



SUPPORTING VICTIMS AND WITNESSES IN ANTI-SOCIAL BEHAVIOUR COURT CASES: A COMPREHENSIVE GUIDE TO CIVIL COURTS

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Introduction

Witnesses are crucial to tackling anti-social behaviour: whether they are the direct victims of anti-social behaviour or residents who witness anti-social behaviour directed against the community. We need witnesses to report incidents, to provide evidence and to help police to take enforcement action against perpetrators. This entails ensuring that victims and witnesses have confidence in the practitioners to whom they report the information, that it will be treated confidentially and that their safety will not be compromised by coming forward. These concerns may be more intense where the victim and perpetrator of anti-social behaviour live in close proximity to each other.

This guidance has been written in collaboration with the Home Office, Communities and Local Government and the Ministry of Justice. Part One of this guidance sets out how victims and witnesses should be supported and encouraged through the process from when anti-social behaviour is reported until after any legal action. It also directs readers to best practice to help inform their own local approaches in providing victim and witness support service. Part Two advises on restorative justice methods for cases where this may be appropriate and suitable.

The guidance is intended for a universal readership, from people who need to understand the basic process from the beginning to end through to experienced practitioners searching for answers to difficult situations.

Part One

Fundamental facts

This section aims to provide the answers to some commonly asked questions about court proceedings in relation to anti-social behaviour.

WHO IS A VICTIM OR WITNESS?

A victim is a person who has experienced nuisance, harassment, alarm or distress or any other anti-social behaviour.

A witness is a person who has seen something or was present when an incident of anti-social behaviour took place. A victim is also a witness.

Please see **Victim Support leaflets** for more information on victims and witnesses:
www.victimsupport.org

WHY ARE VICTIMS' AND WITNESSES' STATEMENTS IMPORTANT?

If the police, a local authority or a housing association want to take legal action against somebody responsible for harassment or any other type of anti-social behaviour, the court needs to know what happened and when. Anyone who has such information can assist the court, either as a victim or a witness, in reaching a decision on how to deal with the perpetrator. Without this the police, the local authority or housing association may be unable to take legal action.

WHY ARE PEOPLE ASKED TO BE WITNESSES?

People are asked to be witnesses because they have evidence that may help a victim prove their case in court.

WHO IS A CASE OFFICER/MANAGER?

A case officer may be an employee of a local authority (including arm's-length management organisations) or housing association (also known as a registered social landlord or RSL) who will lead on an anti-social behaviour complaint case. They are responsible for keeping in touch with the victim about their case. Most anti-social behaviour proceedings are brought to court by the local authority, the police or a social landlord.

Each local authority and housing organisation has its own policy for dealing with complaints about anti-social behaviour. The case officer might be a housing officer; for others it may be an anti-social behaviour officer or tenancy enforcement officer. Some staff of social landlords may take statements, while others may use solicitors.

HOW DOES WITNESS INFORMATION GET TO COURT?

Before it is decided to take legal action, witnesses are contacted by their case officer or their landlord's solicitors. The person will be interviewed and a statement will be taken. In county court proceedings these will be concluded with a 'statement of truth'.

Before a victim's or witness's statement is used for any court proceedings, the victim or witness will be asked to check it for accuracy and then, only if they are satisfied it is correct, to sign it. They should be given a copy of their statement to keep. Once the case reaches the court they will not be allowed to add further information to it, so it is important that it is as comprehensive as possible and includes all relevant information.

The statement, any evidence and other court papers will be sent to the court and a summons will be issued to the perpetrator (normally called the 'defendant'), stating the date and time the court will hear the case.

In a very small number of cases (such as a breach of injunction) the victim or witness may be asked to swear an affidavit. This is similar to a statement, but the victim or witness has to swear on oath that it is accurate.

HOW LONG DOES IT TAKE FOR THE CASE TO BE HEARD?

It may take a number of weeks and sometimes even months before a case is heard by the courts. It depends on factors such as the type of case, how long it is expected to last and how busy the court is with other cases. Where a case is serious or urgent it is possible to go

to court at very short notice for an urgent hearing. These cases will have to be heard by the court again at a later date when the court is able to set aside sufficient time to hear all the evidence from all the witnesses and make a final decision.

WHICH COURT DOES THE CASE GO TO?

Most anti-social behaviour cases led by social landlords are heard in the county court. This is a civil court that deals with non-criminal matters such as eviction proceedings, injunctions, anti-social behaviour orders (ASBO) (where they are presented alongside other anti-social behaviour applications), debt hearings and family proceedings. ASBO applications not related to housing matters are mostly held in magistrates' courts.

In county courts, cases tend to be heard by a district or circuit judge. In a magistrates' court, cases will usually be heard by a single magistrate.

WHAT HAPPENS BEFORE THE CASE GOES TO COURT?

Before the court hearing, victims and witnesses can ask to visit the courtroom to familiarise themselves with the surroundings. Their case officer or the court staff can arrange this for them. If they have other needs (e.g. language or mobility) it is important for them to let their case officer know in advance so that arrangements can be made.

Victims and witnesses should be advised or given tips to make their court experience as least stressful as possible. For example, they should be prepared to spend some time waiting for the case to be called or waiting to be called to give evidence.

WHAT HAPPENS ON THE DAY OF THE COURT HEARING?

When a victim or witness arrives at court, court staff will be able to direct them if they give the staff their name and/or the name of the case (the names of the persons involved in the action, e.g. London Borough of Newham versus Smith). Outside the courtroom the victim or witness will meet the representative(s) of the police, the

local authority or housing association who will be dealing with the case in court. They must then wait for the case to be called.

Victims and witnesses should be advised to arrive in good time for the hearing. Court buildings open a short time before the first hearing of the day, which is normally 10am. They should be advised that they do not have to attend court alone and can take a friend or relative with them. Not all hearings run to time, so they should be advised to ensure that any arrangements they make (e.g. for child care) allow for delays.

Cases may be presented to the court by a barrister (or counsel). Although in some cases victims and witnesses will be able to sit in the court and wait for their turn, they will usually be asked to wait outside. Inside the court the 'applicant' or prosecution usually sits, facing the judge, on the right of the room, and the defendant sits on the left.

WHAT HAPPENS WHEN THE CASE IS CALLED?

Victims and witnesses should be advised that they normally cannot take notes into the witness box as they will not be allowed to refer to them without the prior consent of all the parties' legal representatives and/or the court. A copy of their witness statement will be available in the witness box when they give evidence.

On entering the witness box they will be asked to affirm or swear the oath and they will be asked their full name and address.

The legal representative presenting the applicant's case will ask questions about what happened. Victims and witnesses should be advised to address their answer to the judge. The correct forms of address for the judge are as follows:

- a circuit judge is called 'Your Honour';
- a district judge is called 'Sir' or 'Madam'.

The correct form of address for a magistrate is 'Your worship', 'Sir' or 'Madam'.

WHAT HAPPENS WHEN VICTIMS AND WITNESSES GIVE EVIDENCE?

The victim or witness will usually be asked questions on the content of their statement. When giving evidence, they should be advised to take their time and not rush. If they do not understand a question they should be advised that they may ask for clarification or for the question to be repeated. Although they should address their answers to the judge or magistrate, they should be advised not to expect eye contact from them, as they could be busy taking notes.

Victims and witnesses should keep their answer brief and answer only the question put to them. They should not race ahead or anticipate a line of questioning. By attempting to answer what they think the next question may be, they could end up becoming confused. They should first think about the question asked of them and then answer honestly. 'Yes' and 'no' are perfectly acceptable replies. If the lawyer requires more detail they will ask for it.

They should not attempt to answer questions to which they do not know the answer. 'I don't know' or 'I don't remember' is both honest as well as perfectly acceptable in this kind of situation.

WHAT HAPPENS WHEN VICTIMS AND WITNESSES HAVE FINISHED GIVING THEIR EVIDENCE?

When victims and witnesses have answered all the questions, they will be asked to leave the witness box. Usually they will then be free to go home, but very occasionally the court may ask them to stay in case they need to be asked subsequent questions. They may stay after they have finished giving their evidence unless the matter is heard in private and not in open court.

THE COURT'S DECISION

When all the evidence has been heard the judge or magistrate will consider all the evidence and make their decision. Whatever the decision reached in a particular case, it is important that the victim or witness bears in mind that the reason for giving evidence is to help the

court to establish the facts of the case and, in so doing, to help the court reach a decision.

Examples of decisions made by the judge or magistrate could include: to grant an anti-social behaviour injunction or to make an ASBO; to adjourn (postpone) the case until a later date; or to accept an undertaking from the perpetrator. An undertaking is a promise to the court, and if that promise is broken the matter will return to the court (e.g. the perpetrator may promise not to play music loudly or to harass a neighbour). In housing cases this option must also be accepted by the housing provider.

WHAT HAPPENS AFTER THE COURT HEARING?

If necessary, the case officer will continue to support the victim or witness after the court hearing. If there proves to be any harassment or intimidation of a victim or witness, further action can be taken against the perpetrator.

If victims or witnesses feel harassed, intimidated or threatened because they gave evidence in courts, **they should not suffer in silence**. They should contact their case officer who was dealing with their case.

They could also get in touch with **Victim Supportline** on **0845 3030900**.

More detailed information for expert practitioners

HOW CAN VICTIMS AND WITNESSES BE ENCOURAGED TO REPORT INCIDENTS AND EVIDENCE OF ANTI-SOCIAL BEHAVIOUR?

The evidence available from a witness of anti-social behaviour is of a higher quality than hearsay or professional witness statements; it demonstrates the true distress and annoyance of anti-social behaviour and how it damages the community.

Initial stages

Gaining the **trust** and **confidence** of victims and witnesses is key to keeping them on board, no more so than at the crucial first stage when a report is made. This is the point at which victims' and witnesses' expectations are set.

The key considerations are:

- establishing **trust** with the victim or witness;
- not underestimating the **fear** and intimidation that the victim or witness may be living with;
- acknowledging that the **safety** of the victim or witness is paramount. The greatest fear of most witnesses is that of 'retaliation' and problems during or after any court case; and
- putting the victim or witness at the heart of the process, by applying basic customer care principles and keeping them informed at all stages.

Keeping witnesses engaged

Victims and witnesses can be reluctant to report anti-social behaviour because of fear of revenge attacks and intimidation. Often the period between reporting the incident and going to court is a very stressful time. Witnesses need to be supported through the whole process from report to trial, remedy and beyond.

Good support will include some of the following:

- simple reporting channels;
- taking the complaint seriously and advising how it will be dealt with;
- engaging each key witness in a face-to-face meeting

with the agencies, including witnesses who do not wish to give a statement or attend court;

- assessing the witness's home environment to ascertain what witness protection measures are required (such as installing new locks on windows and doors and a panic button);
- providing emergency out-of-hours contact details;
- putting the witness in touch with other residents who might be available to offer support; and
- considering, when people are too scared to come forward, the use of hearsay evidence containing anonymised witness statements and engaging professional witnesses to give evidence.

Witness development and support

Developing and supporting witnesses is a primary concern of any agency managing a case. Without the initial complaint of the witness the agency will have no detailed knowledge of the problem. Without their continuing development and engagement there will be no evidence on which to build a case.

The welfare and safety of residents whose complaints form the basis of any action must at every stage of the process be the first consideration. The use of hearsay evidence and professional witnesses is one way of achieving this.

While professional witnesses have a duty to engage, lay witnesses can be expected to do so only if:

- they can see a point in doing it;
- the agency is credible and authoritative;
- the case work is visibly focused on the interests of the witnesses; and
- the case officer offers them well-informed, practical personal support throughout the period of evidence collection, court proceedings and afterwards, as necessary.

The experience of witnesses must be given value and significance by case officers. The status and importance of witnesses in case development must be made clear. They should be provided, as appropriate, with:

- a simple method of capturing information, such as diaries, video/audio-recording facilities and translation services;
- information on services and procedures, e.g. about the way witness support services work, service access points, telephone numbers and the name of the case officer working on the case;
- an active and respected role in developing the case – the case strategy should reflect their needs, particularly for reassurance about their safety, and they should have control over any information they provide, including agreeing the form in which it will be provided to the defence;
- protection for themselves and their family – emergency contact equipment, panic alarms and mobile phones may all be appropriate in particularly serious cases;
- regular contact from the case officer, including telephone contact as agreed with the witness (daily, weekly, etc);
- support for any court appearance – a briefing on court procedures and what they should expect, a visit to court in advance of the hearing, the presence with them in court of the case officer, transport to and from court (if necessary) and a secure space separate from perpetrators in which they can wait to be called;
- support after a court appearance – speedy delivery of information, copies of any orders which have been made and an explanation of the implications of the court decision; and
- ongoing support for as long as the witness feels it necessary and as long as is reasonably practical.

Who should provide support to witnesses?

Witness support is an area where the benefits of partnership working can be clearly seen: local authorities and the police have different skills and resources and can combine them to give well-rounded support.

Responsibility for co-ordinating support lies with the case officer, i.e. the person who owns the case. Witness support will not work well if the case officer does not retain primary responsibility for this work and build their own relationship with the witness. Good, dedicated anti-social behaviour teams will spend as much time training their colleagues on these skills as they spend on witness support for their own cases.

Methods of supporting witnesses currently being used by agencies also include:

- enclosing a letter with the summons advising the respondent to stay away from witnesses;
- a higher police presence in the vicinity;
- giving witnesses the personal mobile telephone number of a named police officer who can be called if they are threatened;
- visits from neighbourhood wardens at pre-arranged times (sometimes daily); and
- phone calls from the local authority at pre-arranged times.

Other models of support include the following.

Peer support

The most effective and powerful witness support can be provided by witnesses themselves to others in a similar situation. Supporting the development of peer support, witness support groups and telephone-based contact can be extremely effective.

Day-to-day support

Witness support techniques and approaches are no more time-consuming or difficult than other parts of the investigatory process such as interviewing complainants and perpetrators and writing confirmation letters and file notes. Witness support can easily be a part of all day-to-day work on neighbour nuisance and anti-social behaviour.

Specialist and out-of-hours support

A specialist, dedicated team can help with an out-of-hours service or by taking witnesses to and from court.

Support from the prosecution team

A 10-point prosecutors' pledge outlines the level of service that victims can expect to receive from prosecutors through all stages of the court process. View details of the pledge at: www.cps.gov.uk/legal/section16/chapter_a_annex_e.html; and at Annex A of this guidance.

The introduction of the pledge sees for the first time a document in the public domain that clearly outlines the level of service that victims can expect to receive from prosecutors. It should be emphasised that the 10-point pledge's commitments apply to all prosecuting authorities and also to advocates instructed by the prosecuting authorities in the Crown Court.

Empowering victims

The prospect of appearing in court to give evidence can be daunting. Some victims and witnesses may feel that they have little or no control over the process. Others may prefer to seek information updates themselves rather than wait to be contacted. Giving victims an active and respected role in developing the case – for instance, by allowing them to have control over any information they provide, including agreeing the form in which it will be provided to the defence – can empower them.

Pre-court action

Where an agency has taken action that is not court action (such as a warning or agreement), there is no reason why the case officer cannot disclose to the victim or witness that an action has been completed. This is a proportionate and justifiable course of action. If this is not done the victim or witness will not know that anything is being done to address the problem. It would not normally be appropriate to discuss the terms of the warning or agreement with the victim or witness.

It is also important to inform the wider community about work that has been undertaken to give warnings to perpetrators of anti-social behaviour. Although it would not be appropriate or necessary to identify those involved, it is still possible to communicate the message that action has been taken.

Court action: supporting and explaining legal action

Where an agency has taken action that is court action they should:

- discuss and plan with the witness every stage of the legal action, i.e. the serving of papers, the exchange of witness statements, the court hearing and the implementation of the remedy;
- keep the witness informed of the progress of their case via a weekly courtesy call or other agreed arrangements;
- keep close control of the evidence through regular retrieval and checking of diary sheets;
- remain alert to any potential risks to the witness;
- let other relevant officers, such as caretakers and wardens, know of the witness's potential vulnerability;
- put the witness in touch with other residents who might be available to offer support; and
- offer to arrange a visit to the court in advance of the hearing so that the witness can be familiarised with the layout.

Case study: Manchester City Council protects witnesses

Issue

Witnesses felt anxious about giving evidence. Their concerns included the prospect of appearing in court, coming face to face with defendants and being threatened by defendants at the court building, as well as uncertainties about waiting room and refreshment facilities.

Approach

Manchester City Council negotiated the following arrangements with local courts for anti-social behaviour cases:

- access to a quiet room for witnesses;
- a video link to perpetrators in prison in cases where it would be expensive to bring them back for an ASBO or injunction hearing (this also has the benefit of being less stressful for the witnesses);
- a video link for children and young people; and
- police presence, where appropriate.

In addition, the council provides practical information and support to witnesses. Witnesses are made aware of what to expect, including the court layout, where they and the defendant(s) will be sitting and how people will be dressed. Practical support also includes transport to and from the court, being met by a council officer on arrival and information about refreshment and bathroom facilities.

Outcome

The result has been reassurance and physical security for witnesses. This has led to a reduction in their anxiety about the prospect of appearing in court or accidentally meeting a defendant. Witnesses are better able to focus on the case. The case manager is also able to keep witnesses informed of progress and to manage the case more effectively.

Contact

Nuisance Strategy Group
Telephone: 0161 234 4611

Identifying vulnerability or intimidation

Victims and witnesses who are vulnerable or who fear or experience intimidation are more likely to either drop out of the process before a case reaches court or fail to report anti-social behaviour in the first place.

Early identification of vulnerability or intimidation is crucial. Victims may not initially be identified as vulnerable or intimidated, so it is also vital that agencies work with support organisations to identify these conditions.

USE OF HEARSAY AND PROFESSIONAL WITNESS EVIDENCE

Hearsay and professional witness evidence allow for the identities of those too fearful to give evidence to be protected. This is especially vital as cases often involve anti-social behaviour in residential areas by local people, and those targeted by the behaviour feel unable to come forward for fear of reprisals. Both these measures ensure that the complainant's identity is withheld from the defendant. Hearsay evidence cannot be excluded (at the request of defence lawyers) simply on the grounds that it is hearsay.

Hearsay evidence

Hearsay allows a police officer to provide a statement on behalf of a witness or witnesses who may remain anonymous. Hearsay evidence must be relevant to the matters to be proved. It could include details such as dates, places, times, a specific description of actions, who was present and who said what.

Hearsay can include evidence from the person taking the statement. The person giving the hearsay evidence may attest to the observable conditions of the witness, e.g. that the witness appeared upset, and may give evidence based on their own assessment of the situation. The House of Lords judgment in the McCann case confirmed that hearsay evidence is admissible.

Where an applicant intends to rely on hearsay evidence in the county court, they must act in accordance with Part 33 of the Civil Procedure Rules. Written notice must be given at least 21 days before the hearing to the other party and to the court.

It is for the court to decide how much weight to attach to hearsay evidence in each case.

Professional witnesses

Professional witnesses can be called to give their opinions as to matters within their expertise and can give evidence about their assessments of the respondent or their behaviour. Examples of witnesses who may be called as professional witnesses include council officials, health visitors, railway staff, teachers, doctors and police officers.

Care should be taken to ensure that a professional witness does not inadvertently enable vulnerable or intimidated witnesses to be identified, e.g. by giving their home address.

WITNESS INTIMIDATION

It is a criminal offence if a person knowingly performs an act intended to intimidate another person who is or may be a witness in civil or criminal proceedings. The penalty is up to five years in prison (Sections 39–41 of the Criminal Justice and Police Act 2001).

Intimidation in the court building

Sections 4A and 5 of the Public Order Act 1986 are likely to be the most appropriate sections to deal with intimidating behaviour in a court building.

Section 4A states:

A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he

- uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
- displays any writing, signs or other visible representations which is threatening, abusive or insulting thereby causing that or another person harassment, alarm or distress.

An offence committed under this section may be committed in a public or private place. A person found guilty of an offence under Section 4A is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.

Section 5 states:

A person is guilty of an offence if he:

- uses threatening behaviour, abusive or insulting words or behaviour or disorderly behaviour, or
- displays any writings, signs or other visible representation which is threatening, abusive or insulting
- does either of the above within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

An offence committed under this section may be committed in a public or private place. A person found guilty of an offence under Section 5 is liable on summary conviction to a fine not exceeding level 3 on the standard scale. Practitioners who witness public order offences in the court building should report these immediately to court security or the court manager.

Intimidation in the courtroom

Section 12 of the Contempt of Court Act 1981 is relevant in magistrates' courts. A magistrates' court has jurisdiction under this section to deal with any person who:

- wilfully insults the justice or justices, any witness before or officer of the court or any solicitor or counsel having business in the court, during their sitting or attendance in court or in going to or returning from the court; or
- wilfully interrupts the proceedings of the court or otherwise misbehaves in court.

In such cases the court may order any officer of the court or any constable to take the offender into custody and detain them until the rising of the court. The court may, if it thinks fit, commit the offender (if 18 or over) to custody for a specified period not exceeding one month or impose a fine not exceeding £2,500 or both.

Section 118 of the County Courts Act 1984 is relevant in county courts and offers similar provisions to Section 12 of the Contempt of Court Act.

Superior courts such as the Crown Court have an inherent power to commit people to prison for a maximum of two years, or fine them, for contempt in the face of the court. This can include assaults and threats, insults to people in court and interrupting court proceedings.

Excluding the public from the courtroom

As a general rule the English legal system of administering justice requires that it be done in public, and in relation to magistrates there is a statutory obligation to sit in 'open court'.

Nevertheless a court, including a magistrates' court, may, in the exercise of its powers to control the conduct of proceedings, exclude the public where it becomes necessary in order to administer justice. Usually, except for statutory exceptions, the court should only exclude the public if the administration of justice would be rendered impracticable by their presence, either because

the case could not be effectively tried or because the parties entitled to justice would be reasonably deterred from seeking it at the hands of the court.

The interests of public order are a recognised ground in Article 6 of the European Convention on Human Rights for not sitting in public.

Keeping court managers informed

It is good practice to notify the court manager of cases that might have a high profile, e.g. applications involving a group of people or cases at which the defendant might bring along supporters and which might lead to tension in the court building or courtroom. Such notification might allow the court manager to make any necessary adjustments (e.g. additional security) to deal with any potential disruptions.

While at court

Practitioners should take the following into account:

- ask the court for a room where the layout is less intimidating;
- arrange transport of the witness to the court;
- make arrangements or cover the costs of any childcare or other dependent care;
- consider reimbursement for time off work and other expenses incurred by the witness;
- escort the witness at all times;
- arrange, if possible, for a police presence in the court; and
- secure a separate waiting room.

SPECIAL MEASURES FOR WITNESSES IN PROCEEDINGS FOR ASBO APPLICATIONS

Chapter 1, Part II, Sections 16 and 17 of the Youth Justice and Criminal Evidence Act 1999 set out directions for special measures in the case of vulnerable and intimidated witnesses.

The amendment to the law introduced by the Serious Crime and Police Act 2005 enables special measures to apply in ASBO applications in the Crown Court and magistrates' courts.

Specifically, Section 143 of the Serious Crime and Police Act 2005 inserts Section 1I (after Section 1H) into the Crime and Disorder Act 1998 and provides that special measures directions for vulnerable or intimidated witnesses shall also apply to applications for ASBOs in the Crown Court and magistrates' courts under:

- Section 1 (freestanding applications in the magistrates' courts);
- Section 1C (post-conviction applications in the Crown Court and magistrates' courts); and
- Section 1D (interim applications in the magistrates' courts) of the Crime and Disorder Act 1998.

Other than the provisions set out in subsection 1I(3), Chapter 1 of Part II of the Youth Justice and Criminal Evidence Act 1999 shall apply in full, including Section 18, which covers the availability of special measures.

In addition, subsection 1I(5) provides that restrictions on reporting special measures and offences arising from breach shall apply (see Sections 47, 49 and 51 of the Youth Justice and Criminal Evidence Act 1999).

What are the special measures?

The following special measures may be available:

- screens – to ensure that the witness does not see the defendant;
- live link – allowing a witness to give evidence from outside the courtroom;
- evidence in private – clearing the court of most people (legal representatives and certain others must be allowed to stay);
- removal of wigs and gowns, e.g. by judges, advocates (only applicable in the Crown Court);
- video-recorded evidence in chief – allowing an interview with the witness, which has been video-recorded before the trial, to be shown as the witness's evidence in chief;
- intermediaries – allowing an approved intermediary to help a witness communicate with the police, legal representatives and the court; and

- aids to communication – allowing a witness to use communication aids such as a symbol book or an alphabet board.

Defining vulnerable or intimidated witnesses

Vulnerable witnesses are all witnesses aged under 17 years, or those whose quality of evidence is likely to be diminished because they have a mental disorder or learning disability, or have a physical disability or physical disorder.

Intimidated witnesses are witnesses whose quality of evidence is likely to be diminished because they are in fear or distress about testifying.

It is for the court to decide whether the quality of a witness's evidence is likely to be diminished.

Special measures do not automatically apply once a court decides that a witness is 'eligible'. Having established that a witness is eligible for special measures, the court must then:

- decide whether any of the special measures would be likely to improve the quality of the witness's evidence;
- decide which of those measures (or combination of them) would be likely to maximise the quality of the evidence; and
- give a direction providing for the measure or measures to be applied.

What is the process for making an application for special measures?

The process is set out in the Criminal Procedure Rules 2005, Part 29. View special measures directions or an application form for special measures at: www.dca.gov.uk.

The application must be in writing on a prescribed form. It must be served on the court, as well as the person against whom the ASBO is being sought, who may oppose the application. The court will consider the application and may direct a hearing.

The Rules are relatively complex and it is advisable that anyone seeking to make an application obtains legal advice.

What is the availability of special measures in ASBO applications?

The timetable for implementation of special measures in ASBO applications is the same as the timetable in criminal proceedings.

In the Crown Court all measures are available, except for video-recorded evidence in chief, which is not available to vulnerable witnesses.

In the magistrates' courts the picture is more complex:

- Screens, evidence in private, and aids to communication are available to both vulnerable and intimidated witnesses.
- Live link and video-recorded evidence in chief are available to child witnesses in certain circumstances, in particular in cases of violence or threats of violence.
- Intermediaries are available to vulnerable witnesses in certain pilot areas – Merseyside, West Midlands, Thames Valley, Norfolk, Cardiff and Plymouth.
- Aids to communication are available to vulnerable witnesses. (This measure is not applicable to intimidated witnesses.)

Does the use of special measures mean that the witness's identity or appearance will be concealed from the person accused of anti-social behaviour?

Special measures do not necessarily mean that the witness's identity or appearance will be concealed from the person accused of anti-social behaviour. Except where screens are used, the accused will generally be able to see the witness. However, the witness does not have to see the accused person.

CAN VICTIMS ATTEND COURT TO HEAR THE RESULTS OF COURT ACTION?

When court action has been taken against an adult, or against a juvenile in a civil court, reporting restrictions do not normally apply. Victims and witnesses are able to attend court and hear the results of the verdict. The court may impose reporting restrictions in special circumstances, but unless this has been done there is no reason why successful court action cannot be reported to the community.

The youth court sits apart from other courts and, unlike other courts, is not open to the public. The victim of the crime, however, has the opportunity to attend the court hearings, but they must make a request to the court if they wish to do so.

In the youth court, automatic reporting restrictions apply for criminal convictions, with the exception of breach of ASBO. In proceedings for breach of ASBO, courts retain the **discretion to impose reporting restrictions** on any or all of the details of the case which they consider not in the public interest under Section 39 of the Children and Young Persons Act 1933.

The lifting of reporting restrictions in ASBO breach cases came into force in July 2005 when the commencement of Section 141 of the Serious Crime and Police Act 2005 inserted paragraphs 10D and 10E into Section 1 of the Crime and Disorder Act 1998.

ANTI-SOCIAL BEHAVIOUR RESPONSE COURTS

Within the existing network of magistrates' courts there is now a network of specialist anti-social behaviour response courts across the country. These ensure that court staff, including magistrates, are specially trained and follow a framework that includes specialist sessions, witness care, local community engagement, and appropriate media strategies. This ensures that courts are able to properly respond to anti-social behaviour cases in a visible and consistent way.

WITNESS SUPPORT IN THE COUNTY COURTS

In general terms, county courts deal with a relatively small proportion of anti-social behaviour cases, the majority being dealt with by magistrates' courts. County courts mainly deal with claims for debt repayments, breach of contract, personal injury and housing disputes (including possession claims). Although specific provision for witness support is therefore not routinely required in county courts, and appropriate facilities may not always be available in county court buildings, this does not mean that relevant arrangements cannot be made to support witnesses if needed.

One of the main outcomes of a recent pilot scheme to test the concept of an 'anti-social behaviour co-ordinator' in the county courts was that good practice developed on a local basis by individual county courts when dealing with anti-social behaviour cases is to be made available on a wider basis. A key feature of this good practice is to ensure that any need for special requirements, such as witness support or protection, is identified as early as possible. Evidence from the pilot scheme suggested that where the county court is given sufficient and early notice of any special requirements regarding the attendance of witnesses at court, it is possible to make appropriate arrangements. These can include the provision of separate waiting areas, the use of a video link or screens when giving evidence, or transferring the case to another court with appropriate facilities.

A 'checklist' developed as part of the above pilot scheme is being made available to all county courts, for use when dealing with anti-social behaviour cases. Court staff will therefore need to check whether they have been notified of any requirement for witness support or special facilities.

Practitioners making an anti-social behaviour related application in the county courts therefore need to do the following:

- As part of the preparation for a hearing in the county court, contact the court manager or court staff **as early as possible** to notify them that witnesses will be attending – particularly in cases where special arrangements for witnesses might be needed.

- Discuss the possibility of the witness visiting the court before attending the hearing, in order to familiarise themselves with the surroundings.
- If a witness is considered vulnerable or anxious, discuss the possibility of the witness using a separate entrance and/or waiting area and the provision of a video link or a screen. The court can then consider what arrangements are needed, e.g. the case could be transferred so that the hearing takes place in a court with necessary facilities. This could mean making use of a magistrates' court or Crown Court in the same building (a 'combined court'). The court can also give early advice on any action needed, e.g. a letter might be needed that can be put before a judge to agree special arrangements for giving evidence.
- Some county courts also have links to local witness support schemes that usually operate primarily in magistrates' courts and Crown Courts but which can be extended to accommodate witnesses involved in anti-social behaviour related applications in county courts.

The necessary links and arrangements can only be made if the county court receives early notification by the claimant of any special requirements regarding witnesses. Practitioners will also benefit from having advance notification of any potential problems, as this will give them the opportunity of resolving them before the case reaches the court hearing stage.

Part Two

Using a restorative justice or problem-solving approach

A victim may request a restorative justice approach to:

- make an offender realise how the crime has affected their life;
- find out information to help put the crime behind them – like why the offender targeted them; or
- openly forgive the offender.

WHAT IS RESTORATIVE JUSTICE?

Restorative justice provides opportunities for those directly affected by an offence – victim, perpetrator and members of the community – to communicate and agree on how to deal with the offence and its consequences. Restorative justice can be used at all stages of anti-social behaviour, from early intervention to after enforcement action has been taken.

The role of the community is crucial in dealing with anti-social behaviour. If members of the community feel that people who have previously been involved with anti-social behaviour are now making a positive contribution to the community, it will encourage better relationships and reduce anti-social behaviour in the long term. The key aims or outcomes of restorative justice are:

- victim satisfaction – reducing the fear of the victim and ensuring that they feel ‘paid back’ for the harm that has been done to them;
- engagement with the perpetrator – to ensure that they are aware of the consequences of their actions, have the opportunity to make reparation and agree a plan for their restoration in the community; and
- increasing public confidence in the criminal justice system and other agencies with a responsibility for delivering a response to anti-social behaviour.

The basic principles include:

- putting things right and healing relationships, thereby giving high satisfaction to victims and reducing re-offending;

- ensuring that those directly affected by crime and anti-social behaviour are involved in the process and that their wishes are given careful consideration;
- making positive outcomes for the victim and the community valid objectives, alongside changes in behaviour and attitude of the perpetrator; and
- addressing and being sensitive to particular cultural and special needs – based on anti-discriminatory practice, with an understanding and respect for the diversity of different communities.

Although restorative processes often result in practical reparation, the communication between victim and perpetrator can also produce powerful emotional responses leading to mutual satisfaction and socially inclusive outcomes.

WHAT METHODS OF RESTORATIVE JUSTICE ARE THERE?

It is crucial that restorative justice interventions are appropriate and well facilitated, so those involved in delivering restorative justice must be well trained. In July 2003 the Government published *Restorative Justice – The Government’s Strategy*. This can be seen at: www.crimereduction.homeoffice.gov.uk/workingoffenders/workingoffenders42.htm.

Examples of restorative justice approaches include:

- getting perpetrators to remove graffiti and repair property they have damaged;
- bringing shoplifters face to face with store managers to hear how shop theft affects others; and
- getting perpetrators to write letters of apology.

Perpetrators and victims are brought into contact through:

- **direct mediation** – where victim, offender, facilitator and possibly supporters for each party meet face to face;
- **indirect mediation** – where victim and offender communicate through letters passed on by a facilitator;
- **conferencing** – involving supporters for both parties and members of the community;
- **wider community** – this is similar to direct mediation, except the process focuses on the family as a support structure for the offender (this is particularly useful with young offenders); and
- **Referral Order Panels**¹ – young people who receive a court Referral Order (e.g. for breach of ASBO) attend a panel meeting to discuss their offence and the factors that may have contributed to their offending behaviour. The panel is made up of youth offending team staff and community volunteers. The victim, or their representative, may also attend so that their views may be put forward.

Restorative justice has been used with particular success in the youth justice arena. The Youth Justice Board website has more information on the use of restorative justice. This can be seen at:
www.youth-justice-board.gov.uk.

Mediation

Mediation is a process in which an impartial third party, the mediator, helps people in dispute to work out an agreement. The people in dispute work out the agreement, not the mediator. Generally, trained volunteers act as mediators in neighbour and family conflicts. They aim to get the people in dispute to meet face to face in a neutral setting. The mediators run the meeting with ground rules. They listen to what the people involved have to say but do not take sides – the aim is for the people in dispute to reach an agreement that all will accept and keep to. Mediation can only work if everyone wants it to. The mediators cannot force

people to resolve their conflicts. It is an entirely voluntary process.

Mediation can help people resolve various types of issues:

- **neighbour disputes**, e.g. car parking, young people playing in the street, boundary disputes, dogs barking, noise nuisance – it works best if used before the issue becomes entrenched;
- **family conflict** between young people and their parents or carers on issues of communication – it can help prevent youth homelessness, family estrangement and anti-social behaviour;
- **group conflict** – if a member of a group has a conflict with other group member(s); and
- **victim/offender mediation** – this is a form of restorative justice. It can help by bringing the two parties together so that there is an understanding of what happened, the effect the crime or anti-social behaviour had upon the victim, and an opportunity to apologise or make up for the harm caused. Offenders and their victims do not have to meet face to face – information can be passed between them via the mediators.

The local anti-social behaviour co-ordinator will know of available mediation schemes. If an area does not have such a scheme it is sometimes possible to buy in the service. A list of some local mediation services can be found on the UK Mediation website at:
www.ukmediation.net. Unite is a well-known mediation service in the North of England – see its website at:
www.unite-mediation.org.

Victims' Advisory Panel

A Victims' Advisory Panel has been created to help ensure that victims' voices are heard in the criminal justice system. The new panel will include people who have suffered from crimes such as burglary, anti-social behaviour and hate crime, or who are survivors of victims of serious violent crime.

¹ A Referral Order is one of the disposals available in the youth court for 10–17-year-olds pleading guilty and being convicted for the first time (unless the offence is so serious that a prison sentence is the only option).

The panel will work to ensure that victims feel the system is on their side as they go through the difficult process of giving evidence and working with the police and prosecutors to ensure that criminals are brought to justice. It will examine the way victims and witnesses are treated and the way their experiences are handled by the criminal justice system, and then make formal recommendations for changes directly to ministers.

ANNEX A: The prosecutors' pledge

Where there is an identifiable victim, the prosecutor will do the following:

- ***Take into account the impact on the victim or their family when making a charging decision.***

In doing so, the prosecutor will listen to the voice of the victim through their witness and victim personal statement and ensure that the charge adequately reflects the criminality of the offending.

- ***Inform the victim where the charge is withdrawn, discontinued or substantially altered.***

This includes the upgrading or downgrading of the charge, and in defined categories of offence the prosecutor will offer a face-to-face meeting with the victim to explain the decision.

- ***Where practical, seek a victim's view or that of the family when considering the acceptability of a plea.***

When a plea of guilty is offered the prosecutor, wherever practical, will speak with the victim or members of the victim's family attending court to ensure that any views expressed are taken into account when considering the acceptability of the plea. In order to do so, it may be necessary to seek an adjournment to facilitate such discussion.

- ***Address the specific needs of a victim and, where justified, seek to protect their identity by making an appropriate application to the court.***

The prosecutor will be assisted in forming their judgement by the police or other investigative authority and, where appropriate, will make an application for 'special measures' to ensure that victims are able to give 'best evidence' before the court. In appropriate circumstances, the prosecutor may also make an application to protect the identity of the victim or to prevent inappropriate reporting in the media.

- ***Assist victims at court to refresh their memory from their written or video statement and answer their questions on court procedure and processes.***

The prosecutor will introduce themselves to a victim at court and, while not permitted to discuss their evidence, will answer any questions on court procedure and processes. The prosecutor will also provide the victim with an opportunity to read their statement or see their video-taped statement before giving evidence.

- ***Promote and encourage two-way communications between victim and prosecutor at court.***

The prosecutor will ensure that during the course of the court hearing the victim is kept informed of the progress of the case, and will promote two-way communications to enable a victim or their family to pass to the prosecutor any information that may assist in the conduct of the prosecution or have a bearing on an assertion made by the defence.

- ***Protect victims from unwarranted or irrelevant attacks on their character and may seek the court's intervention where cross-examination is considered to be inappropriate or oppressive.***

The prosecutor will be alert during the course of the trial to unwarranted or irrelevant attacks on the victim's character and may seek the court's intervention where, for example, the prosecutor considers that cross-examination by the defence is inappropriate or oppressive.

- ***On conviction, robustly challenge defence mitigation that is derogatory to a victim's character.***

At the sentencing stage, the prosecutor will challenge any assertion by the defence in mitigation that is derogatory to a victim's character and that is considered either false or irrelevant to proper sentencing considerations.

- ***On conviction, apply for appropriate order for compensation, restitution or future protection of the victim.***

The prosecutor will always consider making any relevant application for ancillary orders such as compensation or restitution and, where appropriate and justified by the evidence, encourage the court to impose a restraining order for the future protection of the victim.

- ***Keep victims informed of the progress of any appeal, and explain the effect of the court's judgment.***

Where a case is the subject of an appeal to the Court of Appeal (Criminal) Division, the prosecutor will ensure that the victim or victim's family are advised of the hearing and that the grounds on which the appeal is made and the effect of the court's judgment are properly explained.

ANNEX B: Glossary

Affidavit: a written description of events that a witness must swear or affirm is true in court

Affirm: confirm the truth of something in court (a non-religious alternative to swearing on oath)

Barrister: a legal representative chosen by a solicitor to present someone's case in court and question witnesses

Breach: (of an injunction) when someone ignores an injunction or breaks the conditions contained in it

Committal case: a court case held when someone breaks an injunction. The judge could send or 'commit' them to prison or fine them

Complainant: the person who has suffered from (and complained of) anti-social behaviour

Contempt of court: disobeying the court, e.g. breaking the terms of an injunction

Defendant: the person against whom a complaint has been made to the court

Ex parte injunction: a type of injunction used in cases that need immediate action because of violence or threats of violence. It is where the defendant is not told of the application until after the order is made

Injunction: an order from the court that tells someone to either do something or stop doing something. Breaking an injunction is a serious offence that could result in a maximum of two years in prison for contempt of court

Interim injunction: a type of temporary injunction used in cases that don't need immediate action or that are a follow up to ex parte injunctions

Perpetrator: the person causing anti-social behaviour

Plaintiff: the person or organisation bringing a case to court

Possession case: a hearing to decide if a council or housing association tenant should be evicted from their home

Solicitor: a legal representative who advises individuals on legal matters and who can present someone's case in court and question witnesses

Statement: a written record of events that a witness signs as a true record

Suspended possession: the judge sets a time period (usually one or two years) when the tenant must not repeat their behaviour. If they do, the landlord will go back to court and ask for immediate possession

Suspended sentence: a prison sentence that is only enforced if the perpetrator breaks a court order within a time limit set by the judge

Swear on oath: confirm the truth of something in court – sworn on a bible or other religious book

Tenancy agreement: the legal contract of rules between the landlord and a tenant

Undertaking: a promise made to the court by a person to either do or not do a certain thing. Breaking an undertaking is as serious as breaking an injunction

Resources

FURTHER INFORMATION

View *The Code of Practice for Victims of Crime: A guide for victims*, published by the Office for Criminal Justice Reform in April 2006, at:

www.cjsonline.gov.uk/downloads/application/pdf/VCOP_GUIDE.pdf.

The guide sets out victims' rights under the code of practice.

Information on witness intermediary schemes is available at the links below:

www.homeoffice.gov.uk/documents/Helping-witnesses-communicate1.pdf?version=1; and
www.cjsonline.gov.uk/the_cjs/whats_new/news-3265.html.

OTHER USEFUL VICTIM AND WITNESS BEST PRACTICE

- **Newham Crime and Disorder Reduction Partnership – Witness Information Pack**
www.newham.gov.uk/NR/rdonlyres/985E9EDE-03AA-4F26-A38A-16F0C5248529/0/4712801WitnessGuidev2.pdf
- **Camden Community Partnership – victims and witnesses information**
www.camden.gov.uk/ccm/content/policing-and-public-safety/community-safety/csp-subsite/personsafe/victims-and-witnesses.en
- **Lancaster City Council – Victim and Witness Support**
www.lancaster.gov.uk
- **Ealing Homes – Victim and Witness Support Pack**
www.ealinghomes.net/export/sites/ealing-homes/main/services/antisocial_behaviour/asb_documents/VICTIM_AND_WITNESS_SUPPORT_PACK.pdf
- **Lambeth Victim Support**
www.vslambeth.org.uk/
- **Brent Housing Partnership – witness and victim support scheme**
www.bhphousing.co.uk/BHPV2.nsf/Pages/BHP-108
- **West Lothian Council – Victim and Witness Support Strategy**
www.westlothian.gov.uk/media/downloaddoc/1799479/Your_Questions_-_pdfs/CMY199_VictimWitness_supp0.pdf
- **Luton Borough Council – ideas on how to make victims/witnesses feel safe**
www.luton.gov.uk/Media%20Library/Pdf/Chief%20executives/Community%20Safety/Social%20behaviour%20unit/Witness_support.pdf



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