

Appendix III

Family Procedure Rules: Amendments to provide for vulnerable and intimidated parties witnesses and children

PART 1

OVERRIDING OBJECTIVE

[There will be an amendment to FPR 2010; rule 1.2: the rest of the rule will remain unaltered]

(2) Dealing with a case justly includes, so far as it is practicable –

(a), (b) and (c) remain as they are (d) will be replaced and the present (d) and (e) will be (e) and (f) respectively.

(d) make provision for vulnerable parties and witnesses and children to assist them in improving the quality of their evidence and to participate fully in proceedings;

[Part 3A will be the current Part 3-Non-court Dispute Resolution]

Part 3B

ASSISTANCE FOR VULNERABLE AND INTIMIDATED PARTIES, WITNESSES AND CHILDREN

CONTENTS OF THIS PART

Rule

3B.1 Scope of this Part

3B.2 The court's duty to consider the needs of vulnerable witnesses and parties

3B.3 The communication of children and young people with the court

3B.1. (1) For the purposes of this part a party or witness in family proceedings must be considered entitled to assistance on the grounds of age, incapacity or on the grounds of fear or distress

(2) For the purpose of this part a party or a witness is entitled to assistance when –

(a) that person is under the age of eighteen at the time of the hearing;

(b) the court considers that the ability of the person to participate in the proceedings will be diminished by reason of any of the circumstances falling within rule 3B.1 (3); and/or

(c) the quality of the evidence of the party or witness is likely to be diminished by reason of any of the circumstances falling within rule 3B.1 (3)

(3) The circumstances are that the part or witness –

(a) suffers from a mental disorder or otherwise has a significant impairment of intelligence or social functioning;

- (b) the nature and circumstances of the allegations with which the party or witness is concerned;
- (c) the age of the party or witness;
- (d) such other matters which appear to the court to be relevant, namely –
 - i) the social and cultural background and ethnic origins of the person;
 - ii) their domestic circumstances and religious beliefs;
 - iii) medical treatments they are undergoing or disabilities from which they might suffer;
- (e) any behaviour towards the party or witness on the part of
 - i) any other party to the proceedings;
 - ii) any other family members of that person;
 - iii) any family members or associates of other parties to the proceedings.

(4) In determining whether a party or witness is entitled to assistance the court must consider any views expressed by that person.

(5) When this part applies -

- a) the court should give directions for the provision of measures, including “special measures,” on an application or on its own initiative for any of the following measures –
 - i) preventing a party or a witness from seeing the other party or parties;
 - ii) allowing a party or a witness to participate in hearings and to give evidence by live link;
 - iii) using a device to help a party or witness to communicate;
 - iv) providing for a party to participate in proceedings through an intermediary;
 - v) providing for a party or witness to be questioned through an intermediary;
 - vi) admitting recorded video evidence;
- b) where the court can exercise any power it has to give, vary or discharge a direction a measure to help a party or witness give evidence.

3B.2. (1) The court must take every reasonable step at the first opportunity, and in any event in cases where the PLO applies at the first Case Management hearing or in private law cases at the FHDRA, to decide whether, as part of its duties under rules 1.1 (2) (d) & 1.4 and the application of PD 3B, it should give directions to provide for measures to assist a party or a witness to participate in proceedings and to improve the quality of their evidence -

(2) In this part the quality of the evidence of a party or witness is a reference to the ability of the party or witness to give evidence in terms of completeness, coherence and accuracy and;

a) to give evidence coherently the party or witness must be able in giving evidence to give answers which address the questions put to them in a manner that can be understood individually and collectively.

(3) The representatives of all parties must identify whether a party or witness is likely to be entitled to assistance at the outset of all proceedings, in cases where the PLO applies at the first CMH or in private law cases at the FHDRA, and make an application to the court if this part applies.

(4) Any party who makes application to the court to give or make directions or an order must –

- a) apply in writing as soon as reasonably practical and as provided for in PD 3B, and in any event not more than 21 days after the proceedings have been issued and;
- b) serve the application on each other party.

(5) The court may decide whether to give, vary or discharge a direction for measures

- a) at a hearing or without a hearing;
- b) in a party's absence provided that party has 7 days to make representations.

(6) An applicant for directions or orders for measures to assist parties and/or witnesses must-

- a) explain why the party or witness is entitled to assistance;
- b) explain why the measure or measures sought would be likely to improve the party's ability to participate in the proceedings;
- c) explain why the measure or measures sought would be likely to improve the quality of the party or witness' evidence;
- d) propose the measure or measures that would be likely to maximise as far is practicable the quality of that evidence;
- e) report any views the party or witness has expressed about their entitlement to assistance or the likelihood that the measure or measures sought would improve their evidence.

3B.3 (1) The court must consider the role and evidence of children and young people in proceedings with which they are concerned whether or not they are parties.

(2) The court will consider how the direct evidence of young people can be put before the court before the court reaches a decision concerning that child by the use the procedure in set out in this part.

(3) The court will consider and make directions in regarding the child or young person visiting the court and/or meeting the judge or tribunal following the procedure and practice as set out in PD 3C.