

The Advocate's Gateway

**Effective participation of
young defendants**

Toolkit 8

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. PROFILE

Note: see also Toolkit 10 - Identifying vulnerability in witnesses and defendants.

- 1.1** All children (those under 18) require special consideration by virtue of their age and developmental immaturity. Teenagers are at particular risk of miscommunication because of their reluctance to ask for clarification and adults' expectation of their ability to understand.
- 1.2** Particular care is needed where a young person has mental health problems, learning or other disabilities or speech and language difficulties. These issues are not always identifiable at an early stage.
- 1.3** A report by the Prison Reform Trust (Talbot 2010) identified that for young people in the Youth Justice system:
 - over 60 per cent have speech, language and communication needs;
 - around 50 per cent have poor or very poor communication skills;
 - around 40 per cent have mental health problems, most commonly conduct disorders, emotional disorders and attention disorders;
 - around 60 per cent have a mild or moderate or borderline learning disability;
 - around 43 per cent of 14-year-olds in custody have attention deficit hyperactivity disorder (ADHD);
 - children who are or who have been looked after by the local authority are overrepresented in the criminal justice system;
 - children in custody are often particularly vulnerable
 - abuse, neglect and deprivation may impair intellectual and emotional functioning and delay physical development. Developmental immaturity affects children's capacity for decision-making. Many young defendants suffer from delayed brain development and impaired reasoning ability and may not be fully able to comprehend the seriousness or longer-term consequences of their criminal behaviour or the impact upon the victim (Vizard 2009).

- 1.4** Many young defendants have literacy problems, which may be associated with difficulty in understanding, processing and retaining information, and in organising an appropriate response to questions. They may be unable express themselves in order to give a coherent and accurate account and may be unable to read their police interviews, the Oath and/or court orders. (For signs of communication needs, see [Sentence Trouble](#) by the Communication Trust).
- 1.5** The Criminal Procedures Rules require the court to make the necessary adjustments to facilitate the participation of the defendant: ‘In order to prepare for the trial, the court must take every reasonable step ... to facilitate the participation of any person, including the defendant.’ ([Criminal Procedure Rules \(CPR\) 3.9\(3\)](#))
- 1.6** ‘Facilitating the participation of any person includes giving directions for the appropriate treatment and questioning of a witness or the defendant, especially where the court directs that such questioning is to be conducted through an intermediary.’ (CPR 3.9(6))

Many young people in the youth justice system have poor understanding and/or comprehension and may struggle to understand language in court if suitable adjustments are not made. Advocates should take care to avoid using legal words and phrases (offence, comply, alleged, appearing in court, remanded in custody) and everyday words used in a legal context (appear, bail, sentence) which may not be understood and may be misinterpreted: ‘Much of the language used in court is highly formal and laden with jargon. As a result it is inaccessible to lay court users, and particularly children who appear in court as defendants or witnesses.’ (Wigzell et al 2015) Even children who have a wide vocabulary and good speech may have poor understanding and their communication needs can be missed.

2. YOUTH JUSTICE

- 2.1** There is a clear principle in statute and domestic and European case law that young people be tried and sentenced in the Youth Court wherever possible. The amendment to section 3B of the [Powers of Criminal Courts \(Sentencing\) Act 2000](#) (PCC(S)A), by the [Criminal Justice and Courts Act 2015, section 53](#)(1) and (3), in force from 13 April 2015, allows the Youth Court to accept jurisdiction for trial in cases which might otherwise have been sent to the Crown Court, and in an appropriate case, if there has been a conviction, later commit for sentence.
- 2.2** There are exceptions to this principle:
- Some offences must be sent to the Crown Court (section 51A(2) [Crime and Disorder Act 1998](#)). This applies to homicide, certain firearms offences (where there is a statutory minimum sentence), an offence under [section 29\(3\) Violent Crime Reduction Act 2006](#) (where there is a minimum sentence for causing someone to mind a weapon) and where notice has been given pursuant to sections 51B and 51C [Crime and Disorder Act 1998](#).
 - ‘Grave crimes’: a ‘grave crime’ is an offence which could attract a sentence which is greater than the Youth Court powers under [section 91 Powers of Criminal Courts \(Sentencing\) Act 2000](#). Generally, these are offences which, in the case of an adult, have a maximum sentence of 14 years or more. Grave crimes also include specified and some sexual offences. The Youth Court must make a jurisdiction decision where there has been a not guilty plea to such an offence and may send it to the Crown Court where a sentence in excess of its powers is a real possibility. The [Sentencing Guidelines Council Overarching Principles – Sentencing Youths \(2009\)](#) suggests this would be a sentence ‘substantially beyond the two-year maximum for a detention and training order’ for those aged between 12 and 17 years.
- 2.3** Some sexual offences may be tried in the Youth Court even though they are capable of being sent to the Crown Court as a ‘grave crime’ and these must, at least initially, be dealt with by an authorised District Judge (Magistrates’ Court) ([Criminal Practice Directions 2015](#), CPD XIII Annex 2 Sexual offences in the Youth Court)

- 2.4** At all times the court must have regard to the following factors:
- the principal aim of the youth justice system, to prevent offending by children and young persons ([section 37\(1\) Crime and Disorder Act 1998](#)) and [Sentencing Guidelines Council, Overarching Principles – Sentencing Youths \(2009\)](#)); and
 - the welfare of the child, as an offender or otherwise ([section 44 Children and Young Persons Act 1933](#)). The younger the offender (taking account of developmental maturity and not just chronological age) the more likely it is that consideration of welfare will be of significance ([Sentencing Guidelines Council, Overarching Principles – Sentencing Youths \(2009\)](#)).
- 2.5** Young defendant trials must proceed as expeditiously as possible as is consistent with the interests of justice and the fair trial provisions in Article 6 of the [European Convention on Human Rights](#).
- 2.6** ‘The proper venue for the trial of any youth is normally the youth court.’ ([Sentencing Council: Allocation Definitive Guideline 2015](#)) Note, however, the ‘guideline does not provide information on the complex statutory framework for dealing with a youth jointly charged with an adult’.
- 2.7** Reporting restrictions are automatic in the Youth Court ([section 49 Children and Young Persons Act 1933](#), as amended by [Schedule 2, para 3 Youth Justice and Criminal Evidence Act 1999](#) (YJCEA), in the Crown Court reporting restrictions are not automatic; the court would need to make a specific direction ([section 45 Youth Justice and Criminal Evidence Act 1999](#)).

3. EFFECTIVE PARTICIPATION IN THE PROCESS: GENERAL PRINCIPLES

- 3.1** Article 6 [European Convention on Human Rights](#) guarantees the right to effectively participate in a criminal trial. A young defendant is at risk of not being able to participate effectively because of age and/or limited intellectual ability and it is therefore essential that young defendants are dealt with in a way which takes account of age, level of maturity and intellectual and emotional capacity, and that steps are taken to promote the young defendant's ability to understand and participate ([V v UK](#) [1999] ECHR 171, (2000) 30 EHRR 121, 30 EHRR 121).
- 3.2** At the police station, representatives should be aware that [Code C Police and Criminal Evidence Act 1984](#) (PACE) deals with the presence of appropriate adults and interpreters for interviews in custody. The entitlement to an appropriate adult now applies to those up to (and including) 17 years of age. There is no provision in Code C for the presence of an intermediary. Consideration may need to be given to the need for communication support to facilitate the interview process. The purpose of the appropriate adult includes to 'facilitate communication with the person being interviewed' (Code C, para 11.17).
- 3.3** Once court proceedings commence, defence representatives need to be alert to any factors affecting the defendant's ability to participate at all stages and request appropriate adjustments be made. The court will need to be provided with as much information as possible at the earliest stage in order to make case management decisions which do not impair the quality of the defendant's participation. This may include medical/expert/intermediary reports or information from those already involved with the young defendant such as his or her GP, teacher or support worker.
- 3.4** The court must take into account the following matters at all times in order to ensure a young defendant can follow and participate in the proceedings (see [SC v UK](#) (2004) 40 EHRR 10):
- the young defendant's level of cognitive functioning;

- the need for use of concise and simple language;
- the level of concentration and need for appropriate breaks;
- the need for access to support;
- the need to take extra time to explain the proceedings, the charge, the outcomes and sentences;
- the need to control cross-examination so that questions are short and clear; and
- the need to avoid the defendant becoming frustrated.

3.5 Appropriate modifications to traditional language should be made so that the young defendant can follow all that is said throughout the entirety of the proceedings and not just during the trial. Opening and closing speeches, applications, submissions and rulings should all be made in language that the young defendant is capable of understanding.

3.6 Modifications to cross-examination should be discussed and agreed in advance of the trial and any limitations on questioning must be clearly defined and followed. If there is an intermediary, questions should be reviewed by the intermediary in advance. See Toolkit 1- Ground rules hearings and the fair treatment of vulnerable people in court and Toolkit 16 - Intermediaries: step by step.

3.7 There is currently no statutory provision in force for intermediaries for defendants. [Section 104 Coroners and Justice Act 2009](#) (not yet implemented) creates a new section 33BA of the [Youth Justice and Criminal Evidence Act 1999](#). Currently, a court may use its inherent powers to appoint an intermediary to assist the defendant's communication at trial (either solely when giving evidence or throughout the trial) and, where necessary, in preparation for trial ([R v Rashid](#) [2017] EWCA Crim 2).

3.8 A ground rules hearing is best practice where there is a young and/or vulnerable defendant with communication needs and/or mental health issues, regardless of whether there is an intermediary. Defence representatives should consider whether the defendant's presence at any pre-trial hearing is necessary and ask for the defendant to be excused if appropriate.

3.9 It will be usual for a youth in the Youth, Magistrates' or Crown Court to appear in person in order to ensure proper engagement and any application for a live link will be dealt with on a case-by-case basis ([Criminal Practice Directions 2015 Amendment No 3](#) 3N.13). Where the use of a live link is contemplated by the court, it will be for the advocates to alert the court to any reason why a hearing should not be conducted in this way. Advocates must therefore be alive to 'circumstances in which the court should not require the use of live link or telephone facilities despite their being otherwise appropriate at a pre-trial hearing' ([Criminal Practice Directions 2015 Amendment No 3](#) 3N.5) which will include 'any case in which the defendant's effective participation cannot be achieved by his or her attendance by such means' by reason of a 'disorder or disability, including a hearing, speech or sight impediment, or has communication needs to which the use of a live link or telephone is inimical (whether or not those needs require the appointment of an intermediary); or where the defendant requires interpretation and effective interpretation cannot be provided by live link or telephone, as the case may be' ([Criminal Practice Directions 2015 Amendment No 3](#) 3N.6).

Note: the list produced in this section is not an exhaustive one. Circumstances in which the live link might be appropriate are cited as including an onward remand hearing where there is no bail application and case management hearings where the youth is serving a custodial sentence ([Criminal Practice Directions 2015 Amendment No 3](#) 3N.13).

3.10 The advocate's duty is to the young client and it may be necessary to take instructions without the defendant's parent(s) being present.

4. EFFECTIVE PARTICIPATION: A FAIR TRIAL

4.1 The following minimum requirements for the fair trial of a young defendant were endorsed in *R (TP) v West London Youth Court* [2005] EWHC 2583:

- the defendant has to understand what he or she is said to have done wrong;
- the court has to be satisfied that the defendant, when he or she had done wrong by act or omission, had the means of knowing what was wrong;
- the defendant has to understand what, if any, defences are available to him or her;
- the defendant has to have a reasonable opportunity to consider what representations to make if he or she so wish;
- the defendant has to have the opportunity to consider what representations he or wishes to make once the defendant has understood the issues involved; and
- the defendant has to be able to give proper instructions and provide answers and suggest questions to his or her representatives in the circumstances of the trial as the issues arise.

4.2 It is crucial that the court, whether it be Youth Court or Crown Court, adapts its procedures so as to ensure a fair trial.

The Criminal Practice Directions at 3G Vulnerable Defendants provide extensive guidance and should be read in full. Extracts are included below covering court familiarisation, pre-trial visits, practising with the live-link (if being considered) and other important issues.

4.3 Court familiarisation

It may be appropriate to arrange that a vulnerable defendant should visit, out of court hours and before the trial, sentencing or appeal hearing, the courtroom in which that hearing is to take place so that he or she can familiarise him or herself with it. Criminal Practice Directions at 3G.2

4.4 Pre-trial visits

Where an intermediary is being used to help the defendant to communicate at court, the intermediary should accompany the defendant on his or her pre-trial visit. The visit will enable the defendant to familiarise him or herself with the layout of the court, and may include matters such as: where the defendant will sit, either in the dock or otherwise; court officials (what their roles are and where they sit); who else might be in the court, for example those in the public gallery and press box; the location of the witness box; basic court procedure; and the facilities available in the court. Criminal Practice Directions at 3G.2

4.5 Live link

If the defendant's use of the live link is being considered, he or she should have an opportunity to have a practice session. Criminal Practice Directions at 3G.4

Findings from interviews undertaken with 18 criminal practitioners indicate that, even when a defendant is sufficiently vulnerable to qualify for the use of live link, the provision is rarely invoked (Fairclough 2016).

4.6 Seating

Subject again to the need for appropriate security arrangements, a vulnerable defendant, especially if he is young, should normally, if he wishes, be free to sit with members of his family or others in a like relationship, and with some other suitable supporting adult such as a social worker, and in a place which permits easy, informal communication with his legal representatives. The court should ensure that a suitable supporting adult is available throughout the course of the proceedings. Criminal Practice Directions at 3G.8

GOOD PRACTICE EXAMPLE

An explanatory visit helped alleviate anxieties of a defendant who was worried by large plasma screens in court, thinking this was to do with reporting the case.

POOR PRACTICE EXAMPLE

A young defendant with learning difficulties and a hearing loss (but who did not have his hearing aid) was seated in a youth court dock behind a glass security screen. He was unable to hear or follow what was said.

4.7 Explaining proceedings

It is essential that at the beginning of the proceedings, the court should ensure that what is to take place has been explained to a vulnerable defendant in terms he or she can understand and, at trial in the Crown Court, it should ensure in particular that the role of the jury has been explained. Criminal Practice Directions at 3G.9

4.8 Timetabling and breaks

A trial should be conducted according to a timetable which takes full account of a vulnerable defendant's ability to concentrate. Frequent and regular breaks will often be appropriate. The court should ensure, so far as practicable, that the whole trial is conducted in clear language that the defendant can understand and that evidence in chief and cross-examination are conducted using questions that are short and clear. The conclusions of the 'ground rules' hearing should be followed, and advocates should use and follow the 'toolkits'. Criminal Practice Directions at 3G.10

GOOD PRACTICE EXAMPLE:

Following intermediary advice, the lawyer asked for the defendant to be produced from custody with enough time to allow him to settle.

In the Youth Court the parties remain seated and the young defendant is referred to by his or her first name or preferred name.

4.9 Wigs, gowns and uniforms in the Crown Court

In the Crown Court, the judge should consider whether robes and wigs should be worn, and should take account of the wishes of both a vulnerable defendant and any vulnerable witness. It is generally desirable that those responsible for the security of a vulnerable defendant who is in custody, especially if he or she is young, should not be in uniform, and that there should be no recognisable police presence in the courtroom save for good reason. Criminal Practice Directions at 3G.12

4.10 Restricting the presence of member of the public

The court should be prepared to restrict attendance by members of the public in the courtroom to a small number, perhaps limited to those with an immediate and direct interest in the outcome. Criminal Practice Directions at 3G.13

4.11 A practice session where non-evidence-related questions are asked and answered may be useful in enabling the young defendant to make an informed decision about whether or not to give evidence.

4.12 Consideration should be given to the use of drawings, maps, symbols etc to assist the defendant to follow proceedings. See Toolkit 14 - Using communication aids in the criminal justice system.

5. EFFECTIVE PARTICIPATION: FITNESS TO PLEAD

- 5.1** Although effective participation has developed separately to the issue of fitness to plead, the two are closely aligned. If a young defendant is not able to effectively participate, by being able to comprehend the charges and be actively engaged and involved in the process, he or she might not be fit to stand trial. However, fitness to plead hearings can only be held in the Crown Court. There is no specific procedure to determine fitness to plead in the Youth Court or Magistrates' Court.
- 5.2** [Section 37 Mental Health Act 1987](#) (MHA) and [section 11 PCC\(S\)A](#) provide a mechanism for dealing with those who have or may have mental health issues. The court can consider whether the defendant 'did the act or made the omission' pursuant to [section 37 MHA](#), and may also make an inquiry into the defendant's physical 'or mental condition' before the method of dealing with him or her is determined ([section 11 PCC\(S\)A](#)). This mechanism is available to the Youth Court although the legislation refers only to the Magistrates' Court ([R \(P\) v Barking Youth Court](#) [2002] EWHC 734 (Admin)).
- 5.3** The court can at any time be invited to make an inquiry into any medical or mental condition by obtaining expert/specialist reports and/or information from those professionals who are already involved with the young defendant. The fact-finding hearing can be considered at any stage of the proceedings. Where a criminal trial has commenced and it becomes apparent that the defendant is unable to participate, the trial may be stopped and the court can consider whether to adopt the above mechanism and proceed to a trial of fact or whether proceedings should be stayed ([CPS v P](#) [2007] EWHC 946 (Admin)).
- 5.4** [Section 37 MHA](#) allows the Court to conduct a fact-finding hearing and make a finding 'without convicting him'. The fact-finding hearing is not a criminal trial and the defendant will not participate as if it were one.
- 5.5** If there is a finding that the young defendant did the act (or made the omission) the court can make an order for hospital treatment, or guardianship if the young person is over the age of 16. There is no provision for any other disposal such as an absolute discharge, which is available only in the Crown Court.

5.6 The process has limitations: the question of fitness to plead is not specifically addressed by the legislation. The focus is whether a condition requires treatment. The term ‘mental condition’ is restricted to a ‘mental disorder’ as defined by [section 1 MHA](#) as ‘any disorder or disability of the mind’ and so many difficulties affecting young defendants such as developmental impairment/immaturity or learning difficulties may not engage the provisions. The provisions do not apply to non-imprisonable summary offences. The only course open to the court if the provisions are not engaged is to consider whether the young defendant can effectively participate, what steps might be needed to ensure he or she can and, if there are none, whether it is an abuse of process to continue with the trial.

6. EFFECTIVE PARTICIPATION: ABUSE OF PROCESS

- 6.1** It may be that the defendant's difficulties are such that there will be a breach of Article 6 [European Convention on Human Rights](#) and the court can be invited to make a finding that it would be an abuse of the process of the court to proceed to trial or continue with a trial. Before such a finding is made all practical measures available to enable effective participation must have been exhausted. This should include consideration of whether an intermediary should be appointed for pre-trial hearings/trial preparation/trial process.
- 6.2** A trial is unlikely to be stayed where there is an apparent unfairness but it can be met by the trial judge adapting the trial process ([R v Cox](#) [2012] EWCA Crim 549, [2012] 2 Cr App R 6). The court is entitled to commence the trial and keep the position under review.
- 6.3** A stay of the proceedings will be an exceptional course and is not likely to be ordered at the outset of proceedings. A stay at the outset of the proceedings is only likely where the young defendant is so severely impaired that he or she cannot participate and there is no useful purpose to be served by proceeding to the fact-finding stage ([CPS v P](#) [2007] EWHC 946 (Admin)).
- 6.4** A finding that a defendant is unfit to plead on one occasion will not mean that it is an abuse of process to prosecute that defendant on subsequent occasions. Questions of capacity are essentially of fact to be determined on the basis of the information available at the time and must be considered afresh on each occasion ([CPS v P](#) [2007] EWHC 946 (Admin)).

7. EFFECTIVE PARTICIPATION: POST-CONVICTION

- 7.1** The [Criminal Practice Directions 2015 Amendment No 3](#) reinforces the importance of the youth being able to engage with the court and the youth offending team when sentence is being considered. It will be usual for a youth to appear in person whether in the Youth, Magistrates' or Crown Court and it will rarely be appropriate for a youth to be sentenced over a live link ([Criminal Practice Directions 2015 Amendment No 3](#) 3N13–14). However, there may be circumstances where it is appropriate and each case will be determined on its merits and the [Criminal Practice Directions 2015 Amendment No 3](#) sets them out at 3N.14.
- 7.2** The court has a duty to give reasons for a finding or decision and explain it in ordinary language. This includes the effect of the sentence; non-compliance with orders; the court's power to vary them; and failure to pay any fine ([Section 54\(3\), Legal Aid, Sentencing and Punishment of Offenders Act 2012](#)).
- 7.3** After conviction, magistrates are encouraged to engage with the young defendant and their parents. Defence representatives and the court must bear in mind that many young people feel discouraged from speaking up and many lack the communication skills to do so. Careful preparation and support is required in order to engage them in this stage of the process and avoid feelings of alienation by using procedures intended to draw them in and help prevent re-offending.
- 7.4** Youth offending teams, community panel members and those involved with restorative justice must be made aware of any difficulties in communicating with the young defendant. Advocates should explain this part of the process and the questions the defendant might be asked so that the defendant can be prepared to respond. This aspect of the process is highly verbally orientated and so the use of drawings and symbols may be of considerable assistance. See: Toolkit 14 - Using communication aids in the criminal justice system. If an intermediary is appointed, the intermediary may be able to assist in this part of the process.

8. SPECIAL MEASURES FOR DEFENDANTS

- 8.1** A vulnerable defendant may give evidence by live link (sections 33A–C [YJCEA](#), inserted by [section 47 Police and Justice Act 2006](#)). Before making such a direction, the court must be satisfied that it is in the interests of justice to do so if the defendant’s ability to participate by giving oral evidence is compromised by their level of intellectual ability or social functioning or mental health and that the use of a live link would enable the defendant to participate more effectively as a witness in the proceedings.
- 8.2** The criteria for a live link may preclude an application by a defendant who is at risk of intimidation by co-defendants or who may be distracted by co-defendants. An application for alternative measures, such as the use of a screen during the young defendant’s evidence, based on the court’s common law powers, may need to be considered.
- 8.3** The use of the live link for a vulnerable defendant should be raised at an early opportunity and considered at a case management hearing and/or ground rules hearing.
- 8.4** If an application is granted, the court should ensure practical arrangements are made, including identifying the person or persons who will accompany the defendant.
- 8.5** The vulnerable accused is not eligible for the range of special measures in sections [24–30](#) and [16\(1\) YJCEA](#). However, a court may order equivalent adjustments in the exercise of its inherent jurisdiction to ensure a fair trial, for example, ordering that an intermediary to be appointed (Criminal Practice Directions at 3F.3). See also Toolkit 16 - Intermediaries: step by step

POOR PRACTICE EXAMPLE

In a case with no safety concerns, the judge required the intermediary to sit in court, away from the defendant who was seated in the dock. The intermediary was unable to identify signs of stress and distress exhibited by the defendant.

8.6 Funding arrangements are between the Legal Aid Agency and the intermediary for initial work (conference and assessment) and between HM Courts and Tribunals Service (HMCTS) and the intermediary for the trial. The defendant's intermediary is entitled to negotiate a fee with HMCTS and agree terms and conditions.

9. QUESTIONING

- 9.1** Advocates should refer to the toolkits relevant to the specific communication needs of the young defendant including but not limited to Toolkit 6 - Planning to question a child or young person and Toolkit 12 - General principles when questioning witnesses and defendants with mental disorder. In addition, some general considerations are set out below.
- 9.2** Over-rigorous cross-examination of any child witness should be stopped. This includes a young defendant. No court user should be put in a position where they face hostility or ridicule.
- 9.3** A young defendant may not be able to say if there is a problem with understanding: they may lack the ability to identify when they do not understand and are likely to be reluctant to say they are having a problem. Be alert to non-verbal clues to miscommunication, e.g. puzzled looks, knitted eyebrows, downcast eyes and long pauses. Defence mechanisms, such as shutting down, dissociating, outbursts and laughing are all observed in young defendants. See [‘A Question of Practice’](#) – short training film.
- 9.4** Body language is very important and facial reactions, overuse or avoidance of eye contact should be observed.
- 9.5** The young defendant’s understanding should be checked by asking further questions. Encourage the young defendant to use language they are comfortable with by asking *‘What word would you use for X?’*; do not just ask *‘Do you understand?’*
- 9.6** Young defendants’ difficulties may include lack of maturity, embarrassment or nerves. Silent gaps should not be filled with further questions or remarks.
- 9.7** The most significant factor in effective communication is the ability to tailor questions to the young defendant's needs and abilities enabling him or her to understand the questions and give answers that he or she believes to be correct. This requires considerable skill and is very different from conversation with young people in the family context. It involves advance preparation as well as the ability to respond flexibly

during cross-examination. Where there is an intermediary, questions should be provided and reviewed in advance.

9.8 Taking account of the young defendant's needs may mean further adaptation or even abandoning of pre-planned questions:

- speak slowly and allow the young person enough thinking time to give a full answer;
- ask short, simple questions, one idea at a time, following a logical, chronological order;
- use 'what/who/when/where' questions;
- avoid 'why' questions;
- use simple, common, concrete and unambiguous words (the literal meaning);
- use names rather than pronouns such as he/she;
- repeat names, places and objects often;
- signpost the subject and explain when the subject is about to be changed;
- check directly on understanding, using simple words;
- avoid question types which carry a high risk of being misunderstood or producing unreliable answers, such as: leading/'tag' questions which make a statement and then add a short question inviting confirmation; other forms of assertion, including questions in the form of statements, which may not be understood as questions; and questions containing one or more negatives.

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The toolkit summarises key points from research and guidance including:

- **Association of Chief Police Officers, *Guidance on the Safer Detention and Handling of Persons in Police Custody***
(2nd edition ACPO and National Policing Improvement Agency 2012)
- **Criminal Practice Directions 2015**
- ***Criminal Practice Directions 2015 Amendment No 3***
- **Criminal Procedure Rules 2015**
- **Crown Prosecution Service, 'Policy guidance on venue representations'**
- **Fairclough, S, "It doesn't happen ... and I've never thought it was necessary for it to happen": barriers to vulnerable defendants giving evidence by live link in crown court trials'**
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- **Guidance for HMCTS Staff, Registered and Non Registered Intermediaries for Vulnerable Defendants and Non Vulnerable Defence and Prosecution Witnesses**
(Her Majesty's Courts and Tribunals Service, 2014)
- **Judicial College, Equal Treatment Bench Book (2018)**
- **Law Commission, Unfitness to Plead**
(Law Com No 364 2016)
- **Senior Presiding Judge's Protocol, 'Sexual offences in the Youth Court' (2010)**
- **Sentencing Guidelines Council, Overarching Principles – Sentencing Youths (2009)**
- **Sentencing Guidelines Council, Allocation Definitive Guideline (2015)**
- **Talbot, J, Seen and Heard: Supporting Vulnerable Children in the Youth Justice System**
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