

Protecting Vulnerable Witnesses of ASB

One of the most challenging issues when taking anti-social behaviour cases to court is getting the cooperation of witnesses. In many cases, this is not because they do not want the problems to be resolved but because they are so frightened of any repercussions on them or their families that they would rather continue suffering.

This is especially difficult in the case of witnesses who are considered 'vulnerable' either due to age, mental capacity, social background or other reason.

The Serious and Organised Crime Act 2005 made a number of provisions for protecting 'vulnerable' witnesses in ASBO cases in the Magistrates' Court and Crown Court and offers some 'special measures' that can be taken.

Who is a vulnerable witness?

The decision as to whether a witness is vulnerable is, of course, up to the court, however, as mentioned above, there are a number of considerations that the court must take into account when deciding whether a witness can be treated as vulnerable and therefore can be afforded further protection by the court.

These considerations include:

- ❖ Whether testifying in court will cause distress or fear
- ❖ The nature and circumstances of the offence committed
- ❖ The age of the witness
- ❖ Social, cultural, religious or ethnic background
- ❖ Political beliefs
- ❖ Any threat of on-going anti-social behaviour against the witness
- ❖ The views expressed by the witness him/herself

What are the special measures available to protect witnesses?

As with deciding whether a witness is vulnerable, it is at the court's discretion whether to grant a special measure (known as a Special Measures Direction). If you have a vulnerable witness, the measures available to you are:

- ❖ Screening witnesses – this allows the witness to see and be seen by parties other than the accused
- ❖ Evidence by live link – evidence can be given from outside the courtroom by video-link
- ❖ Evidence given in private – only the judge, legal representatives and the accused
- ❖ Wigs and gowns – these can be removed by judges and advocates (in Crown Court)

- ❖ Video-recorded evidence – If it is in the interest of justice, pre-recorded evidence can be given in court
- ❖ Video-recorded cross-examination and re-examination
- ❖ Examination via an intermediary (this could be an interpreter or other approved person)
- ❖ Aids to communication – a device that can facilitate communication to and from the witness

Applying for Special Measures

The above list highlights the options available but how do you get the court to give a Special Measures Direction?

In most cases, an application must be made in writing in advance of the trial, however, the court has the discretion to give a direction during the trial. To make an application, the following steps must be followed:

- ❖ Submit a form to the court 28 days before the trial is due to commence (14 days if there has been a not-guilty plea)
- ❖ If needed, the court can consider an oral application if it can be shown that a special measure is needed
- ❖ If an application is opposed, this must be done in writing and cannot be opposed if the witness is a child in need of special protection
- ❖ If an application is unopposed, a judge can agree to a special measure without a hearing, otherwise a hearing may be needed
- ❖ If you need to make a change to the measure, a further application must be made to the court

As you can see, there are a number of options available that can be used to protect witnesses, however, it is important to bear in mind that in most cases the accused may be able to see the witness. The main aim of the measures is to facilitate the giving of evidence especially for those who may feel threatened or intimidated.

Next time you have vulnerable witnesses in an anti-social behaviour case, bear in mind that there may be some options available to help you protect them. If you have any further queries please drop us an email and we'll be happy to answer any questions.