

Protocol on Vulnerable Witnesses

Introduction

1. This protocol sets out the approach that will be taken by the Patrick Finucane Inquiry (the Inquiry) to its management of vulnerable witnesses. It is to be read together with the [Inquiries Act 2005](#) (the Act), the [Inquiry Rules 2006](#) (the Rules) and the other protocols which have been published on the Inquiry's website. The Inquiry recognises that each witness should be able to engage freely with the Inquiry with dignity and respect. Every person engaging with the Inquiry should be supported to give evidence to the best of their ability. This protocol is intended to give effect to the Chair's intention that all witnesses are able to give their best evidence.
2. The procedures outlined below are not intended to cover every eventuality or every procedural issue that may arise. It follows that, in exceptional cases, where the interests of justice and fairness require it, the Inquiry may need to depart from this protocol. Further, this protocol may be amended from time to time, in which case an amended version will be published on the Inquiry website.
3. The Inquiry places the wellbeing of those who engage with it at the centre of the evidence gathering process and acknowledges that the giving of evidence may be challenging for many people.
4. Independent emotional support will be offered to witnesses in relation to their engagement with the Inquiry. Details of support services can be found on the Inquiry's website, which is accessible [here](#).

Definition of a witness

5. A "witness" is any person who gives evidence to the Inquiry, whether or not they are a Core Participant. For the purpose of this protocol "giving evidence" includes preparing for, making, editing and

approving any statement provided to the Inquiry and giving oral evidence.

Definition of vulnerability

6. The term “vulnerable witness” is used widely in Courts and Tribunals and across different types of proceedings. The Inquiry does not intend to cause any harm or distress by using the term “vulnerable”. It is a term the Inquiry has adopted to capture a wide range of witnesses who may benefit from:
 - a. Support and assistance to ensure that they can engage with the Inquiry in an effective and safe way; and/or
 - b. Additional support to ensure that their evidence is taken in a manner which reduces risk of harm to them.
7. A person shall be considered a vulnerable witness if, there is a significant risk that by reason of their experiences and/or personal characteristics they:
 - a. Experience added stress or other difficulty in being a witness or potential witness;
 - b. Suffer a likely detrimental effect in the quality of any statement or evidence which they give;
 - c. Require greater support and/or measures to ensure their effective participation; and/or
 - d. Are at risk of their mental or physical health being adversely affected because of giving evidence.

Identifying vulnerable witnesses

8. Characteristics which may give rise to vulnerability may include, but are not limited to:
 - a. Age (in particular those under the age of 18);
 - b. A recognised mental or physical disability or disorder;
 - c. Substantial fear or distress related to providing evidence about matters relevant to the Inquiry;
 - d. A learning difficulty or language impairment; or

- e. Any issue or condition which affects the ability of the individual to participate as a witness to the Inquiry, including any impairment to adaptive functioning.
9. Anyone who may be a witness (or who is representing a witness) who is or may be vulnerable should notify the Solicitor the Inquiry by email at solicitors@finucane.independent-inquiry.uk (other ways to contact the Inquiry can be found on the Inquiry's website (see [Contact Us](#)) as soon as practicable to:
 - a. Inform them of the vulnerability and its impact on the witness' ability to give evidence or otherwise engage with the Inquiry;
 - b. Provide details of whether an independent health assessment has been requested; and
 - c. Identify any special measures that may be appropriate.
10. It is important that anyone who is or may be vulnerable is identified as such at the earliest opportunity. All witnesses who are to be called to give oral evidence will be asked to notify the Solicitor to the Inquiry of any matters that may have an impact upon their ability to give evidence.
11. The Inquiry is aware that a person's vulnerabilities and needs may develop and change over time. Any such changes should be communicated to the Solicitor to the Inquiry as soon as practicable.
12. If the Chair determines that a person is or may be vulnerable by virtue of one or more of the factors set out at paragraph 6 of this protocol, whether or not this has been raised by the individual or their Recognised Legal Representative (RLR) directly with the Inquiry, he may direct that additional approaches be taken to assist the person in their engagement with the Inquiry.

Measures to assist vulnerable witnesses

13. Where the Chair determines that a witness is vulnerable within the meaning of this protocol, he may direct that measures are put in place to assist a witness to give evidence and to improve the quality of their evidence ('special measures'). Before making any direction, the Chair will ascertain and take into consideration:
 - a. The views of the witness on the appropriateness and nature of the special measures; and

- b. If appropriate, the views of Core Participants.
14. It is a matter for the Chair to determine what special measures are required on a case-by-case basis, based on the witness's evidenced vulnerability. Special measures may include, but are not limited to, one or more of the following:
- a. The appointment of an intermediary, including to
 - i. assess (and report upon) the additional needs of any witness,
 - ii. assist with the making of a statement, and/or
 - iii. otherwise assist the individual when giving evidence;
 - b. The appointment of an interpreter;
 - c. The giving of evidence via a live link from a location other than the Inquiry venue;
 - d. Screens to shield the witness from public view;
 - e. The making of a recorded interview;
 - f. Providing advance written notification of questions to a witness;
 - g. The support of a friend, relative or other appropriate adult to accompany the witness at the Inquiry venue (any such person shall play no part in the witness giving evidence unless directed to do so by the Chair);
 - h. Regular breaks at prescribed times;
 - i. Time limits for questioning a witness;
 - j. Providing access to emotional support through the Inquiry's dedicated support service prior to, during, or after a meeting or interview.

Anonymity

15. Applications for anonymity should be made separately to the Chair in accordance with the Inquiry's [Anonymity Protocol](#).

Assistance with vulnerability issues

16. The Inquiry Legal Team includes counsel, solicitors and other fee earners who have experience in dealing with vulnerable witnesses

and individuals. The Inquiry Legal Team may be contacted via the Solicitor to the Inquiry by any witness or legal representative who would like to discuss this protocol.

17. The Inquiry Legal Team encourages all advocates to review the toolkits available on the [Advocates Gateway](#). The principles set out there are fundamental to the fair and sensitive treatment of vulnerable witnesses and advocates will be expected to act in accordance with them at all times.
18. A further useful and important resource with which all those involved in representing Core Participants (whether as an advocate or otherwise) should be familiar is the [Judicial College Equal Treatment Bench Book](#).

Privacy notice

19. Information and personal data collected as part of this protocol will be used by the Inquiry to put in place the practical arrangements and any special measures to allow the Chair to investigate the matters that fall within the Inquiry's [Terms of Reference](#). Please see the [Privacy Notice](#) for further information.
20. Personal data provided to the Inquiry may be shared with other organisations or services that are involved in or supporting the Inquiry with witness liaison but only to the extent that they need to know.