

*CPR 3.9(3)(b): In preparation for trial, courts must take 'every reasonable step' to facilitate participation of witnesses and defendants. This includes:*

- *setting ground rules for a vulnerable person, whether or not an intermediary is involved (CPR 3.9(7), CPD 3E.2,3E.3)*
- *limiting the scope and duration of questioning (CPR 3.9(7)(iii), 3.10(d), CPD 3E.4)*
- *not requiring the witness to watch his/her ABE interview at the same time as the jury (CPD 29C.4)*
- *giving weight to the witness's choice of supporter in the live link room (CPR 18.10(f), CPD18B.1, 18B.2)*
- *combining special measures to shield the live link screen from the defendant and public (CPD 29A.2)*
- *using photos to help familiarise witnesses with the court (CPD 3F.29, 2015 as amended).*

*In response to intermediary recommendations, judges have adopted a wide range of creative steps to accommodate vulnerable witnesses and defendants. Steps need to be tailored to the individual's needs i.e. one size does not 'fit all':*

- Conducting the witness's pre-trial visit on the same day as a pre-trial hearing, and arranging introductions to the advocates and judge, seated and dressed informally. (Where there is more than one defence advocate, introductions have been done one by one)
- If practice on the live link reveals the witness has problems using it, advocates (and, in s. 28 cases, sometimes the judge) have been moved into the live link room for face-to-face questioning. This has also been adopted if questioning using live link or screens breaks down
- Letting witnesses write or text their responses; answers were read out by the intermediary; and using a range of aids, including drawing, to enable non-verbal communication
- Allowing the intermediary to relay the answers of witnesses who answered questions with their back to the live link camera; and to relay the replies of witnesses who whispered
- Agreeing the use of a 'visual timeline' to facilitate questioning about alleged offences over a period of time/ in different locations
- Allowing witnesses to take short 'in room' breaks (with sound turned off between the court and live link room) without sending out the jury. These can be measured by a sand timer
- Permitting witnesses to monitor/ indicate their stress levels by tapping a 'thermometer' card, 'traffic lights' or a numerical scale with added personalised stress indicators. The intermediary can then alert the judge if stress levels increase to a point where a break is needed
- Where questions are agreed in advance, allowing the use of counters as a visual aid. The witness puts a counter in a box for each question (or small group of questions) asked, and can then see how many remain
- Letting anxious witnesses bring a calm dog/ a hamster in its ball into the live link room; allowing a defendant with mental health difficulties to bring his cat in a trolley into the dock
- Keeping the defendant in the dock until the witness has left the court building.

*Judicial decisions in respect of children have included:*

- Letting a 4-year-old set the pace: the child would answer, put in the piece of a puzzle, hand a piece to counsel in the live link room who would place it and then ask the next question
- Using a 10-minute sand-timer to allow a child to monitor the length of cross-examination to be conducted in 10-minute 'blocks'
- Allowing children to pause cross-examination briefly to relieve stress without leaving the live link room by going under a table, behind a curtain or under a blanket
- Letting a child with urinary urgency go to the toilet without seeking permission first and arranging access to a shower at court for a child at risk of soiling
- Agreeing that the usher would knit quietly during cross-examination because it was calming for the child and meant the usher was not obviously observing. Agreeing to a child's request that a male usher would cover his face with a cushion when the child said 'naughty' words

- Permitting a child to regulate his breathing by playing the recorder during an ‘in room break’
- Allowing children to reduce heightened anxiety and ‘settle’ with physical activity during breaks. Agreed activities have involved vacuuming, riding a tricycle, bouncing on a mini trampoline and rocking in a small rocking chair
- Allowing a teenager, cognitively able but unwilling to speak about what happened, to type responses to typed questions (as was done at the ABE interview). A typist transcribed counsel’s questions. Video screens allowed jury and defendant to follow Q and A exchanges
- Agreeing that a 15-year-old with psychological problems could pull up her ‘hoodie’ if stressed. With this reassurance, she gave her evidence without covering her head
- Letting a 13-year-old give evidence with her legs wrapped in a blanket
- Allowing a teenager distressed by seeing the advocate’s face over the live link screen to be questioned using live link sound only
- Allowing a four-year-old to give evidence while sitting on a relative’s knee.

*Judicial decisions in respect of vulnerable adult witnesses have included:*

- The advocates and judge asking the witness non-evidential questions developed by the intermediary at a pre-trial visit. This was followed by – and helped inform – decisions about the form of questions at the ground rules hearing
- Removing a ticking clock from the live link room for a witness with autism
- Setting aside a ‘quiet room’ for use during breaks
- Allowing an acutely embarrassed witness with autism to use a ‘word body map’ (pointing to words for parts of the body rather than the picture of a body outline)
- Allowing the intermediary to hold and rock a witness with learning difficulties and mental health problems when she showed signs of psychological disturbance
- When questioning broke down, allowing a witness (being treated for post traumatic stress disorder who had a tendency to vomit when stressed) to write down all she wanted to say. This was shown to the jury and she was cross-examined about it
- Letting a witness with autism wear a lion’s tail, his ‘comfort object’ in daily life
- Agreeing that those in court would avoid perfume and aftershave in the presence of a witness with poor respiratory health and scent sensitivity who wished to give evidence in court.

*Judicial decisions in respect of vulnerable defendants have included:*

- Screening between the dock and public gallery when members of the public made faces at a defendant with learning difficulties
- Agreeing use of a visual timeline in the dock throughout the trial to enable the defendant to follow times and dates mentioned when others gave evidence
- Letting defendants with hearing/ sight problems or poor attention to sit in the body of the court
- Out of court hours, allowing a defendant with autism to practise walking towards the witness box while his favourite music was played, then answering questions from the box about his favourite subject. This relaxed him and enabled him to give evidence from the witness box
- Letting the defendant’s intermediary text defence counsel when breaks were needed
- Allowing defendants to have quiet, calming objects (including an iPad with a relaxation programme and colouring books) in the dock, to help them attend or keep calm
- Allowing a defendant with autism to give evidence with the witness box screened
- Preparing the judge’s opening remarks and the defence’s questions in large print for a defendant with limited vision and learning difficulties.