

Special Measures

The Youth Justice and Criminal Evidence Act 1999 ('the 1999 Act') created two categories of witness - vulnerable or intimidated - who are eligible for Special Measures. A witness is classified as vulnerable if they are under 17 years of age at the time of the hearing; or if they suffer from a mental disorder within the meaning of the Mental Health Act 1983 or otherwise has a significant impairment of intelligence and social functioning; or that the witness has a physical disability or is suffering from a physical disorder. A witness is classified as intimidated if they are a victim of a sexual offence or witnesses who are in fear or distress as a result of intimidation, which may reduce the quality of their evidence. An independent evaluation in 2004 found that one-third of witnesses would not have been willing or able to give evidence without Special Measures

The following Special Measures are provided for by the 1999 Act:

- **Video recorded evidence-in-chief** where the interview with the police is visually recorded, this can be played as the witness's evidence in the trial.
- **A live link** enables the witness to give evidence during the trial from outside the courtroom through a televised link. The witness may be either accommodated within the court building or in a suitable location outside the court.
- **Screens** may be made available to shield the witness from the defendant.
- **Evidence given in private** exclusion from the Court of members of the public and the press (except for one named person to represent the press) will be considered in cases involving sexual offences or intimidation.
- **Removal of wigs and gowns** by judges and barristers.
- Video recorded cross-examination is also to be considered admissible if the witness has already been permitted to give their evidence in chief on video prior to the court case (N.B. not yet implemented).
- **Examination of the witness through an Intermediary**, who may be appointed by the court to assist the witness to give their evidence at court and during the video recording of their initial evidence. This measure is available only to vulnerable witnesses.
- **Aids to communication** will be permitted to enable the witness to give best evidence whether **through a communicator or interpreter**, or through a communication aid or technique, provided that the communication can be independently verified and understood by the court. Again, this measure is only available to vulnerable witnesses.

Other protections for certain witnesses provided in the 1999 Act are:

- **Mandatory protection of witness from cross-examination by the accused** in person. An exception has been created which prohibits the unrepresented defendant from cross-examining vulnerable child and adult victims in certain classes of cases involving sexual offences.
- **Restrictions on evidence and questions about complainant's sexual behaviour.** This places restrictions on the circumstances in which the defence can bring evidence about the sexual behaviour of a complainant in cases of rape and other sexual offences (see Core Brief on previous sexual history for further information).

Intermediaries

What are intermediaries and what do they do?

An intermediary is an officer of the court and is someone who the court approves to facilitate communication.

Intermediaries can also provide communication assistance in the investigation stage – approval for the admission of evidence so taken is then sought retrospectively from the court. The intermediary is allowed to explain the 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. **Intermediaries are not investigators and their role is not the same as appropriate adults, witness supporters or expert witnesses.**

Section 29 of the Youth Justice and Criminal Evidence Act 1999 provides for the examination of a witness to be conducted through an intermediary approved by the courts.

This measure will assist eligible (in accordance with Section 16 of the Act) prosecution and defence witnesses who need help to communicate their best evidence and who fall into any of the following categories:

- those who are under the age of 17;
- those who suffer from a mental disorder or significant impairment of intelligence and social functioning that is likely to diminish the quality of their evidence;
- those who have a physical disability or disorder that is likely to diminish the quality of their evidence.

Why are intermediaries necessary?

Some vulnerable witnesses (including victims) need assistance with communication and understanding in order to give their best evidence - intermediaries can assist them in communicating during an investigation and at trial. Intermediaries will help to make the justice process accessible to some of the most vulnerable people in our society. In some cases an intermediary will be the difference between a witness being able to testify or not.