



LIVE LINKS PROTOCOLS

Parties to the agreement

- Crown Prosecution Service
- Her Majesty's Courts Service
- Association of Chief Police Officers
- Joint CPS/police Witness Care Units
- Victim Support's Witness Service
- NSPCC
- Safeguarding Children's Boards
- Area Adult Protection Committees
- Judiciary
- Law Society
- Criminal Bar Association

Background

Witnesses currently able to give evidence by way of live link are vulnerable and intimidated witnesses (under section 24 of the Youth Justice and Criminal Evidence Act 1999) and persons located outside the United Kingdom (section 32 of the Criminal Justice Act 1988). A further provision in the Criminal Justice Act 2003 will allow for any witness, other than the accused, to give evidence through a live link where the court is satisfied that it is in the interests of the efficient or effective administration of justice to permit that (section 51).

The legislative measures have different aims. For vulnerable and intimidated witnesses (VIWs), the live link is a measure which takes the witness out of the court room and helps enable them to give their best evidence by reducing the stress of giving evidence live in court. The other two measures are primarily for the effective administration of justice but can also be used for witnesses who find it particularly difficult to attend court. However, most of the issues covered by these Protocols are common to all types of live link.

These Protocols provide a national framework of guidance for those responsible during the criminal trial process. It sets out the roles and responsibilities for each agency or organisation for the different types of live link. This should be seen as best practice, but it is recognised that there will be local variations for which separate agreements may need to be reached. It is recognised that the responsibilities for the Witness Service, and other witness support agencies, will only be offered if the witness consents to their assistance.

Aims

1. To produce national standards for the use of live link facilities, both between and within courts, and from remote facilities to courts (both magistrates and Crown Courts are covered by these protocols)

2. To outline the roles and responsibilities of the parties to the protocols so that maximum use can be made of live TV link facilities in a safe and efficient manner.

Objectives

1. To ensure applications are made to court for live links in all appropriate cases
2. To ensure, where live links applications are granted, that appropriate arrangements are made so that:
 - the live link facilities are available and operating effectively on the day of the trial
 - confidential and effective communication of witness needs occurs between CJS agencies both pre-trial and on the day of the hearing
 - appropriate pre-trial preparations are made, including support and information for the witness
3. To facilitate local interagency arrangements to achieve these objectives.

Core responsibilities – General

Her Majesty's Courts Service

- Appoint a Witness Liaison Officer (WLO) or other Officer of the Court
- Ensure that all the parties, the Witness Service and the intermediary (if appointed) are provided with copies of directions from the Court through a designated officer (i.e. Court Case Progression Officer)
- Maintain and meet the ongoing cost of live link facilities within the courthouse and guarantee the maintenance and efficient operation of HMCS-owned equipment at remote sites
- Ensure, where possible, that priority is given to listing a case involving a vulnerable or intimidated witness giving evidence via live link
- Endeavour to ensure the efficient operation of all TV link equipment (including links to remote facilities) by testing in advance of the day of trial, where possible, and prior to the hearing on the day of trial
- Ensure that the witness suite containing the live link equipment is safe and secure at all times
- Conduct regular risk and health assessments of the witness suites (in consultation with others, if necessary) and take appropriate action as necessary to ensure that all witness safety needs are provided for
- Arrange for a suitably vetted court usher to be present at, or facilitate the use of, a link room and ensure that an Officer of the Court is able to provide some technical support
- Arrange for an Officer of the Court to be present to take the oath or affirmation of witness (es) and administer the Intermediary Declaration, as required
- The usher (or other Officer of the Court) should alert the court to any problems before or during the hearing through a locally agreed mechanism (i.e. holding up a coloured card).

The Court

- Explore and determine witness eligibility, and witness running order where practicable (with the agreement of the CPS/defence), for live links at the Plea and Case Management Hearing (PCMH), or subsequent occasion, and make necessary directions on the use of live links, including: the use of a remote facility and the number and types of witness who will be using live links (i.e. vulnerable or expert)
- Decide on a suitable witness supporter (i.e. parent/guardian, Witness Service or other witness supporter) at the earliest opportunity and include details in any direction
- At the hearing in the Crown Court, explain to the jury that evidence given by live link should be treated in the same way as if it was given live in court. In the magistrates' court such a direction should be given to the Justices by the Justices' Clerk/Assistant Justices' Clerk
- Give appropriate directions to the witness and the supporter regarding the role of the supporter in the live link room (see guidance at Appendix 3)
- Determine application(s) by a party (or raise of his/her own motion) for witnesses over 14 to give unsworn evidence and ensure that no witnesses under 14 give evidence under oath (**section 55 Youth Justice and Criminal Evidence Act 1999**)
- If an intermediary is to be used at trial, consider at PCMH the issues raised in the special measures application and the intermediary case checklist (Section 1 of the Intermediary Procedural Guidance Manual – see Appendix 7)
- If an intermediary is being used via a live link, the default position should be to list the trial to make use of equipment with plasma screens which enable a good view from the courtroom of the witness and the intermediary and any aid to communication (e.g. symbol book)
- In deciding how an intermediary should signal to a court, bear in mind that the intermediary in the live link room will not be able to see the judge or magistrates during questioning of the witness (they will only be able to see the advocate)
- Consider intermediary recommendations, including on questioning, and make directions as necessary
- At the start of the trial, and after breaks, camera angles should be checked to ensure that the intermediary and the witness can both be seen.

Witness Care Units

- Witness Care Officers (WCOs) should assess the needs of all witnesses (including health needs or requirements) referred to the Witness Care Unit (WCU) and share relevant information about witnesses (where the witness consents) with the Prosecution Team, Defence and the Witness Service as appropriate
- WCOs should identify the need for a special measures application, after consultation with the witness, and where previously not identified ensure that need is brought to the attention of the Prosecution or the Defence
- WCOs should inform witnesses (and their supporters if known) as to the likelihood of them going to court to give evidence, and the dates of all court hearings

- WCOs should outline the availability and purpose of pre-trial familiarisation visits with witnesses and put them in touch with the local Witness Service (if they consent) so that they can discuss pre-trial visits and any other concerns before trial
- If a witness indicates that they do not wish their details to be disclosed to a witness support service, provide the witness with sufficient information about the trial process and positively recommend the Witness Service (or other support service where available)
- Ensure witnesses are informed of hearing dates and that they are available for the trial
- Provide the Witness Service with information on witness attendance
- Inform the Witness Service of the outcome of live links applications
- Ascertain the oath or affirmation requirements of the witnesses in advance of trial and inform the relevant party and HMCS at the earliest opportunity.

Crown Prosecution Service and Defence

- Each party to endeavour to provide a “running order” for witnesses, especially where the intention is to use a remote facility, and an indication of the duration of their evidence
- Inform the listing officer if there are any changes relating to witness availability as soon as possible
- Defence to outline the availability and purpose of pre-trial familiarisation visits with witnesses and put them in touch with the local Witness Service (if they consent) so that they can discuss pre-trial visits and any other concerns before trial
- If a defence witness indicates that they do not wish their details to be disclosed to a witness support service, provide the witness with sufficient information about the trial process and positively recommend the Witness Service (or other support service where available)
- Consult with the witness (es), obtain their views on the use of a live link and discuss the various location options
- Make applications, where possible and appropriate, for live links in accordance with the time limits specified in the **Criminal Procedure Rules (CPR) (Part 29** for vulnerable or intimidated witnesses and **Part 30** for other witnesses), specifying: the provision under which the application is made, the purpose of the application, what type of link facility is required (court-to-court, remote or link from abroad) and ensuring that written statements are provided to sustain any application
- Where the application is for an intermediary and a live link, the application should request that plasma screen equipment be used and make any other appropriate recommendations to maximise the effectiveness of the communication process. The application should take account of practical considerations including the need for good sight of the intermediary and the witness from the courtroom and effective arrangements for the intermediary to signal to the judge/Justices the need for a break or a rephrase or any other relevant matter. In all cases involving an intermediary the application should include the intermediary’s recommendations relating to the witness’ needs including advice on questioning
- Inform the WCU of successful or unsuccessful applications as soon as possible
- Ensure that the witness (es) have had an opportunity to refresh their memory of their written statement or their visually-recorded statement before the day of trial

- Make applications, where appropriate, for witnesses over 14 to give unsworn evidence and make representations as necessary to ensure that no witness under 14 gives sworn evidence (**section 55 Youth Justice and Criminal Evidence Act 1999**)
- Defence to ascertain the oath or affirmation requirements of their witnesses in advance of the trial and inform the relevant Party and HMCS at the earliest opportunity.

Police

- Conduct the initial witness needs assessment, including how witness evidence should be taken (i.e. video-recorded)
- Identify, and specify on form MG2, witnesses who may benefit from giving evidence via a live link after consulting with them. Inform the CPS and Witness Care Unit of witness needs and contact details
- Inform witnesses from the outset that they will only be able to give evidence by live link if the court decides that the measure is necessary and, where the witness is a VIW explain to them that if they give evidence over a live link at trial the defendant may still be able to see them
- Provide the CPS and WCU with sufficient information to enable the appropriate application for live links to be made.

Witness Service (or other support provider)

- Contact witness (es) as soon as practicable to discuss and explain the purpose of a pre-trial visit (with parent or guardian, if applicable)
- Arrange for a pre-trial visit, liaising with Court WLO or remote facility representative. If a witness is to give evidence from a remote facility, a pre-trial visit to that is also desirable
- Convey any relevant issues, including practical arrangements such as wheelchair access to the live link room, after the pre-trial visit to the CPS, HMCS, the WCU or Defence (where the witness consents) and inform the WLO, or appropriate member of the Court Staff of all visits
- Where an intermediary is involved, liaise with the intermediary about the witness' familiarisation visit to court and invite the intermediary to attend
- Ensure that witness needs are communicated to the CPS/Defence throughout the proceedings
- Inform family members and/or guardians that they will be permitted to accompany the witness to the link room, but will not be permitted to enter the room during evidence unless given permission by the Court
- On the day of the trial, consult witness (es) to ensure that they have had an opportunity to refresh their memories ahead of trial, liaising with the CPS/Defence as appropriate
- Supervise witness (es) during breaks, particularly where they are younger children
- Meet witness (es) and family members, if appropriate, at court or remote site, and accompany them to the live link room
- Ensure the care and support of the witness throughout the proceedings

- Alert the court to any problems before or during the use of the live link through a locally agreed mechanism (i.e. holding up a coloured card).

All parties

- When an application is made for an intermediary to be used, all parties should make reference to Section 1 (checklist) and Section 2 (guidelines) of the Intermediary Procedural Guidance Manual – see Appendix 7.

Remote links

Her Majesty's Courts Service

- If providing the remote facility, ensure on the day prior to the hearing, and a reasonable time before the start of proceedings on the day of the trial, that the equipment connecting the court to the link room is operating effectively; arrange for any defects to be rectified immediately
- If the remote facility is being provided by another agency, arrange a date and time to test the link in advance of the day of trial, where possible, and prior to the hearing on the day of the trial
- Provide, where necessary, for a suitably vetted court usher to be present at the remote site
- The usher should ensure that the appropriate oath/affirmation/holy books are available at the remote site, after liaising with the WCU and/or the Witness Service and/or the Defence. The usher should normally administer the oath or affirmation of the witness (es).

The Court

- When directing that a witness may give evidence from a remote site, consider the proximity of the facility in order that a witness may be brought to court if necessary within a reasonable period of time, and to enable exhibits to be transferred to and from the facility expeditiously
- Decide at the earliest opportunity which exhibits are required to remain in court
- At the same time, decide and direct who will be required to administer the oath or affirmation in the live link room and, as far as possible, specify who will need to make an oath or affirmation
- At the beginning of the hearing, ensure that the Court, jury, magistrates, Legal Adviser and the parties are introduced to the witness and that all those present in the link room are identified to those in the Court
- Arrange for the witness (es) oath to be taken (and, where necessary, the oath of the witness supporter) by an appropriate Officer of the Court
- At a hearing in the Crown Court, explain to the jury the purpose of the live link facility and the roles of each individual in the link room. In cases in the magistrates court, the Justices' Clerk/Assistant Justices Clerk should explain this to the Justices.

Witness Care Units

- Arrange for witness (es) to attend the remote site in good time prior to them giving evidence on the day of the trial
- In consultation with the party and HMCS, arrange for the booking of a remote link once a live link has been granted by the court.

Crown Prosecution Service and Defence

- Parties to check on HMCS web site whether their local court has the facilities required on the proposed date of trial prior to making any application
- Where practicable, visit the remote site before the trial with the witness (es) or speak to the witness (es) over the live link prior to the beginning of the hearing
- If responsible for providing the remote facility, inform the court of the location and type of facility. Maintain that facility and ensure the equipment is operating effectively both before and during the trial
- Arrange for a suitable time with the Court to test that the equipment is operating effectively in advance of the day of the trial, where possible, and prior to the start of the hearing on the day of the trial.

Police

- Conduct a risk assessment of each remote link facility, including security and health and safety issues, i.e. wheelchair access, designated waiting areas (see Appendix 6 for guidance) liaising with the Witness Service and HMCS
- Inform the other agencies of potential risks, both in general and for specific witnesses
- The officer in the case should normally facilitate the safe passage of the witness (es) to and from the remote site, in conjunction with the WCU in appropriate cases
- An Exhibits Officer, or a nominee, will facilitate the safe passage of real or physical exhibits from the court to remote site and back again.

Provider of the remote site

- Appoint a remote site manager to be the on site contact point to consult with HMCS, WCU and CPS/Defence on all matters relating to the site
- Maintain fax and phone facilities for the transfer of documentary exhibits.

Witness Service (or other support provider)

- Arrange for witness (es) to attend the remote site in good time prior to them giving evidence on the day of the trial wherever possible
- Consult with witness (es) as to any health needs or requirements, both pre-trial and on the day of trial, that have not already been identified by the WCU
- Alert the party who has called the witness and ,where appropriate, HMCS to the health needs and requirements of the witness (es) in advance of the hearing where not already identified by the WCU

- Alert the Court to any concerns whilst the remote link is being used according to local arrangements
- Inform witness (es) at the pre-trial visit to the remote site or before trial about what they will be able to see on the screen, who will be able to see them in court and explain that technical difficulties may occur on the day.

Live links under section 24 Youth Justice and Criminal Evidence Act 1999

Her Majesty's Courts Service

- Inform the Witness Service (or other support provider) of the date and time of hearings which are known to involve a special measures application to enable them to be present, where possible
- Ensure that video-recorded evidence is tested on the court equipment and at any remote facility in advance of the trial to avoid delay and witness distress
- An Officer of the Court should ensure that the appropriate oath/affirmation/holy books are available in the live link room, after liaising with the WCU and/or the Witness Service
- Following a successful application from the prosecution, or a Court Order on its own motion, the Officer of the Court should check ahead of the hearing that the defendant will not be visible to the witness on the screen and, where practicable, endeavour to ensure that the defendant will not be able to see the witness on the live link screen (i.e. by placing a screen around the defendant).

The Court

- Determine at the earliest opportunity applications by a party (or raise of his/her own motion) for vulnerable or intimidated witnesses to give evidence via live link and make a special measures direction as appropriate.

Crown Prosecution Service and Defence

- In consultation with the police (via an early special measures meeting if appropriate) and the WCU determine the needs of each witness, identify VIWs and make special measures applications in accordance with the time limits set out in **CPR r.29.1(4)** for live links (and any other special measure)
- Prior to making any special measures application, discuss the benefits and drawbacks of giving evidence by live link with the witness, consider their views and inform the court of any views expressed by the witness if an application is deemed necessary.

Live links under section 51 Criminal Justice Act 2003

Her Majesty's Courts Service

- Ensure at the PCMH that any remote facility proposed is suitable for use at the trial (and add to approved list on the HMCS web site if appropriate).

The Court

- Determine applications by a party (or raise of his/her own motion) for live links to be used for the efficient or effective administration of justice.

Crown Prosecution Service and Defence

- Make application (s) for all witnesses to give evidence by live link specifying why it would be in the interests of the efficient or effective administration of justice at the earliest opportunity
- Inform the Court of the likely length and timing of the witness' evidence at the earliest opportunity.
- Provide all witness contact details to the WLO and the Witness Service
- Consider supplying witness (es) with pager (s) to contact them regarding the time they will be needed to give evidence to minimise travel and waiting time when they do not have their own mobile telephone
- Communicate with witness (es) via the link to discuss any evidence-related matters or practical/technical difficulties prior to the start of the hearing.

Police

- If police officers, or any other witness, are to give evidence from a police station link room the force is responsible for the maintenance and upkeep of the facility
- Ensure that equipment is compatible with the courtroom facilities well in advance of the trial.

Live links under section 32 of the Criminal Justice Act 1988 (where the witness is outside the United Kingdom)

Her Majesty's Courts Service

- An Officer of the Court shall notify all parties of the decision on an application for live links from abroad in accordance with the requirements of **CPR r.30.1 (9)**.

The Court

- A Crown Court judge should determine any application for a live link from abroad in accordance with the time frame in **CPR Part 30**
- The judge may specify a person who is able and willing to answer, under oath or affirmation, any questions about the circumstances in which the evidence is given (including those present in the live link room)
- The judge should determine at the same time whether any physical or real exhibits will need to be available at the site.

Crown Prosecution Service and Defence

- After consulting with the witness (es) and any relevant agency, consider whether any witness (es) may need to give evidence via a live link from abroad

- Determine whether there is a suitable consular or other facility from which the witness (es) could give evidence, ensuring that the equipment will be compatible with the chosen Court's live link equipment
- Make applications to the court in accordance with the **CPR Part 30**, specifying the country and place from where the evidence will be given and, where necessary, the name(s) of the witness (es)
- Speak to the witness (es) before the day of the trial, or over the live link in advance of the trial, to discuss any evidence-related or practical matter in order to prevent any delay.

Police

- An Exhibits Officer, or a nominee, will facilitate the safe passage of real or physical exhibits from the court to remote site and back again, consulting with the overseas police force and Interpol as necessary on all matters regarding witness safety and the passage of exhibits.

Use of supporters

The Court

- When making a special measures direction enabling a VIW to give evidence via a live link, decide who will be permitted to act as the witness supporter in the live link room on the day of trial
- Consideration should be given to **Practice Direction III.29** when deciding who the supporter will be (at Appendix 4).

Crown Prosecution Service and Defence

- When making a special measures application, identify (if there is to be one) who will act as the witness supporter on the day of trial and why they will assist the witness to give their best evidence.



APPENDICES

1. Applicable legislation (Pt III of the Criminal Justice Act 1988, Pt II Ch I of the Youth Justice and Criminal Evidence Act 1999 and Pt VIII of the Criminal Justice Act 2003)
2. HMCS Technology Protocol
3. Guidance on the use of supporters: *Achieving Best Evidence* (2nd edition) 5.12-5.30, "National Standards for the court witness supporter in the live link room" (Appendix G to *ABE*)
4. Part III.29 of the Consolidated Criminal Practice Direction
5. Joint ACPO/Home Office/NCPE Guidance on the safer detention and handling of persons in police custody 2006 (chapter 12)
6. HMCS, "The Witness Security at Court"
7. Intermediaries Procedural Guidance Manual

Appendix 1: Applicable legislation (Pt III of the Criminal Justice Act 1988, Pt II Ch I of the Youth Justice and Criminal Evidence Act 1999 and Pt VIII of the Criminal Justice Act 2003)

Criminal Justice Act 1988 (PART III OTHER PROVISIONS ABOUT EVIDENCE IN CRIMINAL PROCEEDINGS)

32 Evidence through television links

(1) A person other than the accused may give evidence through a live television link on a trial on indictment or an appeal to the criminal division of the Court of Appeal or the hearing of a reference under section 17 of the [1968 c. 19.] Criminal Appeal Act 1968 if—

(a) the witness is outside the United Kingdom; or

(b) the witness is under the age of 14 and the offence charged is one to which subsection (2) below applies,

but evidence may not be so given without the leave of the court.

(2) This subsection applies—

(a) to an offence which involves an assault on, or injury or a threat of injury to, a person;

(b) to an offence under section 1 of the [1933 c. 12.] Children and Young Persons Act 1933 (cruelty to persons under 16);

(c) to an offence under the [1956 c. 69.] Sexual Offences Act 1956, the [1960 c. 33.] Indecency with Children Act 1960, the [1967 c. 60.] Sexual Offences Act 1967, section 54 of the [1977 c. 45.] Criminal Law Act 1977 or the [1978 c. 37.] Protection of Children Act 1978; and

(d) to an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within paragraph (a), (b) or (c) above.

(3) A statement made on oath by a witness outside the United Kingdom and given in evidence through a link by virtue of this section shall be treated for the purposes of section 1 of the [1911 c. 6.] Perjury Act 1911 as having been made in the proceedings in which it is given in evidence.

(4) Without prejudice to the generality of any enactment conferring power to make rules to which this subsection applies, such rules may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this section.

(5) The rules to which subsection (4) above applies are—

(a) Crown Court Rules; and

(b) Criminal Appeal Rules.

Youth Justice and Criminal Evidence Act 1999 (PART II GIVING OF EVIDENCE OR INFORMATION FOR PURPOSES OF CRIMINAL PROCEEDINGS)

CHAPTER I SPECIAL MEASURES DIRECTIONS IN CASE OF VULNERABLE AND INTIMIDATED WITNESSES)

24 Evidence by live link

(1) A special measures direction may provide for the witness to give evidence by means of a live link.

- (2) Where a direction provides for the witness to give evidence by means of a live link, the witness may not give evidence in any other way without the permission of the court.
- (3) The court may give permission for the purposes of subsection (2) if it appears to the court to be in the interests of justice to do so, and may do so either—
- (a) on an application by a party to the proceedings, if there has been a material change of circumstances since the relevant time, or
 - (b) of its own motion.
- (4) In subsection (3) “the relevant time” means—
- (a) the time when the direction was given, or
 - (b) if a previous application has been made under that subsection, the time when the application (or last application) was made.
- (5) Where in proceedings before a magistrates' court—
- (a) evidence is to be given by means of a live link in accordance with a special measures direction, but
 - (b) suitable facilities for receiving such evidence are not available at any petty-sessional court-house in which that court can (apart from this subsection) lawfully sit,
- the court may sit for the purposes of the whole or any part of those proceedings at a place where such facilities are available and which has been appointed for the purposes of this subsection by the justices acting for the petty sessions area for which the court acts.
- (6) A place appointed under subsection (5) may be outside the petty sessions area for which it is appointed; but (if so) it is to be regarded as being in that area for the purpose of the jurisdiction of the justices acting for that area.
- (7) In this section “petty-sessional court-house” has the same meaning as in the [1980 c. 43.] Magistrates' Courts Act 1980 and “petty sessions area” has the same meaning as in the [1997 c. 25.] Justices of the Peace Act 1997.
- (8) In this Chapter “live link” means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there and to be seen and heard by the persons specified in section 23(2)(a) to (c).

Criminal Justice Act 2003 (**PART 8** LIVE LINKS)

51 Live links in criminal proceedings

- (1) A witness (other than the defendant) may, if the court so directs, give evidence through a live link in the following criminal proceedings.
- (2) They are—
- (a) a summary trial,
 - (b) an appeal to the Crown Court arising out of such a trial,
 - (c) a trial on indictment,
 - (d) an appeal to the criminal division of the Court of Appeal,
 - (e) the hearing of a reference under section 9 or 11 of the Criminal Appeal Act [1995 \(c. 35\)](#),

(f) a hearing before a magistrates' court or the Crown Court which is held after the defendant has entered a plea of guilty, and

(g) a hearing before the Court of Appeal under section 80 of this Act.

(3) A direction may be given under this section—

(a) on an application by a party to the proceedings, or

(b) of the court's own motion.

(4) But a direction may not be given under this section unless—

(a) the court is satisfied that it is in the interests of the efficient or effective administration of justice for the person concerned to give evidence in the proceedings through a live link,

(b) it has been notified by the Secretary of State that suitable facilities for receiving evidence through a live link are available in the area in which it appears to the court that the proceedings will take place, and

(c) that notification has not been withdrawn.

(5) The withdrawal of such a notification is not to affect a direction given under this section before that withdrawal.

(6) In deciding whether to give a direction under this section the court must consider all the circumstances of the case.

(7) Those circumstances include in particular—

(a) the availability of the witness,

(b) the need for the witness to attend in person,

(c) the importance of the witness's evidence to the proceedings,

(d) the views of the witness,

(e) the suitability of the facilities at the place where the witness would give evidence through a live link,

(f) whether a direction might tend to inhibit any party to the proceedings from effectively testing the witness's evidence.

(8) The court must state in open court its reasons for refusing an application for a direction under this section and, if it is a magistrates' court, must cause them to be entered in the register of its proceedings.

52 Effect of, and rescission of, direction

(1) Subsection (2) applies where the court gives a direction under section 51 for a person to give evidence through a live link in particular proceedings.

(2) The person concerned may not give evidence in those proceedings after the direction is given otherwise than through a live link (but this is subject to the following provisions of this section).

(3) The court may rescind a direction under section 51 if it appears to the court to be in the interests of justice to do so.

(4) Where it does so, the person concerned shall cease to be able to give evidence in the proceedings through a live link, but this does not prevent the court from giving a further direction under section 51 in relation to him.

(5) A direction under section 51 may be rescinded under subsection (3)—

- (a) on an application by a party to the proceedings, or
- (b) of the court's own motion.

(6) But an application may not be made under subsection (5)(a) unless there has been a material change of circumstances since the direction was given.

(7) The court must state in open court its reasons—

- (a) for rescinding a direction under section 51, or
- (b) for refusing an application to rescind such a direction,

and, if it is a magistrates' court, must cause them to be entered in the register of its proceedings.

53 Magistrates' courts permitted to sit at other locations

(1) This section applies where—

(a) a magistrates' court is minded to give a direction under section 51 for evidence to be given through a live link in proceedings before the court, and

(b) suitable facilities for receiving such evidence are not available at any petty-sessional court-house in which the court can (apart from subsection (2)) lawfully sit.

(2) The court may sit for the purposes of the whole or any part of the proceedings at any place at which such facilities are available and which has been appointed for the purposes of this section by the justices acting for the petty sessions area for which the court acts.

(3) A place appointed under subsection (2) may be outside the petty sessions area for which it is appointed; but (if so) it shall be deemed to be in that area for the purpose of the jurisdiction of the justices acting for that area.

54 Warning to jury

(1) This section applies where, as a result of a direction under section 51, evidence has been given through a live link in proceedings before the Crown Court.

(2) The judge may give the jury (if there is one) such direction as he thinks necessary to ensure that the jury gives the same weight to the evidence as if it had been given by the witness in the courtroom or other place where the proceedings are held.

55 Rules of court

(1) Rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Part.

(2) Rules of court may in particular make provision—

- (a) as to the procedure to be followed in connection with applications under section 51 or 52, and
- (b) as to the arrangements or safeguards to be put in place in connection with the operation of live links.

(3) The provision which may be made by virtue of subsection (2)(a) includes provision—

- (a) for uncontested applications to be determined by the court without a hearing,

(b) for preventing the renewal of an unsuccessful application under section 51 unless there has been a material change of circumstances,

(c) for the manner in which confidential or sensitive information is to be treated in connection with an application under section 51 or 52 and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

(4) Nothing in this section is to be taken as affecting the generality of any enactment conferring power to make rules of court.

56 Interpretation of Part 8

(1) In this Part—

- “legal representative” means an authorised advocate or authorised litigator (as defined by section 119(1) of the Courts and Legal Services Act [1990 \(c. 41\)](#)),
- “petty-sessional court-house” has the same meaning as in the Magistrates' Courts Act 1980 (c. 43),
- “petty sessions area” has the same meaning as in the Justices of the Peace Act [1997 \(c. 25\)](#),
- “rules of court” means Magistrates' Courts Rules, Crown Court Rules or Criminal Appeal Rules,
- “witness”, in relation to any criminal proceedings, means a person called, or proposed to be called, to give evidence in the proceedings.

(2) In this Part “live link” means a live television link or other arrangement by which a witness, while at a place in the United Kingdom which is outside the building where the proceedings are being held, is able to see and hear a person at the place where the proceedings are being held and to be seen and heard by the following persons.

(3) They are—

(a) the defendant or defendants,

(b) the judge or justices (or both) and the jury (if there is one),

(c) legal representatives acting in the proceedings, and

(d) any interpreter or other person appointed by the court to assist the witness.

(4) The extent (if any) to which a person is unable to see or hear by reason of any impairment of eyesight or hearing is to be disregarded for the purposes of subsection (2).

(5) Nothing in this Part is to be regarded as affecting any power of a court—

(a) to make an order, give directions or give leave of any description in relation to any witness (including the defendant or defendants), or

(b) to exclude evidence at its discretion (whether by preventing questions being put or otherwise).

Appendix 2: HMCS Technology Protocol



LIVE TELEVISION LINKS FOR WITNESSES INCLUDING RELATED MATTERS CONCERNING VISUALLY RECORDED EVIDENCE

1.1 Introduction

- 1.1.1 This protocol provides practical guidance to court staff and court users in magistrates' courts, the Youth Court and the Crown Courts on how to make arrangements to provide live television link¹ facilities to support witnesses due to appear in court.
- 1.1.2 Evidence can now be given by live television link as one of a number of provisions available. This means that the witnesses meeting existing criteria laid down in statute can give live evidence from:
- a remote room within the court precinct
 - a remote court location
 - another location, such as a hospital, care home, witness suite or even a location abroad. *NB The provisions in Part 8 of the Criminal Justice Act 2003 allowing evidence to be given from a remote site within the United Kingdom are not yet in force nationally and will be piloted for 12 months in serious sex offence cases in 5 Crown Courts (Hull, Bristol, Northampton, Lewes and Leeds)*
- 1.1.3 Giving live evidence via a television link will sometimes follow the playing of visually recorded evidence in chief.
- 1.1.4 This protocol is intended to provide practical, not legal, guidance. The detail of current legislation, which may change is deliberately omitted from the protocol although the statutes governing or authorising the current use of live television link is contained in annex 1A. It supports and complements the OCJR Live Links Protocols which cover the responsibilities of the various agencies involved for each type of live link, to ensure that applications for live links are made in all appropriate cases and that witness needs are full addressed through effective inter-agency communication.
- 1.1.5 The timetable laid down in Criminal Procedure Rules 30 will apply to all applications for TV link other than those to which Rule 29 (Special Measures) applies. These rules are printed in Annex 1B.
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1.2 Live Television Links within the Court Precinct

Procedures prior to trial

- 1.2.1 The prosecution or defence must make an application to the court to use a live television link at or before the Plea and Case Management Hearing (PCMH) or as soon as practicable before the hearing where the witness is to give evidence. The court also has the power to order such a live link, if one has not been applied for, of its own motion.
- 1.2.2 If the application for live television link is granted, the court's list officer will ensure that the case is listed in a courtroom where there are appropriate technical facilities to support the use of live television link. The case will also be given a fixed date when the television link will be required.
- 1.2.3 No decision will be taken to move or transfer the case to another date or to court centre without appropriate consultation with the prosecution and defence.
- 1.2.4 If a video recording of evidence has been played, it is desirable that the trial remains in the live television link courtroom for the duration of the case because there is the possibility that the original video evidence may need to be played again, at any time up to the jury returning their verdicts.
- 1.2.5 At a convenient time before the live television link is required, and in liaison with the parties, court staff will check that the format of any recorded evidence whether on video tape or any other electronic format e.g. CD / DVD, is compatible with the equipment available in the courtroom to playback such evidence. If the format is not compatible with the standard courtroom equipment the party producing the evidence will provide and connect suitable equipment to enable the material to be played with appropriate connecting leads. The court will provide the necessary screens/monitors.
- 1.2.6 Any editing requirements ordered at the Plea and Case Management Hearing should be completed within the required timescale .
- 1.2.7 Standard equipment necessary to facilitate hearings by live television link within the court precinct will be provided by the court at no cost to the parties.

Responsibilities on day of trial

- 1.2.8 It is the responsibility of the court staff to ensure that the standard courtroom equipment is fully operational before the start of the hearing where live television link facilities are required.

- 1.2.9 When the witness is to give evidence he/she and a Witness Service representative or other witness supporter approved by the judge will go into the live link room. The Usher will administer the oath and will confirm who else is in the room via the live television link. The Usher will then leave the live link room and ensure no-one enters while the witness is in the room without the leave of the judge. If no witness service representative is available the Usher will remain in the live link room while the evidence is given. If an interpreter is needed the interpreter should be in the live link room with the witness while the evidence is given.
- 1.2.10 As a general principle, it is not the responsibility of court staff to operate the playing of video taped evidence but this does not preclude other informal local arrangements.

1.3 Links to another Court Building in England and Wales

Procedures prior to trial

- 1.3.1 The party calling the witness must obtain prior agreement from the remote court centre, from where the witness will be required to give evidence, that they will cooperate with the process. The Listing Officer at the remote court will need time estimates for the duration of evidence and an indication of when the evidence is likely to be heard.
- 1.3.2 The relevant party must notify the Listing Officer at the 'home' court when lodging the special measures application for a link to remote court location of outline details of the proposed arrangements.
- 1.3.3 At the PCMH, the practical matters, which may affect the use of the live link to the remote court will be agreed, such as the production and viewing of exhibits needed by the witness. A trial date will be fixed or confirmed at the PCMH, so that witnesses can be told when they are required, confirmation can be given to the listing officer at the remote court and technical arrangements can be made.
- 1.3.4 The list officers at the 'home' and remote courts will liaise with each other to coordinate the fixture arrangements and court officials will liaise to obtain details of the ISDN or network IP dialling numbers so that the link can be set-up and tested prior to the hearing.
- 1.3.5 The listing officer at the remote court will ensure that the witness service is kept informed of the arrangements.
- 1.3.6 Any exhibits required at the remote site, together with any original witness statements made by the witness, will be delivered by prosecution or defence, to the list officer at the remote court, at least one day before evidence is due to be given. Copies may be substituted if approved by the judge.

- 1.3.7 A fax machine will be made available by the court at the remote court to enable additional paper exhibits to be sent during the trial if required (ideally this should be based in the witness room, or very close to it).
- 1.3.8 All call charges for links to another court building in England and Wales, will be met by the trial court and standard equipment necessary to facilitate hearings at the home and remote courts will be provided by the trial court at no cost to the parties.

Procedures on the day of trial

- 1.3.9 A court official will arrange a time to test the link at the remote site, at a convenient time before evidence is to be given. This should allow any technical faults to be rectified. The live link will be established at least 15 minutes before the witness is due to give evidence to confirm that all equipment is working properly.
- 1.3.10 A court officer, usually an usher, will be made available from the remote court to attend to the witness and administer the oath.
- 1.3.11 If the Judge/Magistrates and counsel/solicitor want to speak to the witness before he/she gives evidence the court will be cleared and used for that purpose.
- 1.3.12 If prosecuting counsel or defence counsel need to speak to the witness alone at the remote court, this will normally be permitted, using the live television link, in which case the court will be cleared of all persons except counsel and anyone they require to be present.
- 1.3.13 When the witness is to give evidence he/she and a Witness Service representative or other witness supporter approved by the Judge will go into the live link room. The Usher will administer the oath and will confirm who else is in the room via the live television link. The Usher will then leave the live link room and ensure no-one enters while the witness is in the room without the leave of the judge. If no witness service representative is available the Usher will remain in the live link room while the evidence is given.
- 1.3.14 If there are any breaks whilst the witness is giving evidence (legal arguments/luncheon) similar arrangements must be made by the Witness Service as are made when witnesses give evidence at the local court.
- 1.3.15 When evidence is completed, or at the end of the court day, the Usher, will return all documents and exhibits to the list officer at the remote court for safe keeping or to return to the 'home' court.

1.4 Links to a non-court location in UK or Abroad

Procedures before trial

- 1.4.1 If a witness needs to give evidence from a remote location in the United Kingdom (other than a court building) or abroad an application must be made to the Court. The application should set out in as much detail as possible what the proposed arrangements are.
- 1.4.2 If the evidence is to be given from outside the United Kingdom it should if possible be given from a British Embassy, Consulate or High Commission. If this is not possible, the location must be approved by the judge. The judge will also give directions for the administration of the oath or affirmation, and will need to be satisfied that the government of the country in which the evidence is to be given has no objection to the form of oath or affirmation to be used.
- 1.4.3 At the PCMH practical matters will need to be agreed, such as location, who will administer the oath and any other special arrangements required to ensure that the witness can give their evidence freely. Provision must also be made for the transmission to a responsible person at the remote site of any documents which may be necessary for the witness to see. The party applying for the link will arrange for a version of any document which it will be necessary for the Witness to see which is accepted by all parties or approved by the judge to be available at the remote site.
- 1.4.4 The List officer will need to be provided with the following by the party requesting the link:
- The ISDN number at the remote site
 - Contact name and telephone number at the remote site
 - Date, time and anticipated length of when link will be required, taking account of any time difference if the link is abroad
 - A date and time for test link, again taking account of any time difference if the link is abroad
 - An undertaking from prosecution / defence to meet all charges for the provision of the ISDN line and the charges that apply at the remote location
 - For privately funded defendants, an undertaking is required to meet all call charges and charges that may apply at the remote location
 - For Legally Represented defendants costs can be reclaimed from Central Funds
- 1.4.5 The Court will need to book a bridging service to enable connection to an ISDN line if the live television link is to be conducted using the courts Prison Video Links equipment and sufficient notice is required as the bridge service operates on a first come first serve basis.
- 1.4.6 It is the responsibility of the party whose witness is using the remote venue, to dial into the court system.
- 1.4.7 The provision of courtroom equipment will be a matter for Her Majesty's Courts Service and the provision of equipment at the remote site will be a matter for the party applying for the link.

Procedures on the day of trial

- 1.4.8 The procedures set out above 1.3.9 to 1.3.14 apply as far as they are relevant, except that the person administering the oath and attending to the witness at the remote location will be a person who has been approved by the judge at the application for the remote link. Arrangements must be made for the safe keeping of documents at the remote site, and their return to the home court or other relevant place when no longer needed.
- 1.4.9 The oath or affirmation must be administered as directed by the judge.
- 1.4.10 If an interpreter is required the interpreter should be in the room with the witness while he or she gives evidence.
- 1.4.11 Arrangements must be made to ensure that no unauthorised person comes into contact with the witness while he or she is giving evidence or during any breaks.

1.5 Annex 1A

Statutes governing or authorising the current and future use of video links

Section 24 of the Youth Justice and Criminal Evidence Act 1999 allows vulnerable and intimidated witnesses to give evidence using video links if the court permits.

Part 8 of the Criminal Justice Act 2003 allows for any witness in the magistrates' court or the Crown Court to give evidence over a video link if the court considers, that it is in the interests of efficient or effective administration of justice for the evidence to be given in that way. *NB The relevant sections of this Part of the Act are not in force nationally as yet. These provisions will be piloted for 12 months in serious sex offence cases in 5 Crown Courts (Hull, Bristol, Northampton, Lewes and Leeds)*

Section 32 of the Criminal Justice Act 1988 (CJA88) allows evidence to be taken from abroad via a live television link. Previously only witnesses in homicide and serious fraud cases could use the links. From 1 September 2004 this was extended to all trials on indictment, appeals to the Criminal Division of the Court of Appeal and hearings of references under section 9 of the Criminal Appeal Act 1995. Section 29 of the Crime (International Co-operation) Act 2003 gave the Home Secretary power to extend section 32 CJA88 to other or all criminal proceedings.

Section 30 of the Crime (International Co-operation) Act 2003 permits foreign authorities to apply to the Home Secretary for a person in England and Wales to give evidence over a TV link. If the Home Secretary grants the request he is expected to nominate a court from which the witness must give evidence.

This Protocol will be available on the CJS online.

Appendix 3: Guidance on the use of supporters: *Achieving Best Evidence* (2nd edition) 5.12-5.30, “National Standards for the court witness supporter in the live link room” (Appendix G to ABE)

Overview of support and preparation work

Who is entitled to support and preparation?

5.12 All witnesses, including those who may be vulnerable or intimidated, may require support before the trial. Witnesses, whether giving evidence for the prosecution or defence, are entitled to an explanation of their role at court and assistance to ensure that they are able to give their best evidence. Support is appropriate at all stages of the case. This will not involve discussing or rehearsing the witness’s evidence or otherwise coaching them before the trial – witness ‘training’ for criminal trials is prohibited. That does not prohibit pre-trial familiarisation visits provided that broad guidance is followed – the witness can be shown the courtroom and the live link room to familiarise themselves before their day in court, but there can be no discussion of the evidence (see also *R v Momodou & Limani* [2005] EWCA Crim 177; [2005] 2 All ER 571; [2005] 2 Cr App R 6).

What does support and preparation consist of?

5.13 The first task is the identification of children and those vulnerable and intimidated adults who need special consideration during their involvement with the criminal justice process. To ensure timely access to support, the police must take all reasonable steps to identify vulnerable or intimidated victims, and to record relevant information on either the reverse of the MG11 statement form or on the MG2 – standard forms used by the police to transmit confidential information to the CPS. In practice, this statutory responsibility to victims will also be extended to the identification of vulnerable and intimidated witnesses. While it is usually the police who first identify witnesses’ vulnerability, it can be highlighted by anyone with knowledge of the witness. Once a witness has been identified as either vulnerable or intimidated, there is potentially a long period of time before a court hearing takes place. During this time, preparation and support needs to focus on arrangements surrounding any interviews with the witness, pre-trial arrangements, and preparation for any court hearing (*Speaking Up For Justice* (Home Office, 1998), paragraph 6.1). Providing the witness with information about the investigation and court case is crucial. If the case goes ahead, support will also be required during the court hearing and in the immediate aftermath. In the typical criminal case, these activities will probably occur over many months.

5.14 Witness Care Units have been established in all areas throughout England and Wales to provide information to all victims and witnesses whose case is proceeding to court. In addition they will seek to ensure that individually tailored support is provided to all victims and witnesses. The Code of Practice for Victims of Crime places obligations on the Witness Care Unit to update vulnerable or intimidated victims who are witnesses of any requirement to give live evidence; of the outcomes of all pre-trial hearings; of the dates of all criminal court hearings; and of any subsequent amendments within one working day of receiving the information from the courts.

5.15 Box 5.1 illustrates some of the range of possible activities that can be undertaken with vulnerable witnesses by pre-trial and court witness supporters. The key tasks for young witness preparation are described in the National Standards for Young Witness Preparation (see Appendix F) and *Preparing Young Witnesses for Court – A Handbook for Child Witness Supporters* (NSPCC, 1998).

5.16 Victims of sexual violence and abuse may have multiple support and safety needs because of the nature of these crimes. These may include therapeutic support, housing, treatment of injuries

and infection, drugs and alcohol treatment, risk assessment and support through the criminal justice process. In some areas there are now specialist independent sexual violence advisers (ISVAs) to co-ordinate support and risk management for victims of these crimes. ISVAs are generally based in voluntary sector organisations such as Rape Crisis or Sexual Assault Referral Centres, which provide medical care, counselling and a forensic examination for victims of sexual violence in some areas. However, they work closely with statutory organisations such as the police, the CPS and health services as part of a virtual multi-agency team. In those areas where there is an ISVA, they should normally be responsible for the provision of pre-trial (non-therapeutic) support and support at court. Where local protocols can be agreed, they are also well placed to relay information about a case's progress to the victim on behalf of the police and CPS.

5.17 There are also 64 court systems that now specialise in dealing with domestic violence cases following a successful pilot programme. The Specialist Domestic Violence Court Programme, which involves prosecutors, police, courts, probation and support systems for victims, aims to bring more offenders to justice and place the victim at the heart of the process. The new courts provide independent domestic violence advisers (IDVAs) for victims, as well as dedicated prosecutors, magistrates, legal advisers and police officers who specialise in domestic violence cases. The IDVAs provide support to victims both within and outside the criminal justice system, supporting victims with housing, benefits, social services, counselling and children's issues. Within the criminal justice system the IDVAs link with the Witness Care Units and ensure victims have access to pre-court visits and risk assessments through Multi-Agency Risk Assessment Conferences (MARACs) and attend court with victims.

Box 5.1(a): Activities undertaken by pre-trial supporters and court witness supporters

Depending on the supporter's role, they can:

- provide emotional support,
- educate and give information;
- understand the witness's views, wishes, concerns, and any particular vulnerabilities that might affect them during the criminal process (including the witness's views on Special Measures), and convey these to the relevant criminal justice system agency;
- agree the manner and frequency of the provision of information;
- familiarise the witness with the court and its procedures, and with the responsibilities of the criminal justice system;
- support the witness through interviews and court hearings;
- undertake court preparation and pass on information about the forthcoming trial;
- accompany the witness on a pre-trial visit to court;
- accompany the witness when their memory is to be refreshed (this should not be undertaken by a supporter who will

accompany the witness while giving evidence);

- accompany the witness while they give evidence in court or the live link room (where the court approves this);
- liaise with family members and friends of the witness;
- liaise with legal, health, educational, social work and other professionals and act as an advocate on behalf of the witness;
- liaise with those offering therapy and counselling prior to a criminal trial; and
- arrange links with experts in any of the witness's specific vulnerabilities or difficulties, e.g. communication problems, learning disabilities, specific cultural or minority ethnic group concerns or religious priorities.

Box 5.1(b): Different types of supporter

- Victim Support volunteer
- Witness Service volunteer
- Witness care officer
- Pre-trial child witness supporter
- Independent sexual violence adviser
- Independent domestic violence adviser
- Intermediary
- Domestic violence officer, family liaison officer, child protection officer

5.18 Usually interests of the witness and of consistent information provision will be best served if the same supporter is involved throughout. However, in many cases a supporter's role may not allow them to be the sole provider of information throughout the criminal justice process and it will be necessary to involve more than one person in assisting the witness. Where this occurs, the witness will be best served if supporters and information providers complement each other's roles.

5.19 Different support functions may be provided at different stages. The same supporter will not normally be used throughout the entire criminal justice process, since this can lead to allegations that the witness is being coached, and also because family members and friends are unlikely to have an experience of the courtroom, while the pre-trial supporter must have knowledge of the court process. However, in exceptional circumstances (such as a witness finding it difficult to adapt to change), the same supporter may be used at more than one stage of the process. When this happens, great care needs to be taken to brief the supporter about the limitations of their role. You would also need to be certain that the supporter was not going to be called as a witness either by the defence or the prosecution.

At the investigative interview

5.20 Accompanying and supporting children and vulnerable witnesses can be helpful during

investigative interviews. The supporter may be a friend or relative provided they are not party to the proceedings.

Pre-trial

5.21 Support from a trained person with knowledge of the court process can assist the witness through information provision and preparation for giving evidence. The witness care officer appointed to a witness will ensure that they get timely information about the progress of the case, and support requirements in preparation for court will be discussed and agreed with the witness. A supporter may be present when the witness views their video-recorded statement for the purpose of memory refreshment before the trial. However, careful consideration must be given as to who this supporter should be, in order to guard against future allegations of coaching the witness. Generally, any supporter present during the witness's memory refreshment would not be the same person who has supported the witness pre-trial and/or is expected to accompany the witness when giving evidence. This issue should be raised at the plea and case management hearing (PCMH) (see paragraph 5.45).

5.22 Victim Support's Witness Service can also arrange pre-trial visits for both prosecution and defence witnesses. These visits should, where practicable, involve giving vulnerable or intimidated witnesses the opportunity to practise using the live link facility, providing the use of the measure has been granted by the court.

While giving evidence

5.23 Support during the court process itself, in the live link room or when giving remote live link evidence, is to be provided when it is necessary. There are evidential constraints that apply to the person providing support (see the summary in paragraphs 5.24 to 5.26 and Appendix G). The identity of a supporter in the live link room or at the remote location must be the subject of an application to the court (see paragraph 5.69). A practice direction issued by the Lord Chief Justice outlines who can act as a supporter in the live link room. Reference is made to '*an increased degree of flexibility*' being appropriate, and as long as the supporter is completely independent of the witness and is not involved in the case (for example, as a witness), they do not need to be the usher or another court official (Consolidated Criminal Practice Direction, Part III. 29, *Support for Witnesses Giving Evidence by Live Television Link*, is available at www.justice.gov.uk/criminal/procrules_fin/contents/practice_direction/pd_consolidated.htm).

Evidential boundaries

5.24 The supporter must not be a witness in the case and must not be given details of the case or the evidence of the witness. However, the supporter needs to know:

- the charges against the defendant;
- the relationship between the defendant and the witness or whether the charges involve an abuse of trust;
- the defendant's custody status and any change in this during the pre-trial period; and
- matters which may affect how preparation is conducted or how the witness gives evidence (e.g. the age of the witness, whether an intermediary has been applied for or not, and any medical, health or religious needs).

An exception to this is a witness care officer, who may get details of risk assessments to help them provide ongoing risk management.

5.25 Supporters must not discuss with the witness the details of the case or the evidence the witness is to give or has given. In their initial contact with witnesses, supporters (with the exception

of witness care officers who are acting on behalf of the prosecution) must explain that they are independent of both the prosecution and the defence and that there will be no discussion of the evidence, in order to avoid allegations that the supporter has told the witness what to say. Supporters need to distinguish between providing practical emotional help and support to the witness generally which is a key part of their role, and on the other hand expressing their own views and beliefs concerning the evidence of the witness, which is not permitted.

5.26 Supporters must also explain that preparation work cannot be guaranteed to be confidential. For example, if the witness begins to talk about the evidence, the supporter must make a note – in the witness’s words – of what was said, notify the police and ask the witness to speak to the person who conducted the investigative interview. Such a written record is disclosable. Further guidance on intermediaries and court witness supporters has been developed and is described in Appendix G.

Who can provide support?

5.27 Who undertakes the range of support and preparation functions will depend upon the needs of the individual witness, the availability of resources and the court’s directions. In addition to general considerations, including the views of the witness, it may be appropriate to secure the assistance of a supporter who has a particular understanding of the needs of the witness, for example from the point of view of ethnic or cultural background or disability awareness. However, it is important to distinguish the co-ordination role from the role of provider of the relevant services. Witness Care Units in particular have been set up to establish information and support the needs of every witness whose case is proceeding to trial, and then to make arrangements for support to be provided through referral or contact with other agencies.

5.28 Assistance and support is available from Witness Care Units, Victim Support and the Witness Service (see paragraphs 5.58, 5.59 and 5.64) as well as a range of other organisations. In the case of child witnesses, various local arrangements exist which may involve local authorities or organisations such as the NSPCC and Barnardo’s. Agreement should be reached on a local basis as to who is responsible for pre-trial preparation and also for ensuring that the necessary preparation has been or is being undertaken. Regardless of which profession is identified as best placed to co-ordinate pre-trial preparation and support, it is vitally important that it begins as soon as the witness’s vulnerability is identified and the police and/or the CPS become aware that they may need to attend court.

5.29 In certain cases, no support and preparation work with a prosecution witness should be undertaken without informing the police officer in charge of the case (subject to any confidentiality requirements). Different individuals carry out child witness preparation and support across the country. Regardless of professional background, the work should be carried out by someone who is independent and focuses purely on preparing the witness for a difficult experience. They must also not have been involved in the detailed preparation of the case, nor must they discuss details of the prosecution case or the evidence of the witness. It is recognised that support personnel could be police officers or other professionals, or volunteers. However, all must have received basic training, which may include additional information from the CPS on the criminal justice system and court processes. Supporters working with child witnesses should have current enhanced Criminal Records Bureau clearance. The social worker or police officer who conducted the investigative interview is excluded from the role of supporter in the same case (see ‘Government Policy on the Child Witness Supporter’ in *Preparing Young Witnesses for Court – A Handbook for Child Witness Supporters* (NSPCC, 1998)).

What skills are involved?

5.30 Witness support requires training. The skills involved in pre-trial preparation and support include the following:

- knowledge about, and aptitude for, working with vulnerable individuals;
- an ability to prepare witnesses to go to court without discussing their evidence or coaching them in any way;
- knowledge and understanding of court procedures, relevant legislation and policy;
- knowledge about the information and support requirements of vulnerable and intimidated witnesses, as well as the support that is available; and
- an ability to liaise with other professionals and with family members.

Working with young witnesses requires additional qualities and skills and these are described in the National Standards for Young Witness Preparation (see Appendix F) and in *Preparing Young Witnesses for Court – A Handbook for Child Witness Supporters* (NSPCC, 1998). There must be proper documentation of any support work (see Box 5.2).

Box 5.2: Documenting support work

Supporters should:

- make concise and factual records summarising all activities undertaken with witnesses, including a record of all phone contacts (these should be suitable to produce to the court if required). Ideally, for witness care officers, this will be on the national Witness Management System (WMS);
- make the records as soon as possible after the event;
- make a record of all liaison contacts with other professionals and the voluntary sector;
- distinguish fact from opinion, when it is necessary to record opinion;
- note, in the witness's own words, any reference by the witness to the evidence, and notify the police accordingly; and
- keep records securely in a locked room or filing cabinet.

G National

Standards for the Court Witness Supporter in the Live Link Room

G1 Role of the supporter

The role of the court witness supporter is, by their presence, to provide emotional support to the witness and to reduce their anxiety and stress when giving evidence, thereby ensuring that the witness has the opportunity to give their best evidence. The role of any accompanying member of the court staff includes ensuring that the equipment in the live link room is working correctly.

G2 Identity of the supporter

If the witness expresses a wish to be supported in the live link room, there can be benefits, both in reducing the stress suffered by the child and in the quality of the witness's evidence, if this wish is granted. However, in each individual case, it is a matter for the judge to determine who should accompany a witness in a **remote** live link room. An application by the prosecution or defence for the witness to give evidence by means of live television link may be made in advance of the trial for determination at the plea and case management hearing. The key characteristics of anyone acting in this capacity should be as follows:

- someone **not** involved in the case, who has no knowledge of the evidence and who has not discussed the evidence with the witness;
- someone who has received suitable training in their role and conduct (depending upon the supporter's identity, consideration needs to be given to their training); and
- someone with whom the witness has a relationship of trust. Ideally, this should be the person preparing the witness for court, but others may be appropriate.

Once the decision has been reached on the identity of the supporter in any particular case, the witness should be informed by either the officer in the case or the court witness supporter themselves. Additionally, the Witness Service (if they are not the preparer), the CPS and the police should also be informed.

G3 Skills required by the supporter of a child or vulnerable or intimidated adult witness

Required skills include:

- impartiality/lack of emotional involvement;
- communication skills (including with parents/carers, professionals and young people) particularly listening skills;

awareness of the needs of abused children and adults, the effects of crime and the effects of the court appearance on child witnesses and vulnerable adults;
flexibility;
knowledge of the criminal justice system;
confidence of the police, the CPS and the court;
ability to liaise and work with other agencies; and
familiarity with the basic rules of evidence and awareness of the danger of contaminating or discrediting the evidence of the witness.

G4 The court witness supporter's conduct

The court witness supporter will need to act according to agreed standards of conduct, covering communication with the witness, both within and outside the live link room, ensuring the witness's comfort, and alerting the judge to any problem arising while the witness is giving evidence. The suggested behaviour to be observed in this role is as follows.

G4.1 Before the witness gives evidence

Accept and follow the instructions of the judge with regard to witnesses and procedures to be observed.

Liaise with the Witness Service (where the court witness supporter is not from the Witness Service).

Ensure that the room is ready for the witness.*

Take the witness and carer to the waiting room and ensure that they are comfortable.*

Remain with the witness at all times while in non-public areas of the court building.

Settle the witness into accommodation in the waiting room.

Be present in court to take the oath as required by the judge.

Escort the witness to the live link room.

G4.2 In the live link room

Sit the witness in the chair and fix the microphone to their clothing.*

Place the warning notice in the corridor and close the door.*

Sit beside the witness and in view of the camera.

As directed by the judge, swear in the witness by enabling them to repeat the oath or promise, as appropriate.

Communicate relevant concerns (via the usher or agreed procedure) to the court.

Be present throughout the time the witness is in the room.

Ensure that the witness can clearly see and hear the transmission.*

Ensure that the witness can be clearly seen by the courtroom at all times.*

Remain visible to counsel and the defendant during evidence.*

Hand any exhibits to the witness without comment.*

Remain with the witness in the event of failure of the equipment.

Prevent any unauthorised person entering the room.

Ensure that there is no attempt to interrupt, intervene or intimidate the witness by any other person present in the live link room.

G4.3 Contact with the witness

Do not speak to the witness about the case, or about their evidence, before or during the proceedings or in any interruption to the proceedings.

Do not explain, interpret, guide or make comments about the evidence in the case.

Do not interrupt or intervene while court proceedings are taking place, unless it is to alert the judge to a problem.

Do not prompt or seek to influence the witness in any way.

Ensure that any other person in the room observes these prohibitions.

Maintain a neutral but sympathetic manner, in order to provide comfort and reassurance, and help the witness to give their evidence clearly, with a minimum of stress.

If the witness becomes distressed and the proceedings are interrupted, the supporter may listen if the witness talks about the case, and may make comforting gestures to ease the witness's distress.

When requested by the judge, direct the attention of the witness to the questioner.

G4.4 In case of difficulties

In the event of a problem, ask the usher to contact the court by telephone.

If necessary, speak to the judge via the live link (according to the procedure previously agreed with the court).

G4.5 After the evidence has been given

After completion of the evidence, return with the witness to a safe place.

* Tasks which could be carried out by the court witness supporter, but which would be more appropriate for a member of the court staff, if one is present.

Achieving Best Evidence (2nd edition, 2007) is available on the CJS online web site via the following link:

http://frontline.cjonline.gov.uk/includes/downloads/guidance/better-trials/Achieving_Best_Evidence_FINAL.pdf

Appendix 4: Part III.29 of the Consolidated Criminal Practice Direction

III.29 SUPPORT FOR WITNESSES GIVING EVIDENCE BY LIVE TELEVISION LINK

- (III.29.1)** This section of the Practice Direction is made pursuant to Rule 7 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002 and Rule 7 of the Magistrates' Courts (Special Measures Directions) Rules 2002 and supersedes previous guidance given by the Senior Presiding Judges, Lord Justice Tasker Watkins in 1991 and Lord Justice Auld in 1998.
- (III.29.2)** An increased degree of flexibility is now appropriate as to who can act as supporter of a witness giving evidence by live television link. Where a special measures direction is made enabling a vulnerable, intimidated or child witness to give evidence by means of a live television link, the trial judge will make a direction as to the identity of the witness supporter. Where practical, the direction will be made before the trial commences. In giving the direction, the trial judge will balance all relevant interests – see paragraph 1.11 of the guidance "*Achieving Best Evidence*". The witness supporter should be completely independent of the witness and his or her family and have no previous knowledge of or personal involvement in the case. The supporter should also be suitably trained so as to understand the obligations of, and comply with, the National Standards relating to witness supporters. Providing these criteria are met, the witness supporter need not be an usher or court official. Thus, for example, the functions of the witness supporter may be performed by a representative of the Witness Service.
- (III.29.3)** Where the witness supporter is someone other than the court usher, the usher should continue to be available both to assist the witness and the witness supporter, and to ensure that the judge's requirements are properly complied with in the CCTV room.

The Consolidated Criminal Practice Direction is available on the Ministry of Justice web site via the following link:

http://www.justice.gov.uk/criminal/procrules_fin/contents/practice_direction/pd_consolidated.htm



Appendix 5: Joint ACPO/Home Office/NCPE Guidance on the safer detention and handling of persons in police custody 2006 (chapter 12)

This guidance can be found on the Home Office web site via the following link:

http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/Safer_Detention_and_Handlin1.pdf?view=Binary



Appendix 6: HMCS, “The Witness Security at Court”

This paper has been jointly produced between the Home Office and Department of Constitutional Affairs and is designed to offer recommendations and practical steps when considering the issue of witness security. The guidance has been agreed by the senior judiciary, ACPO and Victim Support.

This Guidance Paper can be found on the CJS on line web site via the following link:

[http://frontline.cjsonline.gov.uk/includes/downloads/guidance/victims-and-witnesses/WITNESS SECURITY AT COURT.pdf](http://frontline.cjsonline.gov.uk/includes/downloads/guidance/victims-and-witnesses/WITNESS_SECURITY_AT_COURT.pdf)



Appendix 7: Intermediaries Procedural Guidance Manual

This guidance manual can be found on the CJS online web site via the following link:

http://frontline.cjsonline.gov.uk/includes/downloads/guidance/victims-and-witnesses/Intermediary_Procedural_Guidance_Manual.pdf