

Guidance Note on Applications for Special Measures

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INTRODUCTION

This Guidance Note has been prepared to ensure all applications for special measures at Tribunal hearings are dealt with consistently and efficiently and to maximise the quality of evidence given by all those who appear before the Tribunal.

The Tribunal is committed to ensuring all parties receive a fair trial (Article 6 European Convention on Human Rights).

Following the procedure set out in this guidance note when making an application for special measures will help to ensure that the Tribunal is able to facilitate the effective participation of all parties, including vulnerable witnesses, by adapting its normal hearing procedures where necessary.

If you require any additional information or clarification, please contact the Case Management Team at enquiries@solicitorsdt.com.

A decision by the Tribunal to grant special measures does not indicate that the Tribunal has drawn any conclusions about the allegations made against any Respondent, or about the credibility of any witness.

SECTION A: WHAT ARE THE TYPES OF SPECIAL MEASURES DIRECTIONS THAT THE TRIBUNAL CAN MAKE?

1. There are a number of special measures directions that the Tribunal can make. These include:

Allowing evidence to be given by video link

2. At the moment the majority of the Tribunal's hearings are being held remotely. Covid restrictions permitting, the Tribunal will facilitate a small number of hybrid hearings (i.e. hearings at which some participants attend in person and some attend via a video platform). If you are due to give evidence as a witness in a hybrid hearing, the expectation will be that you will give evidence remotely. If you want to give evidence in person you need to discuss this with the party who is asking you to give evidence so that they can make the appropriate application.
3. For in person hearings where all parties and witnesses attend the Tribunal it is possible to request a remote live link (please see separate SDT Video Link Request Guidance Note). 'Live link' means a live link or other arrangement by means of which, although the witness is outside the courtroom: -
 - a) the witness can see and hear the proceedings in the court room; and
 - b) the Tribunal Panel and clerk, the parties, their legal representatives, any person appointed to assist the witness and members of the public in the court room can see and hear the witness.
4. The witness will usually give their evidence from another location and will participate in the hearing via a video link which is set up by the Tribunal's administrative staff and tested prior to the hearing.

Anonymising the Cause List

5. The Tribunal publishes cause lists which can be viewed on its website and, when the Tribunal's offices are open, are also displayed at the Tribunal's offices. The cause list

contains the time and date of the hearing and the names of the parties. It sets out who the Tribunal Panel are and who the clerk to the hearing will be. If there is more than one case being heard by the same Panel, details of all of the cases being considered by that Panel will be on the cause list.

6. Under Rule 34 of The Solicitors (Disciplinary Proceedings) Rules 2019 it is possible to apply for the cause list to be anonymised.

7. Rule 34 (2) states:

“Any party or other person who claims to be affected by an application may apply to the Tribunal for the cause list to be anonymised on the grounds of –

(a) exceptional hardship; or

(b) exceptional prejudice

to a party, a witness or a person affected by the application.”

8. An application for the cause list to be anonymised can also be made in relation to cases to which The Solicitors (Disciplinary Proceedings) Rules 2007 and The Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011 apply.

Holding the hearing in private

9. The starting position is that hearings take place in public, recognising the need for open justice. Under Rule 35 of The Solicitors (Disciplinary Proceedings) Rules 2019 it is possible to apply for a hearing - or part of a hearing - to be held in private.

10. Rule 35(2) states:

“Any person who claims to be affected by an application may apply to the Tribunal for the hearing of the application to be conducted in private on the grounds of –

(c) exceptional hardship; or

(d) exceptional prejudice

to a party, a witness or a person affected by the application.”

11. An application for a hearing to be held in private can also be made in relation to cases to which The Solicitors (Disciplinary Proceedings) Rules 2007 and The Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011 apply.

Special measures in relation to a party and/or a witness/witnesses

12. It is for the person making the application to explain why special measures would be likely to improve the quality of the witness's evidence and which measure(s) would be likely to achieve this. The Tribunal will need to consider and decide which steps, if any, are appropriate after receiving representations from the parties.
13. Examples include:
 - when a witness gives evidence in person, screens to shield that witness from another party/the public: The witness may be permitted to give their evidence behind a screen if they need to be screened from the Respondent, or otherwise not exposed to public view; or
 - when a witness gives evidence remotely, the Tribunal can ensure that that witness is not visible to another party/the public. The Tribunal does this by directing those from whom the witness should be shielded to attend the hearing by telephone during the witness's evidence; or
 - where a witness gives evidence remotely, the Tribunal can ensure that the Respondent is not visible to them by directing that the Respondent de-activate the video function on the video link platform during the witness' evidence.

Support for the witness

14. The Tribunal may grant leave for the vulnerable witness to be accompanied by another person, be it professional or lay, whilst they are giving evidence. That person would be present as a support mechanism and would not be permitted to address the Tribunal and/or talk to the witness during the course of their evidence.

Regular breaks

15. Whether sitting in person or remotely the Tribunal will always take regular breaks. However, some people participating in a hearing may need additional breaks. If a witness or an advocate knows that they will need regular breaks for any reason they should ask the Tribunal in advance. During the hearing anybody can ask for a break. Factors such as the time of day a witness gives evidence and the overall length of evidence on each day will need to be considered by the Tribunal.

Other case specific measures that will help parties participate in the hearing and/or witnesses to give their best evidence

16. Every case before the Tribunal is considered on its own facts. It is not possible to set out in a Guidance Note the full range of specific measures that might be appropriate in relation to an individual case.
17. If there are specific measures that will help parties participate in the hearing and/or enable witnesses to give their best evidence then an application should be made for special measures specifying what measures are sought and why.
18. It is for the person making the application to explain why special measures would be likely to improve the quality of the witness's evidence or the parties' participation in the hearing, and which measure(s) would be likely to achieve this. The Tribunal will need to consider and decide which steps, if any, are appropriate after receiving representations from the parties.

SECTION B: VULNERABLE WITNESSES

19. The Tribunal recognises that it needs to be alert to the vulnerability of witnesses appearing before it and to give effect to section 20 of the Equality Act 2010 in relation to the administrative functions of the Tribunal by making reasonable adjustments in order to remove barriers for people with disabilities.

20. When a new case arrives at the Tribunal it is reviewed by the Clerk. If on the face of the papers there is potential for witness vulnerability, the Clerk will flag this information and consider any case management issues arising. Parties are asked at different stages in the proceedings to tell the Tribunal whether any party or witness might be vulnerable.
21. Throughout the proceedings, the Tribunal in each case will consider if (a) a party's participation in proceedings is likely to be diminished by reason of vulnerability and/or (b) the quality of evidence given by a party or witness is likely to be diminished by reason of vulnerability, and in either case whether it is therefore necessary for Special Measures to be put in place.

What is meant by the term 'vulnerable witness'?

22. For the purposes of this guidance note, vulnerability may arise where a witness is young; elderly; suffering from physical or mental illness; has a disability; has speech or language difficulties; is alleged to have been involved in a distressing situation, whether directly involving a party to the proceedings or not; and/or is alleged to have been exploited, by a party to the proceedings. Not all witnesses falling into any of these categories will be vulnerable and some vulnerable witnesses may not fall into a readily identifiable category of vulnerability.
23. In addition, a witness may be vulnerable because they feel intimidated i.e. suffering fear or distress in relation to giving evidence in the case.

SECTION C: ADDITIONAL INFORMATION

24. It should be noted that, simply because special measures are put in place, or because a witness is identified as vulnerable, it does not imply that there has been any prejudgment by the Tribunal that the witness is truthful e.g. as to whether or not they were exploited by the Respondent.
25. The purpose of identifying vulnerability is to secure the best possible evidence from each witness; it does not necessarily mean that the evidence will be accepted as true to the required standard of proof.

26. Please note that it is the responsibility of the parties to seek appropriate directions for special measures from the Tribunal.

Where should I send an application for a special measures direction?

27. Applications should be made as early as possible (to ensure decisions about how procedures should be adapted are made promptly) and sent to the Case Management Team:
- by email to enquiries@solicitorsdt.com ; or
 - by post addressed to the Clerk to the Solicitors Disciplinary Tribunal, 2nd Floor, 45 Ludgate Hill, London, EC4M 7JU.
28. The Case Management Team will refer the application to a Panel of the Tribunal for a decision once the views of the other party (or parties) have been obtained. In some cases there will be a hearing to consider the application and hear from the parties before the Panel makes a decision.

Is there a prescribed form?

29. Yes. The application form ('Application for A Special Measures Direction') can be found on the Tribunal's website.

