



ADVOCACY AND THE VULNERABLE National Training Programme

The 20 Principles of Questioning

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The 20 Principles have been created by HHJ Cahill QC, Professor Michael Lamb and Dr. Jacqueline Wheatcroft. They are not intended to be exhaustive. They have been devised to assist in giving consistent feedback to delegates on the training programme. The cross-examination of vulnerable witnesses is case-specific and this approach should be adjusted accordingly, depending on the extent and type of vulnerability in each witness in each case.

Three principles for preparation

No.	Rule	Reason
1	GRH Comply with the Ground Rules Hearing (GRH).	The rules arising from the Ground Rules Hearing are sacrosanct and must be adhered to by all participating advocates. It is very likely that advocates will have been asked to submit lists of questions for each witness so that the Judge can see them in advance and decide if they are appropriate in style and in length. This is vital to the success of an effective cross-examination of a vulnerable witness.
2	Issues Identify the key issues.	Identification of the key issues is imperative to formulate focused, brief questions. 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.
3	Pre-draft Draft your questions in advance.	The drafting of questions in advance is imperative. It will help advocates to keep a ‘flow’ of questions and not to fall back onto tried and tested methods of cross-examination. It is the Judge, and not an Intermediary, who is the final arbiter about whether a question is permitted. Intermediaries are there to advise and assist, not to make decisions.

Nine principles for conduct

No.	Rule	Reason
4	Rapport You do not need to build a rapport with the witness. A simple polite greeting is fine.	There is no need for a cross-examining advocate to go out of his/her way to build up a rapport as a precursor to starting to question the witness. It is important that the witness keeps a focus on the role of the parties in the process. It will not help a vulnerable witness to be side-tracked by irrelevancies. It is more likely that the Judge will explain to the witness that it is OK if they don't understand or if they don't remember something.
5	Ask, not talk Do not suggest you will 'talk' to the witness.	Witnesses are expecting to be asked questions and that is the role of the advocate in proceedings. They may get confused if you suggest otherwise.
6	Chronology Keep to a chronological order.	Jumping about a timeline or chronology of events will be especially difficult for a vulnerable witness. As far as is possible, keep questions to an order which the witness can follow chronologically.
7	Pace Put questions at a suitable pace for the witness.	Pauses between the questions can be important (at least six seconds is recommended) along with time allowances to permit the witness to digest the question. Response time with vulnerable witnesses will be slower. Wait for them to answer rather than plough 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. They need time to digest information and decide how to answer the question.
8	No statements Ask questions. Do not make statements.	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. They may not understand the subtlety of the question and may not realise they can/should answer or may think they are obliged to agree.

9	<p>Signpost</p> <p>Signposting is important.</p>	<p>For a vulnerable witness, signposting is important to help them stay focused. When moving on to a new topic, re-signpost for the witness. Don't move from one topic to another without telling them first.</p>
10	<p>No repetition</p> <p>Do not be repetitive.</p>	<p>Per Hallett LJ <i>in R v Jonas [2015] EWCA Crim 562</i>. As was explained in <i>R v Lubemba and Pooley [2014] EWCA Crim 2064</i>, 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 will now be treated as a group and, if necessary, issues divided amongst them, provided, of course, there is no unfairness in doing so.</p>
11	<p>Behaviour</p> <p>Your behaviour towards the witness should be kept in check at all times.</p>	<p>Vulnerable witnesses find human behaviours hard to read and can be inhibited by behaviour which appears to be disapproving or indifferent. It is imperative that advocates do not exhibit rage or irritation for example, in order to maintain an equilibrium in the court arena for the witness to answer the questions being put to him/her.</p>
12	<p>Distress</p> <p>Watch for signs of distress or tiredness in your witness.</p>	<p>This is very much a part of the advocate's role and understanding the vulnerabilities of the particular witness in question is crucial. The intermediary reports are likely to be detailed and to make recommendations specific to that witness.</p> <p>Advocates should be very familiar with the recommendations in respect of each of the witnesses he/she intends to cross-examine.</p>

Eight principles for questions

No.	Rule	Reason
13	<p>No “remember” questions</p> <p>Avoid questions starting with, ‘do you remember?’</p>	<p>This will require complex processing for some witnesses, particularly children. Use simpler, direct questions such as: ‘Did you go to the swings with Bob?’</p> <p>or</p> <p>‘When you were six, did you get a puppy?’</p>
14	<p>No pronouns</p> <p>Identify who you are talking about in each question.</p>	<p>Use the person’s name or the name of a place or spell out what it is you are referring to;</p> <p>‘Did uncle George (not ‘he’) give you sweets?’</p> <p>‘Did you like going in the shed (not ‘in there’)?’</p>
15	<p>Telling someone else</p> <p>Exercise special care when asking if and what a witness told someone else.</p>	<p>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.</p> <p>By way of example:</p> <p>‘Do you remember telling mummy your bottom was sore?’</p> <p>If the child answers ‘no’ this could mean ‘No, I don’t remember’ or ‘No, my bottom wasn’t sore’ or ‘Yes I remember telling Mummy but no, my bottom wasn’t sore.’</p> <p>Instead ask:</p> <p>‘Was your bottom sore?’</p> <p>‘Did you tell your mummy?’</p>
16	<p>No ‘why’ and ‘how’ questions</p> <p>Avoid ‘why’ and ‘how’ questions.</p>	<p>Avoid asking vulnerable witnesses to explain why or how something happened. Instead, ask them what happened.</p> <p>Vulnerable witnesses can find identifying intention very difficult to do and young children often reverse ‘why’ and ‘because’. E.g. ‘I fell over that’s why I was running.’</p>
17	<p>No ‘tag’ questions</p> <p>Do not ask ‘tag’ questions.</p>	<p>Judicial guidance has recommended that this form of question should be avoided with children and that a direct question is far better. By analogy, tag questions should also be avoided with an adult whose intellectual development</p>

		<p>equates to that of a child or young person. Tag questions are undesirable not only because they are suggestive and/or coercive but also because they are unnecessarily complex. Tag questions contain a positive and a negative element which vulnerable witnesses find difficult to fathom.</p> <p>Instead of asking:</p> <p>‘You wanted the cake, didn’t you?’ you should frame it more simply by asking: ‘Did you like the cake?’ ‘Did you want to eat it?’</p>
18	<p>No compound questions</p> <p>Avoid compound questions.</p>	<p>At the best of times, witnesses do not give reliable answers to these types of questions but the answers obtained from a vulnerable witness as a result of this type of question will be confused and lacking in any value. For example, do not say:</p> <p>‘You and Susan went to the park, played on the swings, drank vodka and nothing else happened?’</p> <p>Instead try:</p> <p>‘Did you and Susan go to the park?’</p> <p>‘Did you play on the swings?’</p> <p>‘Did you drink vodka?’</p> <p>‘Did anything else happen?’</p>
19	<p>Direct questions</p> <p>Ask short, directed questions.</p>	<p>For example:</p> <p>‘Did you go to the park with Jason?’</p> <p>‘Did you want to go to the park with Jason?’</p> <p>‘Was anyone else with you?’</p> <p>‘Are you sure Harry wasn’t with you?’</p>
20	<p>No leading questions</p> <p>Do not ask leading questions but start with ‘what’, ‘where’, ‘when’ and ‘did’.</p>	<p>The reasons for this relate in part to the ‘suggestibility’ of vulnerable witnesses and their desire to answer in a manner designed to please the questioner as opposed to allowing the witness to give their own answer. Questions can be suggestive in many ways. Tag questions that presume information not stated by the witness are problematic. Leading questions tend to be tag questions or statements turned into a question. Both are to be avoided.</p>

The 20 principles with examples

Three principles for preparation

No.	Rule	Reason
1	Comply with the Ground Rules Hearing (GRH)	<p>In the case of R v George Graham, the following set of questions is not permitted under the GRH ruling number 7 (page 24) which states that; ‘the family background will not be explored with Daniel, Fay or Caroline in any detail beyond that which is relevant to establish essential facts. Any relevant family background should either be part of the admissions or proved by other evidence’. None of these questions, in red below, go to establish essential facts. They also contain statements:</p> <p>‘You left home for good when you were 16.’</p> <p>‘And you have 3 children now.’</p> <p>‘Why did your children get taken away from you?’</p> <p>‘How long after that baby was born did you start going to the mental health drop in centre?’</p> <p>‘You were asked by a doctor to attend a drop in centre for people with mental health difficulties.’</p> <p>‘You didn’t go much.’</p> <p>‘You went 6 out of 21 times.’</p>
2	Stick to the issues	<p>For example:</p> <p>‘Did you get it wrong when you said it was your third pregnancy?’</p> <p>Why did you get such an important detail wrong?’</p> <p>These two questions are neither necessary nor relevant and both breach the GRH rulings on relevance.</p>
3	Pre-draft questions	<p>You will be asked to submit questions. Not topics.</p> <p>If you pre-draft, you can check, for example, that you have used the same tense throughout.</p>

		<p>For instance: ‘Did George sometimes say, you can’t come in the shed?’</p> <p>Both the present and the past tense are used here. A better way of asking this question would be,</p> <p>‘Did George always let you go in the shed?’</p>
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Nine principles for conduct

No.	Rule	Reason
4	<p>Rapport</p> <p>All of this work should have been done by the judge beforehand 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. The vulnerable witness is expecting to be asked questions.</p>	<p>Nine principles for conduct</p> <p>Do not say, for example:</p> <p>‘Fay, my name is..., we met earlier on.’</p> <p>‘I’m going to ask you questions soon, but two things, I’m going to check you understand before that...’</p> <p>‘If you don’t understand a question, will you tell me and Jan?’</p> <p>‘And if you want a break for any reason, will you ask me or Jan?’</p> <p>Simply say:</p> <p>‘Hello Fay, I am going to ask you questions about when you were little.’</p>

5	<p>Ask, not talk</p> <p>Do not suggest you will ‘talk’ to the witness.</p>	<p>Do not say: ‘Now I want to talk to you about Caroline.’</p> <p>Instead you should say:</p> <p>‘I am going to ask you questions about Caroline...’</p>
6	<p>Chronology</p> <p>Keep to a chronological order. This does not mean necessarily from start to finish. You may have to take a witness backwards to get them to the point in time you are asking about.</p>	<p>Sometimes, you will need to work backwards chronologically. For example, if you are asking about events that took place in a house where a child used to live, you will need to ask about periods of time in their life, such as when they were in Year 1 or after they started school or after Mummy had the witness’ baby brother, to help the witness put time into context, then you can ask, for example: ‘Did you live in a house with Bob then?’</p> <p>Most of the time, you should ask questions that follow a chronological timeline – what happened when Fay was 6, when she was 15 and what happened more recently.</p>
7	<p>Pace</p> <p>Put questions at a suitable pace for the witness.</p>	<p>This is self-explanatory. Witnesses will feel under pressure to respond quickly. They should be allowed to answer the questions just put to them after considering it and understanding fully what is being asked.</p>
8	<p>No statements</p> <p>Ask questions.</p> <p>Do not make statements.</p>	<p>For example, the examples given in red are statements and not questions. They are also complicated. They are not relevant. The answers are in the Agreed Facts (pages 20 & 21 of the bundle). They are in breach of the GRH.</p> <p>‘You told the police.’</p> <p>‘The police tried to talk to you but after making the complaint, you didn’t go back to the police.’</p> <p>‘You knew the police had spoken to your mother.’</p> <p>‘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.’</p>

<p>9</p>	<p>Signpost</p> <p>Signposting is important and once you have signposted a topic, ask questions only about that topic. It will keep them focussed on the topic they are about to discuss.</p> <p>The word ‘topic’ is a word often used in primary education and one with which children will be familiar. If you have five topics, you can say this at the outset. The problem of course arises if you end up asking more than five.</p>	<p>For example, if you say, ‘Topic 1 – Family’ the questions should be about the family. Poor examples of questions under this heading are:</p> <p>‘Did you get on with Aunt Fay?’</p> <p>‘Did you see Aunt Fay once a week or more than once a week?’</p> <p>‘Does Aunt Fay like George?’</p> <p>‘Did Aunt Fay tell you she doesn’t like Uncle George?’</p> <p>It would have been better to say:</p> <p>‘I am going to ask you some questions about Aunt Fay’ or ‘Topic 1 – Aunt Fay’.</p> <p>‘Did you get on with Aunt Fay?’</p> <p>‘Did you see Aunt Fay once a week or more than once a week?’</p> <p>‘Does Aunt Fay like George?’</p> <p>‘Did Aunt Fay tell you she doesn’t like Uncle George?’</p>
<p>10</p>	<p>No repetition</p> <p>Do not be repetitive.</p> <p>Per Hallett LJ <i>in R v Jonas [2015] EWCA Crim 562.</i></p>	<p>The following questions are unnecessarily repetitive:</p> <p>‘Did your mum sometimes get angry with you?’</p> <p>‘When your mum got angry with you, was it because you had done something wrong?’</p> <p>‘Did you sometimes tell your mum you hadn’t done anything wrong?’</p> <p>‘When you told your mum you hadn’t done anything wrong, did your mum believe you?’</p>

		<p>‘Did your mum ever call you a liar?’</p> <p>‘Did your mum ever call you names?’</p> <p>‘Did your mum call you stupid?’</p> <p>‘What else did your mum call you?’</p>
11	Behaviour Your behaviour towards the witness should be kept in check at all times.	This is self-explanatory.
12	Distress Watch for signs of distress or tiredness in your witness.	This is self-explanatory.

Eight principles for questions

No.	Rule	Reason
13	<p>No “remember” questions</p> <p>Avoid questions starting with, ‘do you remember?’</p>	<p>Remembering and being asked how often something happened are both complex areas for a vulnerable witness and should be avoided.</p> <p>‘Do you remember how often you went in Granddad George’s shed?’</p> <p>A better way of asking about this is:</p> <p>‘I want to ask you about going to Granddad’s house.’</p> <p>‘Did you go the shed once or more than once?’</p> <p>or</p> <p>‘Did you go to the shed once a week or several times a week?’</p>

14	<p>No pronouns</p> <p>Identify who you are talking about in each question.</p>	<p>Poor examples of this are as listed below – they should all refer to George:</p> <p>‘Did you get on well with him?’</p> <p>‘Did he get cross with you for stealing?’</p> <p>‘Did he get cross with you for telling lies?’</p> <p>‘Did he get cross with you about other things?’</p> <p>‘Did he say that you were stupid?’</p>
15	<p>Telling someone else</p> <p>Exercise special care when asking if and what a witness told someone else.</p>	<p>This is a poor example of how to tackle this situation:</p> <p>‘You told the police officer that at the time you told the nurse about what you say George did to you that you were on medication.’</p> <p>There are at least four separate parts to this question. The witness might say yes/no to telling the police office (ROY), yes/no to telling the nurse, yes/no to saying what George did and yes/no to being on medication. The answer will be worthless.</p>
16	<p>No ‘why’ and ‘how’ questions</p> <p>Avoid ‘why’ and ‘how’ questions.</p>	<p>Questions such as the following should be avoided:</p> <p>‘Why didn’t you try to speak to the police officer again?’</p> <p>‘Why did you go back to live with George?’</p> <p>‘How did George play Incey Wincey Spider on your arm?’</p>
17	<p>No ‘tag’ questions</p>	<p>‘You made a complaint about your step dad in 1999, didn’t you?’</p>
18	<p>No compound questions</p> <p>Avoid compound questions.</p>	<p>‘Did you want to get George into trouble because you don’t get on?’</p> <p>It would be better to ask:</p> <p>‘Did you get on with George?’</p> <p>‘Did you want to get him into trouble?’</p>

<p>19</p>	<p>Direct questions</p> <p>Ask short, directed questions.</p>	<p>For example, a lengthy, unfocussed question is:</p> <p>‘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?’</p> <p>More examples of poor questions are:</p> <p>‘Did you decide not to make a statement because what you said about George abusing you was untrue?’</p> <p>‘Did you talk to Caroline about the lollipop game before you talked to Gillian Perkins about it last year?’</p> <p>‘When you went to visit, would anyone else be at their house?’</p> <p>‘Would your mum have thought it strange for you to have 6 lollipops at once?’</p> <p>Use of the word ‘would’ is also confusing. It suggests a hypothesis – imagined rather than true.</p> <p>A better way to ask those questions is:</p> <p>‘When you went to Granddad George’s house, was anyone else there?’</p> <p>‘Did your mum let you have lollipops?’</p> <p>‘Did your mum let you have 6 lollipops at the same time?’</p> <p>An exemplary set of questions dealing with the ‘puppies and the kittens evidence’ with Fay is, as follows:</p> <p>‘Hello Fay.</p> <p>Fay, I am going to ask you about the pets you had at home when you were young.</p>
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		<p>Did you have a dog of your own?</p> <p>Did you have kittens?</p> <p>Now I want to ask you about the shed in the garden.</p> <p>Did George keep lots of things in his shed, like bits of radios?</p> <p>Did you go to the shed to see the kittens?</p> <p>Fay, are you sure you saw puppies in the shed?</p> <p>Do you think it might have been kittens that you saw in the shed?</p>
20	<p>No leading questions</p> <p>Do not ask leading questions but start with 'what', 'where', 'when' and 'did'.</p>	<p>'You told the police that it went on for a number of years.'</p> <p>This is leading and a statement. It also refers to the police when it should refer to the interviewing ABE officer by name, which in this case is Roy.</p> <p>'You told Roy that the abuse went on for a number of years. Are you sure the abuse went on for a number of years?'</p>