

# “Are you listening? Can you hear my voice?”

Exploring the application of the ABE Guidance with CSE victims.



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**July 2018**

## Background

In 1991, the Criminal Justice Act determined that a child's 'evidence in chief' could be presented by means of video recorded interview, which would be conducted by a police officer and social worker. The guidance for this practice was contained in the Memorandum of Good Practice on Video Recorded Interviews with Child Witnesses for Criminal Proceedings (1992). The Memorandum became the basis for training and set out the phased approach to interviewing of victims, which remains unchanged in current guidance. In 1999 the Youth Justice and Criminal Evidence Act introduced pre-recorded interviews as one of a variety of special measures available to vulnerable witnesses of any age, in an attempt to improve the quality of evidence. Following this the guidelines were revised to allow for learning from the Memorandum procedures and allow for a more tailored approach to meet the needs of individuals.

In 2002, the first version of the Achieving Best evidence in Criminal Proceedings (ABE) guidance was published. This provided extensive guidance about different types of interviews and more detail about the preparation and considerations before, during and after. In 2011 a revised version of Achieving Best Evidence guidance was published to include the Coroners and Justice Act (2009), which amended the special measures provision.

The definition of CSE used for the purposes of this research was taken from Safeguarding Children from sexual exploitation, supplementary guidance (DfE, 2009):

Sexual exploitation of children and young people under 18 involves exploitive situations, contexts and relationships where young people (or a third person or persons) receive 'something' (e.g. food, accommodation, drugs, alcohol, cigarettes, affection, gifts, money) as a result of them performing and /or another or others performing on them sexual activities.

Child sexual exploitation can occur through the use of technology without the child's immediate recognition. For example, being persuaded to post sexual images on the intranet/ mobile phones without immediate payment or gain. In all case, those exploiting the child/ young person have power over them by virtue of their age, gender, intellect, physical strength and /or economic or other resources. Violence, coercion and intimidation are common, involvement in exploitative relationships being characterised in the main by the child or young person's limited availability of choice resulting from their social/ economic and/or emotional vulnerability.

This definition was amended in February 2017, after the case files for review were selected. However, if the updated 2017 definition had been used it would not have impacted on the case selection.

In addition, Working Together to Safeguard Children (2015)<sup>1</sup> provides a guide to inter-agency working to safeguard and promote the welfare of children. The guidance ensures that the child's welfare is at the centre of all professional conduct, guiding agencies

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<sup>1</sup> HM Government (2015) Working Together to Safeguard Children, Retrieved from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/592101/Working\\_Together\\_to\\_Safeguard\\_Children\\_20170213.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/592101/Working_Together_to_Safeguard_Children_20170213.pdf)

through the processes of child protection:

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*“Whenever there is reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm there should be a strategy discussion involving local authority children’s social care (including the fostering service, if the child is looked after), the police, health and other bodies such as the referring agency.”<sup>2</sup>*

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This guidance also informed the framework through which this project was conducted and its findings and recommendations, focused.



## The project

This research project was one of a number of Police led research projects carried out in partnership with the University of Bedfordshire International Centre CSE Policing and Knowledge hub and funded by the College of Policing. As part of this project the researchers were required to attend a 5 day masters level CSE course and to lead their research project with support of an academic. The project was supported by Dr Helen Beckett, Joanne Walker (University of Bedfordshire) and Anne Eason (University of Worcester).

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<sup>2</sup> (Ibid, Pg. 36).

## Research Process

### Ethical Approval

Prior to commencing the research, favourable ethical approval was sought through the University of Bedfordshire, as part of the [Working Together to Enhance Police Response to Child Sexual Exploitation and Related Vulnerabilities Project](#). Approval was also given by Warwickshire Police Legal Team.

Confidentiality was at the heart of the project to ensure any risk to CSE victims, police officers and the police force were minimised. All findings are anonymised and recommendations focused on the future development of ABE processes and methods of application.

### Aim of the Project

The central aim of the project was to explore the application of the Achieving Best Evidence (ABE) in Criminal proceedings guidance (Ministry of Justice 2011), in the investigation of Child Sexual Exploitation (CSE).

### Objectives

- To understand the barriers to applying the ABE guidance in CSE investigations
- To identify examples of good/ effective practice
- To recommend any changes/ additions to the guidance and/ or its application

### Methodology

As a police officer conducting research of police practice, the project took an

ethnomethodological approach<sup>3</sup> interrogating the behaviour of other officers in their daily work, more specifically of their tacit knowledge, understanding and application of the ABE interview process.

The project was designed using a qualitative methodology, evaluating ABE case files against a template reflecting the Ministry of Justice Guidance. The case files were selected using the Police Crime Recording System to identify those that met the inclusion criteria as follows:

- CSE investigation within the last 18 months
- Victim took part in ABE video interview
- Victim aged 13 or over

7 cases were randomly selected from this list for case file review. The cases were reviewed using the review template, which considered the application of the ABE guidance across 3 broad areas of the ABE process:

- Pre-interview assessment and preparation
- Conducting the ABE video interview
- Post Interview process

## What we found

Of the seven case files reviewed the following initial points were identified:

- Only one case involved a male victim, in line with the low

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<sup>3</sup> Patton, M.Q (2015) *Qualitative Research and Evaluation Methods* (4th Ed.) London: Sage Publications

number of male CSE victims (7%) identified in the Alliance threat assessment (2015). However, the number of male victims identified by the Alliance is significantly less than the national figure of approximately 33% of victims being male<sup>4</sup>. This raises potential issues around disclosure and/or the identification of male victims. Further exploration of the disparity between local and national identification of male victims is beyond the scope of this study.



- Suspects were charged with a sexual offence following CPS advice in three out of the seven cases.
- No charges were brought in the remaining four cases. In these, the decision was made by Police not to pursue due to insufficient evidence.

A full analysis of the data highlighted three main themes; Learning Difficulties, Joint working and Not Following Guidance. These are discussed below.

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<sup>4</sup> Cockbain, E. Brayley, H. and Ashby, M (2014) *Not Just a Girl Thing: A large-scale comparison of male and female users of child sexual exploitation services in the UK*, London: UCL

## 1. Learning Difficulties

### ***Six (86%) of the victims had a learning difficulty, disability or additional needs***

This ranged from children who were schooled in mainstream education, with additional support, through to children who attended specialist educational establishments. The over-representation of children with additional learning needs within this study suggests that these children are more vulnerable to CSE victimisation. Jones *et al's* (2014)<sup>5</sup> study conducted a meta-analysis of 17 studies of violence against disabled children and young people and found that this group is between three and four times more likely to experience violence than non-disabled children.

### ***In all of the cases the information about the particular needs of the victim were established through discussions with parents, social workers or teachers.***

There was no evidence that the individual assessment of the victims learning needs, for example a statement of educational needs, had been obtained during the ABE planning phase of the investigation. In a number of cases the interviewing officers sought the advice or professional opinion of a teacher or social worker regarding the ability and suitability of the victim for a video recorded interview. This is useful information to gather as part of the witness assessment process, however

this should not be a substitute for consultation with a Registered Intermediary.

### ***A Registered Intermediary was not consulted as part of the witness assessment.***

It was not clear from the case recording whether this had been a consideration or whether the investigator was not aware of the service. From the case file analysis, it would appear that consultation with a Registered Intermediary would have assisted with the planning and interview process in a number of the cases, predominantly due to learning difficulties being identified in these cases.

There is a difference between a child who can understand and communicate in their day to day life and the challenges of understanding and communicating within the context of an interview and court environment. In several cases the children received additional support within their educational setting.

It would be difficult for a professional involved with a child to be able to make an accurate assessment of a child's ability to participate in the interview process unsupported, unless they were familiar with the interview and criminal justice process. If the child was at a special school the officer relied upon the teacher to advise on the child's ability to understand the interview process. Again, although this information is useful, it does not replace the service offered by a registered intermediary.

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<sup>5</sup> Jones, L Bellis, M. Wood, S. Hughes, K. Mccoy, E. Eckley, L. Bates, G. Mikton, C. Shakespeare, T. & Officer, A. (2012). Prevalence and risk of violence against children with disabilities: A systematic review and meta-analysis of observational studies. *Lancet*. 380. 899-907. 10.1016/S0140-6736(12)60692-8.

## 2. Joint Working

***There was no evidence of formal strategy discussions as outlined by the DfE Working Together guidance (2015).***

There were varying amounts of contact with Children's Services across the cases but in general this was to inform the social worker of plans that had already been made, or request an 'appropriate adult' for the interview. It may be of interest to note that all of the cases were investigated by CID, rather than specialist CSE or Child Protection teams. Therefore, it is not known whether the officers involved in the investigations had experience of joint investigations.

***No direct evidence that Children's Services were viewed as part of the investigation partnership.***

In five of the cases there was already a Social Worker allocated to the child as part of existing Child Protection arrangements (Child in Need, Child Protection, MASE (Multi Agency Sexual Exploitation)). In four of the five cases this was due to concerns about parenting. However, in relation to the ABE interview, there appeared to be no consideration of consultation with Children's Services as part of the pre-interview assessment process.

***There was a lack of understanding about the difference between an 'Appropriate Adult' and an 'Interview Supporter' for the purposes of a video recorded interview.***

There has been no requirement to have an 'Appropriate Adult' for a video recorded interview since 2003, however, in six of the seven cases the officers thought that an 'Appropriate

Adult' was needed for the interview. This resulted in a variety of adults carrying out this role including; parents, foster carers and social workers. Some of these were arguably inappropriate. For example:

- The parent was appointed despite being a witness in a case.
- A male foster carer attended and the victim refused to do the interview with them present, so the officer placed them in the monitoring room without the victims knowledge.
- Where social workers were used, they were often not known to the child.

The findings suggest officers believe that they cannot do the interview without an 'Appropriate Adult' present and therefore securing the attendance of the appropriate adult becomes the overriding concern.



## 3. Not Following Guidance

***In four of the seven cases the ABE video interview was conducted within 24 hours of the report being received by the Police.***

There appeared a desire to conduct the video interview as quickly as possible and it was clear that the investigating officers felt under pressure to achieve this. For example,

in one case the officers had arranged to meet a child at an interview suite after school to do the interview but the Sergeant requested that the interview was brought forward. This resulted in the child missing school to do the interview, which was only conducted three hours earlier than originally planned. There was no apparent reason for this (eg. medical, forensic).

It is acknowledged that in some cases due to exceptional circumstances (immediate risk, forensic considerations) it may be necessary to do an initial interview as quickly as possible. However, in the reviewed cases there were no obvious reasons either documented by the officer, or identified by the reviewer for undertaking an interview urgently.

***There was a sense that the video interview was viewed as a task to complete, rather than a process to be followed.***

The apparent culture of obtaining a 'quick ABE' results in there being little consideration of the importance and significance of obtaining the best evidence from the victim in the case. The implications of rushing to complete the interview are significant and, in the cases analysed for this project, led to interviews being conducted with very little knowledge or understanding of the victims individual needs.

***There is no standard national witness assessment form.***

The Force's witness assessment form, which has been produced to assess the needs of victims, was only evident on one case file. There does not appear to be widespread awareness and knowledge of this form amongst

interviewers or supervisors and it was not referred to, or requested, in any of the other six cases.

Section 2 of the ABE guidance contains detailed information about what information and considerations are required prior to conducting an interview.

Where there was a witness assessment on file it was recorded that key aspects of the victim's needs had been considered, in line with those outlined in the guidance. In the other cases there was little, or no, record of these considerations and interviews were carried out with very little information about the child and their individual needs and preferences.

***One out of the seven files contained a written interview plan.***

There was no evidence of any discussion or planning between the interviewer and supervisor in six out of the seven case files. It would appear that less importance is placed on the ABE interview process compared to the suspect interview. In serious and complex investigations, it is common to seek advice from a tier 5 interview advisor, however, there was no evidence that there was any advice sought for the ABE interviews included in this study. This appears to be indicative of the value placed on the ABE interview in comparison to suspect interviewing, and yet it requires equal skill to conduct and can be the key piece of evidence underpinning a prosecution.

***Six of the interviews were conducted at a SARC or ABE interview suite.***

The interviews were not conducted in suites located at a Police station. In

the remaining one case the victim chose to be interviewed at a Police station interview suite. This was also the case which included the witness assessment and demonstrates the importance of allowing the victim to make informed choices.

***The duration of the interview ranged from 63 minutes to 179 minutes.***

Again, because there was no witness assessment form or interview plan on file in six of the cases it was not clear how, or whether, the duration of the interview was considered as part of the witness assessment. In cases where the victim has a learning difficulty, disability or additional need and a registered intermediary is used part of their assessment will include recommendations about the duration of the interview and rest breaks. If an intermediary is in the interview they actively monitor the child for signs that they may need a break and will advise the interviewer.

***Post interview support.***

In two cases there was a record of a referral to the ISVA service. In the other five cases it was not clear what the post interview support plan was. It appeared that the support was seen as children's services responsibility and the extent of the Police involvement was requesting a referral. The support was not seen as an integral part of the process and there was little evidence of the investigators participation in multi-agency discussions as part of the wider child protection process.

***How the victim was kept informed and updated.***

In the majority of cases all of the communication about the case was done through the victim's parent or carer. There were only two cases where the child was updated directly. It is interesting to consider this in the context of the pre-existing child protection concerns. In three cases there were child protection concerns relating to the parents, which existed prior to the CSE investigations. However, the CSE investigations appeared to be conducted in isolation from the wider child protection concerns and were not cognisant of the possible implications on the investigation. For example, in one case all of the updates were provided to the mother of the victim and it only transpired after a month that the mother had not passed any of the information on to the daughter.

## **Victim Blaming**

***".....markers for CSE risk. Risk appears to stem from her allowing herself into high risk situations with unknown males"***

(quote from case file examined)

Victim blaming is a common public attitude towards victims of certain types of crime such as domestic violence and sexual offences. These attitudes are perpetuated through the media, as well as the criminal justice system. Victims of CSE are often blamed for their abuse. For example, victim blaming was identified in serious case reviews undertaken in Rotherham and Oxford into CSE, where these attitudes resulted in professionals ignoring both the signs of abuse and the voices of the victims. There are a number of theories to explain victim blaming and how this can impact on how victims are viewed



(Crippen, 2015)<sup>6</sup>. This is an issue that, although not wholly apparent in this research, should be considered from the point of disclosure as an area that can distract an officer from investigating the complaint with the same rigour as other types of crime.

### ***The voice of the child.***

#### ***What was apparent throughout the analysis, was the silence of the child's voice.***

There was little evidence, within the case files examined for this study, that the child's view was either sought or taken into consideration. All of the planning about the time/ date/ location and attendees appeared to take place around the child rather than with the child. There was little evidence that the child was given a choice in any aspect of this part of the process.



The case which included the witness assessment demonstrated that the child had been informed and consulted throughout the planning and organisation of the interview. In this case the child was able to express that they preferred to be interviewed at a Police Station, due to negative associations with the SARC. In the other cases there was no evidence that these conversations had taken place prior to interview and the

location of the interview was chosen by adults without considering the child's express wishes.

## **Conclusion**

The ABE process, and in particular the video recorded interview, is the victim's key evidence and therefore the quality of the interview will have a significant impact on the outcome of the case. Where the guidance has not been followed, the victim may not have been afforded the opportunity to provide their best evidence; this is particularly important in cases where the victim's account is the key/only evidence and decisions whether to proceed are based on this.

In the cases reviewed, there was no evidence that the managers deciding whether or not to progress the case, had viewed the recording of the interview or considered whether 'best' evidence had been achieved. This is of concern as the fundamental principles of the ABE process are there to ensure that best evidence is obtained to support the prosecution of the offenders but also future protection of the victim(s). Managers should be quality assuring evidence collected and ensuring officers follow the ABE guidance. Failure to follow the guidance could result in offenders avoiding prosecution and negatively impact on the safety and recovery of the victim.

This study has found that the ABE guidance is not consistently followed in CSE investigations. This research has also highlighted that the outcome of the ABE interview appeared to be perceived as part of evidence gathering for the criminal investigation rather than to inform the enquiries as part of the wider child protection process.

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<sup>6</sup> Crippen, Megan, "Theories of Victim Blame" (2015). Senior Honours Projects. 66. <http://collected.jcu.edu/honorspapers/66>

## Recommendations

### **Officers need to understand the difference between an 'interview supporter' and an 'appropriate adult'**

- Communication to officers and supervisors.
- Update relevant force forms to remove the reference to 'appropriate adult', which currently reinforce this misconception.
- Consider how this part of the guidance is covered in training.

### **Understanding and adherence to the Working Together to Safeguard Children guidance (2015)**

- where possible, ensure that investigators and supervisors responsible for child protection investigations are suitably trained, registered and experienced.
- Ensure that information gained during an ABE interview is considered in the context of an enquiry under section 47 of the Children Act 1989.
- Supervisors should communicate with the MASH at the earliest opportunity to discuss the necessity of a Strategy discussion and, where appropriate, be part of this discussion. This will ensure that information is shared at the earliest opportunity and a joint investigation plan is agreed with Children's Services.

### **A Witness assessment form should be completed in all cases prior to an interview taking place and discussed with the supervising officer.**

- Review, and if necessary update, the force witness assessment form
- Require a witness assessment form to be completed prior to conducting an interview with a victim
- Supervisors to review and discuss the content of the form prior to the ABE interview being conducted

### **Local ABE tactical advisor.**

There is a national interview advisor, who is employed by the NCA and is predominantly used as part of more complex investigations. The force would benefit from a local tactical advisor(s) who could be available to consult during the initial interview planning and preparation phase and any subsequent decision making as part of the ongoing victim/witness strategy. The tactical advisor(s) could also act as single point of contact for updates, best practice and dissemination of learning to trained officers across the Force.

### **Better awareness and use of the Registered Intermediary service.**

- Review this element of the ABE training/ refresher training
- Communication and awareness for interviewers and supervisors
- Promote the use of the witness assessment form
- Consultation with tactical advisor

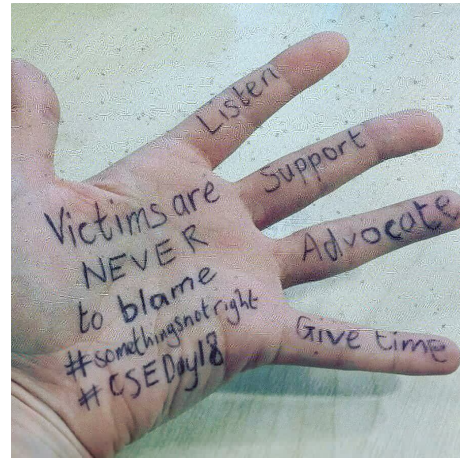
***The Voice of the Child should be considered at every stage of the ABE process.***

It is difficult to list recommendations specifically for this subject because it requires a significant organisational commitment at every level and across every team and department. The Voice of the Child needs to be considered at every stage of the investigation by every member of the team around the child. In order to achieve this it is necessary to weave this through all aspects of training, CPD, supervision and organisational procedures and process. The Working Together to Safeguard Children guidance and the ABE guidance both place the child at the centre of professional decision making. It is imperative that officers who conduct ABE interviews and their supervisors have a working knowledge of this guidance.

***Victim Blaming.***

As with the Voice of the Child, addressing the issue of victim blame requires a whole organisation commitment towards cultural change in perceptions, opinions, unconscious bias and stereotyping. This can be deep-rooted and it would be naive to think that a list of recommendations within this report could address such a fundamental and complex issue. In fact, the issue of victim blaming in the context of CSE investigations is a whole research topic in its own right. However, there are opportunities within the recommendations above to begin to challenge this issue and ensure that we do not continue to reinforce it within our own policies, procedure and practices. For example, if every time we review, revise or create a policy or procedural document, write a training programme

or issue guidance, we consider the potential for victim blaming. In doing so, we can influence perceptions to begin the journey of organisational change.



## Further Research

To further explore the findings of this research the following projects will be pursued by the authors:

- Explore the findings via a survey to all officers who conduct ABE interviews.
- Follow-up interviews for those willing to discuss their responses in more detail.
- Investigate the possibility of capturing the experience of the ABE interviewee.
- Explore the opinion of other professionals involved in the ABE process.

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