

Special measures meetings between the Crown Prosecution Service and witnesses

Practice Guidance

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Practice Guidance

Introduction

The *Speaking up for Justice* report recommended that “meetings between the Prosecutor and certain vulnerable or intimidated witnesses could benefit the conduct of the case and provide reassurance to the witness”.

This Practice Guidance provides information about meetings between the Crown Prosecution Service (CPS) and witnesses.

This document is for CPS prosecutors. It should also be used by police officers. It should be read in conjunction with the Practice Guidance *Early special measures discussions between the police and the Crown Prosecution Service*. The use of the guidance documents and the special measures introduced by the Youth Justice and Criminal Evidence Act 1999 will enable vulnerable and intimidated witnesses to give their best evidence in criminal proceedings.

The Code of Practice for Victims of Crime

The *Code of Practice for Victims of Crime* (“the Victims’ Code”), published in October 2005, places certain obligations on the police and the CPS in respect of victims and witnesses in criminal proceedings.

The Victims’ Code states that the police must take all reasonable steps to identify vulnerable or intimidated victims. The document also states that all organisations with responsibilities under the Code should identify victims as vulnerable or intimidated as defined by the Code.

The police must also explain to the victim the provision of special measures provided by the Youth Justice and Criminal Evidence Act 1999 (“the 1999 Act”) and record, on the MG2 form, any views the victim expresses about applying for special measures.

The Victims’ Code also states that, where a victim is to be called as a witness in criminal proceedings and has been identified as potentially vulnerable or intimidated, the CPS must have systems in place to assist prosecutors in considering whether to make an application to the court for a special measures direction.

The obligations placed on the police and the CPS by the Victims’ Code make it important that the investigating officer and the prosecutor discuss, as soon as possible, the special measures that may assist a vulnerable or intimidated witness to give their best evidence in a criminal trial.¹

¹ The Practice Guidance *Early special measures discussions between the police and the Crown Prosecution Service* covers this in more detail. The guidance is available from the CPS website, www.cps.gov.uk

The Prosecutors' Pledge

The Prosecutors' Pledge, published in October 2005, complements the Victims' Code. The Pledge details the level of service victims can expect to receive from prosecutors.

The Pledge includes ten commitments. The following commitment is of particular relevance when considering whether the prosecutor should meet with the witness to discuss special measures:

“address the specific needs of a victim and where justified seek to protect their identity by making an appropriate application to the court”.

The CPS prosecutor will consider the Victim Personal Statement, which details the impact of the crime on the victim, when deciding whether to charge the accused with an offence. The CPS prosecutor will discuss with the police officer whether the victim is eligible for special measures.

The CPS prosecutor is able to apply to the court for a range of special measures. The prosecutor should ensure that the witness's views are taken into account and will, if required, meet with the witness to discuss them.

Special measures

Sections 23–30 of the 1999 Act provide for a menu of special measures to enable vulnerable or intimidated witnesses in a criminal trial to give their best evidence.² The table at Annex A provides information about the eligibility of vulnerable and intimidated witnesses for special measures. Annex B details the witness eligibility criteria for special measures.

Sections 21 and 22 of the 1999 Act set out certain presumptions that apply in respect of child witnesses under the age of 17 (Annex C provides further information).

Sections 34–36 of Part II of the 1999 Act prohibit, or provide the court with the power to prohibit, cross-examination by defendants in person in respect of certain specified witnesses, such as children and complainants in sexual offence cases (Annex D provides further information).

² The special measures available under the 1999 Act are: video-recorded evidence in chief; live links; screens around the witness box; evidence given in private (clearing the public gallery); removal of wigs and gowns; video-recorded cross-examination (NB not yet implemented); examination of the witness through an intermediary; and aids to communication. For further details about the menu of special measures see *Early special measures discussions between the police and the Crown Prosecution Service*, which is available from the CPS website (www.cps.gov.uk).

Case study

On the evening of 2 September 2007, Alison was celebrating her friend's birthday. She went to the local public house and then on to a disco. She consumed eight alcoholic drinks and described herself as "drunk and happy".

Whilst at the disco, Alison noticed a man staring at her. The man, Paul, approached her and engaged her in conversation. She described Paul as being pleasant and not aggressive in his conversation.

Paul offered to drive Alison home. They walked to Paul's car and chatted amiably. The journey to her house lasted approximately 15 minutes. On the way to her house, Paul sexually assaulted her.

After the assault, Paul pulled Alison out of the car onto the pavement. He then drove off. Alison states that she lay on the pavement, in a state of shock, until a witness found her and telephoned the police.

Alison was examined by a doctor at the police station. The doctor found fresh reddening on her upper arms. There were no other injuries on her body. A vaginal swab was taken and the DNA matched Paul's.

Alison gave her account to the police by way of a video-recorded interview.

Paul was arrested later that day. In interview, he stated that he had consensual sex with Alison in his car, at her request. He denied using any force and said that he had no injuries on him. He consented to be examined by a doctor. No injuries were found on him.

The police submitted a file of evidence to the CPS. The file was reviewed by the rape specialist prosecutor, who advised that there was sufficient evidence to proceed with the case. The CPS prosecutor decided that it was appropriate to meet with Alison to discuss the special measures available to her. She agreed to meet the CPS prosecutor.

At the special measures meeting, the CPS prosecutor informed Alison that, as she was a complainant in a serious sexual case, she was automatically entitled to special measures upon application of the prosecution. The prosecutor informed her of the range of special measures, including the option of having her video-recorded evidence played as evidence in chief. The prosecutor explained the advantages and disadvantages of each of the available special measures. Alison was asked to express her view as to which, if any, special measures should be applied for by the prosecution.

Alison stated that she was particularly fearful of having to be questioned by Paul in court. The prosecutor explained that this would not happen as sections 36–37 of Part II of the Youth Justice and Criminal Evidence Act 1999 prohibit, or provide the court with the power to prohibit, cross-examination of victims in sexual cases by unrepresented defendants.

Police officers and CPS prosecutors must not assume that a witness will want special measures, or a particular special measure. Also, police officers and CPS prosecutors must take into account that a witness may initially say that they do not require special measures, but may later realise that they do but are reluctant to say so. A witness's need for special measures should be kept under review throughout the criminal justice process by the police officer in the case and the CPS prosecutor.

Police officers and CPS prosecutors should discuss, as early as possible, whether a witness may benefit from special measures. Police officers must inform CPS prosecutors of the witness's views about special measures (via the MG forms and early special measures discussions). This will enable the CPS prosecutor to make timely and informed decisions about important issues, such as applying for special measures, including the appointment of an intermediary. It is important to note that the decision to order special measures rests with the court and so witness expectations must be managed effectively throughout the process.

Following the early special measures discussion, the police officer should ask the witness whether, if they are required to give evidence, they wish to meet the CPS prosecutor. The purpose of that meeting is to discuss matters relating to special measures decisions.

The CPS prosecutor must inform the Witness Care Unit (WCU) of the applications made for special measures, as well as the direction made by the court³ (further information concerning WCUs is at Annex E).

Witness special measures meetings

Special measures meetings focus on supporting eligible witnesses to give their best evidence.⁴

The meetings:

- establish a link between the CPS and the witness;
- provide an opportunity for the CPS prosecutor to reassure the witness that their needs will be taken into account;⁵
- allow the CPS prosecutor to supply clear and accurate information to the witness;
- provide an opportunity for the witness to explain their concerns about giving evidence and ask questions about the availability of special measures;
- may reduce the reluctance of witnesses to participate in the Criminal Justice System;
- may improve the CPS prosecutor's understanding of the witness's view of special measures; and
- improve the trial process, as CPS prosecutors apply for the special measures that will best meet the witness's needs.

The special measures meeting may provide an opportunity to assess any further needs of the witness when giving evidence. Such an assessment must be carried out without entering into any discussion of the evidence. If there are doubts about the reliability of the witness's evidence, a pre-trial witness interview should be held.⁶

³ Paragraph 8.3(b) of *The Code of Practice for Victims of Crime* states that Her Majesty's Courts Service must "in relation to all later hearings... ensure that, in cases which the court staff have been notified involve vulnerable or intimidated victims, decisions reach the joint police/CPS Witness Care Units no later than one working day after the day on which the decision is made; and in cases involving other victims, decisions reach the joint police/CPS Witness Care Units no later than three working days after the day on which the decision is made".

⁴ A separate meeting must be held for each witness for whom special measures are under consideration.

⁵ There should be a locally agreed process in place to ensure that the WCU is informed about special measures.

⁶ See the *Code of Practice for Pre-trial Witness Interviews*, which applies to interviews for the purpose of assisting a prosecutor to assess the reliability of a witness's evidence or to understand complex evidence.

The meeting can also be an opportunity for the CPS prosecutor to explain why a decision has been taken not to apply for special measures.

If the meeting does not coincide with the pre-court familiarisation visit, which will usually be conducted by Witness Service volunteers, an explanation of court procedure and the roles of the various parties in the trial may be given.

The meetings assist the CPS prosecutor and the witness. In appropriate cases, an intermediary may also be required to attend the meeting in order to facilitate communication between the CPS prosecutor and the witness.

When should the meeting with the witness take place?

It is preferable for the meeting with the witness to be held before an application for special measures is made to the court. This will allow the CPS prosecutor to confirm the views of the witness as to which of the special measures should be applied for. The CPS prosecutor is then able to make a fully informed application to the court (Annex F indicates the purpose and benefits of meetings held before applying for special measures).

In certain cases, it may only be possible to meet with the witness after an application for special measures has been made to the court. This meeting may be timed to coincide with the pre-court familiarisation visit. The meeting would permit the witness to see and be reassured by the special measures available, such as the live link room (Annex F provides details of the purpose of meetings held after applying for special measures).

When considering when to hold a meeting with a witness, CPS prosecutors must note the following:

- the meeting should be held after the defendant has been charged with an offence;
- the meeting should not take place until the witness has made a statement, or further statement, which was discussed at the early special measures discussion with the police officer;⁷ and
- the tighter timescales in the magistrates' and youth courts mean that meetings with witnesses will need to be held as soon as possible after the entry of a not guilty plea (see Annex G).

⁷ See Practice Guidance *Early special measures discussions between the police and the Crown Prosecution Service*.

Which witnesses are eligible to attend a meeting with the CPS prosecutor?

Vulnerable and intimidated witnesses (as defined by sections 16 and 17 of the 1999 Act) for whom the CPS intends to make an application for special measures will be offered a meeting with the CPS prosecutor. Witnesses in respect of whom the CPS has decided not to apply for a special measure(s) may also request a meeting with the CPS prosecutor if they are unhappy with that decision (Annex B provides details of the witnesses eligible for special measures).

How will the eligible witnesses be offered a meeting with the CPS prosecutor?

The police officer in the case should take all reasonable steps to identify whether the witness is vulnerable or intimidated.⁸ The police officer should explain to the witness the provision of special measures, and record the witness's views about applying for special measures. The police officer should then discuss, during an early special measures discussion with the CPS prosecutor, the needs of the witness and the eligibility of the witness for special measures. Following the early special measures discussion, the police officer should contact the witness to inform them of the CPS prosecutor's decision about special measures. The police officer should ask the witness whether, if they are required to give evidence, they wish to have a meeting with the prosecutor to discuss any matter arising from the early special measures discussion. The witness may decide not to meet the CPS prosecutor. The witness's decision should be respected.

⁸ It is important that the police officer informs the CPS prosecutor whether the witness is receiving pre-trial therapy, or it is proposed that they do so, or that it has been undertaken (see Annex H).

Who should attend the meeting with the witness?

CPS prosecutors must consider each case individually, and the needs and wishes of the witnesses must be taken into account. The final decision as to who will attend the meeting rests with the CPS prosecutor, after appropriate discussion and liaison with those concerned.

When considering who should attend the meeting with the witness, CPS prosecutors must aim to provide the maximum possible continuity for the witness. Consideration must be given to, where possible, the witness meeting the same members of the prosecution team throughout the trial process.

When arranging the meeting, consideration should be given to the number of attendees. It is recommended that the number of attendees is limited to the witness and a maximum of four others. Consideration should be given to the attendance of the following people:

- the CPS reviewing lawyer;
- the trial advocate;⁹
- counsel;¹⁰
- the CPS caseworker;
- the police officer in the case;¹¹
- the witness;
- a relative, carer or supporter of the witness, such as an Independent Domestic Violence Advisor; and
- a person who may be required to facilitate communication with the witness for the purpose of the meeting, for example an intermediary.

If the witness wishes a legal representative to attend the meeting, this should usually be permitted. It will be the responsibility of the witness to make the arrangements for the attendance and payment of the legal representative.

The CPS will pay reasonable expenses and allowances incurred by the witness attending the meeting (other than any legal representative of the witness), in accordance with the Crown Prosecution Service (Witnesses' etc. Allowances Regulations 1988). The Witness Care Officer will send the expenses form to the witness in advance of the meeting. Where the Witness Care Officer is not the single point of contact for the witness, arrangements must be made locally to ensure that the witness is supplied with an expenses form.

⁹ Whenever possible, the trial advocate should be present at the meeting and, if not the same person, the CPS prosecutor who was present at the early special measures discussion.

¹⁰ If counsel has been, or is to be, instructed to prosecute the case, they should, wherever possible, attend the meeting.

¹¹ If the police officer in the case has not had the contact with the vulnerable or intimidated witness, then the officer who has had such contact should also attend.

Where will the meeting take place?

The meeting can be held at a CPS office, a police station or the courthouse at which the case will be tried.¹² CPS prosecutors should consider the possibility of holding the meeting at another location, such as social services premises, if the witness has particular needs. In some cases, it may be necessary for the meeting to be carried out by way of a remote link.

When deciding where to hold the meeting, the needs of the witness must be taken into account.

Meeting with the witness at the CPS office

CPS prosecutors should consider the benefit to the witness of arranging for the meeting to be held at the CPS office. A quiet room at a CPS office will provide an environment in which the CPS prosecutor can explain, without interruption, special measures decisions and listen to the concerns of the witness.

If the meeting with the witness is held at the CPS office, the witness may ask for an explanation of court procedure and the roles of those involved. If this happens, the CPS prosecutor should give an explanation whilst avoiding any discussion of the evidence. The explanation is not intended to replace the work of the Witness Care Unit or the Witness Service.

Meeting with the witness at police premises

CPS prosecutors must consider that the witness may be familiar with the environment of the police station and may opt for this venue for the meeting.

CPS prosecutors should always be alert to the possibility of holding a meeting at the police station. This option is of particular relevance where there are personal safety issues to be considered.

Meeting with the witness at the courthouse

It may be possible to arrange for the meeting to be on a day and at a time which will coincide with the pre-court familiarisation visit organised by the Witness Service. The pre-court familiarisation visit is invaluable for many witnesses, as it enables them to familiarise themselves with the layout of the court. During the visit, the witness should, where possible, have the opportunity to have a demonstration of the special measures for which they are eligible. The demonstration should include, for example, the use of the live link and an explanation as to who will be able to see the witness in the courtroom, and showing the use of screens (where it is practicable and convenient to do so). If it is not possible to arrange a demonstration, the special measures should be fully explained to the witness in order to avoid any misunderstandings. The pre-court familiarisation visit makes witnesses better informed about the particular special measures that may assist them to give evidence.

If the meeting is to be held on the same day as the pre-court familiarisation, CPS prosecutors should consider the possibility of allowing a break between their meeting with the witness and the witness meeting the Witness Service. This will be of benefit to the witness as it will allow them sufficient time to consider the environment and the information supplied to them, as well as avoiding the need to set aside two days for two meetings.

If it is decided that the CPS prosecutor will meet the witness on the day of the pre-court familiarisation visit, this will avoid a potential duplication of work. As part of the pre-court familiarisation visit, the Witness Service will explain to the witness the court procedure and the roles of the parties in the trial process, and offer support to the witness.

¹² CPS staff involved in a meeting with a witness should consider their personal safety by following the guidance contained in the *CPS Health and Safety Manual*. Section 11 provides guidance on health and safety best practice concerning victims and witness care on CPS premises. The Manual can be found on the CPS Infontet.

Arranging the meeting

The witness's single point of contact will arrange the meeting. If a Witness Care Officer has been assigned as the single point of contact, the Witness Care Unit will arrange the meeting.

The Witness Care Unit will seek the views of the witness as to the venue for the meeting, but the final decision will be made by the CPS prosecutor. The Witness Care Unit will inform the witness of the venue for the meeting as soon as possible.

If the police station is chosen as the venue for the meeting, the Witness Care Unit will liaise with the officer in the case to arrange the allocation of an appropriate room.

If the meeting is to be held at the courthouse, the Witness Care Unit will liaise with the Witness Service to co-ordinate the arrangements and will also discuss the request of the witness for a pre-trial familiarisation visit.

The Witness Care Unit will provide the witness with a leaflet¹³ to explain the purpose of the meeting with the CPS prosecutor. This will inform the witness, in advance of the meeting, that it will not be possible to discuss the evidence of the witness or any other evidential aspect of the case. The provision of the leaflet will avoid the possibility of the witness having expectations that are not met.

The need to avoid rehearsing or coaching the witness

It is imperative that there is no discussion with the witness as to the evidence in the case. It is possible that the witness will wish to mention or discuss a matter relating to evidence. Such a discussion could lead to an allegation of rehearsing or coaching of the witness, as well as the exclusion of evidence.

Prosecutors must be alert to the case of *R v Momodou and R v Limani* [2005] EWCA Crim 177. Prosecutors must not under any circumstances train or coach the witness. CPS prosecutors must not ask questions that may taint the witness's evidence.

This case establishes that there is a dramatic distinction between witness training or coaching, and witness familiarisation. Training or coaching for witnesses in criminal proceedings is not permitted. This principle does not preclude pre-trial arrangements to familiarise witnesses with the layout of the court, the likely sequence of events when the witness is giving evidence, and a balanced appraisal of the different responsibilities of the various participants. Such arrangements, usually in the form of a pre-trial visit to the court, are generally to be welcomed.

If the witness does wish to discuss an evidential matter, the CPS prosecutor must explain that the witness must discuss his or her evidence with the police officer, not the prosecutor. The CPS prosecutor must arrange for this to happen. The CPS prosecutor must also make a written record¹⁴ of what was said by the witness and the action taken by the CPS prosecutor.¹⁵

¹³ *About your meeting with the CPS Prosecutor*

¹⁴ See the section "Keeping a record of the meeting".

¹⁵ The record must be made in writing. The officer in the case must include the details of the written note on the form MG6C. The MG6C must be supplied to the CPS. The CPS must disclose the MG6C to the defence. The MG6C should be disclosed without a specific request from the defence to do so. If the written note contains sensitive material, the officer in the case must include details of the note on the form MG6D. Issues concerning the disclosure of the MG6D form must be determined in accordance with the usual Criminal Procedure and Investigation Act 1996 principles, the Attorney General's guidelines on disclosure and public interest immunity procedures.

Keeping a record of the meeting

It is essential that a contemporaneous written record is kept of what is discussed and agreed with the witness at the meeting. A CPS employee should be appointed as the designated note-taker for this purpose. Annex I provides details of what information should be recorded.

The meeting attendees, with the exception of the witness, should be asked to sign the record of the meeting as being a correct record of what was discussed.

The officer in the case must include the details of the written record on the MG6C form, which must be supplied to the CPS (see footnote 16).

It is vital that the matters discussed at the meeting are sufficiently recorded. The written record may avoid the CPS prosecutor being called as a witness at the trial and, in the event of being called, will provide an aide-memoire.

It must be noted that the meetings with witnesses may be tape-recorded or video-recorded if the circumstances of the case justify this action. CPS prosecutors make a written note of the reason(s) for deciding to tape/video-record the meeting. The same principles of disclosure, as detailed at footnote 16, will apply to the written note and the record of the tape/video-recorded meeting.

What should be discussed at the meeting

CPS prosecutors must consider each case on an individual basis, but the following matters should be included in the discussion:

- an explanation to the witness of the purposes of the meeting;
- an explanation as to the prosecutor's role;¹⁶
- an explanation to the witness that it will not be possible to discuss the evidence of the witness or any other matter relating to the evidence in the case;
- if appropriate, an explanation to the witness of the provisions contained in sections 34–36 of the 1999 Act;
- an explanation to the witness that, although a relative, carer or supporter has attended the meeting with the witness, such a person will not necessarily be permitted to sit in the witness box with the witness; and
- if the witness asks and if the meeting does not coincide with the pre-court familiarisation visit organised by the Witness Service, an explanation of court procedure and the roles of the various parties in the trial.

Where the CPS prosecutor has decided not to apply for any special measures, or to apply for special measure(s) that differ from those preferred by the witness, at the meeting they must provide an explanation to the witness of the reasons for that decision.

Where the meeting takes place before the application for special measures is made to the court, the CPS prosecutor should:

¹⁶ Paragraph 5.12 of the *Code for Crown Prosecutors* states: "The Crown Prosecution Service does not act for victims or the families of victims in the same way as solicitors act for their clients. Crown Prosecutors act on behalf of the public and not just in the interests of any particular individual. However, when considering the public interest, Crown Prosecutors should always take into account the consequences for the victim of whether or not to prosecute, and any views expressed by the victim or the victim's family."

- explain to the witness the special measures that were identified at the early special measures discussion with the police officer;
- discuss with the witness the special measures identified and check that those special measures are appropriate for an application to the court for a special measures direction under section 19 of the 1999 Act;
- seek the views of the witness as to which of the special measures they would prefer to have;
- explain to the witness that the defendant's legal representatives have a duty to promote the best interests of the defendant, and that they may contest the use of special measures; and
- explain to the witness that the court will make the final decision as to what special measures will be made available to the witness at the trial. In reaching that decision, the court will take the wishes of the witness into account and also consider whether the measures tend to inhibit the effective testing of the evidence of the witness by the defendant (section 19(3) of the 1999 Act).

Where the meeting takes place after the application to the court for special measures is made, CPS prosecutors must:

- inform the witness and those involved of the special measures directed by the court to apply to the trial; and
- explain the binding effect of the court's direction (section 20 of the 1999 Act).

Where the CPS prosecutor has decided not to apply for any special measures, an explanation should be given to the witness of the reasons for that decision. The CPS prosecutor must take into account any comments or views expressed by, or on behalf of, the witness and, if appropriate, reconsider the decision not to apply for special measures.

Change in needs or circumstances of the witness

The needs or circumstances of a witness may, indeed often will, change from the reporting of the crime to the court hearing. The CPS prosecutor should ask the witness to contact the Witness Care Unit or, if appropriate, their single point of contact, if their needs or circumstances change in a way that might affect the decision not to apply for special measures or the special measures already applied for. If it is necessary to make an application or a further application to the court for special measures, the CPS prosecutor should do so as soon as possible (see section 20 of the 1999 Act).

After the meeting

Following the meeting, CPS prosecutors must:

- inform the Witness Care Unit of the outcome of the meeting;
- notify the defence that a meeting has taken place; and
- send a copy of the relevant MG forms to the defence, unless they contain sensitive material.

Annex A

Youth Justice and Criminal Evidence Act 1999: eligibility for special measures (England and Wales)

	Section 16 witnesses (children)	Section 16 witnesses (vulnerable adults)	Section 17 witnesses (intimidated/fear or distress) ¹⁷
Section 23 screening witness from accused	Eligible	Eligible	Eligible
Section 24 evidence by live link	Eligible ¹⁸	Eligible	Eligible
Section 25 evidence given in private	Only in sexual offence cases and cases involving witness intimidation	Only in sexual offence cases and cases involving witness intimidation	Only in sexual offence cases and cases involving witness intimidation
Section 26 removal of wigs and gowns	Eligible	Eligible	Eligible
Section 27 video-recorded evidence in chief	Eligible ¹⁸	Eligible	Eligible
Section 28 video-recorded cross-examination/ re-examination	Not yet implemented	Not yet implemented	Not yet implemented
Section 29 examination through an intermediary	Eligible	Eligible	Not eligible
Section 30 aids to communication	Eligible	Eligible	Not eligible

¹⁷ Complainants of sexual offences will be considered eligible for special measures unless they inform the court that they do not want to be eligible.

¹⁸ There is a presumption that most child witnesses will have a video-recording admitted as their evidence in chief and will give further evidence or cross-examination through a live link at trial – unless giving in evidence in this way would not improve the quality of the child's evidence. Stronger presumptions that their evidence will be given in this way apply in cases where children are deemed in need of "special protection", i.e. witnesses in sexual offence cases and those involving violence, cruelty, abduction or neglect.

Annex B

Special measures: witness eligibility

Witnesses are eligible for special measures to help them give evidence on one or more of the following grounds:

Vulnerable witnesses (section 16 of the 1999 Act)

These are people who:

- are under 17 years of age at the time of the hearing; or
- suffer from a mental disorder; or have a significant impairment of intelligence and social functioning, that the court considers likely to diminish the quality of their evidence. This might cover, for example, autistic spectrum disorders; or
- have a physical disorder or disability, including deafness, that the court considers likely to diminish the quality of their evidence.

Intimidated witnesses (section 17 of the 1999 Act)

These are people who the court is satisfied are likely to suffer fear or distress at the prospect of giving evidence, because of their own circumstances and those of the case, to an extent that is expected to diminish the quality of their evidence.

A number of factors are set out in section 17 which the court should have regard to when determining eligibility under this section.

Annex C

Child witnesses: eligibility for special measures

Sections 21 and 22 of the 1999 Act detail some special provisions for child witnesses under the age of 17. The provisions create strong presumptions that apply to certain categories of child witnesses and concern how they will give their evidence. The provisions state:

- where there is a child witness in a sexual offence case or one involving violence, abduction or neglect, the child witness is deemed to be “in need of special protection”. In such cases, the court does not have to consider whether the special measure(s) will improve the quality of the evidence; this will be assumed to be the case;
- all child witnesses in need of special protection will have the video-recording of their evidence admitted as evidence in chief, unless this is excluded by the court on the basis that to admit the video-recording would not be in the interests of justice;
- child witnesses in sexual or violent cases will normally be cross-examined and re-examined via the live link; and
- for all other child witnesses there will be presumption that evidence in chief will be given by playing the video-recording, if one has been made, and that cross-examination and re-examination will be via the live link. However, the court will need to be satisfied that this will improve the quality of the evidence.

In cases involving children, prosecutors must be alert to the case of *R v Camberwell Youth Court and Others* [2005] UKHL 4.¹⁹

¹⁹ The House of Lords in *R v Camberwell Youth Court and Others* [2005] UKHL 4 held that the presumption for children in need of special protection did not breach Articles 6 or 14 of the European Convention on Human Rights. It also clearly stated that the norm for child witnesses giving evidence was by video evidence in chief (where one has been recorded) and live link for cross-examination. This applies equally to child witnesses for the prosecution and defence.

Annex D

Provisions restricting defendants from cross-examining certain witnesses in person

Section 34 of Part II of the 1999 Act prohibits the cross-examination in person by unrepresented defendants of complainants in sexual cases.

Section 35 of Part II of the 1999 Act prohibits the cross-examination in person by unrepresented defendants of certain “protected witnesses”, such as child complainants and other child witnesses.

Section 36 of Part II of the 1999 Act permits a court to make an order prohibiting the cross-examination in person by defendants of a witness where the prohibitions in sections 34 and 35 do not apply, such as for certain intimidated witnesses.

Annex E

Witness Care Units

Witness Care Units (WCUs) are jointly operated by the police and the CPS. The units are staffed by Witness Care Officers (WCOs) who provide information and access to support to victims and witnesses from the point of charge through to case completion.

Dedicated WCOs act as a single point of contact from the point of charge in the majority of cases. In some cases (such as child abuse, domestic violence and rape), a specialist police officer may act as the single point of contact, and they may refer the witness to a support service such as an Independent Domestic Violence Advisor or an Independent Sexual Violence Advisor. The single point of contact will keep victims and witnesses informed about the progress of the case via their preferred means of contact. This includes the outcome of the case and thanking them for their time and contribution.

WCOs also undertake a detailed needs assessment of each victim and witness. This provides an in-depth understanding of an individual's needs and requirements. The WCOs then have at their disposal a range of interventions to provide tailored support to those victims and witnesses who need it.

Annex F

Special measures meetings between the Crown Prosecution Service and witnesses

Meeting with the witness <i>before</i> the application to the court for special measures	Meeting with the witness <i>after</i> the application to the court for special measures is made
<p>Purpose: The CPS prosecutor can:</p> <ul style="list-style-type: none"> ● confirm that the special measures which were identified at the early special measures discussion with the police officer are appropriate for an application to the court for a special measures direction (section 19 of the 1999 Act); and ● confirm the views of the witness as to which of the special measures should be applied for (section 19 of the 1999 Act requires the court to consider any views expressed by the witness). <p>Benefits:</p> <ul style="list-style-type: none"> ● The CPS prosecutor is able to speak directly to the witness about their wishes for special measures. ● The CPS prosecutor is able to make a fully informed application to the court for special measures. ● The CPS prosecutor may identify other methods of support to enable the witness to give evidence. ● The witness has an opportunity to inform the CPS prosecutor of their concerns about giving evidence. ● The witness is informed, at an early stage, of which special measures will be applied for. ● The witness meets the CPS at an early stage in the proceedings. ● The witness is accurately informed and reassured of their role in the proceedings. 	<p>Purpose: The CPS prosecutor should:</p> <ul style="list-style-type: none"> ● inform the witness of the special measure(s) directed by the court to apply to the trial; ● explain the binding effect of the court's direction (section 20 of the 1999 Act); and ● explain, where necessary, why a decision has been taken not to apply for special measures. <p>Benefits:</p> <ul style="list-style-type: none"> ● The witness has contact with the CPS prior to the trial hearing. ● The CPS prosecutor can provide clear and accurate information to the witness about special measures directed by the court. ● The witness understands which special measures will be available for them on the day of the trial, and the reasons why. ● The witness is fully informed of the progress of the case. ● The meeting may coincide with the pre-court familiarisation visit, permitting the witness to see and be reassured by the special measures available, such as the live link room.

Annex G

Timescales for special measures applications

Application to the youth court

Within 28 days of the date on which the defendant first appears or is brought before the court in connection with the offence.

Application to a magistrates' court

Within 14 days of the defendant indicating their intention to plead not guilty to any charge brought against them and in relation to which a special measures direction may be sought.

Application to the Crown Court

Within 28 days of:

- (i) the committal of the defendant, or
- (ii) the consent to the preferment of a bill of indictment in relation to the case, or
- (iii) the service of a notice of transfer under section 53 of the Criminal Justice Act 1991, or
- (iv) where a person is sent for trial under section 51 of the Crime and Disorder Act 1998, the service of copies of the documents containing the evidence on which the charge or charges are based under paragraph 1 of Schedule 3 to that Act, or
- (v) the service of a Notice of Appeal from a decision of a youth court or a magistrates' court.

Annex H

Pre-trial therapy

The best interests of the vulnerable or intimidated witness are paramount when deciding whether, when and in what form therapeutic help is given.²⁰

Witnesses who are vulnerable or intimidated may be undertaking or considering undertaking pre-trial therapy. It is important that the police and CPS are aware that therapy is proposed, is being undertaken or has been undertaken.

It is a common misapprehension that the CPS will not prosecute a case in which a child or adult has received pre-trial therapy. In fact, it is the nature of the therapy that is a key issue, rather than the occurrence itself, and many forms of therapy will have no adverse impact on the criminal case.

Whether a witness should receive therapy before the criminal trial is not a decision for the police or CPS and those involved in the prosecution have no authority to prevent any witness from receiving therapy. It is for the witness/their carers, in conjunction with the professional agencies providing support, to decide whether or not to undertake therapy.

The nature of the therapy should be explained so that consideration can be given to whether or not the provision of such therapy is likely to impact on the criminal case. Certain therapeutic approaches very definitely present problems so far as evidential reliability is concerned. These would include hypnotherapy, psychodrama, regression techniques and unstructured groups.

Timing of therapeutic work

Delaying therapy, pending the outcome of a criminal trial, for fear that the witness's evidence could be considered tainted and the prosecution lost, conflicts with the need to ensure that child and vulnerable adult victims are able to receive immediate and effective treatment to assist their recovery. In the context of this potential conflict the following matters are relevant:

- Many victims express the wish to see their abuser convicted and punished.
- There is a wider public interest in ensuring that abusers are brought to justice to prevent further abuse.
- All accused persons are entitled to a fair trial.

It therefore follows that both care professionals and forensic investigators have a mutual interest in ensuring, wherever possible, that witnesses who receive therapy prior to a criminal trial are regarded as able to give reliable testimony.

Once the statement or video-recorded interview is complete, it should be possible for appropriate counselling and therapy to take place. Therapy is not usually encouraged before that stage because of the risk that it might be considered to affect or taint the witness's evidence and the likelihood of a prosecution being jeopardised can therefore be greater. However, if therapy is already under way, a decision about how to proceed may be best made after discussion at a multi-disciplinary meeting which includes the therapist.

²⁰ CPS legal guidance *Safeguarding Children. Guidance on Children as Victims and Witnesses*
www.cps.gov.uk/legal/v_to_z/safeguarding_children_as_victims_and_witnesses

If there is a demonstrable need for the provision of therapy and it is possible that the therapy will prejudice the criminal proceedings, consideration may need to be given to abandoning those proceedings in the interests of the witness's wellbeing. In order that such consideration can be given, it is essential that information regarding therapy is communicated to the prosecutor.

Alternatively, there will be some witnesses for whom it will be preferable to delay therapy until after the criminal case has been heard, to avoid the benefits of the therapy being undone.

Full guidance can be found in *Provision of Therapy for Child Witnesses Prior to a Criminal Trial (Practice Guidance)* published in 2001 and in *Provision of Therapy for Vulnerable or Intimidated Adult Witnesses Prior to a Criminal Trial (Practice Guidance)* published in 2002. These documents can be found at www.cps.gov.uk/publications/docs/therapychild.pdf and www.cps.gov.uk/publications/docs/pretrialadult.pdf

Annex I

Record keeping

A member of CPS staff, other than the CPS prosecutor, must attend the meeting with the witness and undertake the role of note-taker.

The note-taker must record the following information:

- the name of the defendant;
- the location of the Crown/magistrates'/youth court;
- the CPS case reference number;
- the name of the witness;
- the names of the meeting attendees (CPS staff, the witness and the police officer. If other people attend the meeting, their relationship to the witness must be recorded);
- the venue of the meeting (together with an indication of whether the meeting coincides with a pre-court familiarisation visit);
- the time the meeting started and ended;
- details of the preliminary matters explained to the witness:
 - the purpose of the meeting;
 - the role of the prosecutor;
 - no discussion of evidential matters;
- discussion concerning special measures;
- explanation of court procedure;
- decisions reached; and
- action to be taken, if necessary.

The note must be signed and dated by all of the meeting attendees, with the exception of the witness.



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