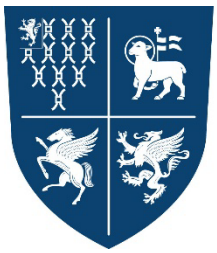

The Inns of Court College of Advocacy

Advocacy and the Vulnerable (Crime)

National Training Programme

The 20 Principles of Questioning

A Guide to the Cross-Examination of Vulnerable Witnesses

Introduction

The 20 Principles of Questioning are now firmly embedded as underpinning the most appropriate approach to the questioning of children and vulnerable witnesses. The national training course has not become mandatory, but the legal profession has nevertheless worked collaboratively and tirelessly to bring about a sea change in the way in which vulnerable witnesses and defendants are dealt with in the courts.

A person can be vulnerable by virtue of age or immaturity or a plethora of other reasons including learning disability, autism, suffering from a hearing impairment or the effects of a stroke, Asperger's, PTSD or a hidden disability such as Asperger's, PTSD, ADHD, dyslexia or speech and language difficulties.

Every Case is Unique

The 20 Principles are not exhaustive. The handling of cases involving vulnerable witnesses and children is very much case-specific and this recommended approach to questioning should be adjusted accordingly, depending on the extent and type of vulnerability in each witness or defendant in each case.

Training Updates

The original guidance was created by HHJ Sally Cahill QC[4] , and the principles have since been refined and endorsed by leading academics, Professor Michael Lamb[5] and Professor Jacqueline Wheatcroft[6]. You will find at the end of this document a number of references which underpin the development of some of the principles. The impetus for the training is practice-led and a new working group has been established to reflect on current practice and provide for even more focussed guidance for all advocates.

[4] S.28 Pilot Judge – Leeds, Circuit Judge Leeds and Blackfriars Crown Court
[5] Professor of Psychology, Cambridge University
[6] 'Professor of Psychology, Teeside University; Chair, British Psychological Society Division of Forensic Psychology Training Committee

The 20 Principles of Questioning

Principles for Preparation

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2. Identify the Key Issues
3. Pre-draft

Principles for Conduct

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17. No 'tag' or 'directive leading' questions
18. No compound questions
19. Ask direct questions
20. No leading questions

Three Principles for Preparation

1. COMPLY FULLY WITH THE GROUND RULES HEARING

The rules arising from the Ground Rules Hearing are sacrosanct and must be adhered to by all participating advocates. In doing so, advocates can focus on the areas, identified by the Judge, that need to be explored.

A Judge never relinquishes the responsibility for controlling questions. 'The use of an intermediary does not reduce the responsibility of the Judge… to ensure that the questions put to a witness are proper and appropriate to the level of understanding of the witness'.[7]

In the *R v Graham* scenario, which is used on the Advocacy and the Vulnerable training course, Ground Rule 7 states:

> *…the family background will not be explored with Daniel, Fay or Caroline in any detail beyond that which is relevant to establish the essential facts. Any relevant family background should either be part of the admissions or proved by other evidence.*

This is an important point and one which arises often during training. It follows in this case that no questions pertaining to the mental health issues that dogged Fay Graham will be permitted.

R v Pipe [2014] EWCA Crim 2570 reminds advocates that issues pertaining to medical records need not necessarily be a matter for cross-examination if it is possible to identify areas of inconsistency and reduce those to written admissions or even agreed facts.

R v Barker [2010] EWCA Crim 4 provides authority for the proposition that undermining a child's credibility need not be a matter for cross-examination. It can be properly addressed after the child has finished giving evidence. *R v Wills [2011] EWCA Crim 1938 15* provides support for this.

However, prosecution counsel must consider carefully whether a vulnerable witness can deal with issues that impact on their credibility **before the GRH**. In some circumstances, it is fair and possible for a vulnerable witness to explain things that exist on their records.

Multi-handed cases should be carefully managed and advocates may not be permitted to repeat questions in cross-examination that have already been put. Issues may well be divided up between the parties: *R v Sandor Jonas [2015] EWCA Crim 562*.

Examples of Poor Practice

- "Why did your children get taken away from you?"
- "How long after that baby was born did you start going to the mental health drop-in centre?"

Neither of these questions are necessary or permissible given the GRH and the agreed facts.

[7] Section B.9.32, *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses and Guidance on Using Special Measures* (2011) London Ministry of Justice, section 5.17

A detailed analysis of issues that might be addressed at a Ground Rules Hearing can be found on The Advocate's Gateway.[8]

2. IDENTIFY THE KEY ISSUES:

Identification of the key issues is imperative to formulate focused, concise and direct questions (see Principle 19). It is no longer acceptable to ask questions about peripheral issues which will only serve to lengthen the time a vulnerable witness has to give evidence.

Identifying key issues is a sound principle of good advocacy and is even more important when dealing with vulnerable witnesses.

At paragraph 3 of the Agreed Facts in *R v Graham* , the following is stated:

> *3. Fay Graham's Community Healthcare and Mental Health records state that: a) In January 1999 Fay Graham was referred to the Morningside Centre by her GP. It specialises in mental healthcare within the community. b) Fay Graham attended 6 of the 21 appointments offered. c) The nurse allocated to her case was Shirley Jones.*

Examples of Poor Practice:

- "You were asked by a doctor to attend a drop in centre for people with mental health difficulties."
- "You didn't go much."
- "You went 6 out of 21 times."

Not only do these questions breach the principles of only asking about the key issues but they are also statements and not questions (see Principle 12).

3. PRE-DRAFT ALL QUESTIONS:

The drafting of questions in advance is important and standard practice in cases involving vulnerable witnesses and s.28 cases. It helps advocates to keep a 'flow' of questions and not to fall back onto more traditional methods of cross-examination.

It is the Judge, and not the Intermediary, who is the final arbiter about whether a question is or is not permissible. Intermediaries are there to advise, assist and to facilitate communication - not to make decisions. A Judge may consult an intermediary about proposed questions.

Pre-drafting questions enables an advocate to check for the use of tenses and the overuse of complex language.

Much of the A&V training course concentrates on the skill of drafting questions and the ability thereafter to review them and make them shorter, more concise and relevant.

[8] Ground Rules Hearing Checklist

Four Principles for Conduct

4. RAPPORT-BUILDING SHOULD NOT BE EXPLOITATIVE:

Arguably, there are limits to the potential benefits of rapport-building and 'interviewers' should monitor the amount of time they spend preparing children for substantive questioning[9]. It is important to distinguish between police interviewing, where rapport-building is recognised as useful in aiding witness memory[10] as opposed to the use of rapport in the context of a legal challenge (cross-examination) where there appears to be no similar research.

Before a trial, rapport-building should be carried out by the judge and best practice is to invite both prosecution and defence advocates to meet the witness with the judge to explain each of their roles and discuss what is about to happen in court or via the live link room. If a Judge does not undertake this rapport-building exercise, then counsel of course should prompt the Judge to do so and if that does not happen, then Counsel should build some rapport with a witness but not in a way that is exploitative.

The main point here is that advocates should not use the building of a rapport to exploit a vulnerable witness or child. Each case must be assessed individually and the age and susceptibility of the child or witness taken into account.

Research[11] shows how important it is for a child to be helped to practise saying, I don't understand. It is not sufficient just to tell a child to say "I don't understand," because he/she may well feel inhibited and unable to do so.

Vulnerable witnesses and children want to present themselves in the 'best light' and are reluctant to admit to not understanding a question. Even children who have been encouraged to say when they didn't understand a question are still reluctant to do so.

5. ADOPT AN APPROPRIATE PACE:

Pauses between questions can be important[12] (twice as long for the youngest of children) along with time allowances to permit the witness to digest and understand the question. Response time with vulnerable witnesses may well be slower.

Wait for a vulnerable witness to answer rather than going ahead with the next question. Advice may need to be sought about this from the Intermediary and it may need to be covered at the GRH.

6. KEEP YOUR BEHAVIOUR IN CHECK:

Vulnerable witnesses find human behaviours hard to read and can be inhibited by behaviour which appears to be 'disapproving' or 'indifferent'. Children especially find the process of giving evidence traumatic and difficult. 50% of young witnesses surveyed in 2001, 2004, 2007 and 2009 felt

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[9] *Of Preparing Children for Investigative Interviews: Rapport-Building, Instruction, and Evaluation*, Yee-San Teoh & Michael E. Lamb Pages 154-163 | Published online: 16 Jul 2010

[10] A*n example of Solution-Focused Academic-Practitioner Cooperation: How the iIIRG facilitated the development of the LIP.* Jacqueline M. Wheatcroft & Graham F. Wagstaff, Journal of Investigative Interviewing: Research and Practice, Vol 6, Issue 1, pp. 42-50. Published 14 Jun 2014

[11] Becky Earharta, Sonja P. Brubachera , Martine B. Powella, Nina J. Westerab, Jane Goodman-Delahunty – *'Judges' delivery of ground rules to child witnesses in Australian courts'*

[12] Frieda Goldman-Eisler, *The distribution of pause durations in speech*. Journal of Language and Speech [1961], Vol 4, Issue 4, pp 232-237.

unable to understand the questions put to them by advocates[13]. This perception prevents them from giving their **best evidence**.

The tone and responses of advocates should be kept in check[14]. Child witnesses have described advocates as being rude, sarcastic, bullying, and aggressive or cross. Whilst this is not the case for the majority of advocates, this type of behaviour has no place in the questioning of children or the vulnerable.

Advocates should avoid nodding when they want an answer to be in the affirmative[15]. Advocates should neither subconsciously nor consciously indicate approval or disapproval of the information a child or vulnerable witnesses has given as these witnesses may tend to want to be compliant or to acquiesce to what they believe the questioner wants to hear.

7. WATCH FOR SIGNS OF DISTRESS:

Just as the judge has an important role in this regard, it is also very much a crucial part of the advocate's role to understand and adapt to vulnerabilities of the particular witness in question. The intermediary reports are likely to be detailed and to make recommendations specific to each witness.

Advocates should be very familiar with the recommendations in respect of each of the witnesses he/she intends to cross-examine.

If a child or vulnerable witness appears to be distressed or tired it is never appropriate to continue without some consideration of the witness' ability to continue to give their best evidence. Often children are kept at court for hours waiting to give evidence. This is poor case management/poor listing and advocates have a role to play here.

It may be that a child is upset but prefers to continue to complete the questioning. It may be however, that a child needs time to become calm and have a break between questions.

This should be a decision reached by the court, led by the judge with help from an Intermediary if present.

Thirteen Principles for Questioning

8. ASK, DON'T TALK:

Witnesses are expecting to be asked questions and that is the role of the advocate in proceedings. A child or vulnerable witness may be misunderstood or be misled if they think there is going to be a chat or conversation.

This approach is linked to signposting which is common sense and should be regularly adopted; "There should be a structured approach, with 'signposting' of subjects..."[16]

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[13] *Children and Cross-examination -Time to Change the Rules*, John R Spencer, Michael E Lamb, 2012

[14] *Achieving Best Evidence in Criminal Proceedings: Guidance Interviewing Victims and Witnesses, and Guidance on Special Measures* (2011)

[15] TAG Toolkit 2

[16] Adrian Keane, *Cross-Examination of Vulnerable Witnesses—Towards a Blueprint for Re-Professionalisation* [2012], The International Journal of Evidence & Proof , Vol 16, Issue 2, pp. 175 – 198

9. KEEP TO A CHRONOLOGICAL OR LOGICAL ORDER:

Jumping about a timeline or chronology of events can be especially difficult for a child or a vulnerable witness. Advocates are encouraged, as far as is possible, to keep cross-examination questions to an order which the witness can follow either chronologically or in an alternative structure that may be advised by the intermediary such as by topic or by reference to an individual.

A form of questioning that jumps around from topic to topic without clues that would ordinarily be given in 'normal conversation' to indicate a change of subject seems as likely to confuse a truthful witness as to trip up a lying one'[17]

Example of Good Practice: "I have finished asking you about when you were 6, I am going to ask you some questions in a moment about when you were at big school."

10. ALWAYS SIGNPOST BEFORE A DIFFERENT TOPIC:

For a vulnerable witness, signposting is important to help focus attention and stay focused. When moving on to a new topic, advocates should re-signpost for the witness. It is very confusing for a vulnerable witness to be asked questions without understanding the scope of them.

If you say to Rebecca, "I am going to ask you about Uncle George," the questions that follow ought to be generic, for example: about his job at the Sunday School, how she helped him stack the chairs, etc. If you are actually planning to ask about the alleged abuse/game/touching then that should be separately signposted.

For example:

- "Did Uncle George work at your Sunday School?"
- "Did you sometimes help him?"
- "Did he give you biscuits?"
- "Were there some chairs?"
- "Did you help put the chairs on top of each other?"

A new signpost should be used to indicate another topic, more focused on what George did:

- "I am going to ask you now about the Incey Wincey Spider game"
- "Becky, did Uncle George play Incey Wincey spider with you?"
- "Did he play the game on your arms?"
- "Did he play the game on your legs?"
- "Eileen (the Intermediary) will give you a picture with a little girl on it. Can you show us where Uncle George played the Incey Wincey spider game?"

11. AVOID REPETITION:

A vulnerable witness should not be asked the same question, howsoever framed, over and over again.

A child or vulnerable witness can easily be overawed by someone who appears to be an 'authority figure' to whom they have provided an answer, but who does not seem to want to accept it. The child or vulnerable witness may either be subdued to silence or intimidated enough to give a different answer to please the questioner. It is akin to receiving negative feedback. Some research

[17] Brennan M and Brennan R E, *Strange Language – Child Victims under Cross-Examination*, Wagga Wagga, 1983, 3.

has suggested there should be a ban on such questioning.[18] Other work has shown that repeating questions can change subsequent responses to the same questions impacting on accuracy.[19]

This issue was considered by Hallett LJ in *R v Jonas [2015] EWCA Crim 562* and, as was explained in *R v Lubemba and Pooley [2014] EWCA Crim 2064*, the judge has a duty to control questioning.

Over-rigorous or repetitive cross-examination of a child or a vulnerable witness must be stopped. In a multi-handed trial the Judge must ensure that the witness is treated fairly over all. They should not be asked questions on the same topics, to the same end, by each and every advocate. For these purposes **defence advocates may now be treated as a group** and, if necessary, issues divided amongst them, provided, of course, there is no unfairness in doing so.

Examples of Poor Practice:

- "I'm going to ask you questions about what you were like at school."
- "Did you always get in trouble at school?"
- "Was there a time you didn't go to school?"
- "Did you go to town instead of school?"
- "What sort of trouble did you get into?"
- "Did Grace get in trouble when she was younger?"
- "Did Grace do well at school?"
- "Was it only you who got in trouble when you were younger?"
- "Did your mum tell you off?"
- "Did George tell you off?"
- "Did your teachers tell you off?"
- "Were you told that you were lying?"
- "Was it your mum who called you a liar?"
- "Was it George who called you a liar?"
- "Who else called you a liar?"

12. AVOID STATEMENTS AS QUESTIONS:

The traditional style of asking a question which only becomes a question as a result of a change of intonation in the voice is not appropriate for a vulnerable witness. Such witnesses may not understand the subtlety of the question and may not realise they can/should answer or may think they are obliged to agree.

Question form and intonation are important. Advocates should be clear about what they are asking and in the delivery of the question.

By all means make a statement which is a precursor to a questions such as: "Uncle George said he didn't touch you above the knee. Are you sure Uncle George touched you above the knee?"

[18] Cossins, Annie, *Cross Examination in Child Sexual Assault Trials: Evidentiary Safeguard Or An Opportunity To Confuse?* [2009] MelbULawRw 3; (2009) 33(1) Melbourne University Law Review 68

[19] Samantha J Andrews and Michael Lamb, *Lawyers' question repetition and children's responses in Scottish Criminal Courts* (2017) Journal of Interpersonal Violence. Online first August 26.

The examples given below are statements and not questions. They are also complicated and irrelevant. The answers to these questions are in the Agreed Facts (pages 20 & 21 of the bundle). They are also in breach of the GRH.

- "You told the police."
- "The police tried to talk to you but after making the complaint, you didn't go back to the police."
- "You knew the police had spoken to your mother."
- "You knew that she had said it could not have happened as she had always been around at home when you were in the house over the holiday."

13. AVOID USING ALL TYPES OF PRONOUNS:

Use the person's name or the name of a place or spell out what it is you are referring to. It is important to be clear about places, names, objects and subjects. Pronouns are complex to master and are easily muddled. Equally, be careful about using the word 'there'.

"Did you go there with him?" should be rephrased to "Did you go to the shed with Granddad?"
"How many times did that happen?" should be "How many times did you babysit?"
"Did uncle George (not 'he') give you sweets?"

14. AVOID USING 'DO YOU REMEMBER' QUESTIONS:

"Do you remember…" is an unnecessary prefix to a question. The witness may start to concentrate on being able to remember instead of dealing with the actual subject of the question[20].

"Do you remember…" -type questions require complex processing even for witnesses over 5 years of age.

For an autistic witness, being able to remember a sequence of related events is difficult. In order for most of us to recall an event, we need to combine memory of space, time, place, meaning and emotion. That way we remember the incident/event as a whole.

"Do you remember…" questions are often tied up with telling someone else something (see Principle 15). Special care should be taken to avoid this prefix. If you were to ask a child whether they remembered telling someone about a specific fact, they would be confused about whether they remembered telling someone and the piece of information they supposedly told them.

Do not ask "Do you remember…" questions because 'yes' answers are inherently ambiguous.

Questions should of course be developmentally appropriate[21].

Instead of asking; "Do you remember telling Aunty Fay about the lollipop game?" use this approach instead:

- "Did you tell Aunty Fay about the lollipop game?"
- "What did you tell her?"

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[20] Evans, A. D., Stolzenberg, S. N., & Lyon, T. D. (2017). *Pragmatic failure and referential ambiguity when attorneys ask child witnesses "Do You Know/Remember" questions*. Psychology, Public Policy, and Law, 23(2), 191–199.
[21] R Marchant, *How Young Is Too Young?* Child Abuse Review (2013)

15. EXERCISE CARE WHEN ASKING ABOUT TELLING SOMEONE ELSE:

Children are particularly likely to be confused when they are asked, not about the event, but about what, or if, they told someone else about it. Poorly drafted questions are multi-part questions and should be broken down. Again, answers given to these questions are ambiguous.

By way of a bad example:

- "Did you tell Mummy that your bottom was sore?"

If the child answers 'No' this could mean several things:

- "No, my bottom wasn't sore", or
- "No I didn't tell my Mummy" and/or "No, my bottom wasn't sore."

Break down the questions into simple short ones:

- "Was your bottom sore?"
- "Did you tell your Mummy?"

16. AVOID 'HOW' AND 'WHY' QUESTIONS:

Why - Asking a child or vulnerable witness why they did or didn't do something is potentially accusatory and can imply involvement, and thereby partial responsibility. It is clear from the following two examples that the questioner is suggesting that the witness did something wrong.

- "Why didn't you try to speak to the police officer again?"
- "Why did you go back to live with George?"

How - Asking a child or vulnerable witness, 'how long ago' something happened can be difficult. The concept of time and numbers is a cumulative skill for children and some vulnerable witnesses. Children are particularly poor in dealing with number-related questions. There are ways in which this can be managed more appropriately such as; 'How many sleeps ago did [something] happen or refer to festivals, holidays, birthdays or class size (to estimate a number of people). In terms of age, height or weight, try to align this with someone specific known to the child but remember that all adults are 'big' to children, so they often do very poorly with these types of questions. This area requires special attention.

When asking someone with autism who lacks the ability to imagine, interpret or predict others' thoughts, feelings or behaviour, it must be borne in mind that, as a result, they may have difficulty in understanding the consequences of their own or others' actions and are unlikely to be aware how their behaviour is interpreted by others. They will struggle for example in explaining 'How' something made them feel.

A witness with autism will probably be better able to answer supported direct questions (Where? Who? What?), but will struggle to answer questions that require explanation such as How? and Why?[22]

[22] TAG Toolkit 15 - Witnesses and defendants with autism: memory and sensory issues

These points are particularly relevant when questions require an understanding of what another person is thinking or feeling. Asking questions about another person's thoughts or feelings are inappropriate as they invite speculation.

Another reason to avoid 'why' and 'how' questions is that vulnerable witnesses can find identifying intention very difficult to do and young children often reverse 'why' and 'because'. They have been known to say, "I fell over, that's why I was running." It is better practice to simply ask a child or vulnerable witness, "What happened when…"

17. DO NOT USE 'TAG' OR 'DIRECTIVE LEADING' QUESTIONS:

Judicial guidance and academic research has recommended that directive forms of leading question should be avoided with children and that a non-directive question is far better. Directive leading questions lead to inaccurate responses.[23]

By analogy, tag or directive leading questions should also be avoided with an adult whose intellectual development equates to that of a child or young person. Tag and directive leading questions are undesirable not only because they are suggestive and/or coercive but also because they are unnecessarily complex. Some such questions contain a positive and a negative element which children or vulnerable witnesses find difficult to fathom.

A tag or directive form of leading question is a statement with a short question tagged on the end which invites a witness to agree or disagree. For example: "You liked going in the shed, didn't you?" or "Granddad George never asked you to suck his lollipop, did he?"

Tag questions are regarded as being a powerful, suggestive form of speech.[24] Such a question allows the questioner to give evidence and simply ask for corroboration. Linguistically, they are challenging for children.[25] The Judicial College has emphasised the need to control tag questions in trials involving children. Moreover, it has been argued that to deal with these kinds of questions cognitively takes seven stages of reasoning.[26]

Instead of asking, "You wanted the cake, didn't you?" you should frame it more simply by asking, "Did you like the cake?"; "Did you want the cake?"

18. AVOID COMPOUND QUESTIONS:

At the best of times, witnesses do not give the most accurate and/or reliable answers to these types of questions[27] and the answers obtained from a vulnerable witness as a result of this type of question may be confused and lacking in any value. Answers are often ambiguous because the question being answered is unclear.

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[23] Jacqueline M. Wheatcroft and Sarah Woods. *Effectiveness of witness preparation and cross-examination non-directive and directive leading question styles on witness accuracy and confidence* [2010]. International Journal of Evidence & Proof, Vol 14, Issue 3, pp. 189-207; Jacqueline M. Wheatcroft, David Caruso and James Krumrey-Quinn, *Rethinking leading: The directive, non-directive divide* [2015] Criminal Law Review, Vol 5, pp 340-346.

[24] *Children and Cross-examination -Time to Change the Rules*, John R Spencer, Michael E Lamb, 2012

[25] A Graffam Walker (1999) *Handbook on Questioning Children – A Linguistic Perspective*, Washington DC, American Bar Association Centre on Children and the Law

[26] Ibid.

[27] Jacqueline M. Wheatcroft and Louise Ellison, *Evidence in court: Witness preparation and cross-examination style effects on adult witness accuracy* [2012], Behavioural Sciences & the Law, Vol 30, pp 821-840.

Questions should deal with a single proposition. A poor example of questioning using a compound question is:

- "So you don't tell lies, and the policeman, Roy asked you, in the tape, whether Uncle George had ever touched you and you said he didn't. Uncle George never touched your front bottom with his lollipop did he?"

It would be better to ask:

- "Did George touch your front bottom with his lollipop?"
- "Are you sure Uncle George touched your front bottom with his lollipop?"
- "Did you tell anyone that Uncle George touched your front bottom with his lollipop?"

Another example of a badly constructed compound question:

- "I want you to consider carefully my next question, is it possible that it could have been someone else other than Caroline who was in the shed with Granddad George?"

It would be better to ask:

- "Did you see Caroline in the shed with Granddad?"
- "Are you sure it was Caroline in the shed with Granddad?"

19. USE CONCISE/DIRECT QUESTIONS:

Concise and direct questions are simpler and easier for children and vulnerable witnesses to process and to understand.

For example (good practice):

- "Did you go to the park?"
- "Was anyone else at the park?"
- "Was Harry at the park with you?"

What follows is a complex question asking about the puppies:

- "You say that George invited you into his shed to see puppies – George says he may have asked you to see kittens in there when you were less than 10 – are you sure that George asked you to see puppies, not kittens in the shed?"

A better way to ask about the puppies is:

- "Fay, I am going to ask you about the pets you had at home when you were young."
- "Did you have a dog of your own?"
- "Did you have kittens?"
- "Now I want to ask you about the shed in the garden."
- "Did George keep lots of things in his shed?"
- "Did you go to the shed to see the kittens?"
- "Fay, are you sure you saw puppies in the shed?"
- "Was it kittens that you saw in the shed?"

More examples of questions that are not direct or concise are:

- "When you went to visit, would anyone else be at their house?"
- "Would your mum have thought it strange for you to have 6 lollipops at once?"

Use of the word 'would' is confusing. It suggests a hypothesis – imagined rather than true. It also reflects someone's behaviour and/or motivation. A better way of asking those questions would be:

- "When you went to Granddad George's house, was anyone else there?"
- "Did your mum let you have lollipops?"
- "Did your mum ever let you have 6 lollipops at the same time?"

20. DO NOT ASK LEADING QUESTIONS:

Leading questions are suggestive by nature. They should be strictly limited in cross-examinations of children and vulnerable witnesses. Even suggestive questions that are short and simple are to be avoided.

In 2010, the CA upheld a conviction in *R v W and M*[28] even though an 8-year old witness had retracted much of her account in cross-examination. The judgment stressed that children's answers to leading forms of questions may be of limited evidential value because of the child's wish to please or simply to bring the questioning to an end.

When a question suggests an answer, children are likely to want to agree with it[29]. Such questions can be even more leading if they contain information that did not come from the witness. If a question is focused on information that does not come from the witness then the inherently leading nature of directive/tag questions will add greater pressure on the witness due to the greater levels of uncertainty created.

Dealing with a leading question from an authoritative figure can mean that the witness has to try to resist psychological pressure. Research has revealed that many children find leading questions oppressive[30]. Open-ended questions are better for children but not as good for autistic witnesses.

Good examples of this type of question are:

- "What happened after Sunday school finished?"
- "Where did you put the chairs?"
- "What games did you play with Uncle George?"

[28] R V W and M [2010] EWCA 1926

[29] Bruck, M and Ceci, S J, *The suggestibility of children's memory* (1999)

[30] J Plotnikoff and R Woolfson (2009), *Measuring up? Evaluating Implementation of Government commitments to young witnesses in criminal proceedings*, NSPCC and The Nuffield Foundation

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