

Health and Care Professions Tribunal Service

PRACTICE NOTE

Special Measures

This Practice Note has been issued for the Guidance of Panels and to assist those appearing before them.

Introduction

1. The Panel rules¹ allow certain categories of witness to be treated as a 'vulnerable witness' who may give evidence subject to one or more special measures. Special measures are the arrangements that a Panel may use to help ensure that vulnerable witnesses give their best evidence. They can also reduce some of the stress associated with giving evidence.

Eligibility for special measures

2. The Panel rules provide that the following categories of witness, if the quality of their evidence is likely to be adversely affected, may be treated as vulnerable and eligible for special measures:
 - a. a witness who is under the age of 17 at the time of the hearing;
 - b. a witness who has a mental disorder (within the meaning of the Mental Health Act 1983);
 - c. a witness who is significantly impaired in relation to intelligence and social functioning;
 - d. a witness with physical disabilities who requires assistance to give evidence;
 - e. a witness who, in a case involving an allegation of a sexual nature, was the alleged victim; and
 - f. a witness who complains of intimidation.

Special measures

3. A Panel may adopt any measures it considers desirable to enable it to receive evidence from a vulnerable witness. Some potential measures are specified in the Panel rules, but Panels are not limited to these and can consider other

¹ HCPC (Investigating Committee) (Procedure) Rules 2003, r.8A; HCPC (Conduct and Competence Committee) (Procedure) Rules 2003, r.10A; HCPC (Health Committee) (Procedure) Rules 2003, r.10A.

arrangements that would help to ensure that the quality of a vulnerable witness's evidence is not diminished. Panels should ensure that reasonable adjustments are made to ensure that witnesses with a disability are not disadvantaged in giving their evidence².

4. Possible special measures include, but are not limited to:
 - a. holding the hearing in person, virtually by video link, or as a "hybrid" hearing (where some parties attend in person and others by video link);
 - b. use of pre-recorded evidence as the witness's evidence-in-chief, provided that the witness is available at the hearing for cross-examination and questioning by the Panel (whether in person or virtually by video link);
 - c. use of interpreters (including signers and translators) or intermediaries³;
 - d. use of screens, not using a camera during a virtual hearing or while giving evidence remotely, or such other measures as the Panel consider necessary in the circumstances, in order to prevent:
 - i. the identity of the witness being revealed to the press or public;
 - ii. access to the witness by the registrant; or
 - iii. the witness's ability to give evidence being hindered by being able to see the registrant; and
 - e. the hearing of evidence by the Panel in private.
5. In considering the use of special measures, Panels should also have regard to whether a vulnerable witness may benefit from other, less formal, arrangements which may help them to give their evidence. For example, it may be appropriate for a vulnerable witness to make a familiarisation visit to the hearing venue ahead of the proceedings or for their evidence to be given based upon a timetable that allows for regular breaks. A Panel may need to give directions to ensure that such arrangements are put in place.
6. Where a witness has given previous evidence by video-recording, that witness should have the opportunity to view the recording before giving evidence, to refresh their memory of what was said. Panels should seek to ensure that this does not take place on the day the witness gives evidence at the hearing. This avoids the need for the witness to have to view twice in the same day a recording of their account of what may have been an unpleasant or harrowing event.

Special measures applications

² Equality Act 2010

³ Intermediaries facilitate communication between a witness and the Panel and others at a hearing. They are independent of the parties and owe their duty to the Panel. They may explain questions or answers so far as is necessary to enable them to be understood by the witness or the questioner but without changing the substance of the evidence

7. The fact that a witness is eligible to be regarded as a vulnerable witness does not mean that special measures should automatically be put in place. Their use is at the discretion of the Panel.
8. If the party calling a witness considers that special measures are needed, they must make an application to the Panel for directions to that effect (a Special Measures Application template is set out in the Annex to this Practice Note).
9. Many applications are unlikely to be contested, such as where a witness has a disability and the measures sought are clearly necessary to avoid the quality of the witness's evidence from being diminished. In less straightforward cases the Panel may need to hold a preliminary hearing in order to consider an application.
10. A special measures application should be made as soon as reasonably practicable. Other than in urgent cases, Panels should expect the parties to reach agreement on the need for, and extent of, any special measures or, if agreement cannot be reached, to identify the issues in dispute which need to be determined by the Panel.
11. In order to ensure that the Panel has sufficient information to make a decision, a special measures application must:
 - a. explain how the witness is eligible to be classified as vulnerable;
 - b. explain why special measures are likely to improve the quality of the witness's evidence;
 - c. propose the measure(s) that would be likely to do so; and
 - d. set out any views on the proposed measures expressed by the witness (or those acting on behalf of the witness).
12. A special measures application should also be supported by information about the practical implementation of the measures proposed. For example, when, where and in whose presence a witness's evidence-in-chief would be video recorded.
13. In dealing with applications, Panels should make full use of their case management powers. For example, Panels should seek to limit the issues on which a vulnerable witness needs to give evidence by exploring the extent to which facts are admitted. Panels should also set a timetable that enables familiarisation visits, etc. to take place ahead of the hearing so that the witness has time to provide an informed view about any special measures and, if necessary, for an application to be made to vary them.

Intimidation

14. Under the Panel rules a witness may be regarded as vulnerable if the witness “complains of intimidation”.⁴ Panels should not interpret that phrase literally (merely complaining of intimidation is insufficient) but, equally, they should not engage in a degree of inquiry that amounts to pre-judging issues which are properly a matter for the later substantive hearing of the case. A witness may have justified feelings of intimidation due to circumstances, even if no one intends to intimidate them. Accordingly, the test to be applied is whether the complaint of intimidation is ‘genuine’, having regard to the particular circumstances of the witness and the case.⁵

Explaining the use of special measures

15. Where special measures have been used to allow a witness to give their best evidence, if the registrant concerned is not given a clear explanation of why this has been done, there is a risk that they may feel the Panel has pre-judged the witness’s evidence or will draw adverse inferences from the use of that special measure. Panels should allay unfounded concerns of that kind and explain that the measure has been adopted simply to put the witness at ease and ensure that they give their best evidence.

⁴ HCPC (Investigating Committee) (Procedure) Rules 2003, r.8A(1)(f); HCPC (Conduct and Competence Committee) (Procedure) Rules 2003, r.10A(1)(f); HCPC (Health Committee) (Procedure) Rules 2003, r.10A(1)(f).

⁵ *R (Levett) v Health and Care Professions Council* [2013] EWHC 3330 (Admin)

Annex

SPECIAL MEASURES APPLICATION

Case Reference:	
Name of Witness:	

Is a preliminary hearing likely to be needed to determine this application?	YES		NO	
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If YES, please explain why:

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Why is the witness vulnerable?	
child or young person under 17:	
witness with a mental disorder:	
witness with impaired intelligence and social functioning:	
witness with a physical disability:	
alleged victim in respect of an allegation of a sexual nature:	
witness complaining of intimidation:	

Explain the nature of the vulnerability and how it is likely to affect the quality of the witness's evidence:

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Which special measures are likely to improve the witness's ability to give evidence?

video link:

pre-recorded evidence in chief:

interpreter or intermediary:

use of screens:

hearing evidence in private:

other measures (specify below):

Explain why these special measures are likely to improve the witness's ability to give evidence and provide supporting detail about their practical implementation:

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Please give details of any view expressed by the witness (or any person acting on behalf of the witness) about the special measures proposed:

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Is any supporting material provided with this application?	YES		NO	
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If YES, please list the supporting material provided:

Signed: _____

Date: _____