



Early Special Measures Meetings between the Police and the Crown Prosecution Service and Meetings between the Crown Prosecution Service and Vulnerable or Intimidated Witnesses

Practice Guidance

Implementing the *Speaking up for Justice* Report



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FOREWORD

The report *Speaking Up For Justice*, produced in June 1998 by an interdepartmental working group on the treatment of vulnerable or intimidated witnesses, recommended that there should be special measures to enable vulnerable or intimidated witnesses in a criminal trial to give their best evidence.

That recommendation led to the provisions contained in sections 16-33 of the Youth Justice and Criminal Evidence Act 1999. These will provide for a range of special measures to enable a vulnerable or intimidated witness in a criminal trial to give the best possible evidence.

The report also recommended that an early special measures meeting should take place between the investigating police officer and the Crown Prosecution Service to discuss and agree what special measures should be applied for and that there could be benefit from a subsequent meeting between the prosecutor and the witness. This guidance is for police officers and Crown Prosecutors. It provides guidance on whether an early special measures meeting should be held, on the conduct of such a meeting and of any subsequent meeting with the witness.

The Crown Prosecution Service, the Association of Chief Police Officers and the Home Office have worked together to produce this guidance. The guidance is issued as part of the *Action For Justice* programme by which the Home Office is co-ordinating the implementation of the various measures for witnesses recommended in *Speaking Up For Justice*.

The guidance has been produced following widespread consultation within the criminal justice system and with many other interested organisations and individuals. We are grateful to all concerned for their important contributions to this guidance. We believe that the use of this guidance and the special measures introduced by the 1999 Act will enable vulnerable and intimidated witnesses to give their best evidence in criminal proceedings in a way that has, hitherto, not been possible.

Harriet Harman

The Rt Hon Harriet Harman QC MP
Solicitor General

EARLY SPECIAL MEASURES MEETINGS BETWEEN THE POLICE AND THE CROWN PROSECUTION SERVICE AND MEETINGS BETWEEN THE CROWN PROSECUTION SERVICE AND VULNERABLE OR INTIMIDATED WITNESSES: PRACTICE GUIDANCE

1 INTRODUCTION

- 1 An interdepartmental working group on the treatment of vulnerable or intimidated witnesses in the Criminal Justice System, published a report, “Speaking Up For Justice” (“the Report”), in June 1998.
- 2 The Report recommended that there should be **special measures** to enable vulnerable or intimidated witnesses in a criminal trial to give their best evidence.
- 3 That recommendation has now been enacted by **sections 16-33** of the **Youth Justice and Criminal Evidence Act 1999** (“the Act”). These sections provide for a range of **special measures** to enable a vulnerable or intimidated witness in a criminal trial to give the best possible evidence. The special measures apply to any witness, prosecution or defence, but not the defendant: **section 16**. This guidance is aimed at police officers and prosecutors where a vulnerable or intimidated witness is to be relied on by the prosecution.
- 4 An example of such a special measure is the giving of evidence by means of a live TV link: **section 24**.
- 5 For a witness to benefit from any of the special measures an application to the court must be made: **section 19**. Courts may also raise the issue of special measures of their own motion. In the case of a trial proceeding either in the magistrates’ court or in the Crown Court, the application

will be made in writing. In the Crown Court, the application may be determined at the plea and directions hearing or, where that is not possible, at a subsequent hearing in advance of the trial. In the magistrates' court, the application will be made at a pre-trial hearing.

- 6** The Report went on to recommend that **early special measures meetings** should take place between the investigating police officer and the CPS to discuss and agree what special measures directions should be the subject of a prosecution application to the court: **recommendation 26**.
- 7** The views and preferences of the witness are to be taken into account during early special measures meetings. It will be for the police to obtain the views of the witness on which of the available special measures should be applied for: **recommendation 24**.
- 8** The police should use the confidential information form MG6 to inform the CPS that the case is one where it may be appropriate to apply for a special measures direction and to indicate the views of the witness: **recommendation 25**.
- 9** The Report recommended that there should be a **meeting between the prosecutor and vulnerable or intimidated witnesses: recommendation 27**. The interdepartmental working group believed that such a meeting could benefit the conduct of the case and provide reassurance to the witness.
- 10** These recommendations were accepted by the Government and have been taken forward by an inter-agency working group. This Practice Guidance has been prepared following widespread consultation within the Crown Prosecution Service and Police Service. Criminal justice system agencies and organisations were also consulted, as were organisations within the voluntary sector.

Special Measures for Vulnerable or Intimidated Witnesses

- 11** The special measures provided for are:
- Screening witness from the accused: section 23;
 - Evidence by live link: section 24;
 - Evidence given in private (i.e. the court is cleared): section 25;
 - Removal of wigs and gowns: section 26;
 - Video recorded evidence in chief: section 27;
 - Video recorded cross-examination or re-examination: section 28;
 - Examination of witness through an intermediary: section 29; and
 - Aids to communication: section 30.

Witnesses Eligible for Special Measures

- 12** The following witnesses are eligible for special measures:
- a witness who is under the age of 17 at the time of the hearing: **section 16**;
 - a witness who suffers from a mental disorder within the meaning of the Mental Health Act 1983, or who has a significant impairment of intelligence and social functioning, or who has a physical disability or disorder. In these cases, the court must be satisfied that the quality of the evidence given by the witness is likely to be diminished due to the mental disorder etc: **section 16**; and

- a witness the quality of whose evidence, in the opinion of the court, is likely to be diminished by reason of fear or distress about testifying: **section 17**.

13 The fact that a witness is eligible for special measures will not automatically mean that the measures will be made available at trial. The reasons for this are:

- **section 19(2)** provides that once eligibility is established the court must then determine whether any of the special measures **would be likely to improve the quality of the evidence** given by the witness and, if so, which of the special measures would **maximise, so far as practicable, the quality of the evidence** of the witness; and
- **section 19(3)** provides that the court must then, before making a special measures direction, **consider all the circumstances of the case** and, in particular, the views of the witness and whether the measure(s) might tend to inhibit the effective testing of the evidence by the defendant.

14 In the case of **child witnesses under the age of 17**, there are some special provisions in **sections 21 and 22**. These provisions create presumptions, that apply to different categories of child witnesses, in relation to how they will give their evidence. They can be summarised as follows:

- child witnesses in sexual cases and cases involving violence, abduction or neglect are deemed to be “in need of special protection”. In these cases, the court does not have to consider whether the special measure(s) will improve the quality of the evidence; this is assumed to be the case.

- all child witnesses in need of special protection will have the video recording of their evidence admitted as evidence in chief, unless this is excluded by the court on the basis that to admit the video recording would not be in the interests of justice.
- child witnesses in sexual cases will normally be cross-examined by way of video recording, unless the child witness says that they do not want this.
- child witnesses in cases of violence will normally be cross-examined via the TV link.
- for all other child witnesses there will be the presumption that evidence in chief will be given by video recording, if one has been made, and that cross-examination will be via the TV link. However, the court will need to be satisfied that this will improve the quality of the evidence.

15 Three other provisions of Part II of the Act should be borne in mind:

- **section 34** – prohibits the cross-examination in person by unrepresented defendants of complainants in sexual cases.
- **section 35** – prohibits the cross-examination in person by unrepresented defendants of certain “protected witnesses”.
- **section 36** – permits a court to make an order prohibiting the cross-examination in person by an unrepresented defendant of a witness where the prohibitions in sections 34 and 35 do not apply.

Procedure for Applying for Special Measures

16 Rules of Court will be issued setting out the procedure and time-limits to be followed when making a special measures application.

2 EARLY SPECIAL MEASURES MEETINGS

What is an Early Special Measures Meeting?

- 17 An early special measures meeting is an opportunity for the investigating police officer and CPS prosecutor to discuss the needs of prosecution witnesses who may be considered vulnerable or intimidated. In particular, the eligibility of witnesses to benefit from special measures will be discussed.
- 18 A benefit of an early special measures meeting will be to ensure that any necessary application for special measures is made in an effective and timely manner.

How will a Case Involving a Vulnerable or Intimidated Witness be Identified?

- 19 The police, during the course of an investigation, will have the responsibility for identifying those cases where an **early special measures meeting** is required, or may be desirable. It is **essential** that the police officer dealing with a vulnerable or intimidated witness does not raise unrealistic expectations on the part of the witness, since the decision whether to apply for special measures will be taken by the CPS and the decision whether to allow special measures rests with the court.
- 20 Police officers will be trained to identify witnesses who may be vulnerable or intimidated and may thereby be eligible for special measures. This training will include a set of prompts to assist police officers identify both vulnerable and intimidated witnesses. For example, the prompts include a list of behavioural characteristics that may indicate that a witness is vulnerable.

- 21 In a case where the police have not identified the need for one or more of the special measures, the CPS may call for an early special measures meeting if, on reviewing the file, it is thought to be desirable. Prosecutors must always be alert to consider whether an early special measures meeting should be held, particularly when a case is likely to be contested.

Is an Early Special Measures Meeting required in Every Case?

- 22 It will be the responsibility of the investigating police officer to decide whether the circumstances of the particular case require an early special measures meeting. Such a meeting will not be necessary in every case involving a vulnerable or intimidated witness. For example, in the case of a child witness who has been sexually assaulted, where there are no other particular considerations, it will normally be appropriate that the evidence of the child should be video recorded.
- 23 **It should be noted that, if a decision is made not to make a video recording of the evidence in chief of the witness, the court will be precluded from making a special measures direction for the video recording of the cross-examination or re-examination of the witness under section 28.**

When will the Early Special Measures Meeting Take Place?

- 24 The guiding principle is that the early special measures meeting should take place **as soon as possible** after the need for such a meeting has been identified by the investigating police officer or the CPS, to ensure the effective and efficient management of the case. The relevant information must be obtained within a timescale which enables the

subsequent meeting with the witness, if there is to be one, to take place effectively and the appropriate applications to be made to the court at the appropriate time. Any time constraints that apply, for example custody time limits, must be kept in mind when planning an early special measures meeting.

- 25** In those cases where the police do not consult with the CPS at the pre-charge stage then the **Form MG6** will be used to indicate that an early special measures meeting is required or desirable and to provide the relevant information. This information will include:
- the basis upon which the witness is to be treated as vulnerable or intimidated within the terms of **sections 16 and 17**;
 - the special measures which may be appropriate and how they will improve the quality of the evidence of the witness; and
 - the views of the witness.
- 26** An early special measures meeting could take place on the same occasion as a case conference, provided that the early special measures meeting is not delayed simply to combine the two purposes.
- 27** The use by the police of the power to bail a suspect under **section 47(3) Police and Criminal Evidence Act 1984** merely for the purpose of facilitating early consultation with the CPS will be inappropriate. However, if the circumstances of the case otherwise justify the use of this power, the period of bail may also be used for the purpose of consultation with the CPS in relation to special measures.
- 28** Exceptionally, the need for an early special measures meeting may not become apparent to the police or the CPS

until a later stage in the proceedings. For example, a witness may only at that later stage have become vulnerable or intimidated. In those circumstances, the meeting will need to be held urgently and as soon as possible.

Where will the Early Special Measures Meeting Take Place?

- 29** This will be a matter for agreement between police officers and prosecutors in individual cases.
- 30** If the issues in the case are straightforward, or the case is urgent, it may be acceptable to conduct the meeting by telephone. If that is done, it is **essential** that the **proforma record of the meeting** at **Annex A** is completed. The proforma will be completed and signed by the prosecutor, who will then send it to the police officer in the case for signature and return. The signed proforma will be entered by the police on the form MG6D and will be retained on the CPS file. Any issue as to the disclosure of this record of the meeting will be determined in accordance with the usual Criminal Procedure and Investigations Act 1996 principles, Attorney General's guidelines on disclosure and public interest immunity procedures.

Who Should Attend the Early Special Measures Meeting?

- 31** The police officer in the case will, whenever possible, attend. If the officer in the case has not had contact with the vulnerable or intimidated witness then the officer who has had such contact will also attend.
- 32** The CPS reviewing lawyer should attend and should also attend any subsequent meeting with the witness. Where practicable, the CPS caseworker and prosecution counsel should also attend.

- 33** The police officer and/or prosecutor may consider that an expert witness should attend to make the meeting effective. This might be an expert who can provide information on a particular disability. This will be a matter for discussion between the police officer and the prosecutor.
- 34** The police officer and/or prosecutor may consider that the witness should also attend the meeting, to better inform the decision as to what special measure(s) should be applied for. Again, this will be a matter for discussion between the police officer and the prosecutor. If the witness does attend the early special measures meeting, the guidance set out in **paragraphs 43-63** should be complied with. It may then not be necessary to hold a subsequent meeting with the witness.

Who is Liable for the Payment of the Fees of an Expert Witness in relation to Special Measures Meetings?

- 33** The following guidelines will apply in deciding whether the police or the CPS is liable for the payment of the fees and expenses of an expert witness, incurred in preparing for and attending a meeting in relation to special measures.
- 34** The **police are responsible** for the cost of the investigation process and the provision of evidence to the CPS. The police will be liable for the payment of the fees and expenses for an expert to attend an early special measures meeting in the following circumstances:
- if the need for an expert arises pre-charge.
 - if, post-charge, further advice is needed from an expert to support the evidence, to satisfy the test of a realistic prospect of conviction as set out in the Code for Crown Prosecutors.
 - if expert evidence is required to deal with an issue as to the competence of a witness to give evidence.

35 The **CPS is responsible** for the costs of the presentation of evidence in court. The CPS will be liable for the payment of the fees and expenses for an expert to attend an early special measures meeting in the following circumstances:

- if, post-charge, the CPS needs to seek the advice of an expert in connection with the presentation of the evidence by the witness.
- if expert evidence is required to deal with an issue as to whether a witness should give sworn or unsworn evidence.
- if the CPS needs to refer either defence comments on the prosecution evidence or defence expert evidence in relation to special measures for a witness, the CPS will be liable for the fees and expenses of the expert.
- the CPS will be responsible for the fees and expenses of the expert witness to attend court.

What Should be Discussed at the Early Special Measures Meeting?

36 Each case will need to be considered individually but the following is a list of the matters which will need to be addressed:

- whether any witness appears eligible for special measures;
- the basis upon which the witness is eligible for one or more of the special measures. Consideration will need to be given to the question of whether any expert evidence will be required in order to establish eligibility;
- which of the special measures will be required to assist the particular witness and how the court is to be satisfied of the matters to which it must have regard under **sections 19(2) and 19(3)** – see **paragraph 13 above**;

- the views of the witness as to which of the special measures should be applied for;
- the form in which the statement of the witness should be taken. **Section 27** of the Act enables a court to make a special measures direction which may allow a vulnerable or intimidated witness to give evidence-in-chief by way of a video recorded interview. If such a video recorded interview is thought appropriate, careful consideration must be given to the terms of **section 27**.

It must be clearly understood that the court may, when carrying out the task of balancing the interests of justice as required by **section 27(2)**, not allow such a video recording to be given in evidence. In that case, consideration should be given to the other special measures of giving evidence by live link or screening the witness from the accused. If no special measures are directed by the court the witness will either have to be called to give evidence in person or, if that is not appropriate, the CPS will have to consider whether there is sufficient other evidence to continue with the case;

- the appropriate individuals to attend any subsequent **meeting between the prosecutor and the witness**.

37 If an issue arises as to the **competence of a witness** to give evidence or whether a witness should give **sworn or unsworn evidence**, such an issue should also be addressed at the **early special measures meeting**. In such a case, **sections 53-56** of the Act will need to be considered. The following should be noted:

Section 53 of the Act provides that a witness is competent if s/he is able to understand questions put and give answers which can be understood.

Section 54 of the Act provides that when determining the issue of competence, the court will have regard to any special measures direction which either has been made or is proposed to be made under **section 19**.

- 38** If there is disagreement between the police and the prosecutor about any of the matters discussed at the meeting, this should be dealt with in accordance with existing locally agreed procedures for resolving casework issues.

Keeping a Record of the Early Special Measures Meeting

- 39** A record **must** be made of the matters discussed and decisions made at the early special measures meeting. The proforma attached at **Annex A** should be used for this purpose. The signed proforma will be entered by the police on the form MG6D and will be retained on the CPS file. Any issue as to the disclosure of this record of the meeting will be determined in accordance with the usual Criminal Procedure and Investigations Act 1996 principles, Attorney General's guidelines on disclosure and public interest immunity procedures.
- 40** A separate record must be kept for each witness.

Action to be Taken after the Early Special Measures Meeting

- 41** As soon as possible after the early special measures meeting, or where there has not been an early special measures meeting but the police have identified a witness as being potentially eligible for one or more special measures, the police officer in the case should contact the witness to deal with the following matters:

- check with the witness whether s/he agrees with the decisions made at the early special measures meeting or, where such a meeting has not been held, the assessment which has been made as to appropriate special measure(s). Any comments made by the witness, whether agreeing or disagreeing with the decisions or assessment made, should be recorded in **paragraph 8 of Annex A**;
- if, following an early special measures meeting, the CPS has decided that it would not be appropriate to apply for any special measure(s), this will be explained to the witness who will also be told that s/he may request an explanation for the decision. This explanation may be provided by means of a letter from the CPS, or if the witness prefers, a meeting with the CPS;
- explain to the witness that the final decision as to what, if any, special measures will be applied for will be made by the CPS;
- explain to the witness that the final decision as to what, if any, special measures will be made available to the witness rests with the court. In reaching that decision, the court will take the wishes of the witness into account as well as having regard to the need to ensure that the defendant has a fair trial;
- if the witness is required to give evidence in the case, whether s/he wishes to have a meeting with the prosecutor to discuss any matter arising from the early special measures meeting. In some cases, a witness may not wish to have such a meeting and the wishes of the witness should, of course, be respected;
- if the witness does wish to have such a meeting with the prosecutor, explain that the police officer will notify the CPS and the CPS will contact the witness, as soon as

possible after it is known that the witness will be required to give evidence, to make arrangements for the meeting.

- explain to the witness that a record of the meeting will be kept, which will normally be disclosed to the defence;
 - confirm the current contact details for the witness and ask the witness to let the police know if there is any subsequent change;
 - ask the witness to let the police know of any change of needs or circumstances that might affect the special measures to be applied for.
- 42** Paragraph 8 of the proforma at **Annex A** will be used to record the above matters and, after completion, will be returned to the prosecutor by the police officer in the case as soon as possible. The proforma must be retained on the CPS file.

3 MEETINGS BETWEEN PROSECUTORS AND WITNESSES

Purposes of Meeting with the Witness

- 43** The purposes of a meeting with a witness are:
- to establish a link between the CPS and the witness and provide the witness with reassurance that their needs will be taken into account;
 - if the witness asks, and if the meeting does not coincide with the pre-court familiarisation visit organised by the Witness Service, an explanation of court procedure and the roles of the various parties in the trial may be given;

- where the meeting takes place before the application to the court for special measures is made, to confirm that the special measures which were identified at the **early special measures meeting** are appropriate for an application to the court for a **special measures direction** under section 19;
- where the meeting takes place before the application to the court for special measures is made, to confirm the views of the witness as to which of the special measures should be applied for – section 19 requires the court to consider any views expressed by the witness.
- where the meeting takes place after the application to the court for special measures is made, to inform the witness of the special measure(s) directed by the court to apply to the trial and to explain the binding effect of the court’s direction – **section 20**.
- where the CPS has decided that it would not be appropriate to apply for any special measure(s), to provide the witness with an explanation for that decision.

44 Additionally, the meeting may provide an opportunity to assess any further needs of the witness when giving evidence without, of course, entering into any discussion of the evidence.

Which Witnesses are Eligible to attend a Meeting with the Prosecutor?

45 Any witness for whom the CPS intends to make an application for special measures in accordance with **section 16-17** may request a meeting with the prosecutor. A witness in respect of whom the CPS has decided not to apply for a special measure(s) may also request a meeting with the prosecutor.

When should the Meeting with the Witness Take Place?

- 46** The meeting will need to take place within a time-scale which enables the CPS to make the appropriate application for a special measures direction under **section 19**. Rules of Court will be issued setting out the procedure and time-limits to be followed when making a special measures application.
- 47** The following provides a general guide:
- where practicable, meetings with witnesses should usually take place after the hearing at which the application for special measures is made and before the trial. This will have the advantage of informing the witness as to the special measure(s) that the court has directed should apply to the trial.
 - there may be cases where it will be appropriate to hold meetings with witnesses prior to the hearing at which the application for special measures is determined. An example is where the witness has indicated disagreement with the decision made by the police and/or CPS as to the special measures which should be applied for.
 - in view of the tighter time-scales in magistrates' and youth courts, the general principle must be that meetings with witnesses will need to be held as soon as possible after the entry of a not guilty plea.
- 48** The meeting should not take place until the witness has made any statement or further statement which was discussed at the **early special measures meeting**. To hold a meeting with a witness before the evidence of the witness has been fully recorded could lead to an allegation of rehearsing or coaching.

Who should Attend the Meeting with the Witness?

- 49 Each case will need to be considered individually and the needs and wishes of the witness must be taken into account. The aim must be to provide the maximum possible continuity and to avoid, where possible, the witness meeting a different person from the prosecution team at different stages of the trial process. The number of people attending the meeting should also be kept to manageable proportions to avoid the witness feeling intimidated.

The following is a list of those people who will need to be considered when arranging the meeting:

- the reviewing lawyer.
- the trial advocate. Whenever possible the trial advocate should be present at the meeting and, if not the same person, the prosecutor who was present at the **early special measures meeting**;
- if counsel has been or is to be instructed to prosecute the case then counsel should, wherever possible, attend the meeting;
- the CPS caseworker;
- the police officer in the case will, whenever possible, attend. If the officer in the case has not had the contact with the vulnerable or intimidated witness then the officer who has had such contact should also attend;
- the witness;
- a relative, carer or supporter of the witness;
- a person who may be required to facilitate communication with the witness for the purposes of the meeting, for

example an intermediary appointed by the court or a sign language interpreter;

If the witness wishes a legal representative to attend the meeting, this should usually be permitted. However, it will be the responsibility of the witness to make the arrangements for the attendance and payment of such a legal representative.

- 50** The final decision as to who will attend the meeting rests with the CPS after appropriate discussion and liaison with those concerned. The CPS will pay the reasonable expenses and allowances of those attending the meeting (other than any legal representative of the witness) in accordance with the Crown Prosecution Service (Witnesses etc Allowances) Regulations 1988.

NB There must be a separate meeting for each witness for whom special measures are under consideration.

Health and Safety Issues

- 51** At all times any CPS staff involved in a meeting with a witness should consider their personal safety and, where required, seek advice from the Departmental Health and Safety Officer.

Where will the Meeting Take Place?

- 52** When deciding where the meeting is to take place, the needs of the witness must be taken into account. The meeting will usually take place at the relevant CPS office but may take place at a police station or other police premises. It may be possible to conduct the meeting at the court centre that will try the case, on a day and at a time to coincide with the pre-court familiarisation visit organised by the Witness Service. This would have a number of advantages including:

- for the witness, the avoidance of the need for a separate meeting; and
- for the CPS, the avoidance of potentially duplicating the work of the Witness Service who will explain court procedure, the roles of the various parties in the trial process and offer support to the witness. If the meeting is held at a CPS office, the witness may ask for an explanation of court procedure and the roles of those involved. In this situation, an explanation should be given whilst avoiding any discussion of the evidence. This explanation is not intended to replace the work of the Witness Service.

Arranging the Meeting

- 53** The CPS will arrange the meeting and the views of the witness as to whether the meeting is to be held at a CPS office, a court centre or elsewhere should be sought and carefully considered. If the meeting is to be held at a court centre, the prosecutor should liaise with the Witness Service to co-ordinate arrangements. The final decision as to where the meeting is to take place will be made by the CPS, following discussion with those involved.
- 54** The CPS will provide the witness with a leaflet to explain the purposes of the meeting with the prosecutor, as set out in **paragraph 43** above. This will include the fact that it will not be possible to discuss the evidence of the witness or any other evidential aspect of the case. The leaflet will help to ensure that the witness is clear as to the purposes of the meeting and thereby avoid the witness having expectations that are not met.

Need to Avoid Rehearsing or Coaching of Witness

- 55** It is **imperative** that there is no discussion whatsoever with the witness as to the evidence in the case. It is quite possible that the witness will wish to mention or discuss a matter relating to evidence but both the **Bar Code of Conduct** and the **Guide to the Professional Conduct of Solicitors** make it clear that there must be no discussion of evidence with the witness. Any such discussion would be likely to lead to an allegation of rehearsing or coaching of the witness. This could not only lead to the exclusion of evidence but also to professional disciplinary proceedings.
- 56** If the witness does wish to discuss an evidential matter, the prosecutor must explain that the witness must discuss his or her evidence with the police officer, not the prosecutor, and that arrangements for this to happen can be made. In such a situation, what was said by the witness and the action taken by the prosecutor must be fully documented and attached to **Annex B**. See **paragraph 58** below with regard to the issue of disclosure of Annex B.

Keeping a Record of the Meeting

- 57** It is **essential** that a **contemporaneous written record** is kept of what is discussed and agreed with the witness at the meeting. A designated note-taker should be used for this purpose and this person should be a CPS employee. The proforma attached at **Annex B** should be used for this purpose. Those persons attending the meeting, other than the witness, should be asked to sign the record of the meeting as being a correct record of what was discussed.
- 58** The signed proforma will normally be entered by the police on the form MG6C and will be retained on the CPS file. **A copy of the proforma should routinely be disclosed to the defence without the need for a specific request from the**

defence. However, if the proforma contains sensitive material it will be entered by the police on the form MG6D. Any issue as to the disclosure of this record of the meeting will be determined in accordance with the usual Criminal Procedure and Investigations Act 1996 principles, Attorney General's guidelines on disclosure and public interest immunity procedures.

59 It is **vital** that the matters discussed at the meeting are sufficiently recorded. The use of the record at Annex B may avoid the prosecutor being called as a witness at the trial and, in the event of being called, will provide an invaluable aide memoire. Its use should also assist in ensuring that the meeting remains focussed.

60 It will not normally be appropriate or necessary to tape-record or video-record the meeting. However, this may be done if the circumstances of the particular case justify this course of action. A written note of the reason(s) for adopting this course of action should be made and retained. The same principles as to disclosure, set out in **paragraph 58** above, will apply in relation to both the written note and the record of the meeting.

What should be Discussed at the Meeting

61 Each case will need to be considered individually but the following is a list of the matters which should be addressed:

- (a) an explanation to the witness of the purposes of the meeting, as set out in **paragraph 43** above;
- (b) an explanation to the witness of the prosecutor's role. The CPS, as an independent prosecuting authority, cannot represent an individual witness. However, the CPS does take into account the needs and views of witnesses and will do as much as is permitted to enable the witness to give the best evidence possible;

- (c) an explanation to the witness that it will not be possible to discuss the evidence of the witness or any other matter relating to the evidence in the case – see **paragraphs 55 and 56 above**;
- (d) if appropriate, an explanation to the witness of the provisions contained in **sections 34-36** of the Act – see **paragraph 15 above**;
- (e) an explanation to the witness that although a relative, carer or supporter has attended the meeting with the witness, such a person will not necessarily be permitted to sit in the witness box with the witness;
- (f) if the witness asks, and if the meeting does not coincide with the pre-court familiarisation visit organised by the Witness Service, an explanation of court procedure and the roles of the various parties in the trial may be given.
- (g) a request to the witness that if, following the meeting, his or her needs or circumstances change, in a way that might affect the special measures applied for, that the CPS be notified as soon as possible.

Where the CPS has decided not to apply for any special measure(s)

- (a) where the CPS has decided that it would not be appropriate to apply for any special measure(s), an explanation to the witness of the reasons for that decision. The CPS will take into account any comments or views expressed by, or on behalf of, the witness and, if appropriate, reconsider the decision not to apply for any special measure(s).

Where the meeting takes place before the application to the court for special measures is made:

- (a) an explanation to the witness of the special measures which were identified at the **early special measures meeting**. There will then need to be a discussion with the witness in order to check that those special measures are appropriate for an application to the court for a **special measures direction** under section 19;
- (b) the views of the witness as to which of the **special measures** should be applied for;
- (c) an explanation to the witness that the final decision as to what special measures will be applied for under **section 19** will be made by the CPS but that the views of the witness are taken into account in reaching that decision;
- (d) an explanation to the witness that the final decision as to which special measures will be made available to the witness at the trial will be made by the court. In reaching that decision, the court will take the wishes of the witness into account and also consider whether the measures might tend to inhibit the effective testing of the evidence of the witness by the defendant: **section 19(3)**.

Note: Where the meeting takes place before the application to the court for special measures is made, the police will be responsible for informing the witness of the outcome of that hearing unless a locally agreed arrangement provides otherwise.

Where the meeting takes place after the application to the court for special measures is made:

- (a) to inform the witness and those involved of the special measure(s) directed by the court to apply to the trial and to explain the binding effect of the court's direction – **section 20**.

Action to be Taken after the Meeting

62 The following steps will need to be taken after the meeting:

- notify the defence that the meeting has taken place;
- send a copy of the proforma attached at **Annex B** to the defence, **unless it contains sensitive material** – see **paragraph 58** above.

Change in Needs or Circumstances of a Witness

63 The needs or circumstances of a witness may change during the course of a case, in a way that could not be foreseen by the police or the CPS. For example, the communication difficulties of the witness may have become more acute and a further aid to communication is now needed. In such a situation, an application or further application to the court should be made as soon as possible – **section 20**.

**ANNEX A
VULNERABLE OR INTIMIDATED WITNESSES:
EARLY SPECIAL MEASURES MEETING**

Record of Meeting

[A separate record must be made for each witness]

R v _____

_____ **Crown/Magistrates’
Court/Youth
Court** [if known]

CPS Reference Number:

[if known]

NAME OF WITNESS:

1. Parties Present

CPS:

Police:

Other:

2. Venue of Meeting

[indicate venue or that meeting was held by telephone]

3. Information Received From Police

[This section to be completed where the meeting is conducted by telephone]

3. Eligibility for Special Measures

[Record here the basis upon which it will be established that the witness is eligible for one or more of the special measures under sections 16 and 17 YJCEA 1999]

4. Special Measures Required

[Record here which of the special measures set out in sections 23-30 YJCEA 1999 will be required and be the subject of an application for a special measures direction under section 19 YJCEA 1999. Set out clearly why the special measures are required and how they will improve the quality of the evidence of the witness]

Special Measure	Why Required	How the Quality of Evidence will be Improved
------------------------	---------------------	---

Screen

Live link

Clear court

Remove wigs/gowns

Video recorded
evidence in chief

Video recorded
cross-examination
or re-examination

Intermediary

Aid to communication

5. Views of Witness

[Record here the views of the witness as to which of the special measures should be applied for: section 19(3)(a) YJCEA 1999]

6. Further Action

[Record here any action which needs to be taken. For example, the taking of a further statement by way of video recording with a view to its admission in evidence under section 27 YJCEA 1999]

7. Agreement Reached

Signed _____ **CPS**

_____ **Police Officer**

Date _____

8. Confirmation With Witness

[record here the matters set out in paragraph 41 of Guidance]

Signed _____ **Police Officer**

Date _____

**ANNEX B
VULNERABLE OR INTIMIDATED WITNESSES:
PROSECUTOR'S MEETING WITH WITNESS**

Record of Meeting

R v _____

_____ **Crown/Magistrates'
Court/Youth Court**

CPS Reference Number: _____

NAME OF WITNESS:

1. Parties Present

CPS:

Witness:

Police:

Other [include, where applicable, relationship to witness]

2. Venue of Meeting

[indicate whether meeting coincides with a pre-court familiarisation visit]

3. Time Meeting Started and Ended

4. Preliminary Matters Explained to Witness

- **The Purposes of the Meeting**
[refer to paragraph 43 of Guidance]
- **The Role of the Prosecutor**
[refer to paragraph 61(b) of Guidance]
- **No Discussion of Evidential Matters**
[refer to paragraphs 55 and 56 of Guidance]

5. Discussion With Regard To Special Measures

[refer to relevant matters set out in paragraph 61 of Guidance and include any comments made by the witness]

6. Explanation of Court Procedure

[refer to paragraph 43 bullet 2 of Guidance]

7. Decisions Reached

Signed _____ **CPS**

_____ **Police Officer**

_____ **Other**

Date _____

