

WITNESSES IN CRIMINAL TRIALS Part 2

What if a witness is too frightened to give evidence or has been intimidated?

If a witness feels too intimidated or distressed to give evidence, a special measures direction may be made by the court following an application by either party to the proceedings, or by the judge's own volition. For a special measure direction to be made, the court must be satisfied that the quality of the witness' evidence may be lessened by their fear and distress (YJCEA 1999 s 17 (1)). There are a number of factors a court must take into account when deciding whether to make a special measures direction relating to fear, these are:

- the witness's age;
- the type of offence the accused is being tried for and the alleged circumstances surrounding the offence;
- the ethnicity of the witness and their social and cultural background;
- the witness's religious and political beliefs and opinions and;
- the accused's behaviour towards the witness, their family or anyone they associate with.

If a witness has been intimidated in connection with giving testimony in legal proceedings or an investigation, the person who has intimidated them may be prosecuted for perverting the course of justice or contempt of court. If found guilty, a person who intimidates a witness faces up to five years imprisonment and/or a fine. If a witness has already given evidence and they are retaliated against, the individual who retaliates against them can also be punished for contempt of court.

What protection can witnesses be given?

A witness will usually be required to give their name before they start giving evidence, and their names will have been given to the defence team before the case begins. In certain cases (e.g. blackmail), the trial judge will allow the witness to not state their name in public and write it down instead.

Under s 74 to 85 of the Coroners and Justice Act 2009, witnesses can apply for an investigation anonymity order at the beginning of an investigation, to ensure that their identities are not disclosed. These are only available if:

- a qualifying offence has been committed (murder or manslaughter where the death was caused by being shot with a firearm or injured with a knife);
- the person likely to have committed the offence was at least 11, but under 30 years old when the offence was committed;
- the person likely to have committed the offence is a member of a group engaging in criminal activity and most of its members are at least 11, but under 30 years old; and
- the witness has reasonable grounds to fear intimidation or harm if they were identified as assisting the investigation.

A separate application must be made for a trial anonymity order under ss 86 to 90 of the Coroners and Justice Act 2009 to ensure the witness remains anonymous throughout the trial.

If a witness feels threatened at any point they should tell their witness care officer or, if they feel seriously threatened, ring 999 for immediate assistance. While in court, witnesses are given separate waiting areas where possible. In very serious cases, a witness may be relocated to a house in another area to ensure their safety or even given a different identity; this is arranged by the police.

In Brief [online], [dostęp 30.04.2018] dostępne w Internecie: <http://www.inbrief.co.uk/court-proceedings/witness-at-criminal-trials/>; <http://legal-dictionary.thefreedictionary.com>

I. Match the expressions in English with the definitions:

1 to intimidate	A to interpret or use incorrectly
2 special measures	B an instrument to make a witness unknown
3 volition	C the foundation for an argument or judgement
4 alleged	D to reveal who the person is
5 the ethnicity	E instruction in how to do something
6 to pervert	F murder or manslaughter by shooting with a firearm
7 to retaliate against	G to involve in actions
8 to disclose the identity	H presumed, not proven
9 an investigation	I to help, support
10 a qualifying offence	J own will
11 to engage in activity	K to deter, coerce, as with threats
12 to assist	L ethnic character or background
13 grounds	M a careful examination to discover facts
14 an anonymity order	N to take revenge
15 a direction	O systems put in place by judicial systems to protect witnesses

II. Complete the sentences with the given words: trial, defending, blackmail, disclosed, investigation, volition, measures, intimidated, ethnicity, retaliates

- A court can make a special _____ direction if a witness is too distressed to testify.
- The person who has _____ a witness will be prosecuted.
- The witness's age, religious beliefs, _____ are factors taken into account by court.
- The person who _____ against the witness can be punished for contempt of court.
- A special measures direction can also be made by a judge's.....
- In case of e.g. _____ the judge will allow the witness not to state his/her name in public.
- Witnesses can apply for an _____ anonymity order to protect themselves.
- This order ensures their identity is not _____.
- The witnesses' names are given to the _____ counsels.
- A witness can also apply for a _____ anonymity order if he/she fears intimidation.

III. Mark the sentences True/False:

- The court must be sure that the witness evidence may be increased by his/her distress.
- A court may make a special measures direction if a witness is too intimidated.
- The judge cannot make such order of his/her own will.
- The witness's age, political beliefs, ethnicity are not factors to be considered by court.
- Witnesses' names do not have to be given to the defence.
- A trial anonymity order protects the witness's identity.

7. The identity of an offender who is a member of a group engaged in criminal activity can be disclosed.
8. The police may arrange relocation of a witness in another area to protect his/her safety.

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