

Unlocking Memories: Cognitive Interviewing for Lawyers



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Foreword

*'It is one thing to understand that something works;
it is an entirely separate matter to work out why.'*

I had discovered that special interviewing techniques were needed when I embarked on investigating allegations of abuse in children's homes in Wales for a broadcaster client in the mid-1990s. As a seasoned commercial litigator, the usual question-and-answer technique was unlikely to encourage damaged children to tell me about their terrible experiences of being abused while in care, in some cases a long time before.

Through experience, I found that there was a better way of encouraging the witnesses to talk, and to give their evidence in a way that was satisfactory to them. This meant that I would often have to meet with prospective witnesses in locations of their choosing and spend a lot of time listening (not a customary skill of a litigator), and responding. Trust was built slowly. Interviews could be lengthy, and would be dictated by the witness's pace. But the outcome could often be stunning, with evidence of a quality and reliability that I had not predicted at the outset.

When my team and I were appointed as solicitors to the Bloody Sunday Inquiry in 1998 to investigate traumatic events that occurred in 1972, and where a public inquiry at the time had failed to engender public confidence, I was clear that every member of my team would need to be skilled in the art of cognitive interviewing – a technique of which I had experience in practice, but without a deeper understanding of the philosophies and concepts that underpinned the process.

It was at that stage that, with the assistance of the author of this book, I sought out a more vigorous analysis of the reasons for the success of the techniques, and ensured that all team members used them, to ensure uniformity of approach. They were trained accordingly. The result was the conduct of over 2,000 interviews using a consistent approach to obtain a consistent body of quality evidence. Lawyers for many of those who gave evidence openly stated that the evidence was of a very high

quality, and that the methodology – inherently inquisitorial in its nature – had proved particularly suitable to engender confidence in the process and to dispel pre-existing scepticism.

The benefits have endured and my team still adheres to this methodology in public inquiry work up until the present time. I therefore commend the techniques that are described in the pages that follow to practitioners in the field who I am sure will find the analysis and direction as useful as it is interesting.

Peter Watkin Jones, partner at Eversheds

About the author

Geoff Coughlin co-founded Emphasis on Skills Ltd in 1995 and is known for his specialist work in cognitive interviewing – memory recall techniques that obtain much more accurate and uncontaminated facts from witnesses. He has trained lawyers in 20 of the 25 largest law firms in the UK. High-profile work includes training litigators to take witness statements for Eversheds in the Bloody Sunday and Shipman Inquiries.



Geoff also works with lawyers and firms to help develop the essential range of communication skills needed in their practice. Interestingly, Geoff was previously a trainer at the Metropolitan Police Training College, Hendon, and had many years' experience as an operational police officer and manager with the Met.

Geoff enjoys family life, writing, and photography when he is not working.

Professional qualifications:

- Chartered Member of Institute of Personnel and Development
- Fellow of Institute of Training and Occupational Learning
- Diploma in Education Management, University of Greenwich 1996
- Certificate in Education [Post Compulsory Education and Training], University of Greenwich, 1993

Testimonials

Over the past two decades, Geoff Coughlin has trained several thousand lawyers and other legal practitioners in the UK and across Europe and has been instrumental in developing the Cognitive Interview for use by lawyers. Some of the higher profile projects that he has undertaken include training Eversheds' public inquiry practice team to successfully apply cognitive interviewing in their work on the Bloody Sunday Inquiry that involved re-interviewing over 1,300 witnesses. The partner in charge of their investigation team, Peter Watkin Jones, said: 'We couldn't have done it any other way'. He also worked with Alexander Harris, the medical negligence specialists, who used cognitive interviewing to draw information from over 200 families whom they represented in the Shipman Inquiry.

The following are unedited testimonials offered by various law firms that have trained their lawyers to use CI. Some of the law firms have requested to remain anonymous and that has been respected.

Burness Paull LLP

We asked Geoff Coughlin of Emphasis on Skills to deliver training on Cognitive Witness Interview techniques to all of our lawyers who specialise in litigation and dispute resolution, employment law, health and safety, and compliance. As a former police officer and with impressive experience training lawyers in cognitive interviewing, we felt that Geoff's training would be interesting and useful to our lawyers in helping them to get the most out of witnesses in the preparation for litigation. This in turn benefits our clients as we are better able to properly assess the strengths and weaknesses of clients' cases at an early stage and resolve disputes in a more timely and cost-effective manner.

David Morgan, who heads up the dispute resolution department at Burness Paull, described this as a 'training need that we didn't know we needed' (he used this when introducing Geoff to the delegates!). Having provided 'on the job' training to junior lawyers on taking witness

statements (precognitions, in Scotland) over the years, it was only after connecting with Geoff that we realised there was a structured approach that we could take to learning to up-skill our contentious lawyers in this important area of their development. David is convinced that this has given us 'first mover' advantage in the market in Scotland.

Geoff delivered engaging and interactive sessions with plenty of opportunity to practice the skills used. We learned how to use cognitive techniques to help witnesses unlock their memories and recall detailed information following the passage of time. For those disputes which do reach the courtroom or tribunal, we have felt that we have more information from our witnesses than would otherwise be the case. This is particularly useful in the Scottish courts, where witness statements are not routinely relied upon in the proceedings and instead 'precognitions' are prepared to assist preparations, and the witnesses are then asked questions in court to elicit their evidence by way of 'examination in chief'. These techniques should reduce the chance for unpleasant surprises during evidence in chief and cross-examination.

Our lawyers also enjoyed practising the techniques designed to help detect lies and deceit in a witness, although hopefully they will not have cause to use this as much!

Our lawyers have been able to use the Cognitive Interview techniques immediately with their cases with great results.

Employment Tribunal litigation

As a specialist in Employment Tribunal litigation, Geoff's training is highly relevant to the work I do and has already made a significant difference to the service I provide to clients. Primarily, I've found I now have a greater degree of confidence when advising clients on the impact their witnesses may have on the case. Some witnesses have performed very poorly when I've adopted Geoff's techniques. Before undertaking the training, I would probably have been more inclined to work through issues with them and make the best of a bad situation, but now I feel I can strongly advise clients that having tested that witness's evidence and ability, they are not going to help our case, and so we should adjust our strategy accordingly. This isn't an easy conversation to have with clients, particularly when the witnesses involved are typically still employees of the relevant organisation or business. That said, without exception, clients have taken on board that feedback and their case strategy has been strengthened as a result.

Interviewing an eye witness to a road traffic incident

Geoff Coughlin's training session on unlocking witness memory recall was one of the most useful and practical skills sessions that I have ever attended. It has proved highly beneficial on a number of occasions, most recently in relation to a precognition which I took by telephone from an eye witness to a road traffic incident. The witness had been a passenger in one of the vehicles involved, but had been adamant that they could remember very little of the lead-up to the crash up until the 'bang' of the impact. Utilising some of the techniques which Geoff had instilled in us through his session (taking two minutes of silence to focus the witness, keeping questions in the present tense to immerse the witness back in the 'there and then' of the day in question, asking for specific detail about seemingly irrelevant or innocuous observations) resulted in a very detailed precognition being taken. As the interview progressed, the witness gradually ended up remembering things like a conversation they had had with a bystander, the design of a nearby building, the particular point where their GPS had re-routed them from their original path, and so on. This all proved useful in terms of building a credible picture of the witness's alertness at the time.

Shipping litigator, International law firm, London

The format of the course was background, then seeing, then doing; this worked well. There was enough detail and real-life examples about the model to satisfy me that it was a tried-and-tested technique. The practical sessions in small groups were important. I liked the fact that we practised in safety; no one was put on the spot in front of the whole group. The technique was offered as a tool in the toolkit, rather than as a magic answer to everything, which seemed realistic.

Employment litigator, leading employment litigation law firm, Birmingham

The tutor was very approachable and created an informal atmosphere that encouraged discussion and learning. The practical sessions were very useful because they proved how effective the technique is in extracting information. I liked the fact that there is a free telephone advice line available after the course, if required. These new skills will enable me to get more detailed witness statements first time round and encourage an approach that finds out everything, warts and all. And it will be essential in tribunal cases.

Financial markets litigation lawyer, City of London:

A few months ago, some of us took part in a half-day training course on Cognitive Interviewing, a method of interviewing which aims to help a witness recall details, essentially by visually taking them back to the event in question.

Maria and I tried the method on our first guinea pig last week. The method helped our witness recall details of a meeting that took place four years ago, which he had not been able to recall by the usual method of specific questioning and taking him through documents.

Dedication

I would simply like to dedicate this book to three very important individuals who have proven pivotal in my working life. Firstly, to Dave Barney, my friend and business partner for over 20 years, with whom I have worked endlessly to develop and bring the benefits of cognitive interviewing to lawyers and practitioners in the wider legal profession in the UK.

Secondly, to Dr Ronald P. Fisher who, along with Dr R.E. Geiselman, invented and tirelessly develop the Cognitive Interview for use by law enforcement officers across the world. Both are inspirational people who first kindled our interest in using and developing the Cognitive Interview for use by a wider audience; their work has made such a positive difference to the outcomes of countless legal cases in civil proceedings here in the UK.

Introduction:

Getting the truth in witness interviews, even if it hurts!

What this book is about

The subject of this book is how to interview witnesses and eye-witnesses using the Cognitive Interview (CI) approach. Cognitive interviewing is a forensic technique consisting of a number of memory recall techniques designed to enable an interviewer to help witnesses recall an event fully and accurately.

The meanings of the terms 'interviewer' and 'witness' are wide-ranging for the purpose and relevance of this technique. To be clear, the 'witness' then in this practical handbook is your subject, whatever your area of work or environment, from whom you need to establish the full facts.

There is no doubt that having access to documents relating to any matter will be not only useful but essential in establishing exactly what happened in any situation. Sometimes it may appear, possibly because of the diverse range and quality of witness testimony available from witnesses and eye-witnesses that what they have to say is unreliable and therefore unwelcome. Such views may be borne of experience, but the simple truth is that by embracing the Cognitive Interview approach and learning to build and develop a rapport with your witness, considerably more reliability can be achieved.

The product of your CI can be tested against your bundle and we can look for corroboration and so much more is possible in terms of outcomes from any of our witness interviews going forward, provided we use all the skills and tools available to us. This book is about bringing all this information together for the first time in one volume and in a format that is easy to understand and use.

Right from the start in the mid-1990s, when my colleague Dave Barney and I introduced cognitive interviewing to the legal profession, we were busy drawing on and pulling together different skills and knowledge in relevant areas and from experts working to understand communication, rapport, witness behaviour, the eye-witness interview and deception. This work has gone on tirelessly ever since, and so this book brings

together for the first time practical application of many useful behaviours that will help you as the interviewer gather the most complete, accurate, and uncontaminated facts from you witnesses at first interview. This really has to be the goal in a commercial environment where pressures on costs, time, and other resources, and of course client expectations, have never been greater.

In this handbook you may recognise material that is familiar including:

- **Cognitive interviewing** – A well-researched and documented technique for obtaining accurate and uncontaminated evidence from witnesses. The main body of research was undertaken for The US National Institute of Justice. This was conducted by two psychologists, Geiselman and Fisher, using principles of cognitive psychology. They were the first people to coin the phrase ‘the Cognitive Interview’.
- **NLP (neuro linguistic programming)** – Your brain is like a super-huge, super-friendly computer. It ‘codes’ your thoughts, feelings, perceptions, and memories as sensory representations: images, sounds, sensations, tastes, smells, as well as words and meanings.
- **Detecting lies and deceit** – So much of what is held in popular belief is flawed in some way; the majority of the confusion lies in what behaviour, verbal, or non-verbal (or body) language can be used as reliable indicators of deception. Work by Professor Aldert Vrij, Professor Amina Memon, Professor Ray Bull, and Stan B. Walters brings clarity and insight to this complex and relevant area for lawyers.

Who this book is aimed at

Lawyers, investigators, paralegals, and other legal practitioners practising in a variety of different areas can use the Cognitive Interview approach whenever it is necessary to extract full factual information from their subject: the witness or eye-witness. This book is squarely aimed at those lawyers and others tasked with establishing the facts early on in the process in order to see if any case exists and how they could or should proceed with the matter. It is not designed for advocates and counsel to use in court or in cross-examination of witnesses, although much of what you will read here could be adapted and deployed effectively in that context with skill and care.

In Scotland, lawyers have found this technique very helpful at the predication stage in their legal proceedings when it is essential to get the full facts and history of an event at an early stage.

Over the past 20 years that I have been training predominantly lawyers to use CI, I have run sessions that have included legal professionals and practitioners from a wider group including barristers, legal executives, enquiry agents, and other consultant investigators who need to interview witnesses to obtain comprehensive factual information and evidence. This often culminates in witness statements to be used in court proceedings such as civil proceedings, industrial tribunals, public inquiries, and other regulatory work.

Examples of types of legal work include: dispute resolution, commercial and general litigation, employment, personal injury, family and mediation, medical and professional negligence, insurance, and private client work. Cognitive interviewing continues to be used widely by leading law firms undertaking inquiry work and has been used successfully in high-profile inquiries like Bloody Sunday and the Shipman Inquiry.

Aim and scope of the book

The aim of this book is to:

- Provide lawyers and other legal professionals with a practical text and toolkit to enable them to get to the facts quickly and efficiently in the time available;
- Demonstrate how interviewers can use the cognitive interview approach to help their witnesses recall fully and accurately the facts of what happened;
- Show practitioners how and why witnesses frequently fail to recall the facts accurately and how they can overcome this tendency to enable their witness to remember additional relevant facts;
- Suggest practical ways of managing 'difficult' witnesses who are being evasive, unwilling, or unable to recall their experience of an event and thereby get closer to the true facts;
- Enable interviewers to better distinguish fact from fiction in their interviews so that they can better establish credibility; and
- Provide the reader with help in developing an extensive communication and inter-personal skill set.

The scope of the book is to provide a practical handbook in the cognitive approach to witness interviewing to help lawyers and others gather full information about incidents and events that have occurred. It is about how to gather the information for many different purposes or types of investigation.

This handbook will not cover recruitment interviewing or general interviewing, although much of the cognitive interview approach and skills that are used will be useful in these contexts. It is also important to understand that this is not an academic text, nor is it an in-depth study into cognitive interviewing – I refer to many books, studies, and texts that have been carried out over the years, and I urge you to refer to Chapter 9 of this handbook to identify some good sources of evidence and further reading should you wish to explore this subject further. I have studied much of what is available across the world from multiple sources, and have applied this knowledge and skill extensively over 20 years, adapting and refining it for use by lawyers and other legal practitioners.

Features

- This book is all about the cognitive techniques of witness interviewing;
- It is about how to get maximum information from witnesses;
- It pulls together the theory of how and why the cognitive approach is so effective and provides a model/structure and explanation of how to apply it;
- Relevant case studies of how lawyers are using it in particular circumstances, and examples from my experience in training several thousand lawyers to use the cognitive approach are included;
- The importance of combining effective communication skills with the cognitive approach is also extensively addressed; and
- Practical tips for detecting lies and deceit, based on the latest most reliable and valid indicators.

The business benefits of using the cognitive interview approach

The success of many cases and investigations depends on obtaining accurate information from witnesses. And it is becoming increasingly important for all lawyers managing cases and those conducting the interviews to establish the full facts of the matter as early as possible. By using

the cognitive approach, interviewers will increase the completeness and accuracy of what individuals can remember. It will enable practitioners to investigate, prepare cases, and proof statements based on full facts from those concerned. By using this witness interviewing handbook, the interviewer will be able to:

- Develop a straightforward, practical interview skill for information gathering;
- Obtain significantly more and more accurate information from their interviews than by using traditional interview methods;
- Obtain quality (more complete and accurate) information earlier on which to base a decision about the allegation, case, or matter;
- Obtain full information in a standard, consistent format that is acceptable for use by solicitors and for production in court, tribunal, or other proceedings. It will also be acceptable to in-house lawyers and legal departments;
- Obtain the facts first time to reduce the need for costly re-interviews;
- Help a witness remember as much as they possibly can about an event, even if it happened months or years ago; for example, as in the Bloody Sunday and Shipman Inquiries where events happened many years ago and over a long period of time;
- Ensure that the witness works hard to recall the facts with clear parameters set by the interviewer to keep them focused on what they are being asked to remember; and
- Make best use of the limited time that may be available.

The need for this handbook

There is currently no practical handbook about this interview method directly aimed at helping lawyers to use cognitive interview techniques when they interview their witnesses and clients. I have trained several thousand lawyers over the past 20 years and the opportunity for them as well as other lawyers and practitioners to access ongoing support through reference to a handbook will be beneficial.

Lawyers and other legal professionals who use normal interviewing methods of question and answer to get a witness to recall an incident, at best, are not doing this in the most effective way. At worst, they are probably hindering the investigation, progress, or even the outcome of a case. Excitingly, however, by making important, specific changes to

their behaviour in interviews, they will notice significant improvements in the quality and accuracy of what their witnesses can remember.

This book opens up a whole new area to lawyers and legal professionals to enable them to use an approach that really helps their witnesses to recall exactly what happened.

Where the idea originates – How cognitive interviewing came about

It is a well-researched and documented technique for obtaining accurate and uncontaminated evidence from witnesses. The main body of research was undertaken for The US National Institute of Justice by two psychologists, Geiselman and Fisher, using principles of cognitive psychology. They were the first people to coin the phrase ‘the Cognitive Interview’.

Research evidence shows that the cognitive interviewer can obtain in excess of 40 per cent more information than by standard interviewing techniques.¹ Importantly, this gain is without any significant increase in incorrect information. We have continued to follow, develop, and apply the approaches and techniques of additional acknowledged experts in this field like Aldert Vrij, Amina Memon, Ray Bull, Dr Eric Shepherd, and Stan Walters, plus others.

What is cognitive interviewing?

It is a forensic tool that comprises a series of memory-retrieval techniques designed to increase the amount of information that can be obtained from a witness. ‘The effectiveness of the cognitive interview in improving the quality and quantity of information from an eye-witness and as a way of improving the skills of interviewers has been empirically tested’,² and it has been described as: ‘One of the most exciting developments in forensic psychology in the last 10 years’.

Cognitive interviewing is based on these notions:

- People (witnesses) have limited mental resources for concentration, so we need to concentrate hard when trying to recall what happened and to focus without distractions.
- The memory of the event directly reflects the mental context that applied at the time. Therefore the way to unlock the memory is for the interviewer to recreate as closely as possible the original context of the event. For example, the interviewer should help the

witness to mentally recreate the thoughts, emotional reactions, physiological states, and environment in which the event took place.

Consider this: as the interviewer, you need to ask your witness to remember as if they were back in the ‘there and then’ – describing the ‘there and then’, rather than sitting in the ‘here and now’ answering lots of questions about the ‘there and then’; this is the mind-set you need to try to create with your witness. It is essential that you bear in mind that:

- An event is not stored in just one place in the memory; it is stored as a lot of little pieces of information within that event. Therefore, we need to conduct multiple retrieval attempts (where the witness tries more than once) in order to find all the locations in the memory where the facts are located. This is why people don’t remember everything first time – because it wasn’t all stored in the same place.
- Although what is actually going on in the brain is far more complicated, in simplified form, each part is stored separately in the brain as if it were a filing cabinet or directory on your computer containing lots of folders. Information about an event will be filed in separate documents in a number of files and in different drawers or folders.
- Clients and witnesses need to be given the best chance to find the details that they have stored in the memory’s filing cabinet.

Examples of the underpinning communication skills needed by the interviewer:

- Ability to build and maintain effective rapport with any witness;
- Allowing the interview to flow with minimal interruption from the interviewer;
- Setting clear parameters for your questioning – clear start and finish points for what you want to know;
- Allowing silence – knowing when to speak and when to stay silent;
- Using well-targeted ‘open’ questions to allow the full facts to emerge – to probe skilfully and tease out additional relevant information;
- Using emotion, feelings, colour, smell, visualising;

- Using pauses tactically to support, or carefully and skilfully apply, some pressure appropriately in any given interview and with due consideration to your witness;
- Using non-verbal communication to build rapport and engage effectively with the witness; and
- Adopting an assertive approach and the variety of verbal communication skills needed to be successful in handling witnesses of all types.

All of these communication skills, combined with the cognitive techniques, form the basis of this comprehensive handbook for practitioners. Your real power to be effective when interviewing witnesses will come from:

- A strong ability to consider and then deploy a combination of the CI approach;
- An ability to build and maintain rapport throughout the interview; and
- An ability to use any of the communication and interpersonal skills detailed throughout this book.

That may sound daunting, especially if you have less experience than your colleagues, but all these skills can be learned and perfected if you follow the guidance offered between these covers.

Using traditional methods, interviewers typically interrupt the witness following a question after only a few seconds and this does not allow all parts of the story to emerge. In a Cognitive Interview, the witness is allowed to tell their story with minimal interruption. This gives them time to find each part of the story in their memory, and of course you need to set clear parameters within which they need to work at recalling what happened.

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