

Witness in Court



CRIMINAL JUSTICE SYSTEM



If you are asked to be a witness in a trial or hearing in court, you play a vital part in delivering justice.

By making a solemn promise to tell the truth and by giving your evidence in court, you make it possible for the magistrates (or the judge and jury if you are called to be a witness in the Crown Court) to understand what really happened.

Before the courts can find someone guilty or not guilty of a crime, they need to hear and consider the evidence – and witnesses are the people who provide the evidence.

Thank you for your time and effort.

01 What does it mean to be a witness?

Why would you be asked to be a witness?

You may be asked to be a witness if you:

- know something about a particular crime, incident or dispute, for example, because you saw it happen;
- have specialist knowledge on a subject that would be useful in deciding the facts in a trial (you will then be an expert witness); or
- you know one of the people involved in a case (you will then be a character witness). You would be asked to answer questions about, for example, how well you know the person and whether he or she is trustworthy.

What is it like to be a witness?

You may not know what to expect if you are called as a witness – or you may find it very different from what you expected.

This leaflet will help prepare you for what will happen. It explains:

- where to find more help and advice on being a witness;
- where you will give your evidence – the different kinds of court;
- who's who in the courtroom and what some of the legal language means;
- what happens before you go to court;
- what happens when you are in court; and
- what happens after you give evidence.

Remember: If you have given a statement and are then asked to go to court to give evidence, you must do so.

If you have any problems or concerns about going to court, you must let the person who asked you to go to court know as soon as possible. If you have to go to court but the court does not think that you will go voluntarily, they may issue a witness summons against you. If you still fail to go to court without a good reason, the court could find you 'in contempt of court' and issue a warrant for your arrest.

02 Where can you find help and information about giving your evidence?

It is not unusual for people to feel anxious about giving evidence in court. Perhaps you are not sure if what you say, or how you say it, will help make sure that justice is done.

People who work in the criminal justice system know the experience can be new or strange for you, and will do what they can to make sure you are treated with respect and sensitivity.

The Witness Service

You can talk to a trained volunteer from the Witness Service before you go to court, and a volunteer will be at the court to help you. They cannot discuss evidence or give legal advice, but they will be a friendly face who will show you around the court and tell you what will happen.

There is a Witness Service in every criminal court in England and Wales. This service is run by the independent national charity, Victim Support, and helps victims and witnesses (both prosecution and defence), and their families and friends, before, during and after the trial. The Witness Service sends a leaflet to witnesses before the court hearing to offer its services.

Trained volunteers provide a free and confidential service including:

- general information on court proceedings;
- personal support before, during and after the hearing;
- someone to go with you into the courtroom if you have to give evidence; and
- a visit to a court before you give evidence so it will not seem strange to you.

You can find their details in the phone book under the name of the court.

Or, you can contact the Victim Supportline on 0845 30 30 900.

More information

There is a charter for the Crown Court called the 'Charter for Court Users', which sets out the important standards which you can expect when you come to court. You can get a copy from the Court or by phoning 020 7189 2000. Many magistrates' courts have their own local charter, which you can get from the court.

You can get this leaflet in a range of other languages. Contact your local police station or Witness Service office for details.

You can get general information about the Criminal Justice System (the police, the courts and the Crown Prosecution Service) and more information about being a witness from www.cjsonline.gov.uk

(UK Online offers access to the internet for free or at low cost in approximately 3,500 centres throughout the UK. Call 0800 77 1234 to find your nearest centre.)

03 Where will you give your evidence?

There are three kinds of court where you might be called to give evidence.

- **Magistrates' court**
- **Crown Court**
- **Youth court**

The person or organisation who writes to you telling you when and where you will be needed as a witness will include details of which kind of court the case will be heard in.

Magistrates' court

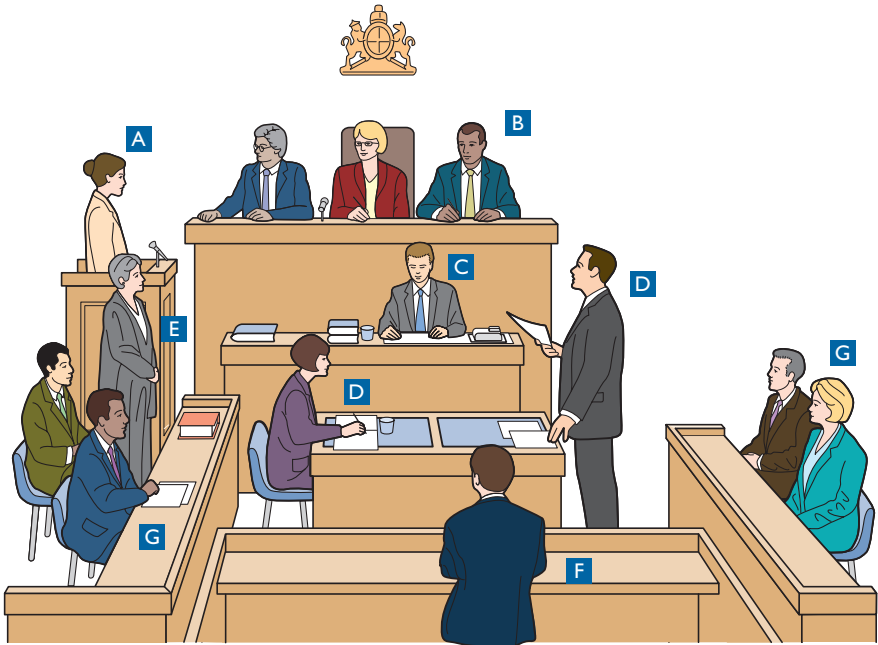
Most criminal cases that come to court are tried in magistrates' courts.

Magistrates listen to all the evidence – including the statements that you and any other witnesses give – and decide whether the person accused of the crime (the defendant) is guilty or not. If the defendant is found guilty or admits he or she is guilty, the magistrates usually decide the sentence.

The magistrates may be three local people (sometimes called justices of the peace or JPs), supported by a legally trained advisor, or there may be just one magistrate (called a district judge, who is a lawyer). No one in a magistrates' court wears the white wigs often seen on judges or lawyers in films or on TV, and only the ushers wear black gowns.

There will be a lawyer (or a team of lawyers) who speaks for the prosecution. In most cases, another lawyer (or team of lawyers) speaks for the defendant – who is also known as 'the accused'.

The picture shows a typical magistrates' court. The magistrates sit behind a raised bench and the witness box is usually to one side near the front of the court.



- Key:** **A** Witness **B** Magistrates **C** Clerk of the court
D Lawyers for the prosecution and the defence
E Court usher **F** Defendant **G** Others

Crown Court

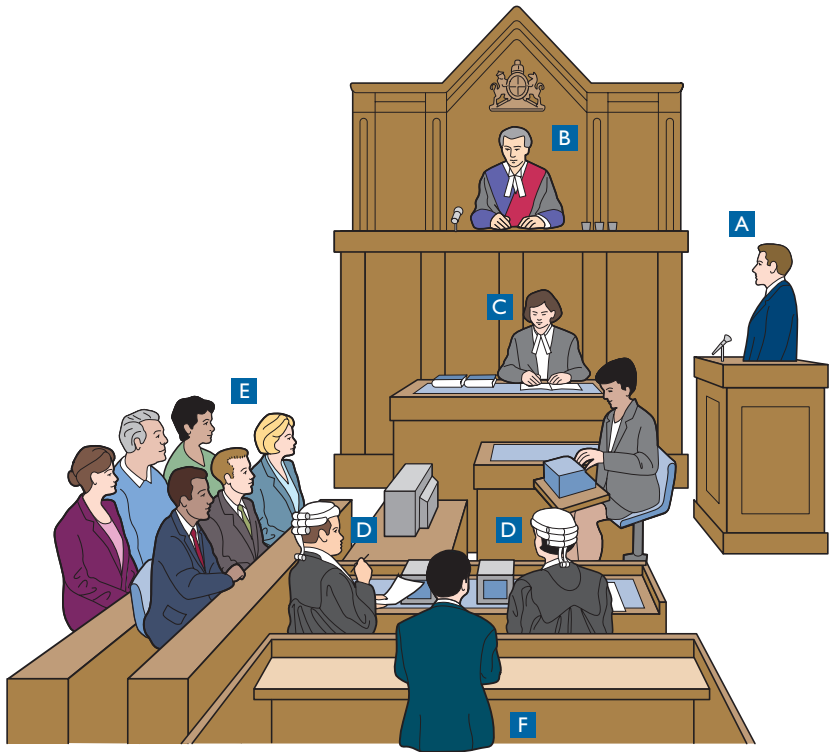
Trials before a judge and jury in the Crown Court are usually only for very serious crimes, or where the defendant has asked to have his/her case tried by a jury. Magistrates may send a case to the Crown Court if they feel they do not have the power to set a sentence as severe as the crime deserves, if the defendant is found guilty.

After listening to all the evidence, the jury tells the judge whether they find the defendant 'guilty' or 'not guilty'.

The judge decides on matters of law. If the defendant is found guilty or admits he or she is guilty, the judge also decides the sentence.

In court, there will be a lawyer (or a team of lawyers) who speaks for the prosecution, and a different lawyer (or team) who speaks for the defendant.

The picture shows a typical courtroom of the Crown Court. Judges and some lawyers wear wigs and gowns. The court clerk also wears a gown and, in some courts, a wig, too. There is also an area for the jury to sit.



Key: **A** Witness **B** Judge **C** Clerk of the court
D Lawyers for the prosecution and the defence
E Members of the jury **F** Defendant

Youth court

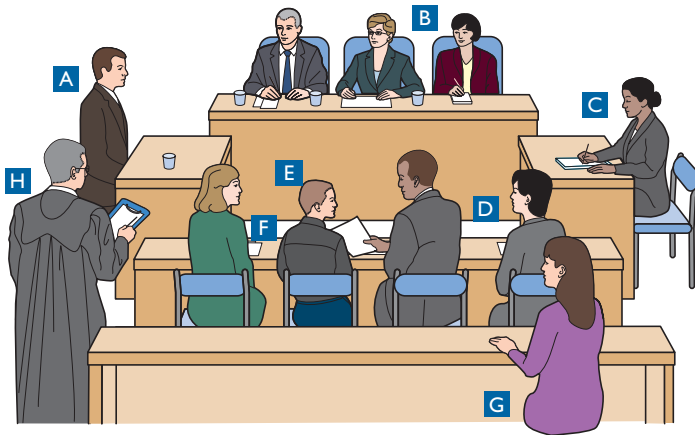
Most defendants under 18 are dealt with in the youth court by specially trained magistrates or by a district judge. There is no jury in these cases. Unlike the adult magistrates' courts and the Crown Court, which are usually open to the public, the law restricts access to the youth court to:

- members and officers of the court;
- both sides involved in the case and their legal representatives;
- witnesses;
- other people directly involved in the case; and
- members of the media and other people who the court has authorised to be present. (The media may report the proceedings but may not normally name any young people involved in the case.)

A child or young person will not be tried in a youth court if he or she is charged:

- with murder or manslaughter (these cases always go to the Crown Court for trial);
- with a very serious offence, such as robbery, and the youth court considers the greater sentencing powers of the Crown Court may be needed; or
- jointly with an adult (a person aged 18 or more) – these cases are heard in the adult magistrates' court or the Crown Court.

The picture shows a typical youth court. The magistrates usually sit on the same level as everyone else in the court.



- Key:** **A** Witness **B** Magistrates **C** Clerk of the court
D Lawyers for the prosecution and the defence **E** Defendant
F Parent **G** Youth Offending Team Worker **H** Usher

04 Who's who in the courtroom?

- **Defendant**
- **Lawyers**
 - **Prosecution**
 - **Defence**
- **Witnesses (including you)**
- **Magistrates, district judge or judge**
- **The jury (only in the Crown Court)**
- **Clerk of the court**
- **Court usher**
- **Other people**

Defendant

The defendant (also known as 'the accused') is the person who is charged with an offence.

Lawyers

One lawyer (or team of lawyers) will speak for the prosecution and one will speak for the defence. If there is more than one defendant, there may be a different lawyer for each defendant.

Most prosecutions are carried out by the Crown Prosecution Service (CPS) on behalf of the Crown (the Queen). This is why you will see or hear the case talked about as *R v 'defendant's name'* where 'R' means 'Regina' or the Queen. The CPS decides whether or not to prosecute cases the police have investigated and, if so, what charges to bring against the defendant.

Both lawyers try to persuade the magistrates or jury how the evidence shows the truth of what really happened.

Witnesses (including you)

There are usually witnesses for the prosecution (whose evidence is used to try to prove the defendant is guilty) and for the defence (not guilty).

Whether you are called as a prosecution witness or a defence witness will depend on which side thinks your evidence is most helpful to their case.

Magistrates, district judge or judge

A magistrate, district judge or judge may ask you questions about your witness statement. In a Crown Court trial, the jury can write down questions which they pass to the judge. The judge then asks the witness.

If the defendant is found guilty (convicted), the magistrates, district judge or judge decide the sentence (what happens to the defendant, such as a fine, community service or a prison sentence).

The jury (only in the Crown Court)

A jury is made up of 12 people who, as far as possible, represent 'the general public'. As jurors are chosen at random, they are likely to reflect a representative mix of people of different ages, from different cultural backgrounds, and doing different jobs.

Once the jury has heard all the evidence, including what you (and other witnesses) say, they talk in a private room about what they have heard. They discuss the evidence. If they are sure that they have heard proof that the defendant committed the crime, they will find the defendant guilty. If the jury is not sure of a defendant's guilt, they must find him or her not guilty.

One member of the jury is chosen to be the 'foreman' and tell the court what all 12 have decided. This is the verdict. Everyone in the court hears the verdict.

Sometimes, all 12 people cannot agree whether they find a defendant guilty or not guilty, even if they talk about it for days or even weeks. If this happens, the judge will tell the jury that a verdict can be given if at least 10 of them agree (a majority verdict). If a majority verdict cannot be returned, the prosecution must decide if it wants to ask for a retrial, which means the whole case will be heard again before a different jury. If the prosecution decide not to ask for a retrial, the defendant will be found not guilty.

Clerk of the court

The clerk of the court makes sure that all the people who should be in court are there, and that what is supposed to happen happens on time and in the right order. He or she may also look up the records of what happened in other trials if the judge needs the information. In magistrates' courts, the clerk, often called the legal advisor, also gives magistrates advice on legal matters.

Court ushers

When the lawyer says in court that they want to call someone as a witness, the usher is the person who actually goes outside the court and calls them in.

Other people

Other people you may see in the court include police officers, probation officers, members of the Witness Service and journalists. In some courts, members of the public are allowed to come and watch what happens from the public gallery. This can include friends and relatives of the people involved in the case.

05 What happens before you go to court?

If you are a prosecution witness, you will normally receive a 'witness warning' letter from the police or from a Witness Care Unit. This tells you when and where you need to go to court to give evidence. You will probably not be given more than about two weeks' notice of the date of the trial. A lawyer should be able to let you know that your case will be heard this week or next week, but often no one knows the exact starting day until the afternoon before.

If you are a defence witness, the defence lawyer should contact you to let you know when to go to court.

When the police or the defence lawyer took your statement, they will have asked you when you are available to go to court. The court will do all it can to set a trial date that is convenient to everybody involved in the case. But witnesses also need to do everything possible to rearrange anything that could clash with them giving evidence.

Time off work

If you need to take time off work, you should show your employer your witness warning letter as proof that you have to go to court. Your employer does not have to pay you for time off work when you appear as a witness. But if you do lose pay, you can claim a witness allowance for loss of earnings (see page 22 for more details about claiming expenses). The loss-of-earnings payment may be less than your actual loss of earnings.

Holidays

You are expected to go to court even if the date clashes with your holiday plans. You could try to rearrange your holiday. Remember that late cancellation can mean you lose money. Your holiday insurance may not cover you if you had been told that booking a holiday before the trial or hearing was over could be a problem.

Health problems

If you are too ill to go to court on the day you have been called to give evidence, contact the clerk of the court or the lawyer who asked you to give evidence and explain.

You should ask your GP for a medical certificate and send it to the person who asked you to come to court. If you get the certificate on the day of the trial, you could call the court and then send or fax the form as soon as possible.

If your illness seems likely to last for a few days or longer, contact the prosecution or defence lawyer and ask what other arrangements they can make for your evidence to be heard in court. For example, the court may agree that your earlier statement can be heard instead.

Other problems

If there are any other reasons which mean that you cannot go to court, you should contact the court as soon as you can.

What you need to do

The person who asks you to come to court should send you information about how to get to the court and the facilities it has. Crown Court centres also have a Customer Service Officer who you can ask about facilities. You can find the number of the court in the phone book under 'Crown Court'. The Witness Service can also help you with this information.

You should tell the person who asked you to come to court if any of the following apply to you.

- You have a disability or other special needs which means you will need help in getting to the court or moving about in the court building. Courts are covered by the conditions of the Disability Discrimination Act 1995, and must make reasonable adjustments.
- You think you will need an interpreter.
- You would like to visit the court before the trial starts. You can also arrange this with the Witness Service or the Crown Court's Customer Service Officer. Or, you can go on-line for a 'virtual' witness walk-through at the Criminal Justice System website (www.cjsonline.gov.uk).

You should also contact the Witness Service if you think you may need:

- personal support;
- someone to go with you into the courtroom; or
- information about what happens at court.

Intimidation

It is a criminal offence to intimidate (frighten) a witness, juror or anyone helping the police in an investigation. If you are harassed or threatened in any way before, during or after the trial, you should immediately tell the police or the representative of the Crown Prosecution Service (CPS) or other prosecuting authority at the court. If you are a defence witness, you should tell the defendant's lawyer or their representative at the court. If you are not sure who to tell at court, tell the court usher.

If you are worried about meeting the defendant, other witnesses, their friends or relatives, or anyone else involved in the hearing or trial, tell the Witness Service, the police, someone who works in the court or the lawyer who has called you as a witness. There should be a separate room where you can wait before and during the hearing.

Special measures in court for witnesses who are vulnerable or intimidated

Some people can find the process of giving evidence in court particularly difficult or daunting and may need extra help. There may be a number of reasons for this, such as their age, they might feel frightened or confused about the court process, or they may have seen something that really shocked or frightened them. Special measures are available to help these people (described as 'vulnerable or intimidated witnesses') give their evidence in the best way possible.

Do you qualify for special measures?

You may be eligible for special measures as a 'vulnerable witness' if:

- you are under 17 at the time of the court hearing; or
- the court thinks that you might need extra help giving your evidence because you:
 - suffer from a mental disorder;
 - otherwise have a significant impairment of intelligence and social functioning; or
 - have a physical disability or are suffering from a physical disorder.

You may be eligible for special measures as an 'intimidated witness' if your evidence is likely to suffer because you are afraid or distressed at giving evidence in the proceedings.

The court will decide if you qualify for special measures. They will get advice from the police, the Crown Prosecution Service or the defence lawyer; and take account of your views on whether you want special measures.

What are the special measures?

- Screens: A screen is placed around the witness box so that the witness cannot see the defendant.
- Live link: The witness sits in a room away from the courtroom where the case is being tried and gives evidence through a live TV link. The witness can see the judge, magistrates or district judge and lawyers, and people in the courtroom can see the witness.
- Evidence in private: The public gallery is cleared except for one member of the press.
- Removal of wigs and gowns: The judge and lawyers do not wear the formal black robes (gowns) and wigs that they usually wear in the Crown Court.
- Video-recorded evidence-in-chief: Before the trial, the witness is recorded on video answering questions asked by a police officer. The video is played at trial as the witness's evidence-in-chief (main spoken evidence before cross-examination).
- Aids to communication: Child witnesses under 17 or adult witnesses who are vulnerable because of their physical, mental or learning disability or disorder are allowed to use a communication aid (for example, an alphabet board) to help give their evidence in court.
- Intermediary: An approved independent intermediary can help child witnesses under 17, or adult witnesses who are vulnerable because of their physical, mental or learning disability or disorder, to communicate with legal representatives and the court.

06 Going to court

Expenses

You can claim certain expenses for travelling to court, and an allowance for meals and lost wages or other financial loss, such as childcare. The amount you can claim will depend on the length of time you have to be away from home or work to go to court. You can claim expenses only up to when the court says you are released.

If you are a prosecution witness, ask the CPS representative or court staff for a claim form when you get to court. If possible, you will be paid 5 to 10 working days after the CPS receive your properly filled-in claim form.

If you are a defence witness, ask the court staff for a claim form.

If you need help to fill in the form, ask the Witness Service or a member of the court staff.

In some cases, advance payments can be made for people who cannot afford to travel to court. You should contact the person who asked you to come to court if you need advance payment for travel costs.

Travel

Sometimes, people worry about things like whether they will be able to get to the court on time, if they will find a parking space or where to find public transport links. It can all get in the way of them feeling comfortable and confident when the time comes for them to give evidence.

The person who is calling you as a witness should give you practical details when they contact you about the day you are expected to give your evidence.

Ask for any more details you need, such as parking arrangements and charges, or whether any food or drink will be available. You may need to bring cash (including change) to cover costs like car parking and refreshments.

Friends and relatives

Check with the person who asked you to come to court if a friend or relative can come to court with you. In most courts, you do not need to ask permission. However, if you are a witness in a trial at the Old Bailey (the Central Criminal Court in London), you will have to let the court know in advance for security reasons.

If a friend or relative comes to court with you to keep you company, they will not be able to claim anything back from the court to cover their travelling expenses or money they spend on food while you are there. But if you need someone to come to court with you to help you, for example, to look after your child while you give evidence, or because you need help with your mobility, they may be able to claim expenses such as travel costs.

07 What happens when you are in court?

Sometimes, people worry about whether they will be able to find the building, or find their way around the building, or that they will talk to the wrong person. It can make it difficult for them to feel confident or calm when giving their evidence.

Being in court should not be a frightening or pressured experience. If you think it might be, help and support are available.

When you arrive

You will find clear signs to help you find your way around. All cases are listed under the defendant's name. Give the receptionist or usher the name of the defendant and show them the letter asking you to come to court.

The receptionist will tell you where to wait. There should be a separate room where you can wait before and during the hearing. If you are not already in touch with the Witness Service, you can contact them when you get to court. If you need to speak to the Customer Service Officer, ask at reception.

If you are a witness for the prosecution, a representative from the Crown Prosecution Service (CPS) will usually introduce himself or herself.

If you have made a statement and you want to see it before you give evidence, you will be allowed to do so. If you are a prosecution witness, ask the CPS for a copy. If you are a defence witness, ask the defence lawyer for a copy. If it would be helpful to you to have your statement with you when you give evidence, ask the lawyer if this is possible in your case.

The usher, Customer Service Officer or Witness Service will let you look in the courtroom before your case starts, if you want to. You can do this first thing in the morning or at lunchtime.

Before you give evidence

The courts will try to make sure you do not have to wait more than two hours before you are called to give evidence.

Do not talk to other people about your evidence before you go into the witness box. It could make the court wonder if you have made an agreement on what to say. You can speak to police officers and lawyers (both prosecution and defence) dealing with the case, although you cannot discuss your evidence with them.

If there is some time to wait before your case starts, you can sit in the public gallery of the courtroom and listen to other cases. If you do this, tell the usher where you have gone. Once your case starts, you must leave the courtroom and wait until it's your turn to give evidence. You must not hear the evidence that other witnesses give.

When it is your turn to give evidence

When your name is called to give evidence as a witness, an usher will show you to the witness box. In the Crown Court, this will usually mean that you are facing the jury.

You will be expected to stand up while you are giving your evidence, and you should let one of the ushers know if you think you will need to sit down. They will ask the judge or magistrate to allow it.

You will then be asked to take the oath (if you are 14 or over). This means you have to swear to tell the truth on the holy book of your religion. If you prefer, you can affirm (promise) to tell 'the truth, the whole truth and nothing but the truth'. The usher should ask you whether you want to affirm or swear on a holy book before you go into the courtroom.

He or she should also ask you about other rituals and practices you may want to observe before giving evidence.

Giving your evidence

Giving evidence in court is usually not the same as when you first made a witness statement. Instead, the lawyers will ask you questions – and they may seem to repeat questions or ask them in different ways. Please remember the following.

- In most cases, the defendant will have pleaded not guilty. Your evidence will help the court to decide whether he or she is guilty or not.
- If you don't know or are not sure of the answer to any questions you are asked, say so. You can ask the magistrates, district judge or judge for advice.
- Don't worry if you are told you cannot say certain things when you are giving evidence. This is because there are some rules about the kind of evidence the court can hear.
- Take your time and speak slowly and clearly.
- Ask for questions to be repeated if you don't understand or can't hear.
- The magistrates, district judge or judge won't know everything about your case, so take care not to leave anything out of your evidence.
- Witnesses are sometimes called to give evidence even when the defendant has pleaded guilty. This happens when there is a disagreement about the facts of the offence.

If you are called as a prosecution witness, the prosecution lawyer will ask you questions. The defence lawyer will then ask you questions (cross-examine you). If you are a witness for the defence, the defence lawyer will ask his or her questions first, followed by the prosecution lawyer. When one lawyer has finished his or her questions, you will stay in the witness box. The judge (or magistrate) will invite the other lawyer to ask you questions. Many people are surprised or worried about the cross-examination by the other lawyer. It is important to remember the following.

- It isn't personal – it's the lawyer's job to make sure you have not made a mistake.
- You are not on trial. The lawyers are not trying to make people think you are stupid, or call you a liar. If the questions become too aggressive, the lawyer who called you as a witness has a right to ask the judge or magistrates to stop it. The judge or magistrates can also ask the lawyer to stop the questions.
- Our law is based on the idea that a defendant is innocent until proven guilty. Making sure a witness's evidence really proves something is an essential part of the process.

In most cases, the defendant will have a lawyer present and they will ask you questions. However, defendants do have the right to refuse legal representation and defend themselves, and this may mean that they will question you. This is extremely rare and normally only happens in very minor cases.

A defendant cannot cross-examine a victim, a child or a 'protected' witness (someone who has been a witness to the actual offence) in cases involving a sexual offence (or certain other offences involving a child). In these cases, a lawyer must ask the questions for him or her.

What happens after you have given evidence?

Both lawyers will tell the judge or magistrates that they have no more questions for you. The judge or magistrates will thank you for your evidence and officially release you. This means that you can leave the court. You can go home, or you can stay and listen to the rest of the case. However, if you are a witness at a trial or hearing in a youth court, you will probably not be allowed to stay after you've given evidence.

Most people are only asked to give evidence once in any trial or hearing. However, if there is new evidence that means asking witnesses different questions, you may be called back again.

08 After the trial

When you have given evidence in a trial, you may be interested in finding out what happens. You may already know if you think the defendant should be found guilty or not guilty – but that may not always be what the court decides.

How to find out what happened in the trial

If a Witness Care Unit asked you to attend court, it should inform you of the result. Otherwise, you can find out the result of the case by contacting the court or you can speak to the person who asked you to come to court.

Will you be asked to be a witness again after the trial?

You should not usually have to give evidence twice about the same crime or incident, but it might be necessary in the following circumstances.

- If a magistrates' court finds a defendant guilty and his or her lawyers appeal against the conviction, you may be asked to give your evidence again. This appeal will be in front of a judge in the Crown Court, but with two magistrates instead of a jury.
- Defendants convicted by a jury in the Crown Court have a right of appeal to the Court of Appeal. It is unusual, however, for the Court of Appeal to want to hear witness evidence again.
- If the jury in a Crown Court case cannot agree on their verdict, a retrial may take place and you might be asked to give your evidence again before a different jury. This does not happen very often.
- A retrial might also be needed if there is a problem with the trial and the judge or magistrate has to stop the case. You will be told why this has happened, when the retrial will be, and whether you should be there.



Criminal Justice System: working together for the public