



The Inns of
Court College
of Advocacy

Advocacy and the Vulnerable

National Training Programme

**Materials for trainee Facilitators led
by Lead Facilitators**

Context

This training programme has been designed to ensure that all advocates, when dealing with vulnerable witnesses, understand the key principles behind the approach to, and questioning of, vulnerable people in the justice system.

The programme has been developed by members of a working group headed by HHJ Rook QC and by The Inns of Court College of Advocacy in response to the [Government's September 2014 paper, *Commitment to Victims – strengthening the protection for victims by making the experience of going to court a better one*](#).

In due course, this training will become mandatory for any advocate wishing to undertake publicly funded serious sexual offence cases involving vulnerable witnesses.

Key Messages

All senior advocates will have at their disposal an extensive toolbox of techniques to assist them as they carry out their professional commitments. For a long time, those tools will have been sufficient and appropriate in almost all cases. Over the years, advocates will have become adept at using those tools and with them they will have become a master of their craft.

This training course sets out to upgrade the advocate's toolbox with new techniques to help deal with vulnerable witnesses. Far from being a "soft approach" this simplified, subtle method of handling a vulnerable witness can be extremely effective.

As long ago as 2004, alarm bells were ringing in respect of the value of evidence given by children in the justice system where advocates had not begun to use developmentally appropriate language.

There is no evidence to suggest that defendants are being denied a fair trial as a result of developmentally appropriate questioning of witnesses. It is however widely acknowledged that children are not able to cope with the demands of the adversarial process, which can increase any existing damage to their psychological and emotional well-being. This leaves a far from level playing field and does not foster justice.

It has become clear that the current and traditional approaches to cross-examination of children and vulnerable witnesses do not often produce "best evidence". Research is unanimous in concluding that without accommodating the special needs of such victims and witnesses, the evidence they give is much more likely to be borne out of fear, misunderstanding or suggestibility.

Objectives

The main objective of all of the training is to ensure that every advocate understands the special treatment that is necessary when handling vulnerable witnesses. The training has been designed to be rigorous, consistent, effective and valuable.

It is not designed to undermine the fundamental principles of the adversarial system within which advocates operate. It seeks to focus on the necessity for tactical changes amongst advocates and the judiciary alike in order to ensure that justice is done and is seen to be done.

Lead Facilitator Training

Having conducted a pilot Lead Facilitator training course in April 2016, the Rook Group examined the outcomes from the training and decided that more needed to be done to ensure the comprehensive training of advocates responsible for training others. Subsequent training events held on 21 May and 23 July have demonstrated clearly that the materials work and that training can be effectively delivered. Further training sessions were scheduled on October 2016 and early 2017.

Lead Facilitators are the most senior practitioners for the Circuit, Inn, Criminal Bar Association, Chambers, Law Society, CBA or CPS and therefore are likely to be called upon to assist, advise and support the national roll-out including the delivery of further training during the course of the lifespan of the course.

Facilitator Training

Facilitator training will be carried out by Lead Facilitators who have already undertaken Advocacy and the Vulnerable training and who have been schooled in delivering the guiding principles of questioning. Each Lead Facilitator has been put forward by their Inn, Circuit, the CPS or Law society and it is their role now to train you as Facilitators.

Your Facilitator training will follow one of three slightly different formats depending on how your respective provider has chosen to deliver your training:

1. You may be asked to watch online, in advance, two plenary sessions. The first is delivered by HHJ Cahill QC on the Principles of Questioning and is accompanied by a detailed PowerPoint (also available for download on the website). The second focuses on the Art of Facilitation and it is presented by Andrew Smith QC. This video is complemented by the Art of Facilitation workbook to assist you as you move forward as a Facilitator. The viewing in advance of these plenary sessions will add to your eight hours of preparation.
2. You may find that your provider will be delivering these plenary sessions 'live' at your designated training and this will extend the length of your face-to-face training.
3. Your provider may alternatively choose to show the pre-recorded films to you at your training session which again will extend the length of your Facilitator training.

Before you attend the training it is **vital** that you prepare, as all delegates will, for an additional minimum of eight hours online which includes the preparation of cross-examination questions for the three female complainants in the case study.

As a Facilitator, we strongly advise that you access and digest as much of the optional materials we have made available online as you can. Given your crucial role in the process, we have made the exemplar films available to you in advance of your training. However, delegates who undergo training from 2016, will only be able to access these films *after* they have concluded their face-to-face training. **It is very important that the exemplar films are not distributed or shared outside your number in order to uphold the integrity of the course.**

National Course Design

There are three distinct learning areas:

Knowledge Element: pre-course reading and viewing (minimum of eight hours)

- a) *20 Principles of Questioning* endorsed by HHJ Sally Cahill QC, Professor Michael Lamb and Dr Jacqueline Wheatcroft. This document underpins the training and gives important advice about the types of questions to ask and to avoid and why. It echoes what you will hear from those who train you and should be used in due course to reinforce your feedback to delegates.

In addition to the 20 Principles themselves, we have provided you with a rationale for each “rule” and examples of poor and exemplary questioning. Of course, there will be advocates and judges who disagree with some of the principles and you may hear mixed messages - especially from intermediaries - about some of the nuances of questioning and what is deemed appropriate in specific circumstances.

The headline 20 Principles of Questioning are provided on page four within this document. An extended version with explanatory notes and examples is available for download on the website.

- b) A number of short films explaining the background to the training. We have assumed that all Facilitators are fully conversant with the reasons for this training and that they already incorporate the methods of cross-examining into their professional commitments. For those who are less familiar, the films may provide valuable background.
- c) The case study, **R v George Graham** is a fictional case involving historical sexual abuse with three complainants, each of whom has a different vulnerability, and one teenage witness as to fact, Daniel Smith. His evidence has been included to show how it is possible to adjust a cross-examination for a slightly vulnerable witness for whom no intermediary assistance is required.

There is a set of agreed facts included in the case study. These deal with the outcome of bad character and hearsay applications under the Criminal Justice Act 2003. There are no section 41 Youth Justice and Criminal Evidence Act 1999 issues in this case. *There is no need to ask any questions about which there are agreed facts.*
- d) A Ground Rules Hearing (GRH) film in R v George Graham – this is provided by way of film, a transcript of the film and the rules emerging from the GRH have also been provided.
- e) Preparation for cross-examination for the three female complainants in the case of R v George Graham based on reading and viewing of the online materials.
- f) Optional materials include a Legal Research Paper - it is assumed that everyone will have a general knowledge of the law and practice in this area but to assist with revision, a paper has been prepared. There are a number of further recommended reading, listening and viewing links.

Skills Element: attendance at a face-to-face course including:

- a) Construction of appropriate questions in written form
- b) Analysis of questions of peer attendees.
- c) Comparison and contrast of good and bad practice.
- d) Asking appropriate questions in cross-examination.
- e) Receiving feedback on question construction and advocacy.

Consolidation Element: post-course activities for delegates

- a) Four exemplar films of cross-examination.
- b) A recorded film by a Registered Intermediary

From March 2017, it is possible for Delegates to access the consolidation stage via the [Bar Council's website](#). Having watched the films, Delegates will have to fill in a short form in order to be accredited.

For the national rollout from November 2016 onwards, the ICCA will provide free online access to all necessary training materials including links to props for role-players. Access will be available pan-profession.

The ICCA will also provide links to course providers for information about courses that are being held. Access to the materials online for your own Facilitator training will be provided upon registration on the ICCA's website.

Intermediaries

The working group highly values the work of intermediaries and the critical role they can play in achieving effective communication with and by the vulnerable. However, for logistical reasons we cannot recommend the attendance of a Registered Intermediary (RIM) at the training events that will be delivered across the country.

These training materials, which include intermediary reports, are the product of extensive collaboration with senior intermediaries and their input has been invaluable. Once training is completed, every delegate will be asked to watch the four 'best practice' cross-examination films and an important podcast delivered by a RIM.

20 Principles of Questioning Headline List

3 Principles for Preparation

1. GRH
2. Issues
3. Pre-draft

9 Principles for Conduct

4. Rapport
5. Ask, don't talk
6. Chronology
7. Pace
8. No statements
9. Signposting
10. No repetition
11. Behaviour
12. Distress

8 Principles for Questioning

13. No "remember" questions
14. No pronouns
15. Telling someone else
16. No "why" and "how" questions
17. No "tag" questions
18. No compound questions
19. Direct questions
20. No leading questions

Suggested session plan for HALF-DAY Facilitator Training

Draft questions should be submitted electronically to the course provider or organiser **a week in advance of training**.

Please check directly with your course provider as your Facilitator training may take longer than a half day if plenary sessions are to be delivered 'live' or shown 'as live'. If not, trainees will need to watch the plenary sessions delivered by HHJ Sally Cahill QC and Andrew Smith QC in advance of attendance.

Time	Session	Content
09:15-09:30		Registration
09:30-10:15	1	Question construction – Fay Graham
10:15-10:45	2	Redrafting questions – Caroline Lloyd and Rebecca Jones
10:45-11:30	3	Question exercise – Caroline Lloyd
11:30-12:20	4	Advocacy exercise – Rebecca Jones
12:20-12:30		Reviewing, closing and Q&A

Session 1: Question Construction – Fay Graham

45 minutes total

Identification (15 minutes)

In small groups seated at a large table with your Lead Facilitator(s), you will look at and peer review all of the prepared draft questions for Fay Graham and attempt to identify any that you think may be problematic in terms of breaching the guiding principles. Lead Facilitators will have seen and marked all of the draft questions in advance.

At this stage you will inevitably want to descend into discussions about relevance and case theory. You will be steered away from this by your Lead Facilitator so as to concentrate explicitly on the construction and framing of questions. In order to help you to concentrate on this issue, please do bear in mind that there are a lot of agreed facts in this case, about which questions should not be put. Similarly, there are areas which have been deliberately excluded as a result of the Ground Rules Hearing.

Scrutiny (15 minutes)

You will be invited to discuss the identified problem questions with your group members with a view to deciding how you might change or amend them or whether you might discard some of them. You will be asked to look for solutions.

Discussion will be encouraged throughout to assist you to focus on the construction of questions whilst allowing you to form your own conclusions. It will be important to take away the main messages from this session so that you import the learning points into the next session after lunch where you will be asked to redraft your original questions for Caroline and Rebecca. Importantly, try to eradicate areas of irrelevance and instead, try to scrutinise the way in which you formulate your questions so that they do not flout the Principles.

One suggested way of doing this, is set out overleaf:

1. **Write the question out verbatim as you would like to ask it:** "I put it to you Miss Smith that you did go to the flat with Mr Terrance Brown and Mr Gareth White on Halloween because you wanted the vodka, because you do like vodka, don't you".
2. **Take out the unnecessary preface:** I put it to you Miss Smith that you did go to the flat with Mr Terrance Brown and Mr Gareth White on Halloween because you wanted the vodka, because you do like vodka, don't you.
3. **Check you have started with their proper name, if appropriate, and that avoid pronouns – use names agreed at GRH:** Miss Smith Alex you did go to the flat with Mr Terrance Brown Terry and Mr Gareth White Garry on Halloween because you wanted the vodka, because you do like vodka, don't you?
4. **Take the two parts of the question apart:** Alex you did go to the flat with Terry and Garry on Halloween because you wanted the vodka?
...because you do like vodka, don't you?
5. **Take the inflected statement and turn it into a proper question, so that:** Alex you did go to the flat with Terry and Garry on Halloween because you wanted the vodka?
Becomes: Alex *did you*, go to the flat with Terry and Gary on Halloween because you wanted the vodka?
6. **Take the tag from the end of the question and use it at the start of the question:**
...because you do like vodka, don't you? **Becomes:** Do you like vodka? Did you go to the flat because you wanted the vodka?
7. **Check whether you have multiple issues in one question:** Alex **did you go to the flat with Terry and Garry on Halloween because you wanted the vodka?**
Did you go to the flat?
Did you go with anyone else?
Did you go on Halloween?
Did you go because you wanted the vodka?
8. **Check, now that you have distilled the question, whether you need ask it at all:** Has the witness already said this in the ABE? Has the witness already made such comments elsewhere and it can be dealt with by admission?

Session 2: Redrafting Questions for Caroline and Rebecca having reflected on the morning's work and learning points

30 minutes

We have introduced this important reflective session to allow you to rework your original questions in light of the 20 Principles of Questioning plenary session and the previous exercise involving question construction for Fay Graham. Lead Facilitators will be on hand to assist you in this exercise. You are welcome to work in pairs, groups or alone – whatever suits you best.

In the time allocated, it is important to reflect savagely on your first drafts to exclude irrelevant questions and to delete or amend any questions that can be dealt with elsewhere or differently. Signposting will be an important element of construction at this point. Questions need to follow the signpost. It may be there are lots of signposts with only one question – this is absolutely fine. Use the time to bounce ideas off your peers and the Lead Facilitators.

Session 3: Questions for Caroline Lloyd

45 minutes

A Lead Facilitator will lead this session and provide you with a list of agreed topics for questions. It should not be necessary to add to this list and discussions about the extent of the list will be kept short.

The purpose of this session is to enable you to produce a set of questions which you, as a group, feel are developmentally appropriate to put to Caroline Lloyd and which challenge her evidence as robustly as possible within the parameters in which you are operating. You should discuss further the language to adopt and the most appropriate approach to be taken with Caroline. It may be that you disagree about the tactics or case theory but this is not as important as making sure that the questions you do compose are drafted in the most appropriate way.

You should begin by choosing good signposts for each topic and paring down the number of questions necessary under each signpost. For example, "I am going to ask you some questions about Granddad George's shed."

Are any of the following questions necessary?

- Where was Granddad George's shed?
- Was it a big shed?
- What did Granddad George keep in the shed?

Session 4: Cross-examination of Rebecca Jones

50 Minutes

Please note that the asking of questions is not formulaic and during the course of real trials in these areas, the interventions and input of the Registered Intermediaries (RIM) and the Judge will be vital. They will make specific recommendations for each individual or child and there is no "one size fits all" approach.

In this session, a Lead Facilitator will ask each member of the group to cross-examine Rebecca. This is an important element of training and familiarity with the extract of the Achieving Best

Evidence (ABE) will be vital. The actress playing the role of Rebecca on the exemplar films was extensively briefed to respond to questions in such a way as to make her performance as realistic as possible. You may wish to remind yourselves of this when watching the exemplars.

You may only get an opportunity to ask part of your cross-examination and feedback will relate specifically to the questions you asked. By this stage, there should be no need for any further discussion about irrelevant questions. You will be expected to use the body map and the soft toy available for Rebecca.

It is useful to write down what you will say in relation to the marking of the body map:

Did UG touch your arms?

- Becky, Audrey is going to show you a picture of a body.
- Becky, Audrey is going to give you a red pencil.
- With the red pencil, can you draw on that picture where Uncle George touched you on your arms?
- Audrey can you hold that up for everyone to see?

Did UG touch your legs?

- Becky, Audrey is going to give you back the picture of the body and give you a green pencil.
- With your green pencil, can you draw on that picture where UG touched you on your legs?

Feedback will be given by the Lead Facilitators and you will be encouraged to contribute to this aspect of training in relation to your peers. At this stage Lead Facilitators will expect to see you beginning to diagnose the errors of others and suggesting a better way forward. This will help you to form a view about your ability to go on to train others. You will have been provided with a sheet of assessment criteria against which you will be assessed as a Facilitator.

At the conclusion of the final small group session, there will be an opportunity to discuss the day's training. We will ask for your detailed feedback as we take the project forward.

Please use this opportunity to pose any unanswered questions to the Lead Facilitators. If you still feel underprepared to go onto deliver the training at the next stage, please make this known to the Lead Facilitators and the ICCA.

Next steps

When you move past your Facilitator training to deliver courses during the national rollout, please use the specially-created materials to assist you to do so. You can access these via the ICCA website. You will need to obtain and download props and registers at the same time.

Delegates will not be assessed on a pass or fail basis.

You will need to liaise closely with your respective providers to ensure that you have all the necessary equipment and documents to deliver delegate training. This aspect of training is in larger groups of up to 16 and will require careful planning and management of time. Working with other trained Facilitators may be sensible. Larger groups are necessary to enable training to be completed by the end of 2018.