

Derbyshire County Council Social Services

Derbyshire Constabulary

Derbyshire Mental Health Services NHS Trust

VULNERABLE WITNESS PROTOCOL

Adults (Aged 18 Years Or Over)

June 2004

JOINT VULNERABLE WITNESS PROTOCOL (ADULTS AGED 18 OR OVER)

1. INTRODUCTION

This joint protocol concerns the co-ordination of police and social services/mental health services in preparation of video recorded evidence-in-chief obtained from vulnerable witnesses, implementing Section 27 of the Youth and Criminal Evidence Act 1999.

The protocol has been agreed by Derbyshire Constabulary, Derbyshire Social Services and Derbyshire Mental Health Services and endorsed by the Derby and Derbyshire Adult Protection Committee.

The Derby and Derbyshire Adult Protection Committee has the responsibility for the monitoring of the operation of the protocol and its review.

Interagency issues, concerning the operation of this protocol that cannot be resolved locally should be referred to the lead officer for adult protection for the agency concerned.

It replaces the Derbyshire Social Services Vulnerable Witness Protocol (2002).

2. BACKGROUND

The Youth and Criminal Evidence Act 1999 provides for special measures to enable vulnerable and intimidated witnesses (both children and adults) to give their best evidence in criminal proceedings.

It originates from previous practice guidelines: "Memorandum of Good Practice on Video Recorded Interviews" (1992) regarding video recorded evidence in chief provided by children and "Speaking up for Justice" (1998)

The procedure includes preparation and planning of interviews, decisions concerning the interview, preparation for court and any subsequent court appearance.

It applies to prosecution and defence witnesses. Special measures do not apply to suspects.

Parts of the Act, where indicated below, have yet to be implemented with no date currently set. This protocol will be updated once more information is available.

The Act provides the following range of 'Special Measures' subject to the permission of the Court: -

- ❑ **Screens** to protect the witness from seeing the accused whilst giving evidence (S 23).
- ❑ **Giving evidence by live video link.** The witness may be either accommodated within the court building or elsewhere (S 24).
- ❑ **Giving evidence in private.** Exclusion from the court of members of the public and the press (except for one named person to represent the press) will be considered in cases involving sexual offences or intimidation. (S 25).
- ❑ **Removal of wigs and gowns** by judges and barristers may be allowed. (S26).
- ❑ **Video recorded evidence-in-chief** obtained from the victim or witness prior to the case, may be admitted by the court. (S 27).
- ❑ **Video recorded cross-examination or re-examination** may also be considered admissible if the witness has already been permitted to give their evidence "in chief" on video prior to the hearing (S28).
- ❑ **Examination of witness through an intermediary.** (Not yet implemented) An intermediary may be sought by the police to assist the witness to give their evidence. An intermediary may also be appointed by the court to assist the witness to give their evidence at court. This measure is only available to witnesses who are eligible for special measures on the grounds of age or incapacity (S 29).

- **Aids to communication** may be permitted to help the witness to give best evidence. This may be through the use of a communication aid or technique. This is provided so that the communication can be independently verified and understood by the court. This measure is only available to witnesses who are eligible for special measures on the grounds of age or incapacity (S 30).
- **Mandatory protection of complainant from cross-examination by the accused in person.** This prohibits an un-represented defendant charged with a sexual offence from cross-examining in person the complainant either in connection with that offence or in connection with any other offence with which the defendant is charged in the proceedings. (S 34).
- **Discretionary protection of witness from cross-examination by the accused in person.** This prohibits an un-represented defendant, charged with an offence other than sexual offences, from cross-examining a witness in person if the quality of evidence given by the witness on cross-examination is likely to be diminished by the cross-examination. The court must be satisfied that it would not be contrary to the interests of justice to prohibit the cross-examination (S 36).
- **Restriction on evidence or questions about complainant's sexual history.** The Act restricts the circumstances in which the defendant charged with a sexual offence can bring evidence about the sexual behaviour of a complainant (S 41).
- **Competence of Witnesses.** All persons are competent to give evidence provided they can understand questions put to them and give answers, which can be understood (S 53 and 54).
- **Giving Sworn or Unsworn Evidence.** A witness may not be sworn unless he/she has attained the age of 14 years and has sufficient understanding of the solemnity of the occasions and of the particular responsibility to tell the truth which is involved in taking the oath. A witness providing evidence by video need not be sworn if they have instead demonstrated an understanding of the difference between a truth and a lie (S 55).

Social Support

Whilst social support is not specifically catered for in the Act, a vulnerable witness may receive it at all stages of the investigation. Three distinct roles for witness supporters have been identified and it is unlikely to be appropriate for the same person to be involved in all three. They are: -

- ▶ **The Interview Supporter** is someone independent of the police, who is not a party to the case being investigated and who sits on the original investigative interview; he/she may be a relative or friend provided they are not a party to the proceedings.
- ▶ **The pre-trial supporter** provides support to the witness in the period between the interview and the start of any trial; a Victim Support volunteer may well perform this role.

- ▶ **The court witness supporter** is a person who may be known to the witness but who is not a party to the proceedings and knows nothing of the case. He/she may have assisted in preparing the witness for their court appearance; a member of the Witness Service may well perform this role.

Role of Vulnerable Witness Interviewer

The vulnerable witness interviewer has a role distinct from social support.

The interviewer jointly interviews the witness with the police officer in preparation of evidence in chief by video. The interviewer has the specific responsibility to ensure the specific needs of the vulnerable witness concerning disability; ill health or communication is taken into account in engaging with the witness to gain best evidence.

The interviewers will normally be social workers/care managers or health care co-ordinators. They will have successfully completed the joint training provided with Derbyshire Police.

3. ADULT (AGED 18 YEARS OR OVER) WITNESSES ELIGIBLE FOR SPECIAL MEASURES

The Act defines a vulnerable witness , as a witness where the court considers the quality of evidence is likely to be diminished because the witness: -

- ▶ Suffers from mental disorder within the meaning of the Mental Health Act 1983.
- ▶ Otherwise has a significant impairment of intelligence and social functioning.
- ▶ Has a physical disability or a physical disorder (S 16.1(a) & 16.2).

When in doubt, the police officer should request an early assessment by an expert, such as a clinical psychologist, a speech language therapist, specialist social worker or psychiatrist.

- ▶ **The use of special measures will require the consent of the witness**

4. VIDEO INTERVIEWING

The witness should always be consulted about the method of giving evidence, as some witnesses and victims may prefer **NOT** to give evidence by way of video.

Where the Interview should be conducted

The location of the interview needs to be considered carefully. In all cases the video suite that is the most convenient to the witness should be utilised (including the person's own home) unless circumstances preclude this, e.g. the suite is in use or defective.

5. THE INTERVIEW

Planning

Planning is essential and will be reflected in the quality of the evidence and service to the witness.

Interviewers must allow time for planning meetings and the completion of the Derbyshire Witness Planning Discussion Notes (Form 798 – Derbyshire Constabulary Procedures).

6. JOINT PROTOCOL

Principles

- ▶ To promote and safeguard vulnerable witnesses to enable them to give their best evidence in criminal proceedings.
- ▶ To ascertain the wishes, views and needs of potential vulnerable witnesses.
- ▶ To ensure an effective, co-ordinated approach.
- ▶ To promote the exchange of information where it is in the interests of justice or the protection of children or vulnerable adults

Operation of Joint Protocol

- ▶ If an investigating Police Officer believes a witness may be considered under the terms of the Act, they will discuss this with the Duty Section Detective Inspector at the earliest opportunity.
- ▶ The Duty Section Detective Inspector will decide whether or not the witness may be eligible for special measures.
- ▶ The Police will contact Social Services/Mental Health Services via the Vulnerable Witness mobile telephone number (07909933054). The mobile telephone number will be diverted to a Service Manager within Social Services. This service is available between 9am and 5pm weekdays but also, in exceptional circumstances, between 10am and 5pm at weekends and on statutory and extra statutory holidays.

- ▶ The referring police officer and the Service Manager receiving the telephone call will agree whether joint action is appropriate. In reaching this decision they will consider:
 - (a) The nature of the incident
 - (b) The vulnerability of the victim/witness
- ▶ The Service Manager receiving the telephone call will:
 - Ensure any appropriate, relevant information, regarding the vulnerability of the witness is made known to the police.
 - In the case where the witness is already receiving assistance from Social Services/Mental Health Services, ensure that the responsible Social Services/Mental Health key worker is contacted to share information to ensure an effective interview. The key worker will not act as the vulnerable witness interviewer.
 - There will be exceptional circumstances when urgent joint action is required, but in most situations any joint action will be planned.
- ▶ If joint action is agreed then the Service Manager receiving the telephone call will allocate a trained vulnerable witness interviewer within Social Services/Mental Health Services in liaison with the line manager for the interviewer as appropriate.
- ▶ If joint action is not appropriate the Service Manager receiving the telephone call will complete a personal profile and send a copy to the Service Manager (Adult Protection/Domestic Abuse) detailing the reasons why joint action was not appropriate.
- ▶ The line manager for the vulnerable witness interviewer will retain management responsibility for the vulnerable witness interviewer throughout the intervention.
- ▶ On completion of the joint interview a copy of the completed personal profile will be provided to the Service Manager (Adult Protection/Domestic Abuse) in order to monitor the quality and volume of social services/mental health services intervention

7. RELATED POLICIES AND PROCEDURES

- Derbyshire Area Child Protection Procedures.
- Derby and Derbyshire Adult Protection Procedures.
- Derbyshire Social Services Domestic Abuse Manual.

Derbyshire County Council Social Services. Derbyshire
Constabulary. Derbyshire Mental Health Services NHS
Trust

Joint Protocol Vulnerable Witnesses (Adults Aged 18 or
Over)

Preparation of evidence in chief by video

Flow Chart

Witness identified as eligible for special measures and
agrees to video interview

Duty Section Detective Inspector agrees need for special
measures

Contact made with Social Services Service Manager via
telephone number 07909933054

Any joint action agreed.

Social Services/Mental Health Services interviewer
deployed

Copy of Personal Profile completed (whether or not joint
action agreed). Copy faxed to Service Manager (Adult
Protection)