

## Special Measures in the Family Court

Special measures are provisions available under the direction of the court to aid vulnerable parties to give evidence or participate in court proceedings. Once victims of abuse receive support to initiate court proceedings, it is important to consider the available measures to protect victims of abuse from further interaction with the perpetrator. It is also important to submit the appropriate form with the initial application in order to keep the applicant's details confidential.

Provision for special measures in family proceedings is made in the Family Procedure Rules. These rules provide that victims of domestic abuse, and sometimes other parties or witnesses, are eligible for special measures in the proceedings if the court is satisfied that the quality of their evidence or their ability to participate, **is likely to be diminished due to their vulnerability**.

There are a range of special measures which have long been available to victims of domestic abuse and these include:-

- separate court entrances;
- separate waiting rooms,
- the use of screens in court to prevent the witness from seeing the perpetrator and from being seen;
- permitting evidence via video link
- giving the witness the assistance of an intermediary.

S63 Domestic Abuse Act 2021, in force from 1<sup>st</sup> October 2021, provides that where a party is, or is at risk of, being a victim of domestic abuse, they will automatically be eligible for special measures in family proceedings because the court will assume their ability to participate or give evidence and the quality of their evidence will likely be diminished.

However, it will remain a matter for the court to decide which of the available measures are necessary in the particular circumstances of the case.

With respect of cross examination, s65 Domestic Abuse Act 2021, prohibits perpetrators from cross-examining in person in family proceedings of victims of offences and of persons protected by injunctions. However the Court can be asked to consider making appropriate directions.

These provisions are not yet in force but will come into force on a date to be appointed.

### Remote Hearings

The Family Courts have the power to make directions for special measures to assist a vulnerable party during proceedings. However, the move to remote hearings as a result of the pandemic

has in many cases ensured victim and perpetrator are not in the same room but it has also posed significant challenges.

The Family Justice Council (FJC) published guidance entitled 'Safety from Domestic Abuse and Special Measures in Remote and Hybrid Hearings', which helpfully sets out guidance on the practical considerations to be adopted going forward. In particular, the FJC specifically highlighted the risk of harm to victims of domestic abuse if perpetrators are able to use the hearing as an opportunity for further abuse.

A checklist of considerations for proceedings in which domestic abuse is an issue has been produced and includes the following:

- In what environment will the victim be appearing?
- In what environment will the victim be preparing themselves for and dealing with the aftermath of the hearing?
- What will be visible to the court and any other participant in the proceedings? What will be visible to the victim?
- What kind of environment and level of visibility is necessary in order to ensure physical and emotional safety for the victim and any children involved?
- What kind of environment and level of visibility is necessary to enable the victim to give their best evidence?
- What kind of environment is necessary to enable the victim to prepare themselves mentally and emotionally for the hearing and to cope after the hearing?
- What kind of environment is necessary for the court to deal justly with the case having regard to any welfare issues involved?

Consideration must be given to the format of the remote hearing, so as to ensure that the parties are not put in a situation where they are alone together. It is also important to consider how details for the remote hearing are sent to the parties. Email transmissions are often sent to all of the parties simultaneously, but it is important to ensure that the victims contact details are not sent to the perpetrator.

Participating in video hearings can be particularly invasive for victims. It is often the case that victims will attend remote video hearings from their bedroom, allowing the perpetrator to virtually enter their private spaces. Methods have been suggested to replicate special measures remotely. Participants can blur their background or use a background wallpaper so that their location cannot be identified. Victims and vulnerable witnesses should be permitted to join by audio only, with their videos turned off. This will prevent them from being seen. A party could also attend by telephone only, whilst the other attends by video. Hybrid hearings have also been adopted, where one party will attend the hearing in person and the other attends remotely by video or telephone. This serves as a suitable option, particularly where the court facilities are unable to accommodate special measures e.g., separate waiting areas.

Here at Alison Fielden & Co our experienced Family Law Solicitors Heather Weavill and Steven Barratt can advise when Special Measures are appropriate and make the necessary applications to the Court. Please contact us on 01285 653261 for an appointment.