

THE SCOTTISH LEGAL AID BOARD

GUIDELINES FOR VULNERABLE WITNESSES

SANCTION IN LEGAL AID CASES

(Sanction for unusual work or work likely to incur unusually large expenditure in respect of special measures for child witnesses)

BACKGROUND

The Vulnerable Witnesses (Scotland) Act 2004 (“the 2004 Act”) is being implemented incrementally beginning from 1 April 2005 with provisions relating to child witnesses in High Court and sheriff court solemn cases and in the consideration of grounds of referral to a childrens’ hearing by a sheriff court.

Provision in respect of adult vulnerable witnesses; sheriff summary cases and; Court of Session and sheriff court civil cases have not yet been implemented.

This guidance note is to assist practitioners seeking the appropriate sanction from the Board to use special measures to assist vulnerable child witnesses when they are giving their evidence.

Under the 2004 Act witnesses under the age of 16 are automatically entitled to give evidence by the use of standard special measures.

The standard special measures are:

- the use of a live television link where the witnesses are in another part of the court building
- the use of a screen
- the use of a supporter.

In addition to the standard special measures, there are also further special measures which may be utilised if suitable to give the necessary support to the child and these are:

- the use of a live television link from a place other than a court building
- the use of prior statements as evidence in chief
- the taking of evidence on commission.

Unusual Work

A witness under the age of 16 is automatically entitled to give evidence supported by the use of standard special measures. As such, where any of the standard special measures are identified as suitable to support the child witness, such work is not considered by the Board to be “unusual” and no sanction need be obtained from the Board on the basis that the proposed work is of an unusual nature.

Where the work being undertaken is however likely to involve one of the further special measures and the vulnerable child witness is appearing for the defence the Board considers this to be “unusual” work for which prior sanction is needed. In these circumstances, the Board will expect to receive sufficient information to show why in addition to or in substitution for the

standard special measures the child needs the further measure to assist him/her in giving their best evidence. Where the work to be undertaken is also likely to involve expenditure of £2,000 or more sanction will also be required to incur unusually large expenditure.

Unusually Large Expenditure

Our current guidance on unusually large expenditure is that where costs are likely to be over £2,000 our prior approval must be obtained before undertaking the work.

If solicitors want to use a special measure for the child and the total cost is £2,000 or less, then our prior approval for this is not necessary. This limit refers only to sanction in relation to unusually large expenditure.

Accounts Information

Where appropriate, a detailed breakdown of the time spent and the rates charged is required for the Accounts Department to properly assess the outlay claimed.