

Joining the Dots: How to use law and good practice on the journey from assessment to court

Facilitators:

David Wurtzel

Rosemary Wyatt

Some aspects to consider for Assessment

- Making arrangements for the Assessment
- What Assessment needs to cover
- Information to be gathered from other sources
- Considerations for ABE advice following Assessment (or Court Report following Assessment post ABE)

Issues around the RI and the Interview

- Planning meetings with IO
- Timing of ABE following Assessment
- Preparation of Aids to Communication (after agreement with IO)
- Decisions around VW's ability to give evidence at Court
- Decisions around VW's need for an RI at Court

Good practice references

References –cont.

- Documents stored on 'files ' on RIO –Including:-
- Reference Pack for Newly qualified RIs.
 - Suggestions for points to look out for in Bridget Towning's document for Mentees
 - Articles about various aspects of interviewing etc including two articles by Ruth Marchant RI . ('Truth, lies and muddles 'and 'How young is too young ? ') highly useful information for those dealing with very young children.
 - Links to The Advocate's gateway.

Arrangements for Assessment

- Problem: The OIC says 'I'll just give you the phone number of the parents/ care home/ hospital and you can make your own arrangements to see them'.

The answer!

- Be assertive! Explain why you should not be alone with the witness.
- Suggest that it is very useful for the IO be present to inform their interview.

What to cover in Assessment

- Find out enough about the alleged offence to be aware of what concepts, vocabulary, descriptive abilities (narrative) might be needed at interview.
- Try to think (Court Report) and all that will be needed to write recommendations/ advise Special Measures.
- The 'Evidence' may need to be detailed; precise and pertinent to back-up all the arguments you may have to produce at the Ground Rules Hearing.
- This may include justifying having an Intermediary at all.
- Justifying why you are recommending changes in Counsel questions.

Timing of ABE

- The Problem: OIC says 'We really need to get all this done and dusted on the same day. That will be ok won't it?'
- Think carefully if this will allow you to do your job properly and to give the best advice for ABE strategies.
- You may have to make tailored props for your witness needs
- You may need extensive planning with the IO
- The witness may have medical or mental health needs which become worse with fatigue or pressures due to anxiety.

ABE Timing (cont'd)

- Is it important to have time to write a proper pre-ABE report and strategies and develop props?
- What does the Report verbal or written need to contain?
- Is there a question of whether the witness can give evidence at all following the Assessment?

Looking at the interview room








Strategies and props to help the police interview



I need a break



 <p>I don't understand</p>	 <p>I don't know</p>	 <p>I've forgotten</p>	 <p>Yes</p>	 <p>No</p>
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Sharon Richardson
Force Champion Event Feb 2010



Sharon Richardson
Force Champion Event Feb 2010

Decisions

- The problem
- Can the witness give meaningful evidence?

OR

- Does the witness need an RI to facilitate ?
- How to decide
- How to not slide into expert witness territory !

How to decide if witness has ability to give evidence at ABE or trial

- Can they understand a simple question or command (2 key words) eg Point to the dog /where's the teddy? / Do you want tea or coffee/Who 's in the kitchen ?'what's a key for ?
- Can they answer accurately by speakingword /gesture/ pointing to a picture or symbol/ writing or drawing

Decisions cont.

- Can the witness answer a simple question
- Can they use pointing/symbols/gesture /writing or drawing?
- Are alternative methods accurately understood by the listener
- Examples . 2 different two year olds
- Adults with severe mental health problems/learning disability /dementia

Does the witness need me at ABE and Court?

- Accurate answers to all questions simple and complex
- Able to give detailed information/create a narrative/ understand concepts of time/position/ sequence /place/tense/emotions
- Able to speak, sign or write clearly while giving information

Adult and child example

- Confident in relating to adults whether child or adult and able to contain any mental health problem
- Examples:-

Court report

- Make sure all the points you have noticed in assessment and ABE and learnt from others are accurately reported and described and referenced so that they can support your arguments .

Once you are at court

David Wurtzel

The Exercise

- Linking best practice with the authority which supports it
- Is something actually going wrong?
- What do you think is best?
- Is there a rule or guidance which supports you?

Three problems

- One. You arrive at crown court ready to assist a witness at trial. “Hello, we only need you for the Ground Rules Hearing/and/or vetting questions”
- Two: What cannot be left out?
- Three: What if the witness cannot communicate in court?

Problem One

- 1. Who is telling you this?
- 2. Has there been a special measures direction?
- 3. How should intermediaries be used?
- 4. Rules for question vetting
- 5. How to control questioning
- 6. How can a GRH not happen?

Problem One (2)

- 1. Who is telling you this?
- Arrive early; identify and deal directly with the advocate (even if already in touch)
- 2. Has there been a SM direction?
- The PTPH form provides for applications to be made
- Cf. court file/electronic copy of PTPH
- The order should mean what it says

Problem One (3)

- 3. How should an RI be used?
- S 29 YJCEA Act 1999 ('communicate to the witness')
- Toolkit 16, The Advocate's Gateway
- Equal Treatment Bench Book, paragraphs 81-114
- Crown Court Compendium 2017 para 3-7

Problem One (4)

- 4. Question vetting
- Not required by law but approved by the Court of Appeal (R v FA): see R v Dinc [2017] for the benefits. Both on TAG. Routine since section 28 pilots
- Crown Court Compendium 3-7 at 7(5) (PTPH should include orders for filing questions with the RI and the court and for arrangements for the advocates and RI's to discuss questions before the GRH)
- Equal Treatment Bench Book February 2018 para 86: where the 'assessment' [RI report] indicates some restrictions on cross-examination, the judge should review questions with the intermediary at a ground rules hearing

Problem One (5)

- 5. How to control questioning
- CPR 3.9(7) Where directions for appropriate treatment and questioning are required the court must invite representations by the parties and any intermediary and set ground rules e. g., about the manner and duration of questioning, about the questions that may or may not be asked, and allocate topics if more than one defendant
- CPD 3E.4 Where limitations are necessary and appropriate they must be 'clearly defined' and the judge ensures they are complied with
- The Advocate's Gateway Toolkits 1a,3-7, etc.

Problem One (6)

- 6. How can a GRH not happen?
- CPR 3.9(7) Where directions for appropriate treatment and questioning are required, the court MUST set ground rules (and invite representations from an RI)
- Crown Court Compendium 3-7/7(6)(7) Judge must at PTPH set date and time for the GRH and order that the intermediary must attend
- Toolkits 1etc.: use the GRH checklist
- ETBB paras 115-125 (with 'trial practice note' para 124)
- ETBB para 86 question vetting is at the GRH

Problem Two

- What cannot be left out?
- 1. Memory refreshing
- CPD 2015, paragraph 18.C1-4 ‘Witnesses are entitled’. Court should enquire at PTPH about arrangements; it should not be immediately before giving evidence; consider doing it separately from court familiarisation
- Equal Treatment Bench Book February 2018 paragraphs 75-80. Repeats CPD guidance ‘Arrangements should be judicially led and are likely to be determined at a ground rules hearing’. Someone other than the RI should take relevant notes during the viewing of the ABE

Problem Two (2)

- 2. Practising on the live link
- Criminal Practice Directions 18.B.4 Witness is entitled to practise in order to be able to express an informed view about special measures. Just being shown the room and equipment is 'inadequate'
- Equal Treatment Bench Book February 2018 paragraphs 67-68 Witness is entitled 'and should be shown screens in place. The court may wish to direct that a court familiarisation visit takes place before the trial' to help identify if use of the live link 'interferes significantly with the quality of witness communication'

Problem Two (3)

- 3. Timetabling
- Equal Treatment Bench Book paragraphs 44-48 the judge should prioritise vulnerable witness cases and obtain availability dates for intermediaries and witnesses
- ETBB paragraphs 52-56 The need for a clean start
- Criminal Practice Directions 3F.28 Where the court directs an intermediary will attend the trial, their dates should be provided to the court. It is preference that such trials are faxed rather than placed in the warned list
- NB Lady Justice Thirlwall's Working Group: write in!

Another Problem

- Are special measures discrete?
- Criminal Practice Directions 2015 paragraph 18A.2
Special measures need not be considered in isolation.
- The needs of the individual witness should be ascertained and a combination of special measures may be appropriate. For example, using screens to shield the live link screen from the defendant and the public
- Equal Treatment Bench Book paragraphs 71-74 Flexible use of the live link including 'using combined special measures' in the same terms as the CPD

Problem Three

- What if the witness is not able to communicate in court?
- Section 53, YJCEA 1999: competence is the ability to 'understand questions put to him as a witness and give answers to them which can be understood'
- The witness need not understand every question (R v B)
- Competence is a legal test which requires expert evidence
- What if the RI concludes that the witness is likely to fail the competence test even if the trial is suitably adapted?

Further research and s 28

- <https://www.criminallawandjustice.co.uk/features/“Section-28”-and-Pre-Recording-Cross-Examination>
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- <http://journals.sagepub.com/doi/abs/10.1177/1365712717725534>
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- https://www.researchgate.net/publication/322951184_No_Evidence_Against_Sketch_Reinstatement_of_Context_Verbal_Labels_or_the_Use_of_Registered_Intermediaries_for_Children_with_Autism_Spectrum_Disorder_Response_to_Henry_et_al_2017
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Last words

- The Court of Appeal in R v Lubemba/R v JP (2014)
- Paragraph 45 ‘It is now generally accepted that if justice is to be done to the vulnerable witness and also to the accused, a radical departure from the traditional style of advocacy will be necessary. Advocates must adapt to the witness, not the other way round. They cannot insist upon any supposed right to “put one’s case” or previous inconsistent statements to a vulnerable witness’.