



**CASE MANAGEMENT IN THE CROWN  
COURT  
INCLUDING PROTOCOLS FOR VULNERABLE  
WITNESSES AND DEFENDANTS**

**Practice Direction No. 2 of 2019**  
*(Revised December 2025)*

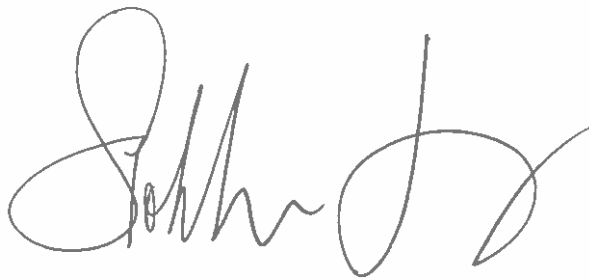
**Issued by the Lady Chief Justice's Office**

**PRACTICE DIRECTION No. 2 of 2019  
(REVISED DECEMBER 2025)**

**CASE MANAGEMENT IN THE CROWN COURT INCLUDING PROTOCOLS  
FOR VULNERABLE WITNESSES AND DEFENDANTS**

1. This Practice Direction is a revision of Practice Direction No. 2 of 2019.
2. This Practice Direction incorporates and updates Practice Direction No. 2 of 2019. Practitioners' attention is particularly drawn to the following:
  - (a) updates to Section 6 regarding third party disclosure processes;
  - (b) addition of third party disclosure templates at Annexes D-J.
3. This Practice Direction also replaces and revokes the Protocol for Third Party Disclosure in Prosecutions of Sexual Offences or Serious Assaults 2006.
4. This Practice Direction takes effect from **15<sup>th</sup> December 2025**.

Signed this 11<sup>th</sup> day of December 2025

A handwritten signature in black ink, appearing to read 'Siobhan Keegan', with a large, stylized initial 'S' and a long, sweeping flourish at the end.

**The Right Honourable Dame Siobhan Roisin Keegan**

**Lady Chief Justice**

## Introduction

This Practice Direction is a revision of Practice Direction No. 2 of 2019. It replaces and revokes the Protocol for Third Party Disclosure in Prosecutions of Sexual Offences or Serious Assaults 2006. It has been approved by the Crown Court Liaison Committee ("the CCLC") under the Chair of Madam Justice McBride. It does not change, but rather builds upon, the practice introduced in the Crown Court since 2011.

The original case management Practice Direction No. 5 of 2011 was superseded by Practice Direction No. 2 of 2019 which updated it to:

- reference support structures and procedures for vulnerable witnesses and defendants;
- direct that Case Management and Review Hearings are held to ensure all issues are expedited, and delay in securing trial hearings is minimised;
- take account of many of the recommendations of the [Gillen Review: Report into the law and procedures in serious sexual offences in Northern Ireland](#); and
- to reflect more recent developments to improve disclosure.

This Practice Direction incorporates two separate protocols which complement the case management procedures:

- The protocol for vulnerable witnesses at **Annex A** sets out the additional steps and provisions necessary to encourage, facilitate and support the attendance and participation of vulnerable witnesses to give their best evidence in all trials. It details the purpose, timing and considerations of Ground Rules Hearings, and the roles of Registered Intermediaries and Victim Support Witness Service/ NSPCC Young Witness Service in preparation for, and during, their evidence in court. It also highlights the option for vulnerable witnesses, where appropriate, to give evidence from non-court facilities such as the Remote Evidence Centres (this process is to be managed by the parties).
- A similar protocol specifically for vulnerable defendants at **Annex B** details support and special measures available for defendants and builds upon and supersedes Practice Direction No. 2 of 2011 which was previously limited to children and young persons.

The CCLC will keep the Practice Direction and protocols under review in light of new initiatives and further consideration of recommendations and revise and re-issue as appropriate.

**PRACTICE DIRECTION No. 2 of 2019**  
**(REVISED DECEMBER 2025)**

**CASE MANAGEMENT IN THE CROWN COURT INCLUDING PROTOCOLS**  
**FOR VULNERABLE WITNESSES AND DEFENDANTS**

This Practice Direction is a revision of Practice Direction No. 2 of 2019 (Case Management in the Crown Court including Protocols for Vulnerable Witnesses and Defendants). It revokes and replaces the Protocol for Third Party Disclosure in Prosecutions of Sexual Offences or Serious Assaults 2006.

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## **PRACTICE DIRECTION FOR CASE MANAGEMENT IN THE CROWN COURT**

### **1. THE OVERRIDING OBJECTIVE**

1.1 The overriding objective of the Practice Direction for Case Management in the Crown Court ("the Practice Direction") and protocols for vulnerable defendants and witnesses is that criminal cases be dealt with justly.

1.2 Dealing with a criminal case justly includes:

- (a) acquitting the innocent and convicting the guilty;
- (b) dealing with the prosecution and defence fairly;
- (c) recognising the rights of a defendant, particularly those under article 6 of the European Convention on Human Rights ("ECHR");
- (d) respecting the interests of witnesses and victims and keeping them informed of the progress of the case;
- (e) dealing with the case efficiently and expeditiously;
- (f) ensuring that appropriate information is available to the court when issues of bail and sentence are considered;
- (g) considering any need for non-statutory reporting restrictions; and
- (h) dealing with the case in ways that take into account:
  - (i) the gravity of the offence alleged;
  - (ii) the complexity of what is in issue;
  - (iii) the severity of the consequences for the defendant and others affected;
  - (iv) the vulnerability of any witness or defendant; and
  - (v) the needs of other cases.

### **2. THE OBLIGATIONS OF PARTICIPANTS IN PROCEEDINGS IN THE CROWN COURT**

2.1 Each participant, in the conduct of each case, must:

- (a) prepare and conduct the case in accordance with the overriding objective;
- (b) be fully acquainted with the facts, issues and history of the case and be in a position to respond in detail to any queries raised by the court;
- (c) communicate effectively and in a timely manner with the other parties, witnesses, experts and the court;
- (d) ensure clients and witnesses (where appropriate) are acquainted with Crown Court procedure;
- (e) ensure that all applications (whether made before or during the trial)
  - (i) are made at the earliest possible opportunity; and
  - (ii) are communicated to the other parties and to the court at the earliest possible opportunity;

- (f) comply with any directions by a judge that any correspondence, skeleton argument, written submission, agreed statement of facts, expert's report, or any other document or exhibit be lodged in court and served on any party in a particular way and by a specified date and time;
- (g) lodge in court a legible and complete copy of any report to be relied upon by that participant as soon as practicable after it is received, and not less than 28 days before the beginning of the trial<sup>1</sup>, unless a judge extends the time for doing so;
- (h) have in court sufficient copies of any exhibits for the judge, the court clerk, the jury, the other parties and the witness; and
- (i) promptly inform the court and the other parties of anything that may affect the date of any interlocutory hearing or the trial or significantly affect the progress of the case in any other way.

2.2 It is the duty of the legal advisers for every defendant:

- (a) to consider whether each witness relied upon by the prosecution is required to attend in person to give evidence, or whether some or all of the witnesses' evidence can be read by agreement, or placed before the court by way of an agreed statement of fact(s);
- (b) to respond to any request from the prosecution to agree a witness or witnesses in writing in a timely manner, or by the date and time fixed by a judge;
- (c) independently of any request from the prosecution, seek to agree a witness or witnesses in writing in a timely manner, or by the date and time fixed by a judge; and
- (d) when advising a defendant before arraignment (or at any other time) to explain to the defendant the impact of a late plea of guilty upon any credit that may be allowed for such a plea.

2.3 Where a witness is a 'vulnerable witness' as defined in Annex A, the principles and procedures detailed in Annex A shall be followed. Where a defendant is a 'vulnerable defendant' as defined in Annex B, the principles and procedures detailed in Annex B shall be followed.

2.4 In areas where Case Progression Officers ("CPOs") have been appointed to provide support to the judiciary, they will ensure that all procedural or administrative matters are being progressed by the relevant agencies and that as far as is possible, any blockages or impediments to effective case progression are addressed. CPOs across NICTS, PPS and PSNI Investigating or Liaison Officers are required to work closely together to ensure that all necessary arrangements are in place, so that cases can proceed as planned. NICTS CPOs also have specific responsibility for ensuring that close liaison is

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<sup>1</sup> In accordance with rule 3(a) of the Crown Court (Advance Notice of Expert Evidence) Rules (Northern Ireland) 1989.

maintained with the judiciary, and they provide the link to the defence representatives and will monitor and follow up on any outstanding defence matters.

- 2.5 Practitioners are reminded to adhere to Crown Court Practice Direction No. 2 of 2015<sup>2</sup>: **Target Times for Cases in the Crown Court**, which still applies.
- 2.6 Where, in place of committal proceedings, a case is to be moved to the Crown Court by way of a **Notice of Transfer** lodged by the Director of Public Prosecutions, and other designated authorities, under Article 3 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 (serious and complex fraud) or under Article 4 of the Children's Evidence (Northern Ireland) Order 1995 (certain cases involving children), all steps in this Practice Direction will apply as if the case were committed unless specific protocols apply, for example the **Pilot to test the 'Protocol to expedite serious sexual offence cases involving witnesses under 13 years in Belfast and Antrim'** ("the Pilot") or the **'Operational Process to expedite serious sexual offences involving children under 16 years across all Divisions'** ("the Under 16 Operational Process").

### 3. COMMITTAL<sup>3</sup> AND ARRAIGNMENT

- 3.1 **Before the committal hearing** (and unless being shared via a digital platform) the prosecution must obtain sufficient copies of the following items where they are to be relied upon as exhibits:
- (a) all digital footage **with related passwords**, and still photographs taken from such footage;
  - (b) copies of all still photographs of witnesses, scenes or exhibits; and
  - (c) any maps.
- 3.2 **At the committal** the prosecution must provide:
- (a) one copy of each such film, photograph or map for the court file and one for the judge, these should be handed to the court clerk, and
  - (b) one copy for the legal representative of each defendant.
- 3.3 In a jury case prior to the commencement of the trial the prosecution must obtain sufficient copies of such films, photographs or maps for use by the jury (six copies will usually be sufficient).
- 3.4 Whilst the copies to be provided at 3.1 and 3.2 above are to be provided free of charge, if they are lost the prosecution will be entitled to charge a reasonable fee for additional copies. It is the responsibility of a legal representative

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<sup>2</sup> <https://www.judiciaryni.uk/judicial-decisions/practice-direction-022015-target-times-cases-crown-court>

<sup>3</sup> See paragraph 2.6



going off record to transfer the papers to the new representative or to meet the cost of replacing these.

**3.5 Before the date fixed for arraignment the defence representative must consider what expert witnesses may be required, and no later than 10 working days before the date fixed for the arraignment must contact every such witness to find out:**

- (a) the earliest date when the witness can examine the defendant, or perform such tests or carry out any inspections required to report;
- (b) the date by which the witness can produce a report; and
- (c) what notes, records or other documents, exhibits or inspection the witness may require to prepare a report.

**3.6 Also before the date fixed for arraignment:**

- (a) the defence solicitor must send a set of papers to counsel, together with the defendant's instructions, no later than 10 working days before the date fixed for the arraignment unless a judge extends the time for doing so. The instructions must include the information required at 3.5 above;
- (b) the defendant's solicitor must take all reasonable steps to obtain written consent from the defendant to make available to any expert instructed by the prosecution to examine the defendant any medical notes and records that the expert requires to conduct an examination, or provide an opinion on any aspect, of the defendant's psychiatric or physical condition at any material time should the prosecution require an examination of the defendant in response to an expert's report relied upon by, or on behalf of, the defendant. If the defendant refuses to provide such written consent, the defendant's solicitor must inform the defendant that such a failure to give consent may have an adverse effect upon the admissibility of any expert report relied upon by the defendant at the trial; and
- (c) counsel must arrange to consult with, and advise, the defendant.

**3.7 If the defendant intends to make an application that has to be heard before the arraignment can take place, such as no bill, fitness to stand trial or quash an indictment, the defendant's solicitor must inform the court, the prosecution, and the legal representatives of any other defendant in writing of the nature of the application, and the estimated length of the hearing, no later than 5 working days before the date fixed for the arraignment.**

- 3.8 If the **defence statement** has not been lodged by the time the defendant pleads not guilty, and the time for doing so has expired<sup>4</sup>, the defendant **must** seek an extension of time from the judge, who has discretion whether to grant an extension.
- 3.9 Where the case is to be managed by the Senior Criminal Judge, the Case Management Team in the Lady Chief Justice's Office will issue a letter setting out the date(s) for arraignment and Case Management Hearing ("CMH") (which may be on the same day) together with a Case Overview template (see **Annex C**). The defence **must** comply with the instructions issued and lodge the completed Case Overview template outlining the proposals for efficient and timely progress to trial as required.
- 3.10 Where the **defendant is a child or other vulnerable, or potentially vulnerable, person**, the defendant's solicitor **must** inform the court, the prosecution and the legal representatives of any other defendant in writing of the nature of the vulnerability, or potential vulnerability, and any special requirements the defendant will be requesting, **at least 5 working days before the date fixed for the arraignment**.
- 3.11 **At the arraignment** the prosecution's legal representatives **must** be in a position to tell the judge:
- (a) what applications will have to be made for interlocutory orders such as special measures, bad character, hearsay, anonymity, live links, or change of venue;
  - (b) whether any additional evidence will be served that may affect the ability of the defence representatives to prepare their client's defence, and if so when it will be served;
  - (c) that a list of witnesses whose evidence the prosecution suggest can be agreed has been sent to the defendant's solicitor;
  - (d) in the event that the defendant pleads not guilty, how long the trial is expected to take;
  - (e) whether any vulnerable, or potentially vulnerable, witnesses will be giving evidence on behalf of the prosecution; and
  - (f) any other specific reasons why expedition is required.

#### **4. WHERE THE DEFENDANT PLEADS GUILTY**

- 4.1 If the defendant pleads guilty at arraignment the judge will proceed to fix a date for the hearing of the plea in mitigation, and will fix a date and time by which the following are to be lodged in court and served on the other parties:
- (a) any victim impact report or victim personal statement;
  - (b) the defendant's criminal record (if not already produced);

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<sup>4</sup> Where prosecution disclosure is made at committal, the relevant time limit expires after 21 days.

- (c) any pre-sentence report;
  - (d) any documentary evidence relied upon by the defendant such as character witness statements or letters, and experts' reports (if not already lodged in court and served on the prosecution);
  - (e) a list of any sentencing authorities relied upon by the parties;
  - (f) if appropriate, an agreed statement of facts; and
  - (g) all relevant information required before the court can make any orders ancillary to sentence, e.g. compensation, costs.
- 4.2 If the defendant wishes the court to conduct a **Newton hearing** the defendant must notify the court and the prosecution in writing of those facts or inferences that are in dispute no later than 5 working days before the date fixed for arraignment to ensure any necessary witnesses are available. The court shall ascertain if either the prosecution or defendant intends to call a vulnerable person to give evidence at the Newton hearing: where a proposed witness is a 'vulnerable witness' the principles and procedures detailed in Annex A shall be followed; where the defendant is vulnerable, the principles and procedures in Annex B will apply.

## 5. WHERE THE DEFENDANT PLEADS NOT GUILTY

- 5.1 Where a defendant enters a **not guilty** plea at arraignment the judge:
- (a) will determine whether the case is suitable for an early trial or falls within the Pilot<sup>5</sup> or the Under 16 Operational Process (a trial may not be suitable for an early trial if there are issues which could require time to resolve (for example screening, Public Interest Immunity ("PII"), disclosure, expert witness issues));
  - (b) will ascertain if either the prosecution or defendant intends calling a vulnerable, or potentially vulnerable, person to give evidence;
  - (c) will have regard to the guidance in the Equal Treatment Bench Book;
  - (d) will ascertain from the parties their best estimate as to how long the trial will last;
  - (e) will ascertain what expert witnesses may be required, who they are, what facilities (if any) they require to prepare their report(s), and when the report(s) will be received by the defendant's solicitor;
  - (f) where a report is to be relied upon by a defendant, may direct that it must be served upon the prosecution by a certain date and time;
  - (g) where the defendant's solicitor fails without reasonable cause to serve any report by the time directed at (f), may rule that the report is inadmissible at the trial; and
  - (h) may direct a copy of any expert report served by any party must be lodged with the court at the same time.

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<sup>5</sup> See paragraph 2.6.

- 5.2 Where the case falls within the scope of the Pilot or the Under 16 Operational Process the judge will manage the case accordingly.
- 5.3 Where a **vulnerable witness** is to give evidence then the principles and procedures detailed in **Annex A** shall be followed. Where the **defendant is vulnerable**, the principles and procedures in **Annex B** will apply.

#### Cases Suitable for Early Trial

- 5.4 Where the case is suitable for early trial the judge will, **at arraignment**, fix the trial date, and any standby trial date, within the next **12 weeks**.
- 5.5 The judge will, at arraignment, ask the defence which witnesses, from the list which they have already received from the PPS or otherwise, can be agreed.
- 5.6 Following arraignment, both the PPS and the solicitor(s) for the defendant(s) will **immediately** notify/confirm all witnesses whose attendance is required at trial of the trial dates. Where the case involves a vulnerable witness, the PPS will notify (within 3 days<sup>6</sup>) the Witness Service or Young Witness Service ("YWS") that their support on those dates will be required. Where an application to give evidence by live link has been granted, the PPS must also notify the Witness Service or YWS. The initial contact will be on the day of arraignment, or the following working day at the latest. This initial contact will be followed up, for prosecution witnesses:
- (a) in the case of civilian witnesses, by a requirement to attend issued by the Victim and Witness Care Unit ("VWCU");
  - (b) in the case of expert witnesses, contact by the PPS or the PSNI as appropriate; or
  - (c) in the case of police witnesses, by the PPS or PSNI as appropriate.
- 5.7 Where a witness does not confirm **within 5 working days of the delivery of the requirement to attend**, they will be contacted by the VWCU case officer. Any inability to contact civilian witnesses is then referred to the Investigating Officer and also flagged to the Directing Officer (prosecutor) for consideration of a witness summons.
- 5.8 In respect of defence witnesses, where a witness does not confirm **within 5 working days of being notified that they will attend court**, the defence must apply for a witness summons.
- 5.9 An application for a witness summons will be made **immediately** by the party requiring the attendance of the witness(es).
- 5.10 For civilian prosecution witnesses, attendance at court will be confirmed upon receipt of the pro forma reply, or by direct contact with the witness. For

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<sup>6</sup> YWS require 4-5 weeks' notice of required attendance.

defence witnesses, attendance at court will be confirmed through direct contact with the witness.

- 5.11 The judge will normally list the case for a **review hearing within 2 weeks of the arraignment** where the standby and trial dates will be confirmed or varied in light of the PPS and defence information about witness availability.
- 5.12 Where it becomes apparent that the date may have to be varied, both the prosecution and the defence will come to the **review hearing** with witness availability for a further 12-week period starting with the original trial date or will have furnished the witness availability to the CPO in advance of the first review hearing if possible. Further review hearings will be arranged where necessary to ensure that any issues are resolved at the earliest opportunity.
- 5.13 Where a case falls within the Pilot, or the Under 16 Operational Process, or is suitable for early trial but involves a vulnerable witness or defendant, the case management and ground rules procedures set out in **Annex A or B** will apply as appropriate.

#### **Cases Not Suitable for Early Trial**

- 5.14 At arraignment, when a judge is determining whether or not a case is suitable for an early trial, the judge will determine this on the basis that the case involves issues which could require time to resolve, for example screening, PII, disclosure, expert witness issues etc.
- 5.15 At arraignment, the judge will ask the defence which witnesses, from the list which they have already received from the PPS or otherwise, can be agreed; or independently of any request from the prosecution, which witnesses can be agreed.
- 5.16 The judge will determine which issues require resolution and get indicative timescales from the representatives when the issues are likely to be resolved.
- 5.17 Where case management issues cannot be resolved on the same date as arraignment, the judge should then timetable a **CMH within 4 weeks of arraignment**. The parties should be able to inform the court of the availability of the witnesses required for trial, together with the availability of any Registered Intermediary ("RI")<sup>7</sup>, Witness Service<sup>8</sup>, YWS<sup>9</sup> or other appropriate lay supporter, and, if possible, the judge will fix the trial, or any standby, dates at that hearing.

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<sup>7</sup> Registered Intermediaries are communication specialists whose main responsibility is to enable complete, coherent and accurate communication with the witness. They are officers of the court.

<sup>8</sup> Victim Support NI Witness Service provide support and assistance for adult witnesses for the prosecution only.

<sup>9</sup> NSPCC Young Witness Service provide support and assistance for children and young people under 18 years old who are witnesses for the prosecution only.

- 5.18 If it has not been possible to fix the trial, or any standby trial, dates at arraignment, then once the issues in the case have been resolved, or the judge is satisfied that they can be resolved by the trial, the judge will fix the trial for a date within 12 weeks of arraignment.
- 5.19 Once the dates have been fixed the PPS and the solicitor(s) for the defendant(s) will immediately notify all witnesses whose attendance is required at trial of the standby and trial dates. The initial contact will be on the day on which the date is fixed, or the following working day at the latest. This initial contact will be followed up, for prosecution witnesses:
- (a) in the case of civilian witnesses, by a requirement to attend issued by the VWCU;
  - (b) in the case of expert witnesses, contact by the PPS or the PSNI as appropriate; or
  - (c) in the case of police witnesses, by the PPS or PSNI as appropriate.
- 5.20 Where a witness does not confirm within 5 working days of the delivery of the requirement to attend, they will be contacted by the VWCU case officer. Any inability to contact civilian witnesses is then referred to the Investigating Officer and also flagged to the Directing Officer (prosecutor) for consideration of a witness summons. In respect of defence witnesses, where a witness does not confirm within 5 working days of being notified that they will attend court, the defence must apply for a witness summons. An application for a witness summons will be made immediately by the party requiring the attendance of the witness(es).
- 5.21 For civilian prosecution witnesses, attendance at court will be confirmed upon receipt of the pro forma reply, or by direct contact with the witness. For defence witnesses, attendance at court will be confirmed through direct contact with the witness.
- 5.22 Where it becomes apparent that the date may need to be changed, both the prosecution and the defence will come back before the court with witness availability for a further 12-week period starting with the original trial date or will have furnished the witness availability to the CPO in advance, if possible.
- 5.23 Whether the trial is, or is not, suitable for an early trial, at arraignment the legal representatives for the prosecution and the defendant must be in a position to give the judge their best estimate of the likely length of the trial.

## **6. PRE-TRIAL MATTERS**

- 6.1 As far as possible all pre-trial matters will be dealt with at the arraignment, or if that is not possible, at the review hearing or CMH on a date fixed by the judge at the arraignment. The parties will therefore be expected to be

prepared to deal with all such matters at the same time, for example disclosure, abuse of process, special measures and anonymity. If necessary, the judge will fix dates by which any skeleton arguments are to be exchanged by the parties and lodged in court.

### **Prosecution Disclosure**

- 6.2 If the prosecution has not made full disclosure within 15 working days of receipt of the defence statement the prosecution **must** immediately apply to the judge in writing for an extension of time with an explanation why full disclosure has not been made.
- 6.3 If the defendant has not received full disclosure within the specified time the defendant's solicitor **must** immediately email the prosecution specifying the disclosure that is claimed to be outstanding, and if a **satisfactory reply is not received within 5 working days of that email, immediately lodge and serve an application** under section 8 of the Criminal Procedure and Investigations Act 1996 ("the 1996 Act"). The appropriate judge<sup>10</sup> will then fix a date for the hearing of the application.

### **Third Party Disclosure**

- 6.4 Third party disclosure applications **must** be made promptly and well in advance of scheduled trial dates so that trial dates are not vacated by reason of late applications. These provisions apply to the following types of cases:
- (a) rape and any other category of sexual offence;
  - (b) serious cases of violence to the person (i.e. attempted murder and offences contrary to sections 18 and 20 of the Offences against the Person Act 1861);
  - (c) attempting, inciting or conspiring to commit any of the offences listed above.

**In all other types of case** the judge dealing with third party disclosure applications may issue such directions as appear appropriate having regard to the interests of the third parties, the defendant, the complainant and the nature of document or thing to which the application relates, including, where appropriate, a direction that all further steps should be in accordance with this Practice Direction.

**However, note that for all third party disclosure applications (save those to which paragraph 6.32 applies) the court will hold the application for 14<sup>11</sup>**

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<sup>10</sup> The judge will be assigned according to whether the case is one in which a certificate has been issued by the Director of Public Prosecutions under section 1 of the Justice and Security (NI) Act 2007 requiring a non-jury trial.

<sup>11</sup> The application provides for determination of the third party disclosure application 14 calendar days after it is filed in court. 14 calendar days presumes service 7 days after posting and then allows a further 7 days to object from receipt of the application in accordance with rule 70 of the Crown Court Rules (Northern Ireland) 1979.

calendar days before referring the application to the judge for determination.

- 6.5 It is incumbent on the police, in consultation with the prosecution, to consider at an early stage of the investigation whether third parties may hold relevant material and, if so, whether it is a reasonable line of enquiry to seek to obtain it. If the police do obtain third party material, it will become prosecution material and will be subject to the normal disclosure obligations and processes arising at common law and under the 1996 Act.

*Disclosure Management Document*

- 6.6 In all cases falling within paragraph 6.4(a) or (c), or where the prosecution have in their possession material obtained from third parties, they must inform the defence by means of a Disclosure Management Document ("DMD") (see Annex D) when serving initial prosecution disclosure. This is necessary to ensure that the defence is aware of the prosecution approach to third party material in the particular case and do not make any unnecessary applications to the court. The DMD will be served on the court with the committal papers, along with a copy of the structured outline of case.
- 6.7 The DMD is intended to be a living document, maintained and updated throughout the life of the case in accordance with the prosecution's continuing duty to keep disclosure under review, as required by the 1996 Act and relevant case law.
- 6.8 The DMD should be revised promptly to reflect any new material obtained, any changes in the prosecution's understanding of the case, or any developments in the defence position that may affect the identification of reasonable lines of enquiry. Updated versions of the DMD should be served on the defence and lodged with the court to ensure transparency and facilitate informed decision-making.
- 6.9 In cases where a DMD is not required, the details of any relevant third parties identified by police must be provided by the prosecution to the defence when serving initial prosecution disclosure and made available to the Crown Court judge at first appearance and at any subsequent application for third party disclosure.
- 6.10 Whether through an updated DMD or, in cases where a DMD is not required, in writing, the prosecution should inform the defence and the judge at the first hearing in the Crown Court of any further third party material obtained by police subsequent to the defendant's return for trial; and of any pending efforts to obtain same. If police have identified any additional third parties who may hold relevant information, details should also be provided as part of their ongoing and continuing duty regarding disclosure.



### *Defence Disclosure Response Document*

- 6.11 In all cases in which the defence have been served with a DMD and where the defence make an application to the court for third party disclosure, they must also complete the Defence Disclosure Response Document ("DDRD") (see Annex E). The DDRD should be lodged with the court at the same time as the initial third party disclosure application and served on the PPS. This document should accompany the application when it is referred to the judge for determination.
- 6.12 The DDRD is a procedural document submitted in response to the DMD. It does not arise from statute, is not a pleading and is not an evidential document. The DDRD must not be interpreted as containing admissions, assertions of fact, or evidential submissions by the defence. It is not a substitute for a Defence Statement and does not alter or diminish the defence's statutory obligations under sections 5 to 6C of the 1996 Act. The DDRD is a procedural aid designed to assist in managing disclosure and must not be treated as fulfilling any part of the defence's duties under the 1996 Act.
- 6.13 The dynamic nature of the DMD is intended to assist the disclosure judge in managing disclosure proactively. It is expected that the DMD will evolve in tandem with the DDRD, which may also require updating or supplementation as the case progresses.

### **Role of the Investigating Officer**

- 6.14 In cases to which the provisions for third party disclosure apply, the Investigating Officer should, at an early point in the investigation, address the issue of third party material with the complainant. For children under 18 years of age (not attained 18 years of age) the Investigating Officer should provide the information to the young person as well as to his/her parents, unless circumstances indicate that this is not in the best interests of the young person.
- 6.15 The complainant should be asked to provide their date of birth (so that the correct medical notes and records can be obtained) and the following third party details: the name of the General Practitioner; the hospital (if any) that they attended; the name of any psychiatrist, psychologist or counsellor and the name and address(es) of the counselling organisation they attended. The complainant should also be asked to provide the address of the relevant office of the Health and Social Services Trust in question if they have been involved with social services. The Investigating Officer should ascertain whether the injured party has made a criminal injury application. [This is not an exhaustive list and the Investigating Officer should enquire as to whether there are any other third parties who may hold relevant material.]

6.16 Where the police are seeking access to third party material the Investigating Officer should explain to the complainant why it is required and how it will be handled upon receipt. The Investigating Officer should also explain the following:

- (i) that the complainant is not required to consent to the release of the material, but their views will be sought and recorded. The material will still be requested if it is considered necessary in order to pursue a reasonable line of enquiry;
- (ii) if material is released to the police it will initially be shared with the PPS only;
- (iii) in the event of a prosecution the prosecutor will apply the disclosure test to the material. This will mean that only those parts of the material as may reasonably be considered capable of undermining the prosecution case or assisting the defence case will fall to be disclosed to the defence;
- (iv) where the police are not seeking access to third party material because they do not consider it a reasonable line of enquiry at that time, in the event of a prosecution, the defence may later apply to the court for an order for its release;
- (v) in reaching any disclosure decisions the complainant's privacy rights will be taken into consideration.

6.17 It should be further explained to the complainant that:

- (i) they will be notified by the PPS of any defence application for access to the third party materials and will have an opportunity to make representations to the court before any order is made. These representations can be made in writing, or in person if a hearing is requested or deemed appropriate by the judge;
- (ii) if they do not wish to make representations, either in writing or at a hearing, the application will be referred to a judge of the Crown Court for determination with or without a hearing;
- (iii) the court will only order the disclosure of such material as is necessary to enable a fair trial to take place and that, in deciding whether to order the release of the material, the court will take into account the complainant's rights under article 8 of the ECHR (the right to respect for private and family life);
- (iv) the material will be reviewed by the court prior to its release and only such parts of the material that meet the disclosure test will be disclosed to the defence.

### **The Defence Application**

6.18 The solicitor seeking a third party disclosure order on behalf of the defendant must serve the application (see **Annex F**) on the directed person. Where the

nature of the application is such that it relates to personal information pertaining to a complainant or otherwise engages the complainant's rights, the application should also be served on the PPS to allow the complainant to be notified of the application.

- 6.19 The solicitor should lodge the application in court together with a completed Certificate of Service (see **Annex G**). If the Certificate of Service is not complete, the application will **not** be accepted by the court office. Where the case relates to personal information pertaining to a complainant or otherwise engages the complainant's rights, box B1 must be ticked and the application served on the PPS. Box B2 can be ticked where records are not held in confidence, for example, where they were in the public domain or where they are the defendant's own records. If the Certificate of Service has box B2 ticked the application does not need to be served on the PPS. If the application relates to material that would be held in confidence, but relates to someone other than the complainant, for example medical or financial records of a person other than the defendant or complainant, then box B3 should be ticked, the application will then be referred immediately to a judge for further direction to allow consideration of how the affected person's rights are engaged. However, in all cases, an application will not be determined until **14 calendar days** have elapsed.
- 6.20 In relation to service on the directed person, the solicitor should include a covering letter (see **Annex H**), a copy of the application, and a copy of the affidavit supporting the application. The application must state clearly the category of documents sought and the reasons why disclosure is being sought. The letter should state that an application will be made to the judge who, if making an order, will direct the production of the documents to the court, and not to the solicitor for the defendant, and that only documents which are relevant to the trial will be disclosed by the judge. The letter should indicate that no documents should be disclosed until an order issues from the court. The directed person against whom the order is sought should be informed that they are entitled to appear and object to any disclosure being made or to make written representations to the court and should be informed of the time limit for indicating an intention to do either. The time limit provided by the Crown Court Rules (Northern Ireland) 1979 is 7 days from the date of the directed person receiving the application.<sup>12</sup>
- 6.21 The defence solicitor, when drawing up the application, should confine the application, in so far as it is possible, to the material required to protect the interests of the defendant, having regard to the date range of material sought, the class of material sought, or the specific issues contained within the material sought. Where the defence solicitor is unable to confine the material sought but proposes to make an application for all records relating to the

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<sup>12</sup> See footnote 11 above.

complainant, the defence solicitor must state that fact on the face of the application and set out the reasons justifying the application.

- 6.22 Third party disclosure applications shall be heard at the arraignment or as soon thereafter as the court directs.
- 6.23 The defence should lodge and serve their application prior to arraignment. If this has not been possible then the defence should be able to justify why at arraignment.
- 6.24 Where the defence has not received details of the relevant third parties from the prosecution to enable it to comply with these time limits, then the application should be lodged and served **within 10 working days** of receiving that information.
- 6.25 Once an application is served on the PPS, the PPS must take steps to ensure that the complainant is notified of the application as soon as possible and to advise them of their entitlement to make representations. The PPS should send a letter to the complainant (see Annex I). This should be sent electronically and/or by post. The complainant must be informed that they have **14 calendar days from the date of the application** to inform the court of an intention to make representations.
- 6.26 If the PPS are aware that they have been unable to contact the complainant **within 14 calendar days of the date of the application** they must immediately inform the court, setting out the steps taken to contact the complainant.
- 6.27 If the court is notified of an intention to make representations on the part of the directed person or the complainant, **within 14 calendar days of the application being lodged in court**, the chief clerk will refer the application to the judge for direction. Where the representations have been made in writing and it is appropriate to determine the application without a hearing, for example where the representations make it clear that the directed person or complainant does not want a hearing, then the application will be determined without a hearing. Where a hearing is requested or otherwise appears appropriate, the judge will list the matter for hearing. The chief clerk will also notify the objecting party ie the directed person and/or complainant of the hearing date.
- 6.28 If the directed person or, where applicable, the complainant, has not notified the court of an intention to make representations within 14 calendar days of the application being lodged in court, the chief clerk will refer the application to a judge of the Crown Court for determination with or without a hearing. The chief clerk will also inform the judge of any communication provided by the PPS in compliance with paragraph 6.25.

- 6.29 The order, if made, will then issue with a court return date, which will normally be within 2 weeks of the granting of the application, but the time frame may be considerably shorter if the trial is imminent, or at hearing.
- 6.30 The third party disclosure order should be drawn up by the court. The party applying for the order should then obtain a copy of the order and serve it on the directed party. Each court office should have and maintain a register recording the date that third party documents are lodged with the court and the date when they are returned to the third parties.
- 6.31 Any material disclosed by the court to the defence following review of third party material will be copied to the PPS and any co-defendant as directed by the judge.

### **Urgent applications**

- 6.32 The above procedure is applicable to all applications moved **at least 14 calendar days in advance of trial**. Where an application is to be made within 14 calendar days of trial, or at trial, then the application must be brought to the attention of the trial judge as soon as possible, for direction. When such an application is lodged in court, it should be accompanied by a certificate of urgency (see Annex J) which will result in the application being placed before the trial judge, even though the requirements for service have not been fulfilled. However, depending upon the time available before the commencement of trial, as many of the service requirements as possible should be complied with.

## **7. CASE MANAGEMENT HEARINGS, REVIEWS AND DIRECTIONS**

- 7.1 Where case management issues cannot be resolved on the same date as the arraignment and depending on the circumstances of the case as outlined at paragraph 3.9 and Section 5, a judge will, where necessary, arrange a **review hearing within 2 weeks of the arraignment or a CMH within 4 weeks of the arraignment**. The judge may arrange to review the case at any time before trial to ensure that the parties are taking, or have taken, all the necessary steps to prepare the case for trial.
- 7.2 A judge shall give all necessary directions to ensure that the parties take any step necessary to progress the case to trial as expeditiously and efficiently as possible, while ensuring the trial remains fair to both the prosecution and the defence.
- 7.3 Such directions may be given at any time, whether in or out of court, and may be given orally or in writing. The parties and witnesses shall comply with any such directions.

**8. PRACTICE DIRECTIONS, PROTOCOLS AND THIRD PARTY TEMPLATES**

**8.1 This Practice Direction together with:**

**Annex A:** Protocol for Vulnerable Witnesses in the Crown Court,  
**Annex B:** Protocol on the Trial of Vulnerable Defendants in the Crown Court,  
**Annex C:** Case Overview Template,  
**Annex D:** Disclosure Management Document,  
**Annex E:** Defence Disclosure Response Document  
**Annex F:** Third Party Disclosure Application Form,  
**Annex G:** Third Party Disclosure Certificate of Service,  
**Annex H:** Third Party Disclosure Covering Letter,  
**Annex I:** Third Party Disclosure Letter to Complainant,  
**Annex J:** Third Party Disclosure Certificate of Urgency

**comes into effect on 15<sup>th</sup> December 2025.**

**The following Practice Directions and Protocols are revoked:**

**No. 2 of 2011 (Trial of Children and Young Persons in the Crown Court),  
No. 5 of 2011 (Protocol for Case Management in the Crown Court), and  
The Protocol for Third Party Disclosure in Prosecutions of Sexual Offences  
or Serious Assaults 2006**

## PROTOCOL FOR VULNERABLE WITNESSES IN THE CROWN COURT

### **A1. DEFINITION**

A1.1 Unless stated otherwise, in this protocol 'vulnerable witnesses' are defined by Articles 4-5 of the Criminal Evidence (Northern Ireland) Order 1999 ("the 1999 Order") and include:

- (i) all child witnesses (under 18 years of age at the time of hearing);
- (ii) any witness whose quality of evidence is likely to be diminished because they have a:
  - mental disorder (as defined by Article 3 of The Mental Health (Northern Ireland) Order 1986); or
  - significant impairment of intelligence and social functioning (witnesses who have a learning disability); or
  - physical disability or are suffering from a physical disorder;
- (iii) any witness whose quality of evidence is likely to be diminished by reason of fear or distress at the prospect of giving evidence, as defined by Article 5 of the 1999 Order<sup>13</sup>; or
- (iv) any other person whom the court may direct in the circumstances is to be treated as a 'vulnerable witness' for the purposes of this protocol.

### **A2. THE OVERRIDING PRINCIPLES**

A2.1 It is the duty of the court to take 'every reasonable step' to encourage and facilitate the attendance of witnesses; to facilitate the participation of all relevant persons in the criminal justice process; to ensure that witnesses are treated in a courteous and dignified manner, and to enable witnesses to give their best evidence. The trial process should, therefore, as far as possible, be adapted in each individual case to ensure these objectives are fulfilled. Many persons, not just those eligible for 'special measures' under the 1999 Order, may require assistance when giving evidence in criminal proceedings.

A2.2 Courts should note the 'primary rule'<sup>14</sup> which requires the court to give a direction for a special measure to assist a child witness or qualifying witness (not a child at the time of hearing but under the age of 17 when a relevant recording was made) and that in such cases an application to the court is not required. The ordinary trial process should, so far as necessary, be adapted to meet those ends. For example, if a vulnerable witness has significant communication needs, (such as short attention span, suggestibility and reticence in relation to authority figures) they may require the assistance of a Registered Intermediary<sup>15</sup> ("RI"), or other supporter approved by the court.

<sup>13</sup> Including Article 5(4).

<sup>14</sup> Article 9(3), (4) and (4A) of the 1999 Order.

<sup>15</sup> Registered Intermediaries are communication specialists whose main responsibility is to enable complete, coherent and accurate communication with the witness. They are officers of the court.

- A2.3 In any given case, the steps which should be taken to comply with this protocol must take account of the age, maturity and development (intellectual and emotional) of the vulnerable witness's role in the trial and all other circumstances of the case.

### A3. INDICATION OF INTENTION TO CALL VULNERABLE WITNESSES

- A3.1 In accordance with paragraph 4.2 of the Practice Direction for Case Management in the Crown Court ("the Practice Direction"), where a defendant intends to plead guilty but seeks a **Newton hearing**, the defence must have notified the court and prosecution of the facts or inferences in dispute **no later than 5 working days before the date fixed for arraignment**. The prosecution or the defence, as the case may be, should at that stage provide the court with information regarding any vulnerable, or potentially vulnerable, witness that they may seek to call at the Newton hearing, if they have not already done so.
- A3.2 **At arraignment** where a defendant pleads not guilty, the prosecution or the defence, as the case may be, should be in a position to provide the court with information regarding any vulnerable, or potentially vulnerable, witness that they may seek to call at the trial, setting out the nature of the vulnerability, or potential vulnerability, and any special requirements if they have not already done so.
- A3.3 Where a **special measures** direction pursuant to the 1999 Order is sought, the application should, so far as possible, be dealt with and determined by the court **on the same date as the arraignment** (subject to the time limits prescribed by court rules for the lodging of such an application and response<sup>16</sup>). Where this is not possible, the special measures application should be dealt with, at the latest, at the Case Management Hearing ("CMH") in accordance with paragraph 5.17 of the Practice Direction, and Section A4 of this protocol.
- A3.4 An **assessment of a vulnerable witness**<sup>17</sup> by an RI should be undertaken in all cases where it appears that a person has a significant communication difficulty which would diminish the quality of their evidence or mean that they would be unable to participate effectively in proceedings as a witness giving oral evidence. The fact that an RI was not present during the Achieving Best Evidence ("ABE") interview does not mean that an RI is not required for trial.<sup>18</sup> Where the complainant or prosecution witness is, or may be, vulnerable, and an RI is to be involved, the Investigating Officer should explain the role of the RI, obtain consent for the RI to make any necessary

<sup>16</sup> Rules 44B-CE of the Crown Court Rules (Northern Ireland) 1979.

<sup>17</sup> In relation to a witness other than the defendant, see Article 17 of the 1999 Order; in relation to a defendant, see Article 21BA of the 1999 Order.

<sup>18</sup> See R v Boxer [2015] EWCA Crim 1684.



enquiries (eg from teachers, doctors, specialists) and for information from third party sources to be included in any report to the court made by that RI, which will subsequently be seen by the prosecution and disclosed to the defence. The prosecution or defence, as applicable, should make arrangements for the assessment, including ensuring the witness is accompanied by a responsible third party (who must not be another lay witness in the case) at all times, and that the assessment takes place at a suitable location and time.

A3.5 The purpose of the assessment is for the RI to ascertain the witness's communication abilities and needs, so that they may:

- (a) indicate whether or not the witness has the ability to communicate their evidence and, if so,
- (b) indicate whether the use of an RI is likely to improve the quality (completeness, consistency and accuracy) of the witness's evidence, and
- (c) make recommendations as to special measures to enable the best communication with the witness.

A3.6 An RI assessment is not an alternative to an expert witness assessment. It is the responsibility of the prosecution or defence calling the witness to obtain and share expert opinion about the witness's communication needs with the RI, or any information which suggests a communication issue from the police (or other party relied on), for example, school, family or social care reports. It should be noted that the RI cannot offer a diagnosis; they are not a witness, but an independent officer of the court - their role is purely to report on communication and while their report may be used in the Ground Rules Hearing ("GRH"), it is not provided as evidence in the case.

A3.7 In a case involving a vulnerable witness, where case management issues cannot be resolved on the same date as arraignment, the court should always list the case for a CMH **within 4 weeks of arraignment**. The parties should be able to inform the court of the availability of the witnesses required for trial, together with the availability of any RI, Witness Service<sup>19</sup>, Young Witness Service ("YWS")<sup>20</sup> or other appropriate lay supporter, and, if possible, the judge will fix the trial, or any standby, dates at that hearing.

#### **A4. CASE MANAGEMENT HEARING ("CMH")**

A4.1 The purpose of the CMH is to ensure, amongst other things that:

- an RI has already assessed the witness, or has been appointed to do so where appropriate;
- the need for a GRH is considered, even where an RI has not been

<sup>19</sup> Victim Support NI Witness Service provide support and assistance for adult witnesses for the prosecution only.

<sup>20</sup> NSPCC Young Witness Service provide support and assistance for children and young people under 18 years old who are witnesses for the prosecution only.

- engaged;
- the Witness Service, or YWS, have been notified of the trial date, where applicable;
- all relevant information or experts' reports have been shared with the RI;
- all special measures issues have been determined – including consideration of using combined measures, and the possibility of alternative court venues or non-court facilities such as non-court remote live link\* if court facilities are unsuitable for the vulnerable witness;
- any outstanding disclosure/Public Interest Immunity ("PII") issues have been determined;
- a DVD copy (or other acceptable digital format) of any ABE interview has been served on the defendant, that it is playable and audible and that it does not require (further) editing;
- any discretionary reporting restrictions (if appropriate) have been determined; and
- suitable arrangements are made for any familiarisation visits required, including meeting with the trial judge and legal representatives, accompanied by the Witness Service, YWS, or other appropriate lay supporter.

**\* this may include the use of Remote Evidence Centres where appropriate.**

#### **A4.2 When listing the case for trial the court must be advised of:**

- the RI's report, recommendations and availability (where appointed);
- dates which are to be avoided by the vulnerable witness (e.g. exams, birthdays, special school or family events, etc.);
- who will accompany the vulnerable witness at court and an assurance that they are available throughout the part of the trial involving the witness to maintain a sense of continuity, particularly where a Witness Service, YWS volunteer has been engaged);
- the availability of those courtrooms which have the necessary courtroom technology;
- the availability of the remote live link / Remote Evidence Centre on the date(s) being considered for the trial; and
- realistic time estimates from all legal representatives for evidence-in-chief and cross-examination of the vulnerable witness.

#### **A4.3 When listing the case for trial the court shall:**

- always list the case with priority (a case involving a vulnerable witness should never be listed as a 'standby' trial);
- ensure that it is listed in a courtroom which has the necessary courtroom technology, or any other facilities required;
- insist that technology is tested in advance of the vulnerable witness arriving to give evidence and that a suitable expert is available during

that evidence;

- schedule a GRH, where required, in advance of the trial date to consider what, if any, directions, limitations or adaptations are required for the evidence-in-chief or cross-examination of any witness in the trial;
- use the time estimates given by the legal representative for evidence-in-chief and cross-examinations to schedule the witness's evidence taking into account the recommendations in the RI's report or directions, limitations or adaptations agreed at the GRH or otherwise;
- require the legal representatives in cases where there are multiple defendants to agree with the trial judge how topics will be divided and which representative will lead questioning, so that questioning is not repeated on behalf of each defendant; and
- if there are any issues over the admissibility of the contents of any ABE interview, fix a date for hearing argument well in advance of the trial so that any necessary editing can be done in time.

A4.4 In the event of an application being made to adjourn a trial following the fixing of the trial date, the prosecution or the defence, as the case may be, must advise the court as to the impact any such adjournment will have on the vulnerable witness. The judge will robustly enquire into reasons for adjournments, which should be granted only exceptionally. **All applications for adjournments in serious sexual offence cases must be made in writing and save in exceptional circumstances, should be served not less than 72 hours in advance of the hearing.**<sup>21</sup>

## A5. GROUND RULES HEARING ("GRH")

A5.1 The purpose of the GRH is to provide an opportunity to plan any adaptations to questioning and/or the conduct of the hearing that may be necessary to facilitate the evidence of a vulnerable person. GRHs should ordinarily be held in hearings involving vulnerable complainants and must be arranged where the witness is a child, or where an RI has been appointed to aid communication. A GRH must be attended by the trial judge, all legal representatives and the RI, where appointed, and may take place on the same date as the arraignment and/or CMH, where practicable.

A5.2 All witnesses, including the defendant and defence witnesses, should be enabled to give the best evidence they can. This may mean departing radically from traditional questioning techniques in the cross-examination of a vulnerable witness. The form and extent of the cross-examination of a vulnerable witness will vary from case to case. The GRH must be held **before the trial** to give legal representatives sufficient time to adapt their questions to the witness's needs. All legal representatives in the case should ensure they

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<sup>21</sup> The Gillen Review Report into the law and procedures in serious sexual offences in Northern Ireland, Recommendation 129.

are fully conversant with current best practice in the examination and cross examination of vulnerable witnesses<sup>22</sup> prior to the GRH taking place.

A5.3 Where an RI has been appointed this will be an opportunity to discuss the recommendations in their report to the court which outlines the communication needs of the vulnerable witness and agree how these ground rules will be put into practice. This will include agreeing what information may be given to the jury, press or public, about the witness's communication difficulties or needs.

A5.4 The GRH should include (but is not limited to):

(a) Approach to questioning the vulnerable witness - Where directions, limitations or adaptations on questioning are necessary and appropriate, whether or not an RI is involved, the ground rules may include, but are not limited to:

- adaptation of questions to the vulnerable witness's developmental stage in order to enable the witness to give their 'best evidence';
- asking short, simple questions (one idea at a time);
- following a logical sequence;
- speaking slowly, pausing and allowing the vulnerable witness enough time to process questions;
- allowing a full opportunity for the vulnerable witness to answer (without interruption);
- avoiding complex questions and 'tags';
- avoiding allegations of misconduct without reasonable grounds;
- not asking the vulnerable witness to give their address or name of school aloud unless it is for a specific reason;
- discussing how the vulnerable witness is to be questioned about matters raised in third party disclosure; or
- discussing how the defence case is to be put to a vulnerable witness.

(b) The Registered Intermediary's report - Where the RI has assessed the vulnerable witness's communication abilities and needs, they will have produced a written report to the court with recommendations as to how best to address these. This will include when and how the RI will alert the court if the witness has not understood the question or requires a break. Where limitations or adaptations on questioning are necessary and appropriate, they must be clearly defined. The RI may make recommendations as to the wearing of wigs and gowns. The parties present should agree the boundaries that are to be adhered to during the trial. The judge shall ensure the agreed ground rules are being complied

<sup>22</sup> See, in particular, Toolkit 1 <http://www.theadvocatesgateway.org/> and <https://www.justice-ni.gov.uk/sites/default/files/publications/doj/achieving-best-evidence-a-practitioner-guide.pdf>

with during the trial.

- (c) Multiple defendants - Where there are multiple defendants, the ground rules in relation to the questioning of any vulnerable witness may require that the legal representatives agree with the trial judge how topics will be divided between them, with the representative for the first defendant leading the questioning, and the representative(s) for the other defendant(s) asking only ancillary questions relevant to their client's case, without repeating the questioning that has already taken place on behalf of the other defendant(s).
- (d) Time estimates - Legal representatives should reconsider and give realistic time estimates for evidence-in-chief and cross-examination (in light of the recommendations made by the RI (where appointed) and/or ground rules agreed). The judge will then use these to schedule the vulnerable witness's evidence taking into consideration such things as the witness's concentration and any necessity for regular breaks.
- (e) Body maps and photographs - In any trial, especially those involving allegations of sexual offences, the ground rules may require that 'body maps' should be provided for the vulnerable witness's use. If the witness needs to indicate a part of the body, the legal representative should ask the witness to point to the relevant part on the body map. Similarly, photographs of the vulnerable witness's body should not be shown around the court while the witness is giving evidence.
- (f) Wigs and gowns - The court should also consider whether the judge/counsel should be robed, and wear wigs or otherwise.
- (g) Registered Intermediary's role during trial - Once the vulnerable witness's individual requirements are known and discussed at the GRH, the judge should ask the RI when and how the RI will alert the court if the witness has not understood the question or requires a break. The judge should also remind the legal representatives that the RI must not be asked to comment on credibility or competence of the witness. They are engaged on behalf of the court to assist the witness to give evidence to the best of his or her ability and should not be asked to become involved outside that role, for example, for consultations outside the courtroom. It should be noted that the RI only attends that part of the trial involving the direct input of the vulnerable witness. The RI should therefore be given an indication of when they will be required so their time can be managed effectively. Legal representatives should also be reminded that: the intermediaries are not witnesses, they are communication specialists whose primary responsibility as officers of the court is to enable complete, coherent and accurate communication; their notes and/or reports do not form part of normal third party

disclosure; and that notes and/or reports used by them which assisted in the assessment should not be asked for.

A5.5 A trial practice note should be produced setting out clearly any directions given or agreements made at the GRH and placed on file for the avoidance of doubt.<sup>23</sup> The judge may prepare the note or ask for one to be prepared by the (legal) parties. The note may simply consist of agreement to the recommendations in the RI report, an indication of any areas of disagreement and anything additional that was agreed at the GRH, and/or may include:

- an agreed description of the nature of the vulnerability of the witness/defendant;
- a list of any particular developmental issues/milestones reached or unattained, which should be taken into account when questioning and in trial management;
- for those with learning disabilities/a mental health diagnosis, an outline of particular concerns which should inform questioning or trial management;
- how long the witness should expect to be questioned in one session, and what breaks will be taken;
- what arrangements are to be made for memory refreshment pre-trial;
- how a prompt start for the witness's evidence will be ensured;
- an agreed outline for the formulation of appropriate questions; and
- where appropriate, formulated questions to be provided to the court in advance.

## A6. THE TRIAL

### Timetable

A6.1 In any case where the complainant is a vulnerable witness who has recorded an ABE video, the jury should be sworn in on the morning of the first day of the trial. Whilst this is being done the witness should normally watch their video recorded ABE interview, taking such breaks as are necessary, after which they can then go home - only in exceptional circumstances should the memory refresh be done on the same day as giving evidence. This should be considered on the advice of an RI (where appointed), for example, where a witness is likely to become distressed by viewing the ABE interview, memory refreshing should not take place just before the witness is expected to give evidence; some vulnerable witnesses may prefer to read a transcript or listen to, but not watch, the ABE interview; or if a witness has reading difficulties, the transcript can be read to them by the Investigating

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<sup>23</sup> [The Equal Treatment Bench Book 2024, Chapter 2, paragraph 145.](#)

Officer (or other police officer) present during the memory-refreshing exercise, who should record any comment that the witness makes when viewing the ABE interview and pass that record to the prosecutor.

- A6.2 The case can be opened to the jury and the ABE video shown to the jury during the morning and/or afternoon of the first day, or otherwise in the absence of the witness. The cross-examination of the witness should then take place at the earliest opportunity when the witness is fresh and alert, which may be the following morning.
- A6.3 In those cases where the complainant is a vulnerable witness who has not recorded an ABE video, it may be appropriate for the jury to be sworn and the case opened on the morning of the first day of the trial, but the complainant not to commence their evidence until the following morning. This should be as agreed in the GRH or otherwise guided by the advice of the RI (where appointed).
- A6.4 In so far as is possible, judges should timetable trials so that vulnerable witnesses commence their evidence at the time of day when they will give their best evidence, as guided by the advice of the RI (where appointed), to prevent them spending long periods of time waiting in the precincts of the courthouse when their vulnerabilities may become heightened.
- A6.5 All witnesses, but particularly those who are vulnerable, should be kept informed of any changes to the schedule or proposed arrangements (including special measures) for the hearing by the PPS/PSNI Investigating Officer, through the Witness Service/YWS. Each stage of the trial should be explained to them in clear and appropriate language, and they should be informed of what is happening next and their understanding of this checked. Any steps that can reasonably be taken to reduce the anxiety of a vulnerable witness should be taken as this will be likely to increase the quality of the individual's communication throughout the trial.
- A6.6 The essential task of the court is to ensure a fair hearing. If the RI is not available on the day, the absence of an RI for a vulnerable person does not necessarily mean that a fair hearing cannot take place, and it would be unusual to stay or adjourn because an RI is not available. However, it is the responsibility of the court to adapt the trial procedure to ensure effective participation. This might require reconvening a GRH and/or re-visiting directions.<sup>24</sup>

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<sup>24</sup> [The Equal Treatment Bench Book 2024, Chapter 2, paragraph 114.](#)

### The Vulnerable Witness Giving Evidence

- A6.7 It is recommended that, in cases where there is a child victim of a sexual crime, their evidence should be heard in a closed court.<sup>25, 26</sup>
- A6.8 The judge will explain to the jury (where present) about the role of the RI (where appointed), and give them information about the witnesses' communication difficulties, needs and measures as agreed at the GRH, or otherwise.
- A6.9 It is the responsibility of the legal representatives to ensure they comply with the agreements made at the GRH or otherwise, to minimise intervention by the judge or RI (where appointed).
- A6.10 The judge shall stop the questioning of a vulnerable witness where there is persistent breach of the ground rules; for example, where the questioning is overly rigorous or repetitive; or where counsel requests the vulnerable witness to point to a part of the witness's own body when it has been agreed that a body map is to be used. Similarly, the judge shall stop any photographs of the vulnerable witness's body being shown around the court while the witness is giving evidence.
- A6.11 Judges also have safeguarding responsibilities.<sup>27</sup> They should be alert to vulnerabilities that may not have been previously identified and ask for relevant information to be obtained and provided where they feel this is necessary.

### Directions to the Jury

- A6.12 Where evidence has been given in accordance with a special measures direction, the judge must give the jury (if there is one) such warning as the judge considers necessary to ensure that the fact that the direction was given in relation to the witness does not prejudice the accused.<sup>28</sup> For example, where a screen is used to assist a vulnerable witness to give evidence may perhaps cause the jury to assume that the defendant must have done something wrong to merit the erection of a screen.
- A6.13 Where an RI is appointed, the jury does not see the report and the RI should not be asked to summarise their findings for the jury. Some of the difficulties outlined in the report in fact may not arise. The report may deal with matters concerning the witness which are not the jury's concern, and there is a risk that the report could prompt the jury to question parts of the witness's

<sup>25</sup> The Gillen Review Report into the law and procedures in serious sexual offences in Northern Ireland: Part 3, Chapter 14 Voice of the Child, Recommendation 188.

<sup>26</sup> Article 13 of the 1999 Order.

<sup>27</sup> [The Equal Treatment Bench Book 2024, Chapter 2, paragraphs 29 -33.](#)

<sup>28</sup> Article 20 of the 1999 Order.



evidence based on the RI's assessment findings and report recommendations (e.g. 'The report says that the witness might have difficulty with closed questions. The witness gave a key answer to a closed question – does it mean the answer to that question is unreliable?').

- A6.14 Questions of competency must be decided before a witness is sworn or starts to give evidence and ideally prior to the start of the trial.<sup>29</sup> However, issues of competency may only become apparent after the witness has begun to give evidence or during cross-examination. This may be particularly so for vulnerable witnesses, whose examination-in-chief has been given in a pre-recorded video interview, where the witness might subsequently be unable to provide intelligible answers in cross-examination. If the court rules the witness incompetent at cross-examination stage, the judge should direct the jury to ignore the witness's evidence.<sup>30</sup>
- A6.15 While it is normally incumbent on a legal representative to put their client's case to a witness so that the witness will have the opportunity to comment upon it, where the witness is a vulnerable witness the judge may dispense with this normal requirement, and impose restrictions on the legal representative 'putting their case' where the judge considers that there is a risk of the witness failing to understand, becoming distressed or acquiescing to leading questions. In such circumstances, the judge has a duty to explain to the jury the directions, limitations or adaptations that have been placed on the legal representative and the reasons for them.
- A6.16 If, however, the legal representative fails to comply with the directions, limitations or adaptations, the judge should give relevant directions to the jury when that occurs. Furthermore, instead of the legal representative questioning the vulnerable witness on inconsistencies in their evidence it may be more appropriate for the trial judge, following discussion with the legal representatives, to point out important inconsistencies to the jury after the witness's evidence. The judge should also remind the jury of the inconsistencies during the judge's summing up. The judge should be alert to alleged inconsistencies that are not, in fact, inconsistent or are trivial.
- A6.17 Where the court is called upon to exercise its discretion in relation to any procedural matter falling within the scope of this Practice Direction or associated protocols but not the subject of specific reference, such discretion should be exercised having regard to the principles in Section A2 of this protocol.

<sup>29</sup> In the case of a prosecution witness, it was held in the case of *R v Yacoob* (1981) 72 Cr. App. R. 313 that the question should be raised and decided at the beginning of the trial.

<sup>30</sup> See case of *R v Whitehead* (1865 - 72) L.R. 1 C.C.R. 33.

**PROTOCOL ON THE TRIAL OF VULNERABLE DEFENDANTS IN THE  
CROWN COURT**

**B1. DEFINITION**

B1.1 Unless stated otherwise, in this protocol ‘vulnerable defendant’ will include:

- (i) a defendant under the age of 18 (“a young defendant”);
- (ii) a defendant in respect of whom a ‘special measures’ direction has been issued under the Criminal Evidence (Northern Ireland) Order 1999 (“the 1999 Order”); and
- (iii) any other defendant whom the court may direct in the circumstances is to be treated as a ‘vulnerable defendant’ for the purposes of this protocol.

**B2. THE OVERRIDING PRINCIPLES**

B2.1 Some vulnerable defendants accused of committing serious crimes shall, amongst other things, be very young or intellectually immature when standing trial in the Crown Court. The purpose of such trial is to determine guilt (if that is in issue) and decide the appropriate sentence if the vulnerable defendant pleads guilty or is convicted. The trial process should not itself expose the vulnerable defendant to avoidable intimidation, humiliation or distress. All reasonable steps should be taken to assist the vulnerable defendant to give their best evidence, understand and participate in the proceedings, and engage fully with their defence. The ordinary trial process should, so far as necessary, be adapted to meet those ends.

B2.2 Regard should be had to the welfare of the young defendant as required by section 53(3) of the Justice (Northern Ireland) Act 2002, as amended by the Justice Act (Northern Ireland) 2015.

B2.3 The special measures which may be directed for a vulnerable defendant are currently limited to Use of Live Link and Intermediary for Evidence of Certain Accused Persons.<sup>31</sup>

B2.3.1 Upon application of the defendant, and where it is in the interests of justice for the defendant to give evidence through a live link, the court may give a live link direction<sup>32</sup> if it is satisfied that:

- the defendant has a physical disability or suffers from a physical disorder; and their ability to participate effectively in the proceedings as a witness giving oral evidence in court is for that reason compromised; or,

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<sup>31</sup> Part 2A of the 1999 Order.

<sup>32</sup> Article 21A of the 1999 Order.

- where a defendant is **aged under 18 when the application is made**, that their ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by their level of intellectual ability or social functioning, and use of a live link would enable them to participate more effectively in the proceedings as a witness; or,
- where a defendant is **aged 18 or over when the application is made**, that they suffer from a mental disorder<sup>33</sup> or otherwise has a significant impairment of intelligence and social function; and is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court; and use of a live link would enable them to participate more effectively in the proceedings as a witness.

While a live link direction has effect, the defendant may not give oral evidence before the court in the proceedings otherwise than through a live link<sup>34</sup>, unless discharged by the court.

**B2.3.2** Upon application of the defendant, and, where necessary to ensure that the accused receives a fair trial, the court may **direct examination of the accused through an intermediary**<sup>35</sup> if it is satisfied that:

- where the defendant is **aged under 18 when the application is made**, the condition is that their ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by their level of intellectual ability or social functioning; or,
- where the defendant has **attained the age of 18 when the application is made** the conditions are that they suffer from a mental disorder<sup>36</sup> or otherwise has a significant impairment of intelligence and social functioning; and is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court.

**B2.4** In any given case, the steps which should be taken to comply with this protocol must take account of the age, maturity and development (intellectual and emotional) of the vulnerable defendant on trial and all other circumstances of the case.<sup>37</sup>

<sup>33</sup> Within the meaning of the Mental Health (Northern Ireland) Order 1986.

<sup>34</sup> Article 21A (6) of the 1999 Order.

<sup>35</sup> Article 21BA of the 1999 Order.

<sup>36</sup> Within the meaning of the Mental Health (Northern Ireland) Order 1986.

<sup>37</sup> Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2011 provides procedural safeguards for children who are suspects or accused persons in criminal proceedings - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0800>

- B2.5 Regardless of whether a Registered Intermediary<sup>38</sup> ("RI") has been used at the investigative stage, an application can be made for their use at trial and the court will determine whether such a course is necessary. For example, if a vulnerable defendant has significant communication needs, they may require the assistance of an RI. An assessment of a vulnerable defendant by an RI<sup>39</sup> should be undertaken in all cases where it appears that they have a significant communication difficulty which would diminish the quality of their evidence or mean that they would be unable to participate effectively in proceedings as a witness giving oral evidence. The fact that an RI was not present during police interview does not mean that an RI is not required for trial.<sup>40</sup> The defence should make arrangements for the assessment. The solicitor acting for the vulnerable defendant is responsible for making an application to the court for the examination of the defendant using the appropriate form.<sup>41</sup>

### **B3. INDICATION OF VULNERABLE DEFENDANT**

- B3.1 Court Offices should promptly bring to the attention of the Case Management Team in the Lady Chief Justice's Office any serious or complex Crown Court case involving a vulnerable defendant. The Lady Chief Justice shall assign a judge to take responsibility for the case. The judge so assigned will hold such preliminary hearings and give such directions as are necessary.
- B3.2 In accordance with paragraph 4.2 of the Practice Direction, where a defendant intends to plead guilty but seeks a **Newton hearing**, the defence must have notified the court and prosecution of the facts or inferences in dispute **no later than 5 working days before the date fixed for arraignment**. The defence should at that stage provide the court with information regarding any vulnerable, or potentially vulnerable, defendant, if they have not already done so.
- B3.3 **At arraignment** where a defendant pleads not guilty, if they have not already done so, the defence should be in a position to provide the court with information regarding any vulnerable, or potentially vulnerable, defendant, setting out the nature of the vulnerability, or potential vulnerability, and any special requirements.
- B3.4 In the case of a vulnerable defendant, especially a **young defendant, indicted jointly with an adult defendant**, the court should consider at an early stage whether the vulnerable defendant should be tried on their own but should only so order, if satisfied that a fair trial cannot be achieved by use of appropriate special measures or other support for the defendant. If a

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<sup>38</sup> Registered Intermediaries are communication specialists whose main responsibility is to enable complete, coherent and accurate communication with the witness. They are officers of the court.

<sup>39</sup> See Article 21BA of the 1999 Order.

<sup>40</sup> See *R v Boxer* [2015] EWCA Crim 1684.

<sup>41</sup> As required by rule 44U of the Crown Court Rules (Northern Ireland) 1979.

vulnerable defendant is tried jointly with an adult the court should consider whether any of the modifications set out in this direction should apply to the joint trial and, so far as practicable, make orders to give effect to any such modifications.

- B3.5 Where a special measures direction pursuant to the 1999 Order is sought, the application should, so far as possible, be dealt with and determined by the court on the same date as the arraignment subject to the time limits prescribed by court rules for the lodging of such an application and response.<sup>42</sup> Where this is not possible, the special measures application should be dealt with, at the latest, at the Case Management Hearing ("CMH") in accordance with paragraph 5.17 of the Practice Direction, and Section B4 of this protocol.
- B3.6 The purpose of the assessment is for the RI to ascertain the defendant's communication abilities and needs, so that they may:
- (a) indicate whether or not the defendant has the ability to communicate their evidence and, if so,
  - (b) indicate whether the use of an RI is likely to improve the quality (completeness, consistency and accuracy) of the defendant's evidence, and
  - (c) make recommendations as to special measures to enable the best communication with the defendant.
- B3.7 An RI assessment is not an alternative to an expert witness assessment. It is the responsibility of the defence to obtain and share expert opinion about the defendant's communication needs with the RI, or any information which suggests a communication issue from the police (or other party relied on), for example, school, family or social care reports. It should be noted that the RI cannot offer a diagnosis; they are not a witness, but an independent officer of the court - their role is purely to report on communication and while their report may be used in the Ground Rules Hearing ("GRH"), it is not provided as evidence in the case.
- B3.8 Arrangements may need to be made for a vulnerable defendant to **visit**, out of court hours and before the trial, **the courtroom** in which the trial is to be held. Where the defendant is in custody, such arrangements will need to be made with the Prison Service. The visit will enable the defendant to familiarise themselves with the layout of the court, and the live link room (if to be used<sup>43</sup>) and may include matters such as: where the defendant will sit (either in the dock or otherwise); court officials (what their roles are and where they sit); who else might be in the court, for example those in the public gallery and press box; the location of the witness box; basic court procedure; and the facilities available in the court.

<sup>42</sup> Rules 44S-W of the Crown Court Rules (Northern Ireland) 1979.

<sup>43</sup> Articles 21A-B of the 1999 Order.

- B3.9 If any case against a vulnerable defendant has attracted or may attract **widespread public or media interest**, the assistance of the police should be enlisted to try and ensure that a vulnerable defendant is not exposed to intimidation, vilification or abuse, when attending the court for the trial.
- B3.10 In the case of a young defendant, where **reporting restrictions** may be appropriate, the court should consider whether to give a direction under Article 22 of the Criminal Justice (Children) (Northern Ireland) Order 1998 or, as the case may be, section 45 of the Youth Justice and Criminal Evidence Act 1999. Any such order, once made, should be recorded on ICOS and copies should be made available, on request, to anyone affected or potentially affected by it.
- B3.11 In a case involving a vulnerable defendant, where case management issues cannot be resolved on the same date as arraignment, the court should always list the case for a **CMH within 4 weeks** of arraignment. The parties should be able to inform the court of the availability of the witnesses required for trial, together with the availability of any RI, Witness Service<sup>44</sup>, Young Witness Service ("YWS")<sup>45</sup> or other appropriate lay supporter, and, if possible, the judge will fix the trial, or any standby, dates at that hearing.

#### **B4. CASE MANAGEMENT HEARING ("CMH")**

B4.1 The purpose of the CMH is to ensure, amongst other things that:

- an RI has already assessed the defendant, or has been appointed to do so where appropriate;
- the need for a GRH is considered, even where an RI has not been engaged;
- all relevant information or expert's reports have been shared with the RI;
- all special measures issues have been determined – including consideration of using combined measures, and the possibility of alternative court venues or non-court facilities such as non-court remote live link if court facilities are unsuitable for the vulnerable defendant;
- any outstanding disclosure/Public Interest Immunity ("PII") issues have been determined;
- a DVD copy (or other acceptable digital format) of any Achieving Best Evidence interview has been served on the defendant, that it is playable and audible and that it does not require (further) editing;
- any discretionary reporting restrictions (if appropriate) have been determined; and

<sup>44</sup> Victim Support NI Witness Service provide support and assistance for adult witnesses for the prosecution only.

<sup>45</sup> NSPCC Young Witness Service provide support and assistance for children and young people under 18 years old who are witnesses for the prosecution only.

- suitable arrangements are made for any familiarisation visits required, including meeting with the trial judge and legal representatives.

**B4.2 When listing the case for trial the court must be advised of:**

- the RI's report, recommendations and availability (where engaged);
- dates which are to be avoided by the vulnerable defendant (e.g. exams, birthdays, special school or family events, etc.);
- the availability of those courtrooms which have the necessary courtroom technology; and
- realistic time estimates from all legal representatives for evidence-in-chief and cross-examination of the vulnerable defendant (if to be called).

**B4.3 When listing the case for trial the court shall:**

- always list the case with priority (a case involving a vulnerable defendant should never be listed as a 'standby' trial);
- ensure that it is listed in a courtroom which has the necessary courtroom technology, or any other facilities required;
- insist that technology is tested in advance of the vulnerable defendant arriving to give evidence and that a suitable expert is available during that evidence;
- schedule a GRH, where required, in advance of the trial date to consider what, if any, directions, limitations or adaptations are required for the evidence-in-chief or cross-examination of any witness in the trial;
- use the time estimates given by the legal representative for evidence-in-chief and cross-examinations to schedule the witness's evidence taking into account the recommendations in the RI's report (where appointed) or limitations agreed at the GRH or otherwise; and
- require the legal representatives in cases where there are multiple defendants to agree with the trial judge how topics will be divided and which representative will lead questioning, so that questioning is not repeated on behalf of each defendant.

**B4.4 In the event of an application being made to adjourn a trial following the fixing of the trial date, the defence must advise the court as to the impact any such adjournment will have on the vulnerable defendant. The judge will robustly enquire into reasons for adjournments, which should be granted only exceptionally. All applications for adjournments in serious sexual offence cases must be made in writing and, save in exceptional circumstances, should be served not less than 72 hours in advance of the hearing.<sup>46</sup>**

<sup>46</sup> The Gillen Review Report into the law and procedures in serious sexual offences in Northern Ireland, Recommendation 129.

## B5. GROUND RULES HEARING (“GRH”)

- B5.1 The purpose of the GRH is to provide an opportunity to plan any adaptations to questioning and/or the conduct of the hearing that may be necessary to facilitate the evidence of a vulnerable person. GRHs may be held in hearings involving vulnerable defendants and must be arranged where the defendant is a child, or where an RI has been appointed to aid communication. A GRH must be attended by the trial judge, all legal representatives and the RI, where appointed, and may take place on the same date as the arraignment and/or CMH, where practicable.
- B5.2 All witnesses, including the defendant and defence witnesses, should be enabled to give the best evidence they can. This may mean departing radically from traditional questioning techniques in the cross-examination of a vulnerable witness. The form and extent of the cross-examination of a vulnerable witness will vary from case to case. The GRH must be held **before the trial** to give legal representatives sufficient time to adapt their questions to the witness’s needs. All legal representatives in the case should ensure they are fully conversant with current best practice in the examination and cross examination of vulnerable witnesses<sup>47</sup> prior to the GRH taking place.
- B5.3 Where an RI has been appointed this will be an opportunity to discuss the recommendations in their report to the court which outlines the communication needs of the vulnerable witness and agree how these ground rules will be put into practice. This will include agreeing what information may be given to the jury, press or public, about the witness’s communication difficulties or needs.
- B5.4 The GRH should include (but is not limited to):
- (a) Approach to questioning the vulnerable defendant - Where directions, limitations or adaptations on questioning are necessary and appropriate, whether or not an RI is involved, the ground rules may include, but are not limited to:
- adaptation of questions to the vulnerable defendant’s developmental stage in order to enable the defendant to give their ‘best evidence’;
  - asking short, simple questions (one idea at a time);
  - following a logical sequence;
  - speaking slowly, pausing and allowing the vulnerable defendant enough time to process questions;
  - allowing a full opportunity for the vulnerable defendant to

<sup>47</sup> See, in particular, Toolkit 1 <http://www.theadvocatesgateway.org/> and <https://www.justice-ni.gov.uk/sites/default/files/publications/doj/achieving-best-evidence-a-practitioner-guide.pdf>



- answer (without interruption);
  - avoiding complex questions and 'tags';
  - avoiding allegations of misconduct without reasonable grounds;
  - not asking the vulnerable defendant to give their address or name of school aloud unless it is for a specific reason;
  - discussing how the vulnerable defendant is to be questioned about matters raised in third party disclosure; or
  - discussing how the prosecution case is to be put to a vulnerable witness.
- (b) The Registered Intermediary's report - Where the RI has assessed the vulnerable defendant's communication abilities and needs, they will have produced a written report to the court with recommendations as to how best address these. This will include when and how the RI will alert the court if the defendant has not understood the question or requires a break. Where limitations or adaptations on questioning are necessary and appropriate, they must be clearly defined. The RI may make recommendations as to the wearing of wigs and gowns. The parties present should agree the boundaries that are to be adhered to during the trial. The judge shall ensure the agreed ground rules are being complied with during the trial.
- (c) Multiple defendants - Where there are multiple defendants, the ground rules in relation to the questioning of any vulnerable defendant, may require that the legal representatives agree with the trial judge how topics will be divided between them, with the representative for the first defendant leading the questioning, and the representative(s) for the other defendant(s) asking only ancillary questions relevant to their client's case, without repeating the questioning that has already taken place on behalf of the other defendant(s).
- (d) Other witnesses - In the case of a vulnerable defendant, the ground rules should include how **other witnesses** in the trial should be examined and cross-examined to help advocates ensure that the vulnerable defendant can follow proceedings. For example, the court may direct that all witness evidence be adduced by simple questions, with witnesses asked to answer in short sentences; or that the evidence is broken down into short periods followed by breaks to ensure the defendant is understanding the proceedings; or to enable the defendant to take short breaks to relax, or for legal representatives to summarise the evidence and to take further instructions.
- (e) Time estimates - Legal representatives should reconsider and give **realistic** time estimates for evidence-in-chief and cross-examination (in light of the recommendations made by the RI (where appointed) and ground rules agreed). The judge will then use these to schedule the

vulnerable defendant's evidence taking into consideration such things as the defendant's concentration and any necessity for regular breaks. In the case of a vulnerable defendant, legal representatives should give realistic time estimates for the examination and cross-examination of all witnesses in order to permit the judge to timetable for sufficient breaks to allow the vulnerable defendant's legal representatives to regularly explain the evidence to him/her and take instructions in relation to same.

- (f) Body maps and photographs - In any trial, especially those involving allegations of sexual offences, the ground rules may require that 'body maps' should be provided for the vulnerable defendant's use. If the defendant needs to indicate a part of the body, the legal representative should ask the defendant to point to the relevant part on the body map.
- (g) Wigs and gowns - The court should also consider whether the judge/counsel should be robed, and wear wigs or otherwise.
- (h) Registered Intermediary's (RI's) role during trial - Once the vulnerable defendant's individual requirements are known and discussed at the GRH, the judge should ask the RI when and how the RI will alert the court if the defendant has not understood the question or requires a break. The judge should also remind the legal representatives that the RI must not be asked to comment on credibility or competence of the defendant. They are engaged on behalf of the court to assist the defendant to give evidence to the best of his or her ability and should not be asked to become involved outside that role, for example for consultations outside the courtroom. It should be noted that the RI only attends that part of the trial involving the direct input of the vulnerable defendant. The RI should therefore be given an indication of when they will be required so their time can be managed effectively. Legal representatives should also be reminded that the intermediaries are not witnesses: they are communication specialists whose primary responsibility as officers of the court is to enable complete, coherent and accurate communication. Their notes and/or reports do not form part of normal third party disclosure, and notes and/or reports used by them which assisted in the assessment should not be asked for.

B5.5 A trial practice note should be produced setting out clearly any directions given or agreements made at the GRH and placed on file for the avoidance of doubt.<sup>48</sup> The judge may prepare the note or ask for one to be prepared by the (legal) parties. The note may simply consist of agreement to the recommendations in the RI report, an indication of any areas of disagreement and anything additional that was agreed at the GRH, and/or may include:

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<sup>48</sup> [The Equal Treatment Bench Book 2024, Chapter 2, paragraph 145.](#)

- an agreed description of the nature of the vulnerability of the defendant;
- a list of any particular developmental issues/milestones reached or unattained, which should be taken into account when questioning and in trial management;
- for those with learning disabilities/a mental health diagnosis, an outline of particular concerns which should inform questioning or trial management;
- how long the defendant should expect to be questioned in one session, and what breaks will be taken;
- what arrangements are to be made for memory refreshment pre-trial;
- how a prompt start for the defendant's evidence will be ensured;
- an agreed outline for the formulation of appropriate questions; and,
- where appropriate, formulated questions to be provided to the court in advance.

## **B6. THE TRIAL**

- B6.1 Where an RI is being used to help the defendant to communicate at court, the trial should be conducted in consideration of any recommendations made by the RI in their report and agreed between the judge and legal representatives at the GRH. This should be set out in a **trial practice note** setting out clearly any directions given or agreements made and placed on file for the avoidance of doubt.
- B6.2 The trial should, if practicable, be held in a courtroom in which all the participants are on the same or almost the same level.
- B6.3 Subject to the need for appropriate security arrangements, a young defendant, should normally, if they wish, be free to sit with members of their family or others in a like relationship, and in a place which permits easy, informal communication with their legal representatives and others with whom they want or need to communicate (where an RI is appointed this will only be during the evidence of the vulnerable defendant).
- B6.4 It is essential that at the beginning of the proceedings, the court should ensure that what is to take place has been explained to a vulnerable defendant in clear language and terms they can understand and follow, and that the judge and legal representatives conduct their examination using questions that are short and clear. The judge should remind those representing and supporting a vulnerable defendant of their responsibilities and continuing duty to explain each step of the trial to the defendant; and should ensure so far as practicable that the trial is conducted in language which the vulnerable defendant can understand and in accordance with any ground rules agreed.
- B6.5 The trial should be conducted according to a timetable which takes full account of the vulnerable defendant's needs. In so far as is possible, judges

should timetable trials so that the vulnerable defendant commences their evidence at the time of day when they will give their best evidence, as guided by the advice of the RI (where appointed), to prevent them spending long periods of time waiting to do so when their vulnerabilities may become heightened. Frequent and regular breaks will often be appropriate.

- B6.6 Before making a direction for a vulnerable defendant to give evidence by live link, the court must be satisfied that it is in the interests of justice to do so and that the use of a live link would enable the vulnerable defendant to participate more effectively as a witness in the proceedings. The direction will deal with the practical arrangements to be made to address the communication and support needs of the defendant.
- B6.7 The court should consider any recommendations made by the RI (where appointed) or as agreed at the GRH or otherwise, as to whether robes and wigs should be worn. Similarly, where an RI recommends that any person responsible for the security of a vulnerable defendant who is in custody should not be in uniform, this should be arranged in so far as is possible. There should be no recognisable police presence in the courtroom save for good reason.
- B6.8 The court should be prepared to restrict attendance at the trial to a small number, where appropriate, limited to some of those with an immediate and direct interest in the outcome of the trial. Arrangements for youth courts provide a guide. The court should rule on any challenged claim to attend.
- B6.9 Facilities for reporting the trial (subject to any direction given under the provisions in paragraph B3.10 above) must be provided. The court may restrict the number of those attending the court room to report the trial to such number as is judged practicable and desirable. In ruling on any challenged claim to attend the courtroom for the purpose of reporting the trial the court should be mindful of the public's general right to be informed about the administration of justice in the Crown Court. Where access to the court room by reporters is restricted arrangements should be made where possible for the proceedings to be relayed, audibly and, if possible, visually, to another room in the same court complex to which the media and public have free access if it appears that there will be a need for such additional facilities. If there is a video link, cameras should be discreetly positioned.

#### **The Vulnerable Defendant Giving Evidence**

- B6.10 Where the vulnerable defendant is called to give evidence, the judge will explain to the jury (where present) about the role of the RI (where present), and give them information about the defendant's communication difficulties, needs and measures as agreed at the GRH, or otherwise.

- B6.11 It is the responsibility of the legal representatives to ensure they comply with the agreements made at the GRH or otherwise, to minimise intervention by the judge or RI (where present). The judge shall stop the questioning of a vulnerable defendant where there is persistent breach of the ground rules.
- B6.12 Judges also have safeguarding responsibilities. They should be alert to vulnerabilities that may not have been previously identified and ask for relevant information to be obtained and provided<sup>49</sup> where they feel this is necessary.

### Directions to the Jury

- B6.13 Where evidence has been given in accordance with a special measures direction, the judge must give the jury (if there is one) such warning as the judge considers necessary to ensure that the fact that the direction was given does not prejudice the accused.<sup>50</sup>
- B6.14 Where an RI is appointed, the jury does not see their report and the RI should not be asked to summarise their findings for the jury. Some of the difficulties outlined in the report in fact may not arise. The report may deal with matters concerning the defendant which are not the jury's concern, and there is a risk that the report could prompt the jury to question parts of the defendant's evidence based on the RI's assessment findings and report recommendations (e.g. 'The report says that the defendant might have difficulty with closed questions. The defendant gave a key answer to a closed question – does it mean the answer to that question is unreliable?').
- B6.15 Questions of competency must be decided before a defendant is sworn or starts to give evidence and ideally prior to the start of the trial.<sup>51</sup> However, issues of competency may only become apparent after the defendant has begun to give evidence or during cross-examination. If the court rules the witness incompetent at any stage, the judge should direct the jury accordingly.<sup>52</sup>
- B6.16 While it is normally incumbent on a legal representative for the prosecution to put the prosecution case to a defendant who gives evidence so that the defendant will have the opportunity to comment upon it, where the defendant is vulnerable the judge may dispense with this normal requirement, and impose restrictions on the prosecution 'putting their case' where the judge considers that there is a risk of the witness failing to understand, becoming distressed or acquiescing to leading questions. In such

<sup>49</sup> [The Equal Treatment Bench Book 2024, Chapter 2, paragraphs 29-33.](#)

<sup>50</sup> Article 20 of the 1999 Order.

<sup>51</sup> In the case of a prosecution witness, it was held in the case of *R v Yacoob* (1981) 72 Cr. App. R. 313 that the question should be raised and decided at the beginning of the trial.

<sup>52</sup> See case of *R v Whitehead* (1866) L.R. 1 C.C.R. 33.

circumstances, the judge has a duty to explain to the jury the directions, limitations or adaptations that have been placed on the prosecution and the reasons for them.

- B6.17 If, however, the legal representative fails to comply with the directions, limitations or adaptations, the judge should give relevant directions to the jury when that occurs. Furthermore, instead of the legal representative questioning the vulnerable defendant on inconsistencies in their evidence it may be more appropriate for the trial judge, following discussion with the legal representatives, to point out important inconsistencies to the jury after the witness's evidence. The judge should also remind the jury of the inconsistencies during the judge's summing up. The judge should be alert to alleged inconsistencies that are not in fact inconsistent, or are trivial.
- B6.18 Where the court is called upon to exercise its discretion in relation to any procedural matter falling within the scope of this Practice Direction or associated protocols but not the subject of specific reference, such discretion should be exercised having regard to the over-riding principles in Section B2 of this protocol.

**URGENT - LETTER BY E-MAIL**

*(e-mail addresses set out below)*

[Date]

Dear Sir/Madam

**NB -Please bring the contents of this letter to the immediate attention of the defence solicitors and counsel instructed in this case (PPS for information only) - see list below.**

**Re: - ICOS: \_\_\_\_\_ R v \_\_\_\_\_**

**Arraignment:** *[insert date]*

**Case Overview:** to be submitted to this Office by noon on *[insert date]*.

Please take notice that going forward the above case will now be case managed by the Senior Criminal Judge. Consequently, the case is now listed for arraignment and a case management review hearing on *[insert date]* in Laganside. A listing notice may have already been sent out by the Crown Office.

The Judge requires an overview of the case outlining the proposals for its efficient and timely progress to trial (*if your client does not plead guilty at arraignment*). The case overview *\*(in the template attached)* **must** be lodged with this office by email no later than noon on *[insert date]*.

Please note that your client(s) must be arraigned on *[insert date]*. If your client is in custody, arrangements will be made for his/her production on the day. If your client is on bail, you should ensure his/her attendance on the day.

If any of your contact details below are incorrect – please inform this Office immediately.

If you have any queries, please do not hesitate to contact this office on the telephone number below or through our email [CaseManagementRCJ@courtsni.gov.uk](mailto:CaseManagementRCJ@courtsni.gov.uk) .

Thank you.

**\*To note - this email requires immediate acknowledgment on receipt.**

**cc: E-mail address list**

All parties postal and email addresses.

Solicitor/s address/e-mail address

**PUBLIC PROSECUTION SERVICE**

Headquarters Sections and Belfast Region  
Belfast Chambers,

93 Chichester Street,

Belfast,

BT1 3JR

E: [crowncourttaganside@ppsni.gov.uk](mailto:crowncourttaganside@ppsni.gov.uk)

T: 028 90542444

\* See Case Overview template below



*Notes on completion – this form should be submitted by counsel, and this template should be used as a guide. The case overview should have paragraphs which are numbered, and if a section is not relevant, then that section can be deleted from the overview which is submitted to the court.*

**Rex v**

ICOS No.

**CASE OVERVIEW - (Client's Name)**

The court requires an overview of the case to assist with the timely process of the case to trial.

The defence provide the overview below for the assistance of the court.

**CHARGE(S)**

The accused faces [insert number] count(s) of \_\_\_\_\_. Particulars of the offence(s) allege that \_\_\_\_\_

\_\_\_\_\_

**BACKGROUND**

Summary of the circumstances of defendant, age/occupation/place of residence, and any other relevant information regarding the personal circumstances of defendant.

The defendant is on bail/in custody. The defendant has been in custody since [insert date].

Summary of the circumstances of any victim or victims, age/occupation/place of residence.

Details about the locus of the incident.

Details of who the main witnesses are in the case – civilian, medical, police, family etc.

What do the witnesses in the case say in their statement about the offence, the defendant, the victim?

What do the witnesses say about the locus of the incident?

The defence suggest that the evidence of the following witnesses can be agreed, and their attendance at trial is not necessary – \_\_\_\_\_

### **OUTSTANDING MATERIALS**

When was defence statement submitted?

What materials remain outstanding – CCTV, photographs, maps, medicals?

### **MEDICAL EVIDENCE**

What medical evidence is on the papers? Who does it relate to?

The medical evidence on the papers relating to the defendant says the following  
\_\_\_\_\_

The medical evidence on the papers relating to the victim(s) says the following  
\_\_\_\_\_

Do the defence agree the medicals in the case?

Do the defence propose to call their own medical evidence? Has this been commissioned, what is the timescale? Is authority required and has it been sought from the Legal Services Agency to instruct this witness?

### **FORENSIC/SCIENTIFIC EVIDENCE**

There are a number of forensic reports relating to – fingerprints/DNA etc. The most substantive forensic report is from Dr *[insert name]* and is at page *[insert number]* of the papers. This report refers to \_\_\_\_\_

Do the defence wish to retain their own expert on forensic or scientific issues? Has this been commissioned? What is the timescale? Is authority required and has it been sought from the Legal Services Agency to instruct this witness?

**ANY OTHER EXPERT REPORTS**

There are further expert reports to be commissioned – these will be from experts in the following fields \_\_\_\_\_

Has this report been commissioned? What is the timescale?

Is authority required and has it been sought from the Legal Services Agency to instruct this witness?

**DISCLOSURE**

Set out the current position regarding disclosure.

**BAD CHARACTER/HEARSAY**

Are there to be bad character/ hearsay applications to be made in the case?

What do they relate to?

Any further information relating to bad character/hearsay applications?

**SPECIAL MEASURES**

Have the PPS indicated they wish to apply for special measures in this case?

Are these applications objected to?

**THIRD PARTY**

Set out any third party disclosure applications which may be necessary (e.g. medical notes of the accused/deceased)

**VENUE**

Set out any issues in relation to trial venue.

**INTERPRETERS**

Clarify whether interpreters are required.

**ANY FURTHER ISSUES**

Set out any further issues which the court may need to know.

Date

**\*Name of Counsel -**

- **Senior (including contact telephone number and e-mail address)**
- **Junior (including contact telephone number and e-mail address)**

**\*not to include non-secure e-mail addresses (e.g Hotmail etc)**

**\*Please also provide contact details below of solicitor's office and contact telephone number and e-mail address.**

- **Solicitor (including contact telephone number and e-mail address)**

**\*not to include non-secure e-mail addresses (e.g Hotmail etc)**

# **Disclosure Management Document**

This Disclosure Management Document sets out the approach of the prosecution to relevant non-sensitive material in this case. Unless otherwise indicated, all the material on the non-sensitive schedule has been inspected by the disclosure officer.

R v XXXXXX (Cxxxxxxxx)

Prosecutor:

Disclosure officer:

Prosecution counsel instructed:

### 1. Reasonable lines of enquiry

The rationale for the identification and scheduling of relevant material is based upon the reasonable lines of enquiry that were conducted within this investigation. The disclosure officer's understanding of the defence case is as follows:

*[What explanation has been offered by the accused, whether in formal interview, defence statement or otherwise. How has this been followed up? This should be set out.]*

*[What are the identified/likely issues in the case eg identification, alibi, factual dispute, no intention etc]*

*[Insert summary of reasonable lines of enquiry pursued, particularly those that point away from the suspect, or which may assist the defence]*

*The time frame selected is considered to be a reasonable line of enquiry, and represents [e.g. the date that the victim first met the suspect to a month after the suspect's arrest]*

Lines of enquiry completed to date:

**DEFENDANT ACCOUNT**

**WITNESS ACCOUNT**

**CCTV ENQUIRIES**

**FORENSIC EXAMINATION**

**HOUSE TO HOUSE ENQUIRIES**

**PHONE EXAMINATION**

**VEHICLE ENQUIRIES**

## 2. Electronic material

*This section should cover the following issues.*

*What mobile telephones/communication devices/computers were seized during the investigation (from all suspects, complainants, witnesses).*

*Identify the items with reference to the non-sensitive disclosure schedule – i.e. telephone, download*

*Have the devices been downloaded? If not, why not. If so, what type of download?*

*Set out the method of examination of each download – were key words deployed, was the entire download inspected, were date parameters employed?*

*What social media accounts of suspect/complaint/witness have been considered a reasonable line of enquiry.*

*Were any phones from the complainant or suspect not seized? If not, why not?*

*Set out the method by which the defence will be given disclosure of material that satisfies the disclosure test explaining, if relevant, why the whole item is not being provided.*

*What CCTV/multi-media evidence has been seized and how it has been examined?*

Exhibit ref	Description	Enquiry undertaken	Result

### 3. Third Party Material

The prosecution believe that the following third parties have relevant material that might satisfy the disclosure test if it were in the possession of the prosecution (e.g. Medical and dental records, Records held by other agencies, Records/material held by Social Services or local authority):

C&C/Exhibit No.	Description (Include who the material refers to and what organisation provided the material)	Has this material been requested?	Parameters and Rationale	Material Received and Reviewed?	Contents of material

Signed:

Dated:



## Defence Disclosure Response Document

This Defence Disclosure Response Document ("DDRD") is submitted in accordance with procedural requirements, as per Practice Direction No. 2 of 2019, (Revised December 2025), following service of the Disclosure Management Document ("DMD"). The contents are provided to assist the disclosure officer and investigators in identifying reasonable lines of enquiry and in their assessment of disclosure obligations and to assist the disclosure judge in determining the scope and relevance of disclosure and third party material under the disclosure regime.

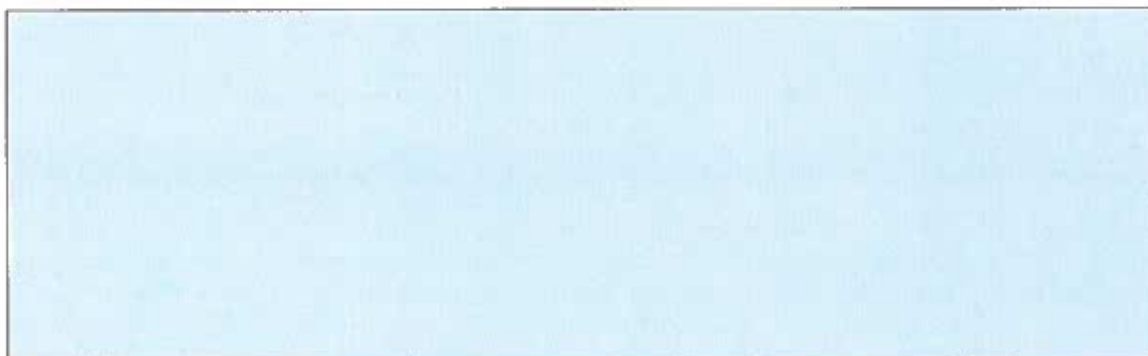
In line with Practice Direction No. 2 of 2019, (Revised December 2025), the defence respectfully asserts that the contents of this DDRD be treated as **confidential and non-evidential**, and that no part of this document is placed before the jury or used in any manner that might prejudice the fairness of the trial. The material herein should not be interpreted as admissions or assertions of fact for trial purposes.

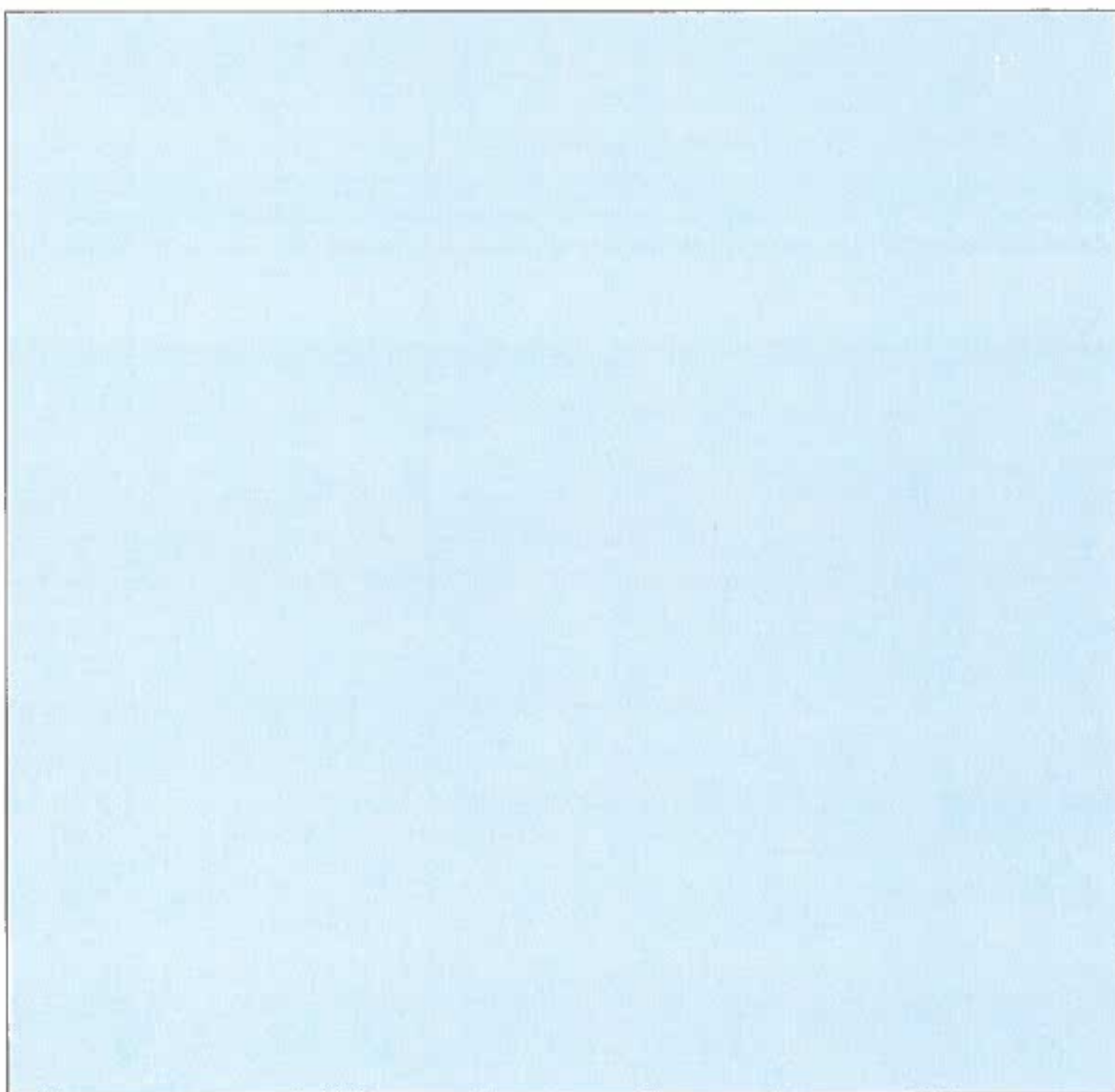
**This form should be lodged with the court at the same time as the initial third party disclosure application and served on the PPS. This document should accompany the application when it is referred to the judge for determination.**

### 1. The defence factual submission

The disclosure officer has identified reasonable lines of enquiry, as set out in the DMD, based on their understanding of the prosecution and defence cases.

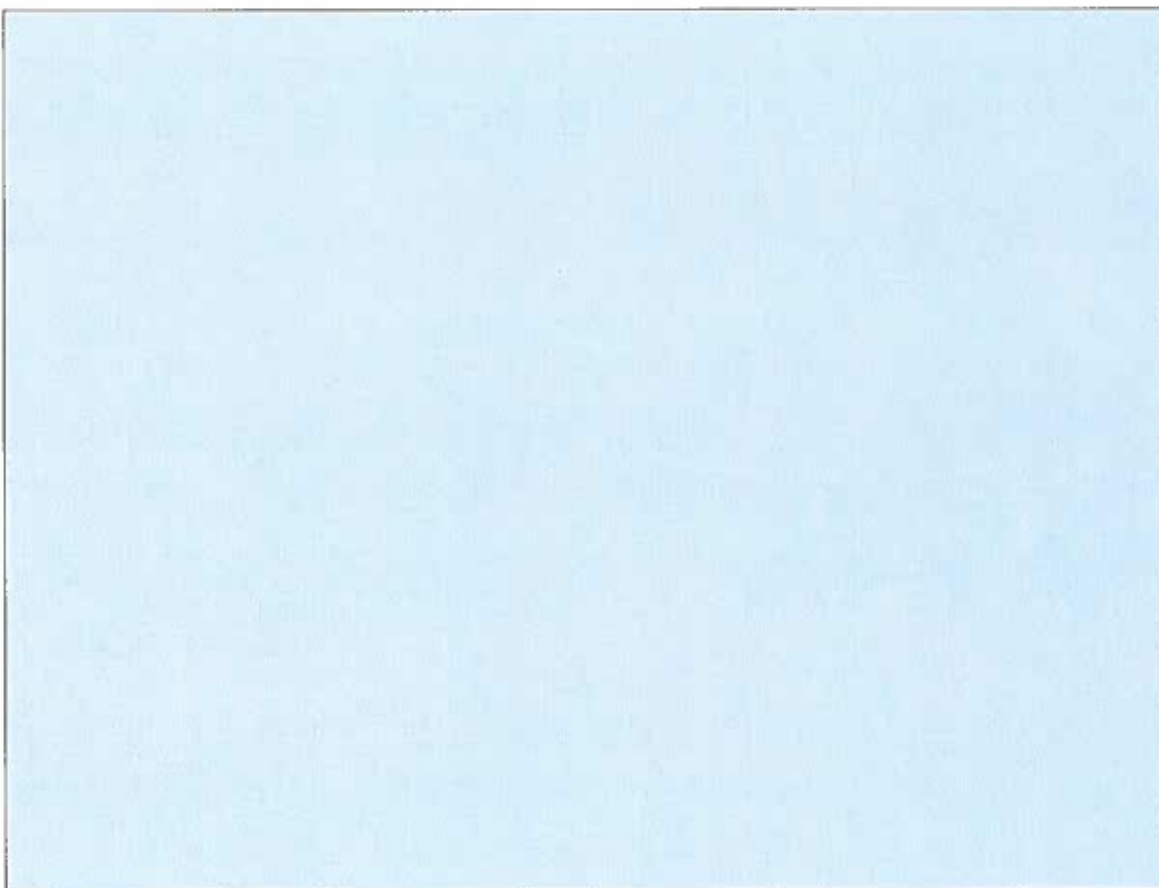
If the defence contend that there are additional factual issues that have not been identified by the disclosure officer and that would assist the disclosure officer or investigators in the identification of reasonable lines of enquiry or the disclosure judge in the identification of material of relevance when considering any third party material, these should be set out below:





## **2. The defence submission in relation to third party disclosure**

When considering third party material, and other than the types of material set out in *Hume* [2005] NICC 30, the defence wish to draw to the attention of the disclosure judge the following issues that the defence say might be contained within the third party material and would meet the test for disclosure:



**The defence have a critical role in ensuring that the prosecution and court are directed to material that meets the disclosure test.**

Signed:

Dated:

ICOS NO.

IN THE CROWN COURT IN NORTHERN IRELAND

IN THE MATTER OF THE JUDICATURE (NORTHERN IRELAND) ACT 1978,  
SECTION 51A and SECTION 51B

THIRD PARTY DISCLOSURE APPLICATION

THE KING

-v-

(NAME OF DEFENDANT APPLYING FOR THE ORDER)

Notice of application for a witness summons, requiring a person to produce a document to the Crown Court at a place and time to be specified in the summons

This application is made under section 51A and 51B of the Judicature (Northern Ireland) Act 1978 and Part X of the Crown Court Rules (Northern Ireland) 1979.

**DETAILS OF RELEVANT COURTHOUSE:**

*[insert name and address of court]*

TAKE NOTICE that an application will be made on behalf of the defendant at a date and time to be fixed by the chief clerk of the relevant courthouse, no earlier than [BOX 1 - insert date 14 calendar days from the date entered in BOX 2 (see end of document)].

THE DOCUMENTS SOUGHT

TAKE NOTICE that the application is for an order that

*[insert the name, address and title of the third party]*

Produce to the Crown Court at the relevant courthouse, all documents specified below, namely:

Documents in his/her/its or its servants or agent's possession, custody, power and control relating to:

*[insert name and date of birth of the complainant]*

and an alleged *[insert charges as per Bill of indictment]* of him/her by the defendant, on the *[insert alleged dates of offences as per Bill of indictment]*

The documents sought are:

*[Specify as precisely as possible the type, nature and date range of documents sought.]*

*In cases where it might be difficult for the third party to identify the documents that are relevant, for example, where documents are required to enable an expert to prepare a report, an affidavit should be filed by the solicitor or the expert, setting out how the information sought is believed to be material to the issues in the trial.]*

OR

I certify that it is not possible to specify the type, nature and date range of the documents that might be relevant to this application and that it is necessary to seek an order for production of all files, notes, reports, records, statements, minutes, memoranda, communications, correspondence and all other documentation howsoever described, and the reasons why such an order is sought are as follows:

*[insert reasons]*

(Note that failing to appropriately confine the application by specifying the documents sought may be grounds upon which the application will be refused.)

#### **THE REASONS WHY THE DOCUMENTS ARE SOUGHT**

1. The documents are sought because it is believed that they are likely to contain material evidence for the purpose of the criminal proceedings before the Crown Court (which means evidence that might assist the defence by weakening the prosecution case or making the defence case more credible) and that it is in the interest of justice that the court issue the summons to secure their production.
2. *[insert reasons]*  
*[In a case alleging violence or a sexual offence, the following draft might be appropriate, but in other classes of case, a tailored response must be provided.]*

(These documents are thought likely, because of their nature, to contain one or more of the following types of evidence. These are types of evidence that courts have in the past held to be relevant material evidence. This list is not specific to this case.

Any account by the complainant of matters directly related to the allegations which are the subject matter of the prosecution, or recording any injury following therefrom; any evidence of false accusations of any significance (not restricted to a sexual connotation) having been made against any person by

the complainant, that any significant criminal conviction has been recorded against the complainant; any record which demonstrates the attitude of the complainant to the defendant; any record which might reveal a medical condition affecting the reliability of the complainant or contain information relevant to the complaints; any inconsistency in the accounts given by the complainant of the alleged offences or the circumstances relating to them. In the case of a child complainant, and where the offence alleged is a sexual one, any evidence that the complainant was engaged in sexual activity with an adult who is not the defendant.)

3. The defendant believes that the directed person will not voluntarily attend as a witness to produce the documents because:

*[insert reasons]*

*[In a case alleging violence or sexual offence, the following draft might be appropriate, but in other classes of case, a tailored response must be provided.]*

(The defendant accepts that a duty of confidentiality would ordinarily exist in relation to these documents such that it would be inappropriate to ask the document holder to produce the documents voluntarily without a court order ensuring that the court performed an appropriate assessment of the complainant's article 8 rights and balanced the rights of the complainant and document holder to privacy, with the interest of the defendant in having a fair trial, and only disclosed such materials as the court viewed necessary to ensure a fair trial.)

### **WHEN THE DOCUMENTS ARE TO BE PRODUCED**

**TAKE NOTICE** that the defendant seeks advance production of the documentation to the Crown Court under section 51B of the Judicature (Northern Ireland) Act 1978.

This means that, at the hearing of this application, the court will specify a date by which the documents must be produced to the relevant courthouse. Normally this will be within 2 weeks of the granting of the application, but the time frame may be considerably shorter if the trial is imminent, or at hearing.

### **RIGHTS OF THE PERSON RECEIVING THIS APPLICATION**

**TAKE NOTICE** that you have a right to make representations about this application. This can be done in writing and/or by attending a hearing, after which the court will consider whether or not to grant this third party disclosure application.

If you want to make written representations or to attend a hearing then you must inform the chief clerk of the relevant courthouse, specified at the top of this application, of that fact, in writing, **within 7 calendar days of the receipt of this application.**

This application is supported by an affidavit of the defendant's solicitor *[insert name]*, a copy of which is served herewith.

Dated: [BOX 2 – *insert date application served on the chief clerk*]

Signed:

To:

The Chief Clerk, *[insert]* Courthouse, *[insert address]*

To: (Name and address of third party)

A copy of this application must be served on the PPS where the nature of the application is such that it relates to personal information pertaining to a complainant or otherwise engages the complainant's rights.

ICOS NO.

IN THE CROWN COURT IN NORTHERN IRELAND

IN THE MATTER OF THE JUDICATURE (NORTHERN IRELAND) ACT 1978,  
SECTION 51A and SECTION 51B

**THIRD PARTY DISCLOSURE APPLICATION**

**CERTIFICATE OF SERVICE**

THE KING

-v-

(NAME OF DEFENDANT APPLYING FOR THE ORDER)

Certificate of compliance with notification requirements.

I [*insert name of defendant's solicitor*] certify that I served a copy of this application on:

**PART A**

A [ ] The Third Party on the      day of

**PART B**

AND EITHER

B1 [ ] The application relates to personal information pertaining to a complainant or otherwise engages the complainant's rights and, to allow the complainant to be notified of the application, it was served on the PPS, on the      day of

OR

B2 [ ] The nature of the application is such that the document or thing would not be held in confidence.

*(For example material that was in the public domain or where the application relates to the defendant's own financial information.)*



OR

B3 ☐ The nature of the application is such that it is held in confidence in relation to a person other than the complainant.

*(To allow the court to make bespoke directions to ensure that the rights of that person are protected.)*

Dated            day of

**Note that unless this completed certificate (with the box in Part A ticked and one of the boxes in Part B ticked) is served on the chief clerk, the Third Party Disclosure Application will not be accepted by the court office.**

Dr [ *Insert name*]  
[*Insert name and address of GP Surgery*]

[*Date*]

Dear Doctor [*Insert name*],

RE: R v [*Insert name of defendant*],  
[*Insert name and address of the court office*]

We act for the abovenamed person who is due to stand trial, on a date to be fixed, at [*insert name of court office*] Crown Court in relation to allegations of [*insert offences*] on [*insert dates of offences*].

The complainant in the case is [*insert name*], Date of Birth [*insert DOB*], and we have been advised by the Public Prosecution Service of Northern Ireland that you hold his/her General Practitioner notes and records.

As part of the preparation of our client's defence, we intend to ask the court to issue a witness summons to compel you to produce certain documents to the court in advance of the trial (this is commonly referred to as a third party disclosure application).

The Crown Court Rules require that we provide you with two documents – a copy of the application for a witness summons that we have filed with the court and a copy of the affidavit that has been sworn by a solicitor in this firm and which supports that application. These two documents are enclosed along with this letter, and you should read them both, as they contain important information about the application that we are making and what any court order might compel you to do.

The application will be determined by a Crown Court Judge at [*insert name of Crown Court*] Crown Court sitting at [*insert name of court office*]. No documents should be disclosed until such times as an order issues from the court.

Please note that you are not obliged to make representations or to attend court. If you do not, then the court might make an order compelling you to produce the documents that we seek to the court without any further reference to you.

However, you have a right to make representations in writing or at a hearing. Where the representations have been made in writing, or where a hearing is not requested, the judge may determine the application with or without a hearing. If you wish to make representations about this application for any reason (for example objecting to such an order being made, denying that you hold the records, or arguing that the application does not enable you to identify the records sought with precision), then you must write to the chief clerk, at the address provided at the bottom of this

letter, within 7 calendar days of receiving this letter, either informing the chief clerk that you intend to appear at a hearing, or that you intend to make written representations.

If you inform the chief clerk that you wish to make representations at a hearing, then a hearing date will be arranged and you will be notified of it.

For your convenience, if contacting the chief clerk, please quote the ICOS number *[insert number]*.

It is important to note that, if the court ultimately does make an order requiring you to produce documents to the court, then ANY documents that you may be required to produce should be provided in a SEALED ENVELOPE and marked for the attention of 'The Disclosure Judge', at *[insert name of court office]* with the ICOS number also marked on the envelope.

DO NOT SERVE ANY DOCUMENTS DIRECTLY ON OUR OFFICE

We would like to thank you for your assistance.

Yours sincerely

Address to which any correspondence should be addressed;  
The Chief Clerk, *[insert name and address of the court office]*

**PRIVATE & CONFIDENTIAL**

[Insert name]

[Insert address]

PPS ref:

[Date]

Dear [insert Name],

**RE: R -v - [Insert name of defendant]**

We have recently been made aware that the defendant's lawyers have applied to the Court for disclosure of certain material relating to you. This is a common application in this type of case and is made because the defence believe that such information may assist their case.

The defence application relates to material held by the following:

- Social Services
- Your GP [insert name of GP]
- Nexus

[Amend as required]

Please note that the prosecution do not play any role in such an application. However, we are required to inform you of this application so that you, or someone instructed by you, has an opportunity to make representations to the court about whether the application should be granted, or whether any of the material that it relates to should be disclosed.

If the Judge grants the application, the material will first be produced to the Judge for review. It is not provided directly to the defence. The Judge will then review the material and decide whether there is a legal requirement to disclose any of it to the defence. The Judge will only do this if the material is considered capable of undermining the prosecution case or assisting the defence case. When making a decision the Judge will also consider your rights, for example, your rights to a private and family life.

Only that part of the material that the Judge decides meets the test for disclosure will be provided to the defence. A copy of any disclosure ordered is also provided to the prosecution.

You are entitled to have your views taken into account by the Judge before they decide whether to obtain and review the material. Should you wish to make

representations you must inform the chief clerk at *[insert details of relevant courthouse]* by email or by post and quote your ICOS number: *[insert number]*. The email address is *[insert email address of court office]*.

**Please note that the Judge will make the decision on or after *[insert date from BOX 1 of application]* unless you have contacted the court before then to say that you want to make representations.**

If you have not contacted the court by this date, then the decision may be made by the Judge on the papers without a hearing taking place. However, if you notify the court that you want to make representations then the Judge will decide whether a hearing is required. The Judge may make a decision on the papers but any representations you have made will be taken into account. If the Judge decides that a hearing is required, then a date will be arranged for this. You will be informed of the date so that you, or someone on your behalf, can attend in person to make representations.

If you contact the court after *[insert date from BOX 1 of application]*, the decision may already have been made.

*[\*Delete next paragraph if not applicable]*

The PPS are unable to provide you with legal advice in respect of this application and how you might wish to proceed. However, the Department of Justice provides a free service called the Sexual Offence Legal Advisors (SOLA) who can provide you with independent legal advice about this matter. The SOLA service can be contacted at [sola@victimsupportni.org.uk](mailto:sola@victimsupportni.org.uk).

Yours sincerely,

*[Insert Name]*

*[Insert Title]*

PPS

Serious Crime Unit

ICOS NO.

IN THE CROWN COURT IN NORTHERN IRELAND

\_\_\_\_\_  
IN THE MATTER OF THE JUDICATURE (NORTHERN IRELAND) ACT 1978,  
SECTION 51A and SECTION 51B

**THIRD PARTY DISCLOSURE APPLICATION**

**CERTIFICATE OF URGENCY**

\_\_\_\_\_  
**THE KING**

**-v-**

**(NAME OF DEFENDANT APPLYING FOR THE ORDER)**

I [*insert name of defendant's solicitor/counsel*] certify that the attached Third Party Disclosure Application is being moved [within 14 days of trial, in a case that is at trial] (*delete as appropriate*)

I request that the application is placed before the trial judge for direction as a matter of urgency.

Dated       day of