



The Advocate's Gateway

The Inns of Court College of Advocacy

Case management in criminal cases when a witness or a defendant is vulnerable: essential questions on Toolkit 1a

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The Advocate's Gateway toolkits aim to support the early identification of vulnerability in witnesses and defendants and the making of reasonable adjustments so that the justice system is fair.

Effective communication is essential in the legal process. The handling and questioning of vulnerable witnesses and defendants is a specialist skill ([*Raising the Bar: The Handling of Vulnerable Witnesses, Victims and Defendants in Court 2011*](#)). Advocates must ensure that they are suitably trained and that they adhere to their professional conduct rules.

Courts are expected to make reasonable adjustments to remove barriers for people with disabilities ([*Equal Treatment Bench Book 2013*](#), giving effect to the Equality Act 2010).

These toolkits draw on the expertise of a wide range of professionals and represent best practice guidance; they are not legal advice and should not be construed as such.

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ESSENTIAL QUESTIONS 4

Note: Unless otherwise indicated, the paragraph numbers referred to in this checklist are the paragraph numbers of the [Toolkit 1a - Case Management in criminal cases when a witness or a defendant is vulnerable](#).

ESSENTIAL QUESTIONS

Is the witness vulnerable?		
	Ask these questions ...	Notes
1.	<p>Who are vulnerable witnesses?</p> <ul style="list-style-type: none"> • Section 16 Youth Justice and Criminal Evidence Act 1999 (YJCEA); • Criminal Practice Directions [2015] EWCA Crim 1567 (CPD), 3D.1 and 3D.2; • para 1.3. 	
2.	<p>What other toolkits deal with vulnerability?</p> <ul style="list-style-type: none"> • Toolkit 10 - Identifying vulnerability in witnesses and defendants; • Toolkit 18 - Working with traumatised witnesses, defendants and parties. 	
3.	<p>What other toolkits apply when the defendant is under 18?</p> <ul style="list-style-type: none"> • Toolkit 8 - Effective participation of young defendants. 	
When should disclosure be sought?		
	Ask these questions ...	Notes
4.	<p>When should applications for third-party disclosure be made?</p> <ul style="list-style-type: none"> • At the Plea and Trial Preparation Hearing (PTPH) in the Crown Court. 	
5.	<p>What if the witness is under 10?</p> <ul style="list-style-type: none"> • 2015 Protocol to Expedite Cases Involving Witnesses under 10 Years; • para 2.1. 	

When should disclosure be sought?		
	Ask these questions ...	Notes
6.	<p>What if there is an allegation of child abuse?</p> <ul style="list-style-type: none"> • 2013 Protocol and Good Practice Model: Disclosure of information in cases of alleged child abuse and linked criminal and care directions hearings; • para 2.1. 	
7.	<p>What if there is an allegation of child abuse and disclosure is required of education records for schools outside Local Authority control?</p> <ul style="list-style-type: none"> • Para 2.1 	
Intermediary assessment for witnesses		
	Ask these questions ...	Notes
8.	<p>When should an intermediary assessment be considered?</p> <ul style="list-style-type: none"> • As early as possible; • para 2.3. 	
9.	<p>For which witnesses should there be an intermediary assessment?</p> <ul style="list-style-type: none"> • CPD 3F.26; • para 2.2. 	
10.	<p>Should all witnesses under 11 have an intermediary assessment?</p> <p>No:</p> <ul style="list-style-type: none"> • para 2.2. 	
11.	<p>Can there be an intermediary at trial if there was no intermediary at the ABE interview?</p> <p>Yes:</p> <ul style="list-style-type: none"> • R v Boxer [2015] EWCA Crim 1684; • para 2.2. 	

Intermediary assessment for witnesses		
	Ask these questions ...	Notes
12.	<p>What other toolkit deals with intermediaries?</p> <ul style="list-style-type: none"> • Toolkit 16 - Intermediaries: step by step. 	
Intermediaries for defendants		
	Ask these questions ...	Notes
13.	<p>Is there a statutory provision in force to allow a defendant to be assisted by an intermediary?</p> <p>No:</p> <ul style="list-style-type: none"> • CPD 3F.12; • R v Cox [2012] EWCA Crim 549; • para 2.4 	
14.	<p>How likely is it that an intermediary will be appointed for an adult defendant?</p> <ul style="list-style-type: none"> • CPD 3F.13; • para 2.4. 	
15.	<p>If an intermediary is appointed for an adult defendant, will he or she be appointed for the whole trial?</p> <ul style="list-style-type: none"> • CPD 3F.13; • R v Rashid [2017] EWCA Crim 2; • para 2.4. 	
16.	<p>What factors will the court take into account when deciding whether to appoint an intermediary?</p> <ul style="list-style-type: none"> • R v Rashid [2017] EWCA Crim 2; • para 2.4. 	
17.	<p>What steps should the court take if there is no intermediary for a defendant?</p> <ul style="list-style-type: none"> • Para 2.5 	

Special measures		
	Ask these questions ...	Notes
18.	<p>Who is eligible for special measures?</p> <ul style="list-style-type: none"> • Section 16 and section 17 YJCEA; • para 2.8. 	
19.	<p>What special measures are available?</p> <ul style="list-style-type: none"> • Para 2.9 	
20.	<p>Can a defendant give evidence by live link?</p> <p>Yes:</p> <ul style="list-style-type: none"> • section 33A YJCEA; • para 2.10 	
21.	<p>What steps should be taken if a witness or defendant gives evidence by live link?</p> <ul style="list-style-type: none"> • Appendix 1 of Amendment No 3 to the Criminal Practice Directions 2015; • CPR 18.10 and CPR 18.15; • para 2.11. 	
22.	<p>Can defence witnesses give evidence by live link?</p> <p>Yes:</p> <ul style="list-style-type: none"> • CPD 3N.11; • para 2.12. 	
23.	<p>What special measures apply for children or those under 18 when the Achieving Best Evidence (ABE) interview was recorded?</p> <ul style="list-style-type: none"> • Section 21 YJCEA; • para 2.13. 	
24.	<p>When is it appropriate for a witness to give evidence by remote link?</p> <ul style="list-style-type: none"> • See Toolkit 9 - Planning to question someone using a remote link. 	

Special measures		
	Ask these questions ...	Notes
25.	<p>When should an application for special measures be made?</p> <ul style="list-style-type: none"> • CPR 18.3; • para 2.14. 	
Pre-trial familiarisation visit to court		
	Ask these questions ...	Notes
26.	<p>What is the purpose of pre-trial familiarisation visit?</p> <ul style="list-style-type: none"> • Para 3.1 	
27.	<p>Who should attend the pre-trial familiarisation visit?</p> <ul style="list-style-type: none"> • CPS Guidance, Speaking to Witnesses at Court 2016, para 2.2; • para 3.1 	
28.	<p>Who should supervise the pre-trial familiarisation visit?</p> <ul style="list-style-type: none"> • Witness Charter 2013, standard 11; • para 3.2. 	
29.	<p>What should happen at the pre-trial familiarisation visit?</p> <ul style="list-style-type: none"> • Witness Charter 2013, standard 17; • para 3.3. 	
Counselling/therapy		
	Ask these questions ...	Notes
30.	<p>Is it for the police or prosecution to decide if a witness should seek pre-trial counselling or therapy?</p> <p>No:</p> <ul style="list-style-type: none"> • para 3.4. 	

Counselling/therapy		
	Ask these questions ...	Notes
31.	<p>If counselling/therapy takes place, are records of it disclosable?</p> <p>They may be:</p> <ul style="list-style-type: none"> • Ministry of Justice, Achieving Best Evidence in Criminal Proceedings 2011, sections 4.58–4.59; • CPS, 'Provision of therapy for child witnesses prior to a criminal trial', sections 4.3–4.4 and 5.4; • CPS, 'Provision of therapy for vulnerable or intimidated adult witnesses prior to a criminal trial', sections 4.3–4.4 and 6.5; • Equal Treatment Bench Book 2013, chapter 5, 'Children and vulnerable adults'; • para 3.4. 	
Ongoing assessment and review		
	Ask this question ...	Notes
32.	<p>Should there be an ongoing assessment and review of the witness's needs?</p> <p>Yes:</p> <ul style="list-style-type: none"> • para 3.5. 	
Keeping the prosecution witness informed		
	Ask this question ...	Notes
33.	<p>Should prosecution witnesses be kept informed of the progress of the case?</p> <p>Yes:</p> <ul style="list-style-type: none"> • CPS Guidance, Speaking to Witnesses at Court 2016; • para 3.7. 	

Plea and trial preparation hearings		
	Ask these questions ...	Notes
34.	<p>What steps should be taken by the PTPH?</p> <ul style="list-style-type: none"> • Paras 4.1–4.3. 	
35.	<p>Should there be priority listing for trials of vulnerable witnesses?</p> <p>Yes:</p> <ul style="list-style-type: none"> • para 4.4. 	
36.	<p>What applications should be made?</p> <ul style="list-style-type: none"> • Para 4.7 	
37.	<p>Should there be provision for further pre-trial hearings?</p> <ul style="list-style-type: none"> • Para 4.9 	
Ground rules hearings		
	Ask these questions ...	Notes
38.	<p>When must a ground rules hearing (GRH) be held?</p> <ul style="list-style-type: none"> • Section 28 YJCEA; • para 5.1 	
39.	<p>When may a GRH be held?</p> <ul style="list-style-type: none"> • CPD 3E; • R v Lubemba [2014] EWCA Crim 2064, para 42; • paras 5.1 and 5.2. 	
40.	<p>What steps should advocates take to prepare for a GRH?</p> <ul style="list-style-type: none"> • Para 5.3 	

Ground rules hearings		
	Ask these questions ...	Notes
41.	<p>What are the restrictions on an advocate cross-examining a vulnerable witness or defendant?</p> <ul style="list-style-type: none"> • R v Lubemba [2014] EWCA Crim 2064; • R v Sandor Jonas [2015] EWCA Crim 562; • CPR 3.9(7) and 3.11(d); • Equal Treatment Bench Book 2013, chapter 5, 'Children and vulnerable adults', para 27c; • paras 5.4 and 5.5. 	
42.	<p>What other matters should be dealt with at the GRH?</p> <ul style="list-style-type: none"> • Para 5.5; • para 5.6. 	
43.	<p>Should there be a note of what was ordered at the GRH?</p> <p>Yes:</p> <ul style="list-style-type: none"> • para 5.7. 	
44.	<p>What other toolkits should be considered?</p> <ul style="list-style-type: none"> • Toolkit 1 - Ground rules hearings and the fair treatment of vulnerable people in court 	
Section 28 YJCEA		
	Ask these questions ...	Notes
45.	<p>When will there be a hearing under section 28?</p> <ul style="list-style-type: none"> • Para 5.9 	
46.	<p>Must there be a GRH for a section 28 hearing?</p> <p>Yes:</p> <ul style="list-style-type: none"> • para 5.11. 	
47.	<p>Should the intermediary attend the section 28 hearing?</p> <p>Yes:</p> <ul style="list-style-type: none"> • para 5.11. 	

Section 28 YJCEA		
	Ask these questions ...	Notes
48.	<p>Can the cross-examination at a section 28 hearing be edited?</p> <p>Yes, with the judge's permission:</p> <ul style="list-style-type: none"> • para 5.13. 	
Pre-trial review		
	Ask these questions ...	Notes
49.	<p>When and why should a pre-trial review (PTR) take place?</p> <ul style="list-style-type: none"> • Para 5.14. 	
50.	<p>What steps should have been taken by the PTR?</p> <ul style="list-style-type: none"> • Paras 5.15 and 5.16. 	
51.	<p>What particular problems should be resolved at the PTR for vulnerable witnesses?</p> <ul style="list-style-type: none"> • Para 5.18; • para 5.17. 	
52.	<p>Should timetabling of a vulnerable witness's evidence be dealt with at the PTR?</p> <p>Yes:</p> <ul style="list-style-type: none"> • para 5.18. 	
53.	<p>Should consideration be given at the PTR to arrangements for the access and exit of the vulnerable witness when at court?</p> <p>Yes:</p> <ul style="list-style-type: none"> • para 5.19. 	

Pre-trial review		
	Ask these questions ...	Notes
54.	<p>Should consideration be given at the PTR as to who will attend the live link?</p> <p>Yes:</p> <ul style="list-style-type: none"> • appendix 1 of Amendment No 3 to the Criminal Practice Directions 2015; • CPR 18.10 and 18.15; • para 5.20. 	
Trial		
	Ask these questions ...	Notes
Practical issues		
55.	<p>What steps should be taken at trial to ensure compliance with previous directions?</p> <ul style="list-style-type: none"> • Paras 6.1 to 6.5 	
Meeting the witness		
56.	<p>What should prosecuting counsel say to a prosecution witness before the witness gives evidence?</p> <ul style="list-style-type: none"> • Speaking to Witnesses at Court 2016, paras 2.1 and 3.4; • paras 6.6 and 6.7. 	
57.	<p>Should the judge speak to a vulnerable witness before the witness gives evidence?</p> <ul style="list-style-type: none"> • Para 6.8. 	
58.	<p>If the judge speaks to a vulnerable witness before the witness gives evidence, should the advocates be present?</p> <p>Yes:</p> <ul style="list-style-type: none"> • para 6.8. 	

Trial		
	Ask these questions ...	Notes
Participation and adjustments		
59.	<p>What steps should the judge take to ensure the full and effective participation of a vulnerable witness in the trial?</p> <ul style="list-style-type: none"> • Paras 6.10 and 6.11. 	
Questioning the vulnerable witness		
60.	<p>Will the judge stop cross-examination of a vulnerable witness if it fails to comply with judicial directions?</p> <p>Yes:</p> <ul style="list-style-type: none"> • <i>R v Lubemba</i> [2014] EWCA Crim 2064; • para 6.12. 	
61.	<p>Will the jury be told about any restrictions in cross-examining a vulnerable witness?</p> <p>Yes:</p> <ul style="list-style-type: none"> • para 6.12. 	
62.	<p>Can the jury be told what questions the advocate would have asked and of any alleged inconsistencies if there had been no restrictions on cross-examining the vulnerable witness?</p> <p>Yes:</p> <ul style="list-style-type: none"> • <i>R v Wills</i> [2011] EWCA Crim 1938, • para 6.14. 	
Vulnerable defendant representing him or herself		
63.	<p>If a vulnerable defendant represents him or herself, can the court order that he or she has legal representation or appoint a court advocate to assist the court?</p> <p>Not if the defendant objects:</p> <ul style="list-style-type: none"> • <i>R v Holloway</i> [2016] EWCA Crim 2175; • para 6.16 	

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