

ANGUS CHILD PROTECTION COMMITTEE



CHILD INVESTIGATIVE INTERVIEWING

VISUAL RECORDING IN ANGUS PROTOCOL

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1. BACKGROUND

This document represents an updated version of a protocol which was formulated during November 2003 for the purpose of initiating visual recording of child investigative interviews conducted by Police Officers and Social Workers at the co-located Child Protection facility at Seymour Lodge, Dundee.

The justification for updating the document is based on the following points:

- The initial protocol document was designed to cover an initial data collection period of six months.
- The pilot has now been operating since late 2003 and account must be taken of features learned to ensure best possible practice prevails.
- The geographical context of the pilot has been extended to the co-located child protection facility operating in Arbroath.
- Draft National Good Practice Guidance on Visual Recording Joint Investigative Interviews with Children.

2. INTRODUCTION

This protocol document and the policies set out below are adopted by Tayside Police, Eastern Division; Angus Social Work and Health; The Crown Office and Procurator Fiscal Service, Angus and the Scottish Children's Reporter Administration, Arbroath. It is aimed primarily at social workers and police officers who carry out joint investigative interviews with children (aged under 16).

Once it has been decided that a Joint Investigative Interview is appropriate, all such interviews carried out by the Police and Social Work with children should be visually recorded. It may also be useful to consider recording interviews with people aged 16 or 17 years old who are subject to supervision requirements for the purposes of Children's Hearings proceedings.

An investigative interview is "a formal planned interview with a child, carried out by staff trained and competent to conduct it, for the purposes of gaining the child's account of events (if any) which require investigation" (Scottish Executive in Supporting Child Witnesses).

This protocol supplements the guidance contained in '*Guidance on Interviewing Child Witnesses in Scotland*' published by the Scottish Executive 2003.

This protocol is related to children up to the age of 16 years. The above mentioned guidance observes that the interview framework must be applied flexibly to meet the needs and profile of the particular child being interviewed.

3. USE OF VISUAL RECORDINGS IN LEGAL PROCEEDINGS

Visual recordings of interviews with children have been admissible in criminal court proceedings as prior statements for some time, under the Criminal Procedure (Scotland) Act 1995 as amended. In 1997 prior statements, including video recordings, were made admissible as part of evidence in chief, although the witness had to adopt the statement in court and children were subject to 'contemporary testing' to ensure they were able to do this truthfully (Scottish Office, 1997).

The Vulnerable Witnesses (Scotland) Act 2004 (VWA) came into force for children in April 2005 in respect of solemn cases and referrals from the Children's Hearings system to the sheriff. In April 2007 it will commence in relation to summary cases, increasing the possibility for reliable recordings of investigative interviews with children, conducted in line with good practice, to be used more widely throughout the criminal justice process.

The VWA extends the 1995 Act so that giving evidence in chief in the form of a visual recording is one of the 'special measures' introduced for children (under 16) who are witnesses in criminal proceedings. The VWA abolishes the need for adoption of the statement and the former competence test is also abolished.

The use of a visual record as evidence-in-chief is not a so-called 'standard special measure', so the court has discretion over its use. All special measure applications involve considerations regarding the child's views, and may require to consider risks of prejudice to the fairness of the trial or interests of justice. Nevertheless, if admitted, recorded evidence in chief may help to reduce the need for a child to re-tell their story in full in court, and also the time spent by the child giving evidence in court.

However, children will still need to be available to be cross-examined. While the Act is silent on this, this means that children may need to watch any recording during the court proceedings. The VWA permits 'standard' special measures for children when doing this, including the use of screens, supporters and CCTV links. Only in very restricted circumstances will the use of a standard special measure be refused. Moreover, as a general rule, children aged under 12 are to give evidence by TV link from a location away from the court building in certain cases, including offences of a sexual or violent nature.

'Refreshing' the witness by showing them a recording beforehand is not acceptable practice in Scotland, as it is in England and Wales.

Provisions in Scotland for taking evidence by a commissioner allow for a vulnerable witness or child's evidence to be taken before a commissioner and video-recorded, to be shown at trial. So far very little if any use of this measure has been made but guidance on using the special measures provisions of the VWA, including taking evidence by a commissioner, is available on the Executive website (Scottish Executive, 2006).

The High Court (Bonomo) Reforms, implemented in part by the Criminal Procedure (Amendment) (Scotland) Act 2004, mean that the Crown will provide details of all productions to the defence (see COPFS, 2004) and Crown practice has since been clarified by Privy Council to include full disclosure of police statements of all witnesses.

This means that defence agents are able to view any visual recording, if one has been made, at the procurator fiscal offices or another suitable location. The VWA also requires that any planned use of prior statements as evidence in chief must be indicated to the court and defence beforehand, in the child witness notice. As well as reducing the need for defence precognitions, there is a possibility that the viewing of good quality interviews may encourage early pleas.

Having a recording available helps the fiscal involved to decide if there is sufficient evidence for a prosecution. Viewing the recording helps them to prepare for any meeting with a child. Any meeting that does take place can concentrate on preparing a child for court or on additional questions that need answering, rather than the child repeating the whole account again.

Recordings may also be used in the children's hearing system. Reporters generally try to avoid citing or precognosing children where there is other evidence available. However, visual recordings hold particular potential for reporters, since except in cases where the child is alleged to have committed an

offence, the burden of proof is on the balance of probability and can include uncorroborated evidence, and hearsay. For this reason recordings may be of use in a range of civil proceedings, including referrals from Children's Hearings to the sheriff.

4. CRITERIA FOR CARRYING OUT INTERVIEWS

Only trained practitioners will conduct interviews carried out under the auspices of this protocol. '*Trained practitioners*' denotes a police officer or social worker who has successfully undertaken the recognised local joint investigative interview (JIIT) training course or the annual Forensic Interview Clinic at University of Dundee.

It is recognised that there will be occasions when such an interview requires to be undertaken out with the availability of '*trained practitioners*'. In such circumstances the interview will be recorded using contemporaneous notes.

All Joint Investigative Interviews must be visually recorded unless there are serious difficulties such as:

- The alleged offence involving video recording or photography which may be indicated by a child objecting to recording.
- Interviews having to take place on an emergency basis.
- Recording equipment is not available or able to be used.
- Unsuitable accommodation in which to carry out visual recording.

The above grounds are not exclusive and given the geographical environment of Angus, other instances might also arise. It must however be appreciated that the justification might later be the subject of sustained challenge in court proceedings.

When a Joint Investigative Interview is not visually recorded, the reason for not doing so must be recorded in case files and verified by an agency supervisor.

In these circumstances contemporaneous hand written verbatim notes must be taken as directed by existing interviewing guidance, or an audio recording may be accompanied by less detailed notes.

5. GUIDANCE TO INTERVIEWERS

The aim of this section is to provide day-to-day guidance for investigative interviewers themselves. It is intended as a flexible framework, since children and cases are individual.

It must be read in conjunction with the existing guidance on conducting investigative interviews with child witnesses especially *Guidance on interviewing child witnesses in Scotland* (Scottish Executive, 2003).

Using the process stages adopted in the interviewing guidance, the following guidance adds in the new parts of the process that relate to visual recording.

Paragraph numbers from the *Guidance on interviewing child witnesses in Scotland* are provided, for cross-reference.

6. INTERVIEW PLANNING

The decision to carry out a joint investigative interview with a child must only be made following initial referral discussions between appropriately trained Police, Social Work and Health staff and consideration of the wider investigative perspective.

Once the decision has been made to carry out such an interview, then there will be an initial referral discussion.

At the planning meeting, when the interviewers decide whether to conduct an interview jointly (para 18), they also need to confirm that this interview should be recorded.

The presumption is to record visually, but the points of planning (para 20) should now include whether any alleged abuse involved the use of video or cameras. This does not necessarily mean that recording is not possible. It does mean however that if the decision is taken to record, then a particularly sensitive approach to informing the parent and child and seeking assent will be necessary.

When the managers responsible for planning the enquiry decide who will conduct the interview (para 23), they have the option of deciding whether both interviewers will sit in the interview room, or whether one should sit in the control room observing and communicating using the technology (following guidance set out below).

Similarly, there is an option for the interviewers' managers to observe from the control room, not only to provide feedback, but to provide an overview related to the investigation. This may be useful if interviews with several different children are being carried out in relation to one investigation. Decisions about observers should be taken at the planning stage.

Part 5 of the *Guidance on interviewing child witnesses in Scotland* (on whether the child has any special needs) must be considered at this stage. These may include any disabilities, sensory impairments or illnesses that mean that the set up of the recording equipment or the interview room should be adapted. If communication boards are to be used, then these should be visible to the camera. If an interpreter is to be used, then it would be even more appropriate for the second interviewer to be sited in the control room.

If a child needs to lip read and may have to watch a recording later in court, then it is especially important to ensure that everyone's faces are clearly visible to the camera.

If there are accessibility issues, it may be more appropriate to take portable equipment elsewhere, instead of expecting the child to attend the suite. Any other requirements and special needs should be considered at this stage as a matter of course.

Apart from interpretation needs for children whose first language is not English, interviewers should consider whether there are any additional considerations for recording interviews with these children, pertaining to cultural practices.

When planning the location (para 25) and timing of the interview (para 27), the availability of the suite and/or recording unit must be considered.

Signals between the interviewers should be agreed beforehand, especially if an earpiece is to be used. These will allow communication between lead and second interviewer. Contingency plans in case of equipment failure should also be confirmed. More detailed guidance is provided below. The interview guidance is unchanged relating to the number and duration of interviews, other persons present, and non-disclosure.

The interview team, before carrying out the interview must have a clear as possible an understanding of the nature of the concern for the child, and how they will attend to the child's needs. They will also have a clear understanding of the purpose of the interview and how they intend to represent that purpose within the context of direct communication with the child.

If recording is to proceed, then before the interview starts the equipment must be turned on to check sound quality and camera views and focus. If an earpiece is being used, this should also be tested.

6.1 Preparing the parent/carer and child for the interview

The child should be informed of the intention to visually record the interview and allowed to express their views, so that their wishes are taken into account. This may be especially important if the alleged offence involved visual recording, but the investigating officers are not yet aware of this.

Parent(s) or an accompanying adult should be given clear information regarding the format and nature of the interview. In particular, they should be advised of the fact that a visual recording will be made and if necessary shown the equipment, which will be used.

Should a child, parent or accompanying adult express reservations regarding the interview being visually recorded, this will be taken into account in deciding whether to undertake such a procedure or not.

The child's parent or carer should be provided with a leaflet when the child arrives for interview, setting out clearly the uses to which a recording may be put, and the arrangements for keeping the recording safe. See Appendix 1. Investigators/interviewers must spend time with parents or carers going over the content of the leaflet, answering questions and clarifying any points raised.

When the child is ready for the interview, new DVDs should be unwrapped and inserted, along with new audiotapes.

6.2 Consent to visually record the interview

Consent is not legally required from parents or children before visually recording investigative interviews with children. Nor is consent legally required to use the recordings for purposes related to the investigation. These purposes include using the recording in peer review for professional development, and using the recording as a production in a trial. However, consent would be required if the recording was to be used for reasons unrelated to the investigation, for example in research, or in training.

Prior to the interview, written consent to review the visual recording of the interview will be sought from the parent / carer and the child (if they are of an age sufficient to understand the nature of the procedure). The form produced at appendix 2 will be utilised for this purpose.

Once consent has been sought, then an entry will be made in the interview logbook. A sequential reference number must be taken from this and allocated to the interview. Numbers must also be taken for those interviews for whatever reason is not to be visually recorded.

6.3 Conducting the interview

All interviews must be carried out in a way that takes account of best practice. This is informed by the *Guidance on interviewing child witnesses in Scotland*. This is not however explicit in the use of mechanical recording methods. As additional guidance therefore, the following should be observed.

The time and date, the personnel involved, the name and age of the child, the reason for the interview and the identities of anyone else present need to be recorded. These can either be stated by the interviewer before the child enters the room, or another possibility would be to use a document camera to record such information from a written sheet in the control room.

Where it is necessary to have a short break likely less than 15 minutes e.g. for toilet or refreshment purposes, the recorder should not be switched off. The lead interviewer must state the reasons for any interruption of what occurred during any interval(s) including all periods away from the interviewing facility.

Having drawing materials at a high table can help keep a child occupied in one place, but may also stop them looking up towards a camera. There is no accepted firm best practice on such matters, so this should be a local decision perhaps best left to interview planners' discretion. Any drawings produced or anatomical diagrams used during the interview must not only be retained, but also should be referred to by the lead interviewer and shown to the camera at the end.

Any written record including rough notes, drawing or other representations used during the interview must be lodged as productions and their integrity maintained in accordance with evidentially sound procedures.

Whether the second interviewer is in the interview room or control room, they should be monitoring the progress of the interview, not taking greatly detailed notes. They should note salient points only, which would include any disclosure made. The equipment can be considered reliable and making detailed notes somewhat defeats the object of visual recording. The spare audio unit, separate from the DVD unit, provides redundancy backup. The second interviewer's role is to devote attention to monitoring the progress of the interview, the child's reactions, and communicating to the lead interviewer any issues requiring follow up.

If the second interviewer has an issue that needs to be raised, this should be indicated to the lead interviewer using the previously agreed signal. This can be done by a physical signal if the second interviewer is in the interview room, or using a pre-agreed phrase if the second interviewer is communicating via an earpiece from the control room.

The interjections or suggestions made by the second interviewer (where communicating by ear-piece from the control room) should also be recorded as part of the visual/audio recording process. Where interviews are conducted in this way, at all times it should be ensured that the interjections of the second interviewer are properly recorded and available as part of the visual/audio record.

6.3.1 Interview debrief and next steps

The *Guidance on interviewing child witnesses in Scotland* (paras 107-110) on holding a debriefing session after the interview should be complied with. However, on completion of the interview, there will be two DVD recordings, two audio tapes, and a note of salient points or 'guide' to the full DVD recording, which the two interviewers should agree immediately afterwards. Any drawings made will also have been preserved, again as under the interviewing guidance.

Immediately following the interview, a check will be made that both sound and image quality has been suitably recorded. If that has not been the case, the interviewers will as soon as possible thereafter, utilising the rough notes made at the time, prepare a full interview record. This should be signed, timed and dated by both interviewers and submitted as a production.

Where the equipment has not functioned properly, the interviewers must ascertain whether this was due to operator error or faulty equipment. Whatever the case this should be recorded on the interview record. If the latter was the case, the equipment must be submitted to a recognised dealer. To ensure evidential integrity it might be the case that a verification statement will be required from the repairer to speak to the fault.

On completion of the interview, the interviewers, child (if of sufficient age and understanding) and parent (if present) should append their signatures and date

directly onto the face of both DVD's with an appropriate marker pen. This will ensure a corroborative audit trail to the effect that the DVD represents the medial on which the recording was made.

Decisions on further action with the case, and the need for further interviews, should be taken here.

The complete visual record provides an ideal opportunity for interviewers to assess their performance. This will not always be possible at the debriefing session, but it may be decided now that the interview should be reviewed later.

7. TRAINING AND CONTINUOUS PROFESSIONAL DEVELOPMENT

Joint Investigative Interviews are carried out by police officers and social workers. The decision on who should lead a given interview is for these professionals to take at the planning stage (as outlined in the interviewing guidance).

Both interviewers must have attended a local Joint Investigative Interviewing Training course. These are 5 day skills based courses that comply with the Association of Chief Police Officers in Scotland (ACPOS) and the Association of Directors of Social Work (ADSW) national training curriculum on Joint Investigative Interviews. Police forces in association with local authorities have responsibility for implementing these locally.

Additionally all will engage in an ongoing programme of continuous professional development. This programme will be discussed and developed by the regional child investigative interview co-ordinating group. Angus is represented on this group.

8. STORAGE OF AND ACCESS TO RECORDING MEDIA

8.1 Safe keeping of recordings

It is important that information on safe storage, retention and destruction is provided clearly to children and their parents or carers at the start of the interviewing process. This can be done by providing them with the leaflet on visual recording but also should be done verbally, so that clarification can be provided.

8.2 After the interview

The DVDs and audio tapes should be removed from the recording unit by the police interviewer, who must seal one copy of each (the master copy) with an evidence label (template provided in national protocol). The equipment has a unit capable of sealing DVDs. The other copy (the working copy) should also be clearly labelled.

The two DVDs and audio tapes must be assigned a unique interview recording number, which is also recorded in a central log, being the next number available in the log. This must be recorded on the evidence labels.

Interviews which are not visually recorded will still have audio recordings, but in any case all interviews should be recorded in the log, to show the methods of recording (visual, audio, written notes or all three).

One senior officer must be assigned responsibility for updating the recording log, allocating recording numbers, and allowing access to both the log and the recordings. This officer must agree all access requests to the DVDs or audio tapes, enable transfers according to the protocol, and ensure that officers use the log appropriately.

8.3 Storage

The responsibility for storing the DVDs, audio tapes and any transcripts made lies with the police, although recordings may be passed to other agencies in the course of an investigation or proceedings (see guidance below).

If there is to be no further action for the time being and no report is submitted in relation to the case, then the police must retain the master copy, the working copy and the audio tapes.

The recordings must be stored in a secure location. The storage must be lockable and access must be controlled and supervised at all times. Storage facilities should be maintained in such a way as to optimise the preservation of the quality of DVD/audio recordings.

DVDs have fewer storage issues than VHS video tapes, and their digital format allows more storage options. Written notes should never be inserted inside the sleeve however, in case paper or ink chemicals react with the DVD surface.

The audio tapes that are produced as backup will only be used if a transcription is requested, for example if the case proceeds to criminal court (see guidance below). They must be stored securely alongside the DVDs.

DVD and audio recordings might be transferred in due course to digital file format on secure server space, which could either be on a secure localised server at force level, or on a national server. This would reduce the space needed locally for storage, improve the security of recordings, and make collaborative co-operation, perhaps on historical abuse cases, possible. The National Steering Group will consider the feasibility of this and incorporate this and any other relevant issues into the national protocol.

8.4 Retention and destruction

Joint Investigative Interviews are means to evidencing child protection concerns or the need for child protection measures as well as obtaining criminal evidence. Retention rules should be in line with local authority procedures for child protection records. Child Protection records will be retained by Angus Council Social Work and health for 25 years after involvement with the family ceases.

ACPOS rules on Records Retention and Disposal currently categorise crime into 'standard' and 'serious' crime only, with retention periods for 6 and 12 years respectively¹. ACPOS rules do not yet take account of child protection issues that may be documented in family protection investigation files. If ACPOS rules are updated to address child protection records specifically, then the revised ACPOS rules should be followed.

When the physical DVDs and audio tapes are eventually disposed of, this must be by physical destruction (crushing or burning), not re-recording.

8.5 Copying and viewing

Access to DVD recordings will be strictly limited to authorised persons for the purpose of investigation, assessment, continuous professional development and furtherance of legal proceedings or research.

As a general rule, copies must not be made of the DVD recordings. If this is to be done it must be on cause shown, at the agreement of the senior police officer in charge of the recording log, and recorded in the log.

Viewing of the DVD should be arranged rather than making copies. This can be done at a police station, procurator fiscal (PF) offices or at the courthouse, depending on who has possession of the DVD/audio recording at the time. All viewing must be recorded in the master log.

Recordings must not be given or copied to defence agents or to others, but viewing arrangements must be made instead. Viewings should be recorded by the PF, to be later noted in the recording log.

8.6 Passing recordings between agencies

Guidance below outlines permissible uses for recordings. In all cases, when recordings are passed from the police to other agencies, this must be agreed with the senior officer responsible for the log and recorded in the log.

A form outlining the duty of secure maintenance should be signed by any person taking possession of the recording, as agreement to this (the NSG will draft a template for the national protocol).

The senior officer responsible for the log should note who has taken charge of the recording, for what purpose (for example, social work team for review) and the date when possession was taken. This means that the log will show, at a glance, where all recordings are, at all times.

In all cases, delivery of recordings must be by trusted hand, and not by commercial courier, mail or email.

¹ The definition of serious crime includes: murder, culpable homicide & drug related deaths; serious & series sexual offences; and serious violence.

The DVD then becomes held by the agency – COPFS, SCRA, or local authority social work department – who assumes the duty of secure maintenance of it. The PF may lodge recordings with the court, in which case SCS assumes the duty of secure maintenance. Requests by any other agencies including defence agents to possess recordings will not be met; viewing arrangements must be made instead.

Local agencies such as PF offices which frequently hold recordings should also consider nominating a senior member of staff to take responsibility for recordings, and may also maintain a recording log, to show which recordings are in their possession at a given time.

At the end of proceedings, all DVDs must be returned to the police for safe-keeping. The senior officer responsible for the log has responsibility for entering information to show when recordings have been returned, and noting whether they have been viewed by the defence, or used in court proceedings (guidance for PFs and children’s reporters on providing this information is given below).

The NSG will receive annual reports from the recording logs as a national monitoring instrument. Local steering groups should be responsible for collating and forwarding this information.

In ordinary circumstances there will be no need to create copies of disks. One exception however might be if, following case preparation and before presentation of evidence in court the Procurator Fiscal or Children’s Reporter requests an edited version. This might be required to screen out any agreed material relating to inadmissible charges etc.

8.7 Use of recordings by the Procurator Fiscal

If the police submit a standard prosecution report (SPR) to the PF in relation to the case, then the sealed master copy of the DVD recording should be also immediately lodged with the PF. This should be done whether or not it is anticipated that the recording may be used as a prior statement under the VWA. At the very least, any report to the PF must indicate whether a recording is available.

The police report passed to the PF must also include the note of salient points taken during the interview and agreed between the police officer and social worker following the interview. This may act as a ‘quick guide’ for the PF.

A transcription of the recording should not be made at this time (see guidance on transcription, below). The PF and/or their precognoscers should view the recording, to help them decide whether the evidence provides or adds to sufficiency for prosecution.

The PF may decide that they still need to precognosce the child, but if this is done then the recording will reduce the need to go over the entire evidence again. This precognition may be restricted instead to covering any additional points, and on preparing the child for court. Viewing the recording will also help

fiscals assess how to approach the child, their level of development, and the child's level/ability in communication.

If the case proceeds to trial and the intention is to use the recording, the recording will require to be lodged in evidence as a production by the PF with the court. If seeking use of a visual recording as evidence in chief, child witness notices should be lodged no later than 14 clear days before the preliminary hearing in the High Court, no later than 7 clear days before the first diet in the sheriff court, and no later than 14 clear days before the trial diet in any other case.

The safeguarding rules concerning transport and duty of secure maintenance apply to the court while the recording is lodged at the court. The PF is responsible for ensuring that the recording is returned to the police after use in court without unnecessary delay. They should note whether a recording has been viewed by the defence or used in court, so that this can be recorded by the police in the recording log when it is returned.

8.8 Viewing by the defence

The Crown has a duty to disclose all statements in full to the defence, covering all police statements, not just those lodged in evidence. This means that the Crown should allow the defence to view the recording at the PF offices. This must always be an unedited version.

Defence agents, their precognoscers or secretaries may view the recording at the PF office and take notes, but no full transcript will be available at this stage and they must not be allowed to borrow the recording. The defence should be allowed to view the recording more than once, as seems reasonable, and is allowed to make an audio recording rather than notes.

Similarly, the legal representatives of the parties to Children's Hearings proceedings, and any safeguarders or curators *ad litem* involved in Children's Hearings proceedings, should be allowed to view recordings under supervision.

Defence agents should view any recording before arranging for a precognition of the child witness, and should consider whether precognition is still necessary and appropriate in discussion with the fiscal. If there are only a few points still to clarify, this should be done during prosecution precognition. Fiscals have a crucial role in facilitating this.

Articles 11 and 13 of the Law Society's criminal code of conduct (Law Society of Scotland, undated) cover the handling of statements and precognition of young witnesses. Since the VWA, defendants in certain cases may not be unrepresented, so the question of unrepresented defendants gaining access to the recordings does not arise. It would not be appropriate to allow even an accompanied represented defendant to view a recording of a JII with a child, in advance of the trial. Instead, the defence agent should report back and clarify any points with their client after viewing the recording themselves.

If the defence agent decides to cite the recording as evidence, they should comply (as would the Crown) with the VWA requirements by using a child witness notice, and should also inform the court service through its Electronic Service Delivery Unit (ESDU - see paragraphs 182 and 183 below) that facilities will be required.

It is appropriate and desirable for police and social workers to use the recordings as a means of bringing new case workers up to date, especially if this will avoid the need for the child to be interviewed again. Any such use should be agreed with the officer in charge of the log, and also recorded in it.

8.9 Editing

The need for editing and transcription should not arise unless a case is proceeding to court. If it is anticipated that the recording will be shown in court, then the following practice should be adopted.

The prosecution and defence teams should convene to agree points of agreement, irrelevancy, hearsay, or unrelated charges that are not contentious and can be excluded. Once agreed, the working copy can be used to produce an edited version.

The need for editing is unlikely to arise in children's hearing court proceedings, but if editing is required then the approach outlined above should be adopted.

The police will use editing units along with the equipment that accords with national standards to edit DVDs.

While the length of the recording should be minimised (since the child will have to watch the recording before cross-examination), the edited version should retain some of the introductory and rapport stages. This helps a jury place the child and interview in context.

The master copy must be retained as a full version of the statement, in all cases.

9. TRANSCRIPTION

Transcription should not be carried out routinely. It is a very time consuming process that does not always result in an accurate record and cannot capture the full information contained in a visual recording.

Generally, the police have responsibility for transcribing witness statements and fiscals for transcribing statements by the accused. Equipment that conforms to national standards under this guidance has a separate unit that records to audio tape. This means that a transcription can be produced without the need to view the recording. Police officers should not be involved in producing handwritten notes for typists.

If the case is going to proceed to trial, then a full transcript will need to be lodged with the full master copy of the recording, before producing any edited versions of

the recording and transcript. It is useful for the Sheriff or Judge and jury members to have a transcription of the evidence to be presented. If the recording is edited, only the edited version of the transcript will be required for those who will view the recording.

There is always the possibility that a plea will be entered at a late stage. This means there is a balance of timing to be struck. If in doubt however, a transcription should be requested by the PF. Defence requests should also be made through the PF.

Reporters are better able to play the whole recording at proofs or referrals to the sheriff because of the different rules of evidence, and the child is less likely to be present to have to watch the entire recording. Therefore the need for transcription should be lower, and should be considered on an individual basis.

Maximising audio quality helps minimise the need for transcription. Any transcriptions made must be stored securely along with the DVDs and audio recordings, and are also subject to a duty of secure maintenance.

10. USING RECORDINGS IN COURT

Almost all Scottish courthouses have facilities to play DVDs, but not all courtrooms are permanently equipped and CCTV links and remote locations particularly may be limited. This means that facilities in effect need to be 'booked' and this is done through the Electronic Service Delivery Service Unit (ESDU) of the Scottish Courts Service (SCS).

The use of a visual recording as evidence-in-chief in criminal courts is a special measure under the VWA, and should be included in the child witness notice. Guidance on using the required child witness notice and informing ESDU is available on the SCS website.

The other special measures available under the VWA should not be overlooked for use when a child is watching the DVD and/or being cross-examined. These will also need to be entered on the child witness notice in advance.

'Refreshing' the witness by showing them the recording the day before the hearing is common practice in courts in England and Wales but is not permissible in Scottish courts. Under the VWA, if a previous statement is to be used as evidence in chief, there is no need for the witness to adopt the statement. However, the child will be asked to watch the recording, or an edited version, and this can help to 'refresh' the child on the day.

Admitting the recording as evidence in chief does not remove the requirement for the child to be available for cross examination unless there are exceptional circumstances (under section 259 of the 1995 Act). If a visual recording is to be played, then the Crown is aware of the possibility that a child witness's first experience of giving evidence might be cross examination by the defence. Therefore the prosecution may prepare the child witness by leading or clarifying part of their evidence.

A visual record of the interview lays the interviewer wider open to cross-examination than do written records. Interviewers should be prepared to defend their decisions during the interview, and the interviewing tactics used. This is an area that training can help address and giving evidence in court and being cross-examined is included in the national curriculum and advanced training.

In civil proceedings, visual recordings can be used as evidence because the use of hearsay evidence is permissible. They can be routinely used by the Children's Reporter for instance, as the main evidence in Children's Hearing court proceedings where the burden of proof is lower and evidence does not need to be corroborated,

As with use in criminal proceedings, planned use of special measures by the reporter should be intimated to the court in the child witness notice. Those intending to use recordings (for whatever authorised purpose) must check equipment availability with the court service beforehand.

11. TRANSPORTING INTERVIEW EQUIPMENT

The equipment located in the interview room can be readily packed into 3 boxes as shown opposite. Both the audio unit (top in picture opposite) and main recording unit (middle box) are already contained in fixed cases. All that is required is for the front and back panels to be fixed. They are then in secure and self contained case which might then be carried. The camera unit, connecting cables, remote control, camera tripod, DVD's, tapes and any documentation might then be secured within the third case.

APPENDIX1: Information Leaflet for parents and carers “About recording of interviews”

[About recording of interviews](#)

APPENDIX 2

VISUAL RECORDING OF INTERVIEW – REVIEW CONSENT FORM

The Police Officers and Social Workers who conduct joint visually recorded interviews with children in Angus are committed to achieving the best possible quality of interview.

In order to monitor and improve the quality of these interviews, arrangements have been made for the performance of interviewers to be reviewed and evaluated. This will involve the visual recordings, of the interview being viewed by a small group of other interviewers, researchers, a Children’s Reporter and a Procurator Fiscal. Transcripts of a small number of interviews will also be evaluated in detail to accurately assess the performance of the interviewers.

When reviewing and evaluating an interview the prime focus will be on the performance of the interviewer and this process will not have any impact upon the outcome of an investigation connected with the interview.

It would be greatly appreciated if the visual recording of the interview with your child could be used in the way described above. This will however only be done with your prior permission.

If you are prepared to allow the visual recording to be used in this programme to improve the quality of interviews with children carried out by Police Officers and Social Workers could you please sign the consent form below.

Name of child:

I agree to the visual recording of the interview with my son/daughter/ward carried out on (date) Being reviewed and evaluated in the manner described above.

Signed:

Witness:

Designation:

APPENDIX 3

The recording equipment.

The recording suite at Bellevue House, Arbroath consists of an interview room and adjacent monitor room.

The recording equipment within the interview room consists of the following:

- Main recording unit
- Audio recording unit
- Camera unit
- Microphone
- Rugby clock sensor
- Remote control for camera / Pan / Tilt / Zoom facility.

It is envisaged that the majority of interviews will be planned to take place within Bellevue. However, these items might be packed into readily available cases for transportation to another location in order to carry out the interview. It must however be stressed that serious consideration will have to be made before deciding if a particular location is suitable in terms of lighting quality, room size, background noise and security from interruption.

Within the monitor room, the following equipment is located:-

- Monitor screen
- Induction loop amplifier and microphone for communication between monitor room and interviewer wearing a covert earpiece.
- Editing suite
- DVD reviewing and transcription suite

It is not envisaged that any of this equipment will be moved from Bellevue.