



LORD JUSTICE-GENERAL'S
MEMORANDUM ON CHILD WITNESSES

APPENDIX TO GUIDANCE ON THE
QUESTIONING OF CHILDREN IN COURT

July 26 1990

MEMORANDUM BY THE LORD JUSTICE-GENERAL ON CHILD WITNESSES

1. The following memorandum of guidance has been prepared at the suggestion of the Scottish Law Commission: see Report on the Evidence of Children and Other Potentially Vulnerable Witnesses (Scot Law Com No 125). Its purpose is to provide assistance to judges in the exercise of their discretionary powers, where a child is to give evidence by conventional means in open court, to put the child at ease while giving evidence and to clear the court of persons not having a direct involvement in the proceedings.
2. The general objective is to ensure, so far as is reasonably practicable, that the experience of giving evidence by all children under the age of sixteen causes as little anxiety and distress to the child as possible in the circumstances.
3. The following are examples of the measures which may be taken, at the discretion of the presiding judges, with a view to achieving that objective—
 - (a) The removal of wigs and gowns by the judge, counsel and solicitors;
 - (b) The positioning of the child at a table in the well of the court along with the judge, counsel and solicitors, rather than requiring the child to give evidence from the witness box;
 - (c) Permitting a relative or other supporting person to sit alongside the child while he or she is giving evidence;
 - (d) The clearing from the court room of all persons not having a direct involvement in the proceedings.
4. In deciding whether or not to take these or similar measures, or any of them, the presiding judge should have regard to the following factors—
 - (a) The age and maturity of the child.

In general the younger the child the more desirable it is that steps should be taken to reduce formality and to put the child at ease while giving evidence.

- (b) The nature of the charge or charges, and the nature of the evidence which the child is likely to be called upon to give.

Particular care should be taken in cases with a sexual element or involving allegations of child abuse especially where the child is the complainer or an eye witness. Children directly involved in such cases are likely to be especially vulnerable to trauma when called upon to give evidence in the presence of the accused. The giving of evidence of a relatively formal nature, especially in the case of an older child, is unlikely to cause anxiety or distress and in such cases it will rarely be necessary to take special measures in the interests of the child.

- (c) The relationship, if any, between the child and the accused.

A child who is giving evidence at the trial of a close relative may be especially exposed to apprehension or embarrassment, irrespective of the nature of the charge. The positioning of the child and the support of a person sitting alongside the child while giving evidence are likely to be of particular importance in these cases.

- (d) Whether the trial is summary or on indictment–

While informality may be easier to achieve in summary cases, the presence of a jury in cases taken on indictment is likely to present an anxious or distressed child with an additional cause for anxiety or distress. This makes it all the more necessary under solemn procedure that steps should be taken to put the child at ease.

- (e) Any special factors placed before the court concerning the disposition, health or physique of the child.

All children are different, and judges should take each child's particular circumstances into account before deciding what steps, if any, should be taken to minimise anxiety or distress.

- (f) The practicability of departing from normal procedure, including the size and layout of the court and the availability of amplification equipment.

Whatever step taken, a child witness who gives evidence by conventional means must remain visible and audible to all those who have to hear and assess the evidence, including the jury and the accused.

5. In all cases, before a witness under sixteen years is led in evidence, an opportunity should be given to those representing the Crown and the defence to address the judge as to what special arrangements, if any, are appropriate. Under solemn procedure such representations should be made outwith the presence of the jury and preferably before the jury is empanelled or at least before the commencement of the evidence.
6. If a relative or other supporting person is to sit alongside the child, that person should not be a witness in the case and he or she should be warned by the judge at the outset not to prompt or seek to influence the child in any way in the course of the evidence.
7. The clearing of the court while a child is giving evidence will normally be appropriate in all cases which involve an offence against, or conduct contrary to, decency or morality: see section 166 and section 362 of the Criminal Procedure (Scotland) Act 1975. In other cases this should only be done if the judge is satisfied that this is necessary in order to avoid undue anxiety or distress to the child. The statutory provisions that bona fide representatives of a newspaper or news agency should not be excluded should be applied in all cases.
8. When taking any of the measures described above the judge should have regard to the court's general duty to ensure that the accused receives a fair trial and is given a proper opportunity to present his defence.



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