To Challenge, or not to Challenge? Best Practice when Interviewing Vulnerable Suspects

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Abstract This article examines to what extent police investigators can reliably question a vulnerable suspect’s account when the evidence base for appropriate questioning styles for this particular vulnerable group is limited. We examine a simulated interview to demonstrate how difficult it is to challenge discrepancies in a vulnerable suspect’s account. It is argued from both linguistic and psychological perspectives that certain question formats may lead to acquiescence, cognitive overload, and confusion for the suspect. It is suggested that one way of trying to manage these issues is through the provision of alternative narratives (i.e. ‘only one of those stories can be true’) but these too are found to be problematic.

Introduction

The key question posed in this article is whether investigating officers should be using different communication skills when confronting discrepancies in a vulnerable person’s account of events. We know that psychological vulnerability can cause ethical and procedural problems for those tasked with conducting investigative interviews (Herrington and Roberts, 2012). Indeed, it could be said that due to the nature of some vulnerability, should we be challenging their accounts at all? However, the challenge stage is an important aspect of the PEACE approach of interviewing (Milne et al., 2007). It is these interesting questions we will attempt to answer in this article. First, the term ‘vulnerability’ must be defined. Vulnerability in terms of suspect interviewing can be defined to an extent by relevant legislation (Police and Criminal Evidence Act, 1984), but one should also consider situational factors within the interview context, which may make ‘anyone’ vulnerable, such as the stressors of finding oneself being interviewed on suspicion of committing a criminal offence. Indeed, life adversity can also impact on an individual’s resilience when questioned by the police (Drake, 2010). Nevertheless, in order to

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give some direction to this article, we will focus primarily on vulnerable persons in terms of psychological vulnerabilities, who are defined by the law in England, Wales, and Northern Ireland for criminal justice purposes in the Police and Criminal Evidence Act 1984 and the Youth Justice and Criminal Evidence Act 1999. Vulnerability would therefore include children under the age of 18 years, persons with mental illness, cognitive impairment, autism, personality disorder, and Attention Deficit Hyperactivity Disorder, but this is not an exhaustive list.

A great deal of progress has been made in recent years in terms of understanding how intellectual disabilities and mental illness may affect the reliability of accounts provided by suspects and witnesses to the police (Gudjonsson, 2010). However, what has been done has only scratched the surface of our understanding and much more work is needed by academics and practitioners alike to develop strategies to assist interviewers to challenge discrepancies in the accounts provided by interviewees, particularly, suspects. In this article, it is argued that psychologists, forensic linguists, and practitioners must continue to add to the research evidence base on the best practice of challenging discrepancies in vulnerable suspects’ accounts, whatever their vulnerability. Additional scrutiny of vulnerable suspect interview transcripts is required to further our understanding of the effects of challenging the accounts of vulnerable persons in an attempt to ascertain the most appropriate way to question a vulnerable suspect. While it is not within the remit of this article, we also suggest that translation issues as well as the altered dynamic within an interview room due to the presence of an interpreter may also make suspects vulnerable when their account is challenged if their primary language is not English (Nakane, 2007; Kredens and Morris, 2010).

It is now 17 years since it was reported that police interviewers were poor at challenging the account of all suspects (Baldwin, 1993). While some recent research has focused on effective interviews with suspects, this has been in terms of assessing the tactics and skills of interviewers and the effects of these on eliciting confessions from those who enter the interview room with the intention of denying their involvement in an offence (Bull and Soukara, 2009). Importantly, Bull and Soukara found that at least 50% of the suspect interviews they assessed (n = 80), the following tactics were used: (i) Emphasising contradictions; (ii) Positive confrontation; and (iii) Challenging the suspect’s account. Furthermore, the tactics of emphasizing contradictions and challenging the suspect’s account were more frequently used with suspects who were not confessing. The study did not however examine the suspects’ level of vulnerability in terms of intellectual functioning or other mental disorder. Neither does it offer transparency of the exact linguistic form of the questions asked in the challenging phase of a police suspect interview although we do know that question ‘form’ is sometimes overemphasized (Oxburgh et al., 2010). This latter point is crucial following earlier findings that police interviewers were not performing competently at challenging suspects (Clarke and Milne, 2001). Such practice may lead, unwittingly, to miscarriages of justice, or at the very least, inaccurate suspect interview accounts. In other jurisdictions, for example, Israel, a protocol has been developed to assist the interviewing officer to challenge the account of a young suspect (Lamb et al., 2008). Maybe this idea can be developed to provide guidance for investigators in the UK when faced with challenging suspects with impaired cognitive functioning or other vulnerabilities.

In order to examine these important questions, the article will first give a brief history of the development of the investigative interviewing approach and ethical interviewing ethos in the UK, keeping the issue of vulnerability at the heart of the discussion. This will result in an examination of the current treatment, policies, and procedures of vulnerable suspects in the police station and in the courtroom. Finally, the impact of some of the legal safeguards for vulnerable persons, i.e.
Appropriate Adults and Registered Intermediaries will be assessed. Are these measures robust enough? Do they really protect the vulnerable suspect? Do they provide a strong enough barrier to hinder false confessions occurring and consequently potential miscarriages of justice?

**Miscarriages of justice**

When undertaking an examination through time of all the celebrated miscarriage of justice cases concerning interviewing it can be seen that vulnerability in some form is a key feature. In the *Confait* case and that of *Timothy Evans*, it is believed that the suspect’s level of intellectual functioning (IQ) would have appeared to have exacerbated their vulnerability within the police station and interview room (Gudjonsson, 2003). So why does ‘vulnerability’ link directly to false confession and thus miscarriages of justice cases? There are three inter-related psychological concepts that are thought to underlie this link: (i) suggestibility; (ii) acquiescence; and (iii) compliance. Each of these will be discussed in turn.

Suggestibility has been defined by Gudjonsson and Clark (1986, p. 84) as ‘the extent to which, within a closed social interaction, people come to accept messages communicated during formal questioning, as the result of which their subsequent behavioural response is affected’. Therefore a leading question within an investigative interview may invite the interviewee to accept the erroneous material as plausible, particularly, if they find themselves in a stressful situation such as a police suspect interview, especially if a person is particularly vulnerable. For example, research has shown that people with a learning disability are more prone to suggestion (e.g. Milne *et al.*, 1999). A leading question can simply be defined as any question that introduces ‘new’ information to an interviewee or informs, in form or content, or in the way the question is posed, the desired response of the interviewer. For example, describe the sawn off shot gun (when no shot gun has been mentioned by the interviewee). Thus, if the vulnerable interviewee is challenged by the interviewer introducing ‘new’ information then this could be taken as leading the interviewee, regardless of the quality of the information gained from the interviewee in response.

Acquiescence (Cronbach, 1946) refers to the tendency for an interviewee to answer ‘yes’ to questions, regardless of the question asked. For example, if providing the answer ‘yes’ to a statement ‘I am happy all of the time’ followed by the answer ‘yes’ to the statement ‘I am sad most of the time’ then the response is acquiescent (Gudjonsson, 2003, p. 377). Gudjonsson (2003, p. 379) believes that acquiescence, where the interviewee provides what they see to be the most plausible answer, is more likely a construct based on intellectual and educational ability rather than personality factors.

Compliance in an interview is however a different concept. A compliant interviewee differs in that they may go along with a particular idea even though they disagree with a given statement, perhaps acknowledging their presence at the scene of a crime, knowing that they were not there, if an inducement to leave the police station earlier was offered. Gudjonsson (2003) has identified two components in compliance. First, the interviewee is eager to please in order to maintain a level of self-esteem in the company of a significant other and secondly, a desire to avoid conflict with that other person. For example, the interviewer states ‘you were outside number 33 the High Street at 10 pm on that day and I don’t believe it when you say you don’t know where you were’. The interviewee may think ‘well I don’t know where I was, he is the police officer and must have more information and anyway I just want to go home now so I’ll just agree and get out of here’.

It is argued that the appropriate challenging of vulnerable suspects must also look beyond false confessions and that an examination of the complexities of language used by interviewers should also be examined, for example, ‘If I was walking up South Street towards the bank, the last turning
on the left before I got to the bank would be Mere Street. Do you know now roughly the area I am talking about?’ Words such as ‘bank’ and ‘roughly’ are ambiguous and could lead to erroneous answers; the statement preceding the question may also be too lengthy for the vulnerable person with slow processing abilities to encode and reflect on prior to attempting to answer the subsequent question. In this example, it is not clear that suggestibility, compliance, or acquiescence is playing a fundamental part in misunderstanding the question and providing an erroneous answer. Nevertheless, it was an examination of the miscarriage of justice cases that in part led to the changes in police interviewing seen in the UK today (Milne et al., 2010).

Changing practices in England and Wales

The practice of interviewing suspects changed significantly in the mid-1980s in England, Wales, and Northern Ireland following the introduction of the Police and Criminal Evidence Act 1984 and its related Codes of Practice (Milne and Bull, 1999). Significantly, in the late 1980s measures were introduced so that all police interviews with suspects were audio recorded and hence available for third party inspection if questions were subsequently asked as to how admissions of guilt were obtained by the interviewing officer. Transparency and fairness in the interview process was the key to good practice.

In 1988, the scrutiny of such audio recordings became invaluable in assessing how one individual, Miller (The Cardiff Three), had provided a confession to the murder of a sex worker that he had not committed. The final Appeal Court judgement noted:

The officers…were not questioning him so much as shouting at him what they wanted him to say. Short of physical violence, it is hard to conceive of a more hostile and intimidating approach by officers to a suspect. It is impossible to convey on the printed page the pace, force and menace of the officer’s delivery. [R. v. Paris, Abdullahi and Miller (1993) 97 Cr. App.R. 99, p. 103]

Mr Miller had a low IQ and suffered from high levels of anxiety. Pearse and Gudjonsson (2003) conducted an analysis of the 12 h and 42 min of Miller’s suspect interviews that took place over a 5-day period and used 19 interview tapes. They observed that a range of inappropriate tactics were used which included the use of multiple questions, raised voices, and manipulating details. This resulted in the Cardiff 3 being acquitted and a re-investigation into Lynette White’s murder. Thus, PACE legislation was not enough to safeguard against vulnerable suspects from giving false confessions in the interview room. More was needed to be done. This came in the form of a substantial amount of time, money, and energy invested into the development of investigative interview training for all operational police officers in England and Wales in the early 1990s. A multi-disciplinary national committee on investigative interviewing was created and the subsequent seven Principles for Investigative Interviewing (since updated and outlined below) were circulated to all police officers in England and Wales (Williamson, 2006).

1. The role of investigative interviewing is to obtain accurate and reliable information from suspects, witnesses, or victims in order to discover the truth about matters under police investigation.

2. Investigative interviewing should be approached with an open mind. Information obtained from the person who is being interviewed should always be tested against what the interviewing officer already knows or what can reasonably be established.
3. When questioning anyone, a police officer must act fairly in the circumstances of each individual case.

4. **The police interviewer is not bound to accept the first answer given. Questioning is not unfair merely because it is persistent.**

5. Even when the right of silence is exercised by a suspect, the police still have a right to put questions.

6. When conducting an interview, police officers are free to ask questions in order to establish the truth, except for interviews with child victims of sexual or violent abuse which are to be used in criminal proceedings. They are not constrained by the rules applied to lawyers in court.

7. **Vulnerable people, whether victims, witnesses, or suspects, must be treated with particular consideration at all times.**

Items (4) and (7) have been given in bold due to the significance of these in this discussion paper.

These guidelines were an attempt to change the ethos of the police from a confession culture to one of a search for the truth. The term ‘interrogation’ was replaced with ‘Investigative Interviewing’ and therefore a new approach to investigation and interviewing was born (see Milne and Bull, 1999; Milne et al., 2007; Griffiths and Milne, 2005; Shawyer et al., 2009; for historical overviews and full descriptions). There then arose a need for a large training operation, but what should this training actually consist of?

**Police training in investigative interviewing**

Following on from the guidelines, the PEACE model of investigative interviewing was developed where the acronym identifies the five steps necessary to conduct an effective investigative interview: Planning and preparation, Engage and explain, Account, Closure, and Evaluation (see Milne and Bull, 1999, for a detailed account). The emphasis of this model was to thoroughly prepare for an interview considering factors such as the interviewee’s needs and the evidence already obtained, including discrepancies. The importance of establishing rapport with the interviewee was seen as a vital step in gaining the cooperation of the interviewee. It was recognized that the actual interview needed to be closed effectively and its findings evaluated in terms of identifying the next stage of the investigation.

The model sought to provide ethical guidelines, trying to avoid the problems of the past which resulted in the infamous miscarriage of justice cases. It was one of the first occasions where psychologists met practical policing needs and the models adapted were developed by psychologists (Milne et al., 2007).

In terms of actually obtaining an account from the interviewee, police interviewers were initially advised that there were two different models depending on how cooperative the witness or suspect was (Milne and Bull, 1999). The Cognitive Interview (Fisher and Geiselman, 1992) was recommended for interviews with cooperative interviewees while a Conversation Management model was recommended for interviews with more resistant interviewees, whether they were witnesses, victims, or suspects (Milne et al., 2007). PEACE provided a structure of ‘how’ one should ethically and legally challenge a suspect’s account. This approach was then disseminated to every interviewing officer in a 1-week long training course. This has subsequently been developed with the introduction of a Five-tier training model (Milne et al., 2007) taking into account of interviewers needing more advanced skills across their career spans and when dealing with more challenging and complex cases. Tier 1 corresponds to basic training aimed at recruits and officers who are returning to an investigation role after some absence. Tier 2 is delivered to uniform investigators and detectives (typically 2 weeks; 1-week witness and 1-week suspect interviewing), and Tier 3 to the Specialist Interviewer.
(e.g. 3-week advanced suspect interviewing and 3-week advanced witness interviewing). Tiers 4 and 5 are designed for management both in terms of line management and specialist and strategic interview management, respectively (see Griffiths and Milne, 2005 for a full description of these tiers). The issue of vulnerability is pivotal across all tiers.

Vulnerable suspects at the police station and interview process

The focus for the remainder of this article will be on the Account stage of the interview with particular emphasis being placed on vulnerable suspects and the police use of appropriate questions and challenges in such circumstances. Therefore, it will examine how the questioning stage of a suspect interview can best be implemented when interviewing a vulnerable person. In order to examine this area the term vulnerability, as applied to police suspects must be fully explored.

The Police and Criminal Evidence Act (1984) Codes of Practice (Home Office, 2005) offer the following advice to investigating officers concerned with the interviewing of vulnerable suspects:

> Although juveniles or people who are mentally disordered or otherwise mentally vulnerable are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating. Special care should always be taken when questioning such a person…


While the above guidance notes provide advice to the officer that there may be difficulties in conducting the interview, they provide no guidance in how to actually carry out the interview. The officer would need to access this information from other sources. One source of information is practice advice such as the guidance given in the, Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and using Special Measures (ABE) (Ministry of Justice, 2011). This document provides interviewers with guidelines on appropriate methods to elicit an account from vulnerable witnesses such as children and persons with intellectual disability and its advice is based on the psychological evidence base (e.g. Lamb et al., 2011) that informs the PEACE model of interviewing. On occasions it may be necessary to ask a witness to explain inconsistencies in their statement and the following advice is provided to interviewers:

Questions intended to elicit an explanation for evidential inconsistencies should be carefully planned, phrased tactfully and presented in a non-confrontational manner.

Ministry of Justice (2011, 2.163)

Further, in terms of interviewing witnesses the ABE guidance informs investigating officers that ‘explanations for evidential inconsistencies should take account of the extent to which the witness may be vulnerable to suggestion, compliance or acquiescence’ (Ministry of Justice, 2011, 2.163). This issue is highlighted because it is also relevant to suspect interviews. It is argued that such advice needs to be reflected in guidance to investigators who conduct suspect interviews with a vulnerable person and who need to challenge discrepancies in the suspect account. In order to achieve this more research is required to see if an interviewing officer can challenge a vulnerable suspect’s account effectively without inadvertently destroying the veracity of such an account. It is commonsense that not only must the suspect be given an opportunity to provide an account but they must also be entitled to have their account examined during the challenge stage of an interview. Significantly, the suspect is
entitled to have their responses elicited and recorded as accurately as possible even if there is no suggestion that a self-incriminating admission or a false confession is being provided (see Gudjonsson, 2003, p. 174, for detailed discussion). As noted earlier in this article, here is where the thorny question lies; how do we challenge a vulnerable suspect who may present as more suggestible, agreeable, or overly compliant?

**Challenging the vulnerable suspect**

The issue of using appropriate challenging questions seems to be exacerbated if the officer is interviewing an alleged suspect of crime. It seems that there is no guidance available to police officers about how to effectively challenge a vulnerable suspect who has intellectual disabilities or any other mental disorder. The following is a simulated interview (based on cases that the authors have worked upon) to demonstrate how complex a police suspect interview could be for a vulnerable suspect. We hope that in time we will be able to offer extended examples derived from real data to enhance this discussion.

The following example outlines a simulated interview where the officer has picked up some inconsistencies within the account provided by a vulnerable suspect who has intellectual disabilities.

**Officer:** you said earlier that you had been in the post office at about 10am. We have a witness statement that states you left the post office at 9.40am so it can’t be true, can it, that you were there at 10am?

**Suspect:** no (meaning, no, it can’t be true that you have witness evidence)

**Officer:** so, you have either made a mistake or lied to us when you said you were in the post office at 10am. You were actually in the High Street at 10am, weren’t you?

**Suspect:** yes (meaning I must have made a mistake; it must have been 9.30am when I was in the post office; I am no good at time)

**Officer:** so, you agree you were in the High Street at 10am?

**Suspect:** no

The officer’s challenge in this account is very complex and may cause a great deal of confusion to the vulnerable suspect. Specifically the challenge includes tag questions (see for example Harres, 1998; Blankenship and Craig, 2007) which are known to be highly complex to children and adults with a Learning Disability. Indeed coercive tag questions such as ‘you hit her, didn’t you?’ can force the interviewee to agree with the interviewer (Harres, 1998) which may certainly in some cases lead to acquiescence or compliance by the vulnerable interviewee as identified by Gudjonsson. Plotnikoff and Woolfson (2009) have reported that tag questions are statements which add a short question that invites corroboration of truth. In the fictitious example provided above, the question ‘You were actually in the High Street at 10am, weren’t you?’ is a tag question. Such questions are known to be linguistically complex, requiring seven stages of verbal reasoning in order to answer them correctly (Plotnikoff and Woolfson, 2009). A person with an intellectual disability may have impaired functioning in such verbal reasoning and may struggle with differentiating between positive and negative tag questions such as ‘you weren’t there, were you?’ or ‘You were there, weren’t you?’

Further to this acknowledged difficulty of cognitive demand there is a linguistic problem in that tag questions and associated forms of question function to seek confirmation from an interviewee rather than information. Newbury and Johnson (2006) demonstrate a distinction between three question forms: a declarative followed by a tag which requests agreement, ‘You were there earlier than 10am, do you agree?’; a declarative followed by a
standard tag, ‘You were actually in the High Street at 10am, weren’t you?’; and a bare declarative, ‘So, you were in the High Street at 10am?’ All three forms are classified as implicitly or explicitly seeking confirmation, rather than seeking information and this implicit purpose may of itself be hard for the vulnerable suspect to resist. Further to this, Newbury and Johnson (2006) argue that the three forms, in the order presented, are increasingly coercive. That is to say, a tag which requests agreement is at least explicit in its purpose and so may be more easily resisted than a standard tag, whereas a bare declarative is most coercive of all. Their analysis applies to all interviewees and it might be argued that for vulnerable suspects the coercive effects are likely to be exaggerated.

To return to our earlier fictitious interview, the challenge could be worded differently but the essence of the challenge is changed with the following questions:

‘The witness says that you left the post office at 9.40am. Did you leave the post office at 9.40am?’ This statement followed by a question does not explicitly highlight the discrepancy in the account between witness and suspect and is more of a clarifying question than a direct challenge as might usually be expected in these circumstances. The question form and function seek information not confirmation.

Alternatively, the interviewer may ask ‘Did you lie, or are you mistaken when you say you were in the post office at 10am?’ This is challenging but again is not placed in the context of the discrepancy. It is also asking a forced choice question where research has shown that 60% of all adults respond even when the correct alternative is missing (see Milne et al., 1999, p. 95 for an overview of problematic question styles). It could be changed to ‘we have a witness who disagrees with you about the time you were in the post office. Were you in the post office at 10am or are you telling a lie?’ However, this is again a forced choice question and is becoming a rather lengthy and complex question format which may be problematic for some vulnerable suspects.

Within the forensic linguistic research, there is a long established view of the adversarial courtroom as a battle between competing narratives (e.g. Matoesian, 1993) and this analysis is emerging as an understanding of the police interview (Haworth, 2010). The competition between narratives may be hard to put to a vulnerable suspect but it may be useful to explore formulations which present this perspective. The essence of the challenge would be presented by the interviewing officer in terms of two stories which both cannot be true. This may run into difficulties of both short term memory limitation and of perspective taking with a vulnerable suspect but nevertheless could be attempted. Thus an officer may say something like this:

Officer: ‘After speaking with you and another witness I have heard two stories. Do you understand they both can’t be true?’

Suspect: ‘Yes’

Officer: ‘You can’t have been in the post office at 9:40 and at 10am. Which story is true?’

Alternatively, in order to avoid allegations that the suspect has acquiesced when answering ‘yes’ in the above example it is possible to amend the text to ‘only one of those stories can be true. You can’t have been in the post office at 9.40am and 10am. Which story is true?’ However, this has eliminated turn-taking and increased the cognitive load again on the vulnerable person.

Even by adopting the competing narratives formulation, the questions are likely to prove problematic to some vulnerable persons who have difficulty understanding complex sentence structure (negatives) and in perspective taking. It is evident that a lot of thought needs to be given to such a challenge in order to minimize later accusations that the suspect did not understand the challenge and the forms of such challenge need to be
evaluated through empirical testing. Problems may be exacerbated if the interviewee has a mental illness such as depression or psychosis, even if the depression and psychosis are not immediately evident to the investigating officer. Thus, it can be seen with one fictitious excerpt that the problems of interviewing vulnerable suspects are far reaching. There are however some safeguards in place as part of the PACE codes to help the vulnerable suspect, namely the Appropriate Adult.

The role of the Appropriate Adult
Currently, in England and Wales, the Police and Criminal Evidence Act 1984 enables the vulnerable suspect to have the safeguard of an ‘Appropriate Adult’ in attendance during the interview. (Home Office, 1984, Code C. 11.17). While a parent who is not a victim, witness or otherwise involved in the investigation may fulfil this role, it is recorded that ‘in the case of people who are mentally disordered… it may be more satisfactory if the Appropriate Adult is someone experienced or trained in their care rather than a relative lacking such qualifications’ (Code ‘C’ 1D). Significantly, this seems indicative of a supportive role rather than the role of a communication expert. Notably, according to Code ‘C’, the Appropriate Adult ‘shall be informed they are not expected to act simply as an observer; and the purpose of their presence is to: advise the person being interviewed; observe whether the interview is being conducted properly and fairly; facilitate communication with the person being interviewed’. Several problems have been highlighted with this measure. First, it is not easy for police officers and staff to identify vulnerable persons in the first place (Cant and Standen, 2007; Gendle and Woodhams, 2005). Can a parent really fulfil this role? Secondly, the extent to which an Appropriate Adult actually provides general safeguards to vulnerable suspects has been questioned (Pearse and Gudjonsson, 1996; Gudjonsson, 2006). Finally, research has shown that Appropriate Adults may contribute little to the investigative interview in terms of facilitating communication (Medford et al., 2003). Therefore, research is urgently required to examine exactly how Appropriate Adults currently function in terms of having the training, skills and experience to ensure fairness in the interview process. We need to know how the Appropriate Adult is trained to identify complex language and to impartially facilitate conversation between the suspect and the investigating officer. These skills would enable the investigator to challenge discrepancies in the provided account, while at the same time enabling the suspect to fully understand the nature of the discrepancy and to respond accordingly.

Registered Intermediaries and defendants at court
Until recently there was no legislation to assist the vulnerable defendant giving evidence at court. It is already known that attendance at court causes difficulties for vulnerable witnesses particularly in terms of cross-examination. Research has shown that questioning strategies employed by lawyers can confuse witnesses with impaired cognitive functioning (Kebbell et al., 2004). Kebbell et al. (2004) found that witnesses with intellectual functioning were questioned in an almost identical way to that of witnesses without such impairment. Vulnerable witnesses in England and Wales have access to a number of Special Measures which were introduced by the Youth Justice and Criminal Evidence Act 1999 and these include the role of the Registered Intermediary.

Plotnikoff and Woolfson (2009, p. 128) note ‘a unique feature of the (Registered Intermediary) scheme is that, unlike a supporter or a witness profiler, an intermediary can help the court by flagging up potential communication problems during questioning and, with the court’s permission, assist in resolving them’. Reflecting back on the fictitious police interview outlined earlier in this...
article, if such ‘tag’ questions were used during the cross-examination of a vulnerable witness at court, then an Registered Intermediary could highlight, if appropriate, that the style of questioning was problematic to this particular witness.

The Registered Intermediary can also assist the questioner to reformulate the specific troublesome question so that it can be understood. The Registered Intermediary is not only available to assist the vulnerable witness at the trial. Earlier in the proceedings, having identified a vulnerable witness, the interviewing officer can request that a Registered Intermediary attend and assess the witness prior to the commencement of an investigative interview and can subsequently facilitate questioning during that interview (O’Mahony, 2010; O’Mahony et al., 2011).

It has been within the power of the court to allow an intermediary to assist a vulnerable defendant at trial and this is because of Criminal Practice Direction III 30 (2011) (see Appendix) which provides directions to the court about the treatment of vulnerable defendants, including their support needs at trial. The Coroner’s and Justice Act 2009 introduced legislation that allows the vulnerable defendant to access an intermediary for the purposes of facilitating communication in the court but this legislation has yet to be implemented (O’Mahony et al., 2011). Currently, if the judge invokes their inherent jurisdiction to allow an intermediary to facilitate communication at court then the intermediary can intervene during any examination of evidence or cross-examination. It begs the question however, why is help not needed in the preceding interview?

Again, returning to the fictitious suspect interview highlighted earlier, if such problematic questions were used at court then the intermediary could intervene. It appears then that more safeguards may be available at court, in terms of ensuring that the defendant understands the communication, than in the police suspect interview and this raises questions about due process in criminal investigations. It would seem therefore that a thorough examination of the utility of the intermediary role with defendants at court should inform how police suspect interviews are undertaken, particularly in terms of the complexity of challenging discrepancies in interviews.

Conclusion

There has been excellent progress in England and Wales in recent years in terms of police interviewing practices and research has been conducted on differing strategies to challenge suspect accounts (Dando and Bull, 2011). This should not lead to complacency though (Milne et al., 2010) and there are areas of practice that still require scrutiny to ensure that investigators continue to hone their skills. One such area that has been identified is that of the language used by interviewers when challenging the accounts of vulnerable suspects (and indeed witnesses). Specifically, we are advancing an argument that psychologists, speech therapists, and linguistic scholars should take an increasingly active role in publishing practice papers about the complexities of certain question styles, for example, tag questions and the comprehension problems that these can cause vulnerable persons. Empirical evidence is required to advance best practice.

While the evidence base continues to grow about best practice in interviewing skills and our knowledge continues to develop about how problematic questioning formats may make certain individuals more susceptible in witness interviews and cross-examination at court, it seems that we are yet to focus our attentions on whether investigators can adequately fulfil their role in challenging the account of a vulnerable suspect, particularly in complex cases where mental illness may be a presenting condition in addition to a learning disability. We must remember that police officers are informed that ‘the police interviewer is not bound to accept the first answer given. Questioning is not unfair merely because it is persistent’. The challenge facing academics and communication professionals
is in demonstrating how a challenging question can be altered to make it less complex and still achieve its intended result. The same difficulties are currently being experienced in the courtroom when counsel is advised by the Registered Intermediary to avoid ‘leading questions’ when challenging the testimony of a vulnerable witness. As we know, cross-examination in the court room has historically been based on leading questions, commonly in the form of tag questions.

We may yet find that challenging vulnerable suspects will need to be conducted in an entirely different format to what we have accepted as the norm in investigative interviews. It may be appropriate to examine the current guidelines for witness interviewing to see if they can be developed to meet the more robust needs of appropriately challenging discrepancies in a suspect interview. We have also questioned the current function of the Appropriate Adult scheme and whether vulnerable suspects being interviewed at a police station are truly having their communication difficulties facilitated by communication experts as is currently established as good practice in the courtroom through the use of Registered Intermediaries. As the intermediary role is expanded to include vulnerable defendants, it is likely that the admissibility of some suspect interviews will fall into question even when an Appropriate Adult was present, and PACE seems to have been adhered to. This will soon highlight the lack of effectiveness of the Appropriate Adult scheme in terms of the lack of professionals with expertise in language, development, and communication skills undertaking the role.

The courts seem to be benefiting from having access to intermediaries, who are trained professionals, to facilitate communication with vulnerable defendants at court. Surely, such a service is also warranted at the police investigative interview? If research indicates that there are problems with communication during police interviews, and indeed this finding is likely, then consideration needs to be given to the training needs of interviewers and/or anyone acting as an Appropriate Adult.

References


Appendix

Legislation, case law, and practice
guidelines referred to in the text

Coroners and Justice Act (2009)
   Criminal Practice Direction III 30 (2011)
   accessed on 30.04.12 http://www.justice.gov.uk/
courts/procedure-rules/criminal/docs/ccpd-
part-III-further-pds-applying-in-the_Crown-
Court-and-magistrates-courts-oct2011.pdf
   Police and Criminal Evidence Act (1984)
   App. R.99, p. 103
   Youth Justice and Criminal Evidence Act (1999)