

Protocol for Vulnerable Witnesses

Introduction

1. The purpose of this protocol is to set out the principles and process that will guide the Inquiry in its management of vulnerable witnesses. The Inquiry recognises that each witness should be able to give evidence with dignity and to the best of his or her ability in order to provide the greatest possible assistance to the Inquiry.
2. All witnesses involved in the Inquiry process whose mental health is affected can access free support services. These details are available on the Inquiry's website and will be communicated when a witness is notified of the intention of the Inquiry to ask for a statement or to call the witness to give evidence at the oral hearings.

Definition of witness

3. For the purposes of this protocol, a witness is anyone who gives evidence to the Inquiry, regardless of whether he or she is also a Core Participant. The process of being a witness includes preparing for, making, editing and approving any formal statement (written or otherwise) and appearing at the oral hearings.

Definition of vulnerability

4. A person shall be considered "vulnerable" for the purposes of this protocol if there is a significant risk that, by reason of one or more personal characteristics, he or she will:
 - a) experience added stress or other difficulty in being a witness or potential witness;
 - b) suffer a likely detrimental effect in the quality of any statement or evidence which they give;
 - c) require greater than normal support to ensure their participation; and/or
 - d) be at significant risk that by giving evidence he or she may suffer a worsening of their mental health or wellbeing.
5. The Inquiry does not intend to cause any harm or distress by using the term vulnerable to describe witnesses. As other courts have done, it is a term that the Inquiry has adopted to capture a wide range of witnesses who may benefit from support and assistance to help them give evidence to the Inquiry in the most effective manner and in the safest way possible, taking into account their personal characteristics.

Personal characteristics

6. These characteristics include, but are not limited to any of the following:
 - a) age, in particular those under the age of 18;
 - b) a recognised mental disability or disorder;

- c) a specific learning difficulty or language impairment;
- d) physical disability or disorder;
- e) substantial fear or distress related to testifying about matters relevant to the Inquiry;
- f) difficulties with communicating in spoken or written English;
- g) difficulties with reading; and
- h) any condition which, whilst not amounting to a recognised mental or physical disability is such as to affect significantly the ability of the individual to be a witness or a potential witness.

Identifying vulnerable witnesses

7. Anyone who may be a witness (or who is representing a witness) that is or may be vulnerable should notify the Solicitor the Inquiry as soon as possible. You should explain the following:
 - a) Details of the vulnerability
 - b) How the vulnerability may impact the witness' ability to give evidence.
 - c) Whether there are any special measures that may assist the individual to give the evidence.
 - d) If an independent health assessment or similar has been (or is expected to be) requested.
 - e) Any other relevant information.
 - f) Provide any medical or other information that will help to explain the particular vulnerability.

8. It is essential that anyone who is or may be vulnerable is identified as such at the earliest opportunity. All witnesses that are to be called to give oral evidence will be asked to notify the Solicitor to Inquiry of any matters that may impact their ability to give evidence. Any changes in an individual's vulnerabilities or needs should be communicated to the Solicitor to the Inquiry as soon as they are discovered.

9. The Chairman to the Inquiry will consider the information provided and determine whether any witness should be considered vulnerable within the meaning of this protocol.

Measures to assist vulnerable witnesses

10. Where the Chair determines that a witness is vulnerable within the meaning of this protocol, he may direct that additional measures put in place to assist a witness to give evidence or to improve the quality of their evidence (Special Measures). Before making any direction the Chair shall, where possible, ascertain and take into consideration the views of the witness on the appropriateness and nature of the Special Measures and, if appropriate, the views of Core Participants.

11. The Chair has a wide discretion to make such directions, as he considers necessary. It may include, but is not limited to, one or more of the following measures:
 - a) The appointment of an intermediary: the Inquiry may appoint an intermediary to assess (and report upon) the additional needs of any witness, to assist with the making of a statement and/or to assist the individual when giving evidence.
 - b) The appointment of an interpreter.
 - c) The making of a recorded interview in place of (or, exceptionally, in addition to) a written statement:
 - i. where a witness is unable to make a witness statement in the normal way or the Chair considers it appropriate so to do, the account of an individual may be taken by way of a recorded interview;

- ii. the interview shall be conducted in a manner approved by the Chair;
 - iii. the interview may be conducted by a member of the Inquiry Legal Team, although the Chair may approve another individual outside that team to conduct the interview;
 - iv. at any such interview, the witness or potential witness may be accompanied (in the interview room) by their solicitor (if they have one) and/or a friend, relative or other appropriate adult;
 - v. the recording of the interview should be audio-visual. Exceptionally, if such a method of recording is not reasonably practicable, the Chair may give permission for the recording to be solely audio.
- d) Live link from a location outside the Inquiry room.
 - e) Screens to shield the witness from view.
 - f) Scheduling a clean start in order to avoid waiting
 - g) The support of a friend, relative or other appropriate adult (sitting with the witness as he/she gives evidence). Any such person shall play no part in the witness giving evidence unless directed to do so by the Chair.
 - h) Regular breaks at prescribed times.
 - i) Providing evidence in large print.
 - j) Time limits for interviewing or questioning a witness.
 - k) Providing advance written notification of questions to a witness.
 - l) A preliminary hearing for establishing the appropriate boundaries for questioning and the advocates permitted to ask questions (a Ground Rules Hearing).
 - m) The opportunity to meet (whether in person or virtually) those advocates who are intending to ask questions.

Anonymity

12. Any applications for anonymity should be made separately to the Chair, in accordance with the Inquiry's Restriction Order protocols and Section 19 of the Inquiries Act 2005.

Questioning of vulnerable witnesses (Rule 10)

13. Advocates are reminded of the *dictum* of Lady Justice Hallett in R v Lubemba [2014] EWCA Crim 2064 at §45, which statement will inform the Inquiry's approach to managing the content and manner of any questions which are asked of vulnerable witnesses: "Advocates must adapt to the witness, not the other way round."
14. The Inquiry's approach to Questioning under Rule 10 generally is outlined in the Inquiry Legal Team's note on Advance Notification of Topics available on the Inquiry website. If a request is made to question a witness that the Inquiry is on notice is vulnerable, the Inquiry Legal Team will consider if the questioning, or any part of it, is necessary and appropriate, and whether it should be the subject of any limitation or modification.
15. Topics are to be submitted 7 days before each witness is scheduled to give evidence and the Inquiry Legal Team will notify the relevant counsel if there are any issues arise with the proposed areas of questioning in light of any vulnerability with the witness. The matter can be referred to the Chair for determination if required.
16. The Inquiry will consider if Core Participants should be made aware in advance of questioning if a witness is said to be vulnerable and what special measure are in place. Where possible, the Inquiry will consider the views of the witness and if it is considered necessary, the Inquiry will notify those counsel who intend to ask questions that a witness is vulnerable.

Vulnerable witnesses who are unable to give evidence before the Inquiry

17. If the Chair determines that, by reason of their vulnerability, a witness is unable to give evidence, in person, before the Inquiry he may:
 - a) permit any signed statement or recorded interview made by that person to be received in evidence; and/or
 - b) if no recorded interview exists, instruct the Inquiry Legal Team to conduct such an interview (if reasonably practicable so to do).

Children and young people

18. No person under the age of 18 shall make any statement or give evidence unless this has been specifically agreed to in advance by the Chair. The Chair may direct the manner in which any statement is to be taken and/or the manner in which evidence is to be given.
19. Should any recognised legal representative wish a statement to be taken from a person under 18, they should write to the Solicitor of Inquiry as soon as practicable, explaining the particular reason why it is necessary.
20. In deciding whether such a statement should be taken, the matters which the Chair will take into account include:
 - a) the importance of the information which can be given by the young person;
 - b) whether that information is available from other sources (especially witnesses over 18);
 - c) the age, maturity and individual character of the young person, in particular whether he or she can participate without being caused unacceptable further trauma;
 - d) the wishes of the child or young person;
 - e) the views of the parents or carers of the young person and those of any professionals who work with the child or young person; and
 - f) any intermediary's report (if obtained).

Assistance with vulnerability issues

21. The Inquiry Legal Team include counsel and solicitors have experience in dealing with vulnerable witnesses and individuals. They may be contacted by any witness or legal representative who would like to discuss this protocol.
22. The Inquiry Legal Team would encourage all advocates to review the toolkits available on the Advocates Gateway (<https://www.theadvocatesgateway.org/resources>). The principles set out therein are fundamental to the fair and sensitive treatment of vulnerable witnesses and advocates will be expected to act at all times in accordance with them.
23. A further very useful and important resource with which all those involved in representing CPs (whether as advocate or otherwise) should be familiar is the Judicial College Equal Treatment Bench Book (<https://www.judiciary.uk/wp-content/uploads/2018/02/ETBB-February-2018-amended-March-2020.pdf>).

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Privacy Notice

Information and personal data collected as part of this protocol will be used by the Inquiry to put in place the practical arrangements and any special measures to allow the Chairman to investigate matters that fall within the Inquiry's Terms of Reference.

Personal data provided to the Inquiry may be shared with other organisations or services that are involved in or supporting the Inquiry but only to the extent that they need to know. Third party organisations that assist the Inquiry with practical arrangements may include the Manchester Magistrates Court (part of HMCTS), Home Office, NHS Resilience Hub or the Corner's Support Service or Greater Manchester Police (to the extent that they are assisting with witness liaison).

More information about how the Inquiry is processing personal data, including details of the Inquiry's Data Protection Officer is available at: <https://manchesterarenainquiry.org.uk/2019/wp-content/uploads/2019/11/Privacy-Notice-1.pdf>.