**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**AND**

**COUNTY COURT OF NORTHERN IRELAND**

**PROTOCOL FOR THE PARTICIPATION OF VULNERABLE PARTIES OR WITNESSES IN CIVIL LITIGATION**

**Application and Scope**

This Protocol applies to all civil proceedings in the High Court and County Court

This Protocol has effect from 2024

Signed this ………………….

**The Right Honourable Dame Siobhan Keegan**

**Lady Chief Justice**

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**PROTOCOL FOR THE PARTICIPATION OF VULNERABLE PARTIES OR WITNESSES IN CIVIL LITIGATION**

**1. Objectives of the Protocol**

1.1 The overriding objective set out in Order 1 rule 1A of the Rules of the Court of Judicature (Northern Ireland) 1980, is to enable the court to deal with cases justly. That objective requires the court, so far as practicable, to ensure the parties are on an equal footing and that the proceedings are dealt with expeditiously and fairly.

1.2 In order to meet this objective, the court should ensure, so far as practicable, that the parties are able to participate fully in proceedings, and that the parties and witnesses can give their best evidence. It is recognised that vulnerability of a party or witness may impede participation and also diminish the quality of evidence. The court should take all proportionate measures to address these issues in every case and the parties are required to help the court to further the overriding objective at all stages of civil proceedings.

1.3 The aims of this protocol are to set out the additional steps and provisions necessary to encourage, facilitate and support the attendance and full participation of vulnerable parties and witnesses in the civil litigation process and ensure, so far as practicable, they give their best evidence.

**2. Vulnerability**

* 1. A person should be considered as vulnerable when a factor – which could be personal or situational, permanent or temporary – may adversely affect their participation in proceedings or the giving of evidence.
  2. Factors which may cause vulnerability in a party or witness include (but are not limited to):

1. age, immaturity or lack of understanding;
2. communication or language difficulties (including literacy);
3. physical disability or impairment, or health condition;
4. mental health condition or significant impairment of any aspect of their intelligence or social functioning (including learning difficulties);
5. the impact on them of the subject matter of, or facts relevant to, the case (an example being having witnessed a traumatic event relating to the case);
6. their relationship with a party or witness (examples being sexual assault, domestic abuse or intimidation (actual or perceived));

(g) social, domestic or cultural circumstances.

* 1. When considering whether a factor may adversely affect the ability of a party or witness to participate in proceedings and/or give evidence, the court should consider their ability to:

1. understand the proceedings and their role in them;
2. express themselves throughout the proceedings;
3. put their evidence before the court;
4. respond to or comply with any request of the court, or do so in a timely manner;
5. instruct their representative/s (if any) before, during and after the hearing; and

(f) attend any hearing.

* 1. The court, with the assistance of the parties, should try to identify vulnerability of parties or witnesses at the earliest possible stage of proceedings and to consider whether a party’s participation in the proceedings, or the quality of evidence given by a party or witness, is likely to be diminished by reason of vulnerability and, if so, whether it is necessary to make directions as a result.
  2. Where a party is a litigant in person, particular care should be taken by the court, and any legally represented party, to try to identify vulnerability of parties or witnesses. The court should, in these cases, have particular regard to whether there is a sufficient need to request that a Registered Intermediary is appointed to provide additional support to the vulnerable party or witness.

**3. Appropriate provisions**

* 1. If the court decides that a party’s or witness’s ability to participate fully and/or give best evidence is likely to be diminished by reason of vulnerability, the court may identify the nature of the vulnerability and may direct appropriate provisions to be made to further the overriding objective. This may include concealing the address and/or contact details of either party or a witness for appropriate reasons. Where the court considers there is sufficient need, the court may request that a Registered Intermediary is appointed.
  2. Subjectto the nature of any vulnerability having been identified and appropriate provisions having been made, a review with the parties should be undertaken before a vulnerable person is to give evidence at trial, to determine what directions of the court are necessary in relation to:

(a) the nature and extent of that evidence;

(b) whether one or more special measures and/or any other support should be put in place for that person;

(c) any duty or power of the court under any enactment or, where applicable, its inherent jurisdiction, to prohibit, limit or modify cross-examination of or by a vulnerable witness or to appoint a legal representative to conduct a cross-examination.

(d) the conduct of the legal representatives and/or the parties in respect of the evidence of that person.

**4. Special Measures**

* 1. Before directing any special measures or other support, the court should consider views expressed by the vulnerable party or witness about participating in the proceedings or giving evidence.
  2. Where the court is satisfied that it is likely to improve the quality of evidence, taking into account the witness's wishes and the ability of the parties to effectively test evidence, it may direct special measures in respect of the conduct of the trial.
  3. Special measures may include, but are not limited to:

1. preventing a party or witness from seeing another party or witness by the use of screens;

(b) allowing a party or witness to give evidence remotely by video conference;

(c) hearing a party or witness’s evidence in chambers;

(d) dispensing with the wearing of wigs and gowns;

(e) admitting pre-recorded video evidence;

(f) questioning a party or witness through an intermediary; and

(g) using a device or other aid to help a party or witness communicate.