



Response to Consultation on Draft Practice Direction 3AA – Vulnerable Persons: Participation in Proceedings and Giving Evidence

About Rights of Women

Rights of Women specialises in supporting women who are experiencing or are at risk of experiencing, gender-based violence, including domestic and sexual violence. We support other disadvantaged and vulnerable women including Black, Minority Ethnic, Refugee and asylum-seeking women (BMER women), women involved in the criminal justice system (as victims and/or offenders) and socially excluded women. By offering a range of services including specialist telephone legal advice lines, legal information and training for professionals we aim to increase women's understanding of their legal rights and improve their access to justice enabling them to live free from violence and make informed, safe, choices about their own and their families' lives.

Rights of Women is a registered charity 1147913 and Company Limited by Guarantee.

Rights of Women's consultation response

Before answering the specific questions asked in the consultation we would point out that as a women's legal organisation we will confine our responses to law and legal policy issues within our skills and experience.

Response to specific consultation questions

1. Do you agree that draft PD3AA gives sufficient guidance on the duties of the court, parties and their representatives in relation to vulnerable witnesses?

If you do not agree, please give reasons and explain what further guidance you think is needed.

Yes, subject to the issues we have raised in response to the other consultation questions below.

2. Do you agree that draft PD3AA (particularly when combined with draft rule 3A.7) gives sufficient guidance on the term ‘vulnerability’, specifically in terms of how to identify if a party or witness is a vulnerable person?

If you do not agree, please give reasons and explain what further guidance you think is needed.

Guidance on how to identify if a party or witness is vulnerable is set out in rule 3A.7 and paragraphs 2.1 and 3.1 of PD3AA. We welcome the additional requirement to consider whether a party can attend a hearing without fear or unnecessary distress, and the requirement to have regard to the presence of:

- a) domestic abuse, including financial abuse;
- b) sexual abuse;
- c) physical and emotional abuse;
- d) racial and/or cultural abuse;
- e) forced marriage or so called “honour based violence”;
- f) female genital or other physical mutilation;
- g) abuse or discrimination based on gender or sexual orientation.

We are unclear as to why this part of the guidance is in the practice direction and the rest of the guidance is in the procedure rule.

There may be circumstances which make a person vulnerable which are not listed in rule 3A.7 or PD3AA. This could be resolved by adding “any characteristic *or circumstances* of the party or witness which is relevant to the participation directions which may be made” to either the procedure rule or PD3AA.

Supporting advice and materials will need to be produced to make the guidance clearer and easier to read for litigants in person.

3. Do you agree that draft PD3AA gives sufficient guidance on how the court should assist a vulnerable person to participate and give evidence effectively?

If you do not agree, please give reasons and explain what further guidance you think is needed.

PD3AA does not give sufficient guidance in this respect. The Prison and Courts Bill 2016-17 (the Bill) which is currently going through the House of Commons sets out circumstances in which:

- There will be an absolute ban on cross-examination by litigants in person (for example where one of them has been convicted of or charged with a specified offence or one of the parties is protected by an injunction);
- The court will have a discretion to ban cross-examination by litigants in person.

The Bill also sets out alternatives to direct cross-examination between the parties, including (if no alternative is available) examination by a qualified legal representative.

There is an urgent need to limit direct cross-examination in cases where there has been domestic or sexual violence. For further details please refer to our previous consultation response: [Rights of Women's response to the consultation on amendments to Family Procedures Rules – Vulnerable Witnesses and Children, 25 September 2015.](#)

None of the above is reflected in the draft practice direction or procedure rule. The Family Procedure Rules and Practice Directions may require amendments or supplementary provisions once the Bill becomes legislation.

4. Do you agree that draft PD3AA is clear about the responsibilities of the parties and any legal representatives including when applying for directions and preparing for or conducting cross-examination?

If you do not agree, please give reasons and explain what further guidance you think is needed.

We agree that there is sufficient guidance on the role of legal representatives.

In relation to parties, paragraph 4.7 requires all advocates (including litigants in person) to be familiar with the use and techniques employed by the toolkits and approach of the Advocacy Training Council. There will be many cases, particularly where there has been domestic or sexual violence, when it will be inappropriate for litigants in person to cross-examine each other. In circumstances where it is appropriate, we agree that litigants in person should follow the approach and toolkits of the Advocacy Training Council. However, most litigants will not be aware of the toolkits and it should be the role of the judge to bring this to their attention and provide copies at the “ground rules” hearing.

The guidance on how to make applications for directions will be difficult for litigants in person to understand, particularly those who are vulnerable. If the practice direction remains unchanged we suggest that HMCTS produce supporting material in simple language providing examples of commonly available measures and guidance on the terms “ability to participate in proceedings” and “quality of a person’s evidence”.

Consideration should also be given as to how litigants in person will be informed of the availability of special measures and how to apply for participation directions from the outset of the case.

5. Do you have any other comments on draft PD3AA?

Review of measures available

It would be helpful for the Committee or the Working Group to conduct a review of the measures available in all of the courts in England and Wales. The information collected should be made available to the judiciary and the public. This will help to highlight which courts need to improve their provision of measures, and it will help judges identify alternative venues.

Rights of Women submitted a Freedom of Information request for this information in 2014, which was rejected.

Measures which are not available

If a court deems a measure to be necessary, but that measure is unavailable, it is not sufficient to simply state the reasons for unavailability (Rule 3A.8(5)). The court should be required to consider how the vulnerable party's interest and position will be properly secured without such assistance, and how the interests of justice and fairness will be maintained.

Further guidance for LiPs

Litigants in person will find the rule and practice direction difficult to follow and understand. They will need a further guidance document consolidating all the important guidance in the Rule and the PD into one simply worded document. That document should set out how a vulnerable person can request report and with what procedure. It should include a list of appropriate support organisations.

Training for judges

We assume that when the rules are introduced magistrates and judges will be trained on the provision of special measures. As part of this training, we urge you to include training by VAWG specialists on domestic violence and, in particular, coercive control. It is the coercive control element of domestic violence that women find so debilitating and this can have a severe impact on their ability to take part in proceedings. It is important that judges understand the dynamics and impact of coercive control so that they can make safe decisions both in relation to special measures and safety for women and children.

Rights of Women

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