Treading carefully

Bobbie Cheema and Sarah Perry discuss the forthcoming Advocacy Training Council Report on Vulnerable Witness, Victim and Defendant Handling

The manner in which the vulnerable are treated in our court system is a mark of how civilised a society we are.

The Advocacy Training Council ("ATC"), which oversees advocacy training for the Bar of England and Wales, is shortly to publish its Report on Vulnerable Witness, Victim and Defendant Handling. It is the first major research project in England and Wales to focus specifically on how best to train barristers in handling the most vulnerable people in court, whether witness or defendant, and whether vulnerable by reason of youth, learning disabilities or a mental health diagnosis.

The Report is the culmination of more than 12 months’ work undertaken by the ATC’s Vulnerable Witnesses and Defendants Handling Group ("VWDHG"). This Group – chaired by Bobbie Cheema and comprising Charles Haddon-Cave QC, Judge Wendy Joseph, Sally O’Neill QC, Johannah Cutts QC, Philip Mott QC and Rachel O’Driscoll – was set up in June 2009, in response to a number of striking cases highlighting the need to ensure all advocates are equipped to respond effectively to the needs of vulnerable people in court.

A sound evidence base
The VWDHG heard evidence from a broad range of experts, including members of the judiciary, practitioners, child/adolescent psychiatrists, intermediaries and social workers, adult learning experts, officials from the Ministry of Justice and members of the police force. This VWDHG research has ensured that the Report,

MEETING THE NEEDS OF THE VULNERABLE IN COURT

The 45 recommendations made in the Report fell under six headings:

- **Training**: proposals as to the design and delivery of a comprehensive, modular programme for all criminal and family practitioners, both new and experienced.
- **Practitioners**: suggestions to assist advocates in trials involving vulnerable people, both in the pre-trial preparation stage and in court.
- **The judiciary**: recommendations from the profession’s viewpoint of how the useful training provided to judges by the JSB might be developed and shared.
- **Trial management**: propositions to ensure trials are proactively managed to take into account the specific needs of a vulnerable witness or defendant, such as accommodating the brief attention spans of young children.
- **Police**: higher-quality, ongoing training, to include practical exercises as part of a modular programme.
- **Other recommendations include**: wider dissemination of the HMCS Going to Court DVD, and that the Law Society should require solicitor-advocates to undergo compulsory training in the handling of vulnerable witnesses and clients.

For further information on the Report – including details of its launch and publication – visit the ATC’s website at www.advocacytrainingscouncil.org

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Advocacy focus

Its findings and its recommendations have a sound evidence base, drawn from the collective experience and expertise of those most qualified in their field.

The Report analyses the evidence under a number of thematic headings, comprising the full range of key issues to be addressed, including: (1) pre-trial preparation and ABE interviews; (2) the crucial role to be played by the judiciary; (3) the use of intermediaries, psychiatrists, and social workers; (4) communication and questioning methods; (5) “coping” strategies helpful to a vulnerable person; and (6) the design and delivery of effective training programmes.

The major themes
Three major themes emerged as the evidence was examined:
- The urgent need to address the significant problems faced by vulnerable people in the court system (including feelings of intimidation and isolation; some advocates’ poor understanding of their particular needs; and marked inconsistencies and weaknesses in advocates’ handling during questioning).
- The considerable benefits that effective education and training would bring to barristers as they approach the task of advising, examining and cross-examining vulnerable people.
- The handling and questioning of vulnerable witnesses, victims and defendants is a specialist skill, and should be acknowledged as such by practitioners, judges, training providers and regulators. Furthermore, there should not be a perceived conflict between treating vulnerable witnesses and defendants fairly and appropriately, and where necessary testing their evidence.

The Report
The Report – which will be made available through the ATC’s website – makes a series of practical and far-reaching recommendations to ensure barristers are properly equipped to handle vulnerable witnesses, victims and defendants.

Key to these recommendations (see “Meeting the needs of the vulnerable in court” on p37) is the need to ensure that advocates are sensitive and responsive to the particular vulnerabilities of the witness/defendant; that they are equipped to rigorously examine the evidence, fulfilling their duty to both client and court; and that they are able to elicit “Best Evidence”.

In addition, the Report will include a “Toolkit” to assist barristers in the preparation of their lines of questioning, identifying common problems likely to be encountered when examining particular vulnerabilities, and recommending possible solutions. The Toolkit is intended to be of practical use, a living document that will adapt and develop as progress in this area is made. It will be freely available to all advocates, both online and in document form.

The Report also makes a series of suggestions for the consideration of bodies including the Judicial Studies Board and the police force, as they continue to develop their own training programmes in this area.

It is believed that the forthcoming Report will represent a significant step forward for the handling of the vulnerable in the court system and for ensuring access to justice for all.