



The Inns of  
Court College  
of Advocacy

The Council of the Inns of Court

## **ADVOCACY AND THE VULNERABLE**

### **National Training Programme**

**The Course Introduced – HJJ Peter Rook QC  
(transcript of video)**

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**A** **HHJ PETER ROOK QC:** History is full of examples of society turning the  
proverbial “blind eye” to phenomena that were manifestly wrong. We now  
**B** appreciate the flawed approach of the past in respect of the treatment of the  
vulnerable in court. Most people acknowledge that it will only be a matter of  
**C** time before every Criminal and Family Law Advocate will have to acquire the  
specialist skill of handling the vulnerable as part of their basic training. In the  
meantime, current advocates need to make up ground as rapidly as possible  
and to embrace the sea change.

**D** Criminal and Family practitioners frequently encounter vulnerability in  
their cases. The handling of the issues surrounding vulnerability and the  
approach to such witnesses involves specialist skills. Over the last decade or so  
special measures to assist vulnerable witnesses to give their best evidence have  
**E** been a conspicuous success. Witnesses have been able to give evidence where  
even half a generation ago it would have been inconceivable.

**F** Some advocates have already acquired this necessary specialist skill.  
There are a growing number of excellent advocacy trainings in this area. First  
class material such as The Advocate’s Gateway Toolkits and the CBA Training  
**G** Video, “A Question of Practice” are readily accessible.

**H** However, there are strong and justified concerns that advocacy has not  
evolved so as to ensure best practice is universally adopted in respect of the  
handling and questioning of vulnerable witnesses and defendants. Well-  
publicised shortcomings have been at their starkest in respect of some sex  
cases at a time when over one-third of contested cases in the Crown Court are

A in respect of sexual offences. However, the problem is not confined to sex cases  
as vulnerable witnesses and defendants are to be found in many different  
types of case.

B Questioning that contravenes principles for obtaining accurate  
information from a witness by exploiting his or her developmental limitations,  
is not only wholly inconsistent with a fair trial but also contravenes the  
C respective Codes of Conduct of both the Bar and Solicitors.

D The problem needs to be addressed as a matter of urgency. The dark  
days of traditional adversarial cross-examination of the vulnerable are over.  
Judges have been trained to adopt an interventionist approach to ensure  
compliance with clearly defined rules made at Ground Rules Hearings tailor-  
E made for the particular vulnerable witness. These critical hearings must take  
place, even if no Intermediary is to be used, in all young witness cases or in  
other cases where a witness or a defendant has communication needs.

F In late 2013, we were invited by The Advocacy Training Council to  
devise a pan profession training course for all advocates who undertake cases  
involving the vulnerable. Our main objective is to ensure high standards in the  
G quality and consistency of advocacy by all advocates involved in these cases,  
whether barrister or solicitor, and whether in the Crown Court or Youth Court.

H The training is designed to support and empower delegates rather than  
to exclude. We wish to make the training accessible to all. The courses are not  
designed simply for those with niche and esoteric practices. The course is

A designed to ensure that all trainees are up to date with all the significant developments in respect of “Advocacy and the Vulnerable”.

B We are stressing the importance of ensuring effective communication with the witness, adapting to the particular witness’s needs. We will be teaching the categories of questions that must be avoided to ensure this is achieved whilst at the same time demonstrating the appropriate approach to questioning. Effective cross-examination can be conducted without long, complicated questions posed in a leading manner.

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D Pre-course online training includes a series of short lectures from experts such as legal academics, child psychologists and psychiatrists. There will be pre-reading of both legal and practical materials. They will cover child development; and the ground-breaking case law from the Court of Appeal underlining the importance of adapting practice to fit the needs of witnesses and the conscious adjustments that may be necessary for defendant vulnerability. These cases make it clear that this approach does not deprive a defendant from having a fair trial. These will be filmed for further use.

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G The online training will include the viewing of a Ground Rules Hearing. This will include the Judge’s ruling. Trainees will need to watch this with care so as to be in a position to draft written topics and questions for the interactive part of the course.

H These sessions will illustrate: (1) the importance of proper preparation of questioning by all advocates taking into account the particular witness’s needs; (2) how to achieve effective Ground Rules Hearings and the correct

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procedure and safeguards where the Judge decides limitations are necessary and appropriate; (3) the need for a departure from traditional cross-

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examination so as to enable young and vulnerable witnesses, including a

defendant, to give the best evidence they can. This will mean the avoidance of questions that may be misunderstood or risk unreliable answers.

C

Every trainee will have an opportunity to undertake some questioning themselves. They will receive constructive feedback from the trainers. Trainees will not be warned in advance as to which advocacy they have been selected to undertake during the interactive session.

D

We feel that all advocates will seize this opportunity to ensure they either have the appropriate skills or to improve their skills so that within a few years lawyers will be regarded as skilled at recognising and handling vulnerability. The exploitation of vulnerability in the witness box will then be considered to be a phenomenon of an unenlightened past.

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