



INVESTIGATIVE INTERVIEWS WITH CHILDREN



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Abstract: The aim of this article is to discuss different protocols and good police practices in some Member States in conducting investigative interviews with children. Issues that are enabling police to achieve higher evidential standards in child-abuse investigation/protection, both for victims and witnesses to perceived difficulties in securing witness/victim accounts are also discussed.

INTRODUCTION

From a police perspective, all forms of abuse and neglect (physical, emotional, sexual, educational and medical) committed against children are some of the most difficult, traumatic and most complex criminal offences to investigate to perceived difficulties in securing witness/victim accounts. Finkelhor and Omrod (2001) have affirmed that 90 % of child victims of abuse who are under 12 years of age know their abusers. In the US, the Department of Health & Services (2010) found that in 80 % of cases the abuser is a parent; in 38 % of cases the abuser is the mother; in 19 % the father and in 18 % both of them. In the remaining 25 % of cases the abusers were mothers acting in concert with another abuser (an abuser unknown to the victim, a male relative, or the stepfather).

These criminal offences require special investigative strategies and the achievement of justice for the child, through the criminal justice system, relying on data gathered from the child in ways that do not re-victimise the child. A multidisciplinary approach needs to

be applied accordingly. Besides knowledge of developmental psychology and child psychology, and making the child's interests paramount, when conducting investigative interviews with child abuse victims, investigators need to be familiar with the modus operandi of child abusers, the impact of family dynamics and gain insight into factors that will influence the victim's willingness to disclose the crime (Zorić, 2008).

Empirical work and clinical experience in the area of child protection indicate that, to secure the best evidence in a child-friendly way that keeps the child's interests paramount, investigative interviews for criminal (and perhaps civil) hearings should be governed by detailed guidelines or best-practice guides. One of the key considerations is to prevent additional victimisation of children. Multiple interviews and interviews in different institutions by different professionals, perhaps with limited training, are some of the factors that can amount to re-victimisation.

Even though there is a great deal of consensus among experts on the basic principles of an



investigative interview (e.g. the importance of adjusting the interview to the child's cognitive level, highlighting free narrative and use of open questions), it is important to highlight that there is no single best practical technique for conducting investigative interviews in cases of child abuse. There are, however, many techniques and protocols for investigative interviews (Poole and Lamb, 1999; Milne and Bull, 1998; Faller, 1998; Home Office, 1992). Some of these techniques and protocols are multi-disciplinary and allow the best evidence to be captured on video, which is later used as the child's examination-in-chief.

According to the guidance issued by Department of Justice of the Criminal Justice System in Northern Ireland (CJSNI, 2012) entitled 'Achieving Best Evidence in Criminal Proceedings, Guidance on interviewing victims and witnesses, the use of special measure, and the provision of pre-trial therapy', there are three categories of children for which video recording an interview is proposed: children giving evidence in sexual offence cases; children giving evidence in cases involving an offence of violence, abduction or neglect and children giving evidence in all other cases. It is proposed that video-recorded interviews should take place in all categories unless the child objects, and/or there are insurmountable difficulties which prevent the recording taking place (including, for example, that the child has been involved in abuse involving video recording or photography).

In England and Wales, the Memorandum of Good Practice (MOGP) interviewing protocol was introduced in 1992 for use with children under the age of 14 for violent offences and under the age of 17 for sexual offences. This protocol was revised in 2001 and replaced by Achieving Best Evidence (ABE) for use in interviewing children under the age of 17, regardless of the offence involved, and also for interviews with vulnerable or intimidated adults (Home Office, 1992, 2002, 2007).

ACHIEVING BEST EVIDENCE — THE ABE MODEL

Many government services, law enforcement bodies and NGOs have started to provide recommended guidelines. One of the leading organisations in this area is the British Home

Office. Guidance was first issued in 1992 and then revised in 2002 and 2007. The redrafted Memorandum Of Good Practice (MOGP) re-titled and revised, 'Achieving Best Evidence, N.I.{2011}' (ABE), provides specific guidelines for a video recording of investigative interviews by police and social workers that can be used in criminal and civil proceedings in the United Kingdom.

The ABE Model is a four stage, step-wise, cognitive interview model designed to be child friendly, evidentially sound and is designed to replace the child's examination-in-chief (the witness's account for the prosecution).

The elements of the model include:

- Interviews should be conducted as soon as possible, if possible straight after receiving the accusations of abuse.
- Interviews should be done in an informal environment with an interviewer who is trained for conducting investigative interviews with children.
- Children should be able to tell everything that has happened before the questioning phase starts.
- Interviews should be conducted in phases, starting with open questions. Specific questions should be used at the end of the interview.
- The duration of the interview shouldn't be longer than one hour.

The interview has four phases:

- establishing rapport;
- asking for free narrative recall;
- asking questions; and
- closure.

The Department of Justice of the Criminal Justice System in Northern Ireland (CJSNI, 2012) has supported and accepted the suggestions of the Memorandum of Good Practice and, in May 2011, created the guidance entitled 'Achieving Best Evidence in Criminal Proceedings, Guidance on interviewing victims and witnesses, the use



of special measures, and the provision of pre-trial therapy'. The guidance was based on the equivalent guidance in England and Wales, with some slight amendments in the underpinning legislation to reflect the legal system in Northern Ireland.

The four phases are compatible with and underpin the PEACE (or ethical interview) model (Planning and Preparation; Engage and Explain; Account, Clarification and Challenge; Closure; Evaluation) interview framework advocated by the Association of Chief Police Officers (ACPO). In fact, the ABE model is also known as the modified PEACE Model. While PEACE is designed for use with suspect and witness interviews, the ABE model specifically takes account of the needs of a child or vulnerable witness, including child abuse victims.

The phased approach acknowledges that all interviews contain a social as well as a cognitive element. As regards the social element, witnesses, especially the young and the vulnerable, will only divulge information to people with whom they feel at ease and whom they trust. Therefore, the first phase of any interview involves establishing rapport with the witness, and the final or closure phase requires the interviewer to try to ensure that the witness leaves the interview feeling that they have been given the fullest opportunity to be heard.

As regards the cognitive element, the phased interview attempts to elicit evidence from the witness in a manner that is compatible with what is known about the way human memory operates and the way it develops through childhood. A variety of interviewing techniques are deployed, proceeding from free narrative to open and then specific-closed questions, from which a hierarchy of reliability of the information is obtained. The technique is designed to ensure that, as far as possible, witnesses of all ages provide their own account, rather than the interviewer putting suggestions to them with which they are invited to agree. The techniques of the phased interview are not those of casual conversation: they must be learned and then practiced to ensure that they are applied consistently and correctly (Achieving Best Evidence in Criminal Proceedings, 2012). Typically, police officers and social workers, who have knowledge or experience of child protection laws, child development, inter-agency working and previous PEACE model training, can be sufficiently up-skilled in a seven-day training course.

EVIDENCE-BASED PRACTICE IN OTHER EU COUNTRIES

In most Member States, the police have the power to interview a child as a witness. In the Federal Republic of Germany and in some police services of federal states there are specialised units that are specially trained and which conduct video-recorded investigative interviews of children (which can be used, if needed, in court proceedings later on). Interviews in the above-mentioned federal states are conducted by staff from centralised units (first as short screening interview in conjunction with other first actions, while proper investigative interviews are conducted by a specially trained team, video recorded if needed). These specialised teams for investigative interviews with children started working in the federal state of Schleswig-Holstein and have achieved a high level of quality based on the Dutch police model of experience, which also achieved very good results (Odeljan, 2012).

EFFECTIVENESS OF ABE INTERVIEWS IN NORTHERN IRELAND

The Royal Ulster Constabulary G. C. and the new police service, established after the peace agreement and terrorist ceasefires, the Police Service of Northern Ireland, were quick to take up the new models promulgated by the MOG and ABE. Child abuse detectives and social workers investigate child abuse cases as a joint team and generally conduct joint interviews with each other under the ABE Model.

The idea that only a video interview with the child, recorded by specially trained staff, could subsequently replace the child's oral testimony in court was at the heart of both practice and policy development. Training was rolled out across the districts to over 60 detectives, senior detectives and prosecutors who were generally pleased with the resulting interviews and the evidence.

The use of ABE interviews is only one element of a raft of special measures for vulnerable victims (The Criminal Evidence (NI) Order 1999). These measures include screening of participants in the trial, removal of wigs and gowns and giving evidence via an intermediary. There were,



however, some challenges facing the police and Health and Social Service Trusts when it came to ABE interviewing and these fall into at least three categories.

First, it became obvious that some detectives were not ideally suited or indeed competent to undertake some of the very difficult cases that arose. Those officers selected for deployment in this area of work are made aware of the necessity to meet national police occupational standards in this area, and indeed that their work will be closely monitored and quality assured by trained supervisory detectives. Only a very small number of investigators will struggle with this type of interview, but the implications for the police service and prosecuting authorities include the need for proper human resources department policies to manage any staffing and/or developmental implications. For the state prosecution service, they needed to think through the implications for pre-trial disclosure of any ABE interviews deemed to be or open to challenge on the basis of breaches of the model or perhaps questions that might be claimed to be leading.

Second, as confirmed by the National Society for the Prevention of Cruelty to Children (NSPCC, 2009), there have always been question marks over the audio-visual quality of reproduction. In particular, the sound on the recording has sometimes been below standard and this ultimately allows the defence to argue that the child should make a live appearance at court to give evidence-in-chief rather than relying upon the video (although the child can still use the live court video link). With the replacement of analogue equipment with DVD and other digital equipment and investment, these issues should be a thing of the past.

Third, the NSPCC points to problems indicated by some of the figures connected with the use of special measures and the outcomes in court, including how often the video interview is successfully used as the child's examination in chief. In a four-year period up to 2009, there were 281 cases in Northern Ireland where the prosecution service applied for video interview evidence to be admitted and 11 were refused. Out of the remainder, 106 videos were actually used as the child's evidence (NSPCC 2009). The figure of only 106 being actually used is not surprising as some of the cases will turn out to be a guilty plea and, in some other cases, the child witness

may express a wish to make a live appearance in court to participate and see justice done. In fact, out of the 446 cases examined in this period by the NSPCC, only 33 were not-guilty findings (39 were withdrawn and 52 were ongoing). From a prosecution point of view, senior officers from the police and indeed the Public Prosecution Service appear to take the view that a good ABE interview, even with a younger child, can be very powerful evidence that may in fact persuade some defendants to proffer guilty pleas.

Turning away from the hard facts and figures, one of the main advantages of the ABE model, if administered as per the UK system, is that generally the child will only be interviewed once and this reduces the trauma (and other problems such as memory retrieval errors) of repeated interviews. In addition, the interviews can be conducted jointly by a police officer and a social worker who have trained together and work in joint investigative teams. This means that the interview can be used to address both criminal and civil issues, as evidence can be used for both criminal justice and family/domestic proceedings. Both the police and health/social welfare departments accept the golden rules in this area of work, namely the child's welfare is paramount, participating in a contested trial may not be in the child's best interests and that child protection is much wider than mere criminal prosecution.

Obtaining a fresh or early video account by trained and experienced police or social-work interviewers working jointly on child protection, and this subsequently being used as the child's evidence-in-chief after one rather than repeated interviews, is a very good way of helping those child-abuse victims who want to get access to justice to do so.

INVESTIGATIVE INTERVIEWS WITH CHILDREN IN CROATIA

Being aware that the position of a child witness in a police station in Croatia can be improved, the Ministry of Interior (Department of Juvenile Delinquency and Criminal Offences Committed against Youth and Family) applied for pre-accession help from the European Commission IPA 2009.





A twinning project entitled 'Capacity Building in the Field of Fight against Sexual Exploitation and Sexual Abuse of Children and on Police Assistance to Vulnerable Crime Victims' started in September 2011 and went on for 21 months, conducted by Northern Ireland Co-operation Overseas — NICO (United Kingdom of Great Britain and Northern Ireland), with the help of the Police Service of Northern Ireland (PSNI). During the project, a special emphasis was placed on training for investigative interviews of child victims of the most serious criminal offences by implementing the ABE (Achieving Best Evidence) methodology.

70 police officers and a smaller number of social workers were trained. Four police officers gained a certificate for delivering ABE training. The content of the training was based on ABE guidance and the UK model for interviewing victims and witnesses, the use of special measures, and the provision of pre-trial therapy (Achieving Best Evidence in Criminal Proceedings, 2012). The level of skills and knowledge achieved by the Croatian police officers was highly praised by the EU Resident Twinning Adviser and by experts from the UK.

The education of specialised police officers and the provision of appropriate technical equipment and child-abuse interview rooms at police stations were all aimed at ensuring timely and high-quality gathering of evidence by police officers. This should enable police who interview children as witnesses to reduce secondary victimisation and to implement the EU directive (2011/92/EU) on combating sexual abuse and sexual exploitation of children and child pornography. Article 20 (3) (c) states: 'interviews with the child victim are carried out by or through professionals trained for this purpose', and implements the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007), Article 35 (a-f).

Now there is a plan to implement research on the effectiveness of the aforementioned training in order to be able to create a tool to assess interview practice under the model concerned. In addition to evaluation of interview practice, the research will be used to assess the quality of evidence obtained and the out-workings of the interview model in criminal and other proceedings. The sample of police officers trained in ABE in 2012 will be used to evaluate practice and qualitative analysis, including cases conducted by police officers previously trained in ABE interviewing.

PROBLEMS IN IMPLEMENTING THE ABE METHODOLOGY IN OTHER EUROPEAN COUNTRIES

As Themeli and Panagiotaki (2013) pointed out, although there is plenty of research in the area of child abuse in Europe, there is little evidence concerning secondary victimisation surrounding preliminary stages of any investigation such as investigative police interviewing.

Unfortunately even today — despite the scientific community — children are frequently considered to be 'second-class' witnesses (Davies and Noon, 1991), as their credibility and their mnemonic ability are rigorously questioned. These are obviously out-dated views that worsen the condition of children and obstruct the detection of the truth or securing the best evidence.

It is clear that the main problems associated with the initial stages of the police or state prosecutor's investigations are connected with staff that have prejudicial or stereotypical views of the capacity and truthfulness of the child witness. Turning to the interview model, Davies, Wilson, Mitchell and Milsom (1995), point out that in their research in the UK only 30 % of the interviews followed the model generally and 28 % had no free narrative phase.

Similarly, Westcott and Kynan (2006) found that 88 % of the cases commenced with utility questions rather than rapport and 30 % of the interviewers jumped too quickly to specific questions rather than allowing or facilitating free-narrative accounts. This nervousness about the free-narrative phase by the interviewers is indicative of a lack of experience from staff in the early stages of their investigative interviewing career. Certainly, these problems with rapport and the free-narrative stage were seen in Northern Ireland when the model was first introduced and it places responsibility on senior staff to assure quality practice and training/selection.

PROBLEMS IN IMPLEMENTING THE ABE METHODOLOGY IN CROATIA

While police have been building up capacities in the fight against sexual abuse of children, the



Ministry of Justice in Croatia has been working on a new Juvenile Courts Act ⁽¹⁾. Police and EU experts were convinced that legislators will accept the EU best practice and the appropriate skill levels achieved by specialist police officers from the Criminal Police Directorate in the area of legislation on children and juveniles protection by criminal law. There was a hope that the Government would allow police officers to interview children or juveniles as witnesses, but instead, new provisions allowed state attorneys to conduct the interview within three days after a report of child abuse and to submit the case to an investigative judge giving suggestions for an evidential hearing of the child as a witness.

This legal solution, especially in situations where time is precious, presents an insurmountable problem (interviewing children and juveniles of foreign citizens, interviewing children or juveniles that have to give information to the police of a personal description or revealing the identity of participants of criminal offences urgently). A video interview with a child is first conducted according to the Police Duties and Powers Act ⁽²⁾, and then the child or juvenile gives one more account in an evidential hearing to an investigative judge. That procedure implies that at least two accounts are to be given by the child. If police were empowered to conduct investigative interviews of children, then a child or a juvenile would be interviewed only once as a witness and the results of interviews would be used accordingly as evidence in criminal proceedings in the form of an official record/video.

Hence, in order to gain information and evidence of criminal offences committed against children, the police is supposed to carry out an informal and inadmissible interview with the child. Information gained is then used to perform formal actions such as crime scene investigation, searches etc. In stark contrast, if the victim is an adult, all actions, including the police interview, are evidential. Regulations from the Juvenile Courts Act (2011) partially allow police to investigate when a report of a criminal offence is made, but there is a danger that the law is being misinterpreted. It remains unclear if the police must, after receiving a report of a criminal offence, stop the inquiry and wait for the state

attorney or judge to conduct an evidential interview with the witness/victim, and then proceed under directions of the state attorney or lawyer; or if the police can proceed with what they would naturally aim to do, to get a detailed account from the victim by interview. Likewise, if the offender is known, it is not clear if the police should arrest the offender immediately or defer the procedure to the state attorney. There are obvious public protection and safety implications for leaving a dangerous sex offender in circulation for any longer than necessary.

At the moment specialised police officers (when getting a report of a criminal offence) conduct an informational interview with the child abuse victim by using the ABE method in order to determine which criminal offence has been committed, where, by whom, and where they might locate forensic evidence and other evidence. Without these crucial fast-track actions and the information needed to formulate an investigative strategy, it is impossible to conduct a proper, timely and human-rights compliant criminal investigation. Furthermore, the situation is also vague for parents and children who come to report child abuse, and in particular they often struggle to accept why the account given to a police officer is not used as evidence. It is well known among professionals that interviews with the victim should be kept to a minimum because repeated interviews can cause multiple traumatic events. Ultimately, trauma can impact upon a person's ability to give coherent oral evidence.

CONCLUSION

It can be concluded that some European Member States, particularly the United Kingdom, achieved high standards in the interviewing of child victims and witnesses of crime, but with certain problems that can be successfully eliminated through ongoing training and evaluation. On the other hand, Croatia, with its legislative provisions, requires additional efforts in inter-agency training and a change of consciousness of experts, in order to give more protection to the rights and interests of children, whose rights must take precedence over all other rights.

⁽¹⁾ Juvenile Courts Act, Croatian Official Gazette, No 84/11.

⁽²⁾ Police Duties and Powers Act, Croatian Official Gazette, No 76/09.



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