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## Twenty-Five Years of Achieving Best Evidence: Investigative Interviews with Victims and Witnesses in England and Wales

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**Twenty-Five Years of Achieving Best Evidence: Investigative Interviews with Victims and Witnesses in England and Wales**

**Abstract**

The guidance in *Achieving Best Evidence* (e.g., Ministry of Justice, 2022) or ABE, as it is more commonly known, has been with us for nearly 25 years. It stems from concerns raised about the quality of interviews with vulnerable witnesses in the 1980s and from the *Memorandum of Good Practice* (Home Office, 1992) that set out to address them. This paper will argue that the various editions of ABE that have been published over the course of that time represent both continuity and change in the practice of interviewing victims and witnesses. It represents continuity in the interview structure that it promotes and in the principles that underpin it. It represents change in its responsiveness to new legislation, new research and emerging operational challenges. Over the years, ABE has become influential internationally, alongside other models such as the National Institute of Child Health and Human Development Protocol and the Cognitive Interview, and its capacity to adapt to change is such that its influence is likely to last for years to come.

**Keywords:** Investigative Interviews, Achieving Best Evidence, Memorandum of Good Practice, Victims and Witnesses

**Introduction**

*Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Guidance on using Special Measures* (Home Office, 2002 and Ministry of Justice, 2007, 2011a and 2022) or, as it is more commonly known, ‘ABE’, has applied to **all** interviews with victims and witnesses in England and Wales since 2011 and not, as is sometimes assumed, exclusively to video-recorded interviews with ‘vulnerable’ and ‘intimidated’ witnesses. It has been in circulation for over 20 years, though its origins date back another 10 years to the *Memorandum of Good Practice on Video-Recorded Interviews with Child Witnesses for Criminal Proceedings* (Home Office, 1992). The interview guidance set out in ABE has become influential internationally (e.g., Faller, 2015), alongside other research-based frameworks and techniques such as the National Institute of Child Health and Human Development Protocol (NICHD Protocol) (e.g., La Rooy et al., 2015) and the Cognitive Interview (CI) (e.g., Milne et al., 2015).

Given the scope of the guidance and the extent of its influence, an understanding of where ABE came from, how it has been developed and the directions that it is likely to take in the future is important and this paper sets out to facilitate that. In so doing, it explores the origins of the guidance, how it came to be and the factors and drivers that motivate and continue to motivate its development. It does so from the perspective of one of the authors of the revisions made to the guidance since 2007, though its architects should always be acknowledged as Professors Ray Bull and Graham Davies.

## The Past: A Short History of ABE

To understand ABE, it is important to understand its roots. This section will consider where ABE came from, what influenced it and what has driven its revisions.

### The Memorandum of Good Practice and the First Edition of ABE (ABE 2022)

ABE builds on the guidance set out in the *Memorandum of Good Practice* (hereafter “the Memorandum”) (Home Office, 1992). Prior to the Memorandum there was no national guidance in England and Wales on interviewing victims and witnesses, other than what was in the training curriculum for police recruits and probationary constables (i.e., police officers in the first two years of their service), which was developed by the Central Planning Unit (CPU) in Harrogate and delivered both regionally and locally (Peacock, 2010).

In the absence of national guidance, the development of the skills necessary for interviewing children and other vulnerable witnesses was largely a matter of chance. Things began to change in the late 1980s, however, with the publication of the *Report of the Inquiry into Child Abuse in Cleveland 1987* (hereafter “the Cleveland Report”) (HMSO, 1988) which identified the areas of agreement over ‘facilitation work’ between the professionals who gave evidence to the Inquiry. These areas of agreement, which were set out in chapter 12 of the report, amounted to several recommendations that included approaching interviews with an open mind, the use of open-ended questions, having no more than two interviews, proceeding at the pace of the child, only using trained interviewers, and recording matters carefully (The Therapeutic Journal, 2011). It was the experience of the author that interviewers were often directed to review and to adhere to these recommendations by the High Court in wardship cases<sup>1</sup>, prior to permission being given for an investigative interview with a child. In a limited sense then, these recommendations could be regarded as the first national guidance for interviews with witnesses in England and Wales.

While the inquiry team were working on the Cleveland Report, police and social services were establishing joint teams to investigate allegations of intrafamilial child abuse (e.g., Metropolitan Police Service, 1987). Where resources permitted, some teams video-recorded the interviews that they conducted with children for reasons of transparency, in-line with one of the recommendations subsequently made in the Cleveland Report. Joint investigations, joint investigative interviews and the video-recording of interviews with children was later endorsed and promoted by Home Office Circular 52/1988, *The Investigation of Child Sexual Abuse*, which was issued on 6<sup>th</sup> July 1988, soon after the publication of the Cleveland Report. Sixteen days before the circular was issued, the Home Office announced the establishment of the *Advisory Group on Video-Recorded Evidence*, chaired by His Honour Judge Thomas Pigot. At the same time, the UK Parliament debated a new clause in the Criminal Justice Bill to allow video-recorded interviews with victims of sexual offences under the age of 14 to be admitted as evidence in court. During its passage through Parliament, the Criminal Justice Bill was eventually amended to permit video-recorded evidence-in-chief for children under

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<sup>1</sup> The overall legal guardianship of a child rests with the High Court in wardship cases.

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14 who were victims of or witnesses to violent offences and children under 17 who were victims of or witnesses to sexual offences.

The *Advisory Group on Video-Recorded Evidence* published its findings some 18 months later in what became known as “The Pigot Report” (Home Office, 1989). The report made several recommendations concerning the evidence of children and said that those provisions should eventually be extended to “adult witnesses who might be especially vulnerable to the worst effects of testifying in open court” (pp 27-32). Thus began the process of trying to make it easier for vulnerable witnesses to give evidence in court (House of Commons Justice Select Committee, 2024). When it came to investigative interviews, “The Pigot Report” recommended that they be conducted either jointly or collaboratively by social workers and police officers working together, that the training of interviewers should include “elements of child psychology and cognitive development” (p35) and that a “Code of Practice” outlining best practice for video-recorded interviews should be developed. The report went on to endorse John Yuille’s “step-wise” approach (e.g., Yuille et al., 1993) and to say that it should be considered if a detailed protocol covering the interview was included in the Code. The Advisory Group was particularly keen on step-wise because the process that it advocated began with rapport building then moved on to coverage of the witness’s account by proceeding “from the most general, open aspects of the interview to the more specific” (p41). It is this funnelling process that went on to form the structural basis of the interview framework that was in the Memorandum (e.g., Sternberg et al., 2001) and that continues in ABE today.

As with step-wise, the Memorandum adopted a phased approach to interviews with children, preceded by a planning stage that included having an awareness of the child’s needs. While there was a difference in the number of phases or “steps” that made up each model, they covered the same ground, as was the case with other interview frameworks at the time (e.g., the PEACE<sup>2</sup> framework, Central Planning and Training Unit, 1993; the NIHCD Protocol, Lamb et al., 2011). The four phases<sup>3</sup> that were recommended by the Memorandum will be familiar to practitioners using ABE today. These phases are preceded by interview planning, something that ABE and the Memorandum before it has always put a great deal of emphasis on, as is also the case with the value and importance of open-ended questions.

After the publication the *Speaking up for Justice* report by the Home Office in June 1998, the UK Government introduced legislation into Parliament that would make “vulnerable” and “intimidated” witnesses eligible for certain special measures when they gave evidence in court. The proposed legislation was subsequently enacted as Part 2 of the Youth Justice and Criminal Evidence Act, 1999 (YJCEA).

The YJCEA does not explicitly define “vulnerability”, it would be more accurate to say that it specifies which witnesses are eligible for special measures when they give evidence in court. Section 16 of the Act focuses on children (defined as under 17 when the legislation was enacted but subsequently amended to under 18) and some of the personal factors, such as mental health, learning disability and physical disorders or disabilities, that are likely to mean that adult witnesses are vulnerable in the criminal justice system. Section 17 of the Act focuses on some of the situational factors that are

<sup>2</sup> PEACE is a framework for investigative interviewing that is used widely in England and Wales. It is an acronym for Planning & preparation, Engage & explain, Account, Closure and Evaluation.  
<sup>3</sup> The 4 phases recommended by the Memorandum and used by ABE today are: rapport, free-narrative account, questioning and closing the interview.

likely to make an adult witness vulnerable, including the nature and the circumstances of the offence, the cultural background, ethnic origins, religious beliefs and domestic circumstances of the witness and the behaviour of the suspected offender or their associates. Over time, the witnesses referred to in section 16 of the Act became known as “vulnerable” and the witnesses referred to in section 17 of the Act became known as “intimidated” (e.g., Ministry of Justice, 2011b and 2020). The special measure of principal interest to this paper is video-recorded evidence-in-chief, though the special measures in respect of the support of an intermediary (a communication specialist, such as a Speech and Language Therapist) and video-recorded cross-examination are also of some significance.

As already noted, it was legislation giving certain child witnesses access to video-recorded evidence-in-chief that was the main driver for the development of the Memorandum. Following on, it was the extension of access to video-recorded evidence-in-chief in the YJCEA to all children and to vulnerable and intimidated adult witnesses that was the driver for the first edition of ABE. ABE made use of the same structural components and principles of investigative interviews that had been outlined in the Memorandum, in that it emphasised the importance of planning and open-ended questions and it adopted the same four phased approach as its predecessor. It was influenced by significant changes in Government policy that were intended to rebalance the justice system in favour of victims and witnesses (e.g., Office for Criminal Justice Reform, 2006) and it considered investigative interviews in the wider context of witness care (Davies et al. 2016). It also took account of the developments in research into investigative interviewing that had taken place following the publication of the Memorandum. In addition, unlike its predecessor, the first edition of ABE was not limited to the interview process; it also covered the pre-trial and the trial processes. Running alongside these changes was a minor variation of the tiered approach to investigative interviewing proposed by Clarke and Milne (2001) that provided for the developmental progression of skills by police interviewers (e.g., Griffiths & Milne, 2006).

### The Second Edition of ABE (ABE 2007)

Unlike some other national guidance documents, ABE is not reviewed and updated as a matter of course, at regular intervals or in accordance with a timetable. It is updated as and when significant changes to legislation and/or procedure demand it. While the drivers for each revision are certainly changes to legislation and/or procedure, revisions also take account of new research, the recommendations made by influential reviews (e.g., by His Majesty’s Inspectorate of Constabulary and Fire & Rescue Services) and feedback from the judiciary.

When Part 2 of the YJCEA was first implemented on 24th July 2002, its implementation was intended to be phased as far as video-recorded evidence-in-chief was concerned (Home Office Circulars 06/2002, 35/2002 and 38/2002). The first phase of the implementation focused exclusively on section 16 YJCEA “vulnerable” witnesses. According to Home Office Circular 06/2002, access to video-recorded evidence-in-chief for section 17 YJCEA “intimidated” witnesses was deferred pending an evaluation of its use by vulnerable witnesses. The subsequent evaluation reported in Hamlyn et al (2004a and 2004b) identified more intimidated witnesses than was expected (estimated at 54%, of which 24% were both vulnerable and intimidated) (Davies et al., 2016) and concluded that special measures were viewed positively by vulnerable and intimidated witnesses (Hamlyn et al, 2004a).

Emphasis was given to video-recorded evidence-in-chief, even though interviews were only video-recorded in a minority of cases at the time (Burton et al., 2006). For that reason, the evaluation went on to “strongly suggest that special measures should be implemented more widely” (Hamlyn et al 2004a, p113). Thus it was that on 25<sup>th</sup> June 2007 the Ministry of Justice issued a circular announcing that video-recorded evidence in chief would be available to adult victims of sexual offences (a specified category of “intimidated” witness) from 1<sup>st</sup> September 2007 (as referred to in R v R [2008] EWCA Crim 678)<sup>4</sup> and ABE 2007 was published to support this further roll out of the legislation.

The guidance covering the interviewing of intimidated witnesses in ABE 2002 was part of the chapter covering vulnerable adult witnesses. As a consequence of the roll out of video-recorded evidence-in-chief to adult victims of sexual offences, ABE 2007 included a new chapter dedicated to intimidated witnesses. This chapter also referred to “section 137 Criminal Justice Act, 2003” and “significant” witnesses, including reluctant and hostile witnesses. Guidance covering “significant” witnesses had featured in the first edition of the *Murder Investigation Manual* (Association of Chief Police Officers, 1998) and had been the subject of other national guidance since (e.g., Association of Chief Police Officers, 2002) but in 2007 a decision was taken to incorporate it into ABE because of the possibility that some of the witnesses who were initially categorised as “significant” could be “vulnerable” or “intimidated” by the time that the case got to court. Briefly, a “significant” witness is defined as someone who claims to have seen, heard or otherwise experienced an offence or events closely connected to it, someone in a particular relationship to the victim or someone who occupies a central position in an investigation (e.g., Ministry of Justice, 2022). Interviews with significant witnesses are often video-recorded for reasons of transparency, there are no legislative provisions that would allow these interviews to be played as evidence-in-chief in court. “Section 137 Criminal Justice Act, 2003” witnesses are a type of significant witness in that they are people who claim to have seen or otherwise witnessed an offence or events closely connected to it. While section 137 does permit the playing of video-recorded interviews as evidence-in-chief in certain circumstances, it has never been commenced.

As a result of the further emphasis on the evidence of people who had directly witnessed crimes and the events associated with them that arose from the inclusion of significant witnesses, additional material detailing the use of the Cognitive Interview (CI)/Enhanced Cognitive Interview (ECI) (e.g., Fisher & Geiselman, 2010) was included in ABE 2007, largely by Professor Becky Milne. In addition, in acknowledgement of the different purposes that can be served by an investigative interview (e.g., Leveson, 2015), the revised guidance drew a distinction between coverage of matters directly relating to the alleged offence and other information that might be important to the investigation (e.g., material that might aid an investigation by identifying a suspected offender, even though it is unlikely to become evidence, such as information about a victim’s movements and associations prior to an offence). This kind of background material was intended to be covered after the witness’s account, either in the “latter part of the questioning phase or in a subsequent interview session, depending on the complexity of the case and what is alleged to have been witnessed” (Ministry of Justice, 2007, pp 29, 63 & 89).

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<sup>4</sup> It may be of note that the Court of Appeal in R v R [2008] EWCA Crim 678 subsequently ruled that the Ministry of Justice did not have the legislative authority to phase the implementation of video-recorded evidence-in-chief and that it had, therefore, technically been available to all vulnerable and intimidated witnesses since 2002.



### The Third Edition of ABE (ABE 2011)

The Coroners and Justice Act received Royal Assent and passed into statute two years after the publication of the second edition of ABE. The Coroners and Justice Act, 2009, amended the YJCEA in several ways. Notably, it raised the upper age limit for children from 17 to 18, it made adult witnesses to certain gun and knife related crimes automatically “intimidated”, it made it clear that children could opt out of the rebuttable presumption in the legislation to the effect that their evidence-in-chief should usually be given in the form of a video-recorded interview (a position known as the “primary rule”) and it established a rebuttable presumption to the effect that the evidence-in-chief of adult complainants to sexual offences should usually be given by way of video-recorded interview, in a way similar to that of child witnesses.

At the same time that the legislative changes in the Coroners and Justice Act were being enacted, the judiciary were becoming increasingly vocal in their concerns about the quality of video-recorded interviews and this resulted in the publication of the first edition of the national guidance entitled *Advice on the Structure of Visually Recorded Interviews with Witnesses* (Association of Chief Police Officers, 2010). This guidance emphasised the importance of adhering to ABE and included a diagram of an interview structure that separated coverage of the matters directly relating to the alleged offence from any other information that might be important to the investigation. The rationale for drawing this distinction was that matters directly relating to the alleged offence were likely to form the witness’s evidence in court, whereas other information that might be important to the investigation were not and could be difficult to edit out if dealt with at the same time as the offence. The psychological processes of memory were also a consideration in the development of this guidance in that matters directly relating to the alleged offence were usually stored as episodic memories (Tulving, 1972) whereas other information that might be important to the investigation was often stored as semantic memories (ibid) and it seemed unlikely that asking witnesses to rapidly move between these different types of memory would be particularly productive.

The implementation of the Coroners and Justice Act in 2011 and the circulation of *Advice on the Structure of Visually Recorded Interviews with Witnesses* a year earlier, led to the publication of the third edition of ABE. This edition of ABE reflected the changes to the legislation, emphasised the importance of drawing a distinction between matters directly relating to the alleged offence and any other information of importance to the investigation in the structure of the interview and highlighted the value of workplace assessment as a means of improving the quality of investigative interviews with witnesses in accordance with the *National Investigative Interviewing Strategy* (Association of Chief Police Officers, 2009). These changes were further emphasised in Ministry of Justice Circular 2011/03, which accompanied the publication of ABE 2011.

### **The Present: The Current Edition of ABE (Fourth Revision, 2022)**

The initial driver for the current edition of ABE was the statutory *Code of Practice for Victims of Crime* (Ministry of Justice, 2015). The Code was first published in 2006, following the implementation of the legislation that underpins it (section 32 Domestic Violence, Crime and Victims Act 2004) but in 2013 and 2015 it underwent significant revisions to take account of the European Union (EU) directives on the rights of victims of crime (EU, 2012), on preventing and combating human trafficking (EU, 2011a) and on combating the sexual abuse and exploitation of children (EU,



2011b). These revisions were made by the UK Government in accordance with its obligation to transpose the directives into domestic law or procedure within 3 years of their adoption by the European Parliament and Council. When it came to the interview process, the Code required the police to consider the guidance in ABE, to plan interviews in advance and to ensure that a “suitably trained professional” conducts them “in a way that considers the needs and views of the victim” (Ministry of Justice, 2013 p33 and 2015 p41). An initial draft of the fourth revision of ABE was prepared and submitted to the Ministry of Justice in March 2016 but, by then, the Government had announced that a referendum would take place on whether the UK should leave the EU (the process commonly known as “Brexit”). It was, perhaps, inevitable that the Government would have other priorities during the campaign leading up to the Brexit vote and during the events that followed it and, consequently, the publication of ABE was delayed until January 2022, by which time another edition of the *Code of Practice for Victims of Crime* (Ministry of Justice, 2020) had been published.

In addition to the revised *Code of Practice for Victims of Crime*, the reports by Her Majesty’s Crown Prosecution Service Inspectorate (HMCPsi) and Her Majesty’s Inspectorate of Constabulary (HMIC) into young witnesses in the criminal justice system in 2012 and into Achieving Best Evidence in 2014, were a significant influence on the development of ABE 2022. Of note were the recommendations made in the 2014 report concerning the supervision of interviews and the management of complex cases. The importance of supervision and the absence of it has long been recognised in the research surrounding investigative interviewing (e.g., Clarke & Milne, 2001; Lamb et al, 2002; Price & Roberts, 2011). Despite the research and the recommendations that followed from it, however, HMCPsi & HMIC (2014) found “little consistent formal review or feedback of ABE interviews by supervisors” (p 36) and they, therefore, made several recommendations associated with supervision which are reflected in a new section in chapter 1 of ABE 2022.

The police officers who were interviewed during the HMCPsi & HMIC (2014) review wanted to see more guidance in respect of complex cases, particularly those relating to child sexual exploitation investigations. This type of investigation has increased significantly since “Operation Yewtree”, an investigation into the child sexual abuse allegations concerning Jimmy Savile, a high-profile UK television and radio personality, that commenced a year after his death in 2011 (Independent Inquiry into Child Sexual Abuse, 2022). The guidance concerning complex cases in ABE 2022 sets out to address the recommendation made by HMCPsi & HMIC (2014) by advocating the appointment of interview advisers (see Association of Chief Police Officers, 2009) and the development of interview strategies, including an initial engagement strategy (for more on interview strategies for victims and witnesses see Smith & Milne, 2017; Smith & Milne, 2018; Smith, 2019). The new section in ABE about complex cases also included guidance relating to memories for recurring events (e.g., Goodman-Delahunty et al., 2017) to cover investigations involving multiple offences.

In their coverage of victim and witness needs and support assessments, ABE and the Memorandum before it has always promoted a victim and witness centred approach to interviewing. ABE 2022 further emphasises that by explicitly promoting trauma-informed practice in a new section in chapter 2. Trauma-informed practice has become increasingly important in Government policy and guidance over the years (e.g., Office for Health Improvement & Disparities, 2022) and of significance in influential reviews into police practice (notably, Ministry of Justice, 2021). The importance of rapport in the ethical and effective management of trauma has also been emphasised in recent

research into investigative interviewing (e.g., Risan et al. 2020; Smith and Milne, 2018) and this together with access to therapy (Crown Prosecution Service, 2022) is promoted in ABE 2022.

## The Future: Conclusion

The development of ABE represents both continuity and change. It represents continuity in its victim and witness centredness, in its emphasis on the importance of planning interviews, in its 4-phased structure and in its preference for the use of open-ended questions. It represents change in the way that it has adapted to new laws and procedures, in its guidance about separating the alleged offence from the other information that might be important to the investigation in the structure of the interview, in what it says about the importance of work-place supervision and in its response to research and emerging operational needs (e.g., trauma and the management of the interview process in complex cases). Important though these developments are, however, it should be acknowledged that there is still much to be done to ensure the effective implementation of the guidance in the workplace (e.g., HMCPsi & HMIC, 2014; Davies et al, 2016).

Where then next for ABE? It will certainly be reviewed and quite likely be revised when the Prisoners and Victims Bill that was negotiating its way through the UK Parliament at the time of writing finds its way onto the statute books. Perhaps most notably, it will need to take account of the changes to the *Code of Practice for Victims of Crime* (Ministry of Justice, 2020) and the publication of new statutory guidance in respect of specified victim support roles and victim information requests that will follow the enactment of the Bill. The long-standing but increasing emphasis in government policy on taking a victim centred approach (e.g., Waxman, 2019) is likely to be of particular significance to the next revision of ABE, with its emphasis on the value of needs assessments and the vital role that they play in tailoring the services and support given to individuals who find themselves in the unenviable position of being victims of crime (e.g., Ministry of Justice, 2018). The ongoing implementation of the Domestic Abuse Act, 2021 will also have an impact because it amends the YJCEA to make victims of domestic abuse automatically “intimidated” within the meaning of section 17(4) and, therefore, automatically eligible for special measures, including video-recorded evidence-in-chief<sup>5</sup>. Added to all of that will be new research, the concerns of the judiciary as they are increasingly refined and the ever-changing nature of operational challenges (e.g., the ongoing work of Operation Soteria<sup>6</sup>, which is intended to improve the detection and prosecution of sexual offences and to address the other matters raised in *The End-to-End Rape Review Report*, Ministry of Justice, 2021, including a new model of interviewing victims of sexual offences that is entirely consistent with the guidance set out in ABE). Thus, while it is true to say that ABE represents a degree of continuity in the consensus about what constitutes good practice in investigative interviewing, it is by no means a static document that was published to gather dust on a bookshelf. It is a dynamic document that has responded to change over the last 25 years and it will continue to do so, perhaps for the next 25 years.

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<sup>5</sup> In this context, automatic eligibility for video-recorded evidence-in-chief does not mean that every domestic abuse victim will get access to it. Domestic abuse victims will only be able to access this special measure if the prosecution can satisfy the court that it is likely to maximise the quality of their evidence.

<sup>6</sup> Operation Soteria is a UK Government funded research and change programme which is led by the National Police Chiefs’ Council and hosted by the London Mayor’s Office for Policing and Crime. For further information, see <https://www.npcc.police.uk/our-work/violence-against-women-and-girls/operation-soteria/>

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