

SUMMARY: GENERAL PRINCIPLES FROM RESEARCH - PLANNING TO QUESTION A VULNERABLE PERSON OR SOMEONE WITH COMMUNICATION NEEDS

Toolkit 2(b)

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For more detail, see Toolkit 2(a), *General Principles from Research (full version)*

1. *Questioning approach*
2. *Framing your questions*
3. *Questions easily misunderstood/ risking unreliable answers*

Always consider assessment of a vulnerable witness by a Registered Intermediary (section 29 Youth Justice and Criminal Evidence Act 1999). The judiciary may use its inherent jurisdiction to appoint a non-registered intermediary for a vulnerable defendant. Section 104, Coroners and Justice Act 2009, will (if implemented) enable appointment of intermediaries for certain vulnerable defendants but only for oral evidence at trial. This toolkit contains general guidance and is not a replacement for an intermediary assessment which will provide advice specific to the individual.

1. QUESTIONING APPROACH

- 1.1 *Keep the duration of questioning developmentally appropriate*
- 1.2 *Meet the person informally to help you 'tune in' to communication.*
- 1.3 *Maintain eye contact, an important part of communication unless there are reasons to avoid it. Using the live link, look straight at the camera (not your papers). Avoid 'looming'.*
- 1.4 *Ensure tone and body language are neutral Do not nod, inviting an affirmative response, or express disbelief through your expression.*
- 1.5 *Speak slowly and do not speed up again.*
- 1.6 *Use the witness's preferred name to help keep the person's attention.*
- 1.7 *Give enough time to process your question At least six seconds: some need longer.*
- 1.8 *Be alert for possible miscommunication Many witnesses will not recognise when difficulties occur or will be embarrassed to admit this.*
- 1.9 *Check that you and the witness mean the same thing Clarify understanding of words crucial to the evidence, eg 'touch'.*
- 1.10 *Be alert to loss of concentration Early signs may not be evident over the live link. Ask someone with the witness to alert the court.*
- 1.11 *Consider non-verbal communication/ use of visual aids eg use a body map if asking a witness to demonstrate intimate touching.*
- 1.12 *Avoid asking the witness to say his or her address aloud*
- 1.13 *Draw the court's attention to improper/ inappropriate cross-examination*

2. FRAMING YOUR QUESTIONS (Writing them out will help identify potential problems)

- 2.1 *Follow a logical, chronological order*
- 2.2 *Signpost your subject and changes of subject*

- 2.3 *Ask about one idea at a time* Questions containing 'if' almost always contain two ideas
- 2.4 *Keep questions short*
- 2.5 *Use simple, common words*
- 2.6 *Ask who/ what/ where questions* These are usually most easily understood. *Why/ how* involve abstract concepts.
- 2.7 *Use concrete words* Use of abstract or concept words by the witness does not mean they are fully understood.
- 2.8 *Name places, people and objects* Use the witness's name if it helps them focus.

3. QUESTIONS EASILY MISUNDERSTOOD/ RISKING UNRELIABLE ANSWERS

- 3.1 *'Tag' questions* ('*Jim didn't hit you, did he?*') are powerfully suggestive and linguistically complex. To respond accurately, the witness has to be able to judge whether the statement part of the question is true; understand that the tag expresses the advocate's point of view, and is not necessarily true; be able to counter that point of view; and (if the question combines both a positive and a negative) understand that a positive statement takes a negative tag and vice versa. The Judicial College recommends putting direct questions to children instead, eg '*Did Jim hit you?*'.
- 3.2 *Other assertions* eg '*Isn't it a fact that...*'. '*Is that right?*' give undue emphasis to the suggestion. Alternatives include: '*Are you sure?*'; or '*Is it true Jim hit you?*'.
- 3.3 *Questions in form of statements* may not be understood as requiring a response.
- 3.4 '*Do you remember...?*' questions are complex, particularly where the witness is asked, not about an event, but about what (s)he told someone else.
- 3.5 *Questions containing negatives* are complex. This includes single negatives, negative forms (eg '*incorrect*', '*unhappy*'); and concealed negatives (eg '*unless*').
- 3.6 *Forced choice questions* Include an open-ended option.
- 3.7 *Literal interpretation* Avoid figures of speech and use of the present tense.
- 3.8 *Effect of repetition* Questions repeated (consecutively or interspersed) by an authority figure may cause a witness to conclude that the first answer was wrong (even if correct) and to change it. If a question must be repeated because an answer was unclear, explain why.
- 3.9 *Leading questions inviting repetition of either 'Yes' or 'No' answers* An acquiescent witness may adopt a pattern of replies 'cued' by the questioner and cease to respond to individual questions.
- 3.10 *Suggestions that the witness is lying or confused* If the challenge is developmentally appropriate (see Toolkit 1(c) Ground Rules, section 3) it should be addressed separately, in simple language, at the end of cross-examination.