

The Advocacy Training Council

EXCELLENCE IN ADVOCACY



TRAINING THE TRAINERS



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A. INTRODUCTION

1. The four Inns of Court, the Circuits and Bar Vocational Course Providers have been using a structured method of teaching (“The Method”) for more than two decades to train advocacy. As the years have passed and our skills in teaching have improved, so has our ability to teach to more advanced levels.
2. With the improvements in the quality of teaching at the Bar Vocational Stage, and the resulting improvement in the quality of the advocacy of those entering the profession, the need to teach to higher levels has become apparent. No longer can the advocacy trainer training Pupils expect to be able to correct advocates on basic issues: many of the Pupils will have already achieved a reasonable competence. In addition, trying to help develop the advocacy skills of new practitioners and established practitioners who are taking advantage of the advanced courses creates a greater pressure on the teaching skills of the advocacy trainer.
3. The Method originated in the USA at the National Institute of Trial Advocacy (NITA). It was developed by Professor the Honourable George Hampel QC and introduced to the Inns of Court, since when it has been further developed and refined. George Hampel’s great insight was that advocacy was a ‘performance skill’, the basic techniques of which could be taught and inculcated by repeated practice using the Method, which worked equally well with his University students in Australia as well as at the advanced appellate advocacy workshops he ran for leading counsel. The brilliance of the Method is that it ensures focus on one point at a time and encourages incremental teaching and learning.
4. This Manual is a publication of the Advocacy Training Council (ATC), which is responsible for standards of advocacy at the Bar of England & Wales. It is intended to be a living document, responsive to the needs of the Inns and Circuits and the advocates they train, and expanded and adapted as appropriate. The Manual may be used alone, or in conjunction with the ATC’s ‘Training the Trainers’ DVD, which illustrates key aspects of the Method, and was funded in part by the Bar Standards Board. The ATC is currently developing a training DVD and manual on Case Analysis, which will be available in late 2010.

5. This Manual attempts to cover the following:
 - (a) Teaching Witness Handling
 - (b) Teaching Argument/Narrative Advocacy
 - (c) Conduct of the DVD Review
 - (d) Teaching Advanced Advocacy

6. The ATC recognises that all training establishments will have their own variations on a theme in terms of the training they provide and the way they do it, but at the core of all the training will be the use of the Method by trainers who are familiar with it and feel secure in its use. Every trainer will bring his/her own unique way of getting the message across, but they will all do it by using the Method. It is a sure way to teach a skills-based subject; it is not a straitjacket but a way to explain and convey a skill which a trainer wants to teach. Once trainers become more experienced, there may be some flexibility; but it remains imperative that the Method provides the firm basis for their training. In this way, we can make the best use of this simple, but effective, teaching scheme without feeling totally constrained by its use.

7. It is hoped that this Manual – together with the DVD - will assist in training at all levels and will provide a sound introduction to the Method on which the Inns, the Circuits and the BTPC providers can build. The Method is used in advocacy training in many jurisdictions across the world - and experience has shown that it works.

B. WITNESS HANDLING

ORGANISING THE SESSION

1. Key to the success of an advocacy teaching session is preparation. As trainer, you will need to know the papers as well as any of those being taught. You need to have conducted your own case analysis before the session begins and to have thought about the structure of the case to be presented by both sides. All trainers, however experienced they may be, need to remind themselves of the Method.
2. Now that those being taught are coming to us with better skills, you as their trainer can no longer rely on being able to correct simple points of advocacy, but must be prepared to tackle issues that relate to the substantive presentation of the case. Unless you are confident about the facts and issues in the case, it is unlikely that you will be in a position to help those who are to be trained.
3. Before the session, make sure you have identified where you are teaching and with whom you are teaching. Good time keeping during the session is essential. You cannot afford to spend the first five minutes of the session trying to work out who should be doing what. Understand and annotate your schedules in advance. Make sure you have plenty of paper to write on. A suggested sheet for taking notes on page 17, but you may find that they are better used as a guide; experience has shown that the sheet never provides sufficient room for a full note of the questions asked by the advocate.
4. If the session is being recorded on DVD (and see Section D on DVD Reviews), make sure the camera is working and that you understand how to operate it. It is a useful tip that, more often than not, the DVD Reviewer will have nothing to do whilst the first advocate displays his/her skills, and should be able to sort out the camera for you. Make sure that the room is laid out as you want it: do not accept the way that it has been set up if it does not suit your way of teaching. Make sure, for instance, that the camera is not facing towards a window that will leave the performer in silhouette, or that the camera is so far from the advocate that the voice is not picked up.

5. Begin the session by introducing yourself, giving a short description of your practice and/or judicial background. Explain the need for strict time controls. There should also be time for the advocates to introduce themselves briefly, describing where they are doing their Pupillage or where they are in practice, and how much advocacy training experience they have had.

THE METHOD

6. The Method follows the same pattern as all skills-based training, whether it be, for instance, teaching a musical instrument or carpentry. The Method involves:
 - (a) Assessing the skill displayed
 - (b) Identifying what can be improved in what has been displayed
 - (c) Giving examples of what needs improving
 - (d) Explaining why it needs improving and how it can be improved
 - (e) Demonstrating how it can be improved
 - (f) Asking for a short part of the exercise to be repeated taking account of the suggested improvements to show the point has been taken.
7. The Method formally identifies those stages as follows:

Headline: The topic to be addressed
A short, memorable phrase

Playback: An illustration of the headlined matter
An exact quote of what the advocate said

Reason/Rationale: Why the topic is being addressed.
Why it needs improvement

Remedy: How to improve the performance
How to fix the problem in a practical way

Demonstration: The trainer demonstrates how to apply the **Remedy**
A short example of how it should be done

Replay: By the advocate to confirm he/she has understood the Review
The advocate has another try

8. Whilst each part of the Review will be considered separately, the Review - except for the Replay - should be looked on as one entity. It is not necessary to identify out loud each part of the Method (“*My headline is.... My reason/Rationale is.... I propose the following remedy...*”). This approach identifies the teaching method to the advocate, rather than providing the assistance which the advocate is looking for, and risks becoming formulaic and boring. A good Review will eventually flow seamlessly through its constituent parts.

9. A good Review must also be thoroughly thought out. It cannot be given completely off the cuff – and achieving this requires effective time management. Allowing for the fact that an advocate is given (depending on the nature of the exercise) anything between four and seven minutes to perform, the trainer should divide his/her time as follows:
 - (a) Write down the questions for the first three quarters of the performance time.

 - (b) By about halfway through, you should choose your **point for Review**. Do not be too concerned if a better topic comes to light in the second half, unless it is clear that it must take priority: there will be ample opportunities for it to be dealt with on another occasion.

 - (c) During the last quarter, keep listening to the performance, noting further examples that will confirm your chosen point. Use this time to plan your Review. Go through your notes and identify the examples you wish to give in the **Playback**. Think about a convincing **Reason/Rationale**. Decide how you are going to assist the advocate with a **Remedy**. Plan your own **Demonstration**. Think of a **Headline** that will encapsulate the Review you are about to give.

10. Although time is always at a premium, if you need a short pause to refine your Review before delivering it, take that time. This is particularly so if the advocate finishes before you expect him/her to do so.

THE METHOD: HEADLINE

11. The **Headline** should consist of one topic. The trainer's desire to assist the advocate on several points that he/she has noticed could be improved during the performance is sometimes overwhelming, but must be resisted. Remember that the advocate will be receiving many Reviews over the course of a training session. Other trainers will spot the same things you have seen, and it is better to improve one element of an advocate's performance, than to try to achieve a full make over and not succeed. A step by step approach to improvement will ensure that you have helped the advocate further his/her career.
12. The **Headline** is by far the most important part of the Review process. A poorly chosen, poorly worded or imprecise Headline will adversely affect the focus of the Review. What follows will be equally unhelpful to the advocate.
13. The Headline needs to be short and, if possible, memorable. Just in case it is not, you can ask that the advocate writes it down. (He may be asked what it is when if a DVD Review takes place [see Section D]). Try simple statements such as:

"Do not lead in chief" or *"Lead, lead, lead in cross"*
"Tell the story" or *"Create a dialogue"*
"Ask specific questions" or *"Target your questions"*

rather than

"My headline is that you ask rather long questions of the witness such that they will have quite forgotten what it is that they were supposed to be answering in the course of your otherwise punctilious examination-in-chief."

14. You will find it easier to teach using the correct headline if you take accurate notes of the advocate's performance as it proceeds, because this will help you focus on the point on which you need to teach (and you need these notes for **Playback** – see below).
15. Do make sure that you know what the advocate is performing. It is not unknown for a trainer to provide a **Headline** such as *"Do not lead"* to be told a little later in the Review that the advocate was conducting a cross-examination. Also make sure that what you have chosen is something

that the advocate at his/her stage of development will be able to improve. Make sure that the suggested remedy provides guidance which, when he/she comes to do the **Replay**, he/she has been able to follow.

16. Never embarrass the advocate. We have all been tempted at some point to begin a Review with an emotive phrase of condemnation. Not only will you lose the advocate you are trying to assist and undermine his/her self confidence in a group setting, but the rest of the group will be too terrified to perform in front of you.
17. How to review the immaculate performance is dealt with later, but when stating the Headline, do not give a mixed message, such as:

“That was very good but you need to....”

18. If there is something that genuinely needs attention, but in many respects it was a sound piece of advocacy, you can always include the right words of encouragement later in the Review. Something on the following lines tends to be appreciated:

“You may wonder why I chose this particular aspect of your advocacy to Review. I have done so because it will enhance an already very polished technique...”

19. If there is a second topic which you are itching to address because, unless it is put right quickly, difficulties may be stored up for the future, a DVD Review (see **Section D**) can offer an additional opportunity to address the problem. You can conclude your Review by inviting the advocate, when he/she is watching the DVD, to look out for the second point, or ask him/her to mention it to his/her DVD Reviewer. This is a weapon of last resort, but does allow you, in exceptional circumstances, to get a second bite at the cherry.
20. A table containing suggestions for possible **Headline** topics and possible remedies appears at the end of this Manual. No good trainer should be left without something he/she can assist an advocate with by the end of his/her performance. However, beware an approach whereby your choice of Review topic is prompted by a desperate grab for what appears to be the "best fit" from the table of suggested headlines. Such an approach will frequently lead to your Review unravelling as you come to appreciate that your chosen headline does not actually address the advocate's problem. Bear in mind that some of the topics are better suited to a DVD Review than a group Review.

THE METHOD: PLAYBACK

21. The quality of the **Playback** depends on the accuracy and fullness of the note taken during the performance. You cannot afford to be selective if you are the lead trainer; you must (at least for the first three quarters of the allotted time) note every question which the advocate asks. It is a tricky discipline. During the rest of our working lives we tend to note the answers, not the questions.
22. As with any note taking, it is pointless unless it is legible. Take a moment to ensure that you can read the parts which you wish to recite to the advocate. There are two golden rules:
 - (a) The note of what the advocate says must be accurate, otherwise your Review may be sidelined by a debate with the advocate; and
 - (b) It must be legible.
23. Go through your note making it legible. Use all the techniques which we are used to employing – side line the passages to which you want to return, amending the order in which you recite them if it will help make your point. If you wish to Review an advocate on an oft-repeated phrase, it will often be sufficient just to note the phrase once, and keep a running total of the number of times it was said. It is always more impressive to quote a figure.
24. Do not feel obliged to read out every example of the point you wish to highlight. Rubbing it in may not assist. Pick the best two or three examples. Occasionally an advocate will challenge you, either on the basis that he/she did not say it, or that it only happened once. Hence the need for an accurate note and further examples ready to quote if you need to persuade the advocate that it is a point that needs to be addressing.

THE METHOD: REASON/ RATIONALE

25. This is your opportunity to explain why you have chosen this topic to assist the advocate. If you cannot come up with a convincing explanation, either the advocate will switch off, because he/she cannot see the advantage of putting it right, or the trainer will suddenly realise that he/she has chosen the wrong **Headline**.
26. As with every part of the Review, it needs to have been thought out in advance. The explanation need not be long (depending on the topic). Something on the lines of:

“By asking non leading questions in chief you will ensure the tribunal hears the story coming from the witness, not the advocate. As a result they will remember that evidence when the time comes to make their decision on the merits of the case.”

or

“By asking non leading questions in cross-examination, you lose control and hand it back to the witness. They then have the opportunity to reinforce the evidence they gave in chief.”

27. It is not uncommon to hear trainers changing their Review when they get to this stage because the realisation has dawned that the topic chosen is not worth addressing. If you try to change tack at this stage the whole Review will unravel. It is better to go on with the topic you have chosen, using your own powers of advocacy to persuade the advocate that there is a genuine **Reason/Rationale** for addressing the issue.

THE METHOD: REMEDY

28. As with a doctor, it is no good diagnosing what is wrong with the patient unless you are able to prescribe the right medicine. If you cannot fix it, don't pick up on it. Here we have to draw on our own experience of being an advocate, all that we have learned over the years, and our abilities to teach it to the advocate. The best Reviews are those which identify the root of the problem and seek to put it right in the suggested **Remedy**. It is not uncommon to see a trainer remedying the surface problem without identifying what lies behind the advocate's difficulty. By way of a trite example, is she hopping from foot to foot because she has not learned to keep her legs firmly planted on the floor, or is it because she is uneasy with her knowledge of her papers? Telling the advocate to stand still is not a **Remedy** - telling her how she can organise her papers, make notes and use highlighting is.
29. The **Remedy** we prescribe must be one which the advocate is able to make use of and carry though into practice. It is pointless teaching them an art which you have only mastered after fifteen years or more at the Bar if they are still in Pupillage. Assess the ability of the advocate you are Reviewing and give him/her the help which you judge he/she will be able to make use of. Examples of possible remedies are set out in the table on pp 14-16 of this Manual.

THE METHOD: DEMONSTRATION

30. This is the part of the Review which the trainers least enjoy but which, from the feedback from the advocates, is an essential and really useful element of the Review.
31. The trainer will, using the same material as the advocate, show how the **Remedy** he/she has prescribed can be used to achieve a better result. If the **Demonstration** does not employ the technique which you have explained to the advocate, it will lose its point.
32. The secret to a good **Demonstration** is to keep it short. Advocacy is never easy; it is doubly hard when you know that the group is watching to see what an improvement it will be on what the advocate has just done. By asking three or four questions in the style which you have suggested will work, you are more likely to provide a good example than by trying to ask five, six or seven questions. In the end your skills will break down. Thorough preparation of the exercise the advocate is performing, e.g. examination-in-chief or cross-examination, will give you some examples to use in your demonstration.
33. If a **Demonstration** does go wrong or you fall into the same error as you have tried to correct in the advocate, come clean with the group and, if you think you can get it right by starting again, do so. They will in fact learn as much and gain more confidence from a **Demonstration** that goes awry.
34. Trainers tend to try to find any excuse for not doing a **Demonstration**. Perhaps they will choose a topic such as "The questions did not follow the case analysis" on the basis, as they will then say:

"There is no way I can usefully demonstrate what I have just been talking about..."

Even if you have chosen such a topic, it can still be demonstrated by asking some questions which do follow the case theory.

35. There may be occasions when it is inappropriate to do a **Demonstration** - for instance when you have fallen behind on time, or have had to take a long time with an advocate explaining a difficult point, or during the course of a long day, the same **Demonstration** has been performed *ad nauseam* (although the latter may make you wonder whether you have been choosing the right headlines or whether you have failed to get the message across).

THE METHOD: REPLAY

36. Views on when to conduct the **Replay** vary, and it is for individual training groups to decide which they prefer.
37. When teaching the basic techniques of advocacy, the principal value of **Replay** is to ensure the advocate has understood the Review and can put it into practice. In this context an immediate **Replay** is invaluable. In witness handling exercises the advocate who has learned the lesson should have no difficulty in re-organising a few questions in accordance with the lesson just delivered. Even if the advocate merely parrots the demonstration, the very fact of having to articulate correctly formed (or improved) questions will help to fix the lesson in the advocate's mind. If the trainer wants to avoid parroting, the trainer can always ask the advocate to pick up questions where the demonstration left off. As with all matters concerning teaching, it is a matter of assessing the advocate and how best to help him or her progress.
38. When teaching at a more sophisticated level – and, in the case of narrative advocacy – an immediate **Replay** is not always helpful. The lesson may require the advocate to rethink his/her or her approach to the task in hand. In that case a delayed **Replay** may be more suitable. The delay may be short, such as letting the advocate take a few minutes whilst the next advocate takes a turn, or it may be postponed to later in the day or the course. However, it should not be too long postponed or the point of the exercise may be lost. The two are not mutually exclusive. If time allows, there is no reason why one should not have a short immediate **Replay** followed up by a later, more considered, **Replay**.
39. If **Replay** is delayed the trainer must be careful to ensure that any further comments are confined to the original point of Review. There is a clear difference between a delayed **Replay** - which is part and parcel of the original Review - and a new exercise when a fresh point may be taken.
40. Whether immediate or postponed, the **Replay** should be normally be short, continuing only so long as is necessary to ensure that the advocate has taken on board the advice given. On no account should a **Replay** lead to a new full Review. It sometimes happens that the advocate makes the same mistake which led to the Review and in that event the trainer should intervene immediately, succinctly restate the point (or reformulate the advocate's question appropriately), and get the advocate going again until it is clear that the point has been understood.

41. If within the time available the advocate shows no improvement, then the point will have to be revisited another time and possibly in a different way. A delayed **Replay** may show that the lesson was in fact learned, and the advocate merely needed time to get his/her or her thoughts re-ordered. However, not all lessons succeed, and a failed **Replay** may indicate that the trainer has failed to address the real cause of the problem. It is not unusual to find that the cure to one problem lies in solving another. For example, an advocate who mumbles may, in truth, be having difficulty formulating non leading questions: address that point and the boost in confidence that results will probably solve the problem of audibility.

THE METHOD: THE HOPELESS ADVOCATE

42. Just occasionally you will have an advocate who does not have a clue. Should you sit there for four minutes listening to him? It is difficult to see how it is helping the advocate if he/she is just allowed to go on crucifying the art of advocacy. If the situation demands it, it is preferable to take this approach:
- (a) Stop the advocate as soon as you can, and tell him that you want to address a point straight away.
 - (b) Carry out a mini-Review explaining what is going wrong.
 - (c) Move quickly to a **Demonstration** of how he should be doing it.
 - (d) Stay standing with the advocate whilst he starts again. Be willing to continue to guide him and, if necessary, stop him again and correct him (where appropriate keeping the DVD running).
 - (e) Carry out a second mini-Review and set him an achievable aim for the delayed **Replay**.
 - (f) In extreme circumstances, and if you have the luxury of a second Reviewer, get that Reviewer to take the advocate out of the room for some one to one teaching for ten minutes. You can make a real difference in a short time when the problem is a basic one.

THE METHOD: THE BRILLIANT ADVOCATE

43. There has been much unnecessary angst over the years as to what should be done with the perfect advocate. Fortunately, there are very few advocates who cannot be assisted to make their abilities even better. On the other hand, trainers must be wary of trying to find something to Review just for the sake of it.
44. If the advocacy is of a high standard, then the performance can be used in itself as a teaching method. It can be used to draw in the whole group by conducting a group Review on the following lines. Speak with the group:

“What did you think of that?”

“What was so good about it?”

“Did you notice how he/she asked the questions in this form?”

“Why did it make that examination-in-chief so good?”

“How did he/she achieve that?”

45. If you analyse the above questions, you will see that they actually follow, more or less, the stages of the Review. The advantage of it is that you are drawing the group in and providing a good teaching method to the group.
46. Alternatively, you could carry out a positive Review. Give the **Headline** indicating that the advocate should continue to keep performing like this, e.g. “Keep asking leading questions in cross examination.” Give the **Playback**, or ask the group for examples of what was said. Ask the group why these questions were effective: the **Reason/Rationale**. Then ask the advocate how he/she achieved that result - the **Remedy**.
47. As a method of reinforcing good advocacy it does not fall foul of the difficulties which surround the *“That was very good but...”* Review or the *“That was marvellous, I worship at your feet, now let’s move on...”* Review, neither of which achieves anything. The secret is to make something of the good performance; let the group do it for you. This is one occasion when it is unnecessary for the trainer to do a **Demonstration!**

THE METHOD: WHERE TO CONDUCT THE REVIEW

48. It is recommended that the trainer moves from the position he/she was in when listening to the performance and goes over to the advocate in order to conduct the Review. It provides a better way to communicate with him/her, and to some extent makes the advocate less aware that the Review is taking place with other members of the group listening in.
49. However, the Method is not a straitjacket. Some rooms do not lend themselves to a great deal of movement. In the final analysis, the trainer should stand or sit where ever he/she feels best able to present a good Review. There is one exception: all **Demonstrations** must be conducted from a position alongside the advocate with the advocate standing next to you as you conduct the **Demonstration**.
50. A copy of suggested headline topics and the Oral Advocacy Check List are set on pages 15-17.

POSSIBLE HEADLINES AND REMEDIES

Please note that the following are merely examples of possible headlines and possible remedies for problems often encountered; in no respect are they intended to be prescriptive. In every case it is vital to give advice appropriate to the level of ability already attained by the advocate. Remember that the teaching is incremental. Most of the following examples suit only the most elementary level of teaching and would otherwise be inappropriate. For example the suggested headline "*Do not lead*", with its suggested remedy, may be suitable advice to a Pupil incapable of formulating a non leading question; however, in due course - when the Pupil has learned that lesson - it will be superseded with more sophisticated advice as to when it is appropriate to lead and when not. The headline and remedy for that lesson would be very different.

The ATC's paper on common mistakes made by Pupils in advocacy training sessions is attached at **Annex A**, and provides a useful summary of mistakes likely to be encountered when training Pupils.

EXAMINATION-IN-CHIEF

HEADLINE	REMEDY
Do not lead	Ask questions beginning with “who”, “what”, “when”, “where”, “how”, “why”; or “describe”, “explain”
Avoid irrelevance	Do not be a slave to the witness statements. List the facts you need from each witness to prove your case and arrange them into a logical order
Focus your questions	Think of the answer you need
Avoid compound questions	Seek one point of information at a time
Avoid wide questions	Use piggybacking technique, i.e. use the answer to your previous question to form the next question. E.g. A: “I ate a curry for dinner”. Q: “What sort of curry did you eat for dinner”?
Do not invite comment / speculation	Ask only about facts
A picture is worth a thousand words	If there is a plan or a photograph of the scene, get the witness to give his/her evidence with constant reference to it.

CROSS-EXAMINATION

HEADLINE	REMEDY
Use leading questions	The question should contain the proposition to which you seek agreement
Don't give the witness a second bite at the cherry	Avoid unnecessary revisiting of matters covered in examination in chief
Don't argue with the witness	Make your challenge and move on
Ring-fence the witness	Anticipate and seal off escape routes
Elicit favourable answers first	Your plan should set out, and you should ask about, points on which you expect agreement before you alienate by challenges
Don't let the witness avoid answering the question	Repeat the question
Don't say, "I put it to you"	Just ask the question
Know when to stop	When you get the answer you need for your submission, move on or sit down

GENERAL POINTS

HEADLINE	REMEDY
Listen to the answer	Absorb the answer before deciding whether to move on
Do not interrupt	Wait until the witness has closed his/her mouth
Help the Tribunal to follow	Signal changes in topic
Maintain eye contact	Your notes should be bullet points, which are legible at a distance
Fillers ("um", "er", questions beginning with "and")	Do not fear silence
Avoid legalese	Speak as you would out of Court
Avoid long questions	Engage the brain before the mouth

ORAL REVIEW CHECKLIST

Pupil's Name	
Rôle in the Exercise	
HEADLINE	The subject-matter of the Review
PLAYBACK	A precisely accurate note of the Pupil's performance
REASON/RATIONALE	Why there is a problem
REMEDY	Technique (method of doing it better)
DEMONSTRATION	The remedy performed by the trainer
REPLAY	The Pupil performs again (<i>n.b. Delayed Replay</i>)

C. THE METHOD: ARGUMENT/NARRATIVE ADVOCACY

1. “Argument” or “Narrative” Advocacy is a generic term to describe performances of speeches, applications, submissions at trial and appellate advocacy. Use of the Method needs to be slightly adapted for Argument/Narrative Advocacy.
2. The need to keep a note of the speech is equally important and requires dedicated work by the trainer. It may become apparent more quickly what issue you will wish to address, thereby allowing you to be more selective in your note taking.
3. The Method is applied less rigorously in Argument/Narrative Advocacy Reviews, but the basic structure of the first four elements of the Review, namely,
Headline
Playback
Reason/Rationale
Remedy
remain as essential elements of the Review.
4. Useful examples of the topics which could be chosen as the Headline in such **Reviews**, and suggested remedies, are set out in a table on page 19.
5. **Demonstrations** are more difficult to achieve in Argument/Narrative Advocacy, because they may involve a performance as long as that given by the advocate for which there is insufficient time. It is often better, for instance, to talk through the way in which you would structure a speech as you provide the **Remedy** than to try by a demonstration to show that structure. However, very often it is possible to isolate a section of a speech to provide a demonstration which effectively illustrates the **Headline**; the advocate will learn a great deal from such a **Demonstration**.
6. If you have two trainers in the room, it is useful for one of them to act as the judge and to challenge the advocate as she might expect to be challenged were she in court. The trainer acting as judge must be sympathetic to the standard of the advocate in her interventions and ensure that she does not use it as her opportunity to display her skills as a testing (or testy) judge to the disadvantage of the advocate. If there is no second trainer, ask one of the advocates to assume the role. In Appellate Advocacy it may be useful to create a three judge court using the advocates; they will learn a lot from observing advocacy from that position.

SUGGESTED HEADLINES AND REMEDIES

A list of possible headlines for argument/narrative advocacy is set out below. Please note that the following are merely examples of possible headlines and possible remedies for problems often encountered; in no respect are they intended to be prescriptive. In every case it is vital to give advice appropriate to the level of ability attained to the advocate. A headline and remedy suitable for an elementary level of teaching may well be inappropriate to a more sophisticated lesson.

ARGUMENT/NARRATIVE ADVOCACY

HEADLINE	REMEDY
Structure	Use chronological structure or deal with most important point first
Organisation	List points to make and follow same structure
Use signposts	Split into sections - highlight start of section
Tell the Court what you want	State purpose of application. Be able to answer the question "Why are you here?"
Tell the Court why you should succeed	Give reasons to support your points. Apply the facts of your case to the law. Tell the court the conclusion
Way-marking	Explain to the Court at the outset the structure you intend to adopt. Show the judge the way, and where you are in your structure. Map it out as you proceed.
Start strong. Grab attention	Summarise what you want and why. Put best point first
Plain and simple language	Imagine explaining to a non-lawyer
Short sentences	One point at a time
Be persuasive	Use descriptive language. Put a credible spin on the facts
Avoid a paper chase	Know our way round the documents. Wait for judge to get there
Do not invent facts	Be faithful – not wishful – to the evidence.

D. DVD REVIEWS

CHANGE IN APPROACH TO THE DVD REVIEW

1. The decision on whether to include a DVD Review as part of the Method will depend on a number of factors, not least time constraints and whether the appropriate facilities are available. One trainer will lead the live session, and a second trainer will conduct the DVD Review in an adjacent room immediately afterwards. The DVD Reviews may be either on an individual or a group basis. Individual DVD Reviews allow the advocate an opportunity to examine their performance closely in a more personal setting, particularly addressing points of style. The way in which group DVD Reviews are carried out will depend greatly on the number of available trainers and the size of the group. You should also be aware that it is not always appropriate to have the whole group watching an advocate's performance.
2. From the advocate's point of view, a good DVD Review will be an extremely helpful part of the learning process. The advantage to the advocate of being able to see his/her own advocacy and Review it with the trainer is enormous, if, on occasions, slightly painful. Much re-thinking has been done about the best way to use the DVD Review session, since it can cause trainers difficulties.
3. The benefits of the DVD Review have been recognised in some training sessions by taking a decision to Review only half the advocates in any one session and devoting twice as much time to those advocates who are to be Reviewed. This allows the trainer to spend up to 20 minutes with the advocate. Owing to the constraints on time this is not generally adopted. It also requires highly developed skills on the part of the trainer.
4. DVD Reviews have tended to be used to assist advocates with stylistic problems rather than issues of substance. It has been used to correct the advocate who, for instance, waves her arms about, or who chews her pen top or who cannot control her papers. This has had the effect of the trainers narrowing their focus and often dealing with relatively trivial matters whilst letting important matters go by.
5. DVD Reviews ought to be looked on as an extension of the Review that has already taken place. Subject to the warnings below, trainers should not fight shy of dealing with points of substance of the type that would be

addressed during a standard Method Review. Similarly, whilst the Review process can be far more conversational (because it is on a one-to-one basis), the Review should include within it the same assistance with the **Reason/Rationale** and **Remedy** as would a Review. In appropriate cases both a **Demonstration** and a short **Replay** may be appropriate. With advanced advocates, it can be a perfect opportunity to tackle issues as to the structure of a piece of advocacy or the advocate's approach to the case theory.

6. The DVD Review can be used to assist an advocate in one of three ways:
 - (a) To reinforce the **Headline** given during the group Review where it is necessary to do so.
 - (b) To deal with any **stylistic issue** which might cause him/her embarrassment were it to be dealt with in a group session. However, the value of a DVD Review should not be squandered by dealing with a trivial issue of style.
 - (c) Where the trainer feels competent to do so, to confront **another point of substance** which might otherwise be addressed in a group session.

REINFORCING THE GROUP REVIEW

7. At the start of the DVD Review, the advocate will be asked what the **Headline** was of the Review they have just had. Ask them whether it was a valid issue that was raised. Occasionally the advocate will tell you he does not accept that he/she had done what the trainer has just tried to assist him with. In such a case tell the advocate that you will use the playing of the tape to assess with him whether the point was a valid one. It usually becomes clear to the advocate that the trainer spotted something which he had not appreciated he was doing. As the trainer you must then decide whether to devote the rest of the Review to that point, or whether you feel confident that the advocate has really understood the earlier Review – and whether you feel confident to go on to deal with a second point in the time available.
8. If they remain obdurate, it will be of most assistance to use the Review to cover the same point as was raised on the earlier Review. This is not a waste of Review time but ensures that the lesson which was not brought home in the earlier Review is now appreciated by the advocate. Make sure that the advocate not only truly understands why the **Headline** was raised but has also taken in the rest of the Review he/she was given. A failure by

the advocate to appreciate that the **Headline** was a valid one may mean that he/she has failed to take in the rest of the Review. In those circumstances the best course is to repeat the same Review giving your assistance to the advocate on the same point. Only contemplate moving on if you are convinced that the message of the earlier Review has been taken in.

9. On those very rare occasions when neither you nor the advocate can see the validity of the issue raised by the earlier trainer, it may be better to acknowledge that and then move on to another point, otherwise the purpose of the original Review and the DVD Review will be lost on the advocate.

STYLISTIC ISSUES

10. If the **Headline** from the group Review is accepted by the advocate, then begin to watch the DVD looking for a new point to cover. The Review can often be used to address very basic issues of posture, fiddling and unconscious habits, paper control, eye contact, modulation of voice, speed/clarity of speech, the use of pauses and variation in pace etc.. Trainers sometimes feel unwilling to tackle these issues and do not want to offend the advocate. However, the trainer will be doing a greater disservice by allowing them to go unnoticed. If the stylistic point is a valid one, and it is handled sympathetically, it will not offend.
11. By way of example, although no trainer would dream of correcting someone simply because of the strength of an advocate's regional or national accent, if the advocate's diction is such that she cannot be understood without great difficulty, the advocate needs to know. These and other matters of personal style can usually be addressed if the trainer, having played about three minutes of the tape, asks the advocate whether she has noticed anything about her own performance which she would wish to correct. If the answer is not immediately forthcoming, the trainer should be able to use her own powers of gentle (preferably non leading!) examination-in-chief to bring the advocate to the point of recognising what needs to be tackled.
12. Having reached this stage, the advocate will be only too keen to obtain your suggestions as to how the matter can be rectified. It follows, as with any Review, unless you can provide a **Remedy**, the Review will lack an essential element in its effectiveness. Thus the **Remedy** cannot be as simple as

“Stand still”

or

“Georgina, don't do that”

It must include useful instructions which will get to the root of the problem. If, for instance, the problem is with movement, it can sometimes be cured by getting the advocate to put his feet a little further apart, thereby making it more difficult to move. Get the advocate to stand and test the new posture. Get him to repeat part of his performance. See if it works. If not, try something else.

POINTS OF SUBSTANCE

13. It is important that you do not squander Review time by, for instance, choosing to Review a stylistic point which does not really need addressing and which, because of its minimal impact on the advocate's performance, will only cause hostility if it is raised. In these circumstances the trainer ought to consider dealing with a point of substance of the sort which might otherwise only be tackled in the group session.
14. This requires considerable skill on the part of the trainer and an ability to conduct a full Review at speed. If you feel that the advocate needs a Review of this type, then be prepared to make a note sufficient to allow you to provide **Playback**. This can be achieved either from your notes or by replaying that part of the tape (if you have made a note of the counter time). The Review should follow the normal sequence but adapted to the time available and the benefits of a one-on-one Review.
15. Whilst not wishing to discourage this type of Review in any way – because its value may be very profound – it comes with a health warning and ought not to be attempted by any trainer who does not feel wholly comfortable with, and confident about using, the Method.

THE MECHANICS OF THE DVD REVIEW

16. Time is the real problem. If you can get agreement with the trainer running the group sessions that they will ensure the DVD is at the start point, this will save a considerable amount of time. The DVD Reviews cannot overrun and there is a lot to pack in. Sometimes many minutes can be wasted searching for the start point.
17. To this end it is important that you understand how the DVD recorder works and which buttons perform which task. You should have about ten minutes before your first Review (unless there is one left over from the last session) in which to master the technology.

18. Assuming that the tape has not been re-run, the session should proceed as follows:
- (a) As soon as the advocate arrives, get his/her tape or disc and put it into the machine to rewind it. As you are doing this, ask what the **Headline** was from the Review that they have just had, and whether it was a valid issue that was raised. If the advocate was dissatisfied, see paragraph 9 below for guidance. If satisfied, move on by asking the advocate how he/she felt the presentation had worked.
 - (b) Play the DVD. Make sure that the advocate is actually watching it. Some feel very embarrassed at watching themselves and have to be encouraged to do so. Play at least three minutes of the tape or else most advocates will feel deprived.
 - (c) Make sure that you are watching the DVD. It is too easy to become so obsessed with the mechanics of the Review and with deciding what type of Review you are going to conduct that you fail to watch what is on the screen. In order to watch the screen, note taking will be at a minimum. This can result in finding yourself without a prompt on what to Review. If you slavishly note the performance, you may miss an important stylistic point which you need to address. Concentrate on what is happening on the screen above all else and, unless conducting a Review on a point of substance, make trigger notes only.
 - (d) Stop the tape and discuss the single point you have selected. Assist the advocate with **Reason/Rationale**, **Remedy** and, if necessary, a **Demonstration**.
 - (e) Be ready to develop the point by going on to play a further piece of the tape.
 - (f) If a 'library' of taped sequences is being created for the student, leave the tape at the end of the piece of advocacy which you have Reviewed. If the same tape is being used repeatedly, wind it back to the beginning to make it easier for the next person.

E. TRIAL ADVOCACY REVIEWS

1. Some providers give the advocates the opportunity to conduct full trials without interruption.
2. The main purpose of the trial sessions is to give advocates the opportunity to put all they have learnt together, demonstrating their skills as speech makers, examiners and cross-examiners, and in making submissions during the course of one session. It gives the inexperienced advocate a taste of the problems that arise in having to respond to changes in evidence and, therefore, their case analysis, in time to deal with it in their closing submissions.
3. As the trainer (acting as judge) you should not interrupt the session unless you would have expected that to happen during a real trial. If an advocate is, for instance, bullying a witness or leading unchecked, clearly inadmissible evidence, the judge should intervene. Sometimes it is necessary to prevent the witnesses from deciding that the evening provides a rare opportunity to display their theatrical talents rather than graciously giving up an evening to assist the advocates.
4. If an advocate is becoming entirely lost in the exercise, it may very rarely be necessary to intervene to get the case back on the rails. Subject to these issues, the judge should refrain from comment on the advocacy until the trial is completed.
5. Your instructions will include the detailed timings for the evening. The advocates will know them as well. Very often some stages do take longer than allowed and some less time than is available. However a reasonably strict control on timings is essential, particularly if you are borrowing a court, not least to ensure the court and its staff allow you to use the facilities on subsequent occasions.
6. You should allow between 15 and 20 minutes at the end of the trial for your Review. It is not necessary to adhere to the Method and most of the comments you make as a trainer will be of a broad nature. This is not an occasion to descend to the detail: it is an occasion for making it clear to them which parts went well. However, if there are aspects that need to be addressed, the **Reason/Rationale** and the **Remedy** need to be deployed to assist the advocate.

7. The order in which you Review the advocacy is very much a matter of your own personal choice. Some trainers like to go chronologically, switching between advocates. Others prefer to deal with one advocate at a time and Review him/her in one go. You may wish to vary your approach depending on the comparative strengths of the advocates you are Reviewing.

8. If you feel a **Demonstration** would assist the advocate, it may be appropriate to do so during the trial process by a short “judicial” examination of a witness who was not effectively examined or a cross-examination of a witness who was allowed to get away with it. An explanation during the Review of why, uncharacteristically, you entered the arena may be advantageous. Similarly, save where it has been necessary to halt proceeding to prevent a catastrophe and given advice as to how the advocate should proceed, there is neither the time, nor the place, for a structured **Replay**.

F. TEACHING ADVANCED ADVOCACY

1. The approach to teaching the already skilled or partly skilled advocate is no different from that employed in teaching the beginner: the trainer is still teaching a skills-based subject. Therefore the underlying principle of the Method is equally valid. However at advanced level, a trainer will not be expecting to teach individual techniques of advocacy as opposed to the effective deployment of all the skills to best effect. Focussing on one core aspect of the advocacy rather than several disparate points still brings its dividend.
2. That said, it may be beneficial to look on such training as being conducted as a workshop rather than a group session. As a trainer it should be possible to make use of the experience of the advocates to assist one another in achieving a better presentation of their advocacy skills. By opening up the sessions to wider discussion within the group, it is more likely that the advocates, who may be resistant to the possibility of showing up weaknesses that they perceive they should not have at their stage of advancement, can be coaxed into seeing ways to improve their performance.
3. By using the group, who are unlikely to want to be anything but supportive of each other, it should be possible to break down the reluctance to perform and listen to the assistance being provided by the trainers.
4. Although the trainer may still be able to address underlying issues of the advocate's presentation which are affecting the quality and effectiveness of his/her performance, it is more likely that a Review will have less to do with the way in which the advocate is framing particular questions or addressing particular arguments, and more to do with whether the advocate is achieving the aim which she has identified through her case theory, either in her dealing with a particular witness or in the presentation of her case.
5. To achieve this level of Review will require the trainer to have studied the papers in depth.

G. ASSESSMENT CRITERIA

1. It is in the interests of the public, the Court and the profession that all barristers present their cases to the highest professional standards. They must prepare thoroughly and present their cases in a manner which is clear, well organised, efficient and persuasive. The criteria set out below - which you and your advocacy trainers will be working with - are intended to achieve these objectives.

Language

2. These assessment criteria are used for those intending to practise at the Bar of England and Wales, where the official language of the Court, and hence teaching and assessment, will be English. Where the official language of the Court is not confined to English, such as in Wales under the Welsh Language Act 1993, the Pupil is entitled, if he/she or she wishes, to be taught and assessed in Welsh.

Disability

3. The criteria, their application and this scheme in general may be modified (where appropriate) in relation to any Pupil who has a disability, within the meaning of the Disability Discrimination Act 1995. Anyone who requires such a modification to be made should make this known to the Course Provider as early as possible, and normally before the start of the course, so that full consideration can be given to any modifications that may be appropriate.

Criteria for the assessment of Pupil's skeleton argument:

Criteria	The Skeleton Argument:
1.a.	showed clarity of purpose
1.a.ii	had a logical structure & organisation
1.a.iii	identified the issues
1.a.iv	showed clarity of expression
1.a.v	was the appropriate length
1.a.vi	made appropriate documentary references to external materials
1.a.vii	made appropriate references to authorities

Criteria for the assessment of Pupil's Oral Submissions:

Criteria	Organisation:
2.a.i	demonstrated a clear aim (set out what the judge is being asked to do & the source of the power to do it)
2.a.ii	was coherent (structured, logical, with clarity of expression)
2.a.iii	employed a logical structure (beginning, middle and end)
2.a.iv	used materials & authorities appropriately
Delivery:	
2.b.i	was audible
2.b.ii	was at an appropriate pace
2.b.iii	had a clarity of expression
2.b.iv	used appropriate language (language adapted to a tribunal)
2.b.v	made appropriate eye contact
Inter-action with tribunal/dealing with opponent's arguments:	
2.c.i	anticipated points
2.c.ii	dealt with court's questions/concerns (i.e. answered rather than avoided questions, was not thrown by questions, had an honest and coherent approach).
2.c.iii	related submissions to skeleton arguments
2.c.iv	made appropriate use of authorities
2.c.v	adapted to opponent's points

Criteria for the assessment of Pupil's Examination in Chief:

Criteria	Organisation:
3.a.i	had a clear & logical structure (told a story through the witness)
3.a.ii	was relevant (avoided the irrelevant and elicited substance whilst avoiding the irrelevant)
Form of Questions:	
3.b	avoided leading questions (except where appropriate e.g. facts not in dispute)
Inter-action with tribunal/dealing with opponent's arguments:	
3.c.i	was audible
3.c.ii	was at an appropriate pace
3.c.iii	showed an awareness of the tribunal
Inter-action with the witness:	
3.d.i	was audible
3.d.ii	had appropriate control of the witness (used appropriate language, apt and focused questions)
3.d.iii	used short, simple questions, one point at a time
3.d.iv	listened to answers
3.d.v	conduct towards the witness was appropriate

Criteria for the assessment of Pupil's Cross-Examination:

Criteria	Organisation:
4.a.i	demonstrated a clarity of purpose
4.a.ii	used a logical structure & organisation
4.a.iii	identified the issues
4.a.iv	demonstrated a clarity of expression
4.a.v	demonstrated knowledge of facts
4.a.vi	was relevant
Form of Questions:	
4.b	closed & concise
Delivery:	
4.c.i	was audible
4.c.ii	was at an appropriate pace
4.c.iii	knew when to stop
Inter-action with the witness:	
4.d.i	used controlling questions
4.d.ii	listened to answers
4.d.iii	demonstrated flexibility
4.d.iv	used an appropriate form of questions (fact not argument)
4.d.v	was courteous
Putting your case/Support for closing submission:	
4.e.i	elicited necessary facts
4.e.ii	made challenges necessary to put case
4.e.iii	laid the factual foundation of case

Pupil Assessment

Name of Pupil	Sheet ____ of ____
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1 The Skeleton Argument - Assessor's feedback (tick one)

By reference to the Assessment Criteria 1.a.i – 1.a.vii the Pupil has demonstrated the required standard.	
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By reference to the Assessment Criteria 1.a.i – 1.a.vii the Pupil has not demonstrated the required standard*	
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Name(s) of assessor(s)		Exercise
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Signature(s)		Date
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2 Oral Submissions - Assessor's feedback (tick one)

By reference to the Assessment Criteria 2.a.i – 2.c.v the Pupil has demonstrated the required standard.	
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By reference to the Assessment Criteria 2.a.i – 2.c.v the Pupil has not demonstrated the required standard*	
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Name(s) of assessor(s)		Exercise
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Signature(s)		Date
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3 Examination in Chief - Assessor's feedback (tick one)

By reference to the Assessment Criteria 3.a.i – 3.d.v the Pupil has demonstrated the required standard.	
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By reference to the Assessment Criteria 3.a.i – 3.d.v the Pupil has not demonstrated the required standard*	
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Name(s) of assessor(s)		Exercise
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Signature(s)		Date
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4 Cross-Examination - Assessor's feedback (tick one)

By reference to the Assessment Criteria 4.a.i – 4.e.iii the Pupil has demonstrated the required standard.	
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By reference to the Assessment Criteria 4.a.i – 4.e.iii the Pupil has not demonstrated the required standard*	
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* Details on the Supplementary Pupil Assessment form

ADVOCACY CERTIFICATE

This is to certify that

.....
 has satisfactorily completed¹ the Bar Council's Minimum Advocacy Training Requirements in each of the following competencies:

COMPETENCY	SATISFACTORILY COMPLETED Please tick when satisfactorily completed and leave blank until then	SIGNATURE OF COURSE DIRECTOR OR OTHER PERSON AUTHORISED BY THE BAR COUNCIL
		Signed:
		Name:
		Date:
		Signed:
		Name:
		Date:
EXAMINATION IN CHIEF		Signed:
		Name:
		Date:
CROSS EXAMINATION		Signed:
		Name:
		Date:

¹ "Satisfactory" denotes that the Pupil has achieved at least a minimum level of competence in the relevant area such as to enable him/her to take instructions to appear before a Court as a barrister if all other qualification requirements of the Bar Council are achieved.

COMMON ERRORS MADE BY PUPILS IN ADVOCACY TRAINING SESSIONS

1. Closing Speeches

1. a Apply the law to the evidence

Most Pupils re-iterate the facts or the evidence and / or state the law without actually applying the law to the evidence and telling the court or jury what conclusions to draw. It is more of a narrative rather than a persuasive piece of advocacy.

1. b Clearly identify the issues at the outset

Issues are not clearly identified or set out at the beginning of the speech in order to grab the listener's attention and provide a sensible structure and direction to what is to follow.

2. Examination-in-Chief

2. a Don't be a slave to the statement

Generally poorly focused and a slave to the statement, particularly when preparation is lacking and the questions are formulated directly from the statement whilst the Pupil is on his/her feet.

2. b Create a dialogue

Pupils showed an inability to create a dialogue with the witness.

2. c Aim your questions at the target

Use of non-specific questions such as 'what happened next?'

2. d Avoid hearsay

Failure to avoid hearsay, mainly because there is no appreciation that the evidence is hearsay.

2. e Deal with memory refreshing documents

Failure to deal with memory refreshing documents such as police officers' notebooks. Again, this is because the Pupils have not appreciated the need for such a procedure rather than their inability to ask the appropriate questions to lay the foundations to enable the officer to refer to his/her notes.

2. f Pay attention to your witness

Poor eye contact. Looking down at their notes when the witness is answering the question. Preparing the next question instead of listening to the answer.

2. g One step at a time

Long and compound questions instead of one point at a time.

3. **Cross-Examination**

3. a **Know your purpose**

Lacking in objectivity and not knowing where to go next. Pupils are unclear as to the purpose of the cross-examination of a particular witness. They ask questions on all the matters covered in the witness statement without identifying what they need to establish to make their case.

3. b **Once it's out it's out**

Repeating the evidence-in-chief when it is not necessary to make the point they are trying to make. This may be due to a failure to appreciate that once a fact is given in evidence it can be used in the closing speech. It does not need to be established again by the party relying on it.

3. c **Less is more**

Failure to appreciate that 'less is more.' In building to a point they use all the facts in the statement rather than just the ones necessary to make the point they are trying to make.

3. d **Save it for your closing speech**

Making comments instead of putting facts. Some Pupils do not appreciate the purpose of questioning and the purpose of the closing speech.

3. e **Control the witness**

Lack of control. Allowing the witness to give a full answer or wriggle out of a question owing to lack of knowledge of the brief or a failure to stop the witness or, more commonly, a failure to be precise.

3. f **Reveal the inconsistencies**

Lack of knowledge or skill on how to put a previous inconsistent statement.

Chairman: Charles Haddon-Cave QC

Vice-Chairman: Dr Michael Powers QC

Head, International Faculty: Joanna Korner CMG QC

Secretariat: Rachel O’Driscoll
Sarah Perry

Contact: ATC Secretariat
c/o 2 Plowden Buildings
Middle Temple Lane
London EC4Y 9AT
020 7427 5797
sarah.perry@middletemple.org.uk

Website: www.advocacytrainingcouncil.org