JUDICIARY OF
ENGLAND AND WALES

THE RIGHT HONOURABLE THE LORD JUDGE

The Right Honourable Keith Vaz MP
Chairman, Home Affairs Committee
Committee Office, House of Commons
7 Millbank
London
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24 July 2013

Dear Keith,

Home Affairs Committee inquiry in to Child Sexual Exploitation and the response to localised grooming

Thank you for you letter of 17th July in which you invite me to consider recommending to the Judicial College that there should be specific guidance and training for judges who preside over cases of child sexual exploitation. In particular, you have drawn to my attention to those cases in which there is a risk that multiple defendants will seek to cross examine the same vulnerable witness or witnesses and the possibility of guidance on options for controlling multiple cross-examination.

It goes without saying that the proper treatment of vulnerable witnesses, in whatever context, is an issue of high priority for the judiciary generally and particularly for the Lord Chief Justice as the Head of Criminal Justice. This area has been the focus of a considerable amount of thought and innovation over a significant number of years, resulting – I believe – in arrangements that, for the vast majority of cases, operate extremely well. However, the usual effective functioning of the criminal process in this highly sensitive context is no excuse for complacency. I entirely accept that the very few cases in which valid criticisms have been made of the treatment of vulnerable witnesses in court justifies consideration of whether additional steps need to be taken for their protection.

The current requirement is that all judges who try defendants accused of serious sexual offences have to go through an authorisation process to ensure that they have sufficient experience and the necessary expertise to undertake these cases. This involves an application process, in which the Presiding

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Judges consider the merits of the judges who wish to undertake these cases, based not only on the details they individually provide as to their competence, but the assessment by others who have knowledge of their judicial work, and particularly the Resident Judge at the court where they regularly sit. The list of those selected by the Presiding Judges as potentially meriting authorisation is then submitted to the Senior Presiding Judge for his approval, together with a reasoned justification for the recommendation. Thereafter, if selected, the judge undergoes comprehensive training before he or she is permitted to sit on cases of this kind.

The course they each attend is impressive. This specialist education that every judge who tries these cases receives is supplemented thereafter by refresher training.

By way of a summary only, the serious sexual offences courses are conducted by judges with extensive experience of trying cases of a sexual nature, and there are significant contributions by a number of academics with knowledge of this field. The courses include up-to-date training on the position of children and other vulnerable witnesses; how judges are to deal with the ABE ("achieving best evidence") interview; the Advocate's Gateway (which provides important guidance to lawyers on the handling of vulnerable victims, defendants and witnesses); Ground Rules Hearings; and the use of intermediaries. The lectures span a range of issues, including the particular problems associated with historic sex cases; the competence of child and vulnerable witnesses; internet sexual abuse; hearsay and bad character; applications to admit the previous sexual history of complainants; disclosure; and, generally, how to case manage and conduct trials of a sexual nature.

The Crown Court refresher course includes expert guidance on the approach to be taken to the evidence of children and vulnerable witnesses, for instance by careful use of special measures and intermediaries; proactive and early listing; and techniques for intervening to stop inappropriate, unduly long, repetitive or otherwise oppressive cross examination. The judges are encouraged to use their case management powers, from an early stage in the case (at the Plea and Case Management Hearing, if not before).

I am confident that this training is well constructed and that it covers all of the main areas.

However, in light of the rare instances relating to multi-defendant trials in which the process may have operated imperfectly for at least some vulnerable witnesses, I have reviewed the position of the judges who conduct these trials and instituted – with the assistance of the Senior Presiding Judge and the Judicial College – the two particular steps set out hereafter.

First, the following cases will only be tried by a judge selected, on a case-by-case basis, by the Resident Judge **and** approved by a Presiding Judge:

All serious sex cases:

i) that are likely to last more than 10 days (this will cover all multi-defendant cases), or
ii) where one or more of the witnesses is significantly vulnerable, regardless of the probable length of trial.

AND

All other cases, irrespective of the nature of the charges and the length of the trial, in which a significantly vulnerable witness is to be called in circumstances that call for especially sensitive handling (*e.g.* by virtue of age, situation or the circumstances of the case).

Second, I have asked the Resident Judges at each Crown Court, in conjunction with the Presiding Judges, to draw up a list (for approval by the Senior Presiding Judge) of the limited number of judges who are likely to be selected to try these cases. The Judicial College has agreed to provide bespoke training for those identified that will focus particularly on how best to conduct trials involving significantly vulnerable witnesses, as well as addressing the undoubted difficulties posed by multi-defendant trials in this context.

The implementation of these steps will be carefully monitored, so as to ensure that only appropriately qualified judges are selected to try these important and difficult cases.

Your report also recommends that consideration be given to the need to update the Crown Court Bench Book. This is currently in preparation. I am confident that when the new version is available for judges along with the latest edition of the Practice Direction that is soon to be released, judges will have two formidably useful tools to assist them in their work.

I would like to take the opportunity to outline some of the other ways that the judiciary is contributing to efforts to improve the experience of children who are required to give evidence.

Judge Rook QC, who sits at the Central Criminal Court, has unparalleled experience of this area of the criminal law. He has offered to act as a "mentor" for any judge selected to try one of these cases. Given his onerous workload, this is a generous offer on his part which I intend to take up.

Judge Cahill QC is acting as my delegate in order to contribute to the regular meetings organised by the Department of Education which is reviewing the cross-government strategy on combating child sexual exploitation.

The Deputy Chief Magistrate, Judge Arbuthnot, launched an initiative earlier this year to ensure that cases involving very young witnesses come to trial, either in the magistrates' or Crown Court within 12 weeks of the initial

complaint unless there is good reason for it to take longer. She has enlisted the support and co-operation of magistrates, District and Crown Court judges and the criminal justice agencies.

I warmly welcome the recent announcement that the Government will be implementing section 28 Youth Justice and Criminal Evidence Act 1999 which provides, along with section 27, for the early recording of the entirety of the evidence of young witnesses. As you know, I have long considered that section 28 will be of considerable assistance to vulnerable children and to juries, because the evidence will be given by the witness shortly after the incident and in the best possible circumstances. Fulford LJ will be a member of the project board.

It is no secret that I am of the view that more radical options should be considered to reduce – indeed, if possible, entirely to avoid – the need for children to be exposed to the trauma that inevitably accompanies giving evidence in court. However I do not agree that specialist courts will materially improve the position. It goes without saying that all of those involved in the process should be trained appropriately, but there are likely to be unintended adverse consequences if this proposal is taken forward. Restricting the available venues to a few specialist centres is likely to lead to far greater waiting times because of the limited number of court rooms, judges and staff. Additionally, these courts are likely to prove expensive to set up and run. Instead, the combination of the other very sensible proposals in your report, including the training of advocates and the additional training of the core group of judges, will in my view deliver exactly the same outcome as a specialist court.

I trust this provides substantive reassurance of the judiciary's commitment, which has been demonstrated over many years, to the position of vulnerable witnesses and the need to ensure they are treated with sensitivity and respect when participating in the criminal process. In light of the overwhelming public interest in these matters, I intend to publish this letter once you have received it.

Yours sincerely,