



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

Practice Direction No. 2/2019

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12th November 2019**

Introduction

This Practice Direction has been approved by the Crown Court Liaison Committee (CCLC) under the Chair of Mr Justice Colton. It does not change, but rather builds upon, the practice introduced in the Crown Court since 2011.

The original case management practice direction No.5/2011 has been updated 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.

Two separate protocols have been developed to 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 NSPCC Witness Service / Young Witness Service in preparation for, and during, their evidence in court.
- A similar protocol specifically for vulnerable defendants at [Annex B](#) details support and special measures available for defendants and builds upon Practice Direction No.2/2011 which was previously limited to children and young persons.

For ease of reference the updated case management practice direction and protocols have been joined and issued as Practice Direction No.2/2019 and previous versions revoked. 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

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

This Practice Direction revokes and replaces Practice Direction No.2/2011 (Trial of Children and Young Persons in the Crown Court) and Practice Direction 5/2011 (Protocol for Case Management in the Crown Court).

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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
 - (iv) 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 trial¹**, 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.

¹ In accordance with the Crown Court (Advance Notice of Expert Evidence) Rules (Northern Ireland) 1989

- 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 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 2015²: 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’ (“the Pilot”).

3 COMMITTAL³ AND ARRAIGNMENT

- 3.1 **Before the committal** the prosecution must obtain sufficient copies of the following items where they are to be relied upon as exhibits:-
- (a) all CCTV 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.

² <https://judiciaryni.uk/sites/judiciary-ni.gov.uk/files/decisions/Practice%20Direction%202002-2015%20%20Target%20times%20for%20cases%20in%20the%20Crown%20Court.pdf>

³ See paragraph 2.6

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

Before the date fixed for arraignment

3.5 The defence representative must consider what expert witnesses may be required, and **no later than ten 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 **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 ten 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 client 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 plead or quashing the 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 five 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 expired⁴, 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 Office of the Lord Chief Justice 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 five working days before the date fixed for the arraignment**.

⁴ Where prosecution disclosure is made at committal, the relevant time-limit expires after 21 days.

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 statement;
- (b) the defendant's criminal record (if not already produced);
- (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 five 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 (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.

5.2 Where the case falls within the scope of the '**Protocol to expedite serious sexual offence cases involving witnesses under 13 years in Belfast**' the judge will manage the case within the Pilot.

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 also notify (within 3 days⁵) the Witness Service or Young Witness Service that their support on those dates will be required. 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 five 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 five 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).
- 5.8 Confirmation of attendance at court will be on the basis of receipt of a pro-forma reply or direct contact with the witness from civilian prosecution witnesses, or in the case of defence witnesses, direct contact with the witness to confirm their attendance.

⁵ YWS require 4-5 weeks notice of required attendance

- 5.9 The judge will normally list the case for a **review hearing** within **2 weeks after the arraignment** where the standby and trial dates will be confirmed or varied in light of the PPS and defence information about witness availability.
- 5.10 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.
- 5.11 **Where a case falls within the Pilot⁶, 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:

- 5.12 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.
- 5.13 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.
- 5.14 The judge will determine which issues require resolution, and get indicative timescales from the representatives when the issues are likely to be resolved.
- 5.15 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")⁷, Witness Service⁸, Young Witness Service⁹ or

⁶ See paragraph 2.6

⁷ 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.

⁸ Victim Support NI Witness Service provide support and assistance for adult witnesses for the prosecution only

⁹ NSPCC Young Witness Service provide support and assistance for children and young people under 18-years-old who are witnesses for the prosecution only

other appropriate lay supporter, and, if possible, the judge will fix the trial, or any standby, dates at that hearing.

- 5.16 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 the next 12 weeks**.
- 5.17 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.
- 5.18 Where a witness does not confirm within five 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 five 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).
- 5.19 Confirmation of attendance at court will be on the basis of receipt of a pro-forma reply or direct contact with civilian prosecution witnesses or, in the case of defence witnesses, direct contact with the witness to confirm their attendance.
- 5.20 Where it becomes apparent that the date may have to be varied, 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.

- 5.21 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 same time 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 five working days of that email, immediately lodge and serve an application** under Section 8 of the Criminal Procedure and Investigations Act 1996. The judge 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); and

- (c) attempting, inciting or conspiring to commit any of the offences listed above.

- 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 Criminal Procedures and Investigations Act 1996.
- 6.6 The details of any relevant third parties identified by police must be provided by the prosecution to the defence when serving initial prosecution disclosure. Where the prosecution have in their possession *material* obtained from third parties they must inform the defence of that further fact (whether by means of a Disclosure Management Document or by letter) 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. This notification to the defence in relation to third party material will also be included in the papers served upon the court for the purpose of committal and will be available to the Crown Court judge at first appearance. The prosecution should inform the defence and the Judge at the first hearing in the Crown Court in writing 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.

Role of the Investigating Officer

- 6.7 In those cases to which this practice direction applies the investigating officer ("the officer") should, at an early point in the investigation, address the issue of third party material with the complainant. For children under 14 years of age the relevant information should be provided to their parents. However, in the case of children who are 14 but not yet 18 years of age the 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.

- 6.8 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 officer should ascertain whether the injured party has made a criminal injury application. [This is not an exhaustive list and the officer should enquire as to whether there are any other third parties who may hold relevant material.]
- 6.9 Where the police are seeking access to third party material held by any of the above persons, the officer should explain why this is so. The officer should also explain the following:
- (i) That the complainant is not required to consent to release of the material but, if they do not and there is a prosecution, the defence may later apply for access to it and the court may order disclosure if necessary;
 - (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) In reaching any disclosure decisions the complainant's privacy rights will be taken into consideration.
- 6.10 The complainant should be invited to sign a form of consent which will explain the purpose for which the material is sought and how it will be handled upon receipt.
- 6.11 Where the police are not seeking access to third party material (either because they do not consider it a reasonable line of enquiry at that time, or because consent is not provided by the complainant) the complainant should be advised that, in the event of a prosecution, the defence may later apply to the court for an order for its release.

6.12 It should be further explained to the complainant that:

- (i) They will be notified 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 at the time that the application to the court is made;
- (ii) 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).
- (iii) The material will be reviewed by the court prior to its release and only such parts of the material that meet that test will be disclosed to the defence.

6.13 The solicitor seeking a third party disclosure order on behalf of a defendant should, in the first instance, write to the third party indicating clearly the category of documents sought and the reasons why disclosure is being sought. They should ask for confirmation that the proposed third party holds such documents. The letter should then 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 third party against whom the order is sought should be informed that they are entitled to appear and object to any disclosure being made.

6.14 The defence should lodge and serve their application:

- (a) in cases where the trial is to be dealt with by a High Court judge no later than **ten working days from arraignment**, and
- (b) in all other cases no later than **ten working days prior to the arraignment**.

In either situation the date of arraignment is included within the ten working days. Where it is not feasible to comply with (b) above, for example in a particularly complex non-High Court case, the Defence solicitor acting upon counsel's instruction should write to the court not later than 10 days prior to the arraignment seeking an extension of up to 10 days from arraignment in which to lodge the Third Party notice. Such an application should set out in detail the basis upon which such extension is sought.

- 6.16 Third parties should be informed of the time and date of the third party application by the applicant. The applicant should send a copy of the notice and supporting affidavit to the PPS. The PPS will take steps to ensure that the complainant is notified of the application and to advise them of their entitlement to make representations.
- 6.17 Third party disclosure applications shall be heard at the arraignment or as soon thereafter as the court directs.
- 6.18 The order, if made, will then issue with a court return date, which will be at least seven clear working days after the making of the third party disclosure order.
- 6.19 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 third 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.
- 6.20 Any material disclosed by the Court to the defence following review of third party material will be copied to the PPS.

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 section 3.9 and section 5, a judge will, where necessary, arrange a review hearing within 2 weeks after the arraignment or a CMH within 4 weeks after 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 ensure that the case proceeds to trial as expeditiously and efficiently as possible consistent with the trial being a fair one to 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 and PROTOCOLS

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,

come into effect on 12th November 2019 and from that date the following Practice Directions are revoked:

No.2 of 2011 (Trial of Children and Young Persons in the Crown Court), and

No.5 of 2011 (Protocol for Case Management in the Crown Court).



The Right Honourable Sir Declan Morgan
Lord Chief Justice

Date: 12th November 2019

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”), as amended by the Justice Act (Northern Ireland) 2011 (“the 2011 Act”), 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 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 Order¹⁰; 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, (as

¹⁰ Including Article 5 (4) Where the **complainant in respect of a sexual offence or a slavery or human trafficking offence** is a witness in proceedings relating to that offence (or to that offence and any other offences), the witness is eligible for assistance in relation to those proceedings by virtue of this paragraph unless the witness has informed the court of the witness's wish not to be so eligible by virtue of this paragraph.

amended by the 2011 Act), may require assistance when giving evidence in criminal proceedings.

- A2.2 Courts should note the ‘primary rule’¹¹ 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 Intermediary¹² (“RI”), or other supporter approved by 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.

¹¹ Article 9(3), (4) and (4A) of the Criminal Evidence (Northern Ireland) Order 1999

¹² 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.

- A3.3 Where a **special measures** direction pursuant to the 1999 Order as amended by the 2011 Act 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 response¹³). Where this is not possible, the special measures application should be dealt with, at the latest, at the CMH in accordance with Paragraph 5.14 of the Practice Direction, and section A4 of this protocol.
- A3.4 An **assessment of a vulnerable witness**¹⁴ **by a 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 (in the case of a defendant). 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 trial¹⁵. Where the complainant or prosecution witness is, or may be, vulnerable, and a RI is to be involved, the investigating officer should explain the role of the RI, obtain consent for the RI to make any necessary 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’ 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.

¹³ The Crown Court Rules (Northern Ireland) 1979 (as amended), Rules 44B-CE

¹⁴ In relation to a witness other than the defendant, see Article 17 of the Criminal Evidence (Northern Ireland) Order 1999; in relation to a defendant, see Article 21BA of the Criminal Evidence (Northern Ireland) Order 1999.

¹⁵ See R v Boxer [2015] EWCA Crim 1684

- A3.6 A 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** after 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 Service¹⁶, Young Witness Service¹⁷ 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:

- a 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 engaged;
- the Witness Service, or Young Witness Service, have been notified of the trial date, where applicable;
- 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 witness;
- any outstanding disclosure/Public Interest Immunity ("PII") issues have been determined;

¹⁶ Victim Support NI Witness Service provide support and assistance for adult witnesses for the prosecution only

¹⁷ NSPCC Young Witness Service provide support and assistance for children and young people under 18-years-old who are witnesses for the prosecution only

- 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, Young Witness Service, or other appropriate lay supporter.

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, Young Witness Service volunteer has been engaged);
- the availability of those courtrooms which have the necessary DVD, other evidence display format and/or live-link equipment (if required); 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 DVD, other evidence display format and/or live-link equipment, 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' 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 hearing¹⁸.**

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 a 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' needs. All legal representatives in the case should ensure they

¹⁸ 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 witnesses¹⁹ prior to the GRH taking place.

A5.3 Where a 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' 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 a RI is involved, the ground rules may include, but are not limited to:

- adaptation of questions to the vulnerable witness' 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 3rd party disclosure; or
- discussing how the defence case is to be put to a vulnerable witness.

¹⁹ 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>

(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 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' 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' 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' 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 (RI's) role during trial - Once the vulnerable witness' 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. 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.²⁰ 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' 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.

²⁰ The Equal Treatment Bench Book 2018, [Chapter 2](#), section 2-8, paragraph 124

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 a 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 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/Young Witness Service. 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 directions²¹.

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. ^{22,23}

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' 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' body being shown around the court while the witness is giving evidence.

²¹ The Equal Treatment Bench Book 2018, [Chapter 2](#), Overview - Intermediaries 2-2

²² 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

²³ Article 13 of the Criminal Evidence (Northern Ireland) Order 1999

A6.11 Judges also have safeguarding responsibilities²⁴. 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 accused²⁵. 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 a 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 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 trial²⁶. 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' evidence.²⁷

²⁴ The Equal Treatment Bench Book 2018, [Chapter 2](#), and paragraph 2.2 of this protocol

²⁵ The Criminal Evidence (Northern Ireland) Order 1999, Article 20

²⁶ 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.

²⁷ See case of *R v Whitehead* (1865 - 72) L.R. 1 C.C.R. 33.

- 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' 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.

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”) as amended by the Justice Act (Northern Ireland) 2011 (“the 2011 Act”); 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**²⁸.

²⁸ Part 2A of the Criminal Evidence (Northern Ireland) Order 1999

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**²⁹ 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,
- 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 disorder³⁰ 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 link³¹, 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**³² 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 disorder³³ or otherwise has a significant impairment of intelligence and social

²⁹ Article 21A of the Criminal Evidence (Northern Ireland) Order 1999

³⁰ Within the meaning of the Mental Health (Northern Ireland) Order 1986

³¹ Article 21A (6) of the Criminal Evidence (Northern Ireland) Order 1999

³² Article 21BA of the Criminal Evidence (Northern Ireland) Order 1999

³³ Within the meaning of the Mental Health (Northern Ireland) Order 1986

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 case³⁴.
- B2.5 Regardless of whether a Registered Intermediary³⁵ ("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 a RI. An assessment of a vulnerable defendant by a RI 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 a RI was not present during police interview does not mean that a RI is not required for trial³⁶. 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 form³⁷.

B3. INDICATION OF VULNERABLE DEFENDANT

- B3.1 Court Offices should promptly bring to the attention of the Case Management Team in the Office of the Lord Chief Justice any serious or complex Crown Court case involving a vulnerable defendant. The Lord 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**

³⁴ 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>

³⁵ 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.

³⁶ See R v Boxer [2015] EWCA Crim 1684

³⁷ As required by the Crown Court Rules (Northern Ireland) 1979 (as amended).

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 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 as amended by the 2011 Act 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 response³⁸. 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 5.15 of the Practice Direction, and section B4 of this protocol.
- B3.6 An assessment of a vulnerable defendant³⁹ by a RI should be undertaken in all cases where it appears that paragraph B2.3.2 applies and would mean that they would be unable to participate effectively in proceedings as a witness giving oral evidence. The fact that a RI was not present during the police interview does not mean that a RI is not required for trial⁴⁰. The defence should make arrangements for the assessment to take place at a suitable location and time.

³⁸ The Crown Court Rules (Northern Ireland) 1979 (as amended), Rules 44S-W

³⁹ See Article 21BA of the Criminal Evidence (Northern Ireland) Order 1999.

⁴⁰ See R v Boxer [2015] EWCA Crim 1684

- B3.7 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.
- B3.8 A 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.
- B3.9 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 used⁴¹) 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.
- B3.10 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.
- B3.11 In the case of a young defendant, where reporting restrictions may be appropriate, the court should consider whether to give a direction under

⁴¹ Articles 21A-B of the Criminal Evidence (Northern Ireland) Order 1999

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.

B3.12 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** after 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 Service⁴², Young Witness Service⁴³ 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:

- a 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 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.

⁴² Victim Support NI Witness Service provide support and assistance for adult witnesses for the prosecution only

⁴³ NSPCC Young Witness Service provide support and assistance for children and young people under 18 years old who are witnesses for the prosecution only

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 DVD, other evidence display format and/or live-link equipment (if required; 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 DVD, other evidence display format and/or live-link equipment, 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' 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 hearing⁴⁴.

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 a 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’ 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 witnesses⁴⁵ prior to the GRH taking place.
- B5.3 Where a 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’ 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,

⁴⁴ The Gillen Review Report into the law and procedures in serious sexual offences in Northern Ireland, Recommendation 129

⁴⁵ 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>

whether or not a 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 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 3rd 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. 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.

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.⁴⁶ 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 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 a 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.

⁴⁶ The Equal Treatment Bench Book 2018, [Chapter 2](#), section 2-8, paragraph 124

- 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 a 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 B3.11 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 provided⁴⁷ where they feel this is necessary.

⁴⁷ The Equal Treatment Bench Book 2018, [Chapter 2](#), 'Children and vulnerable adults'.

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 accused⁴⁸.
- B6.14 Where a 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 trial⁴⁹. 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.⁵⁰
- 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 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.

⁴⁸ The Criminal Evidence (Northern Ireland) Order 1999, Article 20

⁴⁹ 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.

⁵⁰ See case of *R v Whitehead* (1866) L.R. 1 C.C.R. 33.

- 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' 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.



**CASE MANAGEMENT TEAM
SENIOR CRIMINAL JUDGE OFFICE OF THE
LORD CHIEF JUSTICE
ROYAL COURTS OF JUSTICE
CHICHESTER STREET,
BELFAST BT1 3JF**

URGENT - LETTER BY E-MAIL
(e-mail addresses set out below)

20xx

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: Friday xx xxx 20xx

Case Overview: to be submitted to this Office by noon on **Wednesday 2019**

Please take notice that going forward the above case will now be case managed by Mr Justice Colton, the Senior Criminal Judge. Consequently, the case is now listed for arraignment and a case management review hearing on **Friday xx xxx 20xx 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 **Wednesday xx xxx 20xx**.

Please note that your client(s) must be arraigned on **Friday xx xxx 20xx**. As your client is in custody, arrangements will be made for his production 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.

Yours faithfully

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

CC: E-mail address list

All parties postal and email addresses.

DEFENDANT AND SOLICITOR NAME

Address
Telephone
Email

PUBLIC PROSECUTION SERVICE

Headquarters Sections and Belfast Region
Belfast Chambers,
93 Chichester Street,
Belfast,
BT1 3JR

E: crowncourtlaganside@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.

Regina v

ICOS No.

CASE OVERVIEW – (Insert defendant'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 X 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 (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 X and is at page X 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)**