What judges will NOW expect from advocates in respect of vulnerable witnesses
How this can be best achieved.

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Sub-title

- What advocates should expect from judges
- What advocates are entitled to expect of judges
- Advocates and judges must work together to ensure questioning is appropriate for the particular witness
Hugh strides over last 2 decades

• Examples *Killick* [2011] EWCA Crim 1608 (both complainants, defendant) suffering from cerebral palsy
High incidence of cases where vulnerable witnesses

- Sex cases now 1/3 of all jury trials
- Vulnerable complainants more likely to be victims
Advocacy standards still falling short in this area

- Telford case *Ahdel Ali, Mubarek Ali* [2014] EWCA Crim 140
- Oxford case (silk apparently unaware of s.41)
- Conventional cross-examination often does not assist fact-finder’s evaluation of a witness’ credibility or reliability
- Cross-examination used to launch purely symbolic challenges.
CLEAR DIRECTION FROM THE COURT OF APPEAL

• Re-definition of conventional understanding of the rules of cross-examination by the Court of Appeal
• For judges to ensure proper protections are in place for vulnerable witnesses does NOT deprive a defendant of a fair trial
TRIAL JUDGES’ RESPONSIBILITIES

• Duty to ensure appropriate advocacy

• Advocate must cross-examine a vulnerable witness/ defendant in a manner that enables the witness to give their best evidence

• Trial judges must ensure that the tenor, tone, language, and duration of questions are developmentally appropriate for the particular child
Further trial judge responsibilities

• Prevention of questioning that is irrelevant, repetitive, oppressive or intimidating;
• Need to be alert to difficulties in understanding and to prevent the use of developmentally inappropriate language
Judicial training in respect of vulnerable witnesses/ defendants

• Training given to all judges who try sex cases
• Additional training this year
Judges today

• More interventionist so as to ensure appropriate questioning
• Advocates must expect all trial judges to follow the lead of the Court of Appeal
• No exploitation of developmental limitations of a vulnerable witness (ie questions are comprehensible to the witness, only focus on truly relevant issues, no contamination by suggestion or developmentally inappropriate language.)
Judges today

• Ground rules hearings for each vulnerable witness so as to decide nature of questioning appropriate for that witness
• Insistence that advocates are familiar with rules / responsibilities
• Insistence that advocates are familiar with specialist materials (Advocacy Gateway Toolkits, Question of Practice DVD)
Judges today

• Identify cases where inappropriate to put case to complainant
• Ensure compliance
SOLUTIONS

• Full co-operation between advocates and the Bench

• All training in respect of advocacy and trial witnesses (whether judicial, defence advocates, police or CPS) should seek same objectives.

• All training must seek to achieve same high standards

• This can only be achieved by high quality interactive training
The Advocacy Training Council

• Currently devising such a course to ensure all advocates have a common grounding in the principles underpinning best practice

• (i) young witnesses/ children (ii) vulnerable witnesses (iii) vulnerable defendants (iv) ABE interviews

• ATC will produce materials, train trainers and run a pilot course. Providers then to cascade.

• Aim to produce a course that can be used as a model by all interested parties throughout the jurisdiction
COURSES MUST BE INTERACTIVE

• Same high standard for ALL advocates
• Kite mark/ accreditation
• Peer review
Communications strategy

• To ensure all providers, and all relevant senior judges, resident judges, practitioners, and academics understand the programme that is to be delivered

• To ensure full participation by all advocates
Model courses for ALL advocates

- Groundswell of support for such a course
- Particularly strong support from young not hidebound by years of traditional adversarial advocacy
- Increasing recognition amongst quality advocates in this area that accreditation should be embraced not shunned.