

# SUMMARY: CASE MANAGEMENT IN YOUNG and OTHER VULNERABLE WITNESS CASES

Toolkit 1(b)

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This toolkit brings together policy and guidance relating to:

1. [Instructions, listing and other tasks](#)
2. [Witness needs, wishes and special measures](#)

The expression 'judge' here applies also to magistrates and district judges.

For a version of this toolkit with references and hyperlinks, see Toolkit 1(a). For case management issues relating to young defendants, see Toolkit 8, *Effective participation of young defendants*.

## 1. INSTRUCTIONS, LISTING AND OTHER TASKS

1.1 **Address timetabling and other vulnerable witness issues at first appearance** in magistrates' court or preliminary hearing or PCMH in Crown Court. To help achieve certainty for the witness, complete the PCMH questionnaire/ magistrates' court preparation for trial form:

- based on consultation with witness and if appropriate, carer and supporter, with up-to-date witness information;
- with availability and dates to avoid for the witness (eg exams or other important events); any Registered Intermediary assisting the witness at trial<sup>1</sup> (likely to have limited availability); and any named supporter in the live link room. The court must take every reasonable step to facilitate witness attendance.

1.2 **Priority listing** Delay adds disproportionately to the vulnerable person's stress:

- where the witness is under 18 or otherwise vulnerable (whether or not special measures have been ordered) the trial date should usually be fixed. The prosecution or defence has a responsibility to ask for this but the defence may not if not in the defendant's best interests;
- remind decision-makers to prioritise a vulnerable witness case. The prosecution or defence will ask the court to give the trial date priority and fix it to a specific day;
- give priority to trials involving young defendants or vulnerable or young witnesses. Delay in a case involving a child complainant should be kept 'to an irreducible minimum';
- if the live link is not available in all courtrooms, fix the courtroom when setting the trial date;
- if an early trial date is desirable/ defendant is young, a preliminary hearing should be listed about 14 days after sending the case to Crown Court.

1.3 **If the defence seeks an adjournment** the prosecutor should draw the court's attention to the adverse effect of delay on young witnesses, those with learning disabilities or conditions such as autism spectrum disorder, mental health problems and specific learning difficulties.

1.4 **A court with plasma screens** will give a clear view of intermediary/witness interaction.

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<sup>1</sup> For information about Registered Intermediaries for witnesses, contact the National Crime Agency at 0845 0005463, and by e-mail at [soc@nca.pnn.police.uk](mailto:soc@nca.pnn.police.uk) (by pnn users) or [soc@nca.x.gsi.gov.uk](mailto:soc@nca.x.gsi.gov.uk) (by others). The judiciary may use its inherent jurisdiction to appoint non-registered intermediaries for vulnerable defendants.

### 1.5 **Schedule and adhere to prompt start to witness evidence**

- agree a timed witness order in advance, ensuring opening/ preliminary points will be finished when witness evidence is due to start;
- schedule testimony to start early while the witness is fresh, taking account of concentration span, breaks, length of DVD, effect of any medication and whether there is more than one vulnerable witness. Schedule evidence-in-chief (DVD and additional questions) and cross-examination based on advocates' time estimates;
- short hearings in other matters should not be listed before the start or continuation of trial as they may cause delay;
- take account of witness wishes and judicial preferences about introductions. Prosecutors are expected to meet a witness and defence advocates may find it useful. It is up to the judge whether to meet a witness with the advocates;
- duration should be developmentally appropriate and limits may be imposed.

### 1.6 **DVD interview DVD interview** Have both parties received the DVD?

- watch *before* PCMH to aid decisions on admissibility, editing and refreshing witness memory;
- is it playable and audible on court equipment? Check before day of trial;
- consider timetable for editing and whether a transcript is needed.

### 1.7 **Pre-trial familiarisation visit to the court** See section 2.8, below.

1.8 **Third party material or PII** Applications should be made at an early stage. Disclosure of medical/ counselling records engage the witness's Article 8 right to privacy. Check that the police have obtained appropriate consent to gain access to the records. Witnesses must be informed about the purpose of the request. They are entitled to give qualified consent to disclosure (i.e. to the prosecution only, not the defence) or to decline consent but must also be told about the possible consequences for the case outcome.

### 1.9 **Witness access to/ exit from court building (not public entrance); standby arrangements; and staggered arrival times**

1.10 **Arrangements to refresh witness memory** should be addressed at the PCMH or case management hearing. The witness's first viewing of the DVD can be distressing or distracting. It should not be seen for the first time immediately before giving evidence. Assistance of the intermediary may be needed to establish how memory refreshing should be managed. If the interview is ruled inadmissible, the court must decide what constitutes an acceptable alternative method of memory refreshing. Decisions about how, when and where refreshing should take place should be court led in respect of each witness. General principles to be addressed include:

- the venue for viewing. Refreshing at the same time as the court familiarisation visit may lead to 'information overload'. Refreshing need not take place at court but may be done, for example, at the police interview suite;

- requiring that any viewing is monitored, usually by the officer in the case, who will report to the court about anything said by the witness;
- whether it is necessary for the witness to see the DVD more than once for the purpose of refreshing (the court will ask the advice of the intermediary).

1.11 ***There is no legal requirement that the witness should watch the DVD at the same time as the jury*** Increasingly, this occurs at a different time, so that breaks can be taken without disrupting the trial and cross-examination starts while the witness is fresh. If watched at a different time:

- an intermediary may be present but should not act as the independent person designated to take a note and report to the court if anything is said;
- the witness is sworn just before cross-examination and asked if (s)he has watched the DVD and if its contents are 'true' (in words tailored to witness understanding).

1.12 ***Arrangements for memory refreshing are a police responsibility*** and should be the subject of a clear local inter-agency agreement. In the case of a very young child it may be appropriate to record the viewing. Any supporter present for refreshing should generally not have been at the investigative interview, have supported the witness pre-trial or be expected to accompany the witness when giving evidence.

1.13 ***Update witness and court post-PCMH*** Inform witnesses of case progress:

- ensure explanations are made in simple language with an opportunity for questions;
- new information may become available, witness preferences may change and ways to enable best evidence may have to be reassessed. Advocates must keep the court informed.

1.14 ***What exhibits may be needed in the live link room?*** How will they be managed?

1.15 ***Confirm timetable and ensure all relevant decisions have been made*** Consider requesting a pre-trial review.

1.16 ***If there are parallel care proceedings*** refer to CPS Protocol and Good Practice Model for disclosure of information in cases of alleged child abuse and linked criminal and care directions hearings.

1.17 ***There is a duty to inform court at once if any order is not complied with*** Overriding Objective, Rule 1, Criminal Procedure Rules 2014.

## **2. WITNESS NEEDS, WISHES AND SPECIAL MEASURES**

2.1 ***Timely special measures applications*** in magistrates' court within 28 days of entry of not guilty plea and in Crown Court within 14 days. The court can vary time limits. Special measures information is needed to complete the PCMH questionnaire.

2.2 ***A judge's duty to manage all cases to achieve targets cannot override the duty to ensure that litigants receives a fair trial and are guaranteed the support necessary to compensate for disability***

- 2.3 **Review witness information: request it if not provided** Gather information at the earliest stage. Young witnesses are automatically eligible for special measures. Those over 18 who made a DVD statement when under 18 remain eligible.
- 2.4 **Medical conditions** Consider any relevant precautionary arrangements eg ensuring that someone trained in first aid is available in the court building for someone with epilepsy.
- 2.5 **Assessment of prosecution witness needs** should be recorded on police MG forms and in a follow-up Witness Care Unit assessment. Ask for information, if not provided, about concentration span (likely to be shorter at court), communication, development and health.
- 2.6 **Early identification of needs applies equally to defence witnesses and to vulnerable defendants** Consider whether a relevant expert should be instructed to consider what adaptations may be necessary.
- 2.7 **Competence is assumed if the witness is capable of giving intelligible testimony** This may require use of an intermediary. The judge has a continuing duty to keep competency under review. If the witness seems to satisfy the test, the court and parties should consider whether a competency hearing is necessary as it may cause delay, increase expense and put unnecessary strain on the witness.
- 2.8 **Is witness being helped to express informed opinion about special measures?**
- witnesses are likely to give better evidence when they choose how it is given. They need preparation and support to make an informed choice. This requires a pretrial familiarisation visit to the court with a live link practice session. They should also see screens in place;
  - the prosecution or defence will ask court staff to make provision for witness needs as a result of disability, medical condition or age. An accredited interpreter, Registered Intermediary, signer or other assistance will be provided in relation to language or communication needs;
  - the police, Witness Care Unit or prosecutor or defence lawyer should explain available measures, and ask for witness views. CPS will take the victim's views into account. The witness may ask to meet the prosecutor to discuss special measures;
  - has the young person received Young Witness Pack booklets explaining special measure options?
- 2.9 **Witness opt out** Those not wishing to be seen by the defendant may prefer screens. A young witness (or one over 18 to whom sections 21 or 22, Youth Justice and Criminal Evidence Act 1999 apply) may wish to opt out of the primary rule (recorded evidence-in-chief and live link) and secondary requirement (screens).
- 2.10 **Remote live link (away from trial court) from another court, non-court facility or using mobile police equipment** (Toolkit 9) Consider this where the witness is anxious about seeing the defendant/ supporters; facilities make it difficult to keep the witness separate; or where there is concern about intimidation/ fear of the court environment. What evidence needs to be taken to the remote site?

- 2.11 ***A neutral supporter (trusted by witness) in the live link room*** may be specified by the court which *must* take witness wishes into account. This can be anyone who is trusted by the witness and is not a party/ has no detailed knowledge of evidence; ideally, the person preparing the witness for court. Others may be appropriate and need not be an usher or court official.
- 2.12 ***Consider evidence in private*** in sex offence cases, or if there is a reasonable belief that someone is seeking to intimidate a witness.
- 2.13 ***Where a witness fears being seen by the defendant, or for another specific reason*** the defendant's monitor may be screened/ covered/ turned off.
- 2.14 ***Intermediary special measure to help maximise quality of evidence*** A Registered Intermediary's assessment report advises how best to question the witness:
- can the witness recognise a problematic question/ tell the questioner that (s)he has not understood? If not, consider intermediary assessment;
  - if opposing the application, raise properly arguable grounds. Do not take it upon yourself to decide the communication needs of potentially vulnerable witnesses, in particular, children. If no intermediary was used in interview this is not evidence that one is not needed at trial. If an intermediary apparently took no active part at the police interview, this is usually because the (s)he provided advice to the interviewer beforehand;
  - part F.1 of the Application for a special measures direction and para 5.2, Magistrates' Court Preparation for Effective Trial, require discussion of ground rules by the intermediary, judge and advocates (see Toolkit 1(c) Ground Rules). Advocates may request intermediary advice about adapting specific questions.
- 2.15 ***Communication aids can help improve the quality of evidence*** Intermediaries will, with the permission of the court, advise on the selection of appropriate aids e.g. a visual time line for a witness being asked to give evidence about different events over time/ in different locations; or a body map for a witness asked to clarify intimate touching.
- 2.16 ***Whether the witness seeks pretrial therapy*** is not a decision for the police or prosecutor. The best interests of the witness are the paramount consideration. Careful recording of therapy is essential.
- 2.17 ***Even when assured about reporting restrictions, children and vulnerable adult witnesses remain concerned that enough detail will be published to make them identifiable*** Key guidance is listed in Toolkit 1(a).