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# INVESTIGATIVE INTERVIEWING

THIRD  
EDITION

THE  
CONVERSATION  
MANAGEMENT  
APPROACH

ERIC SHEPHERD AND ANDY GRIFFITHS

# **Investigative Interviewing**



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The Conversation Management Approach

Third Edition

Eric Shepherd and Andy Griffiths

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## Dedications

From Eric  
Rosaleen, a stór mo chroí.

From Andy  
During the writing of this book I lost my best friend of forty years. Allan (Ali) Williams was incredibly wise and great to talk to, about anything. After he died I realised our conversations were so good just as much because of the way he listened, as for what he said. He exemplified so much of what is written in this book but he was not a trained interviewer, or investigator. He was just more interested in the other person than himself.



# Foreword

Eric Shepherd conceived and wrote the first edition of this book in 2007, bringing together, for the first time, the essence and detail of Conversation Management, an ethical approach to interviewing victims, witnesses, and suspects that he had been advocating and training to the police service since 1983. That book quickly became the authoritative handbook on interviewing, not only for investigators but also other professionals across the criminal justice spectrum. In 2013, Eric generously invited me to collaborate with him and, together, we wrote the second edition. My role was to provide contemporary context that complemented Conversation Management's origins. The text incorporated new material drawn from my operational and training experience—as well as my applied research—in the conduct of interviewing, the management of the interview process, and from the wider world of managing investigations. The second edition also took into account contemporary developments within policing, investigation, policy, practice, and the law since the original book. That edition also received very favourable reviews across the practitioner and academic spectrum and opened new conversations with non-police investigators and researchers from diverse backgrounds. It also gained more readers internationally.

This third edition is a more significant update. It is a comprehensive rewrite that has reviewed every word of the previous text. Firstly, over many months, we revisited the fundamental principles of Conversation Management. We reassessed how they were presented in terms of their relevance to modern day interviewing and investigations, both current and anticipated. Once that process was complete we then completely reviewed the application of those principles to interviews with victims, witnesses, and suspects, redesigning and honing the structures, approaches, and techniques that we advise and recommend. Both of these processes were completed while reviewing the relevant empirical evidence. The result is a significantly revised text with a new chapter structure, and additional tools, which is referenced throughout against legal and scientific sources, but written for practitioners.

In relation to this latest edition, we would draw your attention to three very important points.

Firstly, we emphasise that Conversation Management retains, as its foundation, the obligation of respect in treating all interviewees as equals by explaining the interview process and supporting their autonomy in disclosing or not disclosing. This is an unequivocal and timeless principle that cannot be applied as a graduated measure. Respect is very much binary, you either respect another individual or you do not. Too often we have read papers which have hypothesised and then tested various technical reasons why investigators might be asking leading questions or acting in a particular way, and then recommended an incremental change to procedure or technique as the remedy. This, we argue, is often misleading and destined to fail. Behaviour is influenced by attitude and many of the technical defects seen in interviews are actually caused by a fundamental lack of respect in the way the interviewer perceives the interviewee. In relation to a victim or witness this attitude often manifests as a lack of empathy, a failure to understand the experience that the interviewee has undergone and act accordingly. When interviewing a suspect this lack of respect is almost always caused by seeing them not as someone who is *suspected*, but as someone who is *guilty*. Therefore, any micro level recommendation, for example, to change the wording of a question will not change the interviewer's overall communication

message or the way in which the interviewee perceives it. In the absence of any training at all an interviewer who treats an interviewee with respect will communicate better and minimise the risk of misinformation.

Secondly, we have used footnotes throughout the book to demonstrate the broad, mature, and ever-growing evidence base that supports the fundamental philosophy, principles, and professional practice of Conversation Management. The footnotes provide the ability for further personal research where desired, but with minimal distraction for the reader. When looking at the references, you will see that they are not just drawn from specific psychological studies related to false confessions and the reliability of memory but multi-disciplinary sources ranging from linguistics, discourse analysis, social psychology, sociology, neuroscience, cognitive psychology, developmental psychology, forensic psychology, psychopathology, through to criminology. As well as the research we also refer to case law, legislation, official policy, and guidelines in respect of professional practice by police officers, investigators, legal advisers, and other professionals involved in the investigative interviewing process—including social workers, interpreters, intermediaries—and those fulfilling the role of appropriate adult who are not professionals. The resultant bibliography spans over 100 years of relevant research, professional practice, and case law. We have also taken the opportunity, as part of this exercise, to refine Conversation Management's techniques to incorporate the best of the recent research, while ensuring that every addition is compliant with its fundamental ethics.

Thirdly, throughout the book when we are discussing either the Fundamentals or the Applications, we address you, the reader, as a person. This is deliberate. This is a book about conversation and we want you to imagine a voice reading the content to you, in effect explaining the issues to you. This will help you visualise the concepts and practical situations that we describe. As part of this approach, you will see passages of text where we have created conversations between you, as an interviewer, and a fictional interviewee. In those sections we have consciously used the pronoun 'you' and not the more impersonal 'investigator' or 'interviewer'. We recommend that you read the narrative voice aloud in these passages of text and pay particular attention to the pace at which you speak. In these sections of text we have represented pausing by the symbol ^ . Two of these symbols—^ ^—represent a one- or two-second interval, rather as if you said to yourself silently 'pause, pause ... pause, pause'. The more symbols used the longer the pausing. In order to gain a sense of the significance of the pause, try pausing for the requisite period shown by the symbol. When you do this, you will probably think that the pausing is too long, perhaps uncomfortably so! However, this is the key point. Persevere. Move outside your 'comfort zone' and experiment. Skilled investigative interviewing is actually slowed down talk. Pausing is essential. It gives you time to think, to observe, and to create the 'space' for the interviewee who may well 'come in' to take the speaking turn. Then transfer this deliberate pausing into your everyday interviewing. Learn how to make the pause work for you, it is one of the secrets of skilled interviewing.

The complete book has fifteen chapters and a Reference Section. It opens with a detailed chapter that sets the scene for the whole book by explaining Conversation Management including the context of its creation, its ethical basis, and a concise summary of the empirical research that supports it. Chapters Two to Seven then address what we call the Fundamentals. These are the subjects that are universal to conducting any conversation, including those where a person is required to recall an event or incident. In successive chapters we deal with the way conversation works, how people remember and recall episodic information, how people process information, how to build trust and facilitate disclosure, the appropriate way to ask questions, and how to manage an individual's response. The remaining chapters, Eight to Fifteen, then deal with specific Applications. This Part

commences with three chapters addressing how to prepare for different types of interview, followed by three chapters on conducting interviews with suspects. A chapter on interviews that fall outside the mainstream categories of victim, witness, and suspect precedes a final chapter on evaluation. We cross reference back and forth between the Fundamentals and the Applications demonstrating how each informs the other and how knowledge of the fundamental theory improves application of the skills. The Reference Section provides extra material in relation to specific tools for planning, conducting, and evaluating interviews, and to the issues involved when conversing with young people.

You will have realised, having read this far, that we have not written the book as a chronological series of chapters, beginning with interview preparation followed by how to commence an interview, and so on. Rather, we have dedicated individual chapters to a range of overlapping and interdependent subjects, cross referencing material where applicable between different chapters. This reflects how we see interviewing, not as a simple linear process where step 1 always precedes step 2, but as an amalgam of interconnected elements that need to be considered, organised, and assembled according to all the prevailing circumstances in a particular situation. The most appropriate analogy we have is that of a jigsaw, where the various elements of Conversation Management, detailed in this book, represent the individual pieces of the puzzle. We hope that as you work through the chapters, the pieces of the jigsaw will fall into place, enhancing your ability to manage difficult and challenging conversations and to become a highly competent and skilled interviewer.

Andy Griffiths

March 2021



# Acknowledgements

Ours is a practical book, intended to improve practitioners' understanding of and, ultimately skill in, the task of obtaining information—as a knowledgeable, ethical, mindful, and reflective professional—from all types of interviewee. Therefore, during the writing process discussion with and feedback from expert professionals has been vital in shaping the book's content, testing new ideas, and emphasising its key messages. We are incredibly lucky to be able to know many such people and wish to record our thanks to all of them for their help in finalising this manuscript. We take full responsibility for the final version and any errors that remain. We also apologise to anyone whom we have missed.

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# Abbreviations

AA	appropriate adult
ABC	A(ssume nothing), B(elieve nothing), C(hallenge everything); A(ssume nothing), B(elieve no-one), C(heck everything)
ABE	Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Guidance on Using Special Measures (2011)
ACCESS	A(ssess, Action Plan and Prepare), C(ollect), C(ollate), E(valuate), S(urvey), S(ummarise)
ACTA	A(lternative) C(ase) T(theory) A(ssessment)
ADD	attention deficit disorder
AD(H)D	attention deficit (and hyperactivity) disorder
ADVOKATE	A(mount of time under observation); D(istance); V(isibility); O(bstruction); K(nown or seen before); A(ny reason to remember); T(ime lapse); E(rror or material discrepancy)
APD	antisocial personality disorder (also termed sociopathy)
ASD	autism spectrum disorder
ATF	antecedent time frame
BATNA	B(est) A(lternative) T(o a) N(egotiated) A(greement)
BLD	borderline learning difficulty
BPD	borderline personality disorder
BSL	British Sign Language
BWV	body-worn video
CARE	C(larify) A(nomaly and) R(ecap) E(ntirety)
CDA	Crime and Disorder Act, 1998
CHIS	covert human intelligence sources
CI	C(ognitive) I(nterview)
CID	Criminal Investigation Department
CJA	Criminal Justice Act, 2003
CJPOA	Criminal Justice and Public Order Act, 1994
CLA	Criminal Law Act, 1967
CLC	Criminal Law Committee
CM	Conversation Management
CNP	custody nurse practitioner
CPC	C(onsistency), P(rovenance and) Corroborator (disputability factors)
CPA	Criminal Procedure and Investigations Act, 1996
CPN	community psychiatric nurse
CPS	Crown Prosecution Service
CPTU	Central Planning and Training Unit
CREDO	C(ontact), RE(lationship), D(ialogue), O(utcome)
CT	case theory
CYN	confirmatory yes/no
DeMo	De(monstration for) Mo(re detail) (memory-enhancement technique)
DNA	deoxyribonucleic acid

## Abbreviations

EI	emotional intelligence
FAIR	F(inal) A(nomaly) I(nvestigation and) R(easons to suspect)
FGD	fine-grain detail
FIREPLACES	F(inancial), I(deology/moral), R(evenge), P(rotection), L(ifestyle), A(ccess), C(oercion), E(go), S(entence)
FME	forensic medical examiner
FOR	frame of reference
FSIQ	full-scale intelligence quotient
GAD	generalised anxiety disorder
GBH	grievous bodily harm
GEMAC	G(reeting), E(xplanation), M(utual) A(ctivity), C(losing)
GQM	Griffiths Question Map
HIG	High Value Detainee Interrogation Group
HUMINT	human intelligence
I <sup>3</sup>	Investigatively important information
IQ	intelligence quotient
KB	knowledge bin (in SE3R)
KISS	keep it simple and short
LAA	Legal Aid Agency
LD	learning difficulty
LTM	long-term memory
MF	material fact
MHA	Mental Health Act, 1983 and 2007
MICE	M(oney), I(deology), C(oercion or compromise), E(go or excitement)
MO	modus operandi
MoJ	Ministry of Justice
MTF	material time frame
MRC	M(ental) R(einstatement of) C(ontext)
NCA	National Crime Agency
NDM	National Decision Model
NPCC	National Police Chiefs' Council
NPD	narcissistic personality disorder
NRCPPD	National Registers of Communication Professionals working with Deaf and Deafblind People
NRPSI	National Register of Public Service Interpreters
OAPA	Offences Against the Person Act, 1861
OCD	obsessive-compulsive disorder
OCEAN	O(penness to experience), C(onscientiousness), E(xtraversion/introversion), A(greeableness), N(euroticism)
O-P	observer-participant (as in O-P plot – visual information representation)
PACE	Police and Criminal Evidence Act, 1994
PARDs	P(roblematic and) A(nomalous) R(esponses and) D(isclosure)s
PD	personality disorder
PEACE	P(lanning and Preparation), E(ngage and Explain), A(ccount, Clarify, Challenge, C(losure)
PED	portable electronic device
PEI	post-event information
PETALS	P(eople), E(vents), T(hings), A(ctions), L(ocations), S(peech)
PFC	pre-frontal cortex
PID	pre-interview disclosure

PIP	Professionalising Investigation Programme
POCA	Proceeds of Crime Act, 2007
POST	P(ause), O(bserve), S(OFTENS), T(hink)
PRcall	P(ractising detailed) Recall (memory-enhancement technique)
PTSD	post-traumatic stress disorder
RAI	remote audio interview
RASCALS	R(eciprocation), A(uthority), S(carcity), C(ommitment and consistency), L(iking), S(ocial proof)
RCCJ	Royal Commission on Criminal Justice, 1993
RCCP	Royal Commission on Criminal Procedure, 1980
RESPONSE	R(espect), E(mpathy), S(upportiveness), P(ositiveness), O(peness), N(on- judgemental attitude), S(traightforward talk), E(quality)
RI	remote interview
RSVP	rhythm, speed, volume, pitch
RVI	remote visual interview
SIO	senior investigating officer
SMART	S(pecific), M(easurable), A(chievable), R(elevant), T(ime-bound)
SOCPA	Serious and Organised Crime and Police Act, 2005
S(P)CD	social (pragmatic) communication disorder
SRA	Solicitors Regulation Authority
SSE	Sign Supported English
STF	subsequent time frame
STM	short-term memory
SUE	strategic use of evidence (technique)
SW	Special Warning (under the Criminal Justice and Public Order Act, 1994)
TBI	traumatic brain injury
TBR	to-be-remembered
TIC	taken into consideration
TTT	topic transition time
VIS	vulnerable, intimidated, or significant (witness)
VM	visual mapping
WAIS	Wechsler Adult Intelligence Scale
WISC	Wechsler Intelligence Scale for Children
WM	working memory
WOB	wheel of blobs (as in mapping ideas, topics)
WYSIATI	'what you see is all there is'
YJCEA	Youth Justice and Criminal Evidence Act, 1999
YOT	Youth Offending Team



# Fundamentals

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# The Conversation Management Approach to Investigative Interviewing

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## 1.1 Introduction

This chapter sets the scene for the rest of this book. We open with a brief definition of the *Conversation Management* (CM) approach to investigative interviewing, before explaining the psychology of investigation as a decision-making process. Having distinguished the two opposing ethical perspectives on investigation we set the context for the creation and emergence of CM with a detailed description of the practice of expedient interrogation of suspects and expedient interviewing of witnesses up to 1993: the year that *PEACE*—the national investigative interviewing model framed upon CM—was introduced. We examine the evolution of *PEACE*, the subsequent emergence of the *Achieving Best Evidence* (ABE) approach to interviewing vulnerable and intimidated witnesses, and the *Professionalising of Investigation Programme* (PIP). We conclude with a synopsis of research findings that underpin the effectiveness of CM and how we continue to develop our approach to CM.

## 1.2 What is Conversation Management?

Conversation Management (CM) is an ethical and mindful approach to investigative interviewing that seeks to facilitate maximum disclosure by an individual of an event, episode, or circumstances.<sup>1</sup> Both CM and investigative interviewing were devised in 1983 as an alternative to confirmatory confession-driven, unethical suspect interrogation and directive questioning of witnesses<sup>2</sup> to enable the creation of a convenient, confirmatory statement. At the heart of CM is commitment to authenticity in exchanges with individuals: interviews are crucial conversations that concern often extraordinary circumstances and will affect their lives. Typically the stakes are high, opinions vary, and emotions run strong.<sup>3</sup>

The ethical foundations of CM are respect for the law, the person, the integrity of information, and individual autonomy; every witness or suspect has the right to choose whether to converse, what to disclose, when, and how.<sup>4</sup> Respect is a key component of the CM practitioner's mindset, together with commitment to empathy, supportiveness, openness, being non-judgemental, using straightforward talk, and engaging as an equal—talking across, not down, to the interviewee. The CM practitioner's disposition predetermines that they will interpret and respond to any situation mindfully.<sup>5</sup>

CM practitioners are reflective: thinking prior to, during, and following their actions. They have a professional's grasp of human experience and behaviour that affects the interviewee's conduct and contribution in an interview: attention, perception, memory, sources of vulnerability, and barriers to comprehension and disclosure arising from psychological make-up, and perceptions of self and the other person, and the situation. Likewise, they

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<sup>1</sup> Shepherd, E. & Griffiths, A. (2020) *CREDO: Inquiry through Mindful Conversation Management*. Hereford: Forensic Solutions.

<sup>2</sup> Shepherd, E. & Milne, R. (1999) Full and faithful: ensuring quality practice and integrity of outcome in witness interviews. In A. Heaton-Armstrong, E. Shepherd, & D. Wolchover (eds.) *Analysing Witness Testimony*. Oxford: Oxford University Press.

<sup>3</sup> Patterson, K. et al. (2012) *Crucial Conversations*. New York: McGraw-Hill; Shepherd, E. & Griffiths, A. (2020) (n 1).

<sup>4</sup> Shepherd, E. (1991) Ethical interviewing. *Policing*, 7, 42–60; Shepherd, E. (1993) Ethical interviewing. In E. Shepherd (1993) *Aspects of Police Interviewing. Issues in Criminological and Legal Psychology*. Leicester: British Psychological Society.

<sup>5</sup> Dweck, C. (2006) *Mindset*. New York: Random House; Langer, E. (1989) *Mindfulness*. Boston, MA: Da Capo Press.

know how memory works, and the dynamics of conversation in everyday life and in interviews likely to be perceived as stressful, 'difficult', or 'crucial' by the interviewee.

CM practitioners know that comprehensive preparation is essential—mastering the *fine-grain detail* (FGD), identifying what they don't know and need to know, formulating alternative explanations, researching, creating an interview plan, and planning and implementing key actions prior to meeting the individual.

- At the point of initial contact, when *greeting* the individual, they are mindful—considered, considerate, and conscientious in their behaviour: showing respect, empathy, supportiveness, positiveness, non-judgemental thinking, straightforward talk as an equal talking 'across' to the individual. They continue with this mindset—thinking and behaving in this manner—as they engage in dialogue up to point of departure. They listen intently to the FGD of what the individual says verbally. Simultaneously, they actively listen to how it is said (vocally). They continuously and concurrently monitor the interviewee's non-verbal behaviour, identifying an initial baseline on first contact and thereafter noting potentially significant variations from this baseline.
- They *explain* from the start and keep on explaining. To foster and sustain a working relationship based on shared understanding of the aim and the objectives of the interview, they provide *psychological structure*—explaining the *reason* for the interview, the *route map* (topics to be covered), *routines* (e.g. reference to evidence, items), and clear *expectations* (e.g. concerning disclosure of detail).
- They manage the conversational exchange as a dynamic *mutual activity*. They *ethically influence* the individual to engage in maximum spontaneous disclosure by:
  - Maximising the individual's occupancy of the speaking turn through pause and evidencing a commitment to listen rather than talk. This enables them to grasp the FGD and demonstrate awareness of the individual's feelings.
  - Where appropriate and possible, using memory-enhancing techniques to facilitate the individual's remembrance of offence-related detail.
  - Questioning productively and using specific techniques to access the individual's non-verbal experience.
  - Disclosing and withholding information appropriately, to maximise the integrity of the interviewee's account.
  - Probing the individual's response to disclosed detail.
  - Courteously and constructively managing *problematic and anomalous responses and disclosures* (PARDs) that occur whether the individual is cooperating—genuinely or instrumentally—or resisting—giving measured responses, evading, or saying nothing at all.<sup>6</sup>
- Towards the end of the interview they conduct a systematic investigative review of the individual's disclosures to address unresolved anomalies. In the case of a witness, they then share *either* the contents of the draft statement with the individual for feedback and confirmation or, if it is a recorded interview, a summary of the individual's key disclosures for feedback and confirmation. In the case of a suspect, they fulfil the key tasks of:
  - disclosing any previously withheld evidence
  - presenting all of the reasons to suspect the individual
  - where applicable, issuing a Special Warning or introducing 'bad character' evidence

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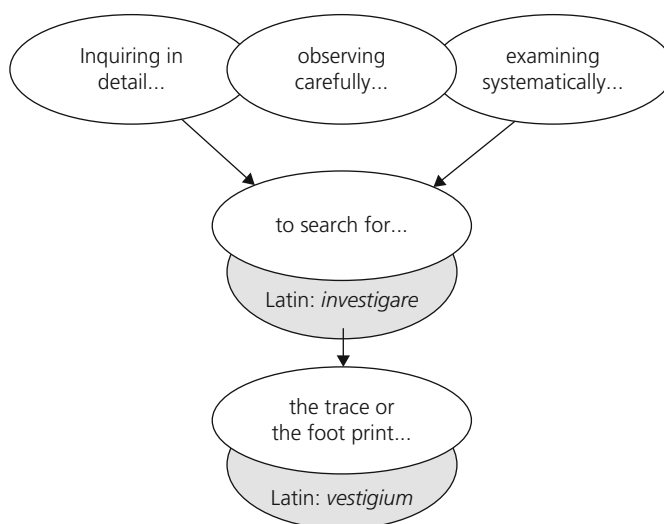
<sup>6</sup> Shepherd, E. & Griffiths, A. (2020) (n 1); Shepherd, E. (2019) The hunt for non-barking dogs and other curiosities: identifying and managing anomaly within forensic interviews. *International Journal of Forensic Mental Health*, 18, 66–84.

- in all cases, summarising the key points of the suspect’s disclosures across the interview.
- Having shared the outcome of the interview with the individual, they create a forward focus—explaining what will happen next—and bring the conversation to a *close*.

Put simply, CM is consistent with *principled investigation*: a truly ethical and investigative approach to interviewing any suspect or witness.

### 1.3 Investigation

The word *investigation* comes from the Latin *vestigium* meaning trace or footprint. It requires commitment and skilful performance in the fundamental tasks of inquiring in detail, observing carefully, and examining systematically what is before the investigator (Figure 1.1).



**Figure 1.1 Investigation as commitment and skilled performance<sup>7</sup>**

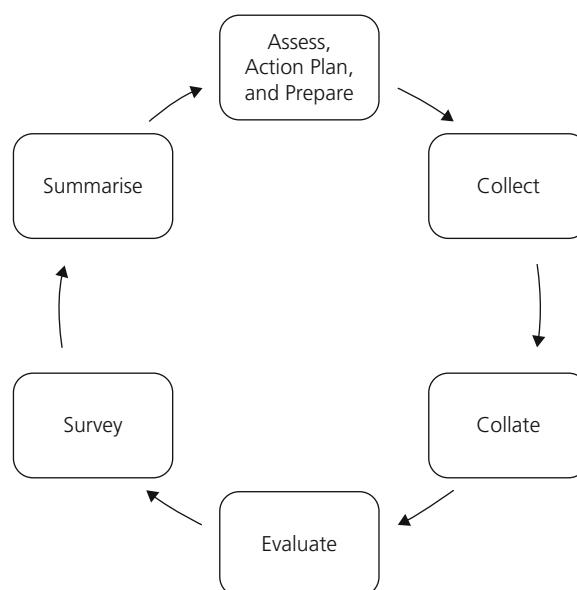
*Reactive investigation* is a response to an instance of actual or potential harm that has happened or is happening. It is usually overt, although circumstances may require the use of covert methods. *Proactive investigation* seeks to prevent the actual or potential occurrence of harm, or further harm. What is common to every context of investigation is the commitment of human resource—practitioner, supervisory, and managerial—increasingly alongside the application of technology, in the acquisition, management, and use of information to protect the well-being of individuals, groups, institutions, the community, or society as a whole by solving or resolving a *case*—a problematic occurrence or set of circumstances.

#### 1.3.1 Investigating a case: a problem-solving cycle

All investigation involves probing from the known to the unknown in order to establish the offence or the intention to offend, the circumstances of its actual or potential occurrence, and the most likely offender. It is a form of problem-solving that involves a

<sup>7</sup> Griffiths, A. & Shepherd, E. (2020) *Conversation Management: Resources for Practice and Development*. Hereford: Forensic Solutions.

continuous cycle of interdependent thought and activity: systematic assessment of current information and evidence, action planning and preparation to collect and check information and evidence (through investigative actions and interviewing of witnesses and suspects), collating—methodically collecting, organising, and integrating new with existing information and evidence—and subjecting this to analysis to enable evaluation, comprehensive examination of all information and evidence in the round, reducing this to its essentials, and engaging again in systematic assessment. These activities are summarised by the acronym ACCESS (Figure 1.2).



**Figure 1.2 ACCESS: the systematic cycle of investigation<sup>8</sup>**

The cycle continues until the final assessment, and a decision concerning the disposal of the case, and what action to take in respect of the suspect. Across the investigation continuous iterations of the cycle give rise to *case material*:<sup>9</sup> evidence and information that either point *towards* or *away from* an individual's culpability of the actual or potential offence.

Evidence is *objective fact* and *oral testimony* perceived as indicating either unequivocally or arguably that a suspected individual committed, or did not commit, the offence. *Direct evidence* lends overt support to the likely truth of an assertion, particularly of guilt or innocence. For example, a witness testifying that they saw the accused perform a particular culpable action gives direct evidence. A witness who testifies seeing the individual running away but did not see the culpable action gives *circumstantial evidence*. Circumstantial evidence is especially important in cases where direct evidence is lacking that points to, or away from, the individual having committed the offence. Once alternative explanations have been ruled out an explanation involving circumstantial evidence becomes more likely. Circumstantial evidence allows triers of fact to infer that a fact exists to support the truth of an assertion or denial.

Box 1.1 summarises different types of evidence.

<sup>8</sup> *ibid.*

<sup>9</sup> Criminal Procedures and Investigations Act (CPIA) (1996) Code of Practice s. 23(1). Material of any kind, including information and objects, which is obtained or inspected in the course of a criminal investigation and which may be relevant to the investigation. This includes not only material coming into the possession of the investigator but also material generated by them (such as interview records).

<b>Testimonial evidence</b>	Oral or written evidence from an individual with direct or hearsay information about an event. Can be sensory information (i.e. what was seen, heard, etc.), circumstantial information about character, or production of official records.
<b>Physical evidence</b>	Demonstrable, i.e. real evidence. Many forms: <i>marks, imprints, and impressions; object evidence</i> , e.g. clothing, items, weapons, vehicles, documents, still photography; <i>traces</i> , e.g. DNA, body fluids, particles, accelerants; <i>physical injuries; wounds; physical damage</i> . Can be direct or circumstantial evidence.
<b>Digital evidence</b>	<i>Electronic files</i> : electronically stored documents, emails, social media messages, digital images, audio and video files, including output of wearable technology. <i>Passive data</i> (automatic system-generated) financial information, CCTV, digital images, computer-based electronic records, telecommunications information, ANPR, customer/subscriber information.
<b>Forensic evidence</b>	Demonstrable and digital evidence that has been subjected to forensic examination. Many forms: <i>contact trace material</i> (CTM: marks, imprints, and impressions, traces, object evidence); <i>physical injuries; wounds; damage</i> . Usually treated as circumstantial evidence: presented in report form and the subject of expert opinion evidence at trial.

**Box 1.1 Types of evidence<sup>10</sup>**

**How information becomes evidence**

Box 1.1 reflects two distinct categories of information: objective (demonstrable and digital, independent of human recollection<sup>11</sup>) and testimonial (born of human recollection, predominately obtained through the process of interviewing). Professional investigators put both forms of information to the test in order to establish whether the information merits being treated as a fact, with a potential to be:

- disclosed prior to, or during, the interview of a suspect
- adduced as evidence in the judicial process as indicative of an individual’s guilt or innocence.

At key stages in the ACCESS cycle this testing of information involves interdependent activities:

- rigorous and systematic management of information
- investigative actions and interviewing in order to establish the *validity* of the information, i.e. inquiring into, and checking, its inherent reality (actual occurrence or existence), integrity (potential contamination, especially human), and accuracy (especially by reference to objective, i.e. non-human, sources)
- assessment of *reliability*—trustworthiness—with the judicial process in mind: arriving at a judgement that the information is:
  - either an *incontrovertible* fact that cannot be refuted by the defence because it is impossible to deny or dispute: its reliability is manifestly evident, i.e. it is *reliable evidence*

<sup>10</sup> Griffiths, A. & Shepherd, E. (2020) (n 7).

<sup>11</sup> Bingham, T. (2006) Assessing contentious eye-witness evidence: a judicial view. In A. Heaton-Armstrong et al. (eds.) *Witness Testimony: Psychological, Investigative, and Evidential Perspectives*. Oxford: Oxford University Press.

- or a *disputable* fact: it is open to question, i.e. refutation (challenge or denial), in terms of its integrity, accuracy, or reality and an assertion that it is *unreliable evidence or fiction* (i.e. patently untrue).

Validation enables objective information to become *hard fact*, and thus potentially robust evidence of guilt or innocence. However, oral testimony—which still constitutes the greater part of information gathered in an investigation—is problematic. Multiple factors affect an individual’s attention, perception, and recollection. Some, most, or all the detail of what people disclose may be amenable to objective validation: comparing what the individual says with objective facts from *non-testimonial* sources that:

- have passed the test of integrity, accuracy, and reality
- have been assessed as incontrovertible or of sufficient robustness to survive questioning as to its reliability.

However, much testimony is not amenable to objective validation. Investigators have to examine what the individual has disclosed from the perspective of consistency and contradiction.

- **Internal consistency.** Does the content of what the individual says fit, i.e. is it logically congruent, squaring with the detail disclosed earlier in the interview, in a prior interview, or across a run of interviews?
- **External consistency.** Does the content of what the individual says converge with or replicate detail disclosed by another or others, i.e. is there *corroboration* (from the Latin word meaning to strengthen) for what the individual says?
- **Absence or degree of contradiction.** Do opposing versions exist within what the individual says or has said, and between what the individual and another or others assert? What is the degree of contradiction?

In the absence of objective validation, the detail within testimony can only ever be ‘*soft fact*’ which has the same definition and characteristics as disputable fact described above.

### 1.3.2 Investigative reasoning

When making their initial and subsequent assessments of information and evidence concerning an event, episode, or set of circumstances, investigators<sup>12</sup> bring to bear their knowledge, skill, experience, and common-sense knowledge of the world.<sup>13</sup> Once they have gathered and sorted out the case material before them and to hand, they formulate a viable, cohesive explanation of what happened before, during, and after the event. This is their initial *case theory* (CT). A CT is a hypothesis<sup>14</sup> or reasoned conjecture that accounts for the ‘what’, the ‘when’, the ‘who’, and the ‘why’.

However, working alone or in a group, an investigator relies on *schemata*—mental maps that are the product of experience and learning—enabling them to make sense of case material. Their schemata guide their conduct in the search for evidence from people and things to aid the reconstruction of the circumstances of the offence.<sup>15</sup>

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<sup>12</sup> For ease of reference we use the term ‘investigators’ to refer to practitioners and to those fulfilling the role of an investigation manager or supervisor. Where appropriate we will differentiate these roles.

<sup>13</sup> Wagenaar, W., van Koppen, P. & Crombag, H. (1993) *Anchored Narratives: the Psychology of Criminal Evidence*. Brighton: Harvester Wheatsheaf; Wagenaar, W. & Crombag, H. (2005) *The Popular Policeman and Other Cases*. Amsterdam: Amsterdam University Press.

<sup>14</sup> Cook, T. (2019) *Blackstone’s Senior Investigating Officers Handbook*. Oxford: Oxford University Press.

<sup>15</sup> Mortimer, A. & Shepherd, E. (1999) Frames of mind: schemata guiding cognition and conduct in the interviewing of offenders. In A. Memon & R. Bull (eds.) *Handbook of the Psychology of Interviewing*. Chichester: Wiley.

Schemata are the product of personal experience—gained first-hand or second-hand, e.g. by observing other investigators in action. They guide the investigator's thinking. The way an investigator thinks can skew and distort judgements and subsequent actions to the detriment of objective analysis and accuracy.<sup>16</sup> Therefore, to guard against this, professional investigators should always engage in *alternative case theory assessment* (ACTA) to:

- formulate alternative, plausible explanations or hypotheses for currently available case material
- prioritise investigative actions across competing CTs
- review on a continuous basis the validity of their working CT in the light of emergent information and evidence.

These are crucial activities at the Assess stage of the ACCESS problem-solving cycle of investigation.

This process of reasoning is called *abduction*—or *abductive reasoning* or *inference to the best explanation*. Clinical professionals abductively reason. In a similar manner to investigators formulating CTs, they formulate opposing diagnoses—explanations—of observed presenting signs, reported symptoms, and outcomes of tests. Their equivalent to ACTA is called the process of *differential diagnosis*. Intelligence analysts use a grid (matrix) to engage in *analysis of hypotheses* that they continuously generate.<sup>17</sup> We engage in abductive reasoning in our everyday lives to arrive at our 'best guess' faced with given circumstances.

Abductive reasoning—continuously formulating alternative CTs and engaging in ACTA—constitutes the messy face of real investigation: there are many versions of the truth, the conflicting facts, and interpretations of them.<sup>18</sup> Furthermore, the reasonableness of a particular CT is a matter of professional argument and discussion concerning the investigator's professional reasoning, assessment, and decision-making.<sup>19</sup> Incomplete knowledge compromises the status—and potential truthfulness—of any CT. The investigator's choices concerning information selection and processing are therefore critical: what to acknowledge as being of value and worthy of collection and study. In this an investigator is no different to a pathologist.<sup>20</sup>

Recent research suggests that investigators differ widely in their ability to generate alternative hypotheses, and are influenced by their training, experience, situational factors, and systematic errors they make in the way they process information and make decisions.<sup>21</sup> Like all people, investigators process information and make decisions through two pathways to processing information: intuitive processing—called *Type 1* (or *Operating System 1*) thinking and rational, analytical processing—called *Type 2* (or *Operating System 2*) thinking.<sup>22</sup> The characteristics, advantages, and disadvantages of these two types of thinking are summarised in Box 1.2.

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<sup>16</sup> Fahsing, I. (2016) *The Making of an Expert Detective*. Gothenburg: University of Gothenburg.

<sup>17</sup> Heuer, R. (1999) *Psychology of Intelligence Analysis*. Langley, VA: Centre for the Study of Intelligence; Heuer, R. & Pherson, R. (2011) *Structured Analytic Techniques for Intelligence Analysis*. Washington, DC: CQ Press.

<sup>18</sup> Shepherd, R. (2018) *Unnatural Causes*. London: Penguin.

<sup>19</sup> Baron, J. (2008) *Thinking and Deciding*. Cambridge: Cambridge University Press.

<sup>20</sup> Shepherd, R. (2018) (n 18) p. 65.

<sup>21</sup> Fahsing, I. (2016) (n 16).

<sup>22</sup> Kahneman, D. (2011) *Thinking Fast and Slow*. London: Allen Lane.

	TYPE 1 THINKING	TYPE 2 THINKING
<b>Characteristics</b>	<ul style="list-style-type: none"> <li>• Fast</li> <li>• Effortless</li> <li>• Unconscious</li> <li>• Triggers emotions</li> <li>• Based on pattern recognition</li> <li>• Associative</li> <li>• Looks for causation</li> <li>• Creates stories to explain events</li> </ul>	<ul style="list-style-type: none"> <li>• Slow</li> <li>• Takes effort</li> <li>• Conscious control</li> <li>• Deliberative</li> <li>• Logical</li> </ul>
<b>Advantages</b>	<ul style="list-style-type: none"> <li>• Speedy response</li> <li>• Enables unthinking performance of routine and repetitive tasks</li> </ul>	<ul style="list-style-type: none"> <li>• Permits examination of fine-grain detail, options, pros and cons, consequences</li> <li>• Enables defensible abduction, reflective practice, and mindful behaviour</li> </ul>
<b>Disadvantages</b>	<ul style="list-style-type: none"> <li>• Mindless behaviour</li> <li>• Jumping to conclusions</li> <li>• Undetected errors, e.g. false assumptions, unfounded judgements, false causal links</li> </ul>	<ul style="list-style-type: none"> <li>• Slow—time-consuming</li> <li>• Takes effort and energy</li> </ul>

### Box 1.2 Type 1 and Type 2 thinking<sup>23</sup>

Type 1 processing is fast and usually effective, potentially achieving the right and intended outcome. It reflects the experiential system of the brain in operation: speedy, relying on emotional images and narratives that help us to estimate risk and benefit. These unconscious images drive our decision-making. The problem is that they are risky. They are much more likely to fail, i.e. giving rise to unconscious mistakes that are seldom corrected.<sup>24</sup> Type 1 thinking is akin to responding like a hare, whereas Type 2 processing is responding like a tortoise. It is slow but relatively reliable. However, it is also demanding in terms of mental effort and resource—thinking hard about evidence, probabilities, and the like. It offers greater potential to achieve the optimum—high quality—outcome because of reduced likelihood of error and failure.

People spend about 95% of their time in intuitive mode.<sup>25</sup> They see the world—and act—in ways that are useful to them. Using the terminology of the Nobel Laureate Herbert Simon, the father of decision-making theory, people *satisfice* rather than *optimise* when they make judgements and choices.<sup>26</sup> They satisfice by choosing the path that satisfies their most important needs even though the choice may not be ideal or optimal.

Satisficing is a ‘rule of thumb’ that psychologists label a *heuristic*, i.e. the individual makes a judgement that meets their minimum requirements.<sup>27</sup> A heuristic is a mental short cut—an abbreviated way of thinking. There are many heuristics born of this fundamental satisficing heuristic.

<sup>23</sup> Griffiths, A. & Shepherd, E. (2020) (n 7).

<sup>24</sup> Evans, J. & Frankish, K. (2009) *In Two Minds: Dual Processes and Beyond*. Oxford: Oxford University Press; Gilovich, T., Griffin, D. & Kahneman, D. (2002) *Heuristics and Biases: The Psychology of Intuitive Judgement*. Cambridge: Cambridge University Press.

<sup>25</sup> Lakoff, G. & Johnson, M. (1999) *Philosophy in the Flesh: The Embodied Mind and its Challenge to Western Thought*. New York: Basic Books.

<sup>26</sup> Simon, H. (1957) *Models of Man: Social and Rational*. New York: Wiley.

<sup>27</sup> Plous, S. (1993) *The Psychology of Judgement and Decision Making*. New York: McGraw-Hill.

For example, investigators have hunches. A form of Type 1 thinking, a hunch is a felt inference—a ‘gut feeling’—occurring automatically. In the absence of conscious analysis or reasoning it gives immediate insight. Beyond the realm of words, the investigator instinctively knows—even believes—something to be the case but does not know how or why. Hunches are examples of *fast* and *frugal* heuristics, i.e. simple and taking no effort. Fast and frugal heuristics are particularly helpful in life or death circumstances, when information is limited, and where time is a luxury. We do not have to search for more information or to consider the information we have for too long.<sup>28</sup> In the investigative context such circumstances are exceptional.

The greater its strength the greater the confidence investigators have in their ‘gut feeling’. (This is another ‘rule of thumb’ called the *affect heuristic*.) Their confidence stems from remembrance of their track record of hunches and their successful outcomes in the past. Such confidence is always biased. People readily remember those occasions when the outcome confirmed that they were ‘right’. They fail to remember those occasions when they were wrong.

Investigators with hunches are in the same position as those without hunches. They must devote time and effort to inquire, observe, and systematically examine what is before them. Their first pass examination triggers a stream of fast and frugal heuristics. Potentially applicable knowledge and experience automatically ‘comes to mind’ (called the *availability heuristic*). They intuitively identify particular features, configurations, and patterns that correspond to their stereotype knowledge, e.g. that this is a typical case of rape. On the basis of this *representativeness* heuristic they formulate their initial CT. This is very risky because investigators fail to detect, or ignore, detail that is unique or idiosyncratic.

Some investigators go further. They apply the *take-the-best* heuristic, a fast and frugal ‘rule of thumb’ that dramatically reduces time and effort. They select a single cue—a piece of information or evidence—felt to have overarching significance or salience, e.g. an individual caught apparently red-handed or an unsolicited admission of culpability. On the basis of this cue they formulate a *single explanation*: a CT that requires no further consideration because the evidence ‘fits’ and is ‘obvious’.

A single CT brings *closure* that has practical benefits and, crucially, emotional benefits. Ambiguity triggers brain structures called *amygdalae* that play a major role in our emotional response to the circumstances before us—particularly those constituting a threat. The greater the doubt, the worse the discomfort that we experience. Our need to remove doubt, and to be right, is actually a need to ‘feel’ right. This need fundamentally skews or distorts our thinking such that we engage in *premature closure*: arriving at an assessment that we feel intuitively is right without considering reasonable alternatives.<sup>29</sup>

This type of confirmatory thinking is a central feature in studies of miscarriages of justice.<sup>30</sup>

Given the disastrous consequences of getting it wrong, society expects investigators—as it does clinicians, forensic scientists, and intelligence analysts:

- to engage for the greater part of their time in Type 2 *actively open-minded thinking*—dealing rationally with information, considering the alternatives, and making rational judgements
- to keep intuitive mode thinking to a minimum, reserving this for situations which require immediate, or swift decision-making to enable time-critical actions.<sup>31</sup>

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<sup>28</sup> Gigerenzer, G. (2008) *Rationality for Mortals: How People Cope with Uncertainty*. Oxford: Oxford University Press; Gilovich, T., Griffin, D. & Kahneman, D. (2002) (n 24).

<sup>29</sup> Burton, R. (2008) *On Being Certain: Believing You are Right Even When You're Not*. New York: St Martins Press.

<sup>30</sup> E.g. MacFarlane, B. (2008). Wrongful convictions: The effects of tunnel vision and predisposing circumstances in the criminal justice system. [https://www.attorneygeneral.jus.gov.on.ca/inquiries/goudge/policy\\_research/pdf/Macfarlane\\_Wrongful-Convictions.pdf](https://www.attorneygeneral.jus.gov.on.ca/inquiries/goudge/policy_research/pdf/Macfarlane_Wrongful-Convictions.pdf)

<sup>31</sup> Baron, J. (2008) (n 19).

However, even when a situation is not time-critical, all too often investigators engage in Type 1 thinking. As with premature closure their feelings, inclinations, and impressions tend to bias—skew or distort—how they process information and result in sub-optimal investigative conclusions, decisions, actions, and outcomes.<sup>32</sup> There are many *cognitive biases* that investigators are liable to manifest. Bias-based conclusions are all the more powerful because the investigators (or clinicians, forensic scientists, or intelligence analysts) believe them.<sup>33</sup> We summarise in Box 1.3 particularly common forms of bias.

BIAS	DESCRIPTION
<b>Affective bias</b>	Allowing personal feelings towards an individual to affect information processing and decisions
<b>Attribution bias</b>	Allowing negative stereotypes to ignore, discount, or minimise, e.g. the offence, the status of information/evidence, the source of information/evidence
<b>Belief bias</b>	Belief, e.g. that a suspect is guilty, or a complainant's account is true, distorts reasoning
<b>Belief perseverance</b>	Resistance to changing the initial hypothesis in the face of new evidence that undermines this hypothesis
<b>Confirmation bias</b>	Selection/overweighting of information/evidence consistent with favoured belief; underweighting of information/evidence contrary to this belief; failing to search impartially for information/evidence. The most common and pervasive bias. Linked to premature closure
<b>Defensive avoidance</b>	Ignoring or discounting information/evidence potentially or actually contrary to your favoured belief. Linked to visceral bias and belief bias
<b>False analogy</b>	Relying on comparisons that are not comparable (when considered objectively)
<b>Going for the obvious</b>	Giving insufficient, or no, consideration to other possibilities. Called ' <i>Sutton's slip</i> ' after the Brooklyn bank robber Willy Sutton who, when asked why he robbed banks allegedly replied, 'Because that's where the money is!' Linked to premature closure
<b>Insufficient—or no—adjustment to initial anchor</b>	Anchoring onto particular features early on is normal but it is necessary to adjust to new information/evidence. Early or pre-emptive cessation of adjustment constitutes ' <i>freezing</i> '—clinging on to a judgement even as conflicting and contradictory information/evidence accumulates
<b>Narrative fallacy</b>	Assumption that good—plausible—accounts are true; poor—implausible—accounts are not
<b>Power of storytelling</b>	Remembering more easily details presented as a coherent narrative
<b>Premature closure</b>	Arriving at an assessment that we feel intuitively is right without considering reasonable alternatives—a speedy end to uncertainty. A very common bias sustained by confirmation bias
<b>Representativeness restraint</b>	Habitually looking for the stereotype attributes of an offence—ignoring the unique. 'What looks like a duck, walks like a duck, and quacks like a duck, may not be a duck.' Linked to saliency bias
<b>Saliency bias</b>	Overvaluing of availability, i.e. judging something to be the case because it readily comes to mind—a product of recent or recurrent exposure to a similar event ('another case of ...')
<b>Status quo bias</b>	Emotional—irrational—preference for the current situation
<b>Sunk cost fallacy</b>	Historical expenditure of resource (e.g. time, staff) biases against acknowledging information/evidence pointing away from current assessment/course of action and towards thinking anew and taking a different course of action. Compounded by status quo bias

<sup>32</sup> Kahneman, D. (2011) (n 22).

<sup>33</sup> Croskerry, P. (2003) The importance of cognitive errors in diagnosis and strategies to minimise them. *Acad. Med.*, **78**, 775–80; Dror, I. & Cole, S. (2010) The vision in 'blind' justice: expert perception, judgement and visual cognition in forensic pattern recognition. *Psychonomic Bull and Review*, **17**, 161–7; Heuer, R. (1999) (n 17); Heuer, R. & Pherson, R. (2011) (n 17); Kahneman, D. (2011) (n 22); Svenson, O. & Maule, A. (eds.) (1993) *Time Pressure and Stress in Human Judgement and Decision Making*. New York: Plenum.

BIAS	DESCRIPTION
<b>Visceral bias</b>	Your subjective response—‘gut reaction’ to or feelings about something or a person—influences your thinking
<b>‘What you see is all there is’ (WYSIATI)</b>	Assuming or accepting that the material you have is everything available and ignoring what you don’t know. Linked to lack of resource, inertia, or overconfidence in skills and abilities

### Box 1.3 Cognitive biases in the investigative context<sup>34</sup>

It would be all too easy, wrong, and unfair to attribute the occurrence of the biases described in Box 1.3 solely to the individual investigator. Certainly, some investigators have a personality that is characterised by *cognitive inflexibility* that renders them unable to consider alternative interpretations of data, modify their representations of the current situation, and to change strategies to reflect changes in the situation.<sup>35</sup> However, in common with clinicians, forensic scientists, and analysts, or indeed anyone working within an *organisational context*, it is extraneous sources of influence within the workplace that most powerfully determine whether or not investigators engage in skewed or distorted thinking and all that this entails.<sup>36</sup>

In common with every other human being, investigators have fundamental *self-focused psychological needs*. They behave in a manner that seeks to elicit from others—peers, senior practitioners, supervisors, and managers—responses that satisfy their *self-concept needs* for affiliation, acceptance, and to belong. When these needs are unmet, feelings of isolation or rejection are common, as well as anxiety and even depression. However, feeling bonded to, and a member of, a group that accepts you is not enough. Investigators have *self-esteem needs*: a need to be respected for the way they investigate and what they accomplish, to have these recognised, appreciated, and rewarded.

Since working together—particularly within a working group—is the medium for meeting self-focused needs, the way investigators work collaboratively and how groups function can operate to influence investigators to think and act in a biased manner. This is compounded where there are resource constraints, e.g. limited time, staffing, or budget. The signs of this contextual biasing include:

- **Disposition to ‘short cuts’ and ‘time saving’.** In the gathering of information and its processing (selective attention; skim reading; relevance filtering; assuming something to be the case, i.e. jumping to a conclusion in the absence of information/evidence).
- **Valuing of ‘decisiveness’.** Immediate/early action and resolution matters more than the quality of the decision.
- **Misaligned incentives.** Adoption of views, actions, and outcomes favourable to the group—and as a consequence to oneself.
- **Champion bias.** Evaluating an assessment/CT on the reputation/standing of the person generating the assessment/CT—not on the objective facts.
- **Unquestioning regard/endorsement.** Producing misaligned interests.
- **‘Sunflower’ effect.** Aligning with the position—stated or assumed—of the ultimate decision-maker, e.g. supervisor, particularly if it is unlikely to change.
- **Groupthink.** In-group pressures to strive for consensus at all costs resulting in ‘not to rock the boat’ behaviour:
  - absence of open expression of alternative views
  - avoidance of realistic appraisal of case material

<sup>34</sup> Griffiths, A. & Shepherd, E. (2020) (n 7).

<sup>35</sup> Krems, J. (1995) Cognitive flexibility and complex problem solving. In P. Fresch & J. Funke (eds.) *Complex Problem Solving: The European Perspective*. Mahwah, NJ: Lawrence Erlbaum Associates.

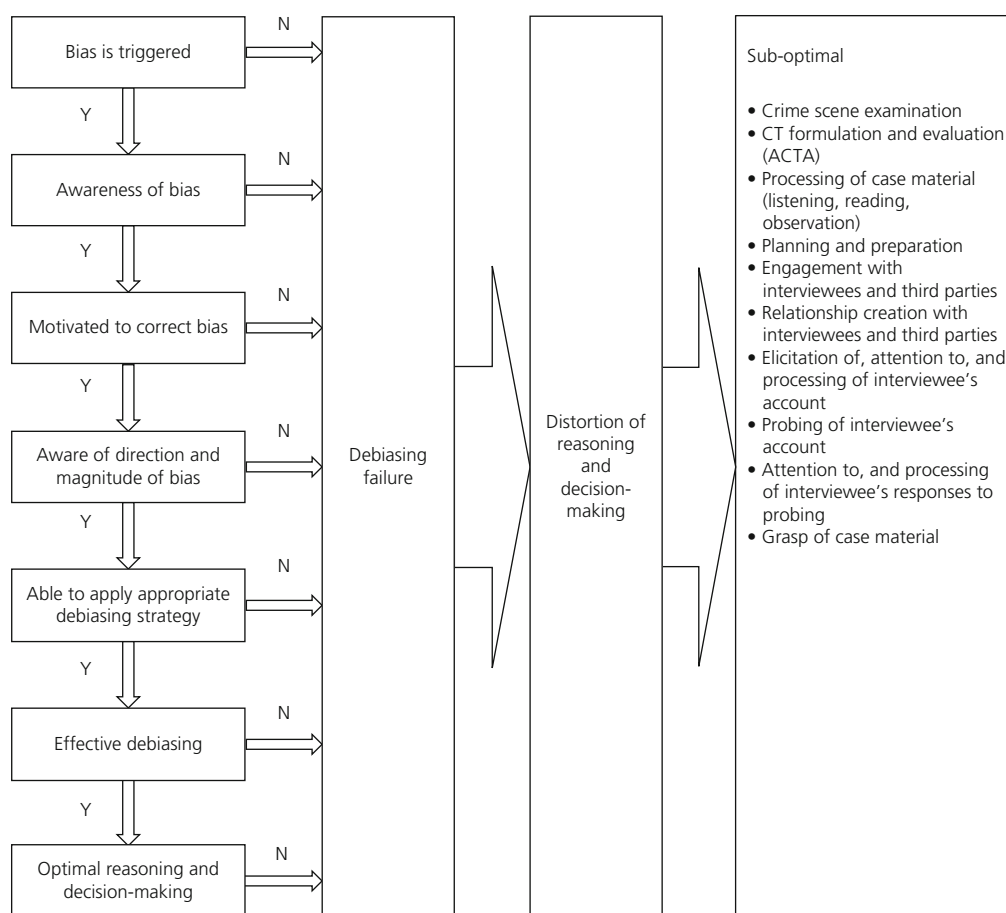
<sup>36</sup> Dror, I. & Cole, S. (2010) (n 33); Lovallo, D. & Sibony, O. (2010) The case for behavioural strategy. *McKinsey Quarterly*, March, 1–16.

- reticence to share alternative interpretations, alternative assessments, alternative CTs, and alternative lines of investigation
- emergence of ‘mind guards’—self-appointed individuals who operate to maintain these behaviours.

It follows that awareness of the cognitive biases in Box 1.3 is not enough to ensure optimal investigation. Bias has to be managed within the working group. Once a bias is triggered, there must be at the level of the individual investigator, fellow investigators, supervisors, and managers:

- the motivation to do something about it: to consider a contrary—opposite or alternative—perspective or manner of behaving
- awareness of the direction and magnitude of the bias
- ability to apply an appropriate debiasing strategy
- effective debiasing
- optimal reasoning and decision-making.

Figure 1.3 shows how successive failure in each of these steps leads to failure to debias and subsequent distortion of reasoning and decision-making.



**Figure 1.3** Managing and failing to manage investigative bias<sup>37,38,39</sup>

<sup>37</sup> Griffiths, A. & Shepherd, E. (2020) (n 7).

<sup>38</sup> Wilson, T. & Brekke, N. (1994) Mental contamination and mental correction: unwanted influences on judgements and evaluations. *Psychol Bull*, **116**, 117–42.

<sup>39</sup> Croskerry, P., Singhal, G. & Mamede, S. (2013) Cognitive debiasing: origins of bias and the theory of debiasing. *BMJ Qual Saf*, **22**, ii58–ii64.

Recognition and effective management of bias are the hallmarks of principled investigation.

### 1.3.3 Principled investigation

Morality has to do with a particular outlook on the world. In everyday life and in the workplace our behaviour reflects our moral outlook: the way we think the world ought to be in terms of *logic*—the appropriate way to reason—and *sociality*—the appropriate way to relate to our fellow human beings.<sup>40</sup> At the outset of their careers, investigators, like clinicians, take an oath of commitment to a noble cause: to follow and apply the law in order to make the world a safer place. In pursuit of this cause they have unique power when assessing a situation, collecting, evaluating, and using information, and when relating to and conversing with their fellow citizens: both the law-abiding and the law-breaking.

Society entrusts all professionals to have a moral compass founded on *deontological* (from the Greek *deon* meaning duty) *reasoning*: belief that how, and why, they do something is more important than the results produced by their behaviour.<sup>41</sup> This implies professionals must have a continuing obligation to be *other-considering*—have concern for the other person—in their dealings with people. Investigators, again like clinicians, are obliged to ‘do no harm’ in the exercise of their power when applying the law, finding out facts, and handling people.<sup>42</sup> When investigating a given case the due process of the law, people as human beings, and the integrity of information and evidence are—‘warts and all’—safe in their hands. They accept that this moral compass may hinder, or prevent, conviction of the guilty but that it also ensures there is no miscarriage of justice. In criminal law this is expressed in Blackstone’s ratio: *It is better that ten guilty persons escape than one innocent suffer.*<sup>43</sup> It is the moral underpinning of the CPIA legal requirement for the investigator to ‘**take all reasonable steps for the purpose of investigation and pursue all reasonable lines of enquiry, whether these point towards or away from the suspect**’.<sup>44</sup>

Research has shown that continual objectivity is challenging for even well-trained investigators<sup>45</sup> but principled investigators and investigative groups are committed to rigorous, quality investigation. They are mindful at all times of the requirement for open-minded, considered, conscientious management of case material. They believe that they *do right*—morally, legally and professionally—by *doing well*—delivering a high standard, unbiased performance in terms of continuous formulation of CTs and ACTA, and systematic examination and analysis of the fine-grain detail (FGD) of case material. Throughout they consciously reflect on what they are doing and have done. This guards against inappropriate fast and frugal heuristics, confirmation bias, and selectivity, and ensures that they respond ethically and effectively to information and evidence—including that which points away from the suspect. Principled investigation—doing things well professionally—takes time, but ensures a robust, defensible outcome that withstands ethical, judicial, and societal scrutiny.

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<sup>40</sup> Wilson, J. (1972) *Ideals*. Guildford: Lutterworth.

<sup>41</sup> O’Neill, O. (2002) *A Question of Trust. The BBC Reith Lectures 2002*. Cambridge: Cambridge University Press.

<sup>42</sup> Shepherd, E. (1984) Values into practice: the implementation and implications of human awareness training. *Policing*, 57, 286–300.

<sup>43</sup> Blackstone, W. (1893) *Commentaries on the Laws of England*. Philadelphia: J.B. Lippincott.

<sup>44</sup> Criminal Procedures and Investigations Act (CPIA) 1996 Code of Practice s. 23(1) emphasis added.

<sup>45</sup> Fahsing, I. (2016) (n 16).

### 1.3.4 Expedient investigation

Other investigators have a different moral compass founded on what is termed *teleological* (from the Greek *telos* meaning end or purpose) *reasoning*: belief that what matters is the outcome, i.e. the end justifies the means to getting there. This is the logic of those who engage in *expedient*—unprincipled—*investigation*. Fundamentally expedient investigators are motivated by convenience and self-interest. However, they justify their self-serving decision-making and actions as practical and politically sensible given the circumstances. Pragmatism rather than principle guides their conduct since it brings about achievement of personal, working group, and institutional goals:<sup>46</sup> conduct that is both rewarding and rewarded. Two types of investigator engage in expedient investigation: those who are morally corrupt and ‘uphold the law’ as they see fit and those who are struggling to cope with the work situation.

#### ‘Upholding the law’ by being expedient

Some investigate expediently because it enables them to ‘uphold the law’ by attaching guilt to a suspect whom they believe to be guilty and thus solving the crime.<sup>47</sup> The means of attaching guilt to the individual does not matter. They believe it appropriate to behave arbitrarily and autocratically, defining what they believe to be the case as ‘facts’ and the ‘truth’, handling information and evidence selectively, bending or disregarding the ‘rules’ (law and procedure), and improperly interviewing to secure accounts from suspects and witnesses that confirm their CT. ‘Upholding’ the law in this manner has a name: *noble cause corruption*.<sup>48</sup> This is not corruption in the sense of financial fraud, but in the sense of fraudulent representation of the reason for their unscrupulous and unlawful behaviour.

#### Expediency as a coping strategy

We recognise that expedient investigation is also a *coping strategy* of investigators faced with a *moral dilemma*: institutional constraints place them between a ‘rock and a hard place’. They would like to do a ‘proper job’ as a principled professional but their working environment does not enable this to happen: excessive workload, unrealistic targets, management culture and practices that require and reward expedient and expeditious performances, limited resource (staff, time, budget). In this situation investigators experience *moral distress*—psychological conflict.<sup>49</sup> The phenomenon of moral distress was recognised a generation ago in the clinical context, subsequently in the military, and is now acknowledged to occur in all working contexts where the functioning of the institution and the workplace:

- make it almost or actually impossible for an individual to think and act in a principled manner
- induce some individuals who are passionate about doing a ‘good’ job to experience and manifest burnout: exhaustion, mental distance from—and feelings of negativism and cynicism related to—their job, and reduced efficacy and productivity
- induce many other individuals to cope by thinking and acting expediently, knowing that their behaviour violates their core values.

<sup>46</sup> Wilson, J. (1972) (n 40).

<sup>47</sup> McConville, M., Sanders, A. & Leng, R. (1991) *The Case for the Prosecution: Police Suspects and the Construction of Criminality*. London: Routledge.

<sup>48</sup> Caldero, M., Dailey, J. & Withrow, B. (2018) *Police Ethics: The Corruption of a Noble Cause*. New York: Routledge.

<sup>49</sup> Jameton, A. (1984) *Nursing Practice: The Ethical Issues*. Englewood Cliffs, NJ: Prentice Hall.

Expedient investigators behave mindlessly, operating in ‘auto pilot’. There is no professional balancing of objective and subjective when dealing with, and interviewing, individuals. Respect and empathy nosedive. They *objectify* individuals—seeing them not as persons but as objects to be manipulated by following the required script in order to tick the boxes.<sup>50</sup> This is all too obvious to those on the receiving end, who are unable to trust an investigator who is manifestly a ‘jobsworth’, ‘going through the motions’.

While some cope with moral distress by ‘switching off’, i.e. ceasing to care, others cannot. There is an established clinical literature evidencing that for these practitioners their knowledge that they—and the institution—are acting in self-serving manner chips away at their conscience and morale. Such individuals are increasingly at risk of suffering from what is termed *moral injury* that stems from the betrayal of ‘what’s right’ in a high-stakes situation.<sup>51</sup> Moral injury is a recognised condition in the professional workplace<sup>52</sup> and is characterised by:

- interpersonal problems—within and outside the workplace
- a sense of betrayal
- lack of trust
- strong emotions—anger, depression, and anxiety
- sorrow, regret
- a negative view of themselves
- guilt and shame
- social alienation
- difficulty with forgiveness
- difficulty sleeping
- using alcohol as an emotional prop.

Put simply, being expedient—when you can’t blot out the knowledge that you should be principled—makes you unwell and, thus, even less capable of doing a ‘good job’.

Finally, there will always be egocentric, slothful, unprofessional investigators for whom expedient thinking and action comes naturally. For them principled investigation and caring to care involves too much involvement and mental and physical effort.

## Tunnel vision

All expedient investigators—whatever makes them behave in a self-serving manner—value expeditiousness: getting the job done as quickly as possible, with as little expenditure of time, effort, and resource—thus pleasing management, who are alert to the community’s desire for the guilty to be apprehended and placed before the courts. They are willing victims to the entire range of fast and frugal heuristics. They engage in premature closure and thereafter investigate with *tunnel vision*: focusing on a suspect, selectively focusing on evidence that ‘builds a case’ for conviction, while ignoring or suppressing evidence that points away from guilt.<sup>53</sup>

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<sup>50</sup> Langer, E. (1989) (n 5).

<sup>51</sup> Shay, J. (2002) *Odysseus in America: Combat Trauma and the Trials of Homecoming*. New York: Scribner; Litz, B. et al. (2009) Moral injury and moral repair in war veterans: a preliminary model and intervention strategy. *Clinical Psychology Review*, 29, 695–706; Evans, W. et al. (2020) *The Moral Injury Workbook*. Oakland, CA: New Harbinger.

<sup>52</sup> Molendijk, T. (2018) Toward an interdisciplinary conceptualisation of moral injury: from unequivocal guilt and anger to moral conflict and disorientation. *New Ideas in Psychology*, 51, 1–8.

<sup>53</sup> Findlay, K. & Scott, M. (2006) The multiple dimensions of tunnel vision in criminal cases. *Wisconsin Law Review*, June, 291–367; MacFarlane, B. (2008) (n 30).

Unwilling to consider any alternative CT, they manifest unbridled confirmation bias in their management of case material. They examine locations and items superficially and selectively. In similar vein, when processing written statements and other documents, they skim read rather than gain a detailed grasp. They *relevance filter*, scanning and selecting information and evidence connected to, appropriate to, or supportive of their CT. Everything else is irrelevant, i.e. not worth knowing or considering. They *'beg the question'*—assuming something to be the case or to have occurred—and *defensively avoid*: evading the complexity and implications of detail, especially ignoring information and evidence that points away from the CT.<sup>54</sup> They extract perceived relevant information as compressed 'bullet points'. Confirmation bias pervades their interviewing of witnesses and suspects and is particularly apparent in 'quick' initial interviews. Expedient management of case material speeds up the investigative process and offers the prospect of a rapid result. Systematic and painstaking analysis, continuous open-minded assessment of information, evidence and ACTA, comprehensive investigation, open-minded interviewing—all make no sense to those with an expedient mindset. These all take time, effort, and resource. Worse still, they could reveal case material that undermines the preferred CT and prejudice the expeditious construction of case against the suspect that will persuade a court and secure a conviction.

This environment is determined by their managers and supervisors who do not recognise the necessity to countenance, foster, or model the management of bias. Thus, expedient investigators and investigative groups capitalise on rather than manage bias. When they investigate they 'rush to get it wrong' ethically and professionally. The extent of the harm caused by this type of investigative behaviour was quantified by a 'sentinel review'<sup>55</sup> of fifty US wrongful conviction cases<sup>56</sup> which analysed the causes of failure in the cases. Cognitive bias, failures to manage evidence correctly, organisational problems, and poor investigation (defined as personal factors) accounted for 61% of the failures with problematic interviewing of witnesses and suspects responsible for a further 13%. Therefore, it is clear that both in the UK and throughout the world expedient investigation has led historically to miscarriages of justice, and loss of public confidence in the police.<sup>57</sup> This was inevitable since people construe the absence of moral conduct as indicative of incompetence.<sup>58</sup> The common denominator of historic miscarriages of justice that have undermined trust in the police service has been impropriety and misconduct in both securing confessions from suspects and constructing written statements from witnesses that 'fit' the investigator's CT.<sup>59</sup>

## 1.4 Securing a confession prior to 1993

Testimony obtained from suspects and witnesses during an investigation has always had significant evidential status. Even with DNA analysis and the ever-increasing scope of

<sup>54</sup> Mortimer, A. & Shepherd, E. (1999) (n 15).

<sup>55</sup> So-called because it sees criminal justice failures as sentinel events indicative of a weak system or environment that is therefore vulnerable to multiple such failures.

<sup>56</sup> Rossmo, D. & Pollock, J. (2019) Confirmation bias and other systemic causes of wrongful convictions: a sentinel events perspective. *Northeastern University Law Review*, **11**, 791–835.

<sup>57</sup> Poyser, S. & Grieve, J.D. (2018) Miscarriages of justice: what can we learn? In A. Griffiths & R. Milne (eds.) *The Psychology of Criminal Investigation. From Theory to Practice*. London: Routledge. Rossmo, D. (2009) *Criminal Investigative Failures*. Boca Raton, FL: CRC Press; Caldero, M., Dailey, J. & Withrow, B. (2018) (n 48).

<sup>58</sup> Stellar, J. & Willer, R. (2018) Unethical and inept? The influence of moral information on perceptions of competence. *Journal of Personality and Social Psychology*, **114**, 195–210.

<sup>59</sup> Gudjonsson, G. (2003) *The Psychology of Interrogations and Confessions: A Handbook*. Chichester: Wiley; Shepherd, E. & Milne, R. (1999) (n 2).

forensic science, including the analysis of digital devices and information,<sup>60</sup> the ‘jewel in the evidential crown’ was a suspect’s *confession*—an admission of culpability. This remained the case in the UK until 1993.

Suspects were always expected to resist: to deny culpability, to ‘push back’, and to tell lies. To overcome their resistance and to persuade them to confess—to ‘cough’—required *interrogation*. This was considered a high-level skill, acquired through experience observing seemingly skilled Criminal Investigation Department (CID) practitioners.

From an institutional perspective, confessions were efficient. They concluded investigations. The earlier confessions emerged the better for the case. Furthermore, one confession could become many confessions when suspects also confessed to committing further—unsolved—offences in the hope that the court might ‘take into consideration’ (TIC) these voluntary, co-operative admissions when it came to sentencing. TICs enabled unsolved crimes to be ‘written off’ as detections, increasing police performance statistics in the absence of any investigation. For these reasons, prior to 1993 the UK police service, in common with those in many other countries, was a ‘confession’ culture.<sup>61</sup> Confessions were called ‘counters’: ‘results’ that counted in multiple ways.

The year before the Police and Criminal Evidence Act (PACE) (1984)<sup>62</sup> required electronic recording of interviews with suspects, officers attending CID training courses received a standard lecture input on interrogation methods based on the research of a serving detective.<sup>63</sup> Walkley<sup>64</sup> had surveyed 100 detectives on their attitudes and everyday interrogation practices and reviewed Royal Commission on Criminal Procedure (RCCP) research,<sup>65</sup> as well as the Reid technique widely taught and practised within and outside the US.<sup>66</sup>

#### 1.4.1 Putting an individual in the ‘frame’, preparation and planning

Initial assessment of the crime scene and awareness of the accounts given by key witnesses at the scene or soon after the offence (before ever making a formal statement) typically provided pointers to the suspect’s identity. These enabled investigators to put a particular person within the ‘frame’ as the potential suspect.<sup>67</sup> In the absence of clear pointers investigators engaged in a primitive form of offender profiling. Thus, a sex offence put within the ‘frame’ the ‘usual suspects’: anyone known or believed to have carried out any form of sex offence.<sup>68</sup>

The presence of inconsistency and contradiction within and between witness statements and the absence of hard fact did not matter. What mattered was a plausible explanation—a narrative that accounted, however approximately, for what investigators observed at a crime scene. Of paramount importance was investigators’ belief that the suspect was guilty. Preparation and planning to question the suspect were unnecessary. All that was necessary was securing a confession by the application of tried and tested techniques.<sup>69</sup>

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<sup>60</sup> White, P. (ed.) *Crime Scene to Court: the Essentials of Forensic Science*. London: Royal Society of Chemistry.

<sup>61</sup> Shepherd, E. (1991) (n 4).

<sup>62</sup> *Police and Criminal Evidence Act* (1984) London: HMSO.

<sup>63</sup> Walkley, J. (1983) *Police Interrogation: A Study of the Psychology, Theory and Practice of Police Interrogation and the Implications for Police Training*. Unpublished MSc thesis, Department of Social Policy, Cranfield Institute of Technology (now Cranfield University).

<sup>64</sup> Walkley, J. (1987) *Police Interrogation: A Handbook for Investigators*. London: Police Review Publishing.

<sup>65</sup> Irving, B. & Hilgendorf, L. (1980a) *Police Interrogation: The Psychological Approach*. London: HMSO; Irving, B. & Hilgendorf, L. (1980b) *Police Interrogation: A Case Study of Current Practice*. London: HMSO.

<sup>66</sup> Inbau, F. & Reid, J. (1967) *Criminal Interrogations and Confessions*. Baltimore: Williams and Wilkins.

<sup>67</sup> McConville, M., Sanders, A. & Leng, R. (1991) (n 47).

<sup>68</sup> Powis, D. (1977) *The Signs of Crime*. London: McGraw-Hill.

<sup>69</sup> Sekar, S. (1997) *Fitted In: The Cardiff 3 and the Lynette White Inquiry*. London: The Fitted In Project (see Foreword by M. Mansfield).

## 1.4.2 Creating the right mental climate for conformity and persuasion

The interrogation was seen as a battle to gain the psychological advantage: such that the interrogators won and the suspect lost. In order to gain the advantage in this zero-sum game the interrogators created the mental climate to render the suspect compliant, open to persuasion, and to cause the suspect to capitulate and confess.<sup>70</sup>

### 'Reading' the suspect, 'lie' signs and 'buy' signs

Decision-making concerning the required mental climate rested upon 'reading' the suspect, i.e. the suspect's demeanour.<sup>71</sup> Suspects were either *nervous*—overtly frightened, anxious, subdued, and seemingly guilty—or the complete opposite, *confident*. Thereafter investigators monitored the individual's behaviour for 'lie' signs: non-verbal and verbal indicators that confirmed their belief in the suspect's guilt (Boxes 1.4 and 1.5).

Sweating	Voice pitch gets higher
Dry mouth	Change in pupils of the eye
Licking lips	Fidgeting in seat
Breath becomes stale	Picking lint off clothing or brushing dust off trousers
Yawning	Fiddling with hands/fingers
Complexion changes (pallor; flushing)	Tying shoelaces
Twitching	Touching the head (nose, ears, hair) with the hand
Trembling	Foot tapping/shuffling
Facial tics	Leg shaking
Blinking/flickering eyelids	Biting fingernails
Requests to use the toilet	Biting lip
Noticeable pulse beat (carotid artery or temple)	Excessive smoking
Stammering	Change in gesticulation ('talking' less with hands)
Tremors	Change in gesticulation (decrease)
Flatulence	Overall posture
Nervous cough	Change in gaze direction (fixed; avoidance)

### Box 1.4 Non-verbal 'lie' signs (after Walkley, 1987)

Over-insistence and excessive assertion of truthfulness
Denying the offence
Challenging the investigator to prove what is being asserted, to produce evidence or a witness
Simple avoidance, e.g. <i>I can't remember; No comment; I'm not saying anymore.</i>
Preying on the investigator's sympathy, e.g. <i>Please believe me; I'd tell you if I'd done it; What more can I say?</i>
Bland reply to a critical question, e.g. <i>I didn't do it; I wasn't there.</i>
Dismissive or adversarial talk, e.g. <i>Dunno what you're talking about; I've done f*** all; That's my story and I'm sticking to it.</i>

### Box 1.5 Verbal 'lie' signs (after Walkley, 1987)

<sup>70</sup> Deeley, P. (1971) *Beyond Breaking Point*. London: Arthur Barker; Gudjonsson, G. (2003) (n 59).

<sup>71</sup> Deeley, P. (1971) (n 70); Irving, B. & Hilgendorf, L. (1980b) (n 65).

However, both innocent and guilty individuals manifest these purportedly lying behaviours.<sup>72</sup> When investigators categorically interpret these as lies, they commit the classic *Othello* error. When perceiving an innocent person's convoluted and evasive responses as guilt they immerse themselves in the *Brokaw Hazard*.<sup>73</sup> Their selective attention to behaviours deemed to be confirmatory of the guilt of an individual whom they believe to be guilty creates a self-fulfilling prophecy.<sup>74</sup>

### Communicating an 'up'–'down' relationship

It was important to make suspects aware of difference in relative status. The confident, well-dressed, articulate investigator was in the 'up' position: the dominant, controlling superior. The suspect was in the 'down' position: the subordinate expected to comply. If the suspect was nervous, investigators adopted the *friendly approach*, acting firmly but in a manner that was befriending, understanding, sympathetic, concerned, and informal. Investigators much more frequently adopted the *masterful approach*, dealing very firmly with the confident suspect, restricting conversation to a minimum.<sup>75</sup>

### Isolating the suspect and obstructing legal advice

Cutting off suspects' contact with the outside world, and any source of support and assistance, was also very important. Under PACE, suspects must be informed of their right to free legal advice at any time in private and to have someone informed of their whereabouts. Many did not exercise these rights. If a suspect requested legal advice during the interrogation process investigators would not immediately stop the interview. They also gave the impression that the granting of this right was within their gift. For many years they obstructed attendance of legal advisers,<sup>76</sup> kept them waiting in reception, restricted where they could advise their clients (typically to the cell), and characteristically gave minimal pre-interview disclosure—lasting only minutes—as to the offence and the case against the suspect, and little indication of evidence held. Whether or not the legal adviser advised the suspect to remain silent or to answer questions was all too often immaterial. Legal advice prior to the interview was brief, often only lasting minutes, and involved no real preparation of the suspect for the questioning process.<sup>77</sup>

The coerced confessions from three vulnerable individuals—an intellectually disadvantaged man with severe learning difficulties and two juveniles both similarly disadvantaged—in a 1972 murder case<sup>78</sup> led to the RCCP. This gave rise to PACE and its requirement to identify suspects who are potentially vulnerable due to intellectual disadvantage, mental disorder, or being juvenile, and to appoint an *appropriate adult* (AA). An AA is a person with knowledge of the individual, or this category of individual, and is therefore able to explain the seriousness of the allegation, the seriousness of what is put to the suspect, and the seriousness of the suspect's responses. Fulfilling this obligation in

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<sup>72</sup> Vrij, A. (2008). *Detecting Lies and Deceit: Pitfalls and Opportunities*. New York: Wiley.

<sup>73</sup> Ekman, P. (1985) *Telling Lies*. New York: Norton.

<sup>74</sup> Mortimer, A. & Shepherd, E. (1999) (n 15).

<sup>75</sup> Irving, B. & Hilgendorf, L. (1980b) (n 65); Walkley, J. (1983) (n 63).

<sup>76</sup> For example, *R v Samuel* (1988) QB 615, *R v Alladice* (1988) 87 CrAppR 380 CA.

<sup>77</sup> McConville, M. & Hodgson, J. (1993) *Custodial Legal Advice and the Right to Silence*. *RCCJ Research Study 16*. London: HMSO.

<sup>78</sup> Price, C. & Caplan, J. (1976) *The Confait Confessions*. London: Marion Boyars. Griffiths, A. & Rachlew, A. (2018). From interrogation to investigative interviewing. The application of psychology. In A. Griffiths & R. Milne (eds.) *The Psychology of Criminal Investigation. From Theory to Practice*. London: Routledge.

terms of identifying intellectual disadvantage and appointing an AA has been an enduring problem.

### 1.4.3 The interrogation process

PACE requires questioning to take place in designated police stations, in interview rooms equipped with electronic recording equipment. Recording was to render the interrogation process transparent and ensure investigators did not engage in oppressive behaviour that induced suspects to stop saying things they otherwise would, or to say things that they otherwise would not.<sup>79</sup>

Installation of equipment took several years to complete. Traditional interrogation practices continued despite the presence of recording equipment. In our review of these practices we shall refer to a case in late 1988 in which interrogators coerced Stephen Miller, an intellectually disadvantaged young man, to make a false confession to murder.<sup>80</sup> Their CT was that under the influence of drugs Miller had stabbed his common law wife Lynette White. With tunnel vision they ignored multiple inconsistencies, multiple contradictions, and manifest lies within accounts from manifestly unreliable witnesses, many of whom were pressured by the police, and several of whom were police informants.

#### The timing and duration of interrogation and team deployment

To fatigue and exhaust the suspect, questioning would start in the day and continue into the night—and often into the early hours of the morning. Interviews would be protracted, frequently lasting hours punctuated by minimal breaks, and extend over days. Miller was interviewed in this manner nineteen times between Wednesday afternoon and Sunday morning.

Protracted interviewing would not be tiring for investigators because it was standard practice to deploy alternating teams, switching back and forth between contrasting approaches. A masterful coercive *hard* approach cumulatively pressured, stressed, and distressed the suspect. This made the suspect increasingly susceptible to a befriending, coaxing *soft* approach—emollient and sympathising with the suspect's 'position', and offering blandishments. Two such teams interrogated Miller.

#### Outnumbering the suspect

The suspect was always physically outnumbered by two, or even more, investigators: a practice the 1980 RCCP recognised as inherently oppressive.<sup>81</sup> If the suspect exercised the right to legal advice the presence of a legal adviser in the interview room notionally nullified this source of pressure. Investigators solved the problem by locating the legal adviser in a chair behind—away from and out of sight of—the suspect. The legal adviser was unable to communicate with the suspect (who would have to turn around to do so), could not see whatever investigators placed on the table, and could be easily ignored if the legal adviser sought to intervene in the event of inappropriate questioning or investigator conduct.

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<sup>79</sup> Wolchover, D. & Heaton-Armstrong, A. (1996) *Wolchover and Heaton-Armstrong on Confession Evidence*. London: Sweet and Maxwell.

<sup>80</sup> *R v Miller, Paris and Abdullahi*. *The Times*, December 24, 1992, CA; Gudjonsson, G. (2003) (n 59); Sekar, S. (1997) (n 69).

<sup>81</sup> Irving, B. & Hilgendorf, L. (1980a) (n 65).

## Non-confrontational phase

Interrogation began non-confrontationally. To get the suspect talking investigators would ask questions about 'neutral' matters, e.g. the suspect's background; knowledge of people (particularly the victim, witnesses, and other interested parties); the suspect's movements within a *material time frame* (MTF) (prior to, during, and after the time of the offence). This phase equated to the *interview* stage of the Inbau and Reid model, during which time investigators scanned for 'lie signs' that confirmed their belief in the suspect's guilt.<sup>82</sup> If the suspect did not spontaneously admit guilt or manifested the significant 'lie' sign of repeatedly asserting innocence then serious questioning would start to induce the suspect to confess.

## Serious questioning

Walkley recommended that investigators assure nervous suspects that they would not be tricked or ill-treated or hurt in any way, and confident suspects were given no such assurance. His reference to assurance reflected public awareness that physical intimidation has a long history in police interrogation. Called the 'third degree' in America, its prevalence and persistence despite official condemnation<sup>83</sup> motivated Inbau and Reid to devise their 'psychological' approach to inducing a confession. In the UK investigators typically intimidated by standing up, beside, and over—as well as sitting beside and close to—the seated suspect: Walkley considered the latter to be the best.

Walkley's survey research revealed a high proportion of investigators thought it right to suggest physical violence (67%), to hint that they had the power to physically hurt the suspect (62%), to grab hold of the suspect's lapels to let the individual know 'who is boss' (45%), to use any form of violence to get the suspect to speak the truth (44%), to slap a suspect across the face (43%), and that with some suspects the only way to get their respect was using some form of physical force (40%). A significant number admitted to resorting to violence (32%). The CID training package, of course, made no reference to physical intimidation. Electronic (tape) recording equipment removed allusion to, and the potential for, actual physical force, though one innovative tactic emerged: requiring suspects to stand throughout the entire interview.<sup>84</sup> Intimidation did occur away from the interview room: in suspects' cells, during what were euphemistically logged in the custody record as 'cell visits', or when investigators took suspects away from the police station to 'visit' an offence-related location. However, the presence of a legal adviser was a key inhibitor. Miller's solicitor was in the interview room during the interviewing of Miller and no physical intimidation occurred.

Serious questioning began with the *confrontation*: investigators accused the suspect and asserted certainty of belief and knowledge of the suspect's guilt. They introduced untrue 'facts' to back up their belief.<sup>85</sup> These 'facts' included—overstated—numbers of witnesses incriminating the suspect, false representation of witnesses' accounts, reference to accounts from non-existent witnesses, falsely asserting the independence of witnesses, 'verballing' (accounts from fellow suspects, prisoners, and police officers reporting incriminatory disclosures made by the suspect in their presence), reference to non-existent physical and

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<sup>82</sup> Inbau, F. & Reid, J. (1967) (n 66).

<sup>83</sup> Fyfe, S. (2010) *Above the Law: Police and the Excessive Use of Force*. New York: Simon and Schuster.

<sup>84</sup> This tactic was subsequently prohibited in PACE. See *Revised Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers. Police and Criminal Evidence Act 1984 (PACE)—Code C*. May 2014. Section 12.6.

<sup>85</sup> *R v Mason* (1987) Crim LR 757.

forensic evidence, and bogus evidence ‘discovered’ by the police.<sup>86</sup> In Miller’s case the investigators misrepresented witness evidence, its consistency, and the independence of witnesses.

Every assertion of innocence (or denial of guilt) from both nervous and confident suspects in response to an accusation or production of ‘facts’ was a ‘lie sign’ confirmatory of guilt. It was first necessary to induce the suspect to stop making repeated assertions. Investigators—in a two-team operation as the hard team—engaged in increasingly masterful behaviour to dominate the conversation, to stress and distress the individual psychologically and emotionally, and to render the suspect silent. Serious questioning created fast verbal exchanges. A judgement would be made when to switch to soft—with the soft team sympathising with the tormented suspect and using persuasive argument to induce the suspect to accept their CT and ‘cough’.

### Tactics to induce the suspect to stop asserting innocence

In our illustrative case Miller asserted his innocence more than 300 times in the initial strong questioning interviews. Table 1.1 shows the use by the two questioning teams of fifteen oppressive tactics when interrogating Miller in the first thirteen interviews.<sup>87</sup>

**Table 1.1 The interrogation of Stephen Miller: tactics used by the Hard Man/Soft Man teams**

INTERVIEW	1	2	3	4	5	6	7	8	9	10	11	12	13
Asserting their belief as ‘fact’	•	•	•	•	•	•	•	•	•	•	•	•	•
Asserting continued resistance as proof of guilt	•			•	•	•	•			•	•	•	•
Misrepresenting facts	•	•	•	•	•	•	•	•	•				
Disruptive talk and disruptive listening	•	•	•	•	•	•	•	•	•	•		•	•
Inappropriate questioning and inappropriate questioning behaviour	•	•	•	•		•	•	•	•	•	•	•	•
Ignoring responses (denials; requests; overt distress)	•	•	•	•	•	•	•	•	•	•	•	•	•
Hectoring, bullying, and pressuring			•	•			•			•		•	•
Anger, swearing, raising voices		•		•		•	•					•	
Belittling and insulting	•	•	•	•		•	•	•					
Emotional blackmail		•			•		•						

<sup>86</sup> Caldero, M., Dailey, J. & Withrow, B. (2018) (n 48).

<sup>87</sup> Shepherd, E. (1992) *The Origins and Forms of Unethical Interviewing in the Police Service*. Written Evidence to the Royal Commission on Criminal Justice. London: Investigative Science Associates.

INTERVIEW	1	2	3	4	5	6	7	8	9	10	11	12	13
Threats	•			•	•		•	•		•	•	•	•
Inducement				•	•		•	•		•	•	•	
Stressing inescapable, isolated position				•	•		•	•			•	•	
Total number of oppressive forms of behaviour	8	8	7	12	9	8	13	9	5	8	7	10	7
Speed of exchange (words per minute)	232	255	238	230	130	218	272	227	174	205	265	248	213

The term *disruptive talk* refers to interruption, overtalking, and rapid topic changing. *Disruptive listening* involved not paying attention, assuming what Miller was about to say, and selectively ‘word-picking’ his responses. Their questioning involved inappropriate constraining and suggestive leading and option questions, and inappropriately not pausing to give Miller time to think.<sup>88</sup> In only one interview was the speed of the exchange within the range of everyday talk which varies between 120–160 words per minute.

Miller’s solicitor did not intervene in any of the nineteen interviews to defend Miller by requesting or demanding that the investigators cease their tormenting behaviour. Such silence was very much the norm with less than 10% of advisers intervening to defend their clients. In 1993 Royal Commission on Criminal Justice (RCCJ) research revealed the tactics used by investigators to undermine legal advisers in the eyes of their clients. These included overtly asking the adviser to side with the police, questioning the advice given to the suspect, questioning the adviser’s credentials, and ‘putting down’ behaviours: mounting a personal attack, ignoring what the adviser said, being sarcastic, dismissing the adviser with throw-away comments, making patronising and condescending remarks, arguing, swearing, and attempting to intimidate.<sup>89</sup>

### Persuasive argument to induce the suspect to accept the investigators’ CT and to confess

From 1984 onwards there was a CID training package that incorporated techniques recommended by Walkley for influencing a suspect’s decision-making.<sup>90</sup> The *maximum-minimum* advantage/disadvantage technique involved pointing out the advantages of confession—it was not as bad as the suspect might fear—and, on the other hand, reducing the apparent advantages—and highlighting the penalties—of continued denial. Investigators developed themes—‘reasonable’ arguments and ‘understandable’ reasons for a person in the suspect’s position faced with the suspect’s circumstances, to commit the offence. Typical themes included expressions of sympathy (‘anyone else under similar conditions or circumstances might have done the same thing’), or reducing the

<sup>88</sup> Mortimer, A. & Shepherd, E. (1999) (n 15).

<sup>89</sup> McConville, M. & Hodgson, J. (1993) (n 77); Shepherd, E. (1994) *Police Station Skills for Legal Advisers. Becoming Skilled—A Resource Book*. London: Law Society.

<sup>90</sup> Heads of Detective Training Working Party (1984) *Interrogation Training*. Wakefield: West Yorkshire Police. Detective training was conducted on a regional basis in a number of police training schools with officers attending a Home Office-approved CID course that was under the direction of a designated head of training.

suspect's feeling of guilt by minimising the seriousness of the offence, suggesting a less revolting, more morally acceptable, motivation for the offence, and condemning the victim, accomplices, or anyone else.

Investigators monitored the suspect's behaviour for 'buy signs'—a term used by salesmen to refer to a prospective customer's readiness to accept what is on offer (Box 1.6).

Requests for information
Bargaining ploys
Excessive arousal, e.g. beginning to cry
Becoming excited or angry
Demanding to be put back in the cell
Hurling abuse
A degree of assent or agreement with what the investigator has asserted
Postures and gestures, e.g. defeated look, lowered gaze, bowed head, head in hands
Response uncertainty, e.g. silence where before the suspect was talkative
Mind racing ahead
Anxious and hesitant replies
Faltering voice
Loss of verbal fluency
Sighing
Mumbling
Replies taking longer
Asking for things to be repeated as a delaying tactic

#### Box 1.6 'Buy signs' (after Walkley, 1987)

Miller exhibited a wide range of 'buy signs'. He eventually made a *coerced compliant confession* implicating four innocent individuals, that he actually *internalised*, i.e. believed for a period, even though it was completely false.<sup>91</sup> His confession comprised the 'facts' given to him within the investigators' assertions and suggested to him in their questions, and confabulation to fill in the gaps.

## 1.5 Interviewing witnesses prior to 1993

PACE does not require the interviews of witnesses to be recorded. After basic training investigators' interviewing of witnesses was rarely monitored. In 1982 a programme in a BBC television documentary series on everyday policing gave the public a shocking insight into witness interviewing. A team of male officers interviewed a female complainant concerning her allegation that she had been raped by three men. Although she was manifesting obvious distress and psychological symptoms, the investigators were uncaring and harsh. Their questioning was constraining and suggestive. They belittled the woman and dismissed her allegation. The response of the interviewers and their managers to media and public condemnation was that the officers were in fact being nice to the woman.<sup>92</sup>

<sup>91</sup> Gudjonsson, G. (2003) (n 59); Sekar, S. (1997) (n 69). The actual murderer was identified years later by a DNA database match, after they gave a sample for a minor offence.

<sup>92</sup> 'A complaint of rape' (1982) Third episode in the documentary *Police*. 15 March. Producer: R. Graeff. Director: C. Stewart. London: BBC.

Contemporary research in the UK and the US revealed how practitioners typically adopted a directive style when interviewing witnesses.<sup>93</sup> They talked more than the witnesses. Pausing was almost non-existent. They ‘filled the pause’, i.e. taking back the speaking turn before the witness had time to speak. They listened disruptively, interrupting and overtalking the witness, and rapidly changed the topic: deflecting the witness away from complete recollection, disrupting the witness’s train of thought, correcting when the witness went ‘off track’, or taking the witness back to probe an earlier disclosure or response. Questioning was rapid fire and pressuring, and questions were predominately suggestive, and closed confirmatory ‘yes’/‘no’. Words of uncertainty, and emergent inconsistency and contradiction within the witness’s account and responses were expediently lost through a process of ignoring or failing to probe or take a note. Interviewers evoked ‘I don’t know’ responses by making judgemental comments, often phrasing these negatively, and implying the witness did not know the answer. The number of witnesses invited to make a drawing or sketch was vanishingly small.

Directive interviewing enables creation of statements saying, or roughly saying, the ‘same thing’ about the occurrence and identifying the suspected offender. It allows investigators to use their preconceptions and the CT—either formed beforehand by the investigator, communicated to the investigator, or quickly formed from the account given by the first witness interviewed—as a framework of ‘fact’ to focus witnesses’ attention, to enable relevance filtering, to secure confirmatory responses, and to speed up note-taking.<sup>94</sup> Interviewing two or more witnesses in this manner thus becomes an extended exercise in confirmation rather than investigation.

## 1.6 The authentic alternative: investigative interviewing using Conversation Management

During 1983 the Police and Criminal Evidence Bill—with its requirement for electronic recording of interviews—was before the UK Parliament. At the time, the first author was working with the City of London Police and he reasoned that recording provided an opportunity to devise an alternative way of doing things, and also to dispense with the distinction between remarkably similar activities—expedient coercive interrogation of suspects and expedient directive interviewing of witnesses—to confirm preconceptions and a CT. Both were illusory since neither genuinely investigated. He considered that all police officers—irrespective of role—had to be professional in *investigative interviewing*: conversing with suspects and witnesses to achieve aims and objectives that were truly investigative. However, the introduction of recorded interviews with suspects made the training of investigators to conduct investigative interviews the priority task.

Bringing to bear experience gained from working with the police service, working as an intelligence officer, and working as a psychologist and psychotherapist in forensic and clinical settings, he devised an alternative approach to conducting investigative interviews of suspects (that could readily be applied to interviewing witnesses). He called the approach *Conversation Management (CM)*.<sup>95</sup>

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<sup>93</sup> Fisher, R., Geiselman, R. & Raymond, D. (1987) Critical analysis of police interviewing techniques. *Journal of Police Science and Administration*, 15, 117–85; George, R. (1991) *A Field Evaluation of the Cognitive Interview*. Unpublished MSc thesis. Polytechnic of East London (now University of East London); McLean, M. (1992) Quality investigation? Police interviewing of witnesses. *Medicine, Science and the Law*, 35, 116–22.

<sup>94</sup> Biddle, D. & Evenden, R. (1980) *Human Aspects of Management*. London: Institute of Personnel Development.

<sup>95</sup> Shepherd, E. (1986a) Conversational core of policing. *Policing*, 2, 294–303.

## 1.6 The authentic alternative: investigative interviewing using Conversation Management

The cornerstone of CM is authenticity: a dual commitment to a mindset of genuine respect—for the law, the person, and integrity of information—and to genuine professionalism in the practice of investigative interviewing—founded upon reflective practice and continuous debiasing, essential professional knowledge, skills, and techniques, preparation and planning before an interview, managing the dialogue from first meeting to point of departure, and subsequent retrospective evaluation. He developed CM from 1983 onwards.<sup>96</sup> He met the second author in 1998 when the latter was tasked with developing specialised interview training, based on CM, for his own police force. Their friendship grew as the second author applied CM operationally, was awarded a national scholarship to study the real-life effects of the training,<sup>97</sup> and became a member of the police committee which provided strategic oversight for the national development of investigative interviewing. Since 2013 they have taken CM forward collaboratively seeking to ensure it is cognisant of any changes in law, professional practice, and empirical research while preserving its ethical foundation of respect.

### 1.6.1 Mindset of genuine respect

*Respect for the person* as a person derives from respect for the law.<sup>98</sup> The law requires officers and investigators to respect people as autonomous agents with a right—like the investigator—to a fair hearing, to have what they say and their decisions acknowledged and accepted. That these are inconvenient—at odds with available information and evidence, investigator perceptions and beliefs, or the prevailing CT—can never justify investigators acting expediently ‘in the name of the law’. Mindfulness of the person as a fellow human being is evidenced by ethical, mindful behaviours summarised by the acronym RESPONSE: respect, empathy, supportiveness, positiveness, openness, non-judgemental attitude, straightforward talk, and equality, i.e. the investigator talking across to the interviewee as an equal, creating a symmetrical ‘across’ as opposed to an asymmetrical ‘up’-‘down’ relationship. RESPONSE behaviours enable investigation through fostering relationship and disclosure.<sup>99</sup>

*Respect for the integrity of information* also derives from respect for the law. Society entrusts investigators, when fulfilling their investigative duty:

- not to act arbitrarily, disingenuously, or dishonestly in their search for, and their examination and representation of, detail
- to counter bias when processing information
- to validate all disclosures and to assess the reliability of their source.

### 1.6.2 Professionalism in the practice of investigative interviewing

#### Reflective practice and conscious debiasing

The way that any professional engages, applies, exercises, realises, and practises their professional knowledge and understanding has a name: *praxis*. Praxis is the manner in which

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<sup>96</sup> Shepherd, E. (1986b) Interviewing development: facing up to reality. In J. Yuille (ed.) *Police Selection and Training*. Dordrecht: Martinus Nijhoff; Shepherd, E. (1988) Developing interviewing skills: a career span perspective. In P. Southgate (ed.) *New Directions in Police Training*. London: HMSO; Shepherd, E. & Kite, F. (1988) Training to interview. *Policing*, 4, 264–80; Shepherd, E. & Kite, F. (1989) Teach ‘em to talk. *Policing*, 5, 33–47.

<sup>97</sup> Griffiths, A. & Milne, R. (2005) Will it all end in tiers? Police interviews with suspects in Britain. In T. Williamson (ed.) *Investigative Interviewing: Research, Rights Regulation*. Cullompton: Willan.

<sup>98</sup> Shepherd, E. (1991) (n 4).

<sup>99</sup> Shepherd, E. & Griffiths, A. (2020) (n 1).

we as investigators manage conversations.<sup>100</sup> It can be good practice or bad practice. All investigators—particularly when they are under pressure (from without, e.g. management demand for results, or within, i.e. the need to achieve and be recognised), and when there are contextual pressures (most especially when time and resource are limited)—are at risk of acting unreflectively and engaging in bad praxis, i.e. without due deliberation, acting mindlessly, operating in ‘autopilot’ heedless of what they are actually doing, its effects, its consequences, and its implications. Unreflective investigators fail to recognise what is clear to an external observer and experienced by an interviewee: their performances are sub-optimal, uncaring, and even unethical.

To guard against these risks, investigators need to be *reflective* practitioners. They have to be aware—mindful—of how they are performing: prior to (*reflection before action*) and during the interview as it happens (*reflection in action*).<sup>101</sup> They also mindfully review how they performed (*reflection on action*).<sup>102</sup> Central to reflective practice is *deliberative judgement*: the investigator reflects on their judgements and actions in order to improve decisions made now and going forward.<sup>103</sup> This enables conscious debiasing.<sup>104</sup>

Aware of the many forms of cognitive bias, reflective investigators consciously monitor their information processing and their behaviour at the point of making an assessment or decision, i.e. a judgement or choice. They take time to consider the opposite of an immediate impression, to ask critical questions, e.g. ‘Are there reasons why my judgement may be wrong?’, and to respect and respond reasonably to inconsistent and contradictory detail, especially that which points away from the suspect. When investigators practise deliberative judgement, they perform optimally: when they do not, they act stupidly, destroying trust and confidence in their ability to act ethically and competently.<sup>105</sup>

Reflection and subsequent action are crucial to principled professional performance. Action without reflection is mere expedient acting without thinking, i.e. creating the illusion of doing something—activism. In contrast, reflection without subsequent action is pointless blah. Authentic CM is reflection and action: authentic praxis.<sup>106</sup>

## Memory for an event, episode, or circumstances

Requesting and responding to an individual’s remembrance of an event, episode, or circumstances, presumes knowledge of how human memory works. Investigators must know the different forms of memory; forms of sensory experience; factors—including many forms of vulnerability—that affect how an individual attends, focuses upon particular detail, follows and makes sense of detail; how detail enters memory store; factors affecting stored detail; retrieval of experience from store—and influencing remembrance, including conversations and being interviewed, and exposure to other sources of information. In addition, it is

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<sup>100</sup> Ramsay, E. & Miller, D. (2003) *Experiences between Philosophy and Communication*. Albany, NY: State University of New York Press.

<sup>101</sup> Greenwood, J. (1998) The role of reflection in single and double loop learning. *Journal of Advanced Nursing*, 27, 1048–53.

<sup>102</sup> Schön, D. (1983) *The Reflective Practitioner: How Professionals Think in Action*. New York: Basic Books.

<sup>103</sup> Fish, D. & Coles, C. (1998) *Developing Professional Judgement in Health Care: Learning Through the Critical Appreciation of Practice*. Oxford: Butterworth Heinemann.

<sup>104</sup> Baron, J. (2008) (n 19); Hirt, E. & Markman, K. (1995) Multiple explanation: a consider-an-alternative strategy to debiasing judgements. *Journal of Personality and Social Psychology*, 69, 1069–86.

<sup>105</sup> Sternberg, R. (2002) *Why Smart People Can Be So Stupid*. New Haven: Yale University Press; Rossmo, D. (2009) (n 57).

<sup>106</sup> Kolb, D., Rubin, I. & McIntyre, J. (1984) *Organisational Psychology*. Englewood Cliffs, NJ: Prentice-Hall; Freire, P. (1986) *Pedagogy of the Oppressed*. New York: Continuum.

important to know about the effects of physical and psychological trauma, alcohol, organic conditions, and the occurrence of complete amnesia and recovered memories.

This fundamental knowledge—being mindful of memory realities—is essential to planning and preparing for, and subsequent skilful conversation and facilitative questioning in the interview. It also enables the mindful application of techniques to assist remembrance of an event, episode, or circumstances.

## Conversation

CM demands underpinning knowledge of conversation as the medium human beings use to relate to another what they have in mind and to relate to that person, i.e. in terms of creating a relationship. Potential to converse skilfully as a professional is aided by awareness: how conversation works,<sup>107</sup> the crucial importance of the first four minutes of any conversation,<sup>108</sup> how participants signal their perceptions of the relationship, and the dynamics of relating to another person.<sup>109</sup>

Like fellow professionals who interview in clinical and forensic settings investigators have to monitor the interviewee's non-verbal and verbal behaviour—establishing a 'baseline' on first meeting and noting potentially significant variations across the entire conversation. Awareness of the interplay between *focus of concern* (self-considering vs. other-considering) and *conversational control* (high through to low) gives insight into interviewer behaviours that facilitate achievement of the investigative aim and objectives.<sup>110</sup> This insight combined with an understanding of resistance as manifestation of two dimensions—the interviewee's *ability/inability to tell* and *willingness/unwillingness to disclose*—enable skilled management of 'push back', active deception, evasion, and silence, as well as confabulation. These, as well as obstructive behaviour, are to be expected from interviewees for whom the conversation is 'difficult' (with self-concept and self-esteem on the line)<sup>111</sup> or 'crucial' (involving differences in perspective, strong emotions, and perceived risk).<sup>112</sup>

Hence investigators like psychotherapists and counsellors must focus on skilful *opening behaviours*:

- mindful conversation—a desire to listen more than to speak, giving the other person maximum access to the speaking turn
- small acts ('gestures' like offering refreshment) that automatically evoke a positive reciprocal response<sup>113</sup>
- mindful RESPONSE behaviours (respect, empathy, supportiveness, positiveness, openness, non-judgemental attitude, straightforward talk, and equality, i.e. talking 'across' to the other person).

<sup>107</sup> Wardaugh, R. (1985) *How Conversation Works*. Oxford: Blackwell; Clark, H. (1996) *Using Language*. Cambridge: Cambridge University Press; Zeldin, T. (1996) *Conversation: How Talk Can Change Your Life*. London: Harvill Press; Stokoe, E. (2018) *Talk: The Science of Conversation*. London: Robinson; Crystal, D. (2020) *Let's Talk*. Oxford: Oxford University Press.

<sup>108</sup> Zunin, L. (1972) *Contact: The First Four Minutes*. London: Talmy Franklin.

<sup>109</sup> DeVito, J. (2004) *The Interpersonal Communication Book*. Boston: Pearson; Adler, R., Rosenfeld, L. & Proctor, R. (2013) *Interplay: The Process of Interpersonal Communication*. Oxford: Oxford University Press.

<sup>110</sup> Shepherd, E. (1984) (n 42).

<sup>111</sup> Stone, D., Patton, B. & Heen, S. (1999) *Difficult Conversations*. London: Penguin.

<sup>112</sup> Cialdini, R. (2007) *Influence: The Psychology of Persuasion*. New York: Harper Collins; Patterson, K., et al. (2012) (n 3).

<sup>113</sup> Saunders, C. (1986) Opening and closing. In O. Hargie (ed.) *A Handbook of Communication Skills*. London: Croom Helm; Cialdini, R. (1984) *Influence: The Psychology of Persuasion*. New York: HarperCollins.

These behaviours create the psychological conditions at the outset for the experience of *rapport*: a sense of connection, of ability to communicate, and of understanding each other's point of view—colloquially called 'clicking'.<sup>114</sup> When this happens instantly or quickly the nature of conversation reflects this in terms of the three elements of rapport:<sup>115</sup>

- **Positivity.** Both feeling positively disposed, if not friendly, towards each other and having care and concern for the other's point of view and feelings.
- **Mutual attentiveness.** Being focused on, and interested in, what the other person is saying and doing—rather than being solely self-focused.
- **Coordination.** Being in 'sync' conversationally, i.e. switching the turn to speak, being an authentic listener—*really* listening to what the other is saying.

Often this sense of connection is not immediate. Your mindful behaviour and mindful conversation enable the gradual development of *common ground*. Agreeing to respond to each other with common decency is relatively easy with a witness but potentially harder with a suspect. The investigator takes things forward: fostering and sustaining *shared understanding* through mindful *explanation* prior to, at the outset of, and across the interview.<sup>116</sup> Early, explicit explanation is essential to the emergence of a coordinated *working relationship*<sup>117</sup>—the investigator facilitating disclosure by an individual who has a shared understanding of the aim and goals of the interview, and of respective roles and tasks. Explanation of necessity includes:

- the *reason* for the interview
- the *route map*—what needs to be covered
- the *routines*—activities such as recording, note-taking, production of evidence
- the *expectations*
  - at all times the individual should say if they do not understand, want to ask something, or need something
  - there is a *disclosure contract*: the individual should give detail, not rush, think before and after saying something, and expect the investigator to stop the individual from time to time to gain a firm understanding.

Shared understanding assists the emergence of positivity across the interview. It enables coordination of respective contributions to the conversational exchange and continuing attentiveness through a managed *mutual activity*—a blend of speaking and listening that facilitates and guides disclosure:

- *inclusive speaking turn behaviours*, i.e. mindful questioning, selective self-disclosure, strategic introduction of evidence, giving feedback

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<sup>114</sup> There are many definitions of rapport and little agreement about how it is measured. Our perspective is that rapport is a positive relationship characterised by trust, understanding, accord, and respect for autonomy fostered through mindful RESPONSE behaviours and mindful conversation: see Shepherd, E. & Griffiths, A. (2020) (n 1).

<sup>115</sup> Tickle-Degnan, L. & Rosenthal, R. (1990) The nature of rapport and its nonverbal correlates. *Psychological Inquiry*, 1, 285–93.

<sup>116</sup> Hargie, O., Saunders, C. & Dickson, D. (1994) *Social Skills in Interpersonal Communication*. Hove: Psychology Press; Brown, G. (1986). Explaining. In O. Hargie (ed.) *A Handbook of Communication Skills*. London: Croom Helm; Brown, G. (2006). Explaining. In O. Hargie (ed.) *The Handbook of Communication Skills*. London: Routledge.

<sup>117</sup> Brammer, L. & Shostrom, E. (1968) *Therapeutic Psychology: Fundamentals of Counselling and Psychotherapy*. Englewood Cliffs, NJ: Prentice-Hall.

- *authentic listening behaviours*:
  - closely observing the individual's verbal and non-verbal behaviour (noting potentially significant variations, anomalies, and responses indicative of 'hot spots', i.e. issues of potential significance to the individual)
  - pausing and supportively responding—non-verbally and verbally
  - registering the fine-grain detail (FGD), i.e. listening *intently*
  - evidencing empathy, i.e. listening *actively*—reflecting back and summarising what the individual says.<sup>118</sup>

Finally, investigators need to be aware of the significance of *closing* the interview factually, psychologically, and in terms of courtesy.<sup>119</sup>

## Preparation and planning

Of course, there will always be occasions—particularly in life-or-death situations or involving minimal or little notice—where the amount of preparation is necessarily affected. However, these are the exceptions. Investigators must master the FGD within available information and evidence in order to identify what they know, and crucially what they don't know and need to know, and to plan investigative actions to be affected prior to or while the interviewing is underway. They must be able to perform better than the average person in terms of *working memory* (WM)—ability to register and manage detail consciously. The skills of efficient reading and systematic observation are fundamental to analysing—and identifying anomalies within—documents and recordings, and to subsequent action planning, including creation of an interview strategy and interview plan.

Preparation and planning also encompasses researching the interviewee, the identification of factors—including potential vulnerabilities—to be taken into account when conversing with the individual from first contact to point of final departure.

## The GEMAC sequence

CM views the conversation with an individual as a dialogue extending from first meeting to point of departure: a dialogue comprising four phases summarised by the acronym GEMAC—*greeting* (G), *explanation* (E), *mutual activity* (MA), and *closing* (C). In these four phases the investigator—aware of the interviewee and any vulnerabilities, and how memory works—fulfils their investigative role as a reflective practitioner: manifesting mindful RESPONSE behaviours, bringing to bear detailed preparation and planning, consultatively manages the conversation to create a working relationship and to facilitate maximum spontaneous disclosure of the event, episode, or circumstances.

## 1.7 PEACE and subsequent developments

Merseyside Police established its Interview Development Unit to train its own investigators, as well as investigators and interview trainers from other forces, in CM.<sup>120</sup> By 1990 around a third of forces in the UK had adopted CM. However, the majority of UK police forces still trained their investigators to interrogate, and many sold interrogation training to other forces, to secure confessions using either an approach consistent with Walkley's

<sup>118</sup> Shepherd, E. & Griffiths, A. (2020) (n 1).

<sup>119</sup> Saunders, C. (1986) (n 113).

<sup>120</sup> Shepherd, E. (1986a) (n 95).

book or the Reid Nine-Step approach. The police service continued to be a 'confession culture'. Although observational research<sup>121</sup> indicated a decrease in manipulative tactics, investigators continued to coerce confessions in interviews even though these interviews were audio recorded and even when a legal adviser or AA was present.

In 1989 multiple forms of investigator misconduct, including intimidation, led to the disbandment of an entire serious crime squad<sup>122</sup> that was responsible for at least sixty-five known miscarriages of justice. The same year the May Inquiry<sup>123</sup> was appointed to examine miscarriages of justice involving coerced confessions dating from 1974, and the Court of Appeal was hearing a growing tide of cases in respect of confessions allegedly coerced from suspects from the 1970s and across the entire 1980s. In October 1990 the Home Office announced that suspects would no longer be interrogated to secure a confession, and that there would be a single national model of investigative interviewing, in which all police officers and investigators would be trained. The model would cover investigative interviewing of both suspects and witnesses.

### 1.7.1 The original PEACE model

A National Project Team was formed to develop the single national model. Called PEACE—an acronym of the stages involved (*Planning and Preparation, Engage and Explain, Account, Closure, and Evaluation*)—the model was framed upon the GEMAC sequence, and cleverly incorporated activities prior to and following the investigative interview and looked like a variation of PACE. Training began in 1993, with all officers and investigators being issued with two supporting practitioner booklets.<sup>124</sup> It included two approaches to obtaining an account. The choice of approach depended upon the practitioner's assessment of the interviewee and the circumstances at the time.<sup>125</sup>

### The Cognitive Approach

This approach was considered suitable when an interviewee—whether witness or suspect—was willing and able to respond freely to the request to describe their recall of a specified occurrence. The investigator followed a standardised sequence of memory-enhancing techniques based on the *Cognitive Interview* (CI), an approach to interviewing devised by Geiselman and Fisher based on their extensive examination of psychological research into memory, and particularly recall of what psychologists call a *to-be-remembered* (TBR) event.<sup>126</sup>

*The interviewee is asked to think back to the event and mentally re-live what happened; thus telling everything that is initially remembered with minimal interference (Free Recall). This is*

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<sup>121</sup> Irving, B. & McKenzie, I. (1989) *Regulating Custodial Interviews: The Effects of the Police and Criminal Evidence Act 1984*. London: Police Foundation.

<sup>122</sup> West Midlands Serious Crime Squad—[https://en.wikipedia.org/wiki/West\\_Midlands\\_Serious\\_Crime\\_Squad](https://en.wikipedia.org/wiki/West_Midlands_Serious_Crime_Squad); [www.mojuk.org.uk/MOJUK%202013/WMSCS-Table.htm](http://www.mojuk.org.uk/MOJUK%202013/WMSCS-Table.htm)

<sup>123</sup> Sir John May (1994) *Return to an Address of the Honourable the House of Commons dated 20 June 1994 for a Report of the Inquiry into the Circumstances Surrounding the Convictions Arising out of the Bomb Attacks in Guildford and Woolwich in 1974*. London: HMSO.

<sup>124</sup> National Interview Model Project Team (1992a) *Investigative Interviewing: A Guide to Interviewing*. Pannal Ash, Harrogate: Central Planning and Training Unit; National Interview Model Project Team (1992b) *Investigative Interviewing: The Interviewer's Rule Book*. Pannal Ash, Harrogate: Central Planning and Training Unit.

<sup>125</sup> National Interview Model Project Team (1992a) (n 124) p. 19.

<sup>126</sup> Fisher, R. & Geiselman, R. (1992) *Memory-enhancing Techniques for Investigative Interviewing*. Springfield, ILL: C.C. Thomas.

*followed with at least one more attempt at 'Free Recall' using a different order or perspective. Areas of specific interest can be pursued when the 'Free Recall' attempts are concluded ... Essentially, the interviewee has control over where the account will go.*<sup>127</sup>

The sequence combined the two basic CI techniques of:

- **Mental reinstatement (or recreation of context—also termed context reinstatement).** 'Going back' to the TBR event, considered to be the most powerful technique to enhance recall.
- **Multiple retrieval.** Two or more attempts to relive the event.

The approach required investigators to give explicit instructions to interviewees.

- **Think back to the event.** 'Setting the scene' by giving the individual instructions to focus on and relive particular aspects of the individual's experience of the circumstances and the event, e.g. what they could see and hear; how they felt at the time; the weather.
- **Free recall.** Asking the individual to tell everything and not to edit anything out, since what they might consider unimportant or not worth mentioning, might be a vital piece of information.
- **Second free recall.** Using the technique of *reverse-order recall*, i.e. getting the individual to remember and relate events in reverse order, e.g.
  - starting at the end of the incident and work backwards to the beginning
  - starting at the most outstanding feature and work backwards and forwards from this point.
- **Third free recall.** Changing perspective, either sensory or physical.
  - *Sensory*: relating to colours, sounds, smell, and touch.
  - *Physical*: changes in the individual's position during the incident.<sup>128</sup>

The Cognitive Approach did not include techniques for memory-jogging—mnemonics—proposed by Geiselman and Fisher to facilitate retrieval of specific detail.<sup>129</sup>

## Management of Conversation

This was framed upon the approach to CM developed in Merseyside and was considered suitable for a reluctant interviewee.

*The interviewee is asked to provide an account of what happened. The interviewer subdivides this first account into a number of parts; each part being pursued in turn in a series of 'second accounts' to obtain more detail. Before each 'second account' is concluded the interviewer can probe for more detail and then link that section to the next area of the second account ... The management of conversation puts the interviewer into the position of control.*<sup>130</sup>

<sup>127</sup> National Interview Model Project Team (1992a) (n 124) p. 19.

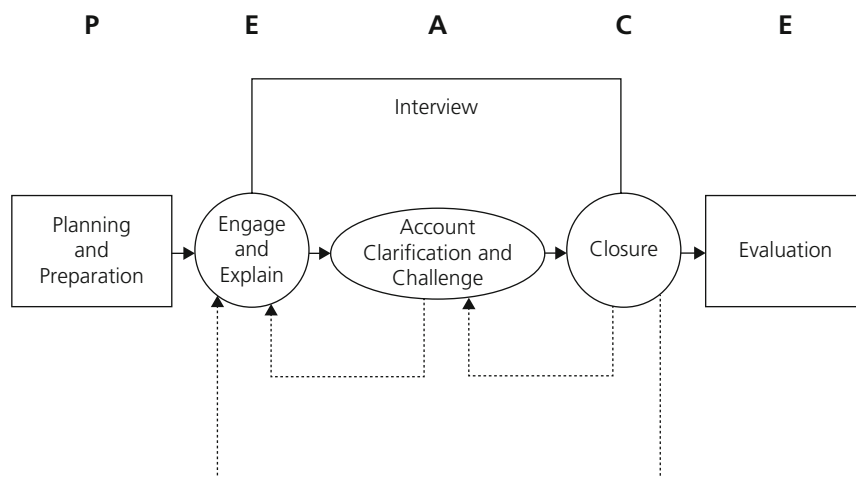
<sup>128</sup> *ibid.* p. 22. This does not correspond to Geiselman and Fisher's description of change perspective. Because people tend to 'report events egocentrically, from their own perspective... from where they were standing at the time, or how it affected them', Geiselman and Fisher recommended asking the individual to describe the event from 'someone else's perspective'. They warned this technique must be used with care—since it might cause the individual to fabricate detail—and must be preceded with a reminder to report only those events that the individual actually witnessed: see Fisher, R. and Geiselman, R. (1992) (n 126) pp. 110–11.

<sup>129</sup> Fisher, R. and Geiselman, R. (1992) (n 126).

<sup>130</sup> National Interview Model Project Team (1992a) (n 124) p. 19.

### 1.7.2 Further development of the PEACE model

The original PEACE model was developed further: *suspect interviewing* replaced interviewing of reluctant interviewees, and for the generality of witnesses there would be a *free recall interview*. Two additional activities were included within the Account stage (Figure 1.4).<sup>131</sup>



**Figure 1.4 PEACE: the UK national model of investigative interviewing**

Applicable to both suspect interviewing and free recall interviews of witnesses, *clarification* refers to:

- questioning upon topics—selected from within the account or specified by the practitioner
- probing for expansion and explanation of responses, especially emergent anomalies (e.g. inconsistencies or contradictions) and when it was not clear what the interviewee was saying.

### 1.7.3 Interviewing suspects

The second activity *challenge* refers to:

- presenting held back evidence, and inviting the suspect to explain and comment upon this
- systematically revealing discrepancies and enduring inconsistencies within the interviewee's replies, and inviting explanation and comment upon these
- issuing *Special Warnings* of the implications of the suspect's failure to mention specific facts.<sup>132</sup>

We have reservations about the use of the word challenge. It is an unfortunate word. Challenge in any context brings with it the mindset of combat—a disposition to think and act combatively:

- calling the other person to participate in a competitive situation or fight to decide who is superior in terms of ability and strength
- calling the other person to prove or justify something.

<sup>131</sup> Training and Development Unit (1998) *A Practical Guide to Investigative Interviewing*. Bramshill, Hampshire: National Crime Faculty.

<sup>132</sup> Criminal Justice and Public Order Act (CJPOA) (1994) ss. 34, 36, 37, and 38.

We acknowledge and respect that the police service in England, Wales, and Northern Ireland will continue with this choice of word notwithstanding its negative connotation. In the investigative context, the problem lies in the fact that challenging constitutes an attack on the suspect's 'face'. 'Face' is a critical factor in interpersonal communication. 'Face' is the concept of self that each person displays to the other in an interaction. When people interact, they tacitly present a 'face'—their conception of who they are in that particular encounter—and seek confirmation from the other person of this conception.<sup>133</sup> Challenging implies the suspect is lying. It creates embarrassment. They lose 'face'. They also perceive your challenges as a threat to their personal freedom, i.e. you are trying to induce them to say something that they do not want to say or not to say something that they otherwise would. Even though this is not the intention, as is always the case for everyone, their perceptions are psychologically real to them. Loss of 'face' intensifies this loss of autonomy and evokes what psychologists term *reactance*.<sup>134</sup> Rapport evaporates and is replaced by resistance, i.e. unwillingness to disclose and 'push back' responses, e.g. arguing, rage.

The CM approach incorporates the process of *reviewing* rather than challenging. During an interview with a suspect the two elements of the review are captured by the acronym FAIR:

- **Final Anomaly Investigation.** The investigator feeds back unresolved anomalies for consideration and comment by the suspect and probes the individual's responses, where necessary.
- **Reasons to suspect.** The investigator presents the totality of the reasons to suspect the individual, i.e. information and evidence disclosed prior to and across the interview, material withheld to this point, 'bad character' evidence, and issues a Special Warning where applicable.

#### 1.7.4 Free Recall Interview

##### Interviewing the generality of witnesses

Since PACE does not require electronic recording of the interviewing of witnesses, the only record comprises the practitioner's written notes and the written statement. The statement is a selectively edited—rather than a full and faithful—representation of the witness's disclosures drafted by the practitioner from notes and personal recall: a representation given to the witness for checking and comment—though few request changes and make additions—prior to signature.<sup>135</sup> Directive interviewing of witnesses has always enabled creation of statements saying, or roughly saying, the 'same thing' about the occurrence and identifying the suspected offender. Interviewers use their preconceptions and the CT as a framework of 'fact' to focus witnesses' attention, to enable relevance filtering, to secure confirmatory responses, and to speed up note-taking.

We explained earlier that monitoring research indicated that practitioners have typically adopted a directive style when interviewing witnesses—deflecting the witness away from complete recollection, disrupting the witness's train of thought, correcting when the witness goes 'off track', or taking the witness back to probe an earlier disclosure or response.

<sup>133</sup> Cupach, W. & Metts, S. (1994) *Facework*. Thousand Oaks, CA: Sage.

<sup>134</sup> Brehm, S. & Brehm, J. (1981) *Psychological Reactance: A Theory of Freedom and Control*. London: Academic Press; Quick, B., Shen, L. & Dillard, J. (2013) Reactance theory and persuasion. In J. Dillard & I. Shen (eds.) *The SAGE Handbook of Persuasion: Developments in Theory and Practice*. Thousand Oaks, CA: Sage.

<sup>135</sup> Shepherd, E. and Milne, R. (1999) (n 2).

For these reasons, quality control of interviewing the generality of witnesses and the content of witness statements remains an enduring problem.<sup>136</sup>

It was inevitable, therefore, that practitioners found following the explicit requirements of the Cognitive Approach time-consuming and the detail disclosed by witnesses often difficult to manage. Furthermore, interviewees found *reverse-order recall* troublesome. The approach was replaced by the *free recall interview*. It remains the standard approach to interviewing the generality of witnesses. It comprises four stages:

- ‘setting the scene’
- free recall
- encouraging repeated attempts to recall—using the technique of accessing different senses
- identifying topics/episodes for expansion and explanation using conventional probing questions.

The techniques of context reinstatement and repeated recall attempts are also considered suitable for suspect interviews where the suspect is co-operative and answering questions, i.e. not exercising the right to remain silent.

### Managing emergent discrepancies and enduring inconsistencies

Where there are emergent discrepancies and enduring inconsistencies, rather than challenging, the PEACE model recommends that the practitioner should suspend interviewing to conduct further inquiries.

We have said that the term challenging is unfortunate and that it should really be a matter of reviewing. We consider not managing *within the interview* emergent anomalies in a witness’s account both unwise and counter to good investigative practice. Furthermore, the PEACE advice to suspend interviewing to resolve anomalies by inquiring elsewhere is, in many instances, both unrealistic and impractical.

As with suspect interviewing, the CM approach incorporates the process of reviewing when interviewing a witness. Where you are creating a written record or statement of the witness’s disclosures the twin elements of the review are captured by the acronym CARE.

- **Clarify Anomaly.** The investigator feeds back any unresolved anomalies for consideration and clarification, noting any response or additional information from the witness.
- **Recap Entirety.** Where the witness is making a witness statement, the investigator reads aloud to the witness the entirety of the investigator’s drafted statement—which will include responses to questioning about anomalies. The witness is asked to stop the investigator if they wish to add or change anything further. The statement is then signed.

### The five-part structured witness statement

A significant development in the quality of the evidential outcome of witness interviewing was the introduction of a five-part structured statement. Box 1.7 gives a general overview of such statements, though there are slight variations across UK.

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<sup>136</sup> Shepherd, E. (1995) Representing and analysing the interviewee’s account. *Medicine, Science and the Law*, 35, 122–35.

<b>Part 1</b>	<b>Introduction</b>	Briefly introduces what the statement is about—sets the scene in one or two sentences
<b>Part 2</b>	<b>People</b>	Introduces: <ul style="list-style-type: none"> <li>• the main people to be mentioned</li> <li>• their relationship with the witness</li> </ul>
<b>Part 3</b>	<b>Places</b>	<ul style="list-style-type: none"> <li>• Introduces places that the witness will be mentioning</li> <li>• Full physical descriptions and sketch plans to be included with the statement</li> </ul>
<b>Part 4</b>	<b>What happened</b>	Detailed chronological account of what happened. <ul style="list-style-type: none"> <li>• Only using the words used by the witness</li> <li>• Using direct speech where possible</li> <li>• Including hearsay where it is important</li> </ul>
<b>Part 5</b>	<b>Legal and other issues</b>	<ul style="list-style-type: none"> <li>• Detailed description of people mentioned by the witness, starting with the suspect</li> <li>• Detailed description of witness</li> <li>• Consent issues: in respect of offences, forensic examination, seizure of exhibits</li> <li>• Values of property damaged/stolen</li> <li>• Identification of the suspect</li> <li>• Willingness to attend identification procedure</li> <li>• Willingness to attend court</li> </ul>

**Box 1.7 Five-part structured witness statement<sup>137</sup>**

### 1.7.5 Interviewing significant, vulnerable, and intimidated witnesses

*Significant* (also called *key*) *witnesses* include (1) individuals who have, or claim to have, witnessed, visually or otherwise, all or part of an indictable offence or events closely connected with the offence (including any incriminating comments); (2) have a particular relationship to the victim or have a central position in the investigation; and (3) police officers who have witnessed an offence. In other serious cases, if considered helpful, an investigator may designate a witness as significant. In most instances interviews of significant witnesses should be video-recorded.

The law allows *special measures*—including the use of video-recorded interviews as evidence-in-chief—for *vulnerable* or *intimidated witnesses*.<sup>138</sup> *Vulnerable witnesses* are those under eighteen years of age, or in circumstances where the court considers their evidence may be diminished due to: experiencing mental ill-health, a significant impairment of intelligence and social functioning, or where the witness has a physical disability or is suffering from a physical disorder. *Intimidated witnesses* are those in fear or distress about testifying at court.

*Achieving Best Evidence (ABE)*<sup>139</sup> provides guidance on the interviewing of vulnerable, intimidated, and significant (VIS) witnesses. It is not an enforceable code of conduct unlike PACE Codes of Conduct in respect of interviewing suspects. However, it represents good practice, departures from which may have to be justified in the courts.<sup>140</sup> It provides

<sup>137</sup> Griffiths, A. & Shepherd, E. (2020) (n 7).

<sup>138</sup> Youth Justice and Criminal Evidence Act (YJCEA) (1999) ss. 16 and 17.

<sup>139</sup> Ministry of Justice (2011) *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Guidance on Using Special Measures*. London: Ministry of Justice.

<sup>140</sup> *ibid.* section 1.1.

information on the processes for identifying and assessing vulnerability, planning and preparation, and implementing a *four-phased approach* to the interview: Box 1.8.

<b>Phase One</b>	Rapport
<b>Phase Two</b>	Witness's free-narrative account of incident(s)
<b>Phase Three</b>	a) Topic division and probing of witness's account of incident(s) b) Topic division and probing of case-specific information important to the investigation
<b>Phase Four</b>	Closure

**Box 1.8 Summary of ABE interview structure (Ministry of Justice, 2011)**

ABE acknowledges the need to consider at the outset that a video-recorded interview will not be always immediately apparent to either the first police officer who has contact with the witness or to other professionals involved prior to the police being informed. Even where this is apparent, it is necessary to establish initial contact to conduct early discussions with the witness and engage in some initial questioning in order to:

- take immediate action in terms of securing medical attention
- make initial decisions about the investigation.

The aim of initial questioning is to obtain a brief account of what is alleged to have taken place, asking no more questions than are necessary to take immediate action. Investigators should obtain a detailed account in the formal four-phased interview.<sup>141</sup>

ABE indicates that inconsistencies:

- are often misleading accounts arising from misunderstandings or misremembering rather than deliberate fabrication;
- are most commonly caused by the interviewer failing to ask appropriate types of question or reaching a premature conclusion that they press the witness to confirm.<sup>142</sup>

ABE sensibly guides interviewers to explore significant inconsistencies after probing of the basic account. Only in exceptional circumstances should the witness be challenged. ABE converges with our view that anomalies require clarification rather than challenging.

- **Clarify Anomaly.** ABE suggests that inconsistencies should be presented 'in the context of puzzlement by the interviewer and the need to be quite clear what the witness has said'.<sup>143</sup>
- **Recap Entirety.** Because the interview has been digitally recorded, the investigator briefly summarises—using the words and phrases used by the witness—key points (aided by notes if these were taken) within the witness's disclosures across the interview including responses to investigation of anomalies. Before doing so the investigator asks the witness to stop the investigator if the investigator has missed anything out or has gotten something wrong. Summarising should not take place if the witness:
  - is fatigued
  - is in an emotional condition or otherwise distracted
  - appears to have a short attention span, as may be the case with a young child or an adult with learning disability.<sup>144</sup>

<sup>141</sup> *ibid.* sections 2.4–2.6.

<sup>142</sup> *ibid.* section 3.67.

<sup>143</sup> *ibid.* section 3.68.

<sup>144</sup> *ibid.* sections 3.80–3.83.

## 1.7.6 Development of memory-enhancement techniques

### Enhanced Cognitive Interview (ECI)

The Enhanced Cognitive Interview (ECI) combines greater attention to the delivery of memory-enhancement techniques of context reinstatement and multiple retrieval with interviewing practices consistent with skilled CM. Policy differs between police forces within the UK as to which investigators receive ECI training. Training comprises learning about memory and receiving detailed instruction in CI techniques,<sup>145</sup> followed by interview practicals.

The ECI continues to develop as a toolbox approach of techniques designed to work in real life investigations.<sup>146</sup> The most recent developments are aimed at enhancing the report everything instruction:

- the DeMo technique in which the investigator demonstrates describing in detail an item which is within the individual's view, e.g. a mug
- giving the individual the opportunity to practise describing a neutral event, i.e. an event unrelated to the event that is being investigated.<sup>147</sup>

### Research on other memory-enhancing techniques

Researchers continue to explore techniques to maximise retrieval of detail by making the task of accessing and representing their recall of an incident easier, e.g.:

- presenting the witness with a visual timeline against which they plot their recollection of the individuals, actions, and sequence of events within the witnessed incident<sup>148</sup>
- providing the witness with paper and pencils, and asking them to draw the witnessed event in as much detail as possible, and to describe each item/event as they are drawing.<sup>149</sup>

## 1.7.7 Principles of investigative interviewing

At the time of the development of the PEACE program the Association of Chief Police Officers (ACPO) issued the *Seven Principles of Investigative Interviewing*<sup>150</sup> to underline the end of confession-focused interrogation. These principles were reviewed and amended by the National Investigative Interviewing Strategic Steering Group (NISSG), when the second author was a member, to ensure that the principles focused equally on the interviewing of victims, witnesses, suspects, and the issue of vulnerability. Box 1.9 presents these with expanding commentary by the College of Policing.

<sup>145</sup> Milne, R. (2017) *The Cognitive Interview: A Step-by-Step Guide*. Portsmouth: University of Portsmouth.

<sup>146</sup> Milne, R. et al. (2019). The Cognitive Interview. A tiered approach for the real world. In J. Dickinson et al. (eds.) *Evidence-Based Investigative Interviewing*. New York: Routledge.

<sup>147</sup> *ibid*; Boon, R. et al. (2020) Demonstrating detail in investigative interviews: an examination of the DeMo technique. *Applied Cognitive Psychology*, 34, 1133-1142. DOI 10.1002/acp.3700

<sup>148</sup> Hope, L., Mullis, R. & Gabbert, F. (2013) Who? What? When? Using a timeline technique to facilitate recall of a complex event. *Journal of Applied Research in Memory and Cognition*, 2, 20–4.

<sup>149</sup> Dando, C., Gabbert, F. & Hope, L. (2020) Supporting older eyewitnesses' episodic memory: the self-administered interview and sketch reinstatement of context. *Memory*. DOI: 10.1080/09658211.2020.1757718

<sup>150</sup> Association of Chief Police Officers (1992). *Principles of Investigative Interviewing*. Home Office Circular 22/1992. London: Home Office.

1. The aim of investigative interviewing is to obtain accurate and reliable accounts from victims, witnesses or suspects about matters under police investigation.

To be accurate, information should be as complete as possible without any omissions or distortion. To be reliable, the information must have been given truthfully and be able to withstand further scrutiny, e.g. in court. Accurate and reliable accounts ensure that the investigation can be taken further by opening up other lines of enquiry and acting as a basis for questioning others.

2. Investigators must act fairly when questioning victims, witnesses or suspects. They must ensure that they comply with all the provisions and duties under the Equality Act 2010 and the Human Rights Act 1998.

Acting fairly means that the investigator must not approach any interview with prejudice. The interviewer should be prepared to believe the account that they are being given, but use common sense and judgement rather than personal beliefs to assess the accuracy of what is being said. People with clear or perceived vulnerabilities should be treated with particular care, and extra safeguards should be put in place.

3. Investigative interviewing should be approached with an investigative mindset.

Accounts obtained from the person who is being interviewed should always be tested against what the interviewer already knows or what can be reasonably established.

The main purpose of obtaining information in an interview is to further the enquiry by establishing facts. This point highlights the importance of effective planning in line with the whole investigation. Investigators should think about what they want to achieve by interviewing the victim, witness or suspect, and set objectives which will help to corroborate or disprove information already known. Investigators should try to fill the gaps in the investigation by testing and corroborating the information by other means where possible.

4. Investigators are free to ask a wide range of questions in an interview in order to obtain material which may assist an investigation and provide sufficient evidence or information.

Conducting an investigative interview is not the same as proving an argument in court. This means that interviewers are not bound by the same rules of evidence that lawyers must abide by. Although the interviewer may ask a wide range of questions, the interviewing style must not be unfair or oppressive. The interviewer should act in accordance with PACE and the PACE Codes of Practice.

5. Investigators should recognize the positive impact of an early admission in the context of the criminal justice system.

Benefits of an early admission relate to the following areas:

- **Victim** – has an opportunity to claim compensation in respect of an offence that has been admitted by the defendant, detected, and acknowledged by the criminal justice system.
- **Court** – has a fuller and more accurate picture of the offending and is able to sentence more appropriately. There is the potential for savings too as offences can be dealt with promptly without additional court hearings.
- **Defendant** – may receive credit for early admission of guilt. They may be eligible for a lesser sentence – possibly allowing for tailored sentencing and access to rehabilitative programmes and being able to ‘clear the slate’ to avoid the risk of subsequent prosecution for other offences.
- **Police** – gain valuable intelligence, increase detected offences rates, record a fuller picture of offending for possible use in future cases or to support applications for anti-social behaviour orders, or other restrictive orders.
- **Prosecution** – has a fuller and more accurate picture of, for example, the offender’s criminal history when considering the public interest test, bail decisions, bad character, level of danger, and what information to give the court.
- **Resources** – are used efficiently, and the public’s confidence in the criminal justice system is improved.

6. Investigators are not bound to accept the first answer given. Questioning is not unfair merely because it is persistent.

An investigating officer has the duty to obtain accurate and reliable information. A complete and reliable account from witnesses, victims and suspects may not always be easy to obtain. There may be different reasons why an investigator needs to be persistent:

- they may have reasonable belief that the interviewee is not telling the truth
- they may believe further information could be provided.

It is acceptable for interviewers to be persistent as long as they are also careful and consistent but not unfair or oppressive.

7. Even when a suspect exercises the right to silence, investigators have a responsibility to put questions to them.

This principle extends the right of an investigator to put questions to those they believe can help them to establish the truth of a matter under investigation. Suspects have the right to remain silent, but they are warned during the police caution or during special cautions of possible adverse inferences being drawn should they choose to exercise that right.

### Box 1.9 Principles of Investigative Interviewing<sup>151</sup>

<sup>151</sup> National Police Improvement Agency (2009) *National Interview Strategy 2009*. <https://library.college.police.uk/docs/npia/BP-Nat-Investigative-Interviewing-Strategy-2009.pdf>

### 1.7.8 Evaluation and supervision

One of the two ‘how to do it’ PEACE handbooks issued to all officers described Evaluation—the final stage of the PEACE model—in the following terms:

*If you are to improve and develop as an interviewer, it is essential that you reflect on the way you conducted the interview.*<sup>152</sup>

It added that the officer should evaluate:

- the information obtained in the interview
- the whole investigation in the light of the information obtained
- their personal performance, either alone or jointly in the case of more than one interviewer.

Since spelling out the necessity to evaluate, the importance of evaluation has run as a consistent theme through subsequent PEACE texts<sup>153</sup> to a recent strategic document relating to the conduct of visually recorded witness interviews.<sup>154</sup> However, the current *Authorised Professional Practice* from the College of Policing offers no guidance on how to conduct this essential activity beyond stating that:

*at the conclusion of an interview, the interviewer needs to evaluate what has been said with a view to:*

- *determining whether any further action is necessary*
- *determining how the interviewee’s account fits in with the rest of the investigation*
- *reflecting on the interviewer’s performance.*<sup>155</sup>

In support of evaluation, a supervisor’s package on developing interviewing skills in officers was distributed nationwide one year after the introduction of PEACE. The package comprised a basic text<sup>156</sup> and a workbook with an accompanying video cassette that constituted an interactive learning course ‘designed to equip the supervisor to carry out effective quality control of the interviews your officers conduct every day’.<sup>157</sup> The package was never brought into practice. In effect, this left individual practitioners then, and continues to leave them up to the present, without supervision as to quality in conducting two demanding tasks following the interview: operational evaluation and developmental evaluation. We argue that dual evaluation is a flawed approach. The two forms of evaluation require entirely independent consideration (see Chapter 15).

In addition, this generalised edict to conduct evaluation following the interview is insufficient to gain acceptance and traction in the pragmatic profession that is the police service. Practitioners, supervisors, managers, and trainers alike recognise the necessity for, and the benefits to be derived from, reflection upon work done—in this case investigative

<sup>152</sup> National Interview Model Project Team (1992a) (n 124) p. 38.

<sup>153</sup> Training and Development Unit (1998) *A Practical Guide to Investigative Interviewing*. Bramshill: National Crime Faculty, pp. 69–71. This text was reproduced in publications created for specific tiers of investigative interviewing, e.g. Centrex/National Crime and Operations Faculty (2003) *Practical Guide to Investigative Interviewing, Tier 1*. Bramshill: Centrex. These texts are no longer accessible. The source of guidance is now the College of Policing.

<sup>154</sup> National Police Chiefs’ Council (2016). *Advice on the structure of visually recorded witness interviews*. London: NPCC.

<sup>155</sup> College of Policing (2019). *Investigative Interviewing*. <https://www.app.college.police.uk/app-content/investigations/investigative-interviewing/#evaluation>

<sup>156</sup> Central Planning and Training Unit (1994) *Developing Interview Skills*. Pannal Ash, Harrogate: Central Planning and Training Unit.

<sup>157</sup> Central Planning and Training Unit (1994) *The Developing Interview Skills Workbook*. Pannal Ash, Harrogate: CPTU 1.

interviewing—but are driven by more basic considerations. Official guidance such as *Authorised Professional Practice* constitute the ‘*formal code*’ of practice: what is expected, and should be, done. That is, the standards that would be applied in any official review. However, the way in which work is organised and done, on a day to day basis, is governed by availability of resource, and the requirement to balance response to demand. This creates a parallel ‘*informal code*’ of practice where risk (of being caught out) versus benefit renders reflection, if not a perceived irrelevance then an infrequent practice, and for many something that is never really done in any systematic way.<sup>158</sup> This factor has played out in many areas of police work affecting the implementation of changes.<sup>159</sup>

Research conducted soon after the introduction of PEACE<sup>160</sup> revealed that supervisors saw their task of overseeing the evaluation of interviews as a low priority. They failed to recognise the need to physically manage interview skills, with a consequent effect on interview quality. The supervisors voiced resource and time pressures as the reason why this activity was not seen as important. In other words, evaluation of investigative interviews was less important than competing tasks. This pointed towards cultural and leadership issues. Supervisors who were not convinced of the value of the activity and were nervous about whether they possessed the skills to evaluate officers’ interviews used excuses not to do it. Leaders in the organisation did not give explicit instructions that this was an important activity and must be completed, and did not ensure the correct staff had the skills to carry it out.

A later national post-implementation review<sup>161</sup> of the PEACE programme found that in some forces supervisors were still not prioritising this activity. In those forces where it was treated as an important supervisory task, there was a positive correlation between this and the standard of interviewing. It appears, then, that despite being promoted as an integral part of the PEACE model, many forces have yet to enable evaluation—a ‘learning’ activity that is vital to the progression and effectiveness of the investigation, even if there is no attention to the actual performance of the individual.

The fact that Evaluation continues to be the most neglected stage of the PEACE model reflects the reality of a disconnect between:

- the senior leadership of the police (who had launched the PEACE programme)
- junior management (in charge of making it happen)
- practitioners confronted with the daily realities of targets, workload, and resource constraints (rendering personal or joint Evaluation of PEACE interviews an impracticality—a task that should be performed by them and quality controlled by a supervisor, but which in reality, neither conducts).

This disconnect underlines the importance of physically managing all parts of change including culture. However, we also believe the inattention to Evaluation is due to the linear nature of the PEACE model, a series of stages to be gone through prior to, during, and following the interview. This creates a mentality of ‘ticking the box’ for each stage. In the case of P, E, A, and C failure to ‘tick’ the box is all too apparent with all that this entails. However, this is not the case if an investigator fails to ‘tick’ the final reflection upon quality of outcome and performance E ‘box’. Investigators are pragmatists. They have no motivation to ‘tick’ this box if its significance upon quality of investigation and the development

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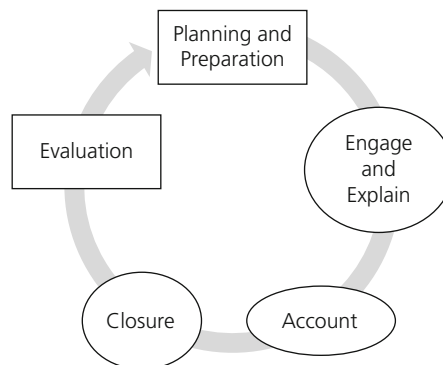
<sup>158</sup> Roberg, R. & Kuykendall, J. (1990) *Police Organisation and Management: Behaviour, Theory, and Processes*. Pacific Grove, CA: Brooks/Cole.

<sup>159</sup> Griffiths, A., & Milne, R. (2018) Conclusion. In A. Griffiths and R. Milne (eds.) *The Psychology of Criminal Investigation: From Theory to Practice*. Abingdon: Routledge.

<sup>160</sup> Stockdale, J. (1993) *Management and Supervision of Police Interviews*. London: Home Office.

<sup>161</sup> Clarke, C. & Milne, B. (2001) *National Evaluation of the PEACE Investigative Interviewing Course. Police Research Award Scheme. Report No: PRAS/149*. London: Home Office.

of professionalism is not understood or valued by supervisors and managers. When we train practitioners, managers, and supervisors we present PEACE as a problem-solving cycle (Figure 1.5)—within the larger ACCESS investigation problem-solving cycle.



**Figure 1.5 PEACE: a problem-solving cycle<sup>162</sup>**

Unlike Evaluation as the last stage in a linear PEACE model, Evaluation within a PEACE problem-solving cycle strikes the critical link between post-interview evaluation, and the quality of subsequent planning and preparation—to progress the investigation and, where applicable, to proceed to the next interview of the individual.

## 1.8 Professionalising investigation

Investigative interviewing is a key process within any investigation. However, as we have indicated throughout this chapter the investigative potential of any interview rests upon and is constrained by:

- the quality and outcome of antecedent investigation
- the manner in which the investigation is managed
- the quality and outcome of investigative decision-making.

### 1.8.1 The Professionalising of Investigation Programme (PIP)

The Planning and Preparation stage of PEACE requires officers to engage in skilful, systematic analysis of available information and evidence, to identify what further information and evidence is needed and where it can be obtained, and then to engage in investigative actions to obtain this information and evidence. However, the nationwide roll-out of PEACE training, practitioners' subsequent performance in the workplace, and RCCJ research revealed a widespread lack of skill in information processing and in actual investigation. There was heavy reliance upon individual wit, motivation, and personal method.<sup>163</sup>

The UK police service has progressively addressed these issues, placing it ahead of many other countries in the training and licensing of its investigators. This commenced with a focus on the most serious of crimes<sup>164</sup> and then to all crime. The *Professionalising of*

<sup>162</sup> Griffiths, A. & Shepherd, E. (2020) (n 7).

<sup>163</sup> Maguire, M. & Norris, C. (1992) *The Conduct and Supervision of Criminal Investigations*. RCCJ Research Study No. 5. London: HMSO; Irving, B. & Dunningham, C. (1993) *Human Factors in the Quality Control of CID Investigations*. RCCJ Research Study No. 21. London: HMSO; Stockdale, J. (1993) (n 160).

<sup>164</sup> Association of Chief Police Officers (1998). *Murder Investigation Manual*. National Crime Faculty.

*Investigation Programme* (PIP)<sup>165</sup> introduced accreditation for investigators at different levels of crime (e.g. PIP1 volume crime). PIP differentiates crime using criteria of frequency, seriousness, and type. To progress beyond the basic level and become a dedicated investigator (PIP2) required passing a nationally set exam and an initial crime investigator development programme (ICIDP), which included a specific two-week training course in interviewing witnesses and suspects—as a supplementary to the basic PEACE course. Practitioners at both levels are taught the skills to equip them to fulfil PEACE requirements when interviewing suspects and the witnesses at that level of crime, including vulnerable witnesses under ABE.

Thereafter, selected officers could also complete further interview training to become PIP2 specialist suspect or witness interviewers, and interview advisers—a career span perspective on developing interviewing skills advocated by the first author in 1988.<sup>166</sup> All of these courses incorporate reflective practice in the acquisition and retention of skills.

As part of this approach, a ground-breaking practitioner text—now in its second edition—spelled out advice on investigative practice, and covered in commendable detail the criminal investigative process, investigative decision-making (including descriptions of some common cognitive biases), investigative strategies, and management of investigation.<sup>167</sup> This was followed by a succession of texts on particular aspects of investigation.<sup>168</sup>

## 1.8.2 The National Decision Model (NDM)

The promulgation of the *National Decision Model* (NDM)<sup>169</sup> is an additional development intended to further increase professionalism and accountability. The model has five stages:

- Gather information and intelligence
- Assess threat and risk to develop strategy
- Consider powers and policy
- Identify options and contingencies
- Take action and review what happened.

The model is intended to be used in conjunction with the police service Code of Ethics<sup>170</sup> to provide a comprehensive framework guiding officers' decision making in all operational situations. Despite the NDM being included in recommended reading for a Senior Investigating Officer (SIO), there is a debate over whether the NDM is better suited to

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<sup>165</sup> <http://www.college.police.uk/What-we-do/Learning/Professional-Training/Investigation>

<sup>166</sup> Shepherd, E. (1988) Developing interviewing skills: a career span perspective. In P. Southgate (ed.) *New Directions in Police Training*. London: Home Office Research and Planning Unit.

<sup>167</sup> Association of Chief Police Officers (2005) *Practice Advice on Core Investigative Doctrine*. Wyboston: ACPO/Centrex; National Police Improvement Agency (2012) *Practice Advice on Core Investigative Doctrine*. 2nd edn. London: NPIA.

<sup>168</sup> Association of Chief Police Officers (2005) *Guidance on Investigating Serious Sexual Offences*. Wyboston: Association of Chief Police Officers/ Centrex; Association of Chief Police Officers (2005) *Guidance on Investigating Child Abuse and Safeguarding Children*. Wyboston: Association of Chief Police Officers /Centrex; Association of Chief Police Officers (2006) *Practical Advice on Financial Investigation*. Wyboston: Association of Chief Police Officers /Centrex; Association of Chief Police Officers (2008) *Practical Advice on the Investigation of Drug Offences (Level 1)*. Wyboston: ACPO/Centrex.

<sup>169</sup> College of Policing (2013/2014) *National Decision Model*. <http://www.app.college.police.uk/app-content/national-decision-model>

<sup>170</sup> College of Policing (2014) *Code of Ethics: A Code of Practice for the Principles and Standards of Professional Behaviour for the Policing Profession of England and Wales*. [http://www.college.police.uk/What-we-do/Ethics/Documents/Code\\_of\\_Ethics.pdf](http://www.college.police.uk/What-we-do/Ethics/Documents/Code_of_Ethics.pdf). The Code is based on *The Seven Principles of Public Life* (Committee on Standards in Public Life, 1995). These principles (also known as the Nolan Principles) apply to anyone who works as a public office-holder: <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>

determining the appropriate overall operational responses to a situation or problem (e.g. a single decision as to whether to deploy firearms officers during a hostage situation, or the arrest policy for drug possession at large street carnival) than complex investigations. In the latter there are multiple decisions, large or small, to be made against competing several lines of enquiry<sup>171</sup> which already need to be rationalised and recorded in observance of CPIA.<sup>172</sup> Arguably, the NDM adds another layer of bureaucracy with no apparent benefit of either increased efficiency or accountability. To date, there has been no research on the effectiveness of the NDM, either in isolation or compared to other frameworks such as the ACCESS model that we described in 1.3.1.

Whatever the effectiveness of the NDM in different contexts, the fact that the police service has advocated a decision-making framework underpinned by ethical values such as integrity, objectivity, openness, honesty, and accountability sends a clear message that modern policing must be ethical as well as effective.<sup>173</sup> These values define an investigation as principled rather than expedient and are consistent with the mindful behaviours that constitute the principled core of CM: behaviours spelled out in 1983 and summarised by the RESPONSE acronym—respect, empathy, supportiveness, positiveness, openness, non-judgemental attitude, straightforward talk, and equals, i.e. talking ‘across’, not down, to the person opposite.

## 1.9 Research findings

The irrefutable moral and ethical basis for CM is described above, interwoven in the context of its creation during the most transformative period in UK criminal justice history. However, in the modern evidence-based world<sup>174</sup> it is important to note that there is also compelling empirical research,<sup>175</sup> built up over the last forty years that supports the effectiveness of CM in obtaining reliable information from victims, witnesses, and suspects.

The trajectory of the relevant research can also be followed through the same transformative milestones, from the research conducted for the 1981 RCCP<sup>176</sup> in England and Wales to the most recent studies funded through the US High Value Detainee Interrogation Group (HIG).<sup>177</sup> At a fundamental level, this research has addressed the miscarriages of justice caused by false confessions and flawed eyewitness testimony, and the differences between accusatorial methods and information gathering techniques.<sup>178</sup> However, as the body of knowledge has expanded, research has also studied: different individual aspects of interviews with suspects and witnesses (including victims); the needs of different groups such as children and vulnerable people; the efficacy of specific interview techniques with specific types of offenders (e.g. sex offenders); the individual communication skills inherent in

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<sup>171</sup> O'Neill, M. (2018) *Key Challenges in Criminal Investigation*. Bristol: Policy Press.

<sup>172</sup> Criminal Procedures and Investigations Act (1996).

<sup>173</sup> For more on the NDM and investigation see Cook, T. (2019) (n 14).

<sup>174</sup> Sherman, L. (2013). The rise of evidence-based policing: targeting, testing and tracking. *Crime and Justice*, 42(1), 377–451.

<sup>175</sup> Vrij, A. et al. (2017) Psychological perspectives on interrogation. *Perspectives on Psychological Science*, 1–29. DOI 10.1177/1745691617706515

<sup>176</sup> Griffiths, A. & Rachlew, A. (2018) (n 78).

<sup>177</sup> Federal Bureau of Investigation. <https://www.fbi.gov/about/leadership-and-structure/national-security-branch/high-value-detainee-interrogation-group>

<sup>178</sup> For a summary, see Miller, J., Redlich, A. & Kelly, C. (2018). Accusatorial and information gathering interview and interrogation methods: a multi-country comparison. *Psychology, Crime and Law*. DOI10.1080/1068316X.2018.1467909

skilled interviewing, such as rapport, questioning, and listening; different individual interview techniques, the Cognitive Interview (CI); and the effect of training on developing the required skills. As a result, there is now significant data on 'what works'<sup>179</sup> and the United Nations<sup>180</sup> has recognised this fact by supporting development of a universal protocol for the application of non-coercive interviewing as a minimum standard by all law enforcement personnel.

Cataloguing and discussing the totality of all the significant research that has taken place over this period would take all of this book, and more. However, this is not a social science textbook. Therefore, for both those reasons we have restricted ourselves to one section of this chapter and set ourselves the challenge of outlining briefly how the major findings from this research support and complement CM's original principles, and approach. The footnote references provide access to further research papers and publications for interested readers.

The largest systematic research programme of the last thirty years relating to interview skills has taken place over the last decade, co-ordinated by US government agencies. The HIG was initiated following exposure of the 'enhanced interrogation'<sup>181</sup> (a euphemism for torture) carried out by US government agencies in an effort to extract actionable intelligence from terrorist suspects as part of their response to the 9/11 New York terror attacks.<sup>182</sup> The origins of the HIG share a certain parallel to that of the 1981 RCCP, as does their mutual focus on the questioning of suspects, but they are different in two key aspects.<sup>183</sup>

First, although some of the HIG research has been conducted within the law enforcement arena, the HIG was primarily commissioned to establish effective and ethical intelligence gathering methods for the purpose of national security. This is an important contextual difference. Take, for example, the exact nature of preparation and planning for an intelligence interview with a terrorist detainee compared to a criminal investigation interview with a suspect. In the former, the interviewer will be in possession of material that may compromise national security or the safety of other individuals if disclosed. Therefore, this material will never be used within the interview process. By comparison, in a criminal justice setting all information known to the interviewer must be put to the suspect before the end of the interview process,<sup>184</sup> in order to ensure a fair trial. Secondly, there are significant legal differences between the US and British legal systems in what is permissible when questioning a suspect about a crime; the US system is confession-driven<sup>185</sup> and allows the use of tactics that are unlawful in the UK.<sup>186</sup> These factors need to be taken into account when considering the relevance of the research published by the HIG outside of the US national security context.

These potential limitations are mitigated by the strong parallels and fundamental similarities in the problems that the HIG programme and CM aim to solve. At a theoretical

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<sup>179</sup> HIG (2016a) *Interrogation Best Practices*. <https://www.fbi.gov/file-repository/hig-report-august-2016.pdf/view>

<sup>180</sup> Mendez, J. (2016) *Report to the United Nations General Assembly 71st session. Torture and other cruel, inhuman or degrading treatment or punishment* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/250/31/PDF/N1625031.pdf?OpenElement>

<sup>181</sup> Fallon, M. (2017). *Unjustifiable Means*. New York: Regan Arts.

<sup>182</sup> Griffiths, A & Rachlew, A. (2018) (n 78).

<sup>183</sup> The HIG is concerned with intelligence gathering from terrorists who may never be charged with a criminal offence, but who are still referred to as suspects. The RCCP was only concerned with those questioned as part of pre-trial investigation.

<sup>184</sup> PACE (1984, as amended) Codes of Practice, Code C 11.1A (2019).

<sup>185</sup> Leo, R. (2008) *Police Interrogation and American Justice*. Harvard: Harvard University Press.

<sup>186</sup> US Courts affirmed the right of police to use deception as an interrogation tactic in the case of *Frazier v Cupp* 394 U.S. 731 (1969) <https://supreme.justia.com/cases/federal/us/394/731/>

level both the HIG and CM tackle the dynamics of difficult conversations; and both focus on the core elements of communication as potential facilitators for productive discourse. At an applied level, both deal with the issue of obtaining reliable information from interviewees who may not wish to disclose, both deal with conversations that are part of a wider investigative context, where the interviewer's ability to handle information is fundamental to success, and both involve high stakes situations. Therefore, we are confident that the published summary<sup>187</sup> of findings from a large number of HIG funded studies provides very strong support for CM. Furthermore, we contend that the scientific evidence supporting the effectiveness of certain behaviours and activities recommended as best practice<sup>188</sup> by HIG provides an authoritative empirical foundation for CM techniques.

Another major area of research that appears relevant to CM, because of the fundamental synergies between the techniques, is that related to the CI. The CI 'comprises ... memory retrieval and communication techniques designed to increase the amount of information ... obtained from an interviewee'<sup>189</sup> and is acknowledged as a 'theory and evidence-based protocol'.<sup>190</sup>

Both CM and the CI place the interviewee at the centre of the process (*focus of concern*); both advocate a low level of conversational control; and both use positive social dynamics to establish and maintain rapport, facilitate communication, and encourage detailed narrative recall(s) with minimal closed questioning. Crucially, both techniques also utilise knowledge of the psychological principles of memory to aid retrieval of information from co-operative interviewees. However, as with the relationship between HIG and CM, when exploring the relevance of empirical evidence supporting the CI to CM, we need to acknowledge any potential limitations of the comparison. In the case of the CI, the main limitation is that it incorporates memory enhancing techniques only applicable to interviews with co-operative interviewees<sup>191</sup> (*willingness to tell*). Therefore, none of the CI techniques, or research, address applicability to unco-operative interviewees. This factor does not mean that CI research is not relevant to CM, rather that it limits applicability to co-operative situations.

Individual studies of the CI have assessed the efficacy of individual components, its applicability to different population groups (e.g. the elderly or young children) and modified versions, mainly the Enhanced Cognitive Interview (ECI) which added social dynamics elements and additional investigative focus to the original CI. As with the HIG research, there is also an authoritative meta-analysis regarding CI research, covering twenty-five years' research and sixty-five published studies.<sup>192</sup> The headline finding of this paper is that interviewers using CI techniques obtain substantially more correct recall information from co-operative witnesses, when compared to a standard police interview (defined as question-answer format). This is a strong endorsement of the theoretical effectiveness

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<sup>187</sup> Over 100 studies carried out in multiple countries. HIG (2016b). *Interrogation: A Review of the Science*. <https://www.fbi.gov/file-repository/hig-report-august-2016.pdf/view>

<sup>188</sup> HIG (2016a) *Interrogation Best Practices*. <https://www.fbi.gov/file-repository/hig-report-august-2016.pdf/view>

<sup>189</sup> Memon, A., Meissner, C. & Fraser, J. (2010) The Cognitive Interview. A meta-analytic review and study space analysis of the past 25 years. *Psychology, Public Policy and Law*, **16**, 340–72. DOI10.1037/a0020518

<sup>190</sup> <https://crestresearch.ac.uk/resources/crest-guide-cognitive-interview/>

<sup>191</sup> The creators of CI have explored its use in suspect interviews. It is important to note that in the US suspects must consent to interrogation and are therefore co-operative if they consent. See Geiselman, R. (2012). The cognitive interview for suspects (CIS). *American Journal of Forensic Psychology*, **30**, 5–20.

<sup>192</sup> Memon, A., Meissner, C. & Fraser, J. (2010) (n 189).