

## **EXECUTIVE SUMMARY OF THE SUBMISSION OF THE PUBLIC PROSECUTION SERVICE (PPS) TO THE JUSTICE COMMITTEE INQUIRY ON VICTIMS AND WITNESSES – DEVELOPING A NEW STRATEGY**

1. The PPS is fully committed to delivering effective services to victims and witnesses.
2. In recent years the PPS has made substantial improvements to the services it provides to victims and witnesses. These include setting up Community Liaison Teams to meet the needs of victims and witnesses in the Magistrates' and County Courts; providing case progression information; giving reasons for no prosecution in all cases and more detailed reasons in a range of more serious cases or where there is a vulnerable victim; making use of the legislative provisions in relation to special measures; referring victims and witnesses to Victim Support's witness service and NSPCC's Young Witness Service; and delivering training to PPS staff and the voluntary sector and statutory agencies to improve service delivery to victims and witnesses.
3. The PPS has identified some gaps in service delivery and is taking forward a number of improvements to its current services. In addition the PPS is the lead organisation for the introduction of a witness case unit (WCU) model for victims and witnesses.
4. All of the above are more fully detailed in the attached submission. The paper also discusses the role of the prosecutor.

**SUBMISSION TO THE JUSTICE COMMITTEE INQUIRY ON VICTIMS AND WITNESSES – DEVELOPING A NEW STRATEGY**

**1. Background**

- 1.1 The Public Prosecution Service (PPS) is fully committed to delivering effective services to victims and witnesses. This commitment derives not only from a recognition that it is the right thing to do, but from a realisation that victims and witnesses are fundamental to the successful operation of the criminal justice system. Without the witness, there is no evidence. Without evidence, there can be no prosecution.
- 1.2 There is now an increased awareness across society of the impact of crime upon the victim and also of the impact for victims of engaging with the criminal justice system. PPS recognises the traumatic experience that the undesired and unwanted involvement in a crime can bring for many people. Equally important is the increased realisation that how the victim is dealt with by the criminal justice system can have a profound effect on how that person can cope with the experience of crime.
- 1.3 Having said that, the manner in which the criminal justice system is organised and the role which is required of the prosecutor has an undeniable influence on the way in which the prosecutor is perceived by the victim. It is important that the role of the prosecutor is properly understood so that unrealistic expectations are not created and misunderstandings are avoided. The way in which our system of criminal justice is currently organised requires that the PPS acts on behalf of the public in the public interest, representing the views of society as a whole, not just on behalf of the individual victim. Accordingly the prosecutor is not the victim's legal representative in the way the defendant is represented by a solicitor and a barrister. The

prosecutor is enjoined to assist the court in ensuring that the Accused receives a fair trial, while the Accused's legal representatives' sole function is to represent his interests as best as possible including seeking to secure his acquittal.

- 1.4 The 2009 House of Commons Justice Committee Report entitled "The Crown Prosecution Service: Gatekeeper of the Criminal Justice System" clarified the role of the prosecutor in the following terms:

*"The prosecutor's role in relation to victims also seems to be generally misunderstood. The prosecutor is not able to be an advocate for the victim in the way that the defence counsel is for the defendant, yet government proclamations that the prosecutor is the champion of victims' rights may falsely give this impression. Much of the prosecutor's work by its nature serves the needs of victims, and we should strive for a better service to victims, but there needs to be a better understanding of what is possible for the prosecutor to be and to do in relation to victims."*

- 1.5 Of course, the limitations which are placed upon the role of the prosecutor do not mean that the victim should not receive a proper service. It is clear that good standards of service and information provision can assist a person in their engagement with the criminal justice system, whilst poor service can have a devastating effect, potentially compounding the distress and anxiety of the crime. It is in this context that the PPS recognises its responsibilities to victims.

## **2. Current Service Provision**

- 2.1 Recent years have seen substantial improvements to the services which PPS provides to victims and witnesses. It is hoped that the

following summary of the key aspects of these services will be of assistance.

## **PPS Community Liaison Teams**

2.2 Perhaps the most demonstrable change in service provision since the setting up of PPS has been the establishment of specific teams of staff entitled 'Community Liaison Teams' (CLTs), dedicated to providing information to victims and witnesses. These teams were developed to meet the need for victim and witness liaison in the Magistrates' and County Courts. They are regionally based and this has the benefit that those PPS staff who carry out these duties will be drawn from the victim or witness's own local area.

2.3 The principal functions of CLTs are:

- to check witness availability, usually by way of a telephone call to the witness;
- to send out documentation explaining to a witness practical matters regarding attendance at court, including the services offered by VSNI Witness Service (WS); and
- to answer any general queries a witness may have. In the event that a query requires a legal input, the matter is passed to a prosecutor to deal with.

2.4 However, there are a number of limitations in relation to the role of the CLTs which should be noted. From its inception in 2005 the PPS has not been resourced to deliver CLT services in the Crown Court where police retain a significant role in witness liaison. Additionally, whilst current arrangements provide for witness attendance at court, they do

not extend to the delivery of services at court or to providing assistance at the post court stage.

- 2.5 A potential further development in service provision could involve the establishment of a PPS dedicated support officer to carry out a meet and greet role at court and to deal with witness queries which arise there. This option is explored in more detail in the final section of this paper under the heading 'Alternative Approaches'.

### **Case Progression Information**

- 2.6 The PPS recognizes the importance of information provision and is committed to ensuring that victims are kept informed of the progress in the case in which they are involved. The following is a summary of the key stages where written communication is provided by the PPS:

- A letter from the PPS Regional Prosecutor is sent to the family representative of the deceased at the time of charge in cases of death, explaining the role of the PPS and providing a contact point
- A letter is sent by PPS to the victim in indictable cases, notifying them of the receipt by PPS of an indictable case file from police
- A letter is sent by PPS notifying the victim of the PPS's decision whether or not to prosecute the case in which they are involved
- If the decision is not to prosecute, then, in certain categories of cases, including serious cases and those with a vulnerable victim, a letter is sent to the victim, setting out an explanation of the reason/s for that decision, and advising them of the availability of a review of the decision
- A letter indicating when the witness is required to attend court to give evidence (their availability having been ascertained in advance)
- A letter notifying the victim of the outcome of the case

- 2.7 It should be noted that letters include other helpful information, such as contact details for Victim Support or NSPCC and relevant explanatory

leaflets relating to the functions of the PPS. There are also additional letters depending on particular developments in a specific case, regarding, for example, the grant of special measures or an appeal by the defendant.

- 2.8 The PPS has recently conducted a review of its correspondence to victims and witnesses. By way of illustration, it has 55 'template' letters and sends in the region of 8,000 letters to victims/witnesses each month. This project, whose aim is to improve written communication with victims and witnesses, has almost concluded. This involves consultation with key stakeholders from the voluntary sector seeking their views on the content and style of communication. The PPS has previously consulted with VSNI with regard to particular letters such as letters to the family representative in cases of a death and on the letter informing the victim of the reasons for a decision not to prosecute. The input from voluntary sector partners is regarded as valuable in quality assuring our services.

### **The Giving of Reasons in cases of No Prosecution**

- 2.9 It should be noted that in cases where the PPS takes a decision not to prosecute, it gives the victim the reason for that decision in writing in all cases. The letter will indicate whether the decision is based on evidential or public interest grounds. In a range of more serious cases, or in cases where there is an identified vulnerable victim, a letter is sent to the victim giving detailed reasons for a decision not to prosecute, offering to meet with the victim, and advising of the opportunity to request a review of that decision.
- 2.10 It is important to remember that in giving reasons, a balance must be struck between the proper interests of the victim and other concerns, such as damage to the reputation or other injustice to an individual, the

danger of infringing upon the presumption of innocence or other human rights and the risk of jeopardising the safety of individuals.

### **Special Measures**

- 2.11 Where the victim is 'vulnerable' or 'intimidated', legislative provisions exist to provide 'special measures' for that victim when giving evidence. These include having their evidence in chief video recorded for use at trial, having their cross-examination conducted via live link from a room outside the court room, screening from the defendant, the removal of wigs and gowns by lawyers and the judiciary and the use of communication aids intended to make the evidence of the witness more easily understood. The legislation also makes special provision for child witnesses.
- 2.12 The grant of such special measures is a matter for the court upon application by the Prosecution. Prosecutors are trained in special measures so that applications are made in all cases where the witness is eligible and wishes to use special measures to give their evidence.
- 2.13 The PPS is an active member of the interagency group which has recently developed new guidance for practitioners on the use of special measures and is also working on the introduction of an Intermediaries Service for Northern Ireland to assist witnesses with communication difficulties give evidence.

### **Referrals of Witnesses to Witness Service and Young Witness Service**

- 2.14 Victim Support's Witness Service and NSPCC's Young Witness Service for under 18 year olds provide important services for victims and witnesses. These include pre-trial familiarisation visits, volunteers who can assist a witness and a separate waiting area intended to reduce the possibility of visual contact with the defendant.

2.15 PPS has worked with Victim Support and NSPCC to develop a PPS electronic system of referrals to Witness Service, designed to ensure the maximum number of witnesses can avail of this service, whilst providing that Data Protection requirements are adhered to. Figures for the last year are in the region of 11,000 referrals. This is a good example of effective inter-agency working intended to improve services to victims and witnesses.

### **Use of IT**

2.16 The PPS is currently taking forward a project with a view to improving the delivery of case progression information to victims by taking advantage of the increased opportunities offered by the electronic media. This is an innovative concept which is being designed to provide an immediate case update service. The concept is that when a case file is received by PPS, the victim will be given a log-in password to the new portal which can be accessed on-line through the PPS website. The victim will be able to see information about the case in which they have an interest, which information will be drawn from the PPS electronic case management system. This will be updated overnight, every night.

### **Guidance and Training**

2.17 The PPS recognises the importance played by the development of policy and training in ensuring that service delivery remains effective and relevant to the victims needs. Accordingly, it has developed a wide range of policy guidance and training on specific offence types, for example, sexual offences and domestic violence and on special measures and other measures to assist a witness in giving evidence. The PPS is also active in providing training to the voluntary sector and



to statutory agencies in a range of victim and witness-focused areas. In turn, PPS staff also receive training from the voluntary sector regarding awareness raising of victim and witness needs and on re-victimisation.

- 2.18 Earlier this year the Service held a range of stakeholder events with a victim and witness theme. Sessions were delivered by speakers from the voluntary and statutory agencies, in the area of rape, road traffic offences and hate crime. This high level of interagency contact is an aspect of the current arrangements which appears to work well. It provides improved policy-making, information and awareness sharing, joint training and better monitoring and evaluation of the effectiveness of measures to assist victims and witnesses.

### **Publications and Community Outreach**

- 2.19 The last ten years have seen significant developments in the provision of information with regard to how prosecution decisions are taken. This can be seen in the drawing up and publication of the PPS Code for Prosecutors which is currently under revision. Further information regarding issues relating to specific offence types can be found in other PPS policy documents, including the PPS Victims and Witnesses Policy and in a range of explanatory leaflets. It should be noted that independent counsel instructed to act on behalf of PPS are subject to the same guidance as employed PPS staff and to the PPS Code of Ethics. Advocacy standards have been agreed with the Bar Council which incorporate a requirement to adhere to PPS policies on victim and witness care.
- 2.20 A simple explanation of minimum service provision for victims is set out in the interagency publication, The Code of Practice for Victims, published in March 2011. The PPS has also developed a Complaints system with an Independent Assessor as well as a proactive

programme of Community Outreach aimed at raising awareness of the role and operation of the PPS.

### **3. Key issues and gaps**

3.1 Whilst acknowledging the improved degree of service provision as evidenced by the increasing levels of recorded victim and witness satisfaction, it is clear that there can be no let up in the drive to improve services. Recognising that on occasions the victim's perception of how a matter was dealt with may not accord with the reality of what happened on the ground, the criminal justice system must nevertheless seek to address a number of issues including:

- There may be a perception from the witness's point of view, of a lack of consistency in service provision at different stages of the process, with a requirement on them to repeat their 'story' to different agencies in order to get information they require.
- A requirement for further case progression information, such as relating to the grant of bail.
- Issues around the listing of cases can be a cause of dissatisfaction, such as a perceived delay in listing of cases, repeat adjournments, and being given short notice of adjournments.
- The current lack of a comprehensive, up-to-date, individualised witness needs assessment.
- There is at present in our criminal justice system a lack of guidance or process around the use of Victim Impact Statements. This issue is currently being taken forward by the interagency Victim and Witness Steering Group and a public consultation is soon to take place.
- Further to the issues set out in para 1.3 and 1.4 above, we recognise that there may be a perception among victims that there is no one to 'represent' them, while the Accused is perceived to be fully represented.

3.2 The matter can perhaps be best summarised by noting the outcome of recent research which demonstrates that the key issues impacting upon victims' and witnesses' experience of the criminal justice system can be summarised by two key needs:

- a desire to be treated with sensitivity and respect, and
- to be provided with information about their case and the process.

3.3 Whilst it is recognised that some victim and witnesses dissatisfaction derives from the way in which the adversarial system operates, there remains a necessity to address these key needs. Seeking to do so can sometimes be frustrated by an apparent lack of continuity between the agencies at different stages in the process. It could be argued that this points towards a 'single point of contact' model as the aspiration for any future radical changes to the system.

3.4 In this context, important issues arise in relation proportionality and the availability of resources. The concept of proportionality has an obvious impact in exploring the most effective use of resources. Decisions will be required as to whether it is appropriate to provide the same level of service to a victim in a relatively minor case who has particular needs to that in a serious case where there is an identified vulnerable victim. This aspect is explored in the final section of this submission.

#### **4. Alternative Approaches**

4.1 The PPS is committed to developing its services to victims and witnesses to ensure that cases are properly prosecuted and that, in so far as it is possible, decisions are explained and transparent to victims and witnesses. As was stated above and in order to meet this objective, the PPS is taking forward a number of improvements to its current services. For example, PPS is examining the circumstances in which the reasons for no prosecution decisions can be given in an increased range of cases; a project has been commenced with a view to providing detailed information as to case progress online to those victims who wish to avail of that option; training programmes will continue to be conducted on a regular basis for PPS staff in conjunction with Victim Support and other voluntary agencies; the PPS

is closely involved in the project to develop the use of Victim Impact Statements and Reports for sentencing purposes in Court and the PPS is the lead organisation for the introduction of a witness care unit (WCU) model for victims and witnesses.

- 4.2 It is understood that CJINI will shortly be publishing a report in relation to Victim and Witness Care. It is expected that a significant recommendation of the report will be the adoption of the Witness Care Unit model in Northern Ireland. In this regard, Police and PPS have been working for some time with a view to introducing a model of victim and witness care which best suits this jurisdiction. Work already completed has identified a number of good practices which can be imported from elsewhere. Equally, it has become clear that there are particular features of the Northern Ireland context which may provide the opportunity to provide a higher level of service than that currently available in England and Wales.
  
- 4.3 A joint PPS/PSNI visit to examine the WCU in operation in Bradford in West Yorkshire, revealed that many of the services offered there were equivalent to those available through the PPS Community Liaison. Indeed it should be noted that the principal function of the Witness Care Unit model in England is to improve the attendance of witnesses in cases which are to be contested at Court. The English model does not provide services during the investigation or decision making stage to victim and witnesses. Equally, it does not provide services in cases where no prosecution is directed or where a plea of guilty is entered or in cases of diversion. It should also be noted that the Bradford model is only one of a number of models used by police and CPS in England. HM CPS Inspectorate are currently undertaking a detailed review of different the methodologies for WCUs in England and Wales and it is likely that their findings will be relevant to this jurisdiction.

4.4 However, there would appear to be four key differences between the Bradford model and the present level of service available in Northern Ireland:-

- (a) the WCUs deal with Crown Court cases as well as Magistrates' Court Cases;
- (b) a formal witness needs analysis is carried out by the WCU;
- (c) the service is centralised with that for West Yorkshire being centralised in Bradford;
- (d) where possible, one witness care officer deals with the same witness throughout the process.

4.5 In considering the way forward it is clear that a possible option is to build onto the current system those aspects of the Bradford model which appear immediately beneficial in the context of Northern Ireland. However, before doing so it would be prudent to determine the extent of any actual benefits for victims and witnesses in proceeding with such a change. For example, in Northern Ireland contact with victims and witnesses in Crown Court cases is presently carried out by police in liaison with PPS Crown Court Clerks. To conclude, without more, that this should become a WCU function may result in losing the benefits of a known, trusted person contacting the victim. Victim satisfaction may reduce where personal contact is replaced by a telephone call or letter from someone not known to the victim or witness.

4.6 In this regard, it should be recognised there can be benefits where service is delivered through local staff dealing with local people, rather than from a more remote, centralised unit. On the other hand, careful analysis may conclude that, resources permitting, an appropriate combination of the two is appropriate. The PPS would be anxious to ensure that the introduction of WCUs leads to substantive, positive

change in the level of service offered to victims and witnesses. This will require a comprehensive analysis of the measures required to deliver such positive change. Such analysis should include all options including that involving the most extensive change, where advantage could be taken of the additional beneficial processes which the system in Northern Ireland can deliver.

4.7 For example, the Causeway system would enable a WCU in Northern Ireland to deal with a case from an earlier stage and to a later stage than is possible in England, where such an integrated IT system is not presently available. In Northern Ireland the witness care officer, drawn from either PPS or police, could not only assist the victim or witness to come to court but could, in due course, provide information in relation to important matters such as the details of custodial sentences, release dates etc. This would be enabled through partnership working with Probation Service and Prison Service and has the capacity to deliver benefits which go beyond the Bradford model.

4.8 A further development of this model may be to have a dedicated witness case officer for the WCU at Court to facilitate the co-ordination and handling of witness care issues in a holistic manner. It is recognised that such an option would require significant additional resources in terms of staffing and training but it does have the potential to provide an enhanced single point of contact for victims and witnesses in the unfamiliar environment of a Court. Such a model would provide a properly trained person to liaise between the victim and witness and the prosecutor. It would build upon the existing working relationships with Victim Support and the NSPCC.

## **5. Conclusion**

5.1 The PPS has been pro-active in seeking to develop an appropriate way forward with regard to victim and witness care. It has and will continue

to work closely with partner agencies to establish the best possible local solution taking account of experience in other jurisdictions. The PPS is committed to ensuring that its people, policies and practice recognise and enhance the priority of victims and witnesses in the criminal justice system thereby bringing about an improvement in the services, information and care they receive.