Victims Commissioner

Automatic Access to Special Measures

Amendment 52
Courts and Tribunals Bill

The Victims' Commissioner for England and Wales, Claire Waxman OBE, is calling for amendments to the Courts and Tribunals Bill to give eligible victims automatic access to special measures, removing unnecessary barriers and providing greater certainty.

Victims should not face uncertainty about the very measures designed to help them participate. The amendment will ensure when victims and witnesses are automatically eligible for special measures (due to their age or the offence type), and want special measures in place, they should have automatic access to screens, live link, and video recorded evidence. These should collectively be defined as **standard measures.**

Victims and witnesses would retain the right to choose whether to use special measures, with the amendment ensuring automatic access where they wish to do so, rather than requiring them to opt in or justify their need.

Legislative change must be backed by an agreed process with a single point of contact, to inform victims about the options available and help them to make a decision that is right for them. Alongside this, court infrastructure needs to ensure special measures are available in practice.

Making access automatic would strengthen victims' rights, reduce administrative burdens, and crucially reduce the stress and uncertainty about giving evidence

"Going through the criminal justice system left me feeling overwhelmed and powerless once again, echoing the very trauma I had endured in the first place. Applying for special measures was another hurdle to overcome, and it meant accepting that how I would present myself and give my best possible testimony was not my decision, but a judge's.

My application for a live link was declined at the last minute. After months of uncertainty and stress, I was left having to attend court in person. I felt unprepared, and angry that I had been denied the choice to decide what was right for me.

If special measures had been applied automatically, it would have removed an additional source of stress. I would have known from the outset that I was protected.

- Charlotte Meijer, Victim-Campaigner

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Background

The Youth Justice and Criminal Evidence Act 1999 introduced a number of measures that can be used to support vulnerable and intimidated witnesses[1] give their best evidence at court. This includes, but is not limited to:

- **Screens** (section 23 YJCEA)– where a screen is placed around the witness box or dock to ensure that the witness cannot see the defendant while giving evidence, and they cannot see them.
- **Live link** (section 24 YJCEA) – where a witness gives evidence in a live video link outside the courtroom (either at court or a remote location).
- **Video recorded interview** (section 27 YJCEA) – where the police video recorded interview becomes the witness's examination-in-chief evidence.

For the purpose of this amendment, the Victims' Commissioner is seeking to make the above special measures automatic for eligible victims and referred to as standard measures.

How does the application process work

Under the Victims' Code, following a needs assessment usually completed by witness care officers, witnesses identified as legally vulnerable and/or intimidated can request special measures as part of their enhanced rights. The Witness Care Unit should then inform the CPS, and the prosecutor makes a formal application to Judge or Magistrate for special measures.

There is no guarantee that the special measure request will be approved. It is for the Judge or Magistrate to decide whether, and which, special measures should be granted.

Currently, when making a decision to grant special measures, the court must determine which special measures (or combination of them) would in its opinion be likely to improve the quality of evidence given by the witness. If the Judge or Magistrate decide it would not improve the quality of evidence, they may suggest a different special measure instead, or they might say no special measure can be used.

What are the barriers to accessing special measures

The current system creates multiple points at which an eligible victim can fail to receive the support they need:

- **Identification**: If a victim's needs are not properly assessed, they may not be identified as eligible or informed about the special measures available to them.
- **Application:** Access can depend on an application being completed properly and sufficiently early.

[1] Special Measures | The Crown Prosecution Service

- **Judicial discretion:** Eligibility does not guarantee access. The court must separately determine which measures are likely to improve the quality of the witness' evidence and which will maximise it.
- **Perceptions:** Misconceptions about special measures, including concerns about the perceived impact on case outcomes and how juries perceive victims giving evidence remain and influence decisions about what special measures are granted.
- **Infrastructure:** Even where a measure is appropriate, inconsistent facilities and technology can affect whether and how effectively it can be delivered.

> "I wanted to do it through a computer screen so I'd have been in a completely different room. But then she [police officer] rang me and said that the barrister for my side was saying … that the jury interacts better with people that are in the court and they can see your facial expressions and your reactions to stuff in real time rather than there being a delay. So, at first, I was supposed to do it via a computer through a video link but then the barrister did ask me to change, and I did change it to the screens. I was never offered anything else … I got told that I was to be in court."
>
> **- Victim-survivor, Suffering for Justice Report**

> "We have seen numerous issues with Special Measures being granted and then withdrawn at a later date. One example involved a live link being granted but then withdrawn on the day of the trial, just minutes before the witness was due to give evidence. The Judge made this decision because they did not want the jury to view the entire trial on a screen, having just watched the ABE interview. As a result, the witness was informed that they would need to give evidence in the courtroom, but with the use of screens instead"
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> **- Rape Crisis ISVA in the South of England, Living in Limbo Report**

Victims should not lose access to support because of failures elsewhere in the system. Automatic entitlement would remove one significant layer of discretion and reduce the number of points at which access can break down.

The case for reform

- **Automatic entitlement would provide certainty and reduce unnecessary process.** Victims would know earlier how they will give their evidence, while police, prosecutors and courts would spend less time preparing and determining applications for measures to which eligible victims would otherwise routinely have access. Automatic entitlement would provide a right to access the measure without requiring judicial approval, but victims would remain free to decline any measure they do not wish to use.

- **Special measures enable participation.** Victims consistently tell us that special measures are essential to their participation, with some saying they would not have engaged with proceedings without them. By reducing anxiety, increasing feelings of safety, and enabling victims to focus on giving their evidence, special measures support the primary aim of helping vulnerable and intimidated witnesses participate effectively. Making access automatic would provide early reassurance and remove unnecessary barriers to engagement.
- **Victims' own assessment of their needs should carry greater weight.** The current framework ultimately places the decision with the court. Automatic entitlement would start from the principle that an automatically eligible victim is best placed to understand which available measure will help them participate and give their best evidence.

"Although I requested to give evidence via video link due to my nervousness and concerns about facing the defendant, this option was not provided. Instead, I had to be physically present in court, which increased my anxiety and discomfort."
- Victim of street violence, Male, 16-24, Victim Survey 2024

"I requested special measures to protect my identity and provide testimony without directly facing the defendant. These included the use of screens in the courtroom and the option to give my evidence via video link, which made me feel safer and more comfortable during the process".
- Victim of street violence, Male, 16-24, Victim Survey 2024

"I requested a screen to be placed between me and the defendant, and this was implemented. It made me feel more comfortable during the trial."
- Victim of hate crime, Female, 25-34, Victim Survey 2024

- **Many special measures are routinely granted in practice.** For victims of offences such as domestic abuse, applications for measures such as screens are often uncontroversial and are rarely refused. Requiring the CPS and courts to prepare and determine applications in these cases can therefore create unnecessary administrative burdens. Automatic entitlement would streamline the process, freeing up resources while providing victims with early certainty that the support they need will be available.
- **A meaningful entitlement could create a stronger expectation of consistent delivery.** If special measures are a right rather than something dependent upon discretionary approval and availability, Government and HMCTS would have a stronger imperative to ensure courts have the facilities, technology and capacity required to provide them.

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> "I asked for the perpetrator not to see [young victim-survivor name] face. And at the time [place] Crown Court couldn't facilitate that. Because there was only one screen in the court. And I said, 'Well, surely, he can be screened off in the dock'. 'No, we can't do that' … It shouldn't be a postcode lottery as to the facilities."
> **- Parent of a young victim-survivor Suffering for Justice Report, (October 2024)**

- **Automatic entitlement should act as a catalyst for reviewing how special measures are administered across the criminal justice system.** Processes should be simplified and supported by shared systems that improve communication between the police, CPS and courts, reducing the risk of information being lost or delayed.

At a time when victims already face significant uncertainty in the justice system, the measures intended to make their participation safer and less traumatic should not themselves be another source of uncertainty. **Victims who are already eligible for special measures should not have to pass through a further discretionary process to access the measures they believe will help them give their best evidence.**

Existing best practice

In Scotland, a new simplified notification procedure has been introduced through Section 6 of the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019. Under this model, child witnesses and deemed vulnerable witnesses can access certain "standard measures" through a notification process rather than a formal application.

These measures include:

- Remote web link
- Screens
- A supporter to sit with the witness when they give evidence

Once the court is notified of the measures sought within the required timeframe, the witness is entitled to receive those measures without the need for routine judicial approval. This represents a shift from a permission-based system to a notification-based model, reducing administrative burdens, streamlining case management, and avoiding unnecessary judicial consideration in straightforward cases. It also provides greater certainty for victims, who can have confidence that the support they have requested will be available when they give evidence.

Beyond legislation

To address other issues associated with special measures, there is a need to look beyond legislative change, and promote better and consistent practice that is trauma-informed and focused on improving the victim experience.

- **Strengthen training and guidance:** Criminal justice agencies, including the police and CPS, should receive consistent training on the value and purpose of special measures and how they can support victims to give their best evidence. Victims should be given clear, accessible information about the measures available, with opportunities to see or

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experience them during a pre-trial visit wherever possible, so they know what to expect and can make an informed choice. Automatic entitlement should not mean that victims have measures imposed upon them, the decision about whether to utilise a special measure or not, should be based upon a proper exploration with the victim of their needs and the measures available.

- **Invest in court infrastructure:** Government should invest in court facilities and technology, including across magistrates' and youth courts, to ensure special measures are consistently available and effective regardless of venue. Technology must ensure quality in recordings and meet victims' needs. Evidence-giving spaces, such as live link rooms should be trauma-informed and appropriate, avoiding small or enclosed environments that may increase distress.
- **Improve offer and access to remote evidence sites:** Greater use and availability of remote sites would allow victims to give evidence away from the court environment altogether. Models such as the Lighthouse in London demonstrate how dedicated, trauma-informed settings can provide a safer and more comfortable environment, particularly for children and other vulnerable witnesses.

Supportive statements

Katie Kempen, Chief Executive at the charity Victim Support, said:

"Giving evidence in court can be a daunting, and often traumatising, experience. Access to special measures can make a huge difference to victims and witnesses, helping to reduce stress and anxiety. Yet victims, and our staff and volunteers supporting them through the process, tell us that applications are often not granted, causing additional worry.

"Automatic access to special measures for eligible victims would reduce feelings of uncertainty and enable victims to give their best evidence, as well as limiting the administrative burden on the criminal justice system. Accepting this change would mark a significant step in creating a system which works for victims and witnesses, rather than against them."

Duncan Craig OBE, Chief Executive of We Are Survivors, said:

"It is the right that we call time on the restrictive way we approach the application of special measures with victims of crime. For too long, the system has at times acted as if special measures are an inconvenience rather than an act of victim-centred care that I believe they were originally set out to be. There should be nothing 'special' about these adjustments that we can so easily make that can reduce the distress a victim feels going through the court system. Since we delivered the first ever male specific ISVA service in the UK, We Are Survivors has seen how positively impactful special measures can be for victims of sexual harms whilst also seeing how stressful it has been getting them in place at times. We, as the system, have to make it easier for all victims and survivors"

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The Amendment

The Victims' Commissioner is supportive of amendment 52, tabled by Baroness Levitt:

After Clause 15

insert the following new Clause—

"Automatic special measures directions

After section 17 of the Youth Justice and Criminal Evidence Act 1999 (witnesses eligible for assistance on grounds of fear or distress about testifying), insert—

"17AAutomatic special measures directions

(1)This section applies where a witness—

(a)is under the age of 18 at the time the defendant is charged with the offence, or

(b)is eligible for assistance by virtue of section 17(4) (witnesses in proceedings of certain offences eligible for assistance on grounds of fear or distress about testifying).

(2)A witness to whom this section applies is entitled to one or more automatic special measures unless—

(a)the witness has informed the court that they do not wish to receive such a measure, or

(b)the court is satisfied that it would be contrary to the interests of justice to give a direction for the measure.

(3)In this section, "automatic special measure" means a special measure provided for by—

(a)section 23 (screening witness from the accused),

(b)section 24 (evidence by live link), and

(c)section 27 (video recorded evidence in chief).

(4)A witness to whom this section applies may indicate to the relevant party—

(a)which automatic special measure, or combination of automatic special measures, the witness wishes to use;

(b)whether the witness wishes to use any other special measure.

(5)Where a witness wishes to use a special measure other than an automatic special measure, an application must be made and determined in accordance with this Chapter.

(6)Where a witness indicates a wish to use one or more automatic special measures, the relevant party must notify the court and the other parties of the measure or measures sought.

(7)Within 14 days of receipt of notification under subsection (6), any other party may give notice to the court opposing the making of a special measures direction.

(8)Subject to subsection (11), the court must make a special measures direction providing for the measure or measures sought.

(9)A special measures direction under subsection (8) may be made without a hearing unless the court considers that a hearing is required in the interests of justice.

(10)Section 19(2) (special measures direction relating to eligible witness) does not apply in relation to a special measures direction under subsection (8).

(11)The court retains discretion as to the manner in which a live link is to be provided and operated.

(12)Where the court refuses to give a direction for an automatic special measure under subsection (2)(b), it must—

(a)give reasons for its decision, and

(b)ensure that those reasons are communicated to the parties as soon as reasonably practicable.

(13)In this section, "the relevant party" means the party proposing to call the witness, and includes the prosecutor, the defendant or their representative.""

Member's explanatory statement

This amendment seeks to establish a statutory presumption that child witnesses and complainants eligible under section 17(4) will be entitled to give evidence via pre-recorded video, screens and live link without a formal application. The amendment is intended to streamline court procedures and improve the experience of vulnerable and intimidated witnesses, whilst preserving the right of the parties to make representations and the court's power to refuse to give a direction where this would be contrary to the interests of justice.