

8. Legal support for victims of crime

8.1 Introduction

Everyone is entitled to the protection of the law and access to justice. Behaviour psychological abuse or hate crime, wilful neglect, unlawful imprisonment, theft and fraud and certain forms of discrimination also often constitute specific criminal offences under various pieces of legislation. Although Rochdale Borough Council has the lead role in making enquiries, where criminal activity is suspected, then the early involvement of the police is likely to have benefits in many cases.

8.2 Special Measures

For the purpose of court proceedings, a witness is competent if they can understand the questions and respond in a way that the court can understand. Police have a duty under legislation to assist those witnesses who are vulnerable and intimidated. A range of special measures are available to facilitate the gathering and giving of evidence by vulnerable and intimidated witnesses.

Consideration of special measures should occur from the onset of a police investigation. In particular:

- immediate referral or consultation with the police will enable the police to establish whether a criminal act has been committed and this will give an opportunity of determining if, and at what stage, the police need to become involved further and undertake a criminal investigation;
- the police have powers to initiate specific protective actions which may apply, such as Domestic Violence Protection Orders (DVPO);
- a higher standard of proof is required in criminal proceedings (“beyond reasonable doubt”) than in disciplinary or regulatory proceedings (where the test is the balance of probabilities) and so early contact with police may assist in obtaining and securing evidence and witness statements;
- early involvement of the police will help ensure that forensic evidence is not lost or contaminated;
- police officers need to have considerable skill in investigating and interviewing adults with a range of disabilities and communication needs if early involvement is to prevent the adult being interviewed unnecessarily on subsequent occasions. Research has found that sometimes evidence from victims and witnesses with learning disabilities is discounted. This may also be true of others such as people with dementia. It is crucial that reasonable adjustments are made and appropriate support given, so people can get equal access to justice;

- police investigations should be coordinated with health and social care enquiries but they may take priority;
- guidance should include reference to support relating to criminal justice matters which is available locally from such organisations as Victim Support and court preparation schemes;
- some witnesses will need protection;
- the police may be able to get victim support in place.

Special Measures were introduced through legislation in the Youth Justice and Criminal Evidence Act 1999 (YJCEA) and include a range of measures to support witnesses to give their best evidence and to help reduce some of the anxiety when attending court.

Measures in place include the use of screens around the witness box, the use of live-link or recorded evidence-in-chief and the use of an intermediary to help witnesses understand the questions they are being asked and to give their answers accurately.

An intermediary may also be used to help to improve the quality of evidence of any vulnerable adult witness who is unable to detect and cope with misunderstanding, or to clearly answer the questions, especially in the context of an interview or while giving evidence at court.

8.3 Vulnerable Adult Witnesses

(S.16 YJCEA) are those that have a

- mental disorder
- learning disability, or
- physical disability

These witnesses are only eligible for special measures if the quality of evidence that is given by them is likely to be diminished by reason of the disorder or disability.

8.4 Intimidated Witnesses

Intimidated witnesses are defined by Section 17 of the YJCEA as those whose quality of evidence is likely to be diminished by reason of fear or distress. In determining whether a witness falls into this category the court takes account of:

- the nature and alleged circumstances of the offence;
- the age of the witness;
- the social and cultural background and ethnic origins of the witness;
- the domestic and employment circumstances of the witness;
- any religious beliefs or political opinions of the witness;
- any behaviour towards the witness by the accused or third party.

Also falling into this category are:

- complainants in cases of sexual assault;
- witnesses to specified gun and knife offences;
- victims of and witnesses to domestic violence, racially motivated crime, crime motivated by reasons relating to religion, homophobic crime, gang related violence and repeat victimisation;
- those who are older and frail; and,
- the families of homicide victims.

Registered Intermediaries (RIs) have been facilitating communication with vulnerable witnesses in the criminal justice system in England and Wales since 2004.

A criminal investigation by the police takes priority over all other enquiries, although Greater Manchester Police will keep Rochdale Borough Council informed and involved as appropriate, to ensure that the interests and personal wishes of the Adult will be considered throughout, even if they do not wish to provide any evidence or support a prosecution. The welfare of the Adult and others, including children, is paramount and requires continued risk assessment to ensure the outcome is in their interests and enhances their wellbeing.

If the Adult has the mental capacity to make informed decisions about their safety and they do not want any action to be taken, this does not preclude the sharing of information with relevant professional colleagues. This is to enable professionals to assess the risk of harm and to be confident that the adult is not being unduly influenced, coerced or intimidated and is aware of all the options. This will also enable professionals to check the safety and validity of decisions made. It is good practice to inform the Adult that this action is being taken unless doing so would increase the risk of harm.

The Police will inform the Local Authority in a timely manner if a prosecution is not proceeding in order that the Local Authority can pick up any investigation.