



ACPO Position Statement: The Presence of Supporters during Interviews with Witnesses

**National Investigative Interviewing
Strategic Steering Group (NISSG)**

THE PRESENCE OF SUPPORTERS DURING INTERVIEWS WITH WITNESSES

Introduction

The purpose of this position paper is to clarify the role of interview supporters for witnesses and to dispel the enduring myth that suggests that an appropriate adult is required during vulnerable witness interviews.

Background

Before the 1st April 2003 Code C of the Codes of Practice to the Police and Criminal Evidence Act 1984 (PACE) suggested that the presence of an appropriate adult was required during interviews with children and vulnerable adult witnesses. Specifically, paragraph 11.14 said:

A juvenile or a person who is mentally disordered or mentally handicapped, whether suspected or not, must not be interviewed or asked to provide or sign a written statement in the absence of an appropriate adult unless paragraph 11.1 or Annex C applies.

Over the years this paragraph led to a number of instances in which video-recorded interviews with child witnesses conducted in accordance with the *Memorandum of Good Practice on Video-Recorded Interviews for Child Witnesses in Criminal Proceedings* (Home Office 1992) were ruled to be inadmissible as a result of the absence of an appropriate adult even though there was no requirement in the *Memorandum of Good Practice* for one to be present. In response to this the ACPO portfolio holder for child abuse investigations of the day, Chief Constable Tony Butler of Gloucestershire, pressed the Home Office to clarify the rules around the presence of an appropriate adult during interviews with witnesses and this became more urgent as the provisions for video-recorded evidence-in-chief were extended to vulnerable adult witnesses in 2002.

The question of whether or not an appropriate adult should be present during interviews with witnesses was finally resolved when the revised PACE Codes of Practice were published on 1st April 2003. The paragraphs of Code C have been

re-numbered a little so that what used to be 11.14 became 11.15. The revised paragraph in the most recent edition (2008) of the Codes now says:

A juvenile or person who is mentally disordered or otherwise mentally vulnerable must not be interviewed regarding their involvement or suspected involvement in a criminal offence or offences, or asked to provide or sign a written statement under caution or record of interview, in the absence of the appropriate adult unless paragraphs 11.1, 11.18 to 11.20 apply. See Note 11C

The effect of this is that appropriate adults are no longer required in interviews with witnesses.

The ACPO Position

While appropriate adults are no longer required, witnesses who fall within the scope of the interview guidance that succeeded the *Memorandum of Good Practice, Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Using Special Measures* (Office for Criminal Justice Reform 2007) are entitled to an interview supporter if they want one. It is important to note that, unlike the *Memorandum of Good Practice, Achieving Best Evidence* refers to all investigative interviews with vulnerable, intimidated or significant witnesses they are recorded on video or not (Introduction, page 1, paragraph 1).

The role of an interview supporter is quite different to that of an appropriate adult. The role of an interviewer supporter is effectively defined by *Achieving Best Evidence* in the instructions that should be given to them as follows:

The supporter must be clearly instructed not to participate in the interview itself, whether by instructing or correcting the child, answering the interviewer's questions, head nodding or facial expressions (paragraph 2.103).

Interview supporters must be clearly told that their role is limited to providing emotional support and that they must not prompt or speak for

the witness, especially on any matters relevant to the investigation (paragraph 3.124 and 4.75).

These extracts from *Achieving Best Evidence* suggest that the role of an interview supporter is a rather passive one confined to providing emotional support to the witness. In contrast, the role of an appropriate adult is far more active as suggested by the information that they should be given:

If an appropriate adult is present at an interview, they shall be informed:

- *they are not expected to act simply as an observer; and*
- *the purpose of their presence is to:*
 - *advise the person being interviewed;*
 - *observe whether the interview is being conducted properly and fairly;*
 - *facilitate communication with the person being interviewed.*

(Code C, paragraph 11.17 and Annex E).

Given that there is no role for an appropriate adult in a witness interview, there is a risk that the witness's evidence may be ruled inadmissible where a third party present during an interview with a witness behaves in manner more consistent with the role of an appropriate adult than an interview supporter and interrupts the interview process.

The presence of an interview supporter is optional and there is no requirement in *Achieving Best Evidence* to inform witnesses as a matter of routine of their entitlement to one. It is rather a matter of common sense, where the witness may benefit from the presence of an interview supporter such as may be the case if they are young, disabled or very distressed it may be appropriate to solicit their views or those of their carers as to the presence of an interview supporter.

It is important to preserve a degree of independence from the investigation when considering who might fulfil the role of an interview supporter. Other witnesses in the case, including those giving evidence of an early complaint, cannot act as interview supporters. Interpreters and intermediaries should also

not act as supporters; these different functions should not be vested in one person.

Acknowledgement

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