



<u>Policy Title</u>	Vulnerable and Intimidated Witnesses
<u>CCMT Sponsor</u>	ACC Specialist Operations
<u>Department/Area</u>	Crime Support
<u>Section/Sector</u>	Force Crime Management Unit

1.0 Rationale

The aim of this policy is to provide guidance to police officers and police staff on how to deal with vulnerable and intimidated witnesses.

2.0 Intention

This policy prescribes that police officers and police staff comply with the provisions of Part II of the Youth Justice and Criminal Evidence Act 1999, which creates a range of special measures designed to assist vulnerable and intimidated witnesses to give their best evidence in criminal proceedings.

This policy does not deal with child protection procedures which are the subject of a separate policy. It does apply to children in relation to their eligibility for special measures.

3.0 General Principles

3.1 The intention of the policy is to ensure that:

- Officers and staff are aware of the special measures and the categories of witness they apply to
- They promptly identify witnesses who meet the criteria and take the appropriate action
- They follow the correct procedures for video-recorded interviews and special measures applications.

3.2 In particular it provides guidance on the implementation of the Home Office pilot for intermediaries (one of the special measures available to vulnerable witnesses).

3.3 Research shows that witnesses who are well supported throughout the investigation and court process are more likely and willing to give their best evidence and are more satisfied with the experience. The police have a duty of care towards witnesses which requires us to treat them with consideration. Research also shows that evidence gained

from witnesses with the assistance of special measures adds considerable value to an investigation.

4.0 Challenges and Representations

To:
Head of Crime Support
Thames Valley Police Headquarters
Oxford Road
Kidlington
OX5 2NX

5.0 Guidance, Procedures and Tactics

(i) The law

The procedures for dealing with vulnerable and intimidated witnesses are set out in the Youth Justice and Criminal Evidence Act 1999. Explanatory notes on key aspects of the Act are shown in Appendix A.

Special measures are introduced incrementally through Statutory Instruments and only come into use when the Secretary of State has informed the courts by letter. The Home Office publishes the latest availability in regular circulars. The latest information was published in Home Office Circular 38/2005.

(ii) Guidance

The main source of guidance on interviewing is found in the Home Office publication *Achieving best evidence in criminal proceedings: guidance for vulnerable or intimidated witnesses, including children* (2002), copies of which are available in police stations and from the Home Office:

www.homeoffice.gov.uk/justice/legalprocess/witnesses/index.html#witnesses. It replaces the memorandum of good practice for video interviewing children. This guidance is advisory but any significant departure from it may need to be justified in court. The guidance is currently being revised and is due to be published in 2006.

Further guidance on processes and procedures, including a flow chart, can be found at Appendix B.

A protocol between the Thames Valley Police and the Crown Prosecution Service (CPS) concerning special measures applications has been agreed. It contains information on early special measures meetings and can be seen at Appendix D

Further information can be found on the Intranet site, including frequently asked questions (link above).

(iii) The role of the Child Protection and Sexual Crimes Unit (CPSCU)

The CPSCU is responsible for the investigation of child sexual abuse and cruelty/neglect cases. It is not their responsibility to interview other vulnerable witnesses or investigate

adult protection cases although they should be able to assist with advice if it is required. This policy applies to the interview of children by the CPSCU in so far as they are always deemed vulnerable and should always be considered for special measures.

(iv) Training

Vulnerable and intimidated witness training forms part of the wider Association of Chief Police Officers (ACPO) Investigative Interviewing Strategy and reference should be made to this for further information (this document is not yet publicly available from ACPO).

Appropriately trained staff must conduct video-recorded interviews. There are three courses available:

- Child course (Tier 2) – one week
- Adult course (Tier 3) - two weeks
- Joint Investigation course – for child protection officers (Tier 3) – two weeks.

Courses are constantly under review to meet user needs and up-to-date information can be obtained from the investigative interviewing team at Training and Development.

Attending the child course does not preclude the interviewer from interviewing an adult or vice versa. The decision should be made on the basis of the interviewer's experience and on the individual.

Probationers will not normally be accepted onto the courses unless they can demonstrate competence to the investigative interviewing trainers to the required level.

Courses are always in short supply. All applicants must therefore be supported by their supervisor, with an undertaking that they will be released to conduct interviews when required. They must also be allowed to complete pre course work as required by Training and Development.

An E-learning package is now available for vulnerable and intimidated witnesses and also forms part of the E-learning package for No Witness No Justice. It is mandatory for all operational officers to complete this training and compliance will be monitored through the Training Prioritisation Board.

Training in this area is under review in the light of the demands of the Victims' Codes of Practice (October 2005).

Gateway Officers, usually Detective Inspectors and Chief Inspectors, approve applications by officers for special measures including video interviews (apart from child protection cases). Briefings for new Gateway Officers are available on request from the person responsible for this policy.

(v) Interpreters

A separate policy exists for the use of language interpreters, including sign language, as the procedures are separate from those for special.

(vi) Intermediaries

From 1 October 2004 the local criminal justice agencies in Thames Valley are taking part in a Home Office pilot for Section 29 of the Act – the use of intermediaries. Examination of a witness through an intermediary is the latest special measure to be made available. An intermediary is a registered professional who assists vulnerable witnesses including children with communication needs to give evidence during an investigation and at court.

A concise guide to the process is included at Appendix C and full guidance is available from the Vulnerable and Intimidated Witnesses Intranet site or from the Home Office.

A core group of interviewers/advisers have been briefed in the new procedures and will be available to assist with or give advice on intermediary interviews. Any costs incurred as a result will fall to the area or department requesting assistance. A list of such advisers is published on the Intranet site.

(vii) Significant or Key Witnesses

Separate procedures for the video recording of these witnesses are set out in the ACPO Murder Investigation Manual, on the Intranet site and at Appendix E. This is not publicly available. If a witness is also vulnerable consideration should be given to video recording their interview under the Youth Justice and Criminal Evidence Act 1999.

(viii) Technical Matters and Facilities

The Technical Support Unit (TSU) is responsible for the video recording equipment, which will meet the Criminal Justice System Equipment Specification. Interviews should take place in dedicated interview rooms because they are designed with vulnerable witnesses in mind and specific standards of technology are required. Mobile equipment is available for use outside these facilities. VIW interview rooms are the responsibility of BCUs.

(ix) Handling of tapes

This is documented at Appendix F.

(x) Witness Protection

Witness protection is co-ordinated through the Witness Protection Unit and the Detective Inspector Specialist Operations. These provisions are subject to separate policies and procedures.

(xi) Future developments

It is anticipated that in 2006 the remaining special measures will become available, notably video recorded evidence in chief for intimidated witnesses. Up to date information is published on the intranet site.

5.1 Remit to deliver the policy

The procedures shown at Appendix B apply to all officers and police staff who deal with victims and witnesses and in particular investigating officers, supervisors, gateway officers, interviewers, file quality managers, witness care units (WCU), trainers and senior investigating officers.

5.2 Remit for the management of the policy

This policy is the responsibility of the force lead for vulnerable and intimidated witnesses, DI Crime Investigation, Force Crime Management Unit.

6.0 Compliance and Certification

6.1 Human Rights Certification

(i) Legal Basis

Part II Youth Justice and Criminal Evidence Act 1999

Rules of Court – special measures applications: Statutory Instruments 1687 & 1688 2002 and 184 & 185 2004

Stated cases:

- R v. D 2002 (competence)
- Brooks v. Metropolitan Police Commissioner (2002) CA (duty of care towards witness)
- R v. Sed 2004 (availability of witness)
- R v. Brown 2004 (screens)

(ii) Human Rights Articles Engaged

Article 6 Right to a fair trial

Article 8 Right to privacy, family life, home and correspondence (positive obligation)

(iii) Prohibition of Discrimination

By engaging any of the aforementioned Articles there is potential to engage Article 14 Prohibition of Discrimination which provides that the enjoyment of rights and freedoms shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other social status. It is possible the provisions within the policy could be applied in a discriminatory manner.

6.2 Diversity Impact Assessment

This [policy has been assessed for its relevance to the six strands of Diversity and has been rated as “LOW” relevance.

6.3 Data Protection

It is recognised that much of the personal data gathered as a result of this policy may be ‘sensitive personal data’ as defined by the Data Protection Act 1998. All personal data processed as a result of this policy will be managed to ensure compliance with the principles of the Data Protection Act 1998.

6.4 Freedom of Information

This policy is not exempt under the Freedom of Information Act and will therefore be made publicly available on the Thames Valley Police Freedom of Information Internet site.

6.5 Protective Markings

This policy has been assessed against the requirements of the Government Protective Marking Scheme and does not need to be protectively marked.

6.6 Health & Safety at Work

Comprehensive advice, including risk assessment, can be found in the Home Office guidance Achieving Best Evidence in Criminal Proceedings: guidance for vulnerable and intimidated witnesses, including children.

Everyone dealing with a vulnerable and intimidated witness should be alert to the possibility that witnesses may suffer an adverse reaction due to the stress of their encounter with the police. This may include a violent reaction and everyone should be alert to this possibility.

This policy is to be read in conjunction with the Force Health and Safety Manual, which sets out the requirement for documented risk assessment by a competent person when exposure to a particular hazard arising from workplace or pre-planned policing work can be said to be reasonably foreseeable.

7.0 Communication

7.1 Links to the PNLD/other

Links are included within the body of the policy to the following relevant sites:

- HMSO
- Home Office

7.2 Communications strategy

This policy is of relevance to all staff and in particular Gateway Officers, trainers and interviewers. It will be published on the Policy Management Unit home page on the force Intranet. It will be linked to the Vulnerable and Intimidated Witnesses (VIW) Intranet site. It will be promoted on relevant courses, Gateway Officer briefings and through Force Weekly Orders/Managers' Briefing.

It has been promoted at the launch of the Home Office pilot intermediary scheme (October 2004).

A communication strategy for the public, including minority groups, will be developed and delivered through the wider Victim and Witness Delivery Plan.

8.0 Monitoring and Review

8.1 Links to Best Value/PPAF/corporate priorities/performance indicators

A prime intention of this policy is to support vulnerable and intimidated witnesses to give their best evidence in criminal proceedings. The successful implementation of this policy will have a beneficial effect on all investigation and victim related policies. As such it supports the force priorities of investigating crime and improving sanction detections.

This subject is not a specific force priority and there are no specific performance indicators. However the policy supports an objective in the **Force Strategic Plan 2005-2008** which aims to:

Provide an effective and timely response focused on the needs of the citizen.

The policy supports the **Quality of Service Commitment Implementation Plan 2005-2006**, including implementation of the Victims' Codes of Practice.

The policy supports the following objective in the **National Policing Plan 2005-2008**:

Provide a citizen focused police service which responds to the needs of communities and individuals, especially victims and witnesses, and inspires public confidence in the police, particularly among minority ethnic communities.

It forms part of the **National Criminal Justice Board vision** – Priority 5, to ensure vulnerable and intimidated witnesses' needs are met.

The policy supports two **public service agreements**:

- PSA target 3: Narrowing the justice gap and reduce ineffective trials*
- PSA target 4: Improve public confidence in the criminal justice system*

The subject forms part of the 2005 **HMIC Baseline Assessment** which will be subject to a Best Value Review in 2005/6.

8.2 Review Process

The use of special measures is monitored through the No Witness No Justice performance measures – identification of VIWs and the use of special measures.

There is a clear requirement for structured and regular reviews of this policy (Vilvarajah v UK 1991 14 ECHR 248). This policy will be reviewed on an annual basis.

The criteria for the policy review should take into account:

- ❑ Changes in domestic and European legislation
- ❑ Changes as the result of Home Office circulars and ACPO, Audit Commission and HMIC guidance
- ❑ Good practice in other forces/organisations
- ❑ Results of national, European and Strasbourg Court rulings (case law)
- ❑ Complaints received as a result of a policy (in conjunction with Professional Standards)
- ❑ Representations made by relevant bodies and persons (e.g. Race Equality Councils, local government and members of the public).
- ❑ Relevant Race Equality Data