

# The Advocate's Gateway

**Planning to question someone  
using a remote link**

Toolkit 9

20 March 2017

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The Advocate's Gateway toolkits aim to support the 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.

*'Advocates must adapt to the witness, not the other way round.'* Lady Justice Hallett in [R v Lubemba; R v JP](#) [2014] EWCA Crim 2064, para 45.

The handling and questioning of vulnerable witnesses and defendants is a specialist skill. Advocates must ensure that they are suitably trained and that they adhere to their professional conduct rules.

*'We confirm, if confirmation is needed, that the principles in Lubemba apply to child defendants as witnesses in the same way as they apply to any other vulnerable witness. We also confirm the importance of training for the profession which was made clear at paragraph 80 of the judgment in R v Rashid (Yahya) (to which we have referred at paragraph 111 above). We would like to emphasise that it is, of course, generally misconduct to take on a case where an advocate is not competent. It would be difficult to conceive of an advocate being competent to act in a case involving young witnesses or defendants unless the advocate had undertaken specific training.'* Lord Thomas of Cwmgiedd, CJ in [R v Grant-Murray & Anor](#) [2017] EWCA Crim 1228, para 226.

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## 1. INTRODUCTION

- 1.1** When a person who is vulnerable is to give evidence, consideration should be given to the use of live link including a 'remote' live link. In preparation for trial, the court must take 'every reasonable step' to facilitate the attendance and participation of witnesses and defendants (Criminal Procedure Rules at 3.9 (3)(a) and (b)). One such step is to identify at the earliest opportunity those whose evidence would be best given via a remote link from a different court centre, police station, video-conferencing facility or any other suitable location.
- 1.2** Not every potential venue will be appropriate for each witness. For instance, it may not be appropriate for a child to give evidence from their home address or school if this will lead to them associating home or school with giving evidence of traumatic events. The views of the witness should be sought and expert advice taken from the parent/intermediary/social worker as appropriate.
- 1.3** It should be noted that the use of remote links is not confined to vulnerable or intimidated witnesses. Provisions are available to enable witnesses to give evidence from abroad, for instance, or from a remote site where it is in the interests of the efficient and effective administration of justice for them to do so ([Criminal Justice Act 1988, section 32](#); [Youth Justice and Criminal Evidence Act 1999](#); [Civil Procedure Rules, Part 32](#)). A remote link may be needed for a number of very different reasons:
- the witness cannot leave their home (e.g. agoraphobia, extreme anxiety, physical disability);
  - the witness cannot leave the residential setting (e.g. in a secure unit with 2:1 support);
  - the witness cannot leave hospital (e.g. severe head injury, terminal illness, multiple health needs);
  - the witness cannot travel the distance required;
  - the witness is too fearful to be in the same building as the defendant(s), even with additional security or additional special measures (e.g. victim of domestic violence who has been moved out of the area for their own safety);

- the witness presents too high a risk to be contained safely in a court building (e.g. extreme violence to self, others or environment; risk of absconding);
- the needs of the witness cannot be met in the court building where the trial is being held (e.g. needing accessible bathroom facilities, rapid access to medical care beyond that which can be provided by the court);
- the witness is too disturbed or too young or otherwise too vulnerable for the experience of a court building to be tolerated, even with additional supportive measures.

#### **1.4 Identifying the need for remote link at the earliest opportunity**

- The need should be identified at the first appearance at the Youth or Magistrates' Court and in advance of the Plea and Trial Preparation Hearing at Crown Court.
- Need should be based upon consultation with the witness and any carer/supporter, medical evidence and/or other agencies involved.
- Any application must contain as much information as possible in order to properly demonstrate why a remote link is necessary for the particular witness. The reasons for a remote link may be included in an intermediary report if there is one. The presence or not and identity of a witness supporter in the remote live link room should also be addressed at the earliest opportunity.

#### **1.5 Pre-trial management**

Pre-trial management will be of paramount importance to ensure that use of the remote link is planned sufficiently in advance of the trial and so that all parties know with whom to liaise and what arrangements are in place.

- A remote link is an extension of the courtroom and therefore all steps must be taken to ensure the 'usual' courtroom procedures (taking the Oath, handling of exhibits etc.) apply.
- Use of a remote link is likely to require considerable planning, organisation and communication between a large number of agencies.

- There may be circumstances in which a pre-trial hearing should be held in order to discuss the practical procedures of administering the remote link, for instance, where the link is from an unusual location or the witness has particularly complex needs. All parties who may be involved in the planning and use of a remote link should attend the pre-trial hearings where possible. These may include:
  - trial advocates;
  - trial judge;
  - court staff;
  - police officer in charge of the case;
  - Witness Service;
  - support/medical/security staff who may be required to be present with the witness while evidence is being given;
  - registered intermediary.

Where there is an intermediary, the pre-trial hearing may usefully be combined with a ground rules hearing.

### **1.6 Identifying the location for a remote link**

- Some court centres have a dedicated site which may be used for a remote link.
- Not all courts have access to a network which will permit external links. However, local businesses/universities/chambers may be able to provide this service. Other courts, police stations, hospitals or the witness's home may also be appropriate, subject to the needs of the witness.
- Identify the reason the remote link is required and then which venue is most appropriate for the particular witness. Check that the location will have adequate facilities for that witness.
- If an appropriate location cannot be found in the vicinity of the court centre because there is limited or no access to video-conferencing, an alternative secure location will have to be found.

- Consider whether Skype or similar is appropriate: can a bridge (a device that connects two networks that are in geographically different locations) be set up to increase security and ensure the audio and visual link is of sufficient quality to enable the evidence being given to be heard and recorded on the court equipment? Some companies will do this at a fraction of the cost of using video-conferencing facilities.
- If contemplating an alternative location, ensure appropriate equipment – e.g. a personal computer or tablet device, internet connection, webcam, microphone and mobile telephone or landline connection – is available at the location.
- The court and bridging company are likely to need some notice in order to set up the bridge, so the need for this facility must be identified at the earliest opportunity.

### **1.7 Factors to consider when a location has been identified**

- The room from which the witness gives evidence should be secure and private with access to adequate facilities for the witness (such as a bathroom). There should be suitable access for medical staff in the event that urgent treatment or attention is required.
- The room should be large enough to accommodate the witness and any other people who may need to be present, e.g. a supporter, care staff, member of court staff, police officer.
- Check whether it is possible to communicate with the court from the remote link location – is there access within the room to a telephone? Is it possible to use a mobile telephone? Can communication be by email?
- Check whether there is any activity likely to be going on outside the room/location which may cause disruption, e.g. building work.
- Are there facilities within the room or nearby from which it is possible to obtain refreshments? If not, how is it proposed this will be done in the event the witness is required all day?
- Identify who will be available to ensure the Witness Oath is taken and to manage any exhibits. Will the judge administer the Oath? Can a member of the court staff

attend? Is the police officer in the case/exhibits officer able to take the exhibits to the remote site and ensure they are kept secure?

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## 2. PRACTICAL ISSUES ARISING FROM THE USE OF A REMOTE LINK

### 2.1 Setting up the remote link

- The court should liaise with the service provider to ensure the facility can be set up and works with sufficient clarity for the witness to be seen and heard and possibly recorded on the court equipment. The link must be tested in advance. Identify a named individual who will be responsible for this.
- Consider whether there should be a technician on stand-by in case the equipment fails at any stage during the proceedings. Consider what will happen if the link does fail – who will be responsible for re-establishing the link? Will the witness need to be taken elsewhere while the link is being re-established or if the link cannot be re-established?
- Who will be present to manage the link once it is up and running? Identify which court official will be present to administer the Oath, manage any difficulties and liaise with the court.
- Ensure there is a back-up plan.

### 2.2 Communication

- Identify who will be responsible for communication between the remote link room and the court and how this communication will take place.
- Is it possible to communicate directly by telephone with those at the remote link location and, if not, what other arrangements are possible? For example, is it possible to communicate by email?
- Contact numbers/email addresses for those in attendance both at court and at the remote link site on the day should be exchanged in advance.

### 2.3 Witness familiarisation

- As is usual for live links, the witness should practise speaking and listening over the live link ([Witness Charter 2013](#), standard 10). Victims are entitled to familiarise

themselves with the venue where they will give evidence ([Code of Practice for Victims of Crime 2015](#)). Practising speaking and listening to questions over a remote link may be combined with the familiarisation visit, but beware of providing the witness with too much information in one visit.

- If it is not possible to conduct a familiarisation visit (for instance, because the witness lives too far away from the location), consider whether there are other means of allowing the witness to see the room/location (for instance, by using photographs).
- Agree how and when the witness will meet the advocates and the judge before giving evidence. If it is not possible for the witness to meet these people in person, consider whether it is possible to send a 'who's who' document in advance, with photographs of the advocates and the judge.

#### **2.4 Scheduling the witness's evidence**

- Scheduling the witness's evidence will be even more important than usual as the link may only be available for a limited period of time and the witness may be waiting in an unfamiliar location.
- Agree a timed witness order in advance, ensuring where possible all preliminary points are finished when the witness is due to start. If possible, the judge and advocates should have a contingency plan in case there are problems. The timetable should ensure that the witness gives evidence at the optimum time for him or herself.

#### **2.5 Memory refreshing**

- Decide when, where and how this should take place on a case-by-case basis with the overriding aim of enabling witnesses to give their best evidence ([CPS Legal Guidance on Safeguarding Children as Victims and Witnesses](#)).
- If the witness had a video-recorded interview, there is no obligation for the witness to watch the recording at the same time as the jury. The first viewing could be distressing or distracting and should be scheduled before the day of testimony

[\(Equal Treatment Bench Book 2018\)](#). Be aware that combining the viewing of a DVD with a court familiarisation visit may be ‘information overload’ for the witness.

- It may not be possible for a recording of the witness’s evidence to be held securely in the remote link location. Consider what arrangements will need to be made if it is proposed that the witness should watch the recording at the remote location.
- Arrangements for memory refreshing are a police responsibility ([Achieving Best Evidence](#), sections 4.48, 4.51, 4.52), but this should be judicially led ([Equal Treatment Bench Book 2018](#)).

## **2.6 Exhibits**

- Arrangements will need to be made for all appropriate exhibits to be taken to the remote link location and returned once the evidence has been given. Identify who will be responsible for doing this.
- There may not be anywhere for documents to be securely stored and so arrangements may involve taking the exhibits to and from the location on the day the evidence is given.
- Consider whether the witness is able to physically hold/manipulate the exhibits and who will assist them with this if necessary.

## **2.7 Other documentation required for the witness**

- Consider when and how other documentation will be presented to the witness. It may be necessary for the defence to identify in advance those documents which they *may* require the witness to view.
- This should be considered by all parties and directions given at a pre-trial hearing.
- Consider in advance whether the witness may be required to draw a plan or sketch or mark a document during their evidence. Consider whether this can be done in advance. If not, how is it to be provided to the judge, advocates and jury?

## **2.8 Taking the Oath**

- It is not the responsibility of an intermediary or a supporter to administer the Oath.

- A member of court staff will need to be present to do so.
- Identify which Oath will be taken in advance so that the appropriate book is made available. Identify who will be responsible for taking the book to the remote link location.

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## ACKNOWLEDGEMENTS AND REFERENCES

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The toolkit summarises key points from research and guidance including:

- **Criminal Procedure Rules**
- **Criminal Practice Directions**
- **Judicial College, *Equal Treatment Bench Book 2018***  
(Judicial College 2013)
- **Ministry of Justice, *Achieving Best Evidence in Criminal Proceedings***  
(Crown Copyright 2011)
- **Ministry of Justice, *Code of Practice for Victims of Crime***  
(Crown Copyright 2015)
- **Ministry of Justice, *The Witness Charter***  
(Crown Copyright 2013)

- ***Re ML (Use of Skype Technology)* [2013] EWHC 2091 (Fam)**
- ***Re S (A Child)* [2013] EWHC 1295 (Fam)**
- **CPS Legal Guidance on Special Measures**
- **CPS Guidelines on Prosecuting Cases of Child Sexual Abuse**
- **CPS Legal Guidance on Rape and Sexual Offences**
- **CPS Legal Guidance on Safeguarding Children as Victims and Witnesses**