

**A STANDARD FOR COMMUNICATION
BETWEEN VICTIMS, WITNESSES
AND THE
PROSECUTING ADVOCATE**

Introduction

Victims and witnesses have a right to be treated with respect and decency when fulfilling their public responsibility of attending court to give evidence. By meeting this right witnesses are enabled to give their best evidence; in turn this enables the courts to reach just outcomes. In addition, by treating victims and witnesses with respect they are more likely to have as positive an experience as possible; this in turn promotes public confidence in the criminal justice system without which the rule of law is undermined.

Prosecuting advocates acting on behalf of the Crown Prosecution Service have a responsibility to ensure that victims and witnesses who are affected by the court process are accordingly treated with respect and decency. This guidance sets out the standards of behaviour required by prosecuting advocates in order to meet their responsibilities in this regard. It applies to both the process of case preparation and case presentation. It applies not only in respect of victims and witnesses, but also in appropriate cases to their families or friends who attend court.

Broadly stated, prosecuting advocates have a responsibility to consult and liaise with victims and witnesses at all stages of the court process to ensure, in conjunction with the Witness Service, the CPS and court staff, that they are provided with appropriate information and support, and their needs are taken account of when arranging the business of the court. In particular, prosecuting advocates have a responsibility to ensure that those who are unfamiliar with courts are put at ease as much as possible, especially witnesses who are nervous, or vulnerable, or intimidated or are the victims of crime. Separate considerations apply when any question arises as to the substance of a witness's evidence. Recent changes to sections 6.3 of the Bar's "Written Standards For The Conduct of Professional Work" came into effect from 1 February 2006 and should be followed.

There may be circumstances when it is not possible to follow this guidance, but prosecuting advocates are expected to ensure it has been considered, followed so far as it can be, and to be able to provide an explanation when it has not been followed.

Prosecution advocates will receive assistance from the CPS to deliver on aspects of this guidance. As an example, the CPS will take steps to ensure that victims and witnesses are aware of the support of the Witness Service and the availability of facilities such as dedicated waiting areas at court. There will also be occasions where Prosecution advocates may need the assistance of police who will have contact with witnesses at court.

Discussions with Victims and Witnesses

Prosecuting advocates should take all reasonable steps to establish whether victims or witnesses are present at court. If necessary, prosecuting advocates should seek a short adjournment to achieve this.

When victims or witnesses are present, where practical, prosecuting advocates should:

- introduce themselves;
- offer an explanation of the court process, in particular the process relevant to that hearing;
- offer an explanation on how the victim/witness will be involved in the hearing, whether as an observer in the public gallery or as a witness giving evidence;
- ensure that witnesses who are deaf or cannot understand English adequately (or Welsh at courts in Wales) have available a qualified BSLI or language interpreter to assist at court;
- ensure victims and witnesses are advised of any delays, the reasons for delay so far as is possible, and of the revised time-table;
- ensure witnesses know what they can and cannot do both if there is an adjournment while they are giving evidence and after giving evidence;
- speak with witnesses who have attended court to give evidence but who are not then required, to explain why this has happened;
- in any case when distressing evidence is to be given, for example in cases involving a fatality, alert victims, witnesses or family members so that they have an opportunity either to prepare themselves or to leave the court;
- check in advance of any sentencing hearing whether any compensation or other order should be sought;
- at the end of court hearings offer an explanation of what has happened, including an explanation of any decisions of the court (particularly decisions concerning bail or sentence), to answer any questions as appropriate, and to explain what is likely to happen;
- in cases when the sentence may be unduly lenient, or when the victim or witness or another expresses such a view, offer an explanation of the unduly lenient sentence process including the 28 day time limit, the actions the CPS will take and the option the individual has to refer sentences to the Attorney General;
- offer a response if a complaint is made about any aspect of the case; and
- consider in conjunction with the Witness Service, the CPS and court staff, what additional information or support might assist victims or witnesses.

If a victim wishes to withdraw a complaint, or a witness wishes to withdraw their evidence the prosecuting advocate should take steps to establish why. If the reason for their withdrawal is nervousness about giving evidence, then the prosecuting advocate should provide re-assurance. If they wish to withdraw because of other reasons (eg. change in circumstances) a police officer should be advised to investigate further.

Prosecuting advocates should make a note of any discussions held with victims or witnesses and ensure this is kept with the case file. The level of detail should reflect the nature of the discussion: a complaint by a witness may require a more detailed note than otherwise. When prosecuting advocates anticipate that further action will be required, for example following a possibly unduly lenient sentence, they should bring the matter to the attention of the appropriate CPS representative.

Acceptance of Pleas¹

Prosecuting advocates should always comply with the Attorney General's Guidelines On The Acceptance of Pleas and The Prosecutor's Role in The Sentencing Exercise 2005 and be aware of the prosecutor's commitments under The Prosecutors' Pledge to Victims 2005

When a Newton Hearing is to take place, prosecuting advocates should explain to victims and witnesses what is to happen and answer any questions.

Listing Arrangements

When fixing trial dates, prosecuting advocate must ensure that agreed listing protocols and practice directions are followed to ensure best possible service is provided to victims and witnesses. In particular, the listing arrangements should:

- take account of witness availability;
- take account of victim and witness interests when arranging the location for trial; and
- so far as is possible, and especially in sensitive cases, should ensure that a fixed trial date is given.

When any witness provides evidence that appears uncontentious, and there is no good reason for requiring the witness to give oral evidence, a robust approach should be taken with the defence to have the evidence agreed, either by way of reading the statement or by way of a formal admission.

Consideration should be given to the order in which witnesses will be called to give evidence and the CPS should be advised accordingly. Attendance should be staggered and a "batting" order provided with the aim of minimising the time witnesses have to attend court or wait at court to give evidence. This applies to both professional and lay witnesses.

When courts have listed a number of cases in the same court on the same day, some cases may have to transfer to another court. In these circumstances prosecuting advocates should

¹ The Farquharson Guidelines on The Role and Responsibilities of The Prosecution Advocate are also relevant.

- seek to avoid cases being transferred that are sensitive or complex, or involve particularly vulnerable witnesses, particularly if it is proposed to transfer the case to another court centre if this will affect the ability of victims or witnesses to attend court; and,
- offer an explanation to victims and witnesses in cases that are transferred.

Court Familiarisation

In certain cases it may be desirable to hold a pre-trial court familiarisation visit to assist witnesses. The court visit should include details of where witnesses will give their evidence in the court and where other court officials and the defendant will sit. When this is to occur the CPS will advise prosecuting advocates who should consider attending in order to meet the witnesses.

Special Measures and other Applications

Witnesses may now give their evidence in a number of different ways that offer protection or other support in order to enable them to give their best evidence. These include:

- “special measures” under the Youth Justice and Criminal Evidence Act 1999 (YJCEA);
- reporting restrictions for adult witnesses under the YJCEA;
- other legislative provisions whereby courts may grant leave for victims or witnesses to give evidence by live television link. Under the Criminal Justice Act 2003, the 1988 provision for video link to enable witnesses to give their evidence via a live link from abroad, have been extended to enable witnesses who are not vulnerable or intimidated (as defined by YJCEA) to have their evidence in chief on video and / or by live link and
- at common law whereby courts may grant leave for the use of screens or other measures to protect or support a witness, for example to provide anonymity for undercover officers or support vulnerable or intimidated victims and witnesses.

Prosecuting advocates must always consider what needs witnesses may have and which must be met if the witness is to be enabled to give their best evidence. When appropriate application should be made to provide protection or other support to witnesses that will meet the needs of witnesses. Prosecuting advocates should also review any applications that have already been made and consider whether any additional applications should be made. In either case, prosecuting advocates should consider the matter at the earliest possible moment and liaise with the CPS in order to ensure the necessary arrangements are put in place before trial and witnesses can be advised appropriately in good time.

Inaccurate, misleading or derogatory Mitigation

Prosecuting advocates should comply with section E of The Attorney General's Guidelines on The Acceptance of Pleas and The Prosecutor's Role in The Sentencing Exercise and be ready to challenge mitigation which is inaccurate, misleading or derogatory.

Where there are substantial grounds for believing that an assertion forming part of the submission is derogatory to a person's character (for instance because it suggests that his conduct is or has been criminal, immoral or improper) and that assertion is false or the facts asserted are irrelevant to sentence¹, the prosecutor should:

- require the defence to comply with the Code of Conduct requiring notice to be given in advance to give sufficient opportunity to consider whether evidence is called.
- invite the court to consider requiring the issue to be determined by the calling of evidence at a Newton Hearing
- consider making an application to prevent media publication of the derogatory mitigation²

Victims or witnesses in the public gallery who may wish to alert the prosecuting advocate to inaccurate mitigation should do so through the police or CPS representative.

Other sources of reference

Attached to this draft is a list of other published documents that provide a useful source of information on standards required of prosecuting advocates in their behaviour towards victims and witnesses.

¹ S 58(4) Criminal Procedure and Investigations Act 1996

² ss. 58(7) & 58(8) Criminal Procedure and Investigations Act 1996.