

THE ANONYMITY OF WITNESSES

THE APPLICATION

1. Witness applies to the coroner for anonymity.
2. The fact that all IPs consent to anonymity does not relieve the coroner of the duty of vigilance.
3. Application is heard in public, in open court: Rule 11(3). If necessary, the coroner may direct that the public be excluded from a pre-inquest hearing or part of a hearing (for evidence and/or submissions) if in the interests of justice: Rule 11(3), (5).
4. Coroner notifies all IPs and media of application and hearing in advance. Provides disclosure of evidence.
5. Coroner considers all the evidence on anonymity, including hearing evidence where appropriate.
6. Coroner hears representations from -
 - all IPs,
 - and
 - the media
7. Coroner weighs up counter-arguments and decides (with reasons).
8. Coroner will also consider special measures, where appropriate.

THE 3 TESTS

9. Article 2 protection

- (a) If the risk to life of the witness is real and immediate (present and continuing), the coroner has a positive duty to protect the witness.
- (b) A real risk is one that is objectively verified, well-founded.

10. The common law duty

- (a) The test is whether the procedure adopted is fair: the coroner's duty of fairness towards witnesses.
- (b) This is a different test to the Article 2 test; it is broader, not limited to risk to life
- (c) It is sometimes expressed that a ruling in favour of anonymity is part of the coroner's inherent power of control of the proceedings (first recognised in 1995): see Jervis 12-23.

11. Article 8 protection

- (a) The right to respect for private and family life.
- (b) Sometimes considered to be the same or similar to the common law duty.

RELEVANT CONSIDERATIONS

12. Coroner must consider -

- (a) subjective fears of the applicant witness, and
- (b) objective reasons for or against anonymity

13. **Subjective** factors which may be considered include (amongst others) -

- fears for life or harm to self and/or family (even if not well-founded); fears for safety and well-being; cf. irrational fear is no basis for anonymity, nor are vague or unspecific threats
- seriousness of the fear and its impact upon the witness
- reason for the fear
- likely effect if anonymity is granted in removing/reducing that fear
- the effect on the witness of giving evidence with or without special measures (including anonymity)
- effect on the public's perception of the impartiality of the inquiry if anonymity is granted
- likely effect on the inquiry's ability to arrive at the truth, if it refuses or grants the application for anonymity in whole or in part

14. **Objective** factors which may be considered include (amongst others) -

- whether subjective fear is objectively justified; whether objective reason for anonymity is established
- the weight of the subjective fear
- any previous incidents of relevance
- external evidence re harm and safety
- the views of others in a similar position (eg siblings, relatives)
- the evidence of the witness in context and the role of the witness in the wider case
- the evidence of other connected witnesses

15. In the end the coroner must consider and weigh all factors in the light of the **countervailing principles and rights** -

(1) the fundamental principle of open justice

any departure from it must be stringently regulated: *R v Bedfordshire Coroner ex parte Local Sunday Newspapers Ltd* (2000) 164 JP 283

Article 10 rights (freedom of expression)

Rule 11: inquest hearings to be held in public (with limited exceptions)

(2) the risk factor(s): deciding whether there is a need for anonymity on an objective basis

Article 2, Article 8 rights; and common law fairness

'An intense focus on the comparative importance of the competing rights being claimed in the individual case is necessary.' - *In Re Officer L* (2007) UKHL 36.

There must be justification for interfering with or restricting any Convention right.

**Peter Thornton QC
2019**