

What judges will NOW expect
from advocates in respect of
vulnerable witnesses

How this can be best achieved.

Peter Rook

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
- *Barker* [2010] EWCA Crim 4 ; *Wills* [2011] EWCA Crim 1938 ; *E* [2011] EWCA Crim 3028 ;

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.