



Speaking to Witnesses at Court

CPS Guidance

February 2018

1. Introduction

- 1.1 The aim of this guidance is to set out the role played by prosecutors at or before court in ensuring that civilian witnesses give their best evidence. This is a core part of the prosecutor's job and will, if done properly, impact positively on both the quality of the witness's evidence in court and the perception of the service they receive from the CPS. Although the Guidance is aimed primarily at civilian witnesses, prosecutors have the discretion to apply the guidance to other witnesses if they feel that it is appropriate to do so.
- 1.2 The guidance emphasises the need to ensure that witnesses are properly assisted and know more about what to expect before they give their evidence. Prosecutors have an important role in reducing a witness's apprehension about going to court, familiarising them with the processes and procedures – which may seem alien and intimidating – and managing their expectations on what will happen whilst they are at court.
- 1.3 Some prosecutors may be uncertain about what they are allowed to say to witnesses. This guidance makes it clear what is expected and permissible and explains the difference between assisting a witness to be better able to deal with the rigors of giving evidence (which is permitted) and witness coaching (which is not permitted).
- 1.4 Prosecutors must apply the principles set out in this guidance irrespective of whether they are from the CPS or from the self-employed Bar or a solicitor being employed as an advocate. The guidance applies to witnesses who are asked to give evidence at any witness related hearing (trials, appeals, Newton Hearings) and to witnesses giving evidence via a remote link as well as to witnesses who are present at court.
- 1.5 Prosecutors should be aware that they are not the only ones offering assistance to witnesses in advance of, and of the day of, their appearance at court. C P S paralegal staff , the police, Witness Care Units, Victim Support (or other local providers), court staff and the Citizens' Advice Court Based Witness Service all have a role to play and it is essential that prosecutors work with these partners to give the best all round support to witnesses throughout their time in the CJS. This will also avoid the witness being given the same information repeatedly by different people at court and enable prosecutors to make best use of the time available to speak with witnesses.

2. Purpose of Assisting the Witness at Court

- 2.1 Meeting the prosecutor in advance or on the day of their appearance and having their questions answered, can help a witness to feel prepared for their court experience and able to give their best evidence. We should seek to

help all witnesses who are called to court in this way, taking into account their needs and the amount of interaction they wish to have.

- 2.2 Providing assistance before and at court is especially important where witnesses are vulnerable and/or intimidated. One measure which should be considered for *all* such witnesses is a pre-trial special measures meeting. This gives the prosecutor an opportunity to introduce him/herself and to help the witness to make a properly informed decision about which special measures might assist them to give best evidence in advance of the day at court. It can also be used to inform the witness about the matters covered in this guidance. Even for those witnesses who are not identified as vulnerable/intimidated and do not have a special measures meeting, it is important that they are aware of what is likely to happen during their time at court.

3. Meeting a Witness at Court

- 3.1 In many cases giving evidence at court forces a witness to focus on a traumatic event that affected them personally or involved a family member or friend. Prosecutors should be aware of the potential for the witness to feel further victimised and/or traumatised and, to minimise this, should ensure that witnesses feel valued and involved in the court process. Particular care needs to be taken to make sure they understand what will happen in court.
- 3.2 Whilst we appreciate that the court room is the place of work for advocates, we would urge you to remember that it is an unfamiliar and unsettling place for witnesses. Prosecutors should therefore exercise discretion and thought, when communicating with other professionals in the presence of others involved in the case and be aware of the impact of thoughtless interaction in and around the courtroom on witnesses, and those supporting them.
- 3.3 **CPS Guidance - Care and treatment of victims and witnesses** sets out the CPS commitment to Victim and Witnesses at Court as follows:

“The CPS is committed to treating witnesses at court with respect and sensitivity. Whenever possible we should introduce ourselves and try to put nervous or vulnerable witnesses at ease and explain court procedures. We should keep all victims and witnesses informed about delays and ask for them to be released as soon as possible after giving evidence”.

The following guidance will assist prosecutors to deliver this commitment.

- 3.4 The prosecutor conducting the case should meet all witnesses before they give evidence. In order to avoid duplication, they should check if the Court Based Witness Service or CPS paralegal has informed the

witnesses of the matters in paragraphs (a) to (c) below and if not, should explain those matters. The prosecutor should provide the witness with assistance to prepare them for cross examination, as set out in paragraph (d) below and ensure that they are updated on progress thereafter.

(a) Introductory Matters

- Introduce yourself and explain who you are, giving your name and role.
- Treat witnesses with respect and dignity.
- Be aware of the particular needs and requirements of vulnerable witnesses and those with learning difficulties or mental health issues. If the witness has an intermediary or other supporter then they should be involved when you speak to the witness in order to assist the witness.
- Explain that a note will be taken of the meeting.
- Invite questions from the witness. Do not seek to restrict the range of questions at the start of the interaction but rather explain why you cannot answer a question if one is asked which you are unable to answer.

(b) Providing Assistance about Procedure

- Ask the witness what they have already been told by the Court Based Witness Service and other support services about procedure. This will give them a chance to input and will prevent repetition of information that they've already been given.
- Confirm any special measures arrangements and make sure the witness understands and is content with them and, where applicable, that arrangements are in place for the supporter of their choice to accompany them when giving their evidence.
- Explain the court's procedure (including the roles of the judge / magistrate), oath taking and the order in which questions are asked by the advocates.
- Explain the role of the defence advocate – that it is their job to put their client's case and challenge the prosecution's version of events, including by suggesting the witness is mistaken or lying. The witness should be informed that they should listen carefully to any such suggestion and clearly say whether they agree or disagree with it.
- Witnesses should be told that they should not be afraid to ask for a break if they genuinely need one such as when they feel tired, are losing concentration or if they want to compose themselves emotionally.

(c) Providing Assistance about Giving Evidence

- Explain to the witness the importance of listening to all questions carefully and making sure they understand each one before answering it. Witnesses should be encouraged not to be afraid to ask the advocate asking the question or the judge to repeat or rephrase any question which they do not understand.
- Witnesses must be told to answer all questions truthfully, however difficult they may be. They should be informed that it is not a sign of weakness if they

do not know or do not recall the answer to a particular question and, if this is genuinely the case, they should not be afraid to say so.

- If the witness has provided a witness statement or video testimony, explain the importance of the witness refreshing their memory from such a statement before going into court. Encourage them to do so. However, the witness should also be reassured that giving evidence is not a “memory game” and that in certain circumstances they may be able to refresh their memory from their witness statement whilst giving evidence. A witness should be told that they should not hesitate to ask to see their statement when giving evidence if they think their memory would be assisted by it.

(d) Providing Assistance for Cross-Examination

- Cross examination within the adversarial system is usually designed to cast doubt on the version of events being provided by either the witness or the defendant. This can put pressure on individual witnesses, especially where their character is attacked in order to reduce their credibility. Questioning may also address deeply personal aspects of the witness’s life, for example in sexual offence cases involving young, vulnerable victims who have been subject to sexual exploitation.
- Although some witnesses will have no problem anticipating the type of cross-examination they will face, others, and particularly those who are vulnerable due to lack of maturity, mental health issues or learning disability, may have little or no idea what to expect. Relying on witnesses to ‘work it out for themselves’ is unfair and unrealistic. To justify this on the basis that giving such information is ‘coaching’ is unhelpful and inaccurate.
- **It is important that prosecutors should not provide the detail of, discuss or speculate upon the specific questions a witness is likely to face or discuss with them how to answer the questions.** However, to enable witnesses to give their best evidence prosecutors should ensure that they are informed of the matters set out below.
- The witness must be told that the purpose of doing so is to provide information to assist them and not to elicit information from them. They should be discouraged from giving a response. Should the witness make any comment which is relevant to the issues in the case then it should be recorded and disclosed, if it may undermine the prosecution case or assist the defence case. **Advocates in the Crown Court should ensure that, during these conversations, they are accompanied by a CPS member of staff based at court to assist with recording the meeting and conversation.**
- If it is possible to do so, vulnerable and intimidated witnesses should be provided with this information in advance of the trial date. This could ideally be done at the same time as a special measures meeting.
- In the case of others, the best time to give this information is when the witness is being referred to his / her witness statement and being reminded that they should tell the truth. They should then additionally be informed that nothing they are told should affect what they say but that they are permitted

to be informed of the following information to assist them:

- (i) The general nature of the defence case where it is known (for example mistaken identification, consent, self-defence, lack of intent). The prosecutor must not, however, enter into any discussion of the factual basis of the defence case.

The nature of the defence case may be obtained from a number of sources including the police interview, the Defence Case Statement (DCS), the Plea and Trial Preparation Hearing form in the Crown Court or the Preparation for Effective Trial form in the magistrates' court.

Prosecutors should outline the defence case based on the most recent information which will typically be the DCS (where there is one).

Prosecutors should not speculate on potential defences and where the general nature of the defence is not clear, the prosecutor should speak to the defence advocate(s) to clarify the defence case before speaking to the witness.

- (ii) Where third party material about a particular witness has been disclosed to the defence as being capable of undermining the prosecution's case or assisting the defence case (such as social services, medical or counselling records) then that particular witness should be informed of the fact of such disclosure. The witness may, in any event, have already consented to the disclosure of some sensitive and / or confidential material that relates to them such as their medical records but even if you believe this to be so, you should check and remind them. The details and the impact on the defence cross-examination should be not be discussed.

- (iii) Where leave has been given for a particular witness to be cross-examined about an aspect of their bad character under section 100 Criminal Justice Act 2003 or their sexual history under section 41 Youth Justice and Criminal Evidence Act 1999 then that particular witness should be informed that such leave has been given.

- Witnesses should be reassured that you can object to intrusive/irrelevant cross- examination and the judge will decide whether the questions need be answered. The witness should be advised that the judge's decision must be followed.
- The record of any meetings between the prosecutor and a witness should be sent to the disclosure officer for scheduling on the MG6 series. When the witness has been spoken to at court on the day of trial, the prosecutor will need to decide whether anything said meets the test for disclosure and if it does, to disclose this immediately to the defence, updating the disclosure officer where appropriate.

(e) Updating Witnesses on Progress

- Ensure witnesses at court are kept informed about progress and delays with regular updates so that they feel engaged rather than left wondering what is happening. You may wish to use other CPS staff, court ushers or the Court Based Witness Service to help you do this.
- Manage expectations and be realistic (never give information that is likely to be inaccurate for example by providing unrealistic estimates of how long they will need to wait, even with the best of intentions).
- Make sure witnesses are released at the earliest opportunity.
- **Consult with victims when considering changing a charge or dropping a case and similarly, inform them of any changes at the end of a hearing.** If you do this, make sure you inform the Victim Liaison Unit that you have done so.

(f) When the Witness has Completed their Evidence

- Speak to the witness after they have given evidence if this is possible to thank them and answer any questions they may have. If you cannot do this personally, arrange for another member of CPS staff or the Witness Service to do so on your behalf.

(g) Victim Personal Statements

- The Code of Practice for Victims of Crime (Victims Code) entitles victims of crime to make a Victim Personal Statement (VPS). The VPS gives victims an opportunity to describe the wider effects of the crime upon them, express their concerns and indicate whether or not they need any support.
- In addition, victims are entitled to say whether they would like to read their VPS aloud or whether they would like it to be read by someone else (eg a family member or a prosecutor), or played (where recorded).
- It is a matter for judicial discretion whether or not the victim is allowed to read out the VPS.
- Prosecutors should speak to any victim who attends court to read their VPS. This may be after a case has been adjourned for a victim to attend, or at the first hearing of the case if it is likely to be dealt with to finalisation at the first hearing.
- Prosecutors should deal with introductory matters and assistance with procedural matters as set out in para 3.4 (a) and (b) of this guidance. In addition, the purpose of the VPS should be explained, and you should make the victim aware that the Judge will decide whether or not the victim will be able to read their VPS aloud. The presumption is in favour of the victim being able to read the VPS. You should tell the victim that they may be asked questions

about the content of the VPS, but reassure them that you can object to inappropriate cross-examination, and, if you do, the Judge will decide what questions may be asked.

Protocol for Reading Victim Personal Statements in Court

Coaching – Case Law

- 3.5 The rule against coaching a witness was explained by the Court of Appeal in *R v Momodou & Limani [2005] EWCA Crim 177; [2005] 2 All ER 571; [2005] 2 Cr App R 6* when the court considered the impact of training delivered to witnesses that included a case study which strongly resembled the circumstances of the case in which the witnesses were to give evidence. At paragraphs 48 and 49 the Court concluded:

“48. ...Training or coaching for witnesses in criminal proceedings...is not permitted.....The witness should give his or her own evidence, so far as practicable uninfluenced by what anyone else has said, whether in formal discussions or informal conversations. The rule reduces, indeed hopefully avoids any possibility, that one witness may tailor his evidence in the light of what anyone else said, and equally, avoids any unfounded perception that he may have done so.....The risk that training or coaching may adversely affect the accuracy of the evidence of the individual witness is constant. So we repeat, witness training for criminal trials is prohibited.

49. This principle does not preclude pre-trial arrangements to familiarise witness with the layout of the court, the likely sequence of events when the witness is giving evidence, and a balanced appraisal of the different responsibilities of the various participants...Witnesses should not be disadvantaged by ignorance of the process, nor when they come to give evidence, taken by surprise at the way it works. None of this however involves discussions about proposed or intended evidence. Sensible preparation for the experience of giving evidence, which assists the witness to give of his or her best at the forthcoming trial is permissible.....Nevertheless the evidence remains the witness's own uncontaminated evidence.”

- 3.6 Prosecutors can have confidence that providing their discussion with a witness is aimed at assisting the witness to give their best evidence and avoids rehearsing them as to the evidence they should give then there should be no risk that coaching has occurred.

4. Other Court Supporters

- 4.1 A large proportion of witnesses get most of their support at the time of their court appearance from friends or relatives but, in addition to this, there are more formal support mechanisms available to witnesses during the process. This next section describes the most common of these.
- 4.2 The Citizens' Advice Court Based Witness Service is represented in magistrates' and Crown Courts in England and Wales providing pre-trial visits for witnesses, so that they are familiar with the court room and the roles of the people in court, as well as providing practical support and information to both prosecution and defence witnesses and their families and friends on the day of trial. Where the magistrate or judge agrees, the Witness Service volunteer or another person may accompany the witness into the court room or live link room to give their evidence, if the witness wants them to. They will also assist and encourage the witness to make contact with the prosecutor whilst they wait to give their evidence at court. Prosecutors should ensure that they build effective relationships with the Witness Service representatives at the court centres where they appear and provide them with information so that they can assist as effectively as possible.
- 4.3 Independent Sexual Violence Advisors (ISVA) and Independent Domestic Violence Advisors (IDVA) provide invaluable support to victims and may influence a victim's decision whether to support a prosecution. Prosecutors should be familiar with the supporters' role and should actively engage with them.
- 4.4 IDVAs/ISVAs provide an effective channel of communication through which information can both be supplied to, and obtained from, a witness. In addition the prosecutor can ask the IDVA/ISVA for their views about how the witness is coping and other relevant issues.
- 4.5 Because the ISVA role is not always understood the type of support ISVAs are permitted to offer their clients at court can vary considerably. If a victim expects the ISVA to accompany them in the live link or behind a screen and this does not happen, their experience of court will undoubtedly be affected. To avoid this situation prosecutors should always explain the ISVA's role to the defence advocate and the court where necessary.
- 4.6 The role includes:
 - Understanding the views, wishes and concerns of the victim
 - Providing support and information through interviews and court hearings, familiarisation with the court and its procedures and guidance on Special Measures

- Accompanying the victim on a pre-trial visit to court and while they give evidence in court or the live link room (where the court approves this)
- Acting as a key liaison point with family members, friends
- Liaising with legal, health, education and social work professionals and those offering therapy and counselling prior to a criminal trial
- Arranging links with experts if there are specific vulnerabilities

4.7 When speaking to the victim it is always useful to have the ISVA/IDVA present.

5. Further Information

5.1 For more information see [Achieving Best Evidence in Criminal Proceedings Guidance](#) on interviewing victims and witnesses, and guidance on using special measures

Useful Links:

[The Code of Practice for Victims of Crime 2015](#)

[The Code of Practice for Victims of Crime 2015 \(Welsh version\)](#)

[The Advocate's Gateway](#)