



Institute
and Faculty
of Actuaries

Support for Vulnerable Witnesses

by the Disciplinary Committee of
the Institute and Faculty of Actuaries

Support for Vulnerable Witnesses

1. Introduction

- 1.1 This Guidance has been issued by the Disciplinary Committee of the IFoA.
- 1.2 It is for use by:
 - (a) Panels, to provide further detail on their powers and procedures to be followed;
 - (b) any other party, so they are aware of the powers of the Panel and procedures to be followed; and
 - (c) IFoA staff.
- 1.3 This Guidance aims to promote transparency and consistency in the approach of Panels and the IFoA staff.
- 1.4 This Guidance applies to all Complaints and applications being considered under the Disciplinary Scheme of the IFoA (effective 1 August 2023) (the Scheme). For Complaints that are being considered under a former version of the IFoA's Disciplinary Scheme, the version of the Guidance applicable to the former version of the Disciplinary Scheme should be applied to the extent that it is possible to do so, otherwise this Guidance will apply.
- 1.5 Guidance should be read alongside:
 - (a) the Scheme; and
 - (b) any Regulations issued by the Disciplinary Committee; and
 - (c) any other relevant Guidance published by the Disciplinary Committee.
- 1.6 Where there is any conflict or inconsistency between the Scheme and this Guidance, the Scheme shall be followed. Where there is any conflict or inconsistency between Regulations and this Guidance, the Regulations shall be followed.
- 1.7 Definitions of defined terms used in this Guidance are set out in the Scheme and Regulations.
- 1.8 This Guidance should not be treated as legal advice. When appropriate, the Legal Adviser will advise the Panel on questions of law and/or procedure, which may include advice on the use of this Guidance.
- 1.9 The Disciplinary Committee will review this Guidance every three years or earlier if needed.

2. Aim

- 2.1 This Guidance:
 - (a) explains who may be considered a vulnerable witness;
 - (b) lists what special measures may be put in place for a vulnerable witness; and
 - (c) notes the procedure and timescales for making a request for special measures.

3. Who may be considered a vulnerable witness?

- 3.1 The IFoA or the Respondent / Applicant may call witnesses to give evidence during an investigation or hearing under the Scheme. Witness evidence may be in the form of a written witness statement and/or attendance at a hearing to give a verbal account of their evidence.
- 3.2 Witnesses may be considered vulnerable if they are likely to suffer significant risk of harm, fear or distress as a result of giving evidence, whether due to their own circumstances or those relating to the case. Witnesses may also have mental and/or physical conditions which render them vulnerable.
- 3.3 In considering the vulnerability of a witness, the following factors may be considered:
- (a) the impact of any actual or perceived or potential intimidation of a witness;
 - (b) whether the witness has a mental health condition, physical health condition, an impairment, a learning disability or communication difficulties;
 - (c) the age of the witness;
 - (d) the issues arising in the case before the Panel, in particular where the witness is the alleged victim of allegations involving sexual motivation, bullying, intimidation, harassment or violence;
 - (e) the social and cultural background of the witness;
 - (f) the domestic circumstances of the witness;
 - (g) the views of the witness in relation to their potential vulnerability; and
 - (h) any other relevant matter.

4. What special measures may be put in place for a vulnerable witness?

- 4.1 Consideration must be given to hearings where vulnerable witnesses are required to give evidence and where special measures may be needed. The Chair should consider whether any practical arrangements should be made to facilitate the hearing and ensure the safety and well-being of participants in the hearing. The Chair should also consider whether the quality of the evidence given by a vulnerable witness is likely to be diminished by reason of that vulnerability in the absence of special measures. If the Chair considers that the quality of the witness's evidence is likely to be affected, they need to consider whether it is necessary to make a direction for special measures to be put in place as a result.
- 4.2 Some examples of special measures for witnesses are:
- (a) using a screen or another method which prevents a witness from being seen by the Respondent;
 - (b) giving evidence from another location by a live link (for example, through video conferencing or telephone whilst the rest of the hearing is taking place in person);
 - (c) protecting the identity of the witness from the press or public through anonymisation or other measures;
 - (d) having a device to help with communication;
 - (e) having a supporter present (for example, a friend or family member);
 - (f) having an intermediary present (for example, an interpreter or communication specialist);

- (g) hearing evidence in private without public observers present; and
- (h) where a Respondent is unrepresented and the allegation involves conduct of a sexual nature, bullying, intimidation, harassment or violence the IFoA will appoint an external lawyer to cross-examine, on behalf of the Respondent, any witness who is the alleged victim.

5. When and how should a request for special measures be made?

- 5.1 Parties should notify the Judicial Committees Secretary as soon as possible in advance of a hearing if a witness requires special measures at a hearing. This is to allow the appropriate arrangements to be considered by the Chair and put in place.
- 5.2 Parties should make witnesses aware of this Guidance note, or otherwise let them know the special measures or reasonable adjustments available to them. Witnesses should be encouraged to approach the Case Manager in the first instance should they have concerns about giving evidence.
- 5.3 The party making the request for special measures on behalf of a witness, or the witness themselves, must submit a written application. Written applications should be submitted at least 28 days in advance of a hearing.
- 5.4 Written applications should include:
- (a) why the witness is eligible to be classified as vulnerable (with supporting written confirmation from a relevant professional which states/refers to the nature of that condition, where possible);
 - (b) the extent to which the absence of special measures is likely to affect the quality of the witness's evidence;
 - (c) the proposed measure(s) that would be likely to assist the witness to give evidence and/or reduce the risk of harm, fear or distress being caused to the witness;
 - (d) the identity of any proposed supporter or intermediary, including confirmation that the supporter or intermediary is not another party or witness; and
 - (e) any views on the proposed measure(s) expressed by the witness.
- 5.5 The other party will have an opportunity to respond in writing to the application.
- 5.6 The Chair will decide whether the application can be considered in writing or whether a preliminary hearing should be held to consider the application. If a preliminary hearing is to be held, this will be arranged in accordance with the applicable Rules and Regulations.
- 5.7 The Chair will decide whether the witness should be classified as vulnerable and, if so, what measures are appropriate.

Document control

Version	Date of publication	Overview
1.0	1 August 2023	Guidance for Disciplinary Scheme effective 1 August 2023



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