

The Vulnerability of Victims and Witnesses to Crime in Police Interviews

Dr Kev Smith
Investigative interviewing and human rights conference
Berlin 24 May 2024

If the most vulnerable in society don't get access to justice, there is no justice (Dame Helen Reeves, circa 2004).

What is vulnerability?

- ❑ Basic dictionary definitions include being “exposed to the possibility of being attacked or harmed” (Compact Oxford English Dictionary, 2005) and being “open to persuasion, temptation, censure etc.” (Collins Concise English Dictionary, 2012).
- ❑ More precise definitions depend on the context and the purpose for which the concept is being used, for example
 - Being vulnerable is defined as “in need of special care, support, or protection because of age, disability, risk of abuse or neglect” (UK National Health Service, 2022);
 - “A vulnerable customer is someone who, due to their personal circumstance, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care” (UK Financial Conduct Authority, 2021);
 - “A vulnerable witness is anyone under 18 and anyone who has a ‘mental disorder’, is in fear or distress over testifying, is a victim of certain sexual offences, trafficking, domestic abuse or stalking or at risk of significant harm by virtue of giving evidence” (section 10 Victims and Witnesses [Scotland] Act, 2014 - amends the Criminal Procedure (Scotland) Act, 1995);
 - “A person is vulnerable if, as a result of their situation or circumstances, they are unable to take care of or protect themselves or others from harm or exploitation” (College of Policing for England & Wales, 2021).

What is "vulnerability" in the context of a victim or witness interview?

- ❑ Internationally, definitions of vulnerability in victim and witness interviews vary;
- ❑ Most definitions include children (though the upper age varies), victims/witnesses with learning disabilities (as defined by the World Health Organization) and mental health issues (the details of which vary), some include physical disabilities and disorders (particularly those that impact on communication) and some take account of the immediate and/or wider circumstances surrounding victims/witnesses and/or the nature of the alleged offence;
- ❑ The academic literature and some policy documents often view the various aspects of vulnerability as either "personal" or "situational".

What is "vulnerability" in the context of a victim or witness interview?

- ❑ Internationally, definitions of vulnerability in victim and witness interviews vary somewhat;
- ❑ Most definitions include **children** (though the upper age varies), victims/witnesses with **learning disabilities** (as defined by the World Health Organization) and **mental health** issues (the details of which vary), some include **physical disabilities and disorders** (particularly those that impact on communication) and some take account of the immediate and/or **wider circumstances** surrounding victims/witnesses and/or the nature of the alleged offence;
- ❑ The academic literature and some policy documents often view the various aspects of vulnerability as either "personal" or "situational".

What is "vulnerability" in the context of a victim or witness interview?

- ❑ Internationally, definitions of vulnerability in victim and witness interviews vary somewhat;
- ❑ Most definitions include children (though the upper age varies), victims/witnesses with learning disabilities (as defined by the World Health Organization) and mental health issues (the details of which vary), some include physical disabilities and disorders (particularly those that impact on communication) and some take account of the immediate and/or wider circumstances surrounding victims/witnesses and/or the nature of the alleged offence;
- ❑ The academic literature and some policy documents often view the various aspects of vulnerability as either "personal" or "situational".

Personal vs Situational Vulnerability

- ❑ Personal vulnerability, e.g., age, learning disability, mental health issues, physical disability or disorder affecting communication;
- ❑ Situational vulnerability, e.g., the nature of the offence, the domestic or employment circumstances of the witness, the background of the witness;
- ❑ Personal and situational vulnerability can overlap, e.g., victims who develop Post-Traumatic Stress Disorder (PTSD) as a consequence of a sexual offence;
- ❑ The idea of personal and situational vulnerability is controversial in that some authors argue that we are all vulnerable, it is just that some people are more resilient than others and resilience is something that is "produced within society... over time and within state-created institutions and in social, political and economic relationships" (Fineman 2008 & 2015 as referred to by Dehaghani, 2021).

Whatever the definition, the management of vulnerability in a police interview with a vulnerable victim or witness to crime is about the ethical management of risk

Risk

- ❑ Risks to the personal safety of the victim/witness and/or their family and friends;
- ❑ The risk that the interview process (and the wider investigation) will seriously harm the victim/witness's mental health;
- ❑ Risks to the accuracy of the evidence (e.g., compliance, acquiescence, suggestibility, unidentified echolalia/echopraxia);
- ❑ The risk that the victim/witness will not be able to communicate (e.g., dissociation, higher brain shut down affecting language processing when trauma is reinstated);
- ❑ The risk that the police and/or the prosecuting authority will cease investigating too soon because it is thought that the victim/witness's communication needs are too challenging;
- ❑ The risk that the victim/witness will not be listened to by the court (on the basis that the court does not think that the victim/witness can understand the questions being asked of them or respond in a way that can be understood by the court).

Whatever the definition, the management of vulnerability in a police interview with a vulnerable victim of or witness to crime is about the ethical management of **risk** and the ethical management of risk is about doing our utmost to see that victims get access to justice because ...

If the most vulnerable in society don't get access to justice, there is no justice (Dame Helen Reeves, circa 2004).

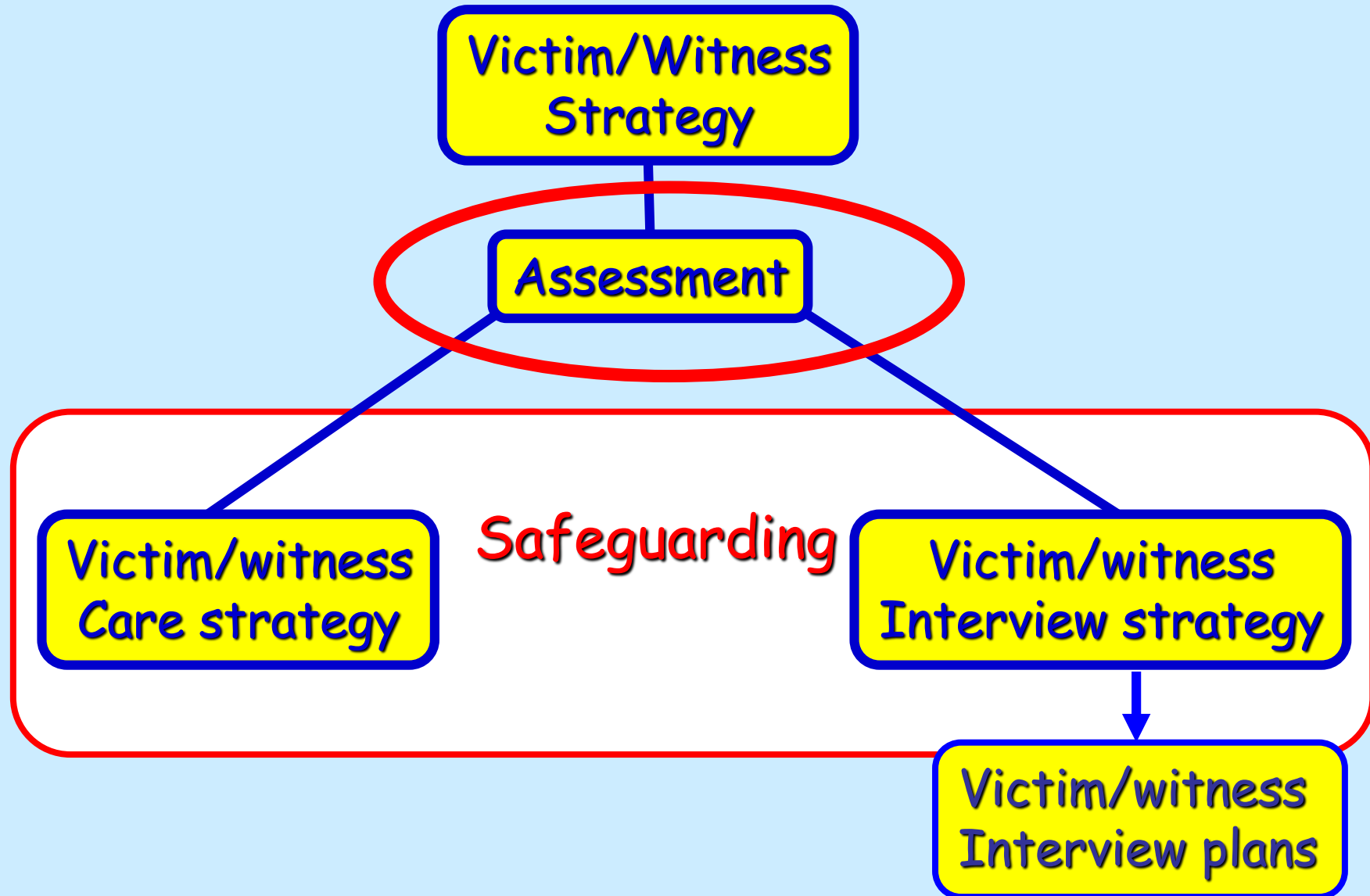
By its very nature, the management of risk focuses the needs of the individual, rather than on groups. When considered in the broader policy context of victim/witness centred approaches and trauma-informed practice, a focus on the needs of the individual is most likely to be supported and, thus, operationalized by a needs assessment. Needs assessments are an ongoing dynamic process that can begin before the police contact the victim/witness, they are not fixed to a single point in time. In the context of a victim/witness centred approach and trauma-informed practice, needs assessments form the basis of much (though not all) of the decision making in police interviews with vulnerable victims and witnesses. Smith & Hynes (in preparation).

By its very nature, the **management of risk focuses the needs of the individual**, rather than on groups. When considered in the broader policy context of victim/witness centred approaches and trauma-informed practice, **a focus on the needs of the individual is most likely to be supported and, thus, operationalized by a needs assessment**. Needs assessments are an ongoing dynamic process that can begin before the police contact the victim/witness, they are not fixed to a single point in time. In the context of a victim/witness centred approach and trauma-informed practice, **needs assessments form the basis of much (though not all) of the decision making in police interviews with vulnerable victims and witnesses**. Smith & Hynes (in preparation).



So let us have a look at needs assessments and the management of risk in police interviews with vulnerable victims and witnesses

Victim & Witness Strategies: Broad Structural Framework



What Functions are Served by Vulnerable Victim & Witness Needs Assessments?

- To identify and manage any risks (to the victim/witness, wider public or the investigation);
- To identify and manage the victim/witness's support needs;
- To inform decision making/investigative activity;
- In some jurisdictions, to determine the appropriateness or otherwise of special measures in court (e.g., giving evidence from behind screens, giving evidence via a live television link).

What Sort of Ground should an Assessment Cover?

- ◆ **Welfare and Safety:**
 - Injury, illness, age, disability, disorder, addiction, intoxication, trauma, intimidation
- ◆ **Personal Circumstances**
 - Domestic situation
 - Relationship to suspect
 - Criminality
 - If exploitation or trafficking
 - role in exploitative/trafficking network
 - missing person reports
- ◆ **Communication needs:**
 - Cultural background, first language (include dialect), communication abilities (including the ability to form a narrative and the victim/witness's understanding of concepts that might be important to the investigation e.g., temporal, spatial and sequential concepts), specific communication requirements and any limitations associated with them (e.g., yes/no responses, mutism, communication boards);
- ◆ **What they have said/been told**
 - Include circumstances
 - Previous allegations

NOTE: The relevance of the items on this list depend on context and are aspirational rather than definitive

How Should We Conduct a Needs Assessment?

- Pre-contact checks and research;
- By being alert to the victim/witness's behaviour;
- By listening carefully to how victims & witnesses report their initial account;
- In conversation with the victim/witness and those who know them well (friends/family/carers and other professionals);
- By informal assessment methods that include practice interviews and tasking (if appropriate).

How Should We Conduct a Needs Assessment?

- Pre-contact checks and research;
- By being alert to the victim/witness's behaviour;
- By listening carefully to how victims & witnesses report their initial account;
- In conversation with the victim/witness and those who know them well (friends/family/carers and other professionals);
- By informal assessment methods that include **practice interviews and tasking** (if appropriate).

What Sort of Ground should an Assessment Cover?

- ◆ **Welfare and Safety:**
 - Injury, illness, age, disability, disorder, addiction, intoxication, trauma, intimidation
- ◆ **Personal Circumstances**
 - Domestic situation
 - Relationship to suspect
 - Criminality
 - If exploitation or trafficking
 - role in exploitative/trafficking network
 - missing person reports
- ◆ **Communication needs:**
 - Cultural background, first language (include dialect), communication abilities (including the ability to form a narrative and the victim/witness's understanding of concepts that might be important to the investigation e.g., temporal, spatial and sequential concepts), specific communication requirements and any limitations associated with them (e.g., yes/no responses, mutism, communication boards);
- ◆ **What they have said/been told**
 - Include circumstances
 - Previous allegations

NOTE: This list depends on context and is aspirational rather than definitive

Pre-Interview Assessment

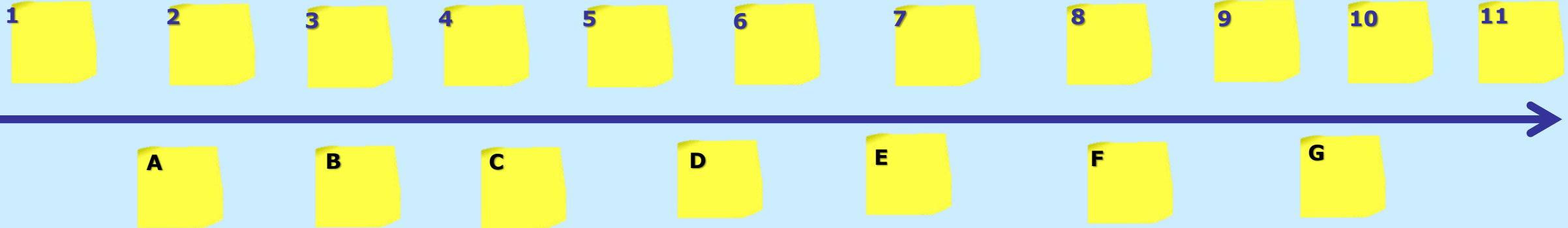


Managing what the witness can't do:

- By "scaffolding" the witness's communication (e.g., the use of timelines and post it/sticky notes where narrative coherence might be an issue). ←
- By reasoned and carefully documented pre-interview preparation.
- By using what the witness can do to mitigate what they can't do.

Timelines and Post it/Sticky Notes

Sequence of activity during a single event or order in which multiple events took place



External reference points (for use when multiple events are discussed)

What Sort of Ground should an Assessment Cover?

- ◆ **Welfare and Safety:**
 - Injury, illness, age, disability, disorder, addiction, intoxication, trauma, intimidation
- ◆ **Personal Circumstances**
 - Domestic situation
 - Relationship to suspect
 - Criminality
 - If exploitation or trafficking
 - role in exploitative/trafficking network
 - missing person reports
- ◆ **Communication needs:**
 - Cultural background, first language (include dialect), communication abilities (including the ability to form a narrative and the victim/witness's understanding of concepts that might be important to the investigation e.g., temporal, spatial and sequential concepts), specific communication requirements and any limitations associated with them (e.g., yes/no responses, mutism, communication boards);
- ◆ **What they have said/been told**
 - Include circumstances
 - Previous allegations

Pre-Interview Assessment



Managing what the witness can't do:

- By "scaffolding" the witness's communication (e.g., the use of timelines and post it/sticky notes where narrative coherence might be an issue).
- By reasoned and carefully documented pre-interview preparation.
- By using what the witness can do to mitigate what they can't do.



A Few Examples ...

Communication boards (alphabet and symbol):

- Check extent of vocabulary on board and carefully introduce new symbols if necessary (in a neutral context some time before the interview using an independent Speech and Language Therapist);
- Additional camera to record what is being indicated by the witness.

Yes/No responses:

- Assessment to check that responses are communication and not random vocalisations or gestures;
- Can't ask open questions, need to ask forced-choice questions;
- Interview needs to be structured to limit the inherent propensity of forced choice questions to be leading.

Mutism (selective/traumatic):

- Interview in the usual way up until the point at which mutism becomes an issue;
- Consider writing things down or typing them (if literacy skills are OK) - need to develop a protocol for doing this and to prepare the witness for their responses being read out on camera;
- Alternatively, consider drawing or symbol use.

What Sort of Ground should an Assessment Cover?

- ◆ **Welfare and Safety:**
 - Injury, illness, age, disability, disorder, addiction, intoxication, trauma, intimidation
- ◆ **Personal Circumstances**
 - Domestic situation
 - Relationship to suspect
 - Criminality
 - If exploitation or trafficking
 - role in exploitative/trafficking network
 - missing person reports
- ◆ **Communication needs:**
 - Cultural background, first language (include dialect), communication abilities (including the ability to form a narrative and the victim/witness's understanding of concepts that might be important to the investigation e.g., temporal, spatial and sequential concepts), specific communication requirements and any limitations associated with them (e.g., yes/no responses, mutism, communication boards);
- ◆ **What they have said/been told**
 - Include circumstances
 - Previous allegations

NOTE: the assessment of communication abilities is about whether a vulnerable victim or witness **CAN** be interviewed, whether any given victim or witness **SHOULD** be interviewed is an entirely different question....

Can be interviewed

Should be interviewed

What Sort of Ground should an Assessment Cover?

◆ Welfare and Safety:

- Injury, illness, age, disability, disorder, addiction, intoxication, **trauma** intimidation

◆ Personal Circumstances

- Domestic situation
- Relationship to suspect
- Criminality
- If exploitation or trafficking
 - role in exploitative/trafficking network
 - missing person reports


◆ Communication needs:

- Cultural background, first language (include dialect), communication abilities (including the ability to form a narrative and the victim/witness's understanding of concepts that might be important to the investigation e.g., temporal, spatial and sequential concepts), specific communication requirements and any limitations associated with them (e.g., yes/no responses, mutism, communication boards);

◆ What they have said/been told

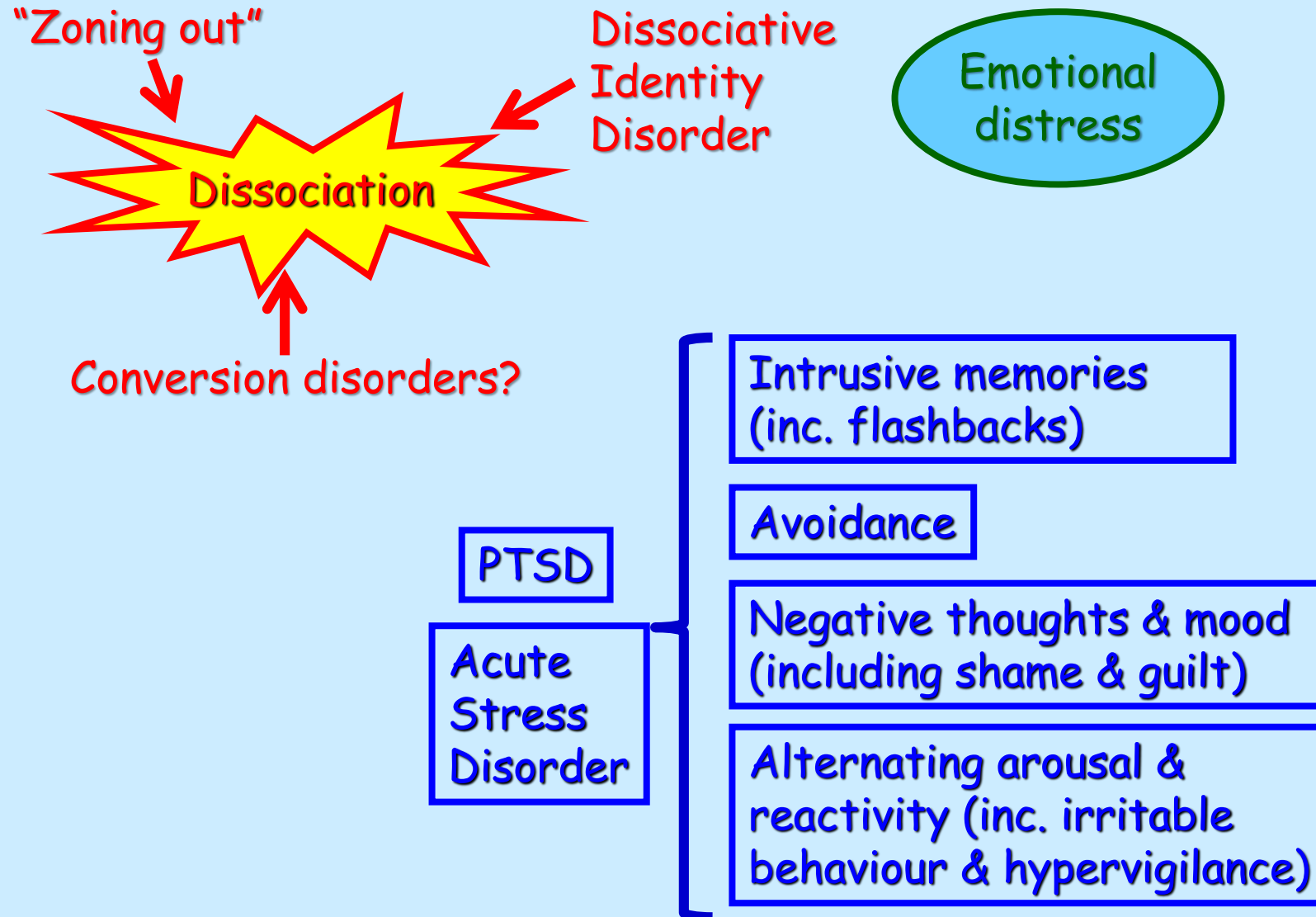
- Include circumstances
- Previous allegations

Trauma: Impact on the Interview

- ❑ Impact on the process; 
- ❑ Impact on the product (in terms of memory recall).

Smith & Milne, 2018

Trauma: Potential Impact on the Interview Process



- Witness preparation
 - consider a practice narrative
- Only RELEVANT detail!

"Fine grain" detail

Negative thoughts (1):
believing that you're not likely
to be believed

For Example
"Why did/didn't you?"
"Was there any reason you did/did not ...?"
"How did that happen then?"

Why and how questions -
Antaki et al, 2015

or

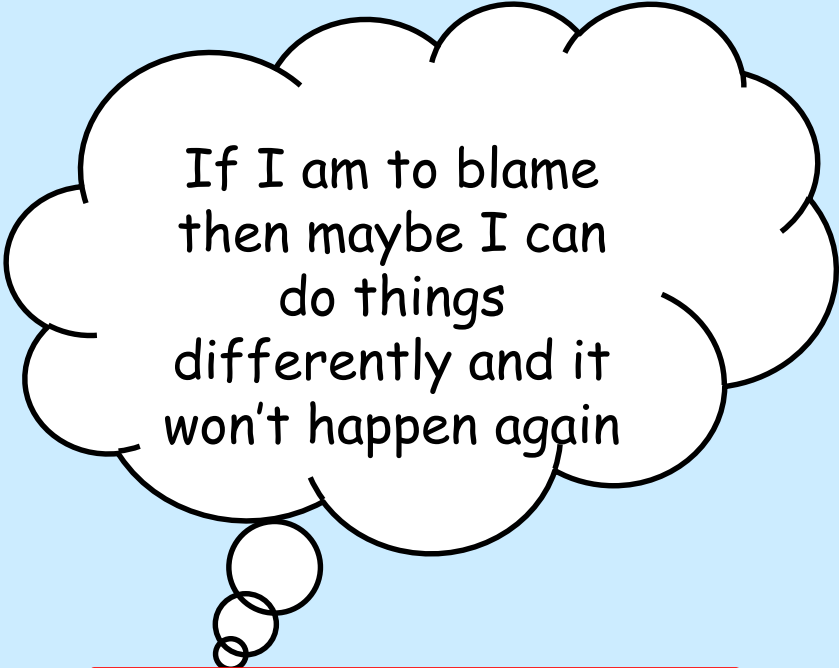
For Example
"Did you feel able to tell anyone about what happened?"
"What was going through your mind when?"
"Tell me what he/she/they did when?"



Negative thoughts (2):
shame & guilt

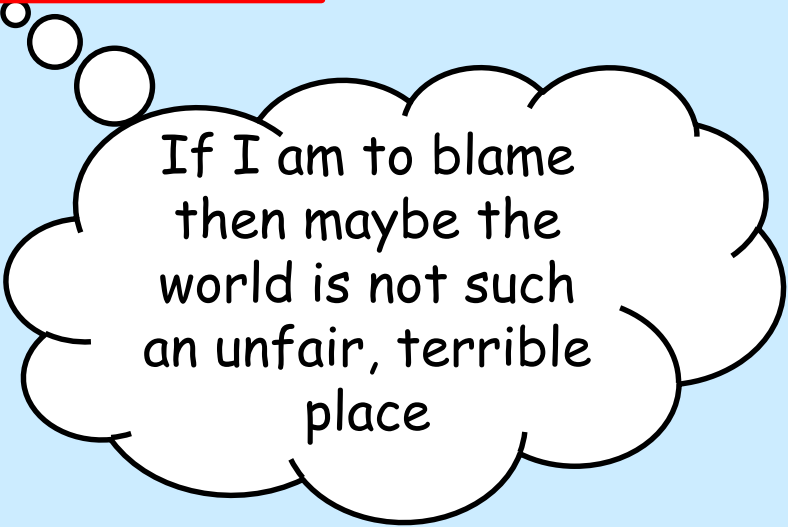
Negative Thoughts: Shame & Guilt

- ❑ Shame and guilt are **common** emotions after a traumatic event (Lee, Scragg, & Turner, 2001). Guilt may occur if the individuals feel that they have done something contrary to their personal code of conduct, and they may desire to reveal their possible wrongdoings. While guilt implies a specific behaviour, shame relates to a devaluation of the entire self and is characterised by feelings of worthlessness, powerlessness, exposure, and inferiority (Kim, et al., 2011);
- ❑ Both emotions can be based on distorted conclusions about what could have been done (McNally et al., 2003). Talking about the trauma in therapy can reduce shame and guilt if the traumatised person is treated with an accepting and non-judgemental attitude (Hokland, 2006);
- ❑ Both emotions can be a barrier to talking about the traumatic event. The individuals want to protect themselves from negative responses from others (Lee et al., 2001; Shepherd et al., 1999), and there is a risk of being exposed and shamed again if they are required to reveal every detail of the traumatic event.



If I am to blame
then maybe I can
do things
differently and it
won't happen again

Adaptive nature of guilt



If I am to blame
then maybe the
world is not such
an unfair, terrible
place

Maladaptive Impact of Shame & Guilt on Core Beliefs

- *They are all powerful*
- *Other people are untrustworthy/evil/out to hurt me*
- *People in positions of authority will abuse/betray me*
- *The world is a really dangerous place*
- *They can read my mind*
- *To survive, I must be subservient*
- *Sex is the only way I can be valued*
- *I am worthless*
- *I am dirty*
- *I am useless*
- *I am evil*
- *I am powerless (no sense of agency)*

Negative Thoughts: Shame & Guilt

- ❑ Shame and guilt are **common** emotions after a traumatic event (Lee, Scragg, & Turner, 2001). Guilt may occur if the individuals feel that they have done something contrary to their personal code of conduct, and they may desire to reveal their possible wrongdoings. While guilt implies a specific behaviour, shame relates to a devaluation of the entire self and is characterised by feelings of worthlessness, powerlessness, exposure, and inferiority (Kim, et al., 2011);
- ❑ Both emotions can be based on distorted conclusions about what could have been done (McNally et al., 2003). Talking about the trauma in therapy can reduce shame and guilt if the traumatised person is treated with an accepting and non-judgemental attitude (Hokland, 2006);
- ❑ Both emotions can be a barrier to talking about the traumatic event. The individuals want to protect themselves from negative responses from others (Lee et al., 2001; Shepherd et al., 1999), and there is a risk of being exposed and shamed again if they are required to reveal every detail of the traumatic event.

Negative Thoughts: Shame & Guilt

- ❑ Shame and guilt are common emotions after a traumatic event (Lee, Scragg, & Turner, 2001). Guilt may occur if the individuals feel that they have done something contrary to their personal code of conduct, and they may desire to reveal their possible wrongdoings. While guilt implies a specific behaviour, shame relates to a devaluation of the entire self and is characterised by feelings of worthlessness, powerlessness, exposure, and inferiority (Kim, et al., 2011);
- ❑ Both emotions can be based on distorted conclusions about what could have been done (McNally et al., 2003). Talking about the trauma in therapy can reduce shame and guilt if the traumatised person is treated with an accepting and non-judgemental attitude (Hokland, 2006);

- ❑ Both emotions can be a barrier to talking about the traumatic event. The individuals want to protect themselves from negative

Consider the importance of rapport!

and the... they are required to reveal every detail of the traumatic event.

Rapport

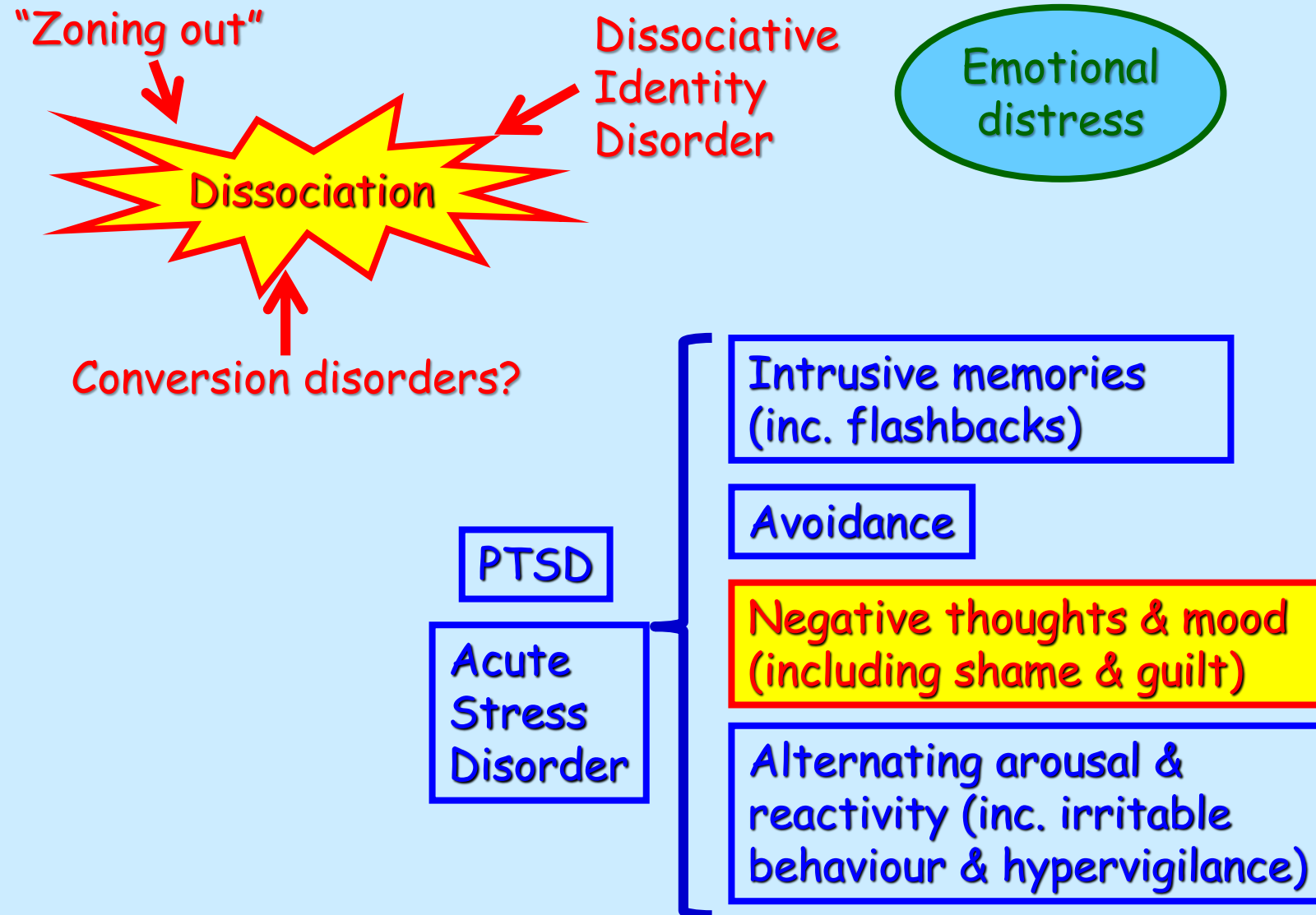
- ❑ Even though definitions of rapport in police interviews vary research has consistently shown that rapport is an important determinant of the quality of investigative interviews;
- ❑ Basic definition of rapport is that it is a shared understanding and communication between the interviewer and interviewee;
- ❑ The development of rapport may help the interviewee to feel safer and more comfortable, moving the individual into a state where it is easier to talk (Risan, Binder & Milne 2016).

Rapport

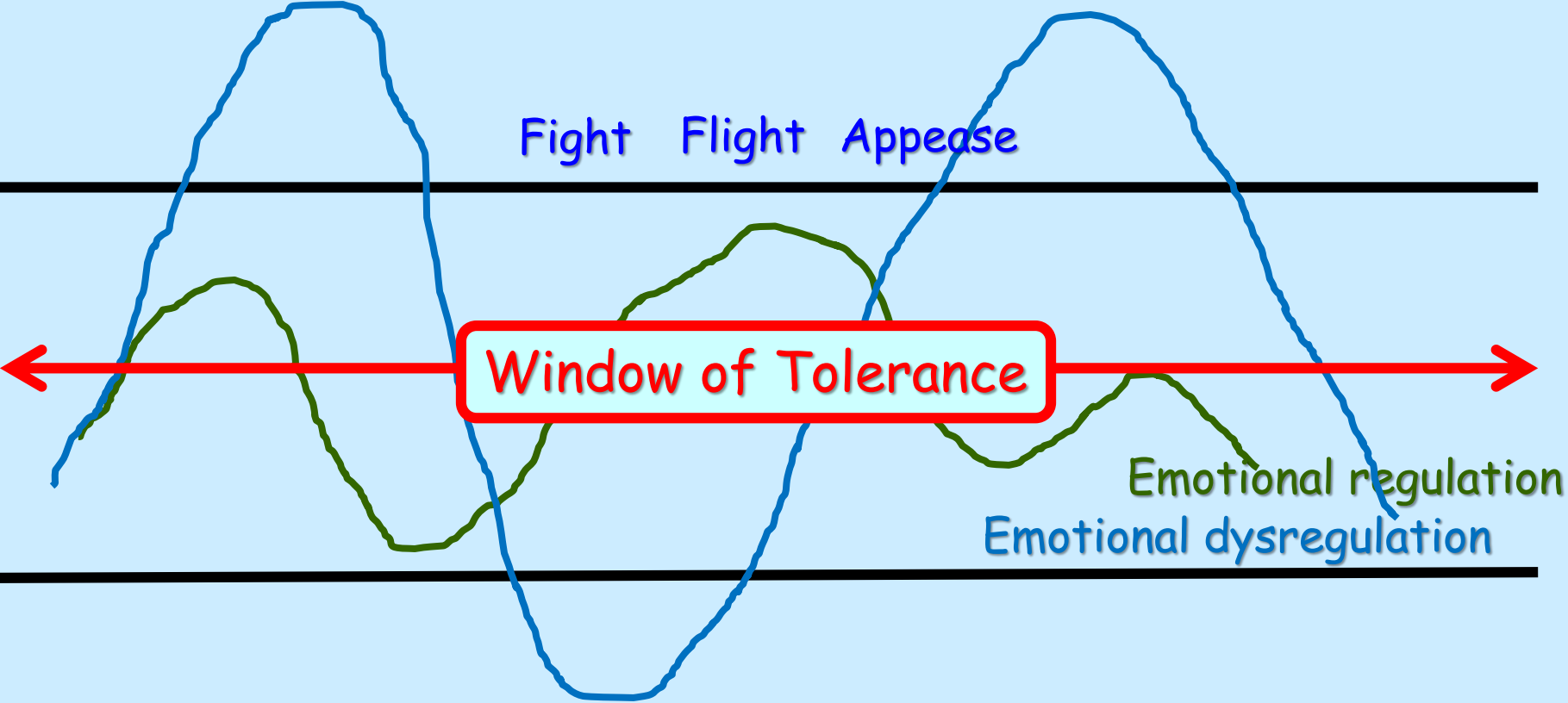
- ❑ Even though definitions of rapport in police interviews vary research has consistently shown that rapport is an important determinant of the quality of investigative interviews;
- ❑ Basic definition of rapport is that it is a shared understanding and communication between the interviewer and interviewee;
- ❑ The development of rapport may help the interviewee to feel safer and more comfortable, moving the individual into a state where it is easier to talk (Risan, Binder & Milne 2016).

Rapport isn't a one-off event such as the stage of an interview, it is a process that begins when initial contact takes place and continues throughout an investigation; it must be developed AND maintained.

Trauma: Potential Impact on the Interview Process



Hyper-arousal (high arousal)



Fight Flight Appease

Window of Tolerance

Emotional regulation

Emotional dysregulation

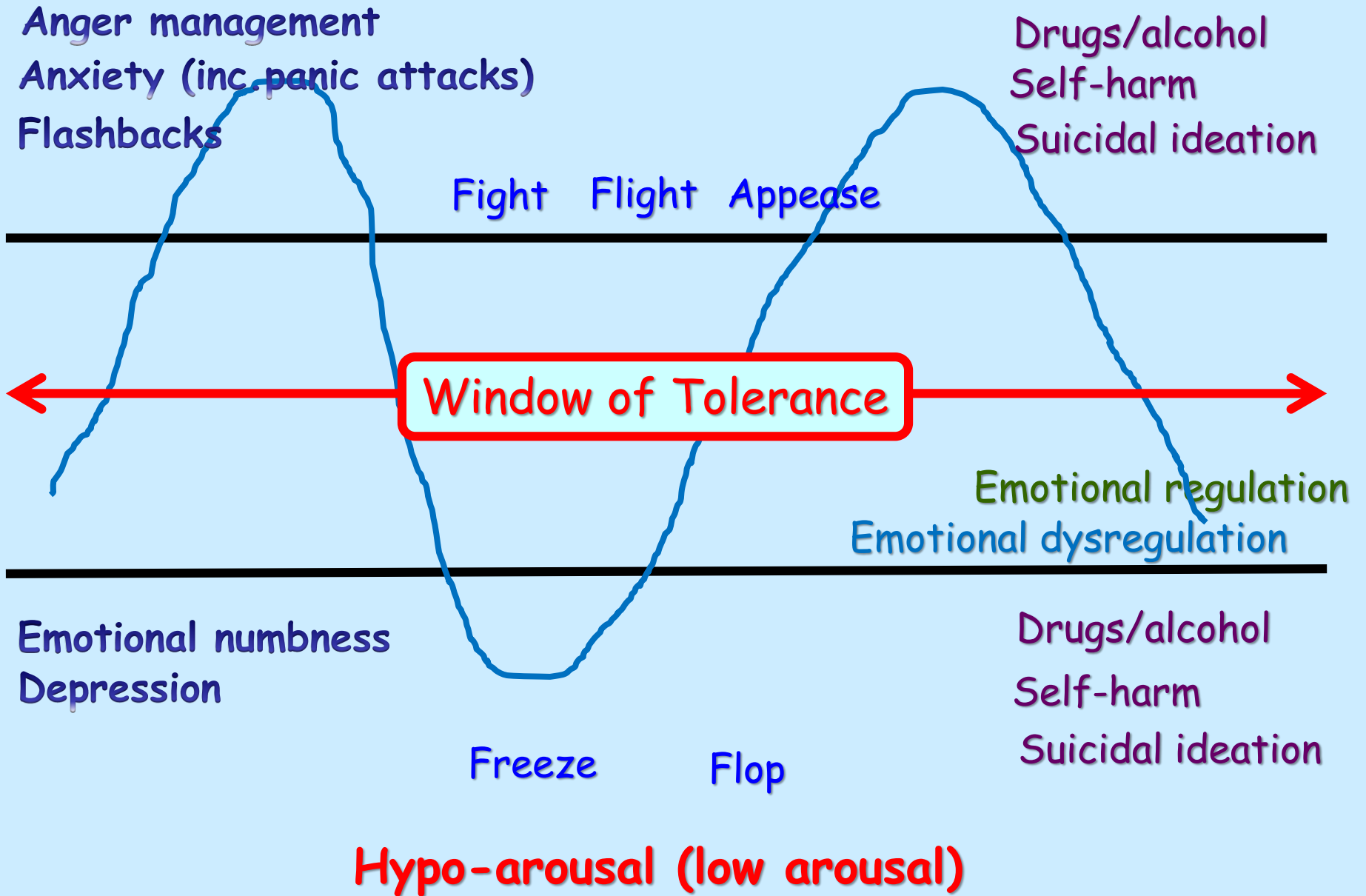
Freeze Flop

Hypo-arousal (low arousal)

Trauma: Can be an Ongoing Process (Post-Event)

Trauma is about the triggering of fear systems that are activated and continue even though the event has passed (van der Kolk, 2014).

Hyper-arousal (high arousal)



Trauma: The Physiology

Terror/trauma overwhelms higher brain functioning (Siegel & Solomon, 2003), including the language centres in the left hemisphere of the neo-cortex (Frewen et al., 2017; van der Kolk, 2005).

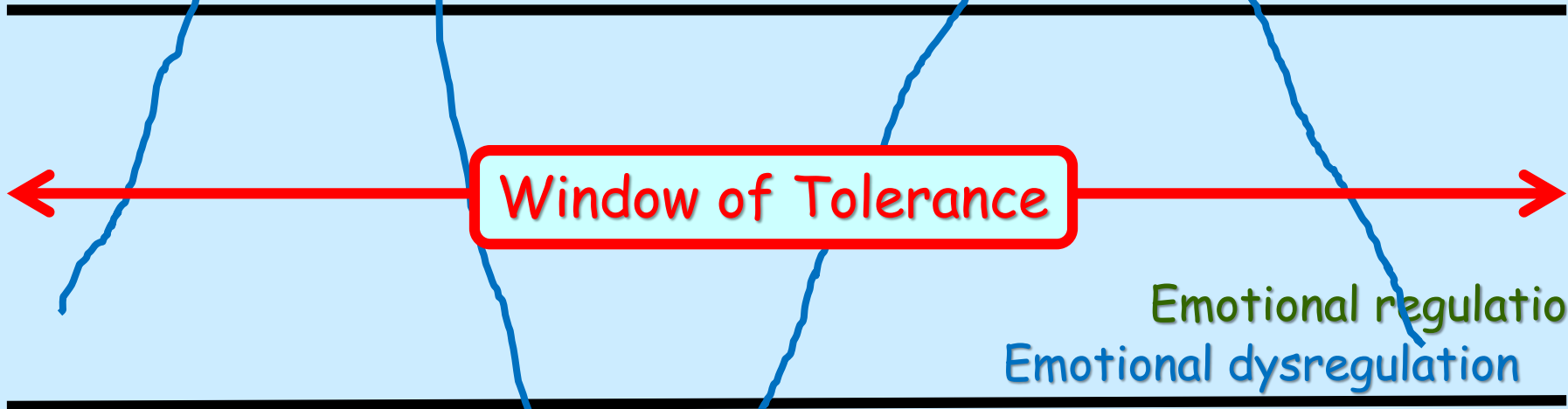
Hyper-arousal (high arousal)

Anger management
Anxiety (inc. panic attacks)
Flashbacks

Fight Flight Appease

Drugs/alcohol
Self-harm
Suicidal ideation

Regulation, co-regulation, de-escalation, safety, rapport, repetitive activity & avoid or reframe questions likely to dysregulate.



Window of Tolerance

Optimal for processing language & participation in the CJS.

Emotional numbness
Depression

Freeze Flop

Drugs/alcohol
Self-harm
Suicidal ideation

Hypo-arousal (low arousal)

And, finally, don't forget that trauma has an impact on you as professionals as well, remember:

"The expectation that we can be immersed in suffering and loss daily and not be touched by it is as unrealistic as expecting to be able to walk through water without getting wet."

(Remen, 1996)

So, look after yourself.

Dr Kev Smith
Chartered Psychologist
University of Sunderland
kevin.smith@sunderland.ac.uk