

SDT GUIDANCE NOTE ON APPLICATIONS FOR SPECIAL MEASURES FOR VULNERABLE WITNESSES, PARTIES, OR LITIGANTS IN PERSON

This Guidance Note has been prepared to ensure all applications for special measures at Tribunal hearings are dealt with consistently and efficiently and to maximise the quality of evidence given by vulnerable witnesses, parties, or litigants in person.

In the remainder of this document the word “witness” includes the parties and litigants in person.

The Tribunal recognises the need to be alert to the vulnerability of witnesses appearing at court and to give effect to section 20 of the Equality Act 2010 in relation to administrative functions of the Tribunal by making reasonable adjustments to remove barriers for people with disabilities. When a new case arrives at the Tribunal it is reviewed by the Clerk or Senior Deputy Clerk. If on the face of the papers there is potential for witness vulnerability, the Clerk/Senior Deputy Clerk will flag this information and consider any case management issues arising. It is however the responsibility of the parties to seek appropriate directions for special measures from the Tribunal.

The Tribunal also recognises the need to ensure all litigants receive a fair trial (Article 6 European Convention on Human Rights).

By following the procedure set out in this guidance note when making an application for special measures, the parties will help to ensure that the Tribunal is able to facilitate the effective participation of vulnerable witnesses by adapting normal trial procedure where necessary.

If you require any additional information or clarification, please contact the Case Management Team (Enquiries@solicitorsdt.com)

1. What is meant by the term ‘vulnerable witness’?

For the purposes of this note, vulnerability may arise where a witness is young; elderly; suffering from physical or mental illness and/or disabled; has speech or language difficulties; is alleged to have been involved in a distressing situation, whether directly involving the Respondent or not; and/or is alleged to have been exploited, by a Respondent. Not all witnesses falling into any of those categories will be vulnerable and some vulnerable witnesses may not fall into a readily identifiable category of vulnerability.

In addition, a witness may be vulnerable because they feel intimidated i.e. suffering fear or distress in relation to giving evidence in the case.

A decision by the Tribunal to grant special measures does not indicate that the Tribunal has drawn any conclusions about the allegations made against the Respondent.

2. Where should an application for a special measures direction be sent?

Applications should be made as early as possible (to ensure decisions about how procedures should be adapted are made promptly) and sent to the Case Management Team:

- By email: enquiries@solicitorsdt.com ; or
- By post addressed to the Clerk to the Solicitors Disciplinary Tribunal, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7LG.

The Case Management Team will refer the application to a Division of the Tribunal for a decision once the views of the other party (or parties) has been obtained.

3. Is there a prescribed form?

Yes. The application form ('Application for A Special Measures Direction') can be found on the Tribunal's website or by following this link.

4. What are the types of special measures directions that the Tribunal can make?

It is for the person making the application to explain why special measures would be likely to improve the quality of the witness's evidence and which measure(s) would be likely to achieve this. The Tribunal will need to consider and decide which steps, if any, are appropriate after receiving representations from the parties.

Examples might be the use of:

- **Remote live links** (Please see separate SDT Video Link Request Guidance Note)

'Live link' means a live television link or other arrangement by means of which, although the witness is outside the courtroom, -

- a) the witness can see and hear the proceedings in the court room; and
- b) the Tribunal Division and clerk, the parties, their legal representatives and any person appointed to assist the witness, and members of the public in the court room can see and hear the witness.

The witness will usually give their evidence from another location and will participate in the hearing via a video link which is set up by the Tribunal administrative staff and tested prior to the hearing.

- **Screens to shield a witness from another party/the public.**

The witness may be permitted to give their evidence behind a screen if they need to be screened from the Respondent, or otherwise not exposed to public gaze.

- **Holding the hearing or part of the hearing in private.**

The default position is that hearings take place in public recognising the need for open justice.

The Tribunal may, before or during a hearing, direct that the hearing or part of it be held in private, if:

- a) the Tribunal is satisfied that a party, a witness, or any person affected by the application (under Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2007) would suffer exceptional hardship or exceptional prejudice if the hearing took place in public; or
- b) in the Tribunal's view a hearing in public would prejudice the interests of justice

- **Regular breaks**

A witness may need regular breaks. It may be that the time of day a witness gives evidence and the overall length of evidence on each day will need to be considered by the Tribunal.

5. Additional Information

It should be noted that simply because special measures are put in place, or a witness is identified as vulnerable, it does not imply that there has been any prejudgment by the Tribunal that the witness is truthful e.g. as to whether or not they were exploited by the Respondent. The purpose of identifying vulnerability is to secure the best possible evidence from each witness; it does not mean that the evidence will be accepted as true to the required standard of proof.