GROUND RULES HEARINGS: PLANNING TO QUESTION A VULNERABLE PERSON OR SOMEONE WITH COMMUNICATION NEEDS

Toolkit 1(c)

February 2015

Lexicon Limited
lexiconlimited.co.uk

This toolkit brings together policy, research and guidance relating to:

KEY POINTS ABOUT GROUND RULES HEARINGS

In preparation for trial, courts must take every reasonable step to facilitate the participation of witnesses and defendants. One such step is the pre-trial ground rules hearing. A new Criminal Procedure Rule makes this essential in every case where directions for appropriate questioning and treatment are required (1.2). This applies to a wide range of cases (3.1). Ground rules facilitate the judge's paramount duty to control questioning (2.1). The judge must state what ground rules will apply at trial (2.2). Advocates have a duty to abide by court rulings (2.3).

Ground rules in Crown Court must be discussed before the day of the witness's evidence to enable advocates to adapt their questions (2.5).

Where limits on cross-examination are 'necessary and appropriate' they must be clearly defined; the judge has a duty to ensure they are complied with and to explain them to the jury (4.1). The judge may issue ground rule directions about the manner of questioning and about questions that may or may not be asked (4.2). Asking advocates to write out questions in advance is 'entirely reasonable' (4.3). The judge may request that direct questions to be put to the witness (4.4). The judge may relieve a party of a duty to put the case to a witness or a defendant in its entirety (4.5). The defence case should be put to the witness provided this can be done simply, in a way the witness can cope with and understand, without suggestive syntax (4.6). No later than the ground rules hearing, the judge should rule on applications affecting the conduct of cross-examination (4.7). Repetitive questioning must be stopped (4.8, 4.9). The judge has a duty to impose reasonable time limits on cross-examination (5.1).

Ground rules hearings should also address appropriate treatment and general care of the witness (6.1) and explanations for the jury (7.1).

1. THE GROUND RULES REQUIREMENT

1.1 ***In preparation for trial, courts must take 'every reasonable step'*** to facilitate the participation of witnesses and defendants (Rule 3.9(3)(b), Criminal Procedure Rules

2015). This includes setting ground rules. They must be discussed in intermediary[1] trials (Rule 3.9(6), Criminal Procedure Rules 2015; para 3E.2, Criminal Practice Directions 2014). The requirement of a ground rules hearing has now been extended to every vulnerable witness case, 'save in very exceptional circumstances' (Vice-President of the Court of Appeal, para 42, *R v Lubemba* [2014] EWCA Crim 2064).

1.2 ***In any case where directions for 'appropriate treatment and questioning' are required*** the court must (Rule 3.9(7), Criminal Procedure Rules 2015):

(a) invite representations by the parties and by any intermediary; and

(b) set ground rules for the conduct of the questioning, which rules may include—

(i) a direction relieving a party of any duty to put that party's case to a witness or a defendant in its entirety,

(ii) directions about the manner of questioning,

(iii) directions about the duration of questioning,

(iv) if necessary, directions about the questions that may or may not be asked,

(v) where there is more than one defendant, the allocation among them of the topics about which a witness may be asked, and

(vi) directions about the use of models, plans, body maps or similar aids to help communicate a question or an answer.

2. PRINCIPLES

2.1 ***Ground rules facilitate exercise of the judiciary's paramount duty to control questioning*** ('overriding objective' Rule 1, Criminal Procedure Rules 2015) by clarifying expectations and setting the tone for the trial. Intervention is minimised if ground rules on questioning are agreed and adhered to (para 3E.1, Criminal Practice Directions 2014):

- judges are expected to intervene if needed, even if an intermediary does not (page 106, Judicial College Crown Court Bench Book – Directing the Jury 2010);
- advocates on either side may ask the judge to intervene if cross-examination is unreasonable (eg if unfair, offensive or aggressive) or irrelevant (Standard 16, Witness Charter 2013). Prosecutors must alert the court if cross-examination of a victim witness is 'inappropriate' or 'too aggressive' (page 20, Code of Practice for Victims of Crime, 2013);
- questioning that exploits developmental limitations is wholly inconsistent with a fair trial and contravenes the professions' Codes of Conduct. Failure to control inappropriate

[1] Section 29, YJCEA 1999, restricts intermediary appointments to prosecution and defence witnesses. For information about Registered Intermediaries for witnesses, contact the National Crime Agency at 0845 0005463, and by e-mail at soc@nca.pnn.police.uk (by pnn users) or soc@nca.x.gsi.gov.uk (by others). 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 courts to appoint intermediaries to assist vulnerable defendants but only when giving evidence at trial.

questioning signals that it can continue. Complaints made later about 'improper' cross-examination are harder to substantiate where the judge has not intervened at the time.

2.2 ***The judiciary must state what ground rules will apply*** Ground rules hearings should not be a rushed, 'tick-box' exercise. They are most effective where there is informal, open discussion allowing the intermediary, if any, to present recommendations and allowing the parties to raise concerns: this is likely to save time at trial. Discussion should culminate in a clear judicial statement of rules to be applied at trial (para 3E.4, Criminal Practice Directions 2014).

2.3 ***Advocates have a duty to abide by court rulings*** and to ensure that the client understands this (Lord Chief Justice, paras 108, 109 and 114 *R v Faroogi and Others* [2013] EWCA Crim 1649). **'**Advocates must adapt to the witness, not the other way round' (Vice-President of the Court of Appeal, para 45, *R v Lubemba* [2014] EWCA Crim 2064). Defendants need not attend the ground rules hearing unless the judge wishes them to hear discussion of limits placed on cross-examination.

2.4 ***A trial practice note should follow the ground rules discussion*** indicating that all parties expect the judge to ensure ground rules are complied with. The judge may prepare the note, or call for one to be prepared by the parties with the intermediary's help (recommendations 21, 26 and para 5.15, Advocacy Training Council Raising the Bar 2011, endorsed in *R v Wills* [2011] EWCA Crim 1938).

2.5 ***Crown Court ground rules hearings before the day of the witness's evidence are most effective*** They must involve the trial judge and advocates. Advance discussion gives advocates time to adapt their questions to the witness's needs (para 3E.3, Criminal Practice Directions 2014; para 27, *R v F* [2013] EWCA Crim 424). Poor questioning 'very often' results from failure to adapt questions sufficiently (para 64, *R v IA and Others* [2013] EWCA 1308). DVD evidence in chief must be viewed beforehand.

2.6 ***Ground rules must be discussed with magistrates*** not just the legal adviser (para 3E.1, Criminal Practice Directions 2014; para 5.2, Magistrates' Court Preparation for effective trial), with sufficient time scheduled for discussion before the evidence of the vulnerable witness or defendant.

2.7 ***Where communication or other difficulties emerge during questioning*** further ground rules discussions are often helpful.

3. CASES IN WHICH GROUND RULES HEARINGS ARE NECESSARY

3.1 ***Directions for 'appropriate treatment and questioning'*** are required (Rule 3.9(7), Criminal Procedure Rules 2015):

- in all intermediary trials. The hearing must address how questions should be put to help the witness understand and how the intermediary will alert the court if the witness has not understood or needs a break (part F.1 Application for a special measures direction; section 9 'Making the most of working with an intermediary', www.lexiconlimited.co.uk).

Good practice example: the hearing was held two weeks before the trial. It discussed the intermediary's recommendations, including observations made on the witness's court familiarisation visit. This resulted in improved preparation of questions, changes to special measures decisions and confirmation of timetabling arrangements which provided certainty for the witness and saved time at trial.

- where a witness or defendant is young and/ or has communication needs;
- where a witness is otherwise vulnerable because of the nature of the offence, life history or other factor (The Advocate's Gateway Toolkit 10, Identifying vulnerability). Needs may not be obvious and the person may actively conceal them. Someone who is articulate, apparently confident, and who declines special measures may nevertheless be vulnerable. Account should be taken of: mental welfare; ability to make decisions about special measures; and cognitive impairments resulting from post-traumatic stress disorders and conditions such as borderline personality disorder. A judge may impose special measures on the witness and/ or remove the defendant during the trial if his behaviour (even nonverbal) seems undermining or intimidating (The death of Mrs A: Surrey Safeguarding Adults Board Serious Case Review 2014);
- a witness has given evidence before, which may affect 'the expectation of fortitude in a witness' (para 68, *R v R, M and L* [2013] EWCA Crim 708);
- an unrepresented defendant is prohibited from cross-examining the witness and a lawyer is appointed to do so on his behalf (sections 34 to 40, Youth Justice and Criminal Evidence Act 1999; section 105, Coroners and Justice Act 2009).

4. GROUND RULES AFFECTING CROSS-EXAMINATION

4.1 ***Where limits are 'necessary and appropriate'*** they must be clearly defined (para 3E.4, Criminal Practice Directions 2014, drawn from *R v Wills* [2011] EWCA Crim 1938):

- the judge has a duty to ensure limitations are complied with;
- the judge should explain them to the jury and reasons for them, so that failure to cross-examine in such circumstances is not taken as tacit acceptance of the witness's evidence;
- if the advocate fails to comply with limitations, the judge should give relevant directions to the jury when that occurs and prevent further questioning that does not comply with ground rules settled in advance. If the advocate is unable to adapt questions sufficiently, the judge may take over questioning. There were 'no grounds for criticism' where a judge asked a young witness some of defence counsel's questions but declined to ask questions that were 'mere comment or would unproductively inflame the witness' (para 10, *R v Cameron* [2001] EWCA Crim 562);
- instead of commenting on inconsistencies during cross-examination, following discussion the advocate or judge may point out important inconsistencies after the witness's evidence. The judge should also remind the jury of these during summing up but must be alert to alleged inconsistencies that are trivial or not inconsistent. Cross-examination need not 'turn over every stone… oblique comment on the

evidence, such as the attempts to demonstrate inconsistency… could probably have been entirely disposed of or dealt with in much more summary form' (para 73, *R v IA and Others* [2013] EWCA 1308).

4.2 ***The judge may issue ground rule directions about the manner of questioning and about questions that may or may not be asked*** (Rule 3.9(7)(b)(ii) and (iv), Criminal Procedure Rules 2015). A competent witness 'is entitled to have the best efforts made to adduce his or her evidence before the court, notwithstanding the difficulties that may exist' (para 42, *R v B* [2010] EWCA Crim 4). 'In relation to young and/ or vulnerable people, this may mean departing radically from traditional cross-examination' (para 3E.4, Criminal Practice Directions 2014):

- directions about 'manner' may include pace, tone and advocates' body language;
- restrictions are appropriate where there is a risk of the witness becoming distressed, failing to understand or acquiescing to leading questions (para 3E.4, Criminal Practice Directions 2014; *R v B* [2010] EWCA Crim 4; *R v W and M* [2010] EWCA Crim 1926). Question types likely to result in unreliable responses include (see also Toolkit 2(a) General principles from research):
  - 'tag' questions, combining a statement and a short question inviting confirmation of its truth (eg *'Jim didn't do it, did he?'*). These are powerfully suggestive and linguistically complex
  - comment and assertions eg '*You have told this jury a complete pack of lies'* are hard to contradict, especially from an authority figure; they may not even be recognised as requiring a reply. They are problematic not only for children but for anyone with learning disability, specific language impairment or autism spectrum disorder, irrespective of age and level of intellectual ability. Lord Judge, Lord Chief Justice, described assertion as 'not true cross-examination. This is unfair to the witness and blurs the line from a jury's perspective between evidence from the witness and inadmissible comment from the advocate' (para 113, *R v Farooqi and Others* [2013] EWCA Crim 1649). He described use of assertions to young witnesses as 'particularly damaging'[2]
  - being accused of lying. This is likely to cause the witness serious distress and may also have a longer term damaging impact (chapter 5, para 64i, Equal Treatment Bench Book 2013; para 92, CPS Guidelines on Prosecuting Cases of Child Sexual Abuse 2013). Repeated assertions to a young or vulnerable witness do not serve any proper evidential purpose and should not be permitted; in some circumstances the judge will not permit the assertion to be put even once (*R v E* [2011] EWCA Crim 3028). If such a challenge is justified, it should be addressed separately, in simple language, at the end of cross-examination.

4.3 ***Asking advocates to write out questions in advance is 'entirely reasonable'*** (para 43, *R v Lubemba* [2014] EWCA Crim 2064; Section 28 pilot scheme Guidance Note).

[2] 'Half a century of change: the evidence of child victims' Toulmin lecture (20.3.2013) King's College London.

An intermediary may be asked to review draft questions with the advocates. The process needs to be timetabled: intermediaries cannot respond appropriately 'on their feet' during the ground rules hearing or if questions are sent or given just prior to cross-examination. Review does not mean pre-approval; intervention during questioning may still be necessary. Poor practice example: Defence counsel began cross-examination of an eight year-old with language disorder by asking three questions not discussed or agreed at two ground rules hearings. These included: 'Do you know what truth means?' and a question with a tag ending. He then said 'No further questions'. The judge did not intervene. The child was distressed and asked 'is that it? Why doesn't he want to talk to me about what happened?'.

4.4 ***The judge may request that direct questions to be put to the witness*** (chapter 5, para 64, Equal Treatment Bench Book 2013). 'Some of the most effective cross-examination is conducted without long and complicated questions being posed in a leading or "tagged" manner' (para 30, *R v Wills* [2010] EWCA Crim 1926); para 30, *R v W and M* [2010] EWCA Crim 1926). Questions which do not lead can nonetheless test the evidence (para 20.3, Advocacy Training Council Raising the Bar 2011).

4.5 ***The judge may relieve a party of a duty to put the case to a witness or a defendant in its entirety*** (Rule 3.9(7)(b)(i), Criminal Procedure Rules 2015; para 3E.4, Criminal Practice Directions 2014; *R v Wills* [2011] EWCA Crim 1938; *R v E* [2011] EWCA Crim 3028). Advocates 'cannot insist on any supposed right "to put one's case" or previous inconsistent statements to a vulnerable witness' (para 45, *R v Lubemba* [2014] EWCA Crim 2064). Intermediaries express concern that, on occasion, advocates have been too ready to concede that the case could not be put to the witness, denying some witnesses the opportunity to answer simple questions that appear to be within their capability. Good practice example: The defence case was that sexual offences alleged by a six year-old did not happen. Following intermediary advice, the judge ruled that the child be asked questions in the following format: "You said T put his willy in your mouth. T says he didn't put his willy in your mouth. Did T really put his willy in your mouth?". The child was able to answer this form of question.

4.6 ***The defence case should be put to the witness provided this can be done simply, in a way the witness can cope with and understand, without suggestive syntax*** A judge cannot force an advocate to ask a specific question. However, if the defence declines to ask a key question that the witness is capable of answering, then it should be asked by the prosecutor or the judge:

- where a judge asked a young witness a question not posed by counsel, the President of the Queen's Bench Division said this 'did not constitute a question designed to bolster X's credibility; rather it gave her the chance to deal with the implication in the cross-examination… a trial judge is not only entitled but under a duty to ensure that no improper advantage is taken of a complainant's vulnerability and, in this case, the judge did no more than was necessary pursuant to his duty of fairness' (paras 63, 69-70, *H v R* [2014] EWCA Crim 1555);

- alternative steps to explain the defence case to the jury should be triggered only if the witness (preferably confirmed by an intermediary) is unlikely to understand or cope with questions on the topic asked in a simple, straightforward way.

4.7 ***No later than the ground rules hearing, the judge should rule on applications affecting the conduct of cross-examination*** (para 35, Judiciary of England and Wales, Judicial Protocol on the implementation of section 28 of the Youth Justice and Criminal Evidence Act 1999: 'Pre-recording of cross-examination and re-examination' 2014). Such applications include:

- section 41, Youth Justice and Criminal Evidence Act 1999 (witness's previous sexual history). Section 41 restrictions should be adhered to unless there are compelling reasons, amounting to the risk of a miscarriage of justice, to dispense with them. Applications must be made in writing, within 28 days of prosecution disclosure (Rule 36.2, Criminal Procedure Rules 2015). The prosecutor should oppose non-compliant applications; a judge considering a non-compliant application should nevertheless apply section 41 criteria (including written questions) when deciding whether to grant it;
- section 100, Criminal Justice Act 2003 (non-defendant's bad character);
- third party disclosure. The judge has power to require the advocate to explain to the jury the nature of the defence and to justify why questions arising from third party material are being asked, before such questions are asked;
    - the prosecutor should ensure that the witness's informed consent to disclosure has been obtained where this is necessary[3];
    - a witness taken by surprise by questions arising from third party disclosure may become very distressed. If posed at the start of cross-examination, the witness may become too upset to go on to answer questions about the current alleged offence. Witnesses should be told in advance that the judge has permitted such information to be disclosed to the defence (para (d)1, Draft CPS Guidance on Speaking to Witnesses at Court January 2015). Consideration should also be given to the place in cross-examination when questions about third party material should be put to the witness.

4.8 ***Questioning must avoid repetition. It should be stopped if it occurs*** (para 3E.1, Criminal Practice Directions 2014). Planning is necessary to avoid repetition where there is more than one defendant (Rule 3.9(7)(b)(v), 2015; para 3E.5, Criminal Practice Directions 2014; para 95, CPS Guidelines on Prosecuting Cases of Child Sexual Abuse 2013). Before the trial, advocates should divide topics between them, with the first defendant's advocate leading the questioning and advocates for other defendants

[3] For example, 'Prosecutors [should] satisfy themselves that complainants have consented to their medical records and/or counselling notes being disclosed to the defence' (Compliance Issue 4, Disclosure of Medical Records and Counselling Notes HM CPS Inspectorate 2013, referring to chapter 15, Rape and Sexual Offences CPS); 'Personal information about children and families held by the agencies is subject to the legal duty of confidence, and should not normally be disclosed without the consent of the subject. The law permits the disclosure of confidential information where a countervailing public interest can be identified' (para 3, Investigation and Prosecution of Child Abuse Cases: Joint Letter CPS 2003).

asking only ancillary questions relevant to their client's case, without repeating questioning that has already taken place on behalf of other defendants.

4.9 ***Questioning must avoid stereotypes and insulting language*** Judges are expected to control:

- stereotypes eg: *'It beggars belief that you remained overnight where you claim you were raped. You could have left that house at any time during the course of that evening'*[4]; and *'If you were telling the truth about these matters*, *then I suggest that your answers would be consistent'.*[5] Prosecutors are also expected to challenge stereotypes (Annex C, CPS Guidelines on Prosecuting Child Sexual Abuse 2013);
- insulting language, eg calling the vulnerable witness *'wicked'* or his or her evidence *'ridiculous'*.

4.10 ***A modified approach to the questioning of all witnesses may be requested*** Where a defendant had complex needs but no intermediary, the judge requested that all witnesses be asked 'very simply phrased questions' and 'to express their answers in short sentences' (*R v Cox* [2012] EWCA Crim 549). Lord Judge, Lord Chief Justice, endorsed this approach: 'processes have to be adapted to ensure that a particular individual is not disadvantaged as a result of personal difficulties, whatever form they may take' (para 29).

4.11 ***Admissibility of hearsay may be allowed in the interests of justice*** In *R v Turner* [2012] EWCA Crim 1786, the judge allowed part of the statement (not concerning the disputed issue) of a reluctant witness to be adduced under section 114(1)(d), Criminal Justice Act 2003. The Court of Appeal held that this decision 'legitimately enabled the best evidence of the witness to be given while at the same time protecting the interests of the appellant'.

4.12 ***The prosecutor must explain to the jury about the circumstances of relevant offending by the witness*** rather than it being put to the witness in cross-examination (para 64, CPS Guidelines on Prosecuting Child Sexual Abuse 2013*).* For guidance about the approach to children/ adults who may be victims of trafficking offences and who become involved in criminal activities, see *L and Others v R, Children's Commissioner and Equality and Human Rights Commission* [2013] EWCA Crim 991.

5. GROUND RULE LIMITS ON THE LENGTH OF CROSS-EXAMINATION

5.1 ***The judge is 'fully entitled, and indeed we would say obliged' to impose reasonable time limits*** (para 11, *R v Butt* [2005] EWCA Crim 805). This is now addressed in the Criminal Procedure Rules (Rules 3.9(7)(b)(iii) and 3(11)(d), 2015). A

[4] A rape stereotype listed at para 12, chapter 17 of the Crown Court Bench Book – Directing the Jury (2010) states that: 'A person who has been sexually assaulted reports it as soon as possible'.

[5] Another stereotype (op cit) is that 'A person who has been sexually assaulted remembers events consistently'.

45 minute limit on questioning of a 10 year-old was 'reasonable' (paras 32, 51, *R v Lubemba* [2014] EWCA Crim 2064):

- the PCMH questionnaire requires identification of disputed issues and estimates for questioning (question 37). Parties should state whether estimates are realistic and a timetable can be fixed (questions 13.3 and 13.5). Judges should challenge unrealistic estimates and keep duration under review at trial;
- cross-examination as a technique to 'wear down' the witness must not be permitted. Duration must not exceed what the witness can reasonably cope with, taking account of age and intellectual development, with a total of two hours as the norm and half a court day at the outside. The witness's needs (age, health, attention span, disability etc.) may require questioning to take place over more than one day (chapter 5, para 63, Equal Treatment Bench Book 2013);
- advocates should not be permitted to range widely over the witness's general history and supposed character to the extent that it assumes disproportionate importance over the central issues which the jury are to try/ decide. The judge may direct that some matters be dealt with briefly in just a few questions (chapter 5, para 63, Equal Treatment Bench Book 2013). Lengthy cross-examination should not be permitted on an issue admitted by the complainant (*R v Ali and Anor* [2014] EWCA Crim 140);
- magistrates should scrutinise why each witness is said to be necessary, set a time that the witness's evidence should take and monitor duration *R (Drinkwater) v Solihull Magistrates' Court* [2012] EWHC 765 (Admin).

6. GROUND RULES CONCERNING 'APPROPRIATE TREATMENT'

6.1 ***Taking 'every reasonable step'*** to facilitate participation includes directions for 'appropriate treatment' (Rules 3(9)(3)(b) and 3.9(7), Criminal Procedure Rules 2015). Ground rules hearings should address 'the general care of the witness' (para 43, *R v Lubemba* [2014] EWCA Crim 2064) and should be held in advance of the witness's evidence allowing adequate time for arrangements to be put in place and for an intermediary, if any, to complete their work. , Arrangements include:

- judicial introductions. These are 'entirely reasonable' and should take place 'preferably in the presence of the parties' (para 43, *R v Lubemba* [2014] EWCA Crim 2064). If arranged at the same time as the court familiarisation visit, introductions may be less pressured (chapter 5, para 27e, Equal Treatment Bench Book 2013);
- obtaining the witness's informed view about how to give evidence (Standard 11, Witness Charter 2013; page 19, Code of Practice for Victims of Crime 2013; section 4.84, Achieving Best Evidence 2011) and who should accompany them while giving evidence (para 29B.1, 2, Criminal Practice Directions 2014). Their views should be reflected in the Application for a special measures direction (parts B5, 6 and C3);
- refreshing and whether the witness should view DVD evidence in chief at a different time from the jury (para 29C.1-4, Criminal Practice Directions 2014);
- the management of breaks (including very short breaks without sending out the jury);

- confirmation of timetabling arrangements. The judge and advocates should anticipate and plan for difficulties, particularly in cases with more than one vulnerable witness. The timetable should ensure that each such witness gives evidence at the optimum time of day.

For examples of flexibility to accommodate witness needs, see www.lexiconlimited.co.uk.

7. DISCUSSION OF INFORMATION FOR THE JURY

7.1 ***Limitations on cross-examination*** Explanations for the jury (and their timing) should be agreed by the judge and parties. In many cases, it will be appropriate for the judge to direct the jury accordingly before the witness gives evidence and to remind the jury in the summing up. A defence advocate may be permitted to tell the jury, either before or after cross-examination, that the witness's evidence is challenged where the challenge appears in the defendant's interview or the defence statement. Following the ground rules discussion, the judge in *R v E* [2011] EWCA Crim 3028 advised the jury:

'The directions that I have given to Mr X in this case are that he can and should ask any question to which he actually wants answers, but he should not involve himself in any cross-examination of [C] by challenging her in a difficult [?] way. In this case the defendant has already set out in some detail what his defence is. It is not a question of putting it to a witness and challenging her about it, so you won't hear the traditional form of cross-examination. I thought you ought to know that from the outset.'

The judge reminded the jury of the limitations imposed on defence counsel before the child gave evidence.

7.2 ***The person's communication needs*** (page 105, Judicial College Crown Court Bench Book - Directing the Jury 2010). Thus information about the defendant's Asperger syndrome might have helped explain to the jury why he was 'behaving so oddly at trial, such as reading a book during X's evidence' (*R v Sultan* [2008] EWCA Crim 6).

7.3 ***Communication aids*** Consider how these are to be explained to the jury and whether copies are needed.

This guidance was funded by Lexicon Limited. It updates a previous toolkit which drew on comments from Lord Justice Fulford; HHJ Tapping; HHJ Peter Rook QC; HHJ Hopmeier; HHJ Topolski; Lesley Bates (barrister); Michael Bowes QC; Professor Penny Cooper (Kingston University London); Rochelle Cowan (Registered Intermediary; Leslie Cuthbert (Solicitors Association of Higher Court Advocates); Sally Hales QC and Emma Stuart-Smith (on behalf of the Criminal Bar Association), Sarah Eitel-Smith (on behalf of the Royal College of Speech and Language Therapists); Paul Mendelle QC; and David Wurtzel (City University London). Additional input has been provided by Rachel Cohen, Ruth Marchant and Sue Thurman (Registered Intermediaries). Lexicon would welcome further comments on the contents.