

A more flexible approach to vulnerable witnesses and defendants November 2017

CPR 3.9(3)(b) Courts must take 'every reasonable step' to facilitate participation, including:

- *setting ground rules, even if no 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 witnesses to watch their VRI 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)*
- *shielding the live link screen from the defendant and public (CPD 18A.2)*
- *using photos to help familiarise witnesses with the court (CPD 3F.29).*

In response to intermediary recommendations, judges have adopted a range of creative steps to accommodate vulnerable witnesses and defendants, but one size does not 'fit all':

Meeting the witness i) The judge and advocates met a witness with complex needs and asked non-evidential questions developed by the intermediary. This was followed by the ground rules hearing and helped inform decisions about the form of questions ii) the judge and advocates, seated and dressed informally, met the witness iii) introductions were made one at a time where the witness was worried about meeting too many people at once

Where witnesses decline to watch the whole VRI Modifications have included i) the witness listening to the VRI ii) watching the disclosure elements only iii) the officer reading out a summary of disclosed events iv) the officer reading out the transcript

Concerns about being seen i) Turning off the defendant's live link screen, blocking his view or moving him, including seating him in a lower chair ii) Where the witness did not wish to be seen from the public gallery and the judge did not wish to exclude the public using s 25 YJCEA 1999, providing iPads to jurors, advocates and defendants, showing the witness on the live link. Members of the public could not see the witness

Clothing (or not) i) Permitting a man self-conscious about skull surgery to wear a baseball cap in court ii) taking evidence by remote link (with a strategically placed table) from a man in a care home who refused to wear any clothes

Repeating questions and answers Letting the intermediary i) repeat questions where witnesses had difficulty listening carefully, may not have understood or relied on lip reading ii) repeat the answers of witnesses who wrote, texted or typed answers (including by eye movement) ii) relay the answers of witnesses who whispered or answered questions facing away from the camera

Monitoring progress through agreed questions/ topics Allowing the witness to i) put a counter in a box for each question/ topic completed, showing how many remained; or ii) tick off or tear out sheets from a booklet with topic headings iii) letting the witness have a sand timer to monitor time during cross-examination conducted in 10-minute 'blocks'

Support Where a supporter of the witness's choice should not hear the evidence, having them wear headphones (playing music) in the live link room, or sit just outside the door

Visual timelines for (i) a witness asked to describe hotels where she had been assaulted. The timeline marked years, significant non-evidential events, and dates and locations from hotel receipts (ii) a witness questioned about three different incidents by referring her to three Post-It notes, identifying each incident by words (agreed at the GRH) spoken by the witness at interview (iii) a defendant, to enable him to follow dates mentioned throughout the trial when others gave evidence

Signposting questions Having advocates 'signpost' their questions as referring to specific topics and allowing the intermediary to refer the witness to a visual aid to help the witness understand the context

Touching While generally not permitted, allowing the intermediary i) to touch the witness's arm to direct her to look at or listen to the live link screen ii) to rock a witness with learning difficulties and mental health problems when she showed signs of psychological disturbance (*R v Christian* [2015] EWCA Crim 1582) iii) to stroke a four-year-old's hair, when requested by the child iv) to hold a 6 year-old giving evidence on her lap. Allowing a 4 year-old to sit on a relative's knee

Breaks i) Allowing short 'in room' breaks, measured by a sand timer, with sound turned off between the live link room and court, without sending out the jury ii) in these breaks, letting children relieve stress by going under a table, behind a curtain or into a 'tent' in the live link room iii) when a witness whose evidence was adjourned overnight returned drunk in the a.m., delaying resumption of cross-examination until the p.m. to allow him to sober up iv) allowing a defendant with mental health problems to pause briefly during questioning, to manage his emotional state v) letting the defendant's intermediary text defence counsel when breaks were needed

When questioning broke down i) holding another GRH ii) moving the witness from the live link room to behind a screen and vice versa iii) moving the advocate into the live link room iv) when the witness became distressed seeing the advocate's face over the live link, turning off the screen and continuing questioning using live link sound only v) allowing a witness with 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 vi) as a last resort, the judge taking over to ask the final questions

Intimidation i) Between co-defendants, seating the vulnerable defendant and intermediary at the end of a row or out of the dock ii) allowing a defendant with ASD to give evidence with the witness box screened iii) screening the dock from members of the public who made faces at a defendant

Section 28 pilot courts i) filming the witness's cross-examination in her care home using police mobile equipment ii) when a trial could not proceed but all parties were present, the witness's cross-examination was filmed as a s 28 hearing. She subsequently died but the recording was played at trial.

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