

Consultation response

Speaking to Witnesses at Court



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About Citizens Advice

Citizens Advice provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities through its network of bureaux in over 3,300 community locations in England and Wales, online, and via telephone.

Citizens Advice understands the issues faced when people become involved in complex legal issues. Last year, Citizens Advice's online guidance about the legal system was viewed over 77,000 times. Information pages on courts of law were viewed over 50,000 times. In 2013/4, bureau staff and volunteers helped over 140,000 people with legal issues. Of these, over 40,000 clients needed advice about court proceedings.

From April 1st 2015, Citizens Advice will begin delivery of the Witness Service in courts across England and Wales.

This document is a response to the Director of Public Prosecutions' consultation on draft guidance published by Crown Prosecution Service on *Speaking to Witnesses at Court*.

1. Does the guidance cover the key issues that impact upon the victim or witness's experience at court? If not, what other subject areas might be covered?

The guidance covers many of the key issues experienced by witnesses in court.

- a) **Waiting time** is consistently the most important issue for improving satisfaction for all types of court users.ⁱ Of witnesses, nearly 1 in 6 is dissatisfied with the time taken on the day and half report that waiting time is a priority.ⁱⁱ Furthermore, many witnesses are given little warning to attend and little notice of a postponed trial.ⁱⁱⁱ The focus on waiting time in this guidance is particularly important to Citizens Advice as the upcoming deliverer of the Witness Service (which provides support and information during often protracted waiting time).

The guidance could go further by advising prosecutors, ushers and Witness Service staff to acknowledge the effect delays have on witnesses' experience and, where possible, make the reasons for delays easier to understand.

While updates are the responsibility of the Crown Prosecution Service, effective updates require collaboration between several court actors (including prosecutors, ushers, and the Witness Service). Clear information regarding practical delivery of information and how often updates should be given would be particularly welcomed.

- b) Vulnerable and intimidated witnesses receiving **special measures** (which can ease the difficult process of giving evidence) are more likely to report overall satisfaction with the justice system and many vulnerable and intimidated witnesses report that they would be unwilling to give evidence in any other way,^{iv} so it is important that issues around special measures are included in this guidance. Guidance for confirming arrangements and ensuring general witness contentment is positive. In some cases, witnesses report being pressured to give evidence behind a screen rather than via video link.^v Therefore, explicit direction could be included to advise prosecutors, where possible, to seek to provide the type of special measures requested by witnesses.
- c) The particular focus on **cross-examination** in this guidance is particularly important as many witnesses find cross-examination to be very distressing. Cross-examination can produce feelings of marginalisation, powerlessness and make witnesses feel as though they are on trial rather than the defendant.^{vi} This poor treatment of victims and witnesses in court is known as secondary victimisation.^{vii} This guidance on improving witnesses' understanding of cross-examination will allow more witnesses to give their best evidence and make it easier for prosecutors to treat witnesses with the respect and dignity they deserve.

Any guidance which allows service providers to feel more confident giving information (while avoiding coaching the witness) is likely to improve the experience of witnesses. The Witness Service's role is to inform witnesses and ensure they understand court processes and procedures such as cross-examination. However, conveying specific details of a trial (such as when sexual history may be brought up by the defence team) is the role of the CPS. Therefore clearer information on the remit of the Witness Service in providing information about cross-examination will be essential to this guidance.

The guidance could also provide more detail on the support that ought to be available to witnesses after cross-examination (or when witnesses' opportunity for giving evidence is lost – for instance in a cracked trial). This is a time when many witnesses need particular support. It is also a time when prosecutors may have other duties as the trial continues to take place in the court room.

- d) The guidance's focus on **providing information in an understandable way** and updating witnesses is timely. Common misconceptions persist among witnesses and these should be tackled. Many witnesses report misunderstanding the role of the prosecution as being to represent their needs;^{viii} confusing the role of the jury and judge;^{ix} or not understanding complicated legal terms such as the "burden of proof".^x The facilitation of meetings with prosecutors where possible and the provision of more general information are therefore essential.

Citizens Advice is committed to building on its experience of providing advice and support to people in times of need. By drawing on this experience, Citizens Advice will deliver the Witness Service in a way that ensures witnesses receive the information they need, when they need it.

The prosecutor, Witness Service, Witness Care Unit, IDVAs, ISVAs and/or police all have a role to play in providing information. This guidance could be more explicit about whose specific role it is to share the particular information covered in this document. Presently, many organisations offer similar but distinct and overlapping information. Conflicting information is confusing for witnesses and a waste of organisations' resources in a time of scarcity.

- e) Witnesses require information throughout their time at court and this guidance is a positive step toward witnesses feeling informed and empowered. Legal jargon can make court practice and procedure hard to understand. From experience working with bureau clients in 3,300 community locations every day, Citizens Advice understands the importance of providing understandable information to ensure people do not feel ill-informed and powerless.

The guidance should highlight the importance of using **simple, understandable, everyday language**. It may be of particular use for the guidance to highlight specific

terms and phrases commonly misunderstood or not understood by witnesses (such as the “burden of proof”). The guidance should direct prosecutors to *regularly* give witnesses the opportunity to say if there is any information they do not understand.

- f) Many witnesses find the opportunity to visit the court, see a courtroom and stand in the witness box during **pre-trial court visits** to be very valuable.^{xi} This is an important role played by the Witness Service. Citizens Advice is committed to improving witnesses’ access to these visits. Many witnesses do not recall being offered a pre-trial court visit and of those who do, practical issues often prevent them from taking up the offer.^{xiiixiiixivxv} Citizens Advice is considering practical ways to increase take up such as digital court viewings and evening and weekend openings.

Specific guidance on who should refer witnesses to the Witness Service (and how and when this should be done) should be included in this guidance in order to ensure as many witnesses as possible have the opportunity to take up a pre-trial court visit. It is during this visit that many witnesses have the opportunity to ask questions, so this referral is likely to have the positive effect of reducing work-load for prosecutors on the day of the trial.

2. Does the guidance strike the right balance between supporting the witness in advance of their appearance at court and ensuring that the trial is, and is seen to be, fair to the defendant?

- a) **Support for witnesses does not undermine defendants’ right to a fair trial.** Popular rhetoric around the “rebalancing”^{xvi} of the justice system implies that rights in court are a zero-sum game. In fact, provision of information and support (by the Witness Service) and good facilities (by the Witness Service and the Court Service) help to improve the fairness and legitimacy of a trial for all court users by ensuring witnesses are able to give their best evidence.^{xvii} Indeed, victims and witnesses often share many of the same concerns in court as defendants.^{xviii}

The distinction between explaining the process and explaining the case itself to a witness should be made clear in the guidance to ensure witnesses are not (purposefully or inadvertently) coached. In a time of significant cultural change within courts, training for prosecutors is important in ensuring changes in guidance are evident in practice.

3. Does the guidance set out clearly what a prosecutor should do when meeting a witness at court? Is there anything else that might be done?

- a) As future deliverers of the Witness Service, Citizens Advice is concerned that the **guidance is clear regarding the remit of the Witness Service**. Much of that covered in this guidance is the responsibility of the Witness Service, such as:
- familiarising witnesses with the processes and procedures of the court,
 - providing pre-trial court visits,
 - answering questions, and
 - helping witnesses to feel prepared for their court experience.

Prosecutors' collaboration in this provision is welcomed. To ensure this collaboration is effective and efficient, the guidance should explain which agencies and individuals are responsible for every task covered.

4. Does the guidance give enough information regarding other support services at court?

- a) The Witness Service, IDVAs and IDSAs play an important supportive role in witnesses' experience of going to court.^{xi} Citizens Advice is committed to delivering a Witness Service which builds strong links with other court agencies in order to ensure the best possible service for witnesses. To ensure different agencies and individuals understand each other's roles and can work together effectively, this guidance would benefit from a **fuller definition of the responsibly of each service and personal supporter mentioned**, and an outline of the points at which agencies are likely to have to work together (such as referrals). This will then provide an opportunity for valuable guidance on how prosecutors, support services and personal supporters in court can provide all the information needed, while avoiding the provision of overlapping or conflicting information (a problem currently experienced by many witnesses).^{xi}
- b) Many witnesses also experience issues involving housing, debt, mental health and drug problems while going through the court process. **Referral to advice services which deal with issues not relating to the trial should also be highlighted in this guidance.**^{xxii} These advice services are important in acknowledging that witnesses' needs do not end at the end of a trial. Advice services such as Plymouth Community Advice and Support Service (CASS) are an important resource to witnesses and other court users. Information included in this guidance on these agencies would allow prosecutors to facilitate valuable referrals for witnesses. When it begins delivery of the Witness Service, Citizens Advice will be uniquely well positioned to develop this more joined up approach.

5. Do you have any other comments on the guidance you would like to offer?

- a) In the run up to delivery of the court based Witness Service, **Citizens Advice welcomes the Crown Prosecution Service's renewed focus on the needs of witnesses** giving evidence in court. The provision of this guidance is an important step in ensuring witnesses receive the information and respect they deserve while undergoing the stressful process of going to court.
- b) Many witnesses come to court having been witness or victim to upsetting or traumatising crimes. Further to this, many experience practical difficulties involving their employer, childcare arrangements, or simply making complicated journeys to the court, often by public transport.^{xxiii} By volunteering their time and energy to give evidence, they perform a public duty for their fellow citizens and wider community.

The guidance recommends witnesses are thanked at the end of the process if this is possible. It is positive that this is brought to the attention of prosecutors. However, this guidance may risk trivialising the experience of many witnesses. Further to ensuring witnesses are thanked, **prosecutors and the Witness Service (as well as other court actors) must ensure witnesses are made to feel informed, valued, respected and dignified** throughout the important process of giving evidence in court. Witnesses should be made to feel their voice is heard and that they have a positive impact on ensuring that justice has been served. This guidance should therefore take this opportunity to remind prosecutors of their power to positively affect a witness's experience and impression, not only of the court, but the whole justice system. If this exceeds the remit of this document, separate guidance on ensuring witnesses feel valued and heard should be considered.

- c) While most witnesses say they would give evidence again, some say they would only do so in a relatively serious offence.^{xxiv} This issue must be addressed. Citizens Advice understands the importance of outcomes for service users, and in order to develop the Witness Service offer (and improve witnesses' experience of the wider justice system,) witnesses should have the **opportunity to give feedback on their experience in court**. With the recent reduction in witness satisfaction surveys,^{xxv} Crown Prosecution Service must make a renewed commitment to capturing feedback in order to identify areas in need of improvement and take action to improve them. The effectiveness of this guidance will only be realised if complementary measures are taken to ensure all witnesses are given the opportunity to give feedback on their experience.

Endnotes

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- ⁱ HM Courts Service, 2009-10 (2010) *Court User Survey*. Ministry of Justice
- ⁱⁱ Victim Support (2011) *Summing Up: a strategic audit of the criminal justice system*
- ⁱⁱⁱ Hunter, G. et al (2013) *Out of the shadows. Victims' and witnesses' experiences of attending the Crown Court*. Victim Support, London
- ^{iv} Jacobson, J. et al (2015) *Inside Crown Court: Personal Experience and Questions of Legitimacy*. Policy Press, Bristol
- ^v Criminal Justice Joint Inspection (2012) *Young victims and witnesses left to flounder in an imperfect justice system*
- ^{vi} Jacobson, J. et al (2015) *Inside Crown Court: Personal Experience and Questions of Legitimacy*. Policy Press, Bristol
- ^{vii} unicef (2009) *Justice in Matters involving Child Victims and Witnesses of Crime*. United Nations, New York
- ^{viii} Hunter, G. et al (2013) *Out of the shadows. Victims' and witnesses' experiences of attending the Crown Court*. Victim Support, London
- ^{ix} Jacobson, J. et al (2015) *Inside Crown Court: Personal Experience and Questions of Legitimacy*. Policy Press, Bristol
- ^x Hunter, G. et al (2013) *Out of the shadows. Victims' and witnesses' experiences of attending the Crown Court*. Victim Support, London
- ^{xi} Ibid.
- ^{xii} Ibid.
- ^{xiii} Crown Prosecution Service. *Commitments to Support Victims and Witnesses* (accessed 11.03.15 http://www.cps.gov.uk/legal/v_to_z/cps_commitments_to_victim_and_witnesses/)
- ^{xiv} Victim Support (2011) *Summing Up: a strategic audit of the criminal justice system*
- ^{xv} Criminal Justice Joint Inspection (2009) *Report of a joint thematic review of victim and witness experiences in the criminal justice system*
- ^{xvi} Home Office (2006) *Rebalancing the criminal justice system in favour of the law-abiding majority. Cutting crime, reducing reoffending and protecting the public*.
- ^{xvii} Jacobson, J. et al (2015) *Inside Crown Court: Personal Experience and Questions of Legitimacy*. Policy Press, Bristol
- ^{xviii} Doak (2008) *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties*, Hart
- ^{xix} Ministry of Justice (2013) *The Witness Charter: Standards of care for witnesses in the criminal justice system*
- ^{xx} HM Government (2012) *Call to End Violence against Women and Girls. Taking Action – the next chapter*
- ^{xxi} Hunter, G. et al (2013) *Out of the shadows. Victims' and witnesses' experiences of attending the Crown Court*. Victim Support, London
- ^{xxii} Whitehead (2013) *Better Courts Case-study: Plymouth Community Advice and Support Service*. New Economics Foundation and Centre for Justice Innovation
- ^{xxiii} Jacobson, J. et al (2015) *Inside Crown Court: Personal Experience and Questions of Legitimacy*. Policy Press, Bristol
- ^{xxiv} Hunter, G. et al (2013) *Out of the shadows. Victims' and witnesses' experiences of attending the Crown Court*. Victim Support, London
- ^{xxv} Victim Support (2011) *Summing up: a strategic audit of the criminal justice system*

Our aims

- Provide the advice people need for the problems they face.
- Improve the policies and practices that affect people's lives.

Our principles

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. We value diversity, promote equality and challenge discrimination.

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