participant 5, Qu. 6 and 7). In addition, those interviewed emphasised the need for the CI to be adaptable.

Understanding of the complex process

One intermediary, with nearly 10 years experience as an RI, indicated that whilst this is a complex process, that most systems will follow this process (Figure 2). There was also an indication that sometimes the VW does not understand the Judicial System they are getting involved in, and that once a claim has been made by a witness, that a whole chain of events will ensue that could lead to a prosecution. This may not be clearly understood from the outset by the VW. But it is recognised that this is beyond the role of the RI to explain this, who is only there to facilitate communication.

The experienced RI tries to prepare the VW for all eventualities, such as whether the defendant is found guilty or not guilty. They would explain to the VW:

'that those 12 people [the jury] are the ones who are listening and that they are just ordinary people... they have to decide....if there is any suggestion that they are not sure they are going to have to say "not guilty"' (Participant 3, Qu.5).

Any special measures that are to be used in a court must be first identified at the initial assessment by the RI and then they are discussed at the ground rules hearing.

'A ground rules hearing is always required, where my recommendations are discussed and agreed upon or rejected [by the Judge]'

(Participant 2, Qu.4).

Generally, Judges will allow Special Measures to be used during a court case, if these have been suggested by the RI in meeting the needs of the VW (Participant 3, Qu.9).

Understanding the variations across regions of the UK

There is recognition that each geographical region operates differently. For example:

'Pre-visit with the court... depends on different areas and how witness support care overlap...' (Participant 3, Qu.4).

In line with Achieving Best Evidence (ABE) a VW interview should always be video recorded, but this does not always happen (Participant 2, Qu.4). The memory refresh should make use of this video recording during those pre-trial visits. The RI facilitates this process in the presence of the police and helps the VW understand the court process.

Both RIs interviewed for this research work across a range of counties. One example of variation across those counties was that in

Norfolk the police use a screening tool known as ABLE. This was designed by RIs to help the police decide if a RI is required. However, this tool is not used in Essex for example (Participant 3, Qu.4). Another example was that in Kent the police make use of a laminated prompt sheet to get the VW to describe an object in the room, which totally overloads the VW, they lose concentration and provide more irrelevant detail (Participant 2, Qu.6). This was also re-iterated by Participant 3 who said:

"Don't just tell me this is a pen" (police talking to a witness), and it goes on and on and you can see the witness looking, thinking, "how on earth is this relevant?"

So it appears to be that the questioning technique designed to get a witness to describe 'every little detail' leads to some confusion and results in less significant or less relevant detail being produced.

What these examples highlight are a lack of understanding of VW needs in relation to cognitive load, cognitive processing and how that can create challenges for people with vulnerabilities.

Challenges

There are various challenges identified by those that were interviewed for this research in relation to the interviewing VWs. These include things like the Judicial System, process and terminology used, the time constraints and support networks for those involved, particularly the RIs.

Judicial system, process and terminology

When a VW is asked to give an account, there is no clarification of what 'significant' means. So they are encouraged to provide an open narrative or free recall. However, this does not always lead to all detail being relayed that may be 'significant'. For example, RI Participant 3 said:

'...He was about 13 this boy...he was quite consistent and repeating the same things, he suddenly moved slightly and I stopped and I said to the police officer, "Can I just check something?" And I said, "John, what did that mean?" And it turned out that the defendant had put his hands around his throat and held him against the wall. And he had never mentioned it...it doesn't matter how much you say," every bit of detail", there are things they think to talk about and things they don't'.

There is also other terminology and process that may be difficult to understand too, such as 'burden of proof'. Once a witness has made a report, the consequences of that are not really understood at the start (Participant 3). Participant 5 pointed out that one of the most underestimated challenges for an interviewer is the impact of trauma (e.g. flashbacks) on the process and the product (e.g. fragmented memories) of the interview. However, the ABE (played video as evidence-in-chief) help when cases get to court, but not all do due to challenges with communication.

Also, the complexity of the Judicial System and ways in which Lawyers cross-examine VWs with the sole purpose of winning a case, whether justice is served or not (Participant 3).

*'I think the difficulty is with Lawyers, there tends to be, "I have done the course"... there tends to be that attitude...But even relatively recently I had a case where...the defence counsel was obviously very adversarial and refused prosecution counsel to allow to see any of the questions... was not open to sort of real discussion with me about how we could do things... but as soon as he started, yeah, it took me about 5 hours to go over his questions, putting them in order...
...the batting order changed...I went back in court to hear the psychologist being questioned..."I suggest you are making out this witness is far less able, that you were in court this morning when you heard me questioning her, the intermediary didn't need to intervene once." And I thought that is really worrying because he stood in front of the jury implying she is far more able, no mention of the 5 hours of amending questions, getting them in a state she could deal with' (Participant 3, Qu.12).*

Participant 5 has over 25 years experience of working with VWs and manages the witness intermediary matching service. He is author of the ABE since 2007 and is the National Vulnerable Witness Advisor. He said that whilst the CI is an excellent investigative tool, not all Judges understand it and have been critical of context reinstatement techniques (Participant 5, Qu. 8 and Qu.10). Also, that the attitudes of legal professionals are highly variable in their adaptability regarding communication techniques. Participant 4 re-iterated this and said:

'I think the issues there is the cross-examination...anybody who is telling the truth...can be a helpful witness in court and where the challenge comes for the VWs in court is the cross examination and... aggressive way in which witnesses are cross-examined and that then makes those witnesses look like they are lacking credibility ...traumatic and stressful process'
(Participant 4, Qu.8)

The court is a hostile environment that is stressful, thus support mechanisms that mitigate this are all helpful (Participant 4, Qu. 12).

RI Support Networks

There are other challenges the RIs identified, which include the extent to which RIs have a support network or team. They will meet through informal discussion groups and organise informal network meetings within regions (Participant 2 and 3).

Time Constraints

Timing is clearly an issue. The CI may be seen as something that takes a long time, but in fact all special measures help to reduce court costs and the free recall in the CI allows a more credible testimony to be made, which is better all round (Participant 4). When the VWs is not identified by the police but then identified by the Crown Prosecution Service (CPS) the assessment could take place on the same day as the court hearing. This will then determine

whether a pre-trial visit to the court can take place along with the memory refresh (Participant 2, Qu. 4).

RI Role:

RIs have various roles throughout the process (Figure 3) of preparing VWs before and in a court of law. Some of those things that interviewees for this research highlighted were their role in relation to communication, assessment and court.

Assessment

The first thing an RI does is to assess the needs of the VWs. They write an assessment report, included in the case notes, that outlines the VW needs and covers an assessment of the police interview (ABE) process and how the VW coped with that process (Participant 3). These case notes are then taken to court and considered by CPS, Lawyers, Judge and Barristers (Participant 2).

Communication

The RI role is to facilitate communication between the police and VW, thus ensuring that the witness has the opportunity to understand what is being asked and to provide clear, valid evidence of the event that they witnessed. This is also the case in the court, when the RI will have presented an assessment report that should have been read and considered by the Lawyers, Barristers and Judge. An example described by the RI above (what is significant) exemplifies the ways in which an RI may clarify things during an interview. They will ensure the question is phrased correctly. They help the witness feel more secure. They may use diagrams or props to facilitate communication e.g. diagrams of intimate body parts (Participant 2) or mannequins (Participant 3).

Whilst the CI is a process that in this research RIs were familiar with when they attend police interviews, both RIs recognised their role is to ensure that the CI is adapted and modified according to their VW needs. They indicated that the police generally like to follow the CI process and if they have been trained will be reluctant to adapt it. RI, Participant 3, indicated that RIs like to use mannequins with VWs during interviews:

'... If we are describing things like movement...or proximity of someone there are certain forces who say, "we are not allowed to use them", and I say, "well I am not using them as evidence, we are not going to be pointing to body parts... but for communication...it takes an awful lot of load off if you can just show somebody how somebody moved."

This RI went on to say that what had been understood verbally was totally different once the mannequins were introduced, as the VW did not have the appropriate vocabulary to articulate the direction and arrangement of people. Thus, the mannequin reduced ambiguity and created greater clarity.

An RI can stop the questioning if it is confusing to a VW or they are unable to answer something. For example:

' I assessed a lady who had no concept of money, so the Judge ruled she could not be asked how much was stolen...In an ABE...we used diagrams of intimate body parts to establish if the rape had actually taken place. If we had not done so, someone would have been wrongfully charged... she did not know how to verbalise which parts...' (Participant 2, Qu.8).

Court

It may be necessary for an RI to suggest the use of communication aids, such as timelines, symbol boards, wooden figures (Participant 5, Qu. 9).

'What is difficult in court is the questioning of the VW who has no visual support' (Participant 3, Qu.8). The RI will usually conduct a pre-trial visit to court with the VW and at that time may conduct the

'memory refresh' where they visit the video recorded interview (ABE) that the jury will review in court.

The RIs' role is to help the VW if they get muddled, particularly during cross-examination. For example:

'I have had instances when somebody has been talking about two men in the house assaulted her, but she had been talking about walking beforehand and passing two men on the path, and I have had to intervene as they were asking about the two men... and I said, "can counsel clarify which two men they are talking about because we have had two lots of two men" (Participant 3, Qu.8).

and

'When working with people with mental health issues ... stopping cross-examination to take a break before someone dissociates and helping them to stay present... being vulnerable they are more likely to agree with those in authority... – Barristers often use legalise, phrasing things or more complicated ways e.g. using tag questions (such as "You went to the shops, didn't you?" instead of "Did you go to the shops?"). Phrased as a tag it is more difficult to understand and tends to suggest what the response should be' (Participant 2, Qu.9).

Therefore, the RI will ensure the VW can communicate and understand things that are communicated to them.

Recognition of the huge progress

There is also recognition that this is a complex process that has made progress:

'I mean, we have made a lot of huge progress' (Participant 3, Qu.4).

Which indicates hope for the future.

Discussion

In the discussion section the researcher explores the themes; particularly in relation to the issues of training, the Cognitive Interview (CI), the role of the Registered Intermediary (RI) and cross-examination in courts; drawn out of the data in the previous section. Reflecting on the literature, further insights are drawn. The second part of the discussion summarises the extent to which these measures are used in court and the extent to which a VW receives the required support, which particularly highlights the issues with cross-examination.

This research sought to understand the extent to which the Cognitive Interview technique and other Special Measures are being used, if used when they are used, and if their use supports Vulnerable Witnesses to be more credible in their statements in a court of law. The findings from this research highlight some key themes in relation to the importance of the support measures in place in preparing Vulnerable Witnesses to provide credible witnesses statements in preparation for a court hearing and during a court hearing.

These themes relate to training, complexity and variation in the application of processes across regions in the UK, other challenges related to the processes, language and support mechanisms for RIs, the role of the RI and a brief insight into the progress that has been made since the introduction of Special Measures and the role of the RI.

The first challenge is that not all VWs are identified in the first place. Burton et al. (2006) indicated that early identification of VWs by the police and the CPS is vital. In 2001, Pamela Cooke reported that people with learning difficulties rarely appear as witnesses in court (Cooke, 2001). This was also raised by the participants of this

research who said that only once the police have identified a witness as having vulnerable needs would a Registered Intermediary be called to conduct an assessment and support them with their communication needs through the interview process. One participant (participant 3) indicated that of the 400 cases she had seen only two or maybe three witnesses would not have been identified as vulnerable. This was also reiterated by participant 2 who said, *'Initially the police spot if a witness is "vulnerable". Some police are trained to do this, but the training and ability of the police varies greatly.'* Thus suggesting that not all witnesses interviewed by police have been identified as vulnerable.

This could be partially explained by an issue Nield et al. (2003) raised when they interviewed 150 police and social workers to understand the impact of the 1999 Act (66.4% response rate) and found that the police estimated 54% of those they interviewed and the social workers estimated that 53% of those they interviewed were vulnerable. However, it was the police who raised concerns about the difficulty in identifying those as vulnerable. The ABLE tool may be a mechanism that the police force in all counties, not just Norfolk, could use to initially identify a VWs and ensure a RI is available for the police interview.

This inability to identify witnesses as vulnerable could be due to a lack of training. This research showed that training is variable across regions in the UK and whilst police are trained to work with vulnerable people and to conduct Cognitive Interviews practices are not consistently applied.

In addition, vulnerable people are also more prone to be victims of crime yet less able to report it (Milne, 2001). However, if they do report it they may be less able to recall and encode the information

but with adequate support, free recall and appropriate questioning they can produce credible evidence. This was supported by participants in this research who said, *'So the free recall allows the witness to erm, literally you know tell the interviewer anything that comes to mind, any detail that comes to mind'* (Participant 4). The CI was developed as a non-hypnosis interviewing technique based on scientific principles of memory (Geiselman et al., 1989). Designed to provide questioning techniques that allow for free recall. VWs need to be able to recall in a disorganised way to prevent led recall (Participant 4, Qu.6). Led recall is often an approach used when being questioned in court. Whilst the CI can elicit more useful and reliable information from a witness not all those applying it understand the scientific principles of memory and how that may vary between vulnerabilities. The CI has been widely yet variably used in police interrogation, as indicated by the participants in this research. For statements that are then replayed to a jury in a court (ABE) to contain detail that is vivid then it is viewed as more credible. Any small detail left out will render it less credible (Bell & Loftus, 1989). However, the CI is not widely understood by Lawyers who engage in legal enquiry (Geiselman et al., 1989). This will be discussed in more detail below in relation to how witnesses may be interrogated in a court. The role of the RI is key both pre-court and in court. Their role is to facilitate communication between the witness and police and also the witness, Lawyers and Barristers. Their role is ensuring that the witness has the opportunity to understand what is being asked in providing clear and valid evidence of the event they have witnessed. The participants in this research suggested the role of the RI is complex and includes facilitating communication to provide clarity and reduced ambiguity for all those who form part of the judicial process, VW, police interviewers, Lawyers, Barristers and Judge. They are able to guide interviewers regarding the interviewing technique, so even if interviewers (police, Lawyers and

bBarristers) are not understanding of or trained in the CI the RI can still help them to structure their questioning that meets the individualised needs of the VW. Thus the RI is able to ensure the VW can and does have the best opportunity to provide credible evidence or statements.

What this research has shown is that whilst the RI is not always invited to take part in the court process, that they are an important part of supporting the VW in preparing for court and conducting pre-trial visits and part of the grounds court hearing to ensure all the needs of the VW for that court process and any special measures have been considered and put in place. That being said, this is not always possible due to time constraints, based on the fact that this is a complex process dependent on many subjective decisions being made throughout that process. These Special Measures are just as important and include things like mannequins, props, screens, removal of wigs in court, types of questioning.

The role of the RI is an element of Special Measures introduced into the UK in the late 1980s and brought into effect through the Youth Justice and Criminal Evidence Act 1999. The RI plays a significant role in helping the VW to navigate the complex process, facilitate communication and prevent them being overwhelmed by the whole process so that they are able to be credible witnesses. RIs also help to ensure that VWs who may appear to be functioning on a day-to-day basis, whose pockets of vulnerability would be exposed through the court process of cross examination are supported in the best way possible to Achieving Best Evidence.

Katie Haworth's (2018) research highlighted the importance of the police investigation interview and she stated that in England and Wales legal framework that *'the credibility of the witness can be*

destroyed by counsel highlighting the differences between what is said in court and what was (recorded as being) said at interview. In a skilful cross-examination this can discredit their entire evidence... the accuracy of interview records is therefore crucial' (Haworth, 2018, P.428).

Participant 2 indicated that her role as an RI in court is:

'ensuring they (VWs) understand the question – Barristers often use legalised, phrasing things or more complicated ways e.g. using tag questions (such as "You went to the shops, didn't you?" instead of "Did you go to the shops?"). Phrased as a tag it is more difficult to understand and tends to suggest what the response should be.

The Advocates Gateway provides 'toolkits' which Barristers are encouraged to look at on line when preparing their questions'.

Participant 3 indicated that if the RI does anything that could be brought up by the Barristers to discredit a witness statement then they will. She said she had been called back in to court for cross-examination by three Barristers due to a word that had been used in the case:

'Because it was I said 'discuss' and they tried to imply that I had been discussing the evidence. And I said, "no no no, I don't do that with the witness, we do talked about the ways a question was phrased and I used the word, 'we discussed'". And they tried to make out, because of course the whole case would have collapsed if they could have shown that I had been discussing the evidence'

She also indicated, in her opinion, that:

'this business that people are going to go in to court to get justice, or you are going to hear the truth, that is not what it is about, it is how you can win the case'.

This highlights not the importance of the CI, but the importance of an interview that allows the VW to understand, to respond and to be understood. Thus the importance of someone who can support the VW witness during this process, the RI. The importance of this role was also emphasised by the National Vulnerable Witness Advisor (Participant 5).

Even when the CI (Ministry of Justice, 2011) has taken place and the ABE is replayed so as to maintain the authenticity of the interview information (Milne & Bull, 2006), to a jury in court a VW may still have to undergo cross-examination in court. Thus their credibility can be brought to question through lawyers deeply entrenched practices. Of course, the RIs assessment that proposed suggestions about Special Measures, props or means of questioning may be considered, but this is not always the case if the RI is not present in court. This research shows that the RI plays a crucial role throughout the process (see Figure 2). They not only facilitate communication between all parties, but help barristers and lawyers clarify understanding in non-intimidating ways in court (Home Office, 2008a).

The RI plays a significant role in getting the VWs to testify (Milne & Bull, 2001) because, as described by an RI participant in this research, they guide them through the process, thus reassure them, they explain clearly the process ahead and what may or may not have happened so there is no hidden surprises. Although O'Mahony et al. (2012) and Burton et al. (2006) had found that not all legislation in this respect had been fully implemented, that there is some indication from this research that progress has and is being made. Whilst there is some variability across some counties, there are more police trained in CI techniques and there is more acceptance of the role of RIs in facilitating the process to ensure VWs can present themselves as credible witnesses.

What has been emphasised is that those lawyers or barristers who are cross-examining VWs do not always understand the needs of the VWs, do not always have (or want to have) the skills to cross-examine them with their vulnerability in mind and will question using

negative, double negatives, TAG questions and complexity (Kebbell et al., 2000). Of course, they are there to win a case or to ensure their client does not have sent to prison. The CI does not need to be used in its entirety (Kebbell & Wagstaff, 1999, Kebbell & Milne, 1999) and this is also reiterated by the RIs interviewed in this research. In terms of using the CI with those witnesses **who are autistic, (Maras...*******

Whilst Burton et al. (2006) had found video recordings (ABE) were made only of a minority of cases, these interviews indicated that they are now recorded in the majority of cases, where VWs are identified. Special measures may still be applied for at a late stage (Burton et al., 2006) but this is due initially not assessing a witness as vulnerable. Yet, Judges do tend to allow what has been recommended by an RI in their assessment report is allowed in the court. There are still issues with witnesses first being recognised as having vulnerabilities through the process.

All the participants interviewed were trained psychologists and have experienced the use of the CI with VWs. They had all undertaken some form of training in the CI technique and working with the VW in relation to communication. The RIs had experience of working directly with VWs during the police interview just after an event or crime had been reported. They would ensure the CI was adapted and questioning meeting the needs of the VW. They would assess those needs and then report on those for the CPS should the case proceed to court. They would be asked to support the pre-trial visit, memory refresh and sometimes attend court to ensure special measures were considered in the ground rules hearing. All participants felt that their role was important and that the CI and other Special Measures were important. All participants felt that the VW can be credible witnesses but that they needed planned support. They felt that where VW are identified as vulnerable by police

support the process well. The police in the use of the CI can be rigid but they can also work with the RI to support the VW during questioning. However, this is variable. They all commented on the challenges of cross-examination and the hostile environment of a court may lead to a VW looking less credible.

This destroying of evidence by counsel through cross-examination to highlight the inconsistencies (Hohl & Conway, 2017) and use of questioning to confuse (Kebbell et al., 2000) appears to be the goal of counsel (Participant 3, Qu.12). So if VWs require Special Measures to be able to cope with this type of cross-examination these should be available to them whilst in court. However, it is the Judges decision as to whether the Special Measures will be allowed in their Court.

Finally, all participants in this research concluded that VWs can be credible in a court of law and are able to, with the right support, ensure cases are brought to court. The focus should be on the abilities of the interviewer and not the interviewee (Milne and Bull, 2001). Whilst the participants believed the CI plays an important role in that process it is the RI who assists the VWs to ensure communication needs are clarified and understood by all parties (Participant 5, Plotnikoff & Woolfson, 2015). However, the challenges highlighted by this research, such as the complexity and language of the judicial system, means that it is even more important that VWs get the support of an RI to navigate the system with them. But also, that those involved in the interview process (both in and out of court) have an understanding of the memory process of witnesses and victims of crime (Milne & Bull, 2006). What this research has shown is this is not always the case. The extent to which police work with VWs is variable, though the majority of the time it is good, but that court cross-examination is designed to

confuse witnesses. Whilst this claim cannot be corroborated fully several references to this in the data refer to this point.

This research offers some tentative findings, which based on the small sample size of 5 participants would require further corroboration. However, there was a consensus in the findings of this research that there is still more work needed to ensure all regions of the UK Police Force can firstly be confident in identifying all Vulnerable Witnesses prior to police interview so that the appropriate RI can be called to carry out an assessment. Also, that the RI should be available throughout all parts of the judicial process when and if required. Finally, that Lawyers and Barristers require better understanding of the memory functioning of vulnerable people so that they can not just respond to recommendations made by an RI but also so they understand that process.

CI is not effective with witnesses diagnosed with Autistic Spectrum Disorder (Maras & Bowler, 2010), but witnesses with learning difficulties or impaired cognitive function need to be identified in the first place and this is not always easy (Geiselman & Fisher, 2014). Although the CI is deemed as not being effective with those diagnosed with Autism (Maras & Bowler, 2010) there has been some follow up research that suggests taking these witnesses physically back to the scene and context can help them to mentally reconstruct events (Maras & Bowler, 2012). Police interviewing of witnesses with autism has been under review and under further development in recent years (Crane et al. 2015).

Relate to what Participant 5 said....

Conclusions

This research provides an indication that the use of special measures, including the use of the Cognitive Interview, are being used when supporting Vulnerable Witnesses to provide credible witnesses statements in preparation for and in a court of law. However, the extent to which they are being used is variable across different regions of the UK.

It was agreed by all the participants in this research that the role of the RI is very important and that with the use of Special Measures and effectively planned support that VWs can be credible in a court of law. Whilst the CI is not used in a court of law as an interviewing technique the ABE (recorded police interview) is shown to the jury in a court of law and the RI provides an assessment that outlines the needs of the VWs to the Lawyers, Barrister and Judge.

With training being variable across different regions in the UK across the police force not all police have the skill set to identify witnesses as vulnerable. Therefore they are unable to flag this up in a timely manner to ensure that a RI is included in the police interview process. The police interview is an important part of a trial, should a case go to court, and an effective interviewing technique may make the difference to justice being served. If a tool, called ABLE, is used by the police in Norfolk, UK to help the police identify VWs then further research to include interviews with police interviewers could provide further insight into how this might work across all police forces.

The complexity of the system is widely recognised but the nature of the Judicial System and modes of questioning in court can confuse VWs. This research indicates that the Lawyers and Barristers need to

better understand the cognitive process of memory and recall in relation to the varying range of vulnerabilities.

Whilst the findings of this research are not significant they provide an indication of some interesting themes that would warrant further research. The lack of perspectives of interviewees is a limitation of this study and further research would need to find a way to gain the insights of these interviewees, perhaps through a survey and then follow up interviews.

This research would have benefited from a broader range of views. Methods triangulation (Denzin, 1978, Patton, 1999), by collecting qualitative and quantitative data would have led to a better level of triangulation. This could have been in the form of a survey to reach a larger number and broader range of participants that could have included the collection of quantitative data.

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Appendices

Appendix 1: Equality Treatment Bench Book: Children and vulnerable adults (2013)

Key points

- Accommodating a vulnerable person's needs (as required by case law, the Equality Act 2010, the European Convention on Human Rights, the UN Convention on the Rights of the Child, the UN Convention on the Rights of Persons with Disabilities and the European Directive establishing minimum standards on the rights, support and protection of victims of crime) requires the court or tribunal to adopt a more flexible approach.
- Courts have safeguarding responsibilities in respect of children and vulnerable adults. The exercise of judicial discretion often has a safeguarding dimension.
- The Inspectorates have highlighted local practices in respect of Vulnerable Witnesses which fail to comply with existing national, evidence-based policies.
- All witnesses, regardless of age, are presumed competent.
- Children and defendants have been shown to experience much higher levels of communication difficulty in the justice system than was previously recognised. This is also likely to be the case for vulnerable adult witnesses and the elderly.
- Children and vulnerable adults under stress can function at a lower level, making it harder for them to remember accurately and think clearly.
- The judiciary should be alert to vulnerability, even if not previously flagged up. Indicators may arise, for example, from someone's demeanour and language; age; the circumstances of the alleged offence; a child being 'looked after' by the local authority; or because a witness comes from a group with moral or religious proscriptions on speaking about sexual activities.
- Assessment by an intermediary should be considered if the person seems unlikely to be able to recognise a problematic question or, even if able to do so, may be reluctant to say so to a questioner in a position of authority.
- Judges and magistrates should ask for relevant information, if not provided (in the case of vulnerable prosecution witnesses, by the police and Witness Care Units); information may also be provided by parents or guardians, social workers or other professional assessments.

Appendix 2:

Step-by-Step Sequence of the CI (Geiselman & Fisher, 2014)

INTRODUCTION: The interview explains the social dynamic for the interview in that this is a witness centred approach. The interviewer then allows the witness to present an uninterrupted narration of the event they have witnessed. The interview presented with some information-rich representations such as scenes or images. The interview is reviewed and closed.

RAPPORT: The interviewer will try to get the witness to be psychologically comfortable with a complete stranger. This will ensure there are lowered amounts of emotional distress so that the cognitive resources contribute to the content of the interview. Time spent building rapport is crucial (Abbe & Brandon, 2013; Collins, Lincoln & Frank, 2002; Shafer & Navaroo, 2012). A set of topics are presented for a casual conversation at the start of the interview (Lowndes, 2003) and the interview must show respect and compassion for the plight of the victim (Fisher & Geiselman, 2010).

TRANSFER CONTROL: The interviewer, who has a higher expert status, needs to transfer control to the witness who has first hand knowledge of the event. This is why the development of rapport is so crucial. The interviewee may say "I was not there when this happened, so I will be relying on you to do most of the work here."

DETAILED RECALL: The witness will be reminded to recall ALL information, no matter how trivial. They are reminded that the interviewer does not want the highlights or a summary but as much information and detail as possible, no matter how small. They will also be reminded about how difficult this is and will require concentration. They are asked not to guess. If they are asked a question and they don't know they need to indicate that. The interviewer thanks the witness for their help and cooperation. It can be suggested that the witness close their eyes to aid recall (Bekerain & Dennett, 1997; Perfect et al., 2008) but this is subject to the establishment of good rapport. All other distractions must be minimised.

OPEN ENDED NARRATION: The witness will be asked to think back to the place and time the event took place. The context needs to be recreated and the witness is asked to mentally recreate the external factors (weather), the emotional factors (how they were feeling, mood) and cognitive factors (what they were thinking). What were the sights, sounds and smells? What was the witness doing just before the event? The witness needs time to think about this event. Once the witness has this in mind, they will be asked to engage in the open-ended narrative. The interviewer may ask: "Tell me in your own words what happened in detail from beginning to end."

The interviewer will listen and decide on which elements to probe later on. The initial narrative must be uninterrupted to allow the total recall of the event (Roberts & Higham, 2002). The interviewer should listen, and only write brief notes during this narrative that flag any probing and follow-up questions. The interview needs to give total attention to the witness. When probing the interview will use the witness's own words to facilitate communication and rapport.

FOLLOW UP QUESTIONS – Probing Scenes and Images: The richest sources of information will be shown to the witness and the interviewer will guide the witness, using the probes they have decided on during the interview.

PRINCIPLE OF DETAIL: The most important or promising part of the narrative should be probed first as this will trigger other memories. This also ensures it is dealt with before fatigue sets in. Fewer questions are better, and the witness should not be interrupted during the thought process. The questions should be open and not leading. There should be 3-4 seconds for thinking. The questioning format should be compatible with the witness's mental record of the event. Some may need to draw a sketch, others may need to model the scene. Probing can be achieved by asking different questions that seek to understand the same information. Visually, what did it look like? Spatially, how much room did it take up? Speech, were any unusual words used, was there an accent? There should be no pressure exerted by the interviewer at any time to coerce an answer.

PRINCIPLES OF MOMENTUM: There should be no skipping between scenes. All relevant questions to each scene need to be asked when the witness has a mental image of that scene, as event details are more likely to be recalled when they have a current mental image (Pecher, Zeelenberg, & Barsalou, 2003).

MULTIPLE & VARIED RECALL: They could be asked for the narrative again but in reverse order. This may bring up incidental information (Geiselman & Callot, 1990). Or describe it from a different angle or from the perspective of another person as there are multiple access routes to memory. There needs to be care that the witness is not guessing what someone else may have seen and some witnesses may find it difficult to take on another perspective (Saywitz, Geiselman, & Bornstein, 1992). This can be done nearer the end of questioning.

REVIEW: Reviewing will help to check accuracy and allows witness to recall any further information or correct information. Notes will be read back, and the witness will be asked to correct any errors. Contradictions will be checked, even if the witness is not sure that will be noted.

CLOSE: All official requirements will be fulfilled. The witness will be thanked. The interviewer will ask the witness to contact them if they have any new information they remember in the next few days, as sometimes recall may be delayed due to emotional arousal of the incident (Fisher, Brewer, & Mitchell, 2009).

Appendix 3: Sample initial email to participants (2)

INITIAL EMAIL TO PSYCHIATRIST

Dear xxxxxx,

As a psychiatrist who works with Vulnerable Witnesses and Lawyers in court cases, I am writing to seek your assistance with a research project I am working on.

The title of this study is: Exploring the use of Cognitive Interview techniques with Vulnerable Witnesses in a court of law.

This is a study about the use of Cognitive Interviewing techniques with vulnerable adults within a court of law. It will seek to understand the extent this technique is being used and when it is used, and whether it supports Vulnerable Witnesses to be more credible in their statements in a court of law. This will be achieved through interviews with psychologists/ psychiatrists and Lawyers who work with Vulnerable Witnesses involved in court cases.

Vulnerability is linked to false convictions, which has led to the use of the Cognitive Interviewing techniques being adopted within police interviewing in recent years in England. However, the use of this technique within a court of law has been under researched.

Primarily the results of this research will be used in the write up of a research project for module SSM 116 which will be submitted for the award of MSc. Applied Psychology, 2019 at Robert Gordon University.

I have attached a participant information sheet that provides a more detailed outline of the project.

What I am looking for is an introduction to other psychologists/ psychiatrists and Lawyers who work with vulnerable adults in a court of law. I would also really welcome your input. For the scope of this project I am looking for 3 to 4 psychologist/ psychiatrists and 3 or 4 Lawyers.

What would be required is an initial interview of up to one hour, either face-to-face or via skype, and a follow up interview of no more than 30 minutes, only if required.

Please do let me know if you can help, I'm happy to give you a call to provide more information, so do email on 1807684@rgu.ac.uk, Mobile: 07748 088734.

Yours Sincerely,

Jo Anna Reed Johnson

INITIAL EMAIL TO PARTICIPANT

Dear xxxxxx,

XXXXX has put me in touch with you as you are Psychiatrist/Psychologist/Lawyer working with vulnerable adults in a court of law, and I am planning to do a study concerned with exploring the use of Cognitive Interview techniques with Vulnerable Witnesses in a court of law.

This study will seek to understand the extent this technique is being used and when it is used, and whether it supports Vulnerable Witnesses to be more credible in their statements in a court of law. This will be achieved through interviews with psychologists/psychiatrists and Lawyers who work with Vulnerable Witnesses involved in court cases. Vulnerability is linked to false convictions, which has led to the use of the Cognitive Interviewing techniques being adopted within police interviewing in recent years in England. However, the use of this technique within a court of law has been under researched.

Primarily the results of this research will be used in the write up of a research project for module SSM 116 which will be submitted for the award of MSc. Applied Psychology, 2019 at Robert Gordon University.

I have attached a participant information sheet that provides a more detailed outline of the project, along with a consent form.

What would be required from you is an initial interview of up to one hour, either face-to-face or via skype, and a follow up interview of no more than 30 minutes, only if required.

Please do let me know if you can help, I'm happy to give you a call to provide more information, so do email on 1807684@rgu.ac.uk, Mobile: 07748 088734.

If you can help, please read the participant information sheet and sign the consent form, return via email and then I can contact you regarding making arrangements for an interview.

Thank you very much for reading this letter, and I look forward to working with you if possible.

Yours Sincerely,

Jo Anna Reed Johnson

Appendix 4: Participant information sheet



Participant Information Sheet Template

Study title

Exploring the use of Cognitive Interview techniques with Vulnerable Witnesses in a court of law.

Invitation

You are being invited to participate in a research study. Before you decide whether to participate, it is important for you to understand why the research is being undertaken and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Feel free to ask the researcher if there is anything that is unclear or if you would like more information.

Thank you for taking the time to read this.

Purpose of the study

This is a study about the use of Cognitive Interviewing techniques with vulnerable adults within a court of law. It will seek to understand the extent this technique is being used and when it is used, and whether it supports Vulnerable Witnesses to be more credible in their statements in a court of law. This will be achieved through interviews with psychologists/ psychiatrists and Lawyers who work with Vulnerable Witnesses involved in court cases.

Vulnerability is linked to false convictions which has led to the use of the Cognitive Interviewing techniques being adopted within police interviewing in recent years in England. However, the use of this technique within a court of law has been under researched.

What's involved?

If you agree to take part in this research you will be required to take part in **one or two interviews** that will **last no longer than 1 hour for the first interview and 30 minutes for the follow up interview (if required)**. The follow up interview may not be required and interviews could take place face-to-face at a place that is convenient to yourself (e.g. work) or via email or skype (or similar). A semi-structured interview schedule will be developed that helps to identify different Cognitive Interviewing techniques based on the literature. It will seek to understand the extent to which current

practice in a court of law makes use of the technique. It also seeks to understand views on how that technique may help Vulnerable Witnesses be more credible in their statements in a court of law. The interview will be audio recorded and fully transcribed for research purposes if consent given.

Why have I been invited to take part?

You have been asked to take part as this research seeks to interview 3 or 4 Psychologist/ Psychiatrists and 3 or 4 Lawyers who are involved with working with Vulnerable Witnesses in a court of law.

Do I have to take part?

It is up to you to decide whether or not to take part. If you do decide to take part you will be given this information sheet to keep and be asked to sign a consent form.

What if I want to withdraw from the study?

If you do decide to take part, you are still free to withdraw at a later date without explanation up until the data analysis and write up of the report, 30 June 2019. A decision to withdraw or a decision not to take part, will not affect the treatment you receive. All data will be destroyed and there will be no repercussions.

What are the possible disadvantages and risks to taking part?

There should be no risks or disadvantages to taking part in this study. The time required would be a one hour interview and possibly another 30 minute follow up interview.

What are the possible benefits of taking part?

While you will be unlikely to benefit personally from this study, your participation will support the researchers completion of their study as an assignment submitted for the award of MSc. Applied Psychology. The study may also be useful for psychology and law and the research around use of Cognitive Interviewing technique with vulnerable adults in a court of law.

How will my information be kept confidential?

All information that is collected about you, including the audio and transcribed interviews, during the course of the research will be kept strictly confidential. Any information used will have your personal details removed so that you cannot be recognised from it. All data will be stored, analysed and reported in accordance with the Data

Protection Act 2018. Data will be retained for a maximum of 3 years in the event that any publications should arise from it. Thereafter all data will be destroyed securely.

What will happen to the results of this study?

Primarily the results of this research will be used in the write up of a research project for module SSM 116, 2019, and submitted for the award of MSc. Applied Psychology. The research project will be submitted on 30th August 2019. You will not be identifiable from any of the information shared in any case.

If the findings are further disseminated, for example at a research conference presentation or journal paper, all the data from you will remain anonymous.

The researcher will be happy to share the results of the study with you should you be interested.

What happens next if I do decide to take part?

The researcher will contact you with a suggested interview times and dates via their RGU email address: 1807684@rgu.ac.uk

Who has reviewed this study?

This study has been reviewed and approved by the Psychology Dissertation Ethical Review Panel at RGU.

Further information and contact details

Should you have any questions or require further information, feel free to email myself, the researcher, (Jo Anna Reed Johnson, 1807684@rgu.ac.uk) or Sarah Henderson, Module SSM 116 Project Supervisor at Robert Gordon University: s.e.henderson@rgu.ac.uk Should you take part, you will be given a copy of this information sheet and a signed consent form to keep.

Appendix 5: Consent form



CONSENT FORM (Participant copy / Researcher copy)

Title of Project: **Exploring the use of the Cognitive Interview technique in questioning vulnerable (adult) witnesses in preparation for a court of law**

Name of Researcher: 1807684 (Jo Anna Reed Johnson)

Please initial box

1. I confirm that I have read the information sheet for the above study. I have had the opportunity to consider the information, ask questions and have had these answered satisfactorily.
2. I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason, without any repercussions. I understand however that I will not be able to withdraw my data after **30th June 2019** as data analysis will be underway.
3. I understand that the information collected about me will be used for a research project and may be further disseminated. In all cases, my data will be stored securely and anonymously.
4. I understand that the interview will be audio recorded, and that the recording will be deleted once a written transcript has been produced.
5. I understand that all my data will be treated confidentially.
6. I agree to take part in the above study.

Name of Participant Date Signature

Name of Person Date Signature
taking consent

(Example)



CONSENT FORM (Participant copy / Researcher copy)

Title of Project: Exploring the use of the cognitive interview technique in questioning vulnerable (adult) witnesses in preparation for a court of law

Name of Researcher: 1807684 (Jo Anna Reed Johnson)

Please initial box

- 1. I confirm that I have read the information sheet for the above study. I have had the opportunity to consider the information, ask questions and have had these answered satisfactorily.
- 2. I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason, without any repercussions. I understand however that I will not be able to withdraw my data after 30th June 2019 as data analysis will be underway.
- 3. I understand that the information collected about me will be used for a research project and may be further disseminated. In all cases, my data will be stored securely and anonymously.
- 4. I understand that the interview will be audio recorded, and that the recording will be deleted once a written transcript has been produced.
- 5. I understand that all my data will be treated confidentially.
- 6. I agree to take part in the above study.

Appendix 6: Interview Schedule



Interview Schedule: Participant X

1807684

Exploring the use of the Cognitive Interview technique in questioning Vulnerable Witnesses in preparation for or in a court of law

13. Have you experienced the use of the Cognitive Interviewing Technique when working with vulnerable adults? **YES / No**

Interviewee is to review APPENDIX 1 and 2 for the Geiselman & Fisher (2014) model.
14. What training have you undertaken, if any, that allows you to work with vulnerable adults?
15. What training have you undertaken, if any, that allows you to use the Cognitive Interviewing process?
16. Tell me about your experiences of working with vulnerable adults and/or the Cognitive Interviewing Technique? In particular, how does this feed into the court process?
17. How do you feel about working with Vulnerable Witnesses (in a court of law)?
18. How well are vulnerable adults able to respond to questions using the CI Technique?
19. What other types of support are available (including CI) to support Vulnerable Witnesses to be effective witnesses in a court of law (in your opinion)? Please provide an example if that helps.
20. In our opinion, does the Cognitive Interviewing Technique lead to Vulnerable Adults being more credible witnesses in a court of law? Why is/ isn't that? Please provide an example if that helps.
21. Are there other things that should be considered when interviewing Vulnerable Witnesses in a court of law (what are they, why is that?)

22. What are the things that might block the use of the Cognitive Interview technique in a court of law with Vulnerable Witnesses?
23. Do you believe Vulnerable Witnesses can offer credible witness statements? Why is that?
24. What are the attitudes and experiences of other Lawyers/ Psychologists/ Psychiatrists who work with Vulnerable Adults who act as witnesses in a court of law?

Questions when interview others involved in the process (not the Registered Intermediary):

25. What is your experience of working with a Registered Intermediary when working with vulnerable adults in a court of law? (these further prompts may be used: what is their role; how used; when used; how does it support a more credible witness statement?)

N/A

(A Safety protocol has been completed. An anonymous Skype Account will be set up if interviews are to be online)

References

Geiselman, R.E. & Fisher, R.P. (2014). Interviewing Witness and Victims, in Michel St. Yves (Ed.) *Investigative Interviewing: Handbook of Best Practices*. Thomson Reuters Publishers, Toronto.
Ministry of Justice (2011). *Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures*. London: MOJ.

Appendix 7: Debriefing form



DEBRIEF FORM

Title of Project:

Exploring the use of Cognitive Interview techniques with Vulnerable Witnesses in a court of law.

Name of Researcher:

1807684 (Jo Anna Reed Johnson)

I would like to thank you for taking part in this research.

In this study you were asked about the use of Cognitive Interviewing techniques with vulnerable adults within a court of law. You took part in an initial one-hour interview that may have been followed up with another 30-minute interview. I wanted to understand the extent this technique is being used and when it is used, and whether it supports Vulnerable Witnesses to be more credible in their statements in a court of law. Vulnerability is linked to false convictions that have led to the use of the Cognitive Interviewing techniques being adopted within police interviewing in recent years in England. However, the use of this technique within a court of law has been under researched.

All information that is collected about you, including the audio and transcribed interviews, during the course of the research will be kept strictly confidential. Any information used will have your personal details removed so that you cannot be recognised from it. All data will be stored, analysed and reported in accordance with the Data Protection Act 2018. Data will be retained for a maximum of 3 years in the event that any publications should arise from it. Thereafter all data will be destroyed securely.

There may be things that surface during the interview that have caused you upset. If this is the case please contact a support organisation. Turning Point (<https://www.turning-point.co.uk/services/mental-health.html>), and The Samaritans (<https://www.samaritans.org/how-we-can-help-you/other-sources-help>) are a couple of charities who may provide you with the support you may need.

Should you wish to contact the researcher further or would like to request a copy of the results once the study is complete please email myself, Jo Anna Reed Johnson: 1807684@rgu.ac.uk or Sarah Henderson Module SSM 116 Project Supervisor at Robert Gordon University: s.e.henderson@rgu.ac.uk

If you have more general interest in this field, you may find the following articles of interest:

Key References:

Bull, R. (2010). The investigative interviewing of children and other Vulnerable Witnesses: Psychological research and working/professional practice. *Legal and Criminological Psychology*, 15, 5-23.

O'Mahony, B.M. (2009). The emerging role of the Registered Intermediary with the Vulnerable Witness and offender: facilitating communication with the police and members of the judiciary. *British Journal of Learning Disabilities*, 38, 232-237.

O'Mahony, B.M., Milne, B. & Grant, T. (2012). To Challenge, or not to Challenge? Best Practice when Interviewing Vulnerable Suspects. *Policing*, 301-312.

Finally, thank you very much for participating in this research.

Appendix 8: Interview Transcriptions

The interview transcripts are presented in **Appendix 11** - thematically coded.

Participant 1: Pilot with Psychiatrist working with Lawyers and VWs

Participant 2: Interview with Registered Intermediary (4 years)

Participant 3: Interview with Registered Intermediary (8 years)

Participant 4: Interview with Psychologist who has worked for the Probation Service

Participant 5: Interview with Psychologist who has over 25 years experience of working with Vulnerable Witnesses and manages the Witness Intermediary Matching Service, Author of the ABE since 2007 and National Vulnerable Witness Advisor at the National Crime Agency.

Appendix 9: Ethical approval (SPER)



STUDENT PROJECT ETHICAL REVIEW (SPER) FORM

The aim of the University's *Research Ethics Policy* is to establish and promote good ethical practice in the conduct of academic research. The questionnaire is intended to enable researchers to undertake an initial self-assessment of ethical issues in their research. Ethical conduct is not primarily a matter of following fixed rules; it depends on researchers developing a considered, flexible and thoughtful practice.

The questionnaire aims to engage researchers discursively with the ethical dimensions of their work and potential ethical issues, and the main focus of any subsequent review is not to 'approve' or 'disapprove' of a project but to make sure that this process has taken place.

The *Research Ethics Policy* is available at www.rgu.ac.uk/research-ethics-policy

Student Name	Jo Anna Reed Johnson
Supervisor	Sarah Henderson
Project Title	Explore the use of Cognitive Interview techniques with Vulnerable Witnesses in a court of law.
Course of Study	MSc. Applied Psychology, Module SSM 116
School/Department	School of Applied Social Studies

PART 1: DESCRIPTIVE QUESTIONS

		Ye s	No
1.	Does the research involve, or does information in the research relate to: [see Guidance Note 1]		
	(a) individual human subjects	x	
	(b) groups (e.g. families, communities, crowds)	x	
	(c) organisations		x
	(d) animals?		x

	(e) genetically-modified organisms www.rgu.ac.uk/hr/healthsafety/page.cfm?pge=26027#122628		x
Please provide further details:			
The research will involve the interviewing of psychiatrist/psychologists and Lawyers involved in supporting or working with Vulnerable Witnesses in a court of law.			
2.	Will the research deal with information which is private or confidential? [see Guidance Note 2]	Yes	No
		X	
Please provide further details:			
<p>There may be some reference to individual clients when the interviewee is describing specific cases in making their claims during interviews. In these cases, pseudonyms will be used in the transcript. Whilst confidentiality in these professions (psychology psychiatry and law) is integral, they have been asked to provide specific examples. Where examples are provided it will be made clear to not use names or examples where individuals could be identified. The interviewees will also be asked to not draw on specific examples where the specific clients could be identified even with the use of pseudonyms in the transcript. As the research outputs for this research are for the purposes of this MSc dissertation, the chances of this will also be minimise. However, should any part of the dissertation be used in a publication in the future, further permission will be sought from the interviewees.</p> <p>Before the interview the participant will have been informed of their rights, and that if they are not comfortable in answering a question then they do not have to.</p> <p>See consent: the right to withdraw will be clearly explained to the participant. All data will be properly destroyed in line with University and BPS requirements within two years of completion.</p>			

PART 2: THE IMPACT OF THE RESEARCH

3.	In the process of doing the research, is there any potential for harm to be done to, or costs to be imposed on: [see Guidance Note 3(i)]	Yes	No
	(a) research participants?		x
	(b) research subjects? [see Guidance Note 3(ii)]		x
	(c) you, as the researcher?		x
	(d) third parties? [see Guidance Note 3(iii)]		x

	Please state what you believe are the implications of the research:		
	This research will explore ways and gain insights into how Vulnerable Witnesses may be and are supported in a court of law.		
4.	When the research is complete, could negative consequences follow:	Yes	No
	(a) for research subjects		x
	(b) or elsewhere? [see Guidance Note 4]		x
	Please state what you believe are the consequences of the research:		
	The consequences of the research should be positive as it will provide insight into ways in which Vulnerable Witnesses are or should be supported in a court of law. This research can contribute to further research discussions and information for practitioners in the field.		

PART 3: ETHICAL PROCEDURES

5.	Does the research require informed consent or approval from: [see Guidance Note 5(i)]	Yes	No
	(a) research participants?	x	
	(b) research subjects? [see Guidance Note 5(ii)]		x
	(c) external bodies? [see Guidance Note 5(iii)]		x
	If you answered yes to any of the above, please explain your answer:		
	The research participants: Psychologists/ Psychiatrists and Lawyers, will all be provided with a participant information sheet and consent form before the study begins. This will be signed. After the interview the participants will be de-briefed.		
	The research participants will be recruited through a friend who is a psychiatrist working in the field. She will be initially approached for guidance on how to select/ who to select. Selection will be based on an opportunist sampling approach.		
	The participant will not be named. No data will be able to identify the individual. All computers where the data is stored will be kept safe, with personal secure sign in that is not accessible to anyone else.		
	Interviews will take place through emails/ online or at the		

participants place of work. The participants will all be reminded at the start of the processes and throughout their right to withdraw from the research before the cut-off state outlined in the consent form.

6.	Are there reasons why research subjects may need safeguards or protection? [see Guidance Note 6]	Yes	No
			x
If you answered yes to the above, please state the reasons and indicate the measures to be taken to address them:			
N/A			
7.	Does the research involve any “regulated work with children” and/or “regulated work with protected adults”, therefore requiring membership of the <i>Protecting Vulnerable Groups (PVG) Scheme</i> ? [see Guidance Note 7]	Yes	No
			x
[Please note: if the research potentially involves “regulated work”, this MUST be raised with your HR Business Partner immediately. In this instance, the Human Resources Department will conduct a detailed assessment and will confirm whether or not PVG Membership is required.]			
(a) PVG membership is not required.			
(b) PVG membership may be required for working with children.			
(c) PVG membership may be required for working with protected adults.			
(d) PVG membership may be required for working with both children and protected adults.			
If you answered yes to (b), (c) or (d) above, please give further information about the work you will be required to undertake and the nature of the contact with these groups. Please provide as much detail as possible:			
	Are you already a PVG member?	Yes	No
			x
If yes, please provide your PVG Scheme number:			

8.	Are specified procedures or safeguards required for recording, management, or storage of data? [see Guidance Note 8]	Yes	No
		s	
		x	
If you answered yes to any of the above, please give details:			
<p>The participants will not be named or identifiable. No data will be able to identify the individual. The consent forms will be stored separately to the data. So as to link the names of consent to the specific data, a colour coding system will be used so that any data can be withdrawn should the interviewee decide to withdraw at a later date.</p> <p>Once all transcriptions have been completed the audio recordings and emails will be destroyed.</p> <p>All computers where the data is stored will be kept safe, with personal secure sign in that is not accessible to anyone else. All data will be protected and properly destroyed in line with University and BPS requirements within two years of completion. All information that is collected from the individual during the course of the research will be kept strictly confidential. Any information about unnamed individuals which is used will have their personal details removed so that they cannot be recognised from it. All data will be stored, analysed and reported in accordance with the Data Protection Act 2018. Data will be retained for a maximum of 3 years in the event that any publications should arise from it. Thereafter all data will be destroyed securely.</p>			

PART 4: THE RESEARCH RELATIONSHIP

9.	Does the research require you to give or make undertakings to research participants or subjects about the use of data? [see Guidance Note 9]	Yes	No
		s	
			x
If you answered yes to the above, please outline the likely undertakings:			
N/A			

10.	Is the research likely to be affected by the relationship with a sponsor, funder or employer? [see Guidance Note 10]	Yes	No
			x
If you answered yes to the above, please identify how the research may be affected:			
N/A			

Part 5: Other Issues			
11.	Are there any other ethical issues not covered by this form which you believe you should raise?	Yes	No
			x
N/A			

Statement by Student			
I believe that the information I have given in this form is correct, and that I have addressed the ethical issues as fully as possible at this stage.			
Signature:	Jo Anna Reed Johnson (1807684)	Date:	18th May 2019

If any ethical issues arise during the course of the research, students should complete a further Student Project Ethical Review (SPER) form.

The *Research Ethics Policy* is available at www.rgu.ac.uk/research-ethics-policy

PART 6: TO BE COMPLETED BY THE SUPERVISOR			
12 •	Does the research have potentially negative implications for the University? [see Guidance Note 11]	Yes	No
			✓
If you answered yes to the above, please explain your answer: N/A			
13 •	Are any potential conflicts of interest likely to arise in the course of the research? [see Guidance Note 12]	Yes	No
			✓
If you answered yes to the above, please identify the potential conflicts: N/A			
14 •	Are you satisfied that the student has engaged adequately with the ethical implications of the work? [see Guidance Note 13]	Yes	No
		✓	
If you answered no to the above, please identify the potential issues: N/A			
15 •	Appraisal: Please select one of the following		
	i. The research project should proceed in its present form – no further action is required	✓	
	ii. The research project requires ethical approval by the School Ethics Review Panel (SERP) (or equivalent)		
	iii. The research project requires ethical review by the University’s Research Ethics Sub-Committee		
	iv. The project needs to be returned to the student for modification prior to further action		

v. The research project requires ethical review by an external body (N.B. Question 5 above). If this applies, please give these details:	
Title of External Body providing ethical review	
Address of External Body	
Anticipated date when External Body may consider project	

AFFIRMATION BY SUPERVISOR

I have read the student's responses and have discussed ethical issues arising with the student. I can confirm that, to the best of my understanding, the information presented by the student is correct and appropriate to allow an informed Judgement on whether further ethical approval is required.

Signature:	Sarah Henderson	Date:	23/05/19
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Appendix 10: Dissertation Safety Protocol



Dissertation Safety protocol

It is expected that

- a) all my research will be carried out on RGU premises
- b) the majority of research will be carried out on RGU premises, however, there may be situations where I will have to travel out with the university in order to carry out the research
- c) the majority of research will be conducted out with the university

Please Tick as appropriate

Should I conduct research out with the university; the following rules will be adhered to:

I will make a note of the appointment time and date, and give full information about the individual being interviewed (i.e. name, address and contact telephone number) and a **personal contact telephone No.** (i.e. my mobile No., phone No. of organisation/school etc) to **my dissertation supervisor and spouse.** My supervisor and spouse will also be told at what time the appointment is expected to end.

Participants will be phoned prior to the appointment to confirm details.

I will have my mobile phone with me at all times, and will be contactable by this when I am out with university premises.

If I am unhappy about an interview or a participant I will LEAVE IMMEDIATELY and contact my supervisor.

If I am interviewing by Skype, I will create an anonymous account and not use my personal Skype Account.

Student Name 1807684 – Jo Anna Reed Johnson

Signed Jo Anna Reed Johnson

Appendix 11: Thematic Analysis



Interview Schedule: Participant 2

1807684

Exploring the use of the Cognitive Interview technique in questioning vulnerable (adult) witnesses in preparation for a court of law

13 June 2019

Key Themes:

- Training
- Understanding the complex process
- Understanding the variations across regions of the UK
- Challenges
 - What is meant by 'significant' detail?
 - RI Support Network
 - Role of Lawyers/ Barristers/ Judge
 - Time
- RI Role:
 - Facilitate communication
 - Clarify
 - Reduce ambiguity
 - Ensure VW has best opportunity to provide 'credible' evidence/statement
 - RI Role in Court
- Recognition for the huge progress

1. Have you experienced the use of the Cognitive Interviewing Technique when working with vulnerable adults? **YES as a Registered Intermediary**

Interviewee is to review APPENDIX 1 and 2 for the Geiselman & Fisher (2014) model.

Yes, I have seen this model before, but structured slightly differently.

2. What training have you undertaken, if any, that allows you to work with vulnerable adults?

I was trained with the Ministry of Justice through City Law School. Intermediaries come from all different backgrounds including social workers, teachers, nurses etc The majority are Speech and Language Therapists. I have a BSc in Psychology and an MSc in Forensic Psychology and worked as a trainee forensic psychologist in the Probation Service.

I work with those vulnerable adults who have mental health issues, personality disorders, have autistic spectrum disorder or have learning difficulties.

As registered intermediaries we are self-employed. The work is not predictable and we can be called on at the last minute. At the moment there has been a new batch of intermediaries trained and we are currently not getting as much work.

3. What training have you undertaken, if any, that allows you to use the Cognitive Interviewing process?

I don't do Cognitive Interviews myself. My knowledge of the Cognitive Interview comes through my Forensic Psychology MSc. I do however advise of how interviews should be carried out, having first assessed the witnesses communication needs and abilities.

4. Tell me about your experiences of working with vulnerable adults and/or the Cognitive Interviewing Technique? In particular, how does this feed into the court process?

I work as a Registered Intermediary for the Ministry of Justice. I work across 5 counties, Kent, Norfolk, Essex, Hertfordshire, Suffolk. I work with vulnerable adults that are categorised as mentally ill, having personality disorders, those with autistic spectrum disorder, and those with learning difficulties. Initially the police spot if a witness is 'vulnerable'. Some police are trained to do this, but the training and ability of the police varies greatly. Some are good and some are not so good. For example, in Norfolk, police use the ABLE's screening tool which was developed by registered intermediaries, to help them decide if an intermediary is required. This is not used in Essex for example.

EXAMPLE?

IF the police spot the witness as being vulnerable, which does not happen as often as it should, as I said the level of training is variable, then I will be called in to do an assessment. This assessment is then communicated to the police. The police invite me in to their interview so that I can make suggestions about the format of the interview and types of questioning techniques to use, depending on the needs of the witness. For a Vulnerable Witness the interview is video recorded (Achieving Best Evidence – ABE) but this does not always happen. It should, but it doesn't. If I am then called to court I may be allowed to attend and during those proceedings could call a halt, due to the witness needing a rest, or suggest a change in questioning. Again, this is up to the Judge as to how that proceeds.

In some cases, the VW is not identified by the police and then identified by the Crown Prosecution Service (CPS). I will then be called to assess them prior to the court proceedings and this could be in the morning of the court case being held in the afternoon but is usually a few weeks or months before. Depending on when I am called to the court, will depend on whether I can conduct a pre-trial visit with the VW or put in place special measures (such as screens or video links to the court room). This will also determine whether a witness gets the chance to do a 'memory refresh' which could be a re-watch of the initial video interview, or reading of the transcript. A ground rules hearing is always required where my recommendations are discussed and agreed upon or rejected.

During assessment I will make recommendations for questioning, such as cue Cards (who/what/where/when), use of time lines to help questions around chronology, the length of questions, what words should be used, how to phrase challenges, etc. I also suggest methods to help people manage their emotions, such as grounding techniques, how frequent breaks should be, whether special measures are required such as whether wigs and gowns should be word by Judge and counsel, how the person should take their oath, etc.

5. How do you feel about working with Vulnerable Witnesses (in a court of law)?

This is a challenging role but I do like the job. Vulnerable adults need the support of intermediaries as they can help them to communicate more effectively and minimise the trauma of the experience, as going to court is a very intimidating experience. However, whilst it is important to work with them in a court of law, this does not always happen. It is up to the Judge and Barrister as to whether they feel you are needed. The Barrister may believe that he/she has enough experience to handle this themselves but often they can end up in a complete mess. I just have to hope that they have read my assessment and take this into account when presenting their questions.

6. How well are vulnerable adults able to respond to questions using the CI Technique? What difference does it make compared to Standard Interviewing? (use an example to elaborate if that helps). REVIEW APPENDIX 1 & 2

The CI process works, but it is not always as rigid as this. In fact, I will sometimes say don't follow it. The open question is just too big. For example, people with autistic spectrum disorders may find it difficult to structure their response, knowing where to start to set the scene and what details to give. I may then suggest

that they start with a simpler question, such as "Who have you come to talk about today?" With smaller questions used to help guide them more if required e.g. "How to you know X? / what do they look like (sometimes this too needs to be broken down – what colour hair, height / skin colour? -

The thing is, I work across different areas and they all operate differently. Kent have a laminated prompt sheet which tells them to explain how much detail is required by talking about an object in the room such as a pen or tissue box. This then overloads the witness and they don't know how a description of a pen relates to what they want to report. They lose concentration, or provide lots of detail that is irrelevant which is difficult when the interview is supposed to be less than two hours

I have been in interviews where the police are too rigid in using the CI Process. They have been trained but are not able to digress. I will make suggestions but some are reluctant to change. The training is variable though.

7. What other types of support are available (including CI) to support Vulnerable Witnesses to be effective witnesses in a court of law (in your opinion)? Please provide an example if that helps.

Special Measures – video links to the court room, screens.

8. In our opinion, does the Cognitive Interviewing Technique lead to Vulnerable Adults being more credible witnesses in a court of law? Why is/ isn't that? Please provide an example if that helps.

Yes, but it is more effective if an intermediary works with them. This ensures the questions are phrased in the right way to support to enable them to explain what happened. They help the witness feel more secure. The court is an intimidating place for anyone. The intermediary guides them through the process.

Intermediaries also stop them being asked questions they can't answer, or would give an inaccurate response to. For example, I assessed a lady who had no concept of money so the Judge ruled she could not be asked how much was stolen. If she had of been asked, she would have given a financial response but it would have been misleading.

In an ABE recently, we used diagrams of intimate body parts to establish whether rape had actually taken place. If we had not done so, someone would have been wrongfully charged because she did not know how to verbalise which parts of her body had been penetrated.

9. Are there other things that should be considered when interviewing Vulnerable Witnesses in a court of law (what are they, why is that?)

When working with people with mental health issues, managing their emotions or their psychosis or drug addictions is important. If this is not done, the person cannot concentrate which may mean they cannot complete their evidence or give inaccurate evidence in order to get out of the situation as quickly as possible. Stopping cross-examination to take a break before someone dissociates and helping them to stay present is really important for them to be able to give their best evidence.

Ensuring they are not led in the responses by the tone or phrasing of the question – being vulnerable they are more likely to agree with those in authority.

Ensuring they understand the question – Barristers often use legalised, phrasing things or more complicated ways e.g. using tag questions (such as “You went to the shops, didn’t you?” instead of “Did you go to the shops?”). Phrased as a tag it is more difficult to understand and tends to suggest what the response should be.

The Advocates Gateway provides ‘toolkits’ which Barristers are encouraged to look at on line when preparing their questions.

10. What are the things that might block the use of the Cognitive Interview technique in a court of law with Vulnerable Witnesses?

CI are never used in a court of law – only during the police interview.

11. Do you believe Vulnerable Witnesses can offer credible witness statements? Why is that?

Yes! Their vulnerabilities may make it more difficult for the legal system to understand what has happened, but their evidence can make the difference between a case coming to court or not. For example, intermediaries have worked with toddlers who were able to give vital information in murder trials which led to convictions that would previously never have happened. More recently, they have helped people who can only communicate with their eyes to give evidence which previously would have been seen as too difficult to take to trial.

Exploring the use of the Cognitive Interview technique in questioning Vulnerable Witnesses in preparation for or in a court of law

26 June 2019

1. Have you experienced the use of the Cognitive Interviewing Technique when working with vulnerable people? **YES, I find this is most commonly used, yes.**

Interviewee is to review APPENDIX 1 and 2 for the Geiselman & Fisher (2014) model.

2. What training have you undertaken, if any, that allows you to work with vulnerable people? **My background is I am a speak and language therapist and then I have done Registered Intermediary training that is offered by the City Law School and approved by the Ministry of Justice.**

Do you have on going training? We have to submit CPD Logs every year and they that show keeping up, and they are scrutinised and if necessary erm... action could be taken to require extra training. And then there are voluntary things as well. So for example, I have done the working in family courts and I'm due to be working with defendants which of course comes outside the statutory intermediary scheme because that is, of course, it is only statutory for working with prosecution witnesses.

3. What training have you undertaken, if any, in supporting the use of the Cognitive Interviewing process?
Erm..., only in the training that we were delivered as RI's where we did role play and modelling and so on, but because it is always stressed very much that we are not actually interviewing as such...(gap) yes, we would have already have done an assessment of the communication so that we are aware of the communication needs of the witness, so it is very much, erm..., bearing in mind the role of the interviewer and what they need. It is a case of supporting the communication without over stepping the mark into introducing new material and so on, or leading the witness, so it is very much, yes adapting the communication so that the witness can answer without introducing, you know something outside of our role.

That must be quite challenging?

It is because obviously we are told, you know, it is always made very clear that the evidence is not for you that you are dealing

with the communication, but of course what is the witness trying to communicate. That is the evidence. So sometimes it does get, very close between the two. I try and make it clear, you know, that when I am intervening it is only on the basis of communication and clarification but it does get very near the mark sometimes.

4. Tell me about your experiences/role as an intermediary, of working with vulnerable people and/or use of the Cognitive Interviewing Technique? In particular, how does this feed into the court process?

Tell me from the beginning and initial contact

So, ideally and this doesn't always work from this, but ideally the police have a witness that has reported something and they have any suspicion that there are needs of any kind, they will contact the team and ask for an intermediary. The team have obviously got our details on a database, which defines what areas we work in, what areas of needs, geographical areas and so on and what age groups and then it is offered to us and we make contact with the police officer. So ideally we should be there from the beginning, before the police have done any formal interviewing, erm... but as I said it doesn't always work like this. So assuming an ideal case we would be, we would arrange an appointment for assessment and because I work with the older age groups I tend to do my interviews, my assessment and interviews in one day because I find that the witnesses want to get it over and done with, but best practice with younger children is to do this on separate days so that the child is not overloaded. So what I would do is then an assessment of communication and look at the different areas of communication that I feel is needed for the particular task they are going to be undergoing, in other words questioning erm... and then there would be a break. I would discuss with the police officer the needs and how we will structure questioning and it might be at that stage I will also say this will be overload for the witness and we need to make an appointment for a separate day. Erm... but all being well, if we will go on to the interview then, but it all depends on how much I am involved, erm... if the police officer has taken on board about questioning and is quite clued in then often I don't need to say anything at all because they are asking questions ... but then again if the witness is struggling then I have means of support and so on, erm... and I tend to consider myself as a third party, neutral so that I sit back and think before coming in, I didn't know anything about the incident, has the witness had it explained it in a way that is clear to me and I know what is going on, or is there a need for further questions to be asked. In which case we would have a break and I would say to the police officer, I'm not clear

on this and I'm not clear on that and so on... so it is sort of a dual role of yes, purely communication but also in making sure that generally the evidence can be understood.

Cognitive Interview: The police officer is using the Cognitive Interview (recap).

Is it used often, regularly – clarification sought

It is on the whole adhered to the most, what are we here to talk to about today and hopefully getting the free narrative account that gives rise to the further questions. I mean, sometimes the witness needs support to get started and might need a prompt, well, so for example, 'when I spoke to you last time you mentioned you have been to a party' or something like that. There might be a prompt but it is always trying to get that free narrative account and I find with police officers are quite loathed to go in with individual questions or have some information already, but with the police they prefer the free narrative to begin with.

Is this recorded?

Yes, with the VWs it is recorded, having said that it has not always happened with people I have worked with.

I remember one particular case where a witness had been particularly badly beaten up so an interview had been taken on a Saturday night in A&E erm... and as far as I understand. It was actually a good lesson to everybody, as she gave a statement and then I did an assessment of her and was absolutely, and a new officer in the case was absolutely amazed that her level of difficulty and sure enough, when we got to court I started to refresh the memory with her with her statement, and when I had read the first line she said, 'I never said that', and we had to actually re-write the whole statement in court. Erm... you know, the Judge insisted we went off to a separate room for a couple of hours and re-wrote it with actually my involvement and I was very loathed to because it is outside my role. But on the other hand he was quite concerned about her communication and being clear about she said. So I actually re-phrased the questions to her that the police had already asked but in a way that meant that she did not give such ambiguous answers. If I can give you an example, it started off with at the beginning of the statement, it said, 'I knew I was out on a Saturday night with X I knew X but we did not have a sexual relationship' and she said, 'I never said that, we had sex all the time but not that night'. And that was the level of difficulty she had understood something and answered and the police officer had written something down what she thought she was saying and between the two there was a whole chasm totally misrepresented.

RECAP – What happens after the police interview is recorded, what happens next?

Well from my point of view I then write, bearing in mind this might be different for someone who are working with young children and they do things on separate days. I also use the interview erm... as part of my assessment because it is one thing to assess somebody with material that I am giving to them to asking them for responds, but it is also very important to see what they do with their own experience recounting. So in actual fact after the interview is complete I then write my report. So I write a report of my assessment findings and also my comments on the ABE that has actually taken place as to how the witness handled it and the level of support that was needed and so on. And that all then becomes part of the case and there are recommendations in there for events at court and what the witness would need in way of support and recommendations for questioning and so on ... so that report will then stay with all the materials and when CPS get the case from the police for charging they should then refer to that and make sure we are available for the court process, the dates, and we are then with the witness. But obviously, when all being said and done whether the Judge decides whether an intermediary is allowed or not. But based on our recommendations erm... a Judge will normally allow. I have had one court case where the Judge has refused, and it was done by email so I wasn't there to justify why I was saying I should be there. But normally the Judge allows the intermediary and that being said, then there will be a ground rules hearing beforehand when we discuss without the witness being in court. We discuss how questions will be asked and so on and any special measures that will be needed and they should then, they will be adhered to, in the actual questioning and when the witness is in court.

Do you do a pre-visit to court?

I always like to do a pre-visit with the court, sometimes though, but it depends on different areas and how witness support and witness care overlap and just exactly, you know, how they see their role in the court

In some areas they are very efficient and they, it has happened that they have got my witness along to do a court without my being there, but if at all possible I like to be there. Erm... because, obviously, I know the witness needs and I know if they are just going to sit there and just nod as though they understand everything and come out immediately and say who are those 12 people? You know this is what happens all the time if we are not careful, it is the intermediary role to look at a witness, are they understanding what is happening, do they need to ask further questions but aren't going to. So I find that if we can be there it is very helpful, but also just the physical aspect of being able to

see the difference between a live link room and the witness box. It is very difficult to explain to a witness beforehand. That yes, you might think going into a separate room and not looking at everybody, just looking at a screen is the easiest, best option but do you realise they are going to be looking at your face on a big screen erm... and you know sometimes those things are not understood unless you are physically there erm... and I find that with most of my witnesses that once they are physically in the witness box, with that screen around them, they better understanding without any amount of explanation or diagrams.

Yes, it is difficult, and there are lots, I find the longer I do this, and there are various other concerns that I have they all stem from witnesses levels of difficulties, and it is very complex. I mean we have made a lot of huge progress but it is by no means without problems still. (GAP) it is very complex.

Also, I have had it a couple of times recently something else that concerns me quite a bit, is that erm... witnesses do not always realise that once they make a report to the police that sets the process off and running, and the trouble is they have had no support up to that point, and they start a process off and running and they don't actually understand always the consequences. And this is part of the unfairness of the system because you or I would be able to sort of think, "yeah well, if we go along and say that, that this is what we might have to do, and that might happen". But I had a case, quite recently, with a severely autistic young boy who was talking about a family member, it was actually a grandfather for example, and came out well it this young man had no concept of what would actually happen after the investigation if his man was actually found guilty erm... and in the process we realised his mother didn't even realise, who was quite an intelligent women and she thought he would get some kind of therapy, and I suddenly felt really quite uncomfortable about whether these people they were going into a system that they didn't quite understand, but they had set the whole process off and erm... as I say it is outside the role of the intermediary and I am only thinking this as someone who works in the area but thinking it is quite difficult actually because once that is running and they might never have wanted to happen once it happens. But it just seems to be there is no stopping it, as once there is an offence you know, it all stems back to the vulnerability and level of understanding and our system is still so complex and I think it takes quite a bit of understanding from those with over average cognitive ability.

5. How do you feel about working with Vulnerable Witnesses (both in and out of a court of law)?

How important is your role?

It is very important, you only see the relief when they come out, or the family saying they couldn't have done it without you. The fact there is a physical presence by their side. And yes, just sometimes intervening I have had situations where defence counsel have said to me when I am starting to intervene, say, 'your witness is answering', and I have had to say, 'But I am not confident that they are answering the question that you asked because it is open to interpretation' I you know it is open to interpretation so there is erm... this thing like that where it could easily be taken either way. And I have had family members saying afterwards and they might not get the verdict, that it has all been made easier but they feel that it has all been made easier and the story has been heard, I shouldn't say story, the account has been heard, and everything that was being done has been done.

Having said that it is very difficult to explain to erm... a VW just exactly what the 'burden of proof' means and just because you got a 'not guilty' verdict that it doesn't mean to say that people don't think it happened, or they don't believe you or they are saying you are lying and that is very hard for people to understand. You know, as they have told you they have given an account and they know it happened and now suddenly after all this time, it might be two years, you know and erm... then somebody turns round and says not guilty and that is very hard to explain.

So in your role do you do that?

Yes, we try and explain in fact, I will try and explain that way before we get to that stage, so when they know they are going to court, that when they know they are giving an account they know that the Judge is there, that they are to ensure that everything runs correctly, but that those people those 12 people are the ones who are listening and that they are just ordinary people and that they are going to be listening and they have to decide, erm... and you know sometimes it is like anything else they agree with you and other times they, 'think oh I am not quite sure'. And they we try and make clear that if there is any suggestion that they are not sure they are going to have to say not guilty. But that doesn't mean it didn't happen, or, so hopefully we prepare them.

Clarification sought:

The role of the intermediary came into effect with the: The Youth Justice Criminal Education Act 1999 it came into effect to have an intermediary. The Registered Intermediary we quote that Act.

6. How well are vulnerable people able to respond to questions using the CI Technique, in your opinion?

Erm... yes, I mean I feel it is good just to ask someone to give their own narrative account to begin with and so on. What I find difficult is that there isn't necessarily an appreciation of what is 'significant' in the same way, so you are asking someone to give an account and it is said to them and "I want this in as much detail as possible", and then we have the dreaded pen coming out and describing the pen, and this is the way the police officers do it and my heart sinks every time. Don't just tell me this is a pen, and it goes on and on and you can see the witness looking, thinking, "How on earth is this relevant?" And when it comes to it, in the interview, I am often quite surprised by what will come out or what is said. For example, I think it was the second or third time of interviewing a young, I think he was about 13 this boy, and I think it might have been the second or the third interview and he was talking about something and he was quite consistent and repeating the same things, and he suddenly moved slightly and I stopped and I said to the police officer, "can I just check something?" and I said, "John, what did that mean?" and it turned out that the defendant had put his hands around his throat and held him against the wall. And he had never mentioned it, you know and to most of us that is something that is criminal and should be mentioned but obviously he was far more concerned with talking about some other things that had happened and didn't mention that and that is always what is difficult. You know it doesn't matter how much you say every bit of detail, there are things they think to talk about and things that they don't so erm...

How do you do that without directing them?

Exactly, exactly, but in that situation you know the intermediary deals with body language as well, and what did that sudden movement mean? It's like when the shoulders suddenly go down and the eyes look away and the intermediary will look at the reason, what is going on? There is another question that needs to be asked or something like this. But erm..., that somebody might not pick up on and just somebody who is so into communication and what words mean. Why did you use that word? Why did you use that word when most of us would use something different? Why did you use something different? You know, so it is just the whole communication process that just feeds into it.

Is the structure changed when you have the conversation with the police?

Erm... well I mean the process can be adapted, so for example we have taken interviews on laptops or selected mutism where they write everything down so we write everything and I repeat it, I mean even a witness who is embarrassed by using certain terminology, so I find they will write the word down and then I will take the piece of paper so, and it is all on camera so it can be seen, and I will read it out and then after a while they might look and think, oh God a woman of that age and she is saying all those words and then eventually they are saying all the words. So these sorts of things can be adapted, whatever needs the witness has. I find that the police will try that, and if they can't get a free narrative account they will try from what they already know. Sometimes it takes, they are obviously trained in a certain way, and some forces get very worried about how they do it, "oh we are not allowed to" and I would say, "well if you speak to XXX XXXX, if that is what the witness needs, that is what you do, you know and as long as we can justify adapting it then that is what we do." But I do find that some forces are quite rigid about certain things. So there is one force, so for example I like to use mannequins if we are describing things like movement, erm... or proximity of someone or arrangement of position or so on, erm... there are certain forces who say, "we are not allowed to use them", and I say, 'well I am not using them as evidence, we are not going to be pointing to body parts we are not going to do anything like that', but for communication it takes an awful lot of load off if you can just show somebody how somebody moved. So for example, I had a case where a boy was trying to describe, a young boy was trying to describe something that just did not work, he was showing just didn't work from the physical position of people until we gave him the mannequins and then what he showed us, he had described verbally as sitting on his lap, which of course the police officer and I have a picture of and what I would have verbalised it as, was 'straddled' but of course he didn't have that in his vocabulary. He just said I was sitting on his lap, but the whole point was we had them you know sort of back of head in front of face, whereas in fact straddled was face to face and then everything else worked then, so erm... yes, it is looking at those kind of things to support and so on. Talking about using support I haven't used a lot in court even though support may be used in interview, when it comes to going into court I haven't had to use mannequins, I might have asked if I could put post-its down on the front if there was remembering certain things if remembering something on three different occasions that the witness is talking about but if this it wasn't possible, I mean

ideally we would recommend keeping things in chronological order and keeping things that way, but if that wasn't possible at least if the witness has some visual clues but on the whole erm... I haven't taken much support in. In fact the only time I did have a witness who had had a stroke and when the defence counsel saw the beginning of the ABE and how much the witness had supported with number boards and letter boards they just said 'we don't want to question him'. You know so they obviously didn't want to go anywhere near um that a witness that required that level of support in court. (Clarification) Yes, I don't know why but I suspect they didn't feel comfortable for themselves, but you know we would like to be thinking it wasn't in the interest of the witness best interest, I don't know, I don't know.

7. What other types of support are available (excluding CI) to support Vulnerable Witnesses to be effective witnesses in a court of law (in your opinion)? Please provide an example if that helps.
Covered above
8. In our opinion, does the Cognitive Interviewing technique lead to vulnerable people being more credible witnesses in a court of law? Why is/ isn't that? Please provide an example if that helps.

Well they have done their interview, so I always think of the visual impact and so on. Now what is difficult in court is the questioning of a VW who has got no visual support, OK they have seen their recording again, but everything is abstract for them, you are being asked on something but you have no support there. Now I think it is very easy to get muddled or, so that is where the intermediary comes in. So I have had instances when the somebody has been talking about, two men in the house assaulted her, but she had been talking about walking beforehand and passing two men on the path and I had to intervene as they were asking about the two men. And I had to intervene and said, "can counsel clarify which two men they are talking about because we have had two lots of two men." Erm... it was and she was on her way to answering because she'd understood what she had thought, but it is important to know that even though we think that that is what is being meant, but we need to clarify what is being meant, as a simple question like that could lead to the downfall of the case, you know.

The police recording is for memory refresh – can it be used in the court?

It is used in the court and that is the whole point, it is one of the special measures so that recording is played erm... we usually insist our witnesses don't watch it at the same time as the jury, as that is too much stress. So what I try to do is, going back to your court familiarisation visit, I like to do that the week before the trial, and if possible link it up with the memory refreshing, and what happens for the memory refreshing is that the intermediary sits in and there has

to be a police officer there as well because, an intermediary is never alone with the witness in case they say anything that will then make us a witness. In case they say anything about the evidence we would then not be able to work with them as an RI. Erm... so I would need to be in there with the police, and at that time if the witness thinks of something else, or adds something or says something is not clear, then that has to be reported to the police who then have to send something into the court. OK.

It is very complex, and there is all these overlapping of roles, and we have to be really careful. I mean I have been called back into court and cross-examined by three Barristers just on my use of one word. Because it was I said 'discuss' and they tried to imply that I had been discussing the evidence. And I said, "no no no, I don't do that with the witness, we do talk about the ways a question was phrased and I used the word, 'we discussed'". And they tried to make out, because of course the whole case would have collapsed if they could have shown that I had been discussing the evidence, but you know, (intermediaries have to be) very careful.

9. Are there other things that should be considered when interviewing Vulnerable Witnesses in a court of law (what are they, why is that?)

Special measures, mannequins, are there other things in a court used?

Yes, there are loads of them, and you will hear a lot when you talk to people who are working with children.

I mean I have sat in the witness box with a 30 year old autistic girl with a big Tinkerbelle sitting on her lap because that is what she needed, you know, fiddle toys and things like that. You would obviously ask for permission before hand of the Judge and say this witness needs some stress toy or whatever, erm... there are instances with children sitting under blankets, somebody coming in with a lions tail on, erm... you know whatever is needed in court. You know there is a lot of talk at the moment, there is a lot of talk about section 28 roll out, where they are actually talking about intermediaries asking questions but recording the whole cross examination but it should taken place earlier on. Somebody else will be able to put you clear on that because it is only available at the moment in certain courts there is a roll out that has been held up. But somebody else will be able to tell you about that but the special measures involved erm... obviously a lot of them a lot more of them are for children, but certainly for adults as well, if I, you know, I would make sure something is in my report erm... and so that I can justify it and then request it at the ground rules hearing if that is what was needed. You know, so for example, I did get clearance for Tinkerbelle. But

sometimes Judges don't understand erm... I have been told very sharply when I was in a live link room, 'let go of the witnesses hand Mrs XXX ` and in that situation you don't answer, you just do as your told. But the point was, that the witness who is sitting by my side, I can hear her level of breathing, I can hear her hyperventilating and she is trembling, and I have applied pressure, and I am not actually holding her hand, I am leaning on her hand, which was on her knee and I am pressing on it because that grounding feeling you know of being able to regulate and so on, but of course that is not how it is interpreted. So it is interpreted that I am making physical contact with her. But erm... unfortunately I probably haven't spelt it out clearly enough. I have talked about her anxiety but it hadn't come out in the interview of course that this may be what would happen because the interview itself is not a stressful as the court process.

There are always things to be learned. So strictly speaking in a situation like that if you found something really pertinent you would have to ask for the jury to be dismissed and go into court to discuss it. Erm... but this was just a one off so Mrs XXX took her hand away and got herself a slap - -(giggle) yeah...

10. What are the things that might block the use of the Cognitive Interview technique in a court of law with Vulnerable Witnesses? Not relevant, but the questions I mean I am sure could do a whole thesis on questioning. A group of us get together and we discuss so say what questions did you get asked recently, what did you hear in court like, 'do you wish you didn't have autism?' I mean, really!

11. Do you believe Vulnerable Witnesses can offer credible witness statements? Why is that?

How often are VW identified at Police or CPS Stage – are the needs of the VW captured enough?

I have worked with over 400 erm... and I have only said that 2 I think or 3 of those did not require any help so that would suggest to me that, and even funnily enough this week, I have had a police officer apologising to me saying ' I think she is alright but someone did mentioned to me autistic spectrum or CAMS' and erm... and it was quite surprising and I wrote her a 5 line story intended for a 9-10 year old and she couldn't answer a question on it. And this is a girl who has just done her GCSE's and people think well, what is going on here, so she is obviously cognitively very able but you know it is, you have to be in the field to understand that you might be able to function on a daily basis and

so on, but that does not mean you don't have pockets and of course those pockets are going to be exposed in a court process.

Nobody wants to admit what they can't do so they are very good at covering up you know so and erm... some witnesses can be quite irate and I always try to explain my role that the police officers need help. Erm... but you know, they don't necessarily want to think, some will readily say, "Oh you know I am really pleased you are here", whilst others will say, "I don't really know why you're here", and you have to mask it somehow. But there is always the issue as well that is not a nice process and that nobody would want to go through, so actually it gets difficult when you work with somebody who what I would call fragile. And you know, but having said that most of us are robust enough that we can deal with the situation but if we think that they can't, but on the whole I would say the police underestimate than overestimate. With this girl that I said about that had done the statement, because she had been beaten up, I mean it is just a co.. A whole error after error it was just coincidence that these things had happened. It was a Saturday night when this had happened, it was a young officer who was sent out and confronted by a 30 year old in hospital with her face all smashed up erm... and he did what he thought he should do and he did his best. But evidently he said afterwards, that after 10 minutes he thought it was a bit odd but "I just pushed on". But of course, that is not, they are pressured to get something done straight away and as soon as possible after the event. But sometimes it can be counterproductive erm... and as luck would have it when I actually assessed that young woman, she was a 30 year old who had three children, all be it they had been taken away from her, but when I actually assessed her she didn't function at a 3.5 year level for some of my assessment. But she would have been a typical one, I'm fine, I'm fine... erm... Bravado.

Can VWs offer Credible statements?

Yes, with support and good planning yes, erm... and support and the necessary support and what the witness needs and yes. It is absolutely possible.

And if you are there as an intermediary your role in the court?

Yes, if an intermediary is needed. Well before hand it is obviously really important for the planning of the interview and erm... doing that in the best way possible so that you know it is not overlong and you are not going to lose the jury's attention. And if there is any support that the witness needs like such as visual cues, writing stuff down and timelines and so on, erm... and that forms yes, that is obviously what the jury sees at first and they see the person talk,

they see the person talking about what happened and ideally the targeted questions in court.

Have you ever had any feedback from Judge in Court?

Yes, I mean the Judges do say, funnily enough actually, I had a really nasty case when I had a complaint made against me and I had to go into court. It was a family member who they had totally been inappropriate in a public area in the court and I had to go back to the Judge and say you know I can't work with the witness on this basis and it was erm...m actually it was gratifying because prosecution counsel spoke on my behalf and even defence counsel spoke on my behalf and said I have actually learnt a lot from MRS xxx and I have sat here for a long time going through the questions with me and then the Judge said to me 'funnily enough Mrs xxx your name came up this morning when I was talking to another Judge'. So there was positive feedback about things that had happened, erm... I mean, that was really nasty and it turned out it was just abit of vindictive, there again not understanding the process, what had actually happened in the beginning was a police officer who had assured me she had worked with an intermediary but actually hadn't and had promised the family things that weren't deliverable. For example, that her sister could sit in with her when she does her statement, you know the things that aren't allowed in the court. Erm... and it was unfortunate, and that was the case in point that the initial interview had taken place without an intermediary, it had lasted 2 hours and was full of unclear statements and so on, you know, so that was a really good lesson for me for you know, maybe if it happened again I would want to re-tread and more or less try and start from the beginning again, but what I had done was try to pick up on what I had already got, and in actual fact, in fact the forensic psychologist had been involved as well, so she was also backing up, you know so she was supporting me as well. But in that situation it is a good learning process, because I think if that happened to be again I would back track to be more careful with my own role. I was busy thinking about what would happen with everybody else and making sure it was alright and in actual fact when it happens it is the intermediary who is on their own. You know the police have their people; the Lawyers have their people. Everybody has a sort of a team but the intermediary is on their own so is vulnerable. Erm... and that is what came out of that whole process. You know and it doesn't help that you are totally exonerated and everybody is written glowing reports on you, you have failed in some way because you know it is not nice.

12. What are the attitudes and experiences of other Lawyers/ Psychologists/ Psychiatrists who work with vulnerable people who act as witnesses in a court of law?

It is quite interesting, I have worked in some courts, I think it is in Guildford and with several female Barristers and its interesting, several of them have said they have got autistic children, I don't know if that is why they do what they do. Erm... anyway, that is interesting and they have obviously got insight to how it is done. I think the difficulty is with Lawyers there tends to be, I have done the course and I know what we are talking about and 'it is just like talking to children isn't it?' And there tends to be that attitude. I say tends to be, that is the negative you get but hopefully it is opening up a bit now and people are becoming a lot more aware but even relatively recently I have had a case where you know, the defence counsel was obviously very adversarial and refused prosecution council to allow to see any of the questions and he said, I have done the course and I know how to ask the questions and I have got children, and I know what to do and of course as soon as he started he was therefore not open to sort of real discussion with me about how we could do things and he unfortunately, the Judge, had said to me before hand this is a very complex case and therefore, I am going to allow his questions, and there were I can't remember, there were about a hundred questions and it was very difficult. But as soon as he started yeah, it took me about 5 hours to go over his questions and putting them in order and saying what should happen. In the event she, the witness was able to deal with them very well. It backfired, in the sense that because the batting order had been changed in the court, the case was delayed and I wouldn't have been available if they kept to the original batting order, so they put the witness cross examination first, so I went back into court to hear the psychologist being questioned, because I knew he was going to question our interpretation of our witnesses ability and I had to listen to him say finally to the psychologist erm... I suggest that you are making out this witness is far less able, that you were in court this morning when you heard me questioning her the intermediary didn't need to intervene once. And I thought that is really worrying because he stood in front of the jury implying she is far more able, no mention of 5 hours or amending questions, getting them in a state that she could deal with and it was all dismissed. You know, and it back fires because they then turn round and say the witness doesn't have the needs, and you know ... yeah, the psychologist was very good in that instance, as he kept trying to, she had done an assessment on suggestibility and so on and he was challenging her all the way along from his expert witness and she kept saying 'I am a forensic psychologist and you are dealing with a something or other psychologist, I don't know, so there was this discussion all the time about what was happening, she was very calm and held her corner. So it was good for me to see how she was challenged. But sometimes there

is just a feeling that any, erm..., anything will be latched on to if it wins the case. You know, this business that people are going to go in to court to get justice, or you are going to hear the truth, that is not what it is about, it is how you can win the case, so going back to getting me back into court and whether I had discussed, erm... you know I you can get the case thrown out on that basis, you know forget what happened, you know, and it just yes, it just seems wrong, but having said that I know you have to comply with the law. So it becomes difficult, I mean I find on whole, I am talking about Lawyers there. But you do get Judges who say, 'we are all trained to ask questions'. Erm... and then you know we will start off with something quite complex, you know.

Clarification - can the Barrister/ Lawyer say can go to court - no, they cannot, CPS takes the case ahead and say what is needed. So what I put on my report is that if special measures are going to be challenged then I am willing to attend a meeting. So and that hasn't happened as I say I have only been refused once and that was done by an email and everybody was quite irate and we think what happened was that the witness had actually previously been a defendant and was an ex-convict and the Judge more or less had decided what had happened you know there was some talk about drugs being involved, I don't know but it was disappointing because in my book he was quite clearly on the autistic spectrum and had quite a few difficulties and had been really badly injured and I think the charge was attempted murder and you know err if just seemed a bit odd to me. But in that situation if it had been a ground rules hearing then obviously I would have been able to rely on my evidence and suggest, but in the end it is the Judges court room and you know they make the decision but most Judges nowadays, there have been cases been appealed over the use of intermediaries so they don't want any appeals going through so they are usefully very careful. But sometimes attitudes come through but there is also, a phrase going around at the moment that Judges are supposed to be saying that 'well intermediary are all out to line their own pockets, you will never hear an intermediary saying they are not needed'. But the logic of that, well nobody has stopped to think, well of course not because you just don't get the cases through to a Judge to a court if an intermediary is not needed. There wouldn't be a report to write and there wouldn't be any involvement so it just seems sometimes, this also, I don't know how much you are doing about defendants and so on but there are issues with the extent to which defence intermediaries representing defendants can be there and how much of the trial they can be there for. So they are talking about, there are these attempts at the moment

for the intermediary to only be there whilst the defence is giving evidence. But of course an intermediary would turnaround and say but he has just as much right to understand what is going on throughout the whole process as a VW does you know.

Yes, it is interesting, but on that Qu 12, I mean from other professionals working with vulnerable people there are no difficulties, you are usually on the same sheet understanding their level of difficult and what you have found in their assessment and I will often find my psychologist report will come through, as they have been called in first, and you know the witness will need to be supported erm, assessed by an intermediary and conversely I have often said you know, you need more from this, you need more background, I am not an expert witness you will need to get a psychologist assessment in. But you know, other things and understanding and so on, but the difficulties is no there it is more with legal people who think that they know how it is done.

Exploring the use of the Cognitive Interview technique in questioning Vulnerable Witnesses in preparation for or in a court of law

15 July 2019

1. Have you experienced the use of the Cognitive Interviewing Technique when working with vulnerable people? **YES**

Interviewee is to review APPENDIX 1 and 2 for the Geiselman & Fisher (2014) model.

2. What training have you undertaken, if any, that allows you to work with vulnerable people?

Training – I had some training during my Forensic Psychology training back in 2003, I think it was. It was part of Forensic Psychology training, so I'd obviously also learnt about it the MSc which I completed in 2003. But as part of the training for Forensic Psychology when I was recruited in 2002 erm we had some intensive training too which was as part of the training as well from part of the probation service. It was pre the formulation of that model – it was based on the early working of the CI model which came in about in the 1980s. So yeah, it was based upon that model. It was the Free Recall bit that was particularly significant at the time and for us a psychologists learning about allowing the free recall of events.

From the probation service. So it was a long time ago. So really, It was prior to becoming part of the advice. It was a new thing. We learnt a lot about reframing the incident. So Erm, We would use a grid which doesn't come up in this current model. A re-framing grid to elicit more recall so what witnesses tend to do is focus on the weapon or focus on main erm threat in the situation. And we were taught to use an imaginary grid to help witnesses recall part of the scene that were outside of the central vision, more peripheral so you would ask a witness to look at the top right hand corner of the grid. There were a lot of techniques that don't come up in this model but they are quite complex ideas. They would be used by psychologists I would imagine still, but not by other interviews.

Also, at the time I did my training on the masters there were police also undertaking training at the same time so the police obviously saw it as important at the time.

3. What training have you undertaken, if any, in (supporting or) the use of the Cognitive Interviewing process?

Above

4. Tell me about your experiences/role of working with vulnerable people and/or the use of the Cognitive Interviewing Technique? In particular, how does this feed into the court process?

A massive variety. One to one with offenders, treatment targets, treatment programmes, CBT that kind of thing. Erm, and risk management, psychometric assessment, research, staff training... a whole variety of things.

Police interviews - no not police interviews, I present reports at court. Erm, in relation to sentencing but not involved with police. Standing with the probation officer, so it was support for the probation side of things. In between being found guilty and sentencing there is always a probation report sometimes a psychiatrist or psychologist report so and that would be my role.

Stood next to the probation officer having written a report and having to present that report in court. A probation psychologist. Writing all aspects, psychological aspects of the crime, whether there were any pre-disposing factors, erm, what happened, the anti-cendence to the crime, any you know circumstances in which I felt the person was vulnerable or you know credible or whatever, it was really.

The probation officer would form a report, I would form a report and we would put that report together. And I would represent probation with the probation officer. So it was also about resettlement and you know the life circumstances of the person. We weren't called upon to do it very often but it was certainly part of our role.

Is that with suspects,

Yes suspects rather than witnesses.

5. How do you feel about working with Vulnerable Witnesses (in and out of a court of law)? How important is your role?

How important was your role in supporting vulnerable people?

Very important, yeah suspect but again they are a witness as well, my role was not a punitive role in a way my role was maybe advocate between the probation officer and the court. It was

quite a complicated role. I was able to build a better relationship with the offender. The probation officer was seen as the punitive side of the writing of the report.

6. How well are vulnerable people able to respond to questions using the CI Technique, in your opinion?

How does the Free Recall help and benefit VW ?

Because there is a tendency, you know, If you remove the questioning at the stage then the witness has the ability to freely recall often with the VWs or child witness, and I have not experience interviewing children, there is a tendency to recall events in a really disorganised way instead of this happened at the beginning and this happened at the end. So the free recall allows the witness to literally you know tell the interviewer anything that comes to mind, any detail that comes to mind. It actually gives weight to the honesty and credibility of the testimony because it is free recall rather than a lead recall through questions.

7. What other types of support are available (excluding CI) to support Vulnerable Witnesses to be effective witnesses in a court of law (in your opinion)? Please provide an example if that helps.

Did every experience memory refresh in court?

Parts but not, erm I was at a trial where one of the witnesses was in protection so part of that testimony was played out because the witness couldn't speak, the were actually in court but were behind a screen. So I have seen trials where defendants have been presented through a link, CCTV link, in to the court room.

Do these measures support?

Yes, yes absolutely, I think that any way in which we can encourage testimony and you know reduce the stress and fear ... yes any opportunity to help, the person on trial it helps to reduce the level of threat, it reduces the costs for the court, there is a variety of benefits to not sticking to having everyone having to be present in the court at the same time.

8. In our opinion, does the Cognitive Interviewing technique lead to vulnerable people being more credible witnesses in a court of law? Why is/ isn't that? Please provide an example if that helps.

Do you feel that the CI helps V person be more credible?

Yes, absolutely because what you are removing is the potential for leading questions when the witness is recalling the events on the free narrative. You are removing the potential to be directed by somebody else in questions. Like I said earlier it is really important to allow that free narrative and for Vulnerable Witnesses because a credible account is usually very disorganised where as a very ordered

account tends to be somebody who has been prepared and that reduces the credibility of the testimony. If that makes sense/ I think the issue there is the cross- examination rather than the actual testimony. I think with anybody who is telling the truth erm, can be a helpful witness in court and where the challenge comes in court is the cross examination and the erm, aggressive way in which witnesses are cross examined and then that makes those witnesses look like they are lacking credibility and it then becomes a really traumatic and stressful process. SO I think it is not necessary that they are lacking in credibility it is the process of the stressful process that they are put through that erm starts to make them question themselves and starts to make their testimony less credible.

Traditional cross examination in a court room – people who are advocates of that don't like the recorded testimony because the cross examination isn't there so they don't feel they can prove if the witness is credible or not credible.

9. Are there other things that should be considered when interviewing Vulnerable Witnesses in a court of law (what are they, why is that?)
Above

10. What are the things that might block the use of the Cognitive Interview technique in a court of law with Vulnerable Witnesses?
n/a

11. Do you believe Vulnerable Witnesses can offer credible witness statements? Why is that?

Other involved in the process – how receptive are others?

I guess I am talking about 2002 and my current knowledge such measures I don't know but at the time, it was a time when psychologists were first being used in those circumstances. 2002 was the first time a psychologist had been employed. They had been employed in prison settings for quite some time, but they had not been employed in the UK in community settings so a lot of the ideas that psychologists and probation psychologists bringing forward were relatively new and on the few occasions when I in those circumstances the Judges were a little bit dismissive of probation and probation psychologists but I think that was the general tone of the court at that time anyway. Any other dealings I had were welcoming for more information.

12. What are the attitudes and experiences of other Lawyers/ Psychologists/ Psychiatrists who work with vulnerable people who act as witnesses in a court of law?

Other's understanding Yes, absolutely and anybody coming into a court of law has some level of vulnerability because it is such a stressful environment to be in , even for me going is as a psychologist, it wracks up the anxiety as you want to do the right thing, say the right thing and that sort of social and the impact of the environment with impact on everybody in the court room.. So I think ways in which we can mitigate that are all good.

Exploring the use of the Cognitive Interview technique in questioning Vulnerable Witnesses in preparation for or in a court of law

12 July 2019

1. Have you experienced the use of the Cognitive Interviewing Technique when working with vulnerable people? **YES**

Interviewee is to review APPENDIX 1 (I designed and developed Appendix 1 - I've been the author of ABE since 2007) and 2 for the Geiselman & Fisher (2014) model (I am familiar with most of the literature on the ECI).

2. What training have you undertaken, if any, that allows you to work with vulnerable people? The only interview training I have had relates to child abuse investigations in 1988. Since then I have written the national training curriculum and guidance for interviewing vulnerable adults and children. I am a chartered psychologist who has specialised in vulnerable child and adult witnesses for 30 years.
3. What training have you undertaken, if any, in (supporting or) the use of the Cognitive Interviewing process? I was trained to use the Cognitive Interview in 1994. I am familiar with most of the literature governing its use and have published papers with people who specialise in the field (notably, Becky Milne).
4. Tell me about your experiences/role of working with vulnerable people and/or the use of the Cognitive Interviewing Technique? In particular, how does this feed into the court process? My main experience is of working with vulnerable child and adult victims and witnesses. I have rarely used Cognitive Interview techniques with these witnesses. I have conducted and advised on countless interviews with vulnerable people over that time. These witnesses have ranged from two and a half to one hundred and three years of age, have had mild to severe learning disabilities (not profound), been on various points of the autistic spectrum, had a variety of mental health issues and physical disorders (including only being able to eye-sign through an E-Trans frame). I have found that one of the greatest and most seriously underestimated challenges for an interviewer is the impact of trauma on the processes (flashbacks, avoidance, mutism, dissociation, negative thoughts including guilt & shame) and the product (attention

narrowing, fragmentary memories and impaired spatial & temporal processing) of the interview. For the most part, these interviews are played on video as evidence-in-chief. Things have worked well in those cases that get to court but it is sometimes difficult to get cases involving witnesses with very challenging communication needs to court in the absence of corroboration.

5. How do you feel about working with Vulnerable Witnesses (in and out of a court of law)? How important is your role? I'd like to think very important, though I'm not sure that everybody would agree, I am the National Vulnerable Witness Adviser.
6. How well are vulnerable people able to respond to questions using the CI Technique, in your opinion? It depends on the nature of the vulnerability. I have only used CI techniques, notably reinstatement of context, with older child witnesses. I have contemplated its use in some PTSD cases but think that the literature is a bit limited in that regard. I have not used it with witnesses with autism, moderate/severe learning disabilities or physical disabilities/disorders that have an impact on communication (e.g. dementia). I advised on a case in which the interviewers attempted to mentally reinstate the context with a witness who had a diagnosis of clinical depression but it proved impossible for the witness to focus sufficiently for the technique to work (my experience is that people with clinical depression struggle to maintain focus in general).
7. What other types of support are available (excluding CI) to support Vulnerable Witnesses to be effective witnesses in a court of law (in your opinion)? Please provide an example if that helps. In my experience, the most effective form of communication support for Vulnerable Witnesses during the interview and at court is the assistance of a Registered Intermediary in England, Wales and Northern Ireland (not available yet in Scotland but I am in dialogue with the Scottish Government over this).
8. In our opinion, does the Cognitive Interviewing technique lead to vulnerable people being more credible witnesses in a court of law? Why is/ isn't that? Please provide an example if that helps. Not necessarily. While the Cognitive Interview is an excellent investigative tool, anecdotal experience suggests that some Judges struggle to understand it and have been critical of context reinstatement techniques.

9. Are there other things that should be considered when interviewing Vulnerable Witnesses in a court of law (what are they, why is that?) **Communication aids as necessary (timelines, symbol boards, wooden figures etc.).**
10. What are the things that might block the use of the Cognitive Interview technique in a court of law with Vulnerable Witnesses? **Judges don't always understand context reinstatement, they are sometimes critical of interviewers who ask witnesses to close their eyes and focus and take the view that it confuses the jury. In essence, while the Cognitive Interview is an excellent investigative tool, some Judges have expressed views to the effect that it is a poor presentational device.**
11. Do you believe Vulnerable Witnesses can offer credible witness statements? Why is that? **Absolutely – based on experience**
12. What are the attitudes and experiences of other Lawyers/ Psychologists/ Psychiatrists who work with vulnerable people who act as witnesses in a court of law? **The attitudes of legal professionals is highly variable, from being incredibly helpful and willing to adapt to being totally resistant to changes their practices in any way to aid communication. The attitudes of psychologists and psychiatrists is generally helpful though some seem to go beyond their skill base.**

Questions when interview others involved in the process (not the Registered Intermediary):

13. What is your experience of working with a Registered Intermediary when working with vulnerable people in a court of law? (these further prompts may be used: what is their role; how used; when used; how does it support a more credible witness statement?) **I manage the Witness Intermediary Matching Service for England and Wales and regularly design and develop interview strategies and plans with interviewers and Registered Intermediaries. I have given expert evidence of the need for a Registered Intermediary in court where an intermediary was not used during an interview. I have written reports for the Procurator Fiscal justifying the use of professionals as unregistered intermediaries in Scotland.**

Glossary

Achieving Best Evidence (ABE) this is a requirement of

The **Cognitive Interview** (CI) is a method of **interviewing** eyewitnesses and victims about what they remember from a crime scene. Using four retrievals, the primary focus of the **Cognitive Interview** is to make witnesses and victims of a situation aware of all the events that transpired.

Conversation Management is a tool that is applicable to any investigative interviewing context. It combines empirical research findings in cognitive and social psychology and sociolinguistics, with research into reflective practice, skilled practitioner performance, counselling psychology and psychotherapy practice.

Hypnosis is the induction of a state of consciousness in which a person apparently loses the power of voluntary action and is highly responsive to suggestion or direction. Its use in therapy, typically to recover suppressed memories or to allow modification of behaviour, has been revived but is still controversial.

Judicial system - the system of law courts that administer justice and constitute the judicial branch of government. judicatory, judicature, judiciary. authorities, government, regime - the organization that is the governing authority of a political unit; "the government reduced taxes"; "the matter was referred to higher authorities".

Legislation is the process of making or enacting laws which are created collectively.

Memory refresh is the process of periodically reading information from an area of computer memory and immediately rewriting the read information to the same area without modification, for the purpose of preserving the information. <https://www.cps.gov.uk/legal-guidance/witness-statements-and-memory-refreshing>

The '**Memorandum of Good Practice** on Video Recorded Interviews with Child Witnesses for Criminal Proceedings' (**Home Office**/Department of Health) was published in **1992** to provide guidance to police officers and social workers responsible for undertaking video-recorded interviews with child victims or witnesses

PACE was developed in order to introduce stricter statutory controls over the acceptable conduct required of interviewers during

interviews. <http://www.hse.gov.uk/enforce/enforcementguide/investigation/witness-questioning.htm>

Prior to the introduction of the Police and Criminal Evidence Act 1984 ("PACE") and the related Codes of Practice, concerns existed about the potential for the police to force interviewees or suspects to confess to crimes they had not committed. Following the Guilford Four and the Birmingham Six appeals, evidence of such coercion, threats, and the alleged mistreatment of suspects emerged.

The **PEACE Model** of investigative **interviewing** was developed in the early 90s as a collaborative effort between law enforcement and psychologists in England and Wales. This **model** takes a conversational, non-confrontational approach to getting information from an investigation **interview** subject.

<https://www.app.college.police.uk/app-content/investigations/investigative-interviewing/>

In the **Reid and Associates technique**, **interrogation** is an accusatory process, in which the investigator tells the suspect that the results of the investigation clearly indicate that they did commit the crime in question. ... The **Reid technique** user's goal is to make the suspect gradually more comfortable with telling the truth.

Section 28 of the Youth Justice and Criminal Evidence Act (YJCEA) 1999 states that where a video recording is admitted as evidence in chief of a witness under section 27 of the YJCEA then a special measures direction may also provide for any video recorded cross-examination and re-examination of the witness to be admitted as well. As a pilot scheme, section 28 was brought into force on the 30th December 2013 at three court centres (Kingston-upon-Thames, Leeds and Liverpool) and s.28 has continued in force at those courts since then. In the pilot scheme, s.28 directions were only available in cases where a witness was eligible for special measures under s.16(1) YJCEA (eligible on grounds of age and incapacity not fear). The pilot schemes were considered to be a success by the Judges involved and the Ministry of Justice and in summer 2016 Mike Penning, then Justice Minister, announced that s.28 would be rolled out nationally. It is now reported that s.28 will be rolled out for s.16 (age and incapacity) witnesses by October/November 2017 and s.17 (fear and distress) witnesses by October/November 2018.¹ Training schemes for both the judiciary and Barristers in s.28 and the questioning of Vulnerable Witnesses generally are in full flow. It is expected that the completion of the Inns of Court College of Advocacy (ICCA) training course "Advocacy and the Vulnerable" will become mandatory for all Barristers who wish to practise in these types of cases.

Significant relates to the sufficiently great or important to be worthy of attention; noteworthy.

Special Measures

The Youth Justice and Criminal Evidence Act 1999 (YJCEA) introduced a range of measures that can be used to facilitate the gathering and giving of evidence by vulnerable and intimidated witnesses. The measures are collectively known as "special measures".

Special measures are a series of provisions that help vulnerable and intimidated witnesses give their best evidence in court and help to relieve some of the stress associated with giving evidence. Special measures apply to prosecution and defence witnesses, but not to the defendant and are subject to the discretion of the court.

Paragraph 2.21, Part B, of the [Code of Practice for Victims of Crime](#) (the Victims' Code) requires prosecutors to give early consideration to making a Special Measures application to the court, taking into account any views expressed by the victim. (See the [Code of Practice for Victims of Crime: CPS Legal Guidance](#).)

The Step-Wise Interview (Yuille, 1990) is an example of a technique that has been developed specifically for the investigative interviewing of children. The Step-Wise Interview Guideline for Child Interviews: The New Generation: (1) to minimize the impact of the investigation on the child; (2) to maximize the quality and quantity of information received from the witness; and (3) to protect the integrity of the investigative process.

Vulnerable Witness (VW) – sometimes referred to as Vulnerable Intimidated Witnesses (VIW). <https://www.cps.gov.uk/legal-guidance/special-measures>

Vulnerable Witnesses are defined by section 16 YJCEA as:

- All child witnesses (under 18); and
- Any witness whose quality of evidence is likely to be diminished because they:
 - are suffering from a mental disorder (as defined by the Mental Health Act 1983);
 - have a significant impairment of intelligence and social functioning; or
 - have a physical disability or are suffering from a physical disorder. Some disabilities are obvious, some are hidden. Witnesses may have a combination of disabilities. They may not wish to disclose the fact that they have a disability during initial and subsequent

needs assessments. Different witnesses on the autistic spectrum may have very different needs.

Intimidated witnesses are defined by section 17 YJCEA as those suffering from fear or distress in relation to testifying in the case. Complainants in sexual offences are defined by section 17(4) as automatically falling into this category unless they wish to opt out. Witnesses to certain offences involving guns and knives are similarly defined as automatically falling into this category unless they wish to opt out.