



The Inns of  
Court College  
of Advocacy

# Advocacy for Vulnerable People and Children (Criminal Course)

National Training Programme

## **The 20 Principles of Questioning**

A Guide to the Cross-Examination of Vulnerable People and  
Children

## Professional Competence and the 20 Principles

Lord Thomas CJ made it clear in the case of *R v Rashid (Yahya)* [2017] EWCA Crim 2, that, in terms of professional competence, the starting point is the assumption that the advocate will have undergone specific training and should therefore be able to ask questions in a way which might make it unnecessary to have an intermediary to intervene. He went on to outline a number of appropriate skills for such cases and stressed that it would be a serious dereliction of duty, as well as a breach of the professional duties ascribed to advocates, if cases were taken on in circumstances where the advocate had not undertaken specific and necessary training.

Advocates are required under their [Code of Conduct](#)<sup>1</sup> to ensure care is given to ensure that the interests of vulnerable people are taken into account and their needs are met.

The 20 Principles of Questioning are designed to be an essential part of that training and are now embedded into the teaching and development of appropriate questioning for vulnerable people, including children.

The original guidance was created by HHJ Sally Cahill QC<sup>2</sup>, and the principles were refined and endorsed by leading academics, Professor Michael Lamb<sup>3</sup> and Professor Jacqueline Wheatcroft<sup>4</sup>. You will find throughout this guidance a number of references that underpin the development of some of the principles.

The focus of the training in handling vulnerable people in court is practice-led, and a new working group<sup>5</sup> has been established to reflect on current practice and provide for even more focussed guidance for all advocates. This updated document is the fruit of their labour.

The profession should be immensely proud that it has worked tirelessly to educate itself and reform practice in this area with considerable success.<sup>6,7</sup>

## Questioning vulnerable people and children and identifying vulnerability

Questioning a vulnerable person or a child is complex, and the 20 Principles and associated training are no substitute for the inclusion, advice and assistance of communication specialists, where appropriate.

If a child or vulnerable person appears to be distressed or tired, it is never appropriate to continue without some consideration of their ability to continue to give their best evidence.

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<sup>1</sup> [Code of Conduct](#)

<sup>2</sup> S.28 Pilot Judge – Leeds, Circuit Judge Leeds and Blackfriars Crown Court

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<sup>4</sup> Professor of Psychology, Teeside University; Chair, British Psychological Society Division of Forensic Psychology Training Committee

<sup>5</sup> Professor Michael Lamb, Professor Jacqueline Wheatcroft, Kama Melly QC, Lynda Gibbs QC (Hon) and Catherine O'Neill. Our thanks also to Olwen Cockell, Nicola Spivak and Odina Nzegwu at Intermediaries for Justice

<sup>6</sup> [Judicial Perceptions of Criminal Advocacy 2018](#)

<sup>7</sup> [NSPCA Falling Short Plotnikoff and Woolfson 2019](#)

Communication is more than words and linguistic structures. In order to operate at the highest level, advocates are encouraged to understand how trauma can affect the vulnerable, including their ability to give evidence or instructions.<sup>8</sup>

A person can be vulnerable by virtue of age or immaturity or a range of other reasons including a learning disability, autism, hearing impairment, a mental health condition, the effects of a stroke, PTSD, or a hidden disability such as Asperger's, ADHD, dyslexia or speech and language difficulties. Recognition of and accommodation for the possible effects of those conditions can allow questioners to elicit more accurate information while minimising the stressfulness of the courtroom experience.

There are many hidden disabilities which are hard to identify such as Specific Learning Differences (SpLDs), the most common of which are Dyslexia, ADHD, ADD, dyscalculia or dyspraxia. The majority of people need to combine memory of space, time, place, meaning and emotion in order to recall an event. By doing so, it is possible to remember the event as a whole. For some vulnerable people, remembering a sequence of related events can be difficult.

With regard to young people in the criminal justice system,<sup>9</sup> diminished language skills can render a child vulnerable. Advocates should not think that knowing a child of a similar age is sufficient to be able to inform them of the average ability of a child of the same age.

With regard to vulnerable adults, a study conducted in north-west England found that up to 80% of adult prisoners had speech, language and communication needs.<sup>10</sup>

These are some easy ways to avoid confusion and trauma:

All jargon, abbreviations and specialised vocabulary should be avoided.

- It is imperative that advocates understand the impact of complex language. For example, the inconsistent use of tenses when framing questions is very confusing.
- To refer to a past event using a present tense such as suggesting that a vulnerable person **is** walking down the road, as opposed to **was** walking down the road, is not only confusing but it may also be traumatic – it could trigger a physical traumatic response by re-imagining a traumatic memory.
- Similarly, the passive voice is also very hard for many vulnerable people to understand. Questions such as 'the garden gate was locked by the caretaker' should be rephrased as 'the caretaker locked the garden gate'.
- Use of the word '**would**' in a hypothetical context is confusing. It suggests something imagined rather than true. It also reflects someone's behaviour and/or motivation. Instead of asking: "When you went to visit Granddad George, **would** anyone else be at his house?" or, "**Would** your mum have thought it strange for you to have 6 lollipops at once?" ask, "When you went to visit Granddad George, was anyone else there?" or "Did

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<sup>8</sup> [Trauma Informed Lawyering - Doughty Street and YJLC](#)

<sup>9</sup> Bryan, K., Freer, J. and Furlong, C. (2007), Language and Communication Difficulties in Juvenile Offenders. International Journal of Language and Communication Disorders, 42 (5), 505-520.

<sup>10</sup> McNamara, Nicola. "Speech and language therapy within a forensic support service." Journal of Learning Disabilities and Offending Behaviour 3.2 (2012): 111-117

your Mum allow you to have six lollipops all at once?” or, “Were you allowed by your Mum to have six lollipops all at once?”

## **Every Case is Unique**

The handling of cases involving vulnerable people and children is very much case-specific, and this recommended approach to questioning should be adjusted, depending on the extent and type of vulnerability of each person in each case. If an intermediary report is available, this will have been based on direct assessment, observations and the gathering of background information from relevant parties in education and adult social care. The recommendations provided in intermediary reports can be crucial to facilitating best evidence.

# The 20 Principles of Questioning

## Principles for Preparation

1. Comply with the Ground Rules Hearing
2. Identify key issues
3. Draft questions in advance

## Principles for Conduct

4. Do not exploit the opportunity to build rapport
5. Adopt an appropriate pace
6. Check your behaviour
7. Watch for signs of distress

## Principles for Questioning

8. Signpost a new topic
9. Tell the vulnerable person or child that you are going to ask them questions
10. Think about the order in which you will take the evidence - chronologically or in a structured way
11. Avoid repetition
12. Avoid statements posed as questions
13. Use places, names, objects and subjects – avoid pronouns
14. Avoid 'do you remember' (DYR) questions
15. Take special care when asking about telling someone else
16. Exercise care when asking about duration, weight, height, age and sensory impact
17. Avoid 'Why' questions
18. No 'tag' or leading questions
19. No compound questions
20. Ask concise/direct questions

# Three Principles for Preparation

## 1. COMPLY 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 that need to be explored and challenged.

With regard to the **timing** of a GRH, it is helpful to schedule the GRH a week in advance to allow time for questions to be carefully considered and not rushed.

**Children's evidence** should be scheduled at a time to suit them and should be kept to time. Tired children do not give their best evidence. In general, younger children are likely to be most attentive in the mornings, and adolescents in late morning or early afternoon. Avoid allowing the court to schedule evidence around the time of school exams or heavy revision periods.

**Each case is different.** Some people want to complete their evidence in one session, whilst others will need breaks. This should be a decision reached by the court, led by the Judge with help from an Intermediary, if present, or based on recommendations in a report.

The Judge should never relinquish the responsibility for approving questions. 'The role of the Judge is to protect a vulnerable person from unnecessary and oppressive questioning, but not at the expense of a fair trial for the defendant.'<sup>11</sup>

## Important cases

*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.

*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.

Careful thought should be given to allowing a vulnerable person the opportunity to explain such agreed facts. There will be cases where advocates want to explore credibility in respect of other behaviour or prior behaviour, but this must be done in such a way as to be fair, non-exploitative and in keeping with these Principles.

Multi-handed cases should be carefully managed, and advocates should not typically 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*.

In the case of *Marc le Brocq v Liverpool Crown Court [2019] EWCA Crim 1398 at [61] – [62]*, the process of drafting questions, having them approved and having restrictions placed on cross-examination during the s.28 procedure was criticised by counsel in the closing speech in a case involving sexual misconduct against a young girl. The advocate described it as a 'virtual emasculation' of the defence case. After the closing speech, the trial Judge discharged the jury and

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<sup>11</sup> Rook and Ward on Sexual Offences Law & Practice 6th Edition, at 28.04 – Sweet and Maxwell

made a wasted costs order. The CA set aside that order but criticised the advocate's comments as inappropriate. Lord Burnett of Maldon CJ clarified the boundaries for advocates in such cases. The way in which evidence from vulnerable people is elicited is prescribed by statutory provisions, the Criminal Procedure Rules, Criminal Practice Directions and case law, all of which are sensitive to vulnerable people as well as ensuring the right to a fair trial. Cross-examination is to elicit evidence and the GRH is there to ensure that the complainant's account is properly challenged if necessary. The purpose of cross-examination is not '*to discomfort, harass or abuse a person for the sake of it*'.<sup>12</sup>

## 2. IDENTIFY KEY ISSUES:

This is a fundamental principle of all good advocacy. Identification of the key issues is imperative to be able to formulate focused, concise and direct questions – see Principle 20. By limiting the issues to those that are strictly relevant, time spent in the witness box is reduced, thereby leading to a much lower risk of re-traumatisation and a greater likelihood of obtaining accurate, relevant testimony.

It is not acceptable to ask a series of preliminary questions or to go over what is already agreed, accepted or peripheral.

## 3. DRAFT QUESTIONS IN ADVANCE:

The drafting of questions in advance is important and standard practice in cases involving vulnerable people and children. It helps advocates to keep a 'flow' of questions and not to revert to more traditional methods of cross-examination.

Drafting questions enables an advocate to check for the correct use of tenses and the overuse of complex language. This process also allows advocates to avoid repetition.

When **reviewing draft questions**, check how many of them start with 'did' or invite only a 'yes' or a 'no' answer. If you have drafted a series of 'did' questions, the likelihood is that it will affect the accuracy of the vulnerable person or child's evidence; sustained questions of this kind carry a risk that a child who is willing to please will adopt a pattern of replies and stop considering each individual question. This can in turn lead to inaccurate replies. A series of 'did' questions makes it more difficult to establish whether the vulnerable person or child is following the line of questioning. 'Did' questions should be mixed up with open and specific questions to facilitate better accuracy and allow for monitoring of the vulnerable person or child's ability to focus.

The **timing of submission of draft questions**, which should be numbered and paginated, will be ordered by the court and consideration should be given to how the questions will reach the intermediary in time for their input. The process is most successful when the relationship is collaborative and open.

Intermediaries are facilitators of communication and neutral to the court process. An intermediary can assist advocates to explore how best to put a challenge to a vulnerable person in such a way that they will understand. Intermediaries look predominantly at language and communication and

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<sup>12</sup> Rook and Ward on Sexual Offences Law and Practice 6th Edition, at 28.07 – Sweet and Maxwell

not the issues in the case. Advocates are encouraged to form a good working alliance in order to discuss these issues.

## Four Principles for Conduct

### 4. DO NOT EXPLOIT THE OPPORTUNITY TO BUILD RAPPORT

This guidance is relevant to cross-examination. It is important to distinguish between police interviewing, where rapport-building is recognised as useful in aiding memory and reporting<sup>13</sup><sup>14</sup> as opposed to the use of rapport in the context of a legal challenge (cross-examination) where there is limited research<sup>15</sup>. Even 'interviewers' should monitor the amount of time they spend preparing children for substantive questioning<sup>16</sup>. New guidance on Achieving Best Evidence has been published which deals specifically with rapport at the interview stage (from page 70 onwards).<sup>17</sup> It should be noted that the ABE interview is the key component of the direct testimony.

Before a trial, rapport-building should preferably be led by the Judge and best practice is to invite both prosecution and defence advocates to meet the vulnerable person or child, 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 should prompt the Judge to do so. If that does not happen, advocates should build *some* rapport with a vulnerable person or child but not in a way that is exploitative or manipulative.

Each case must be assessed individually, and the age and susceptibility of the person concerned should be positively considered. The adults engaged should, where possible, at least sit down and engage in some neutral conversation after introducing themselves. Rapport building is about more than simply explaining the court process.

Please refer to the Equal Treatment Bench Book at Chapter 2, Page 63, paragraph 65.

*“Allow time for introductions and take account of the person’s wishes. Prosecutors are expected to meet the person and defence advocates may find it useful to do so. Accompanying the advocates at such a meeting can be a useful opportunity for Judges to introduce themselves and to ‘tune in’ to the person’s level of communication. Where justified by the circumstances, some trial Judges have met the vulnerable person with the advocates before the day of the person’s evidence.”*

Bearing in mind that the Judge should take the lead, an acceptable format for the rapport building might be:

➤ Smile

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<sup>13</sup> An example of Solution-Focused Academic-Practitioner Cooperation: How the iIRG 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

<sup>14</sup> [Lamb et al 2018, 'Tell me what happened'](#)

<sup>15</sup> [Jaqueline M Wheatcroft & Georgina Gous Directive Leading Questions and Preparation Technique Effects on Witness Accuracy](#)  
<sup>16</sup> *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

<sup>17</sup> *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Guidance on Using Special Measures*

- Sit down
- Use appropriate eye contact and listen
- Use the name that the vulnerable person prefers
- Ideally all advocates and Judge should be together and not have to be seen separately.
- It might be appropriate, for example, to use first names and explain in an agreed format what the role is of each person. Avoid saying 'I'm the prosecutor/the Judge/ the defence barrister' if that language is not going to be understood by the vulnerable person.
- Often intermediary reports will have background information that can be used for brief rapport building
- Any additional rapport building will be dependent on the age and needs of the vulnerable person; it may range from joining briefly in a colouring activity to sharing information about the journey to court or food likes and dislikes for example.

## 5. ADOPT AN APPROPRIATE PACE:

Wait for a vulnerable person to answer, rather than going ahead with the next question. Response time with vulnerable people may well need to be slower.

Advice may need to be sought about this from the Intermediary and it may need to be covered at the GRH.

Pauses between questions can be important (twice as long for the youngest of children) along with time allowances to permit a vulnerable person to digest and understand the question.

## 6. CHECK YOUR BEHAVIOUR:

Vulnerable people can find human behaviours hard to read and can be inhibited by behaviour which appears to be 'disapproving' or 'indifferent'. Eye-rolling, looking away from a person who is answering a question or signs of frustration can all lead to trauma responses and a person shutting down for fear of not being heard. Children in particular find the process of giving evidence traumatic and difficult. 50% of young people surveyed in 2001, 2004, 2007 and 2009 felt unable to understand the questions put to them by advocates<sup>18</sup>. This lack of understanding prevents them from giving their **best evidence**.<sup>19</sup>

The tone and responses of advocates should be kept in check<sup>20</sup>. Children have described advocates as being rude, sarcastic, bullying, 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 vulnerable people.

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<sup>18</sup> [Children and Cross-examination - Time to Change the Rules, John R Spencer, Michael E Lamb, 2012](#)

<sup>19</sup> [Tell Me What Happened: Questioning Children About Abuse, Second Edition, Michael E. Lamb, Deirdre A. Brown, Irit Hershkowitz, Yael Orbach, Phillip W. Esplin First published: 13 July 2018](#)

<sup>20</sup> [Achieving Best Evidence in Criminal Proceedings: Guidance Interviewing Victims and Witnesses, and Guidance on Special Measures \(2022\)](#)

Advocates should avoid nodding when they want an answer to be in the affirmative<sup>21</sup>. Advocates should neither subconsciously nor consciously indicate approval or disapproval of the information a child or vulnerable person has given to avoid encouraging acquiescence.<sup>22</sup> When rapport building crosses the boundaries of acceptability it can create a situation in which the vulnerable person or child wants to agree with everything suggested.

## **7. WATCH FOR SIGNS OF DISTRESS:**

Watch for signs of distress or tiredness in your witness. A tired or distressed witness may give unreliable evidence.

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 person 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 people they intend to cross-examine.

If a child or vulnerable person appears to be distressed or tired it is never appropriate to continue without some consideration of their 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 or poor listing.

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. SIGNPOST A NEW TOPIC:**

Signposting is the term used for the introduction given by an advocate to the topic of questioning they intend to embark on. Signposts can be a significant tool in helping to keep the question itself short.

Signposting is important to help vulnerable people and children focus attention and remain focused. When moving on to a new topic, advocates should re-signpost.

Signposts can be used to ask just one question before moving to another topic. Signposts should only be followed by questions about the signposted topic.

- I am going to ask about when you waited in the Sunday School Hall (pause)
- What games did you play when you waited in the Sunday School Hall?
- Who was in the Hall?

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<sup>21</sup> TAG Toolkit 2

<sup>22</sup> [Garven, Wood, & Malpass, 2000](#)

## **9. TELL THE VULNERABLE PERSON OR CHILD THAT YOU ARE GOING TO ASK THEM QUESTIONS:**

When signposting, advocates should not say “I am going to ‘talk about’ or discuss’ but instead they should explain that the vulnerable person or child is going to be asked questions. Vulnerable people in the court system are expecting to be asked questions. A child or vulnerable person should not be led to believe the advocate is going to talk about things. This is misleading and causes confusion. Cross-examination is about challenging an account and involves questions which contradict a version of events, not a conversation.

## **10. THINK ABOUT THE ORDER IN WHICH YOU WILL TAKE THE EVIDENCE – CHRONOLOGICALLY OR IN A STRUCTURED WAY:**

Jumping about a timeline or chronology of events can be especially difficult for a child or a vulnerable person. Advocates are encouraged to keep cross-examination questions in an order which the person can follow, either chronologically, in an alternative structure that may be advised by the intermediary, such as by topic, by reference to an individual, or by reference to anchoring events like house moves or school years. Timelines are common ways of being able to ground the vulnerable person or child in time. They can be agreed in advance by all parties.

A form of questioning that jumps around from topic to topic without the signposts that would ordinarily be given in ‘normal conversation’ to indicate a change of subject, seems as likely to confuse a truthful person as to trip up a lying one.<sup>23</sup>

## **11. AVOID REPETITION:**

A vulnerable person should not be asked the same question repeatedly.

A child or vulnerable person can easily be overawed by someone who appears to be an ‘authority figure’ to whom they have already provided an answer, but who does not seem to want to accept it. The child or vulnerable person 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 has suggested there should be a ban on such questioning.<sup>24</sup> Other work has shown that repeating questions can change subsequent responses to the same questions thereby undermining accuracy.<sup>25</sup>

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, and not asked questions on the same topics, to the same end, by each and every advocate. Advocates must accept that the courts will no longer allow them the freedom to conduct their own cross-examination where it involves simply repeating what others have asked before, or exploring precisely the same territory. For these purposes defence advocates will now be*

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<sup>23</sup> Brennan M and Brennan R E, *Strange Language – Child Victims under Cross-Examination*, Wagga Wagga, 1983, 3.

<sup>24</sup> 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

<sup>25</sup> [Samantha J Andrews and Michael Lamb, \*Lawyers’ question repetition and children’s responses in Scottish Criminal Courts \(2017\) Journal of Interpersonal Violence.\*](#)

*treated as a group and, if necessary, issues divided amongst them, provided, of course, there is no unfairness in so doing."*

## **12. AVOID STATEMENTS POSED AS QUESTIONS:**

The traditional style of asking a question which only becomes a question as a result of a change of intonation is not appropriate for a vulnerable person or a child. Some children and vulnerable people may not recognise the expectation of an answer. For others, such 'questions' which involve implicit tags have the same effect on accuracy as explicit tags.

It is acceptable to use a statement which is a precursor to a challenge question such as:

- 'Toby has been asked about what happened. Toby said he didn't take you to the park. Is Toby telling the truth or telling a lie?'

## **13. USE PLACES, NAMES, OBJECTS AND SUBJECTS – AVOID PRONOUNS:**

It is important to be clear about places, names, objects and subjects. Pronouns are complex to master and are easily muddled. Be especially careful about using the words 'there' and 'that'.

- Avoid: "Was she there?" Instead, ask: "Was Angela at the party?"
- Avoid: "When did he give it to you?" Instead, ask: "When did Shaun give you the teddy bear?"

Always use the names that the vulnerable person would understand especially when there are a lot of people holding the same role, such as police officers.

## **14. AVOID 'DO YOU REMEMBER (DYR)' QUESTIONS:**

"Do you remember..." is an unnecessary prefix to a question. The vulnerable person may start to concentrate on being able to remember instead of dealing with the actual subject of the question<sup>26</sup>.

A DYR question often does not elicit a clear answer. 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/or the piece of information they supposedly told them.

- Don't ask; "Do you remember what Bobby was wearing?"
- Ask instead: "What was Bobby wearing?"

## **15. TAKE SPECIAL CARE WHEN ASKING ABOUT TELLING SOMEONE ELSE:**

In some instances, a parent may have said to a child before speaking to the police that they should tell the police everything. A question phrased as:

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<sup>26</sup> 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.

- 'Did your Mummy tell you to say X?' needs to have some context. It could legitimately mean 'Did your Mummy reinforce to you that you should fully inform the police about everything that happened with John?'

Alternatively, if an advocate wants to suggest coaching, then the question needs to be more explicit and based in time:

- Before you spoke to the police officer, (pause) did your Mummy tell you to say bad things about John?

Asking a vulnerable person or a child about whether they told someone else about something can be confusing and care needs to be exercised when exploring these issues. Children may be confused as to whether they are being asked about the event or telling someone else about it.

Instead of asking both things in the same question, it should be broken down:

- Who gave you sweets at Sunday School? (Answer 'Uncle George')
- Did you tell anyone about the sweets? (Yes)
- Who did you tell about the sweets? (My Mummy)

## **16. EXERCISE CARE WHEN ASKING ABOUT DURATION, WEIGHT, HEIGHT, AGE AND SENSORY IMPACT.**

Often these types of questions are prefaced with 'how':

**'How long ago'** - Saying 'how long ago' something happened can be difficult for a vulnerable person or a child. In truth, this is often difficult for many of us. The concepts of time and number are cumulative skills. Children have particular difficulty dealing with number-related questions. They rarely generate useful answers, and so such questions are best avoided. If advocates need to ask these types of questions, using an agreed timeline or method discussed in advance with the intermediary is a better way of doing it to avoid confusion.

**'How tall, how heavy, how old'** - If an advocate has to ask about age, height or weight, comparative reference may be made to someone specific known to the child but, remember that all adults are 'big' to children, so they often do very poorly answering these types of questions. The information these questions solicit is usually not necessary and the risks of eliciting inaccurate information are great. For children under 10 years of age, these types of questions should be avoided completely.

**'How did this make you feel?'** - Questions on this topic may need to be asked for different reasons.

If a person has to be asked to describe a physical feeling such as penetration, then the questions have to be much more carefully framed; it is not the same as asking about an emotional impact. Such questions can lead to the vulnerable person breaking down and being traumatised. It is wise to leave this towards the end of questioning.

## 17. AVOID 'WHY' QUESTIONS

**Why** - Asking a vulnerable person why they did or did not do something is potentially accusatory and can imply involvement, and thereby partial responsibility. It is clear from the following examples that the questioner may be suggesting that the witness did something wrong.

- “Why did you go back to the house?”
- “Why did you stay behind after school?”
- “Why didn’t you warn Caroline about Uncle George?”

Another reason to avoid ‘why’ questions is that vulnerable people can find identifying intention and explaining causes very difficult. In addition, young children often reverse ‘why’ and ‘because’. They have been known to say, “I fell over, that’s why I was running.”

**‘How Come’** essentially means why? It should be avoided.

## 18. AVOID ‘TAG’ AND ‘LEADING’ QUESTIONS

**Tag questions** are sometimes referred to as **directive leading questions**. They are assertive in nature and include an interrogative tag such as, “The car was red, wasn’t it?”<sup>27</sup>

Tag questions are regarded as being a powerful, suggestive form of speech.<sup>28,29</sup> Judicial guidance and academic research have recommended that tag questions or directive leading questions should be avoided with children and adults whose intellectual development equates to that of a child or young person. Linguistically, they are challenging for children<sup>30</sup> and they can lead to inaccurate responses.<sup>31,32</sup>

These types of question are suggestive and/or coercive and they are unnecessarily complex. Some such questions contain a positive and a negative element which children or vulnerable people find difficult to fathom. It has been argued that to deal with these kinds of questions cognitively, it takes seven stages of reasoning.<sup>33</sup>

Tag questions allow the questioner to give evidence and simply ask for corroboration. Instead of asking, “You wanted the vodka, didn’t you?” you should frame it more simply by asking a less accusatory question, prefaced by a relevant signpost; “I am going to ask about the vodka.” “Did you want the vodka?”

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<sup>27</sup> Georgina Gous and Jacqueline M Wheatcroft. *Directive Leading Questions and Preparation Technique Effects on Witness Accuracy*. January 9 2020

<sup>28</sup> *Children and Cross-examination - Time to Change the Rules*, John R Spencer, Michael E Lamb, 2012

<sup>29</sup> [‘Tell me what happened’, Lamb et al. 2018](#)

<sup>30</sup> A Graffam Walker (1999) *Handbook on Questioning Children – A Linguistic Perspective*, Washington DC, American Bar Association Centre on Children and the Law

<sup>31</sup> 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 340-34

<sup>32</sup> [Garven et al. 2000](#)

<sup>33</sup> *Ibid.*

**Closed Leading Questions** are suggestive by nature. They are common in a traditional cross-examination, but they should be strictly limited in cross-examinations of vulnerable people and children. You should expect this to have been canvassed and ruled on at the GRH.

In 2010, the CA upheld a conviction in *R v W and M*<sup>34</sup> even though an 8-year-old person had retracted much of her account in cross-examination. The judgment stressed that children's answers to leading 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 and other vulnerable people are likely to agree with it.<sup>35</sup>

Dealing with a leading question asked by an authoritative figure can mean that the vulnerable person has to resist psychological pressure. Research has revealed that many children find leading questions oppressive<sup>36</sup>. In general, open-ended questions are better for all people, including those who are young or otherwise vulnerable, but some, including the very young and those on the autism spectrum, may handle narrower (but not leading) questions better than those that are completely open<sup>37</sup>. The overuse of 'did' questions has been mentioned in Principle 3 – Drafting questions in advance.

Often, we resort to a series of 'did' questions which can become oppressive because they invite only yes or no answers. Sometimes, 'did' questions are the only ones possible, but advocates should try to break them up. Instead of a series of questions such as:

- Did George put the chairs away at the end of Sunday School?
- Did you help George?
- Did you play games with Uncle George on the chairs?
- Did you play Incey Wincey Spider?

Try instead:

**SIGNPOST:** Becky, I want to ask you about the chairs at the end of Sunday School

- What happened to the chairs at the end of Sunday School? **(They went in the cupboard)**
- Who put the chairs in the cupboard? **(George)**
- Did you help George put the chairs in the cupboard? **(Yes)**
- What games did you play with George on the chairs? **(I can't remember)**
- Did you play Incey Wincey Spider when you were on the chairs? **(Yes)**

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<sup>34</sup> *R v W and M* [2010] EWCA 1926

<sup>35</sup> Bruck, M and Ceci, S J, *The suggestibility of children's memory* (1999)

<sup>36</sup> J Plotnikoff and R Woolfson (2009), *Measuring up? Evaluating Implementation of Government commitments to young witnesses in criminal proceedings*, NSPCC and The Nuffield Foundation

<sup>37</sup> <https://srcd.onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-8624.2011.01704.x>

To explore the crucial challenge further:

**SIGNPOST:** Becky, I'm going to ask you to look at a picture now of a little girl, Audrey will show it to you. (Pause) Becky, I'm going to ask you about playing Incey Wincey Spider with Uncle George.

- Can you point on the picture to where Uncle George put his hands on you when you played Incey Wincey Spider?
- Becky, you have pointed to the top of your leg on the picture – is this where Uncle George touched you?
- Uncle George says he only touched you on the bottom half of your leg - is Uncle George telling the truth or telling a lie?

## 19. NO COMPOUND QUESTIONS:

Questions should deal with a single proposition. At the best of times, people do not give the most accurate and/or reliable answers to compound questions<sup>38</sup> and the answers obtained from a vulnerable person may be confused and lacking in any value.

Instead of a long and complex question such as:

- When you were fifteen and you went into foster care, did you start hanging around the park at night with John drinking vodka and staying out late?

It should be broken down significantly into a series of signposts and questions that the vulnerable person or child can follow:

**SIGNPOST:** Susan, I'm going to ask you about things that you did when you were in foster care when you were 15.

- Who did you see in the evenings? **(I saw my friends)**
- Which friends did you see in the evenings? **(John)**
- Where did you see John in the evenings? **(Mostly the park)**

**SIGNPOST:** I'm going to ask about what you did at the park with John.

- What did you do in the park with John? **(We sat on the swings and talked)**
- Did you drink vodka when you were at the park? **(No)**
- John has been asked about what happened. John says you drank vodka every night at the park. Is John telling the truth or telling lies?

**SIGNPOST:** Susan, I'm going to ask about the time you spent in the park.

- What time was it when you left the park each night? **(About 10pm)**

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<sup>38</sup> 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.

## 20. ASK CONCISE/DIRECT QUESTIONS:

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

What follows is a complex question asking about the puppies in the R v George Graham case:

- “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?”

*In the case study, Faye says she was told by George that there were puppies in the shed, and he enticed her into the shed on that basis. George says he never told her there were puppies in the shed but that there may have been kittens at some point. Faye was given a dog once as a present.*

A better way to challenge her evidence about this is:

**SIGNPOST:** Faye, I am going to ask about the animals you saw at home when you were young.

- What animals did you see at home when you were young? **(Puppies)**
- Where did you see the puppies? **(In the shed)**
- Who told you there were puppies in the shed? **(George)**
- George has been asked about this. George says he never told you there were puppies in the shed. Is George telling the truth or telling lies?
- George says there were some kittens at home when you were young. Were there ever any kittens, Faye?
- George says you once got a dog for your birthday. Is George telling the truth or telling lies about the dog?

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