



Special Measures Policy

INTRODUCTION

This policy allows certain categories of witness to be treated as a 'vulnerable witness' who may give evidence subject to one or more Special Measures. A Panel or Committee may use Special Measures to help ensure that vulnerable witnesses give their best evidence. The ICAEW Regulatory Board approved this policy on 20 July 2023, with immediate effect.

Eligibility for Special Measures

The following categories of witness may be treated as vulnerable and eligible for Special Measures, if the quality of their evidence is likely to be adversely affected without the assistance of additional measures in place:

- a witness who has any disorder or disability of mind (within the meaning of the Mental Health Act 1983);
- a witness who is significantly impaired in relation to social functioning;
- a witness with physical disabilities who requires assistance to give evidence;
- a witness who, in a case involving an allegation of a sexual nature, was the alleged victim;
- a witness who complains of intimidation; and/or
- a witness who a CMH Chair and/or a tribunal panel determine is vulnerable for any other reason.

Special Measures

A committee may adopt any measures it considers desirable to enable a vulnerable witness to provide their best evidence. Some potential measures are specified below, but panels and committees are not limited to these and can consider other arrangements that would help to ensure that the quality of a vulnerable witness' evidence is not diminished.

Committees should ensure that reasonable adjustments are made to ensure that witnesses with a disability are not disadvantaged in giving their evidence.

Possible Special Measures include, but are not limited to:

- holding the hearing in person, or virtually by video link;
- 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 committee (whether in person or virtually by video link);
- use of an intermediary;

- use of screens, not using a camera during a virtual hearing or while giving evidence remotely, or such other measures as the committee or panel consider necessary in the circumstances, to prevent access to the witness by the member or relevant person; or
- the witness's ability to give evidence being hindered by being able to see the member or relevant person; and/or
- the hearing of evidence by the committee or panel in private.

In considering the use of Special Measures, committees and panels should also have regard to whether a vulnerable witness may benefit from other, less formal, arrangements which may help them to give their best evidence. For example, it may be appropriate for a vulnerable witness to make a 'familiarisation visit' to the hearing venue ahead (if it is taking place in person) of the proceedings or for their evidence to be given based upon a timetable that allows for regular breaks. A committee or panel may need to give directions to ensure that such arrangements are put in place.

Where a witness has given previous evidence by videorecording, that witness should have the opportunity to view the recording before giving evidence, to refresh their memory of what was said.

Special Measures applications

The fact that a witness is eligible for Special Measures does not mean that Special Measures should automatically be put in place. Their use is at the discretion of the committee or panel hearing the matter. If the party calling a witness considers that Special Measures may be appropriate, they may make an application to the committee or panel for directions to that effect (a Special Measures Application template is included in this Policy in the appendix).

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 committee or panel may need to hold a preliminary hearing to consider an application and any submissions the parties may wish to make.

A Special Measures application should be made as soon as reasonably practicable at a case management hearing to avoid delay on the day and to allow an opportunity for all parties to make representations. Other than in urgent cases, committees and panels should expect the parties to reach agreement on the need for, and extent of, any Special Measures or to identify the issues in dispute which need to be determined by the committee or panel.

To ensure that the committee or panel has sufficient information to make a decision, a Special Measures application must:

- explain how the witness is eligible to be classified as vulnerable;
- explain why Special Measures are likely to improve the quality of the witness's evidence;
- propose the measure(s) that would be likely to do so; and
- set out any views on the proposed measures expressed by the witness (or those calling the witness).

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.

In dealing with applications, committees and panels should make full use of their case management powers. For example, committees and 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. Committees 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

A witness may be regarded as vulnerable if the witness "complains of intimidation". Committees or 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.

Explaining the use of Special Measures

Where Special Measures have been granted, to allow a witness to give their best evidence, if the member, relevant person or member firm concerned is not given a clear explanation of why this has been done, there is a risk that they may feel the committee or panel has pre-judged the witness's evidence or will draw adverse inferences from the use of that special measure. Committees or 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.

Similarly, whilst Committees or panels will grant special measures to help the witness give their best evidence, they should also ensure that their evidence is assessed in the same way as any other witness and the special measures will not affect the Committee's view of the witness and nor is the use of special measures any reflection of the other party.

Appendix

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?	
Witness with a disorder or disability of the mind (within the meaning of the Mental Health Act 1983)	
Witness with impaired social functioning	
Witness with a physical disability	
Alleged victim in respect of an allegation of a sexual nature	
Witness complaining of intimidation	
Other:	

Explain the nature of the vulnerability and how it is likely to affect the quality of the witness' 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:	
Intermediary:	
Use of screens:	
Hearing evidence in private:	
Other measures (please specify):	

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:

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

Signed: _____ Date: _____