

Institution: University of Gloucestershire		
Unit of Assessment: UoA 04 Psychology, Psychiatry & Neuroscience		
Title of case study: The 20 Principles of Questioning and the Vulnerable: Applying psychology to the practice of cross-examination		
Period when the underpinning research was undertaken: 1 January 2000 to 31 December 2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Jacqueline M. Wheatcroft	Role(s) (e.g. job title): Professor of Forensic Psychology	Period(s) employed by submitting HEI: August 2018-Present
Period when the claimed impact occurred: August 2013 to 31 July 2020		
Is this case study continued from a case study submitted in 2014? No		
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>Research provides the platform for significant change in the ways evidence is elicited from children and vulnerable witnesses during legal cross-examination. Empirical evidence has shown that leading or oppressive questioning negatively influences testimony; thus, children and vulnerable witnesses require a measure of protection to give their best evidence. As a result, the 20 Principles of Questioning has been developed for the legal profession to ensure that questioning does not infringe the principle of a fair trial. Heralded as a 'sea change', the impact is a revolution in how criminal advocates question vulnerable witnesses and how judges oversee the examination process.</p>		
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>The evidence of witnesses is a key feature of criminal justice and sexual offences account for more than 50% of some Crown Court's caseloads. The 20 Principles of Questioning is the foundational cause of change to legal practice delivered through Advocacy & Vulnerable (A&V) training. Key are the contributions made by psychology to (and with) law which draw heavily from research, reports and papers that outline a clear evidence base. In 2004, research reported on the influence question styles had on witness accuracy and found that traditional approaches to cross-examination reduced accurate responses of witnesses [1]. Plus, interviews with rape victims and professionals in criminal justice talk to how cross-examination can re-victimise vulnerable witnesses demonstrating a broader, mental health and well-being impact, than simply on evidence alone [2]. Vulnerable witnesses' experiences are a global challenge.</p>		

Despite the centrality of leading questions to cross-examination, law had never defined them and research has led the way by expressing a more nuanced, clear distinction between directive and non-directive forms of leading [3/4]. Attempts to assist witnesses through familiarisation to cross-examination procedures have also been investigated. Preparation aimed to identify standard tactics used by lawyers during cross-examination and provide practical advice to witnesses on the best way to approach the interaction. Empirical research, supported by the Arts and Humanities Research Council (AHRC), concluded complex lawyerly questioning impeded witness accuracy; but familiarisation increased accuracy and reduced errors [5].

In 2014, the UK Government issued a policy paper entitled '*Commitment to Victims – strengthening the protection for victims by making the experience of going to court a better one*', and the case of *R v Lubemba* (2014) moved the profession closer toward thinking about best practice with children and vulnerable witnesses. Because of this steer researchers argued the familiarisation route, despite its legal endorsement (*R v Momodou*, 2005), left witnesses to combat the shortcomings of traditional cross-examination and that this emphasis could not continue [5]. Work put forward strong advice that justice systems develop best practices to gain evidence that is more accurate from witnesses. As the impact is particularly acute for children, vulnerable and victim witnesses, researchers argued directive-leading questions create the greatest difficulty in meeting trial goals and a call to prohibit such questions in cross-examination was proposed [6].

In 2015, the researcher, by invitation, presented at an international conference addressing vulnerability in justice systems. Such was the impact an opening chapter entitled 'Avoiding Miscarriages of Justice' underpinned the Advocacy Training Council (ATC) publication 'Addressing Vulnerability in Justice Systems'. It deals with the impact of questioning on vulnerable witnesses and focuses on the need for an adjusted approach to questions used in cross-examination, including a ban on directive-leading questions [7].

Directive-leading questions are the most damaging to accurate witness reports and various works has informed the 20 Principles and support their continued development. The research is significant in the change to evidence-based policy, legal procedure and new advocacy practice but with an expectation of additional upstream impacts for children and vulnerable witnesses' experiences.

3. References to the research (indicative maximum of six references)

1. Wheatcroft, J.M., Wagstaff, G.F., & Kebbell, M.R., (2004). The influence of courtroom questioning style on actual and perceived eyewitness confidence and accuracy. *Legal & Criminological Psychology*, 9, 83-101. <http://dx.doi.org/10.1348/135532504322776870>
2. Wheatcroft, J.M., Wagstaff, G.F., & Moran, A., (2009). Re-Victimising the victim? How rape victims experience the UK legal system. *Victims and Offenders* 4(3), 265-284. <http://dx.doi.org/10.1080/15564880903048529>
3. Wheatcroft, J.M., & Woods, S., (2010). Effectiveness of witness preparation and cross-examination non-directive and directive question styles on witness accuracy and confidence. *International Journal of Evidence & Proof*, 14(3), 189-209. <http://dx.doi.org/10.1350/ijep.2010.14.3.353>
4. Gous, G., & Wheatcroft, J.M. (2020). Directive-leading questions and preparation techniques effects on witness accuracy. *SAGE Open*, 10(1). <http://doi.org/10.1177/2158244019899053>
5. Wheatcroft, J.M., & Ellison, L.E. (2012a). Evidence in Court: Witness preparation and cross-examination style effects on adult witness accuracy. *Behavioral Sciences & the Law*, 30, 821-840. <http://dx.doi.org/10.1002/bsl.2031> Ellison, L.E., & Wheatcroft, J.M. (2010b). "Could you

ask me that in a different way please?" Exploring the impact of courtroom questioning and witness familiarisation on adult witness accuracy. *Criminal Law Review*, 11, 823-839. Both outputs supported by AHRC Grant No: AH/G010323/1, Alpha+ rated, reflecting 'a proposal of the highest quality and significance to the research area, to be funded as a matter of highest priority'.

6. Wheatcroft, J.M., Caruso, D. & Krumrey-Quinn, J. (2015). Rethinking Leading: The directive, non-directive divide. *Criminal Law Review*, 5, 340-346. <http://eprints.glos.ac.uk/6102/>

7. Wheatcroft, J.M. (2016). Avoiding Miscarriages of Justice. Invited Chapter, in P. Cooper & L. Hunting (Eds.), *Addressing Vulnerability in Justice Systems*, Wildy, Simmonds & Hill Publishing: London. <http://www.wildy.com/isbn/9780854901968/addressing-vulnerability-in-justice-systems-pb-wildy-simmonds-and-hill-publishing>

4. Details of the impact (indicative maximum 750 words)

A leading psychologist and academic at the University of Gloucestershire has worked closely with legal practitioners and the Inns of Court College of Advocacy (ICCA) to develop the 20 Principles of Questioning; subsequently delivered to 6000+ criminal practitioners and judges [1]. Prior to this, the leading question had received little judicial, legislative or academic scrutiny. In the period, research has led to direct change of cross-examination procedure and practice across legal jurisdictions. In doing so, contributions from the ICCA has been significant in implementing the 20 Principles through large-scale financial and practical support to develop a world leading framework which has realised change in how children and vulnerable witnesses are cross-examined. Six lead trainers identified and trained 60+ legal professionals to deliver the 20 Principles; an enormous undertaking.

In 2017, Drew and Gibbs explained why the Advocacy and Vulnerable (A&V) training 'heralds a sea change' and the 2018 Judicial Perceptions report on the quality of criminal advocacy, in discussing adaptations to practice, noted 'One area of practice that is recognised to be largely improving is advocates' ability to deal with young and vulnerable witnesses' (p. 25) [2].

Significantly, a Criminal Practice Direction (CPD No.5; 2017) points advocates to the 20 Principles to assist them in dealing with questioning vulnerable witnesses [3]. CPD and Criminal Procedure Rules (CPR) are law and amendments represent a change in law binding on the courts. Participants have a duty to prepare and conduct cases in compliance with CPD, CPR and the Court. The new rules provide benefits: for advocates and judges, improved professional practice; for vulnerable witnesses, better opportunities to give best, and more accurate, evidence. A new plea and trial preparation hearing (PTPH) form, authorised by the Lord Chief Justice, includes reference to the use of the 20 Principles [4] and (as illustrated in *R v YGM [2018] EWCA Crim 2458*) judges expect advocates undertaking cases involving children and vulnerable witnesses to be familiar with the 'modern approach to questioning'.

The A&V training is clearly affecting advocate behaviour and witness' experiences. A District Crown Prosecutor reported distinct improvement in 'victim satisfaction rates'. 'Where witnesses attended court expecting to face an ordeal, they stressed that their experiences were far more bearable .. Overall there has been a very significant reduction in the number of questions in cross-examination counsel seek to ask and the length, complexity and tone of those questions has changed immeasurably'. Further, 'the A&V course has brought about a substantial improvement in the quality of cross-examination in many cases' and Intermediaries for Justice note, 'Many intermediaries report that there has been a positive change, sometimes considerably so, in the way that questions are put to children and vulnerable witnesses [5].

Importantly, the Ministry of Justice (MoJ; 2018) issued a new Victims Strategy commending the profession for exceeding the Government's manifesto commitment and recognising the benefits of change for vulnerable groups. The A&V training is described as *'both recognised and highly valued by relevant experts who work to support victims' rights and with organisations such as the NSPCC'* [6]. Cited in Blackstone's Criminal Practice (2018), the importance of the 20 Principles to practice and the future legal workforce is illustrated [7].

An independent survey of barristers cites Crown and solicitor advocates, in receipt of the A&V training, who talk to the vast shift in culture. First, a *"complete about-face change, abandoning a lifetime's approach for a whole new world"* and, second, the *"vulnerable witness course was a complete revelation and culturally took a lot of adjustment"* (p. 116). Plus, *'Most of the judges, lawyers and registered intermediaries we spoke to thought the way questions and cross-examinations are tailored to the needs of young witnesses had improved in the last year'* [8].

More recently (2020), and in order to evaluate advocate and judicial experiences, an interim user survey was conducted. Outcomes suggest *'the A&V training has started to build an all-important adaptation in culture and practice but that the profession should remain focused and mindful of the need for continued enhancement and professional development'* (p. 49) [9]; now progressing through the newly formed 'Advocacy and the Child Working Group'. The researcher is a member of the working party.

The current reach of the 20 Principles is significant. In the UK, the Family Law Bar Association (FLBA) has adapted the 20 Principles to create a bespoke course. The Civil Justice Council is considering its application, and the Northern Ireland Bar is looking to adopt the 20 Principles for their Family Bar. The training has reached the Caribbean, India and parts of Australia (10). Benefits extend further than the profession itself. Vulnerable witnesses will benefit from the changes to cross-examination advocacy; in time, showing improved experiences, and receiving better access to, and outcomes of, justice. To maintain momentum, the evidence base needs to develop in parallel with impact but, for the first time in English & Welsh legal history, criminal advocates cannot ask directive-leading questions of the most vulnerable and hard to reach (due to the sensitive nature of their experiences) groups.

5. Sources to corroborate the impact (indicative maximum of 10 references)

1. Cahill, S., Lamb, M., & Wheatcroft, J.M. (2016; 2019). *Advocacy and the Vulnerable National Training Programme: The 20 Principles of Questioning*. Inns of Court College of Advocacy: London.
See <https://www.icca.ac.uk/advocacy-the-vulnerable-crime/> for Criminal Court
See <https://www.icca.ac.uk/wp-content/uploads/2019/05/20-Principles-of-Questioning.pdf> for 20 Principles of Questioning
See <https://www.icca.ac.uk/advocacy-the-vulnerable-family/> for Family Court
2. Drew, S. & Gibbs, L. (2017). A United Approach. *Counsel Magazine*. See <https://www.counselmagazine.co.uk/articles/united-approach>
<https://www.sra.org.uk/sra/how-we-work/reports/criminal-advocacy/>
3. Criminal Practice Directions (No.5) [2017] EWCA 1076 (Crim); updated July. See Point 22: <https://www.judiciary.uk/wp-content/uploads/2017/07/amendment-no-5-cpd-july-2017-update.pdf>
4. *Plea and Trial Preparation Hearing Parties Pre-Hearing Information Form* (PTHP2; July 2019). Courts and Tribunals Judiciary: Crown Copyright. See p.23: <https://www.judiciary.uk/announcements/new-plea-and-trial-preparatory-hearing-form-to-be-used-from-22-july/> See *R v YGM* [2018] EWCA Crim 2458

5. Gibbs, L., Melly, K. & Drew, S. (2018). Advocacy and the vulnerable training: a progress report. *Counsel Magazine*, December 2018. See <https://www.counselmagazine.co.uk/articles/advocacy-and-the-vulnerable-training-a-progress-report>
6. HM Government (2018). *Victims Strategy*. Crown Copyright. See <https://www.gov.uk/government/publications/victims-strategy>
7. Ormerod, D. & Perry, D. (2018). *Blackstone's Criminal Practice*. Oxford University Press: Oxford
See <https://www.amazon.co.uk/Blackstones-Criminal-Practice-Professor-Ormerod/dp/0198812264>
8. Plotnikoff, J., & Woolfson, R. (2019a). *Falling short? A snapshot of young witness policy and practice*. London: NSPCC. See <https://learning.nspcc.org.uk/media/1672/falling-short-snapshot-young-witness-policy-practice-full-report.pdf> Plotnikoff, J., & Woolfson, R. (2019b). Managing young witness cases: the views of judges, advocates and intermediaries *Archbold Review*, 4(27), 8-9. See <https://www.archbold-update.co.uk/PDF/2019/Archbold%20Review%20Issue%204%20PRESS.pdf>
9. [text removed for publication]
10. Gibbs, L. (2020). A Testimonial: Professor Jacqueline Wheatcroft.