

# What warnings does the Defence want?

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This is a checklist for Evidence Act 2006 warnings, and other common jury directions. For some of them it may be appropriate to get instructions (for example whether you want a reliability warning when some of what the witness says it is important to your case, but some of it is disputed; or if the defendant wants you to say to the jury that if it had happened the complainant would have made her complaint a long time ago you will want to advise the defendant about the likely response of the Trial Judge to that).

Highlight or list the warnings you are expecting or need to request and check them off during the Judge's summing up.

## Section 122 – Judicial directions about evidence which may be unreliable

Counsel can ask the Judge to give a direction about evidence which may be unreliable, and the trial Judge must consider whether to give such a direction in certain circumstances. Be prepared to point this out to the Judge.

## Section 124 – Lies

If you ask the Judge for a lies direction the Judge is obliged to give one. Sometimes the direction highlights evidence that a jury may otherwise have not paid much attention to. Does the defendant want the jury to be given a lies direction? What is your advice?

## Tripartite direction

## Section 125 – Children's evidence

Unless there has been expert evidence in the case on this point, the Judge may not instruct the jury that there is a need to scrutinise the evidence of children generally with special care; or suggest to the jury that children generally have tendencies to invent or distort.

## Section 126 – Identification evidence

If the case depends wholly or substantially on identification (voice or visual) then the Judge must give an identification warning.

## Section 127 – Delayed complaint in sexual case

If evidence is given or a question is asked or a comment is made that tends to suggest that the complainant either delayed making or failed to make a complaint the Judge may tell the jury that there can be good reasons for the victim of an offence of that kind to delay making or fail to make a complaint in respect of the offence.

## Any other matters the Defence will want the Judge to direct on?