

THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS



# Prosecution Witness Charter

Standards of care for witnesses in the Cayman Islands

January 2019

## THE WITNESS CHARTER

### About this charter

The Witness Charter has been developed to tell you how, as a witness, you can expect to be treated by the Prosecution if you are a witness to a crime or incident and you have been asked to give evidence for the prosecution in a criminal court. The Charter sets out what help and support you can expect to receive at every stage of the process from police investigators and the Prosecution. It does not cover the work of agencies, defence lawyers, Judges and Magistrates.

The standards of service set out in the Witness Charter apply to all witnesses, regardless of whether you may also be the victim of the crime. The Witness Charter is not set out in law, and there may be constraints which affect the ability of the prosecution to provide the service. The Prosecution will seek to comply with the standards, insofar as is practicable and their professional rules allow.

### Being a witness

As a witness in an investigation, which may lead to a criminal court case, you are helping to ensure that justice is done and that society is made safer for yourself, your family and friends and the community in which you live. The part you play is crucial to the wider effort to tackle crime and poor behaviour and to build a culture of respect. When you give evidence as a witness, you are directly contributing to building a safe and strong community. Family members and friends who accompany a witness to court, helping to make them feel more comfortable about giving evidence, are also contributing to this important role.

If a suspected offender is identified, and the case proceeds to trial, you may be asked to give evidence for the prosecution in court if you know:

- something about a particular crime, incident or dispute; or
- one of the people involved in a case.

A trial happens when a person called “the defendant” is accused of committing a crime. If the defendant states that they are “not guilty”, a trial is needed to decide whether or not this is true. Jurors or Judges in the court hear both sides of the argument and then decide whether or not the defendant is guilty.

The court can only decide whether a defendant is guilty or not with the help of information given by witnesses like you.

Your evidence can be crucial to securing the conviction of the guilty or the acquittal of the innocent.

## STANDARDS OF CARE

### 1: Ensuring fair treatment

As a witness you will be treated fairly and with respect according to your needs irrespective of race, religion, nationality, background, political opinions, gender, age, sexuality or any disability.

### 2: Reporting a crime or incident

The police will ensure that the details of how to contact them and the arrangements for how to report a crime or other incident are widely publicised. If you report a crime or other incident, the police will:

- ensure that they properly understand what you are telling them;
- ensure that you fully understand any information they give you;
- explain how they are going to deal with the matter;
- provide you with an indication as to how long this will take; and
- provide you with a reference or crime number and a contact for further enquiries.

### 3: Initial needs assessment by the police

If you provide a statement to the police, this will include an initial assessment of your needs as a witness. The initial needs assessment will cover:

- what your preferred means of contact is, and when you can most easily be reached;
- what language and communication needs you may have as a witness;
- what other needs you may have, including any help you may need to give evidence in court; and
- what dates you are unavailable to attend court.

This information will be used to decide how the investigation of the case will proceed, and to ensure that arrangements are made to meet your needs if you are called to give evidence in court.

### 4: Initial identification as a vulnerable or intimidated witness

As a prosecution witness, the prosecutor will initially identify whether you may be a vulnerable or intimidated witness and will seek your views on measures that might help you.

This includes measures to help you give your best evidence in court, such as the use of a live TV link or a screen around the witness box, to prevent you being

caused fear and upset at seeing the defendant.

The special measures will ensure that you do not see the defendant when giving evidence. You will only be seen by the lawyers, magistrate or judge and jury present in court.

It may also include the use of an interpreter or signer if you are a witness with a communication difficulty. It is ultimately for the court to decide whether such measures can be allowed.

## **5: Making a statement**

After you have been in contact with the police, the investigating officer will decide whether to ask you to provide a statement. Making a statement is voluntary although you may still be asked to give evidence if you do not make one. If you do agree to make a statement, practical arrangements will be made for it to be taken as soon as possible. This may be in your home, at a police station, or at another place of your choice.

If you are identified as a potential defence witness, in certain circumstances, the police may also ask you to make a statement.

The police will seek to arrange an interpreter or signer for you if necessary.

Before you make your statement, the person taking it will explain the purpose of the statement, consider what help you may need to make it and explain what will happen next. If you provide a statement, you may be required to give evidence at court for the prosecution.

When you make a written statement, the person taking it will:

- ensure that they understand what you are telling them and that this is accurately recorded;
- allow you to read through the statement once completed to check that it is an accurate record, or ask someone else to read it back to you;
- change any inaccuracies you point out in the statement;
- add any further information you want included; and
- ask you to sign your statement to confirm that you agree with what has been recorded.

Child witnesses are able to make a statement in the form of a video-recorded interview. In such cases, the person taking it will ensure that the recording is of sufficient quality for it to be used in court as evidence if necessary. However, the child

may still be required to attend court for the purposes of cross-examination.

## **6: After a statement is given**

Once you have signed your statement the content cannot be changed. However, if you do need to alter or add anything at a later date you can make a further statement.

Unless it is relevant to the case, your address or other personal details - which might lead to the identification of your address - will be withheld. Your personal information will not be shared unless there is a legal requirement to do so.

If your case does proceed to court, you will be given the opportunity to refresh your memory of what you said in your statement.

## **7: Being kept updated on progress during the investigation of a serious criminal offence**

If you have made a statement to the police as part of an investigation of a serious criminal offence and the police have told you that you are likely to be called to give evidence in court, they will seek to update you on the progress of the case. This should continue until the investigation closes, or the point at which someone is charged, summonsed or dealt with by the court.

You can choose to opt out of receiving an update on progress should you want to do so at any stage.

If you have been told that you are not likely to be called to give evidence in court, or you have not made a statement as part of an investigation of a serious criminal offence, the police may not update you but they will seek to provide you with a means of contact so that you can find out what stage the investigation has reached.

## **8: Action on intimidation**

The police will seek to identify if you are being intimidated or are at risk of intimidation. If you think that you are at risk of intimidation, you should bring this to the attention of the investigating officer and they will provide you with advice.

It is a specific offence to intimidate a witness. If you believe you have been the subject of intimidation as a result of your involvement in a case then you may be a victim of a criminal offence. You should bring this to the attention of the police immediately who will carry out an investigation and take any appropriate action, including the

consideration of measures to ensure your safety.

If you are a prosecution witness who has suffered or is at risk of intimidation:

- provided you have informed the police, they will inform the prosecutor if you have concerns about the grant of bail or if the defendant has a history of witness intimidation; and
- the prosecutor will consider what additional needs you have at the time the defendant is charged and throughout the period up to trial.

You should always dial 911 if you think you are in immediate danger.

## **9: Being kept updated on progress after charge**

If you are a prosecution witness and victim to any offence, the police will inform you:

- when the defendant has been charged;
- whether the defendant has been released on bail to attend court, or held in custody until the first court appearance; and
- what relevant bail conditions apply.

The Police or the Prosecutor will keep you fully informed of the progress of your case following the first court appearance. As a witness in a complex case you will be given the name of a Witness Care Officer who will be your single point of contact for all enquiries or concerns that you have. The Witness Care Officer will keep you updated on the progress of the case, passing on to you any information they receive as soon as practicable.

If the case proceeds to court, a Witness Care Officer will, if you so wish, inform you of the outcome of:

- any application for special measures to help you give evidence in court;
- any decisions made by the court to release the defendant on bail (including any relevant conditions) or to remand them in custody between court hearings; and
- all relevant court hearings.

## **10: Follow-up needs assessment**

If you are a prosecution witness in a case that is going to trial, the initial assessment of your needs will be followed up by a Witness Care Officer in the Office of the Director of Public Prosecutions.

This follow-up assessment will explore a range of issues that may influence your

attendance at court and your overall satisfaction with the process, including:

- whether you have any concerns regarding intimidation;
- what language or communication requirements you have, including if you have any difficulties with reading;
- whether you have any medical conditions or physical disabilities which would affect your ability to attend court, including hearing or eyesight problems;
- whether you have any religious or cultural needs;
- whether you need help with childcare or other dependants;
- whether you would like a visit to the court before the trial;
- what transport needs you have to help you get to court on the day; and
- whether your employer requires a letter to grant you permission for you to attend court.

This needs assessment allows the Prosecutor to update your preferred means of contact and the dates you are unavailable to attend court.

It is also a further opportunity to identify whether you are or may be a vulnerable or intimidated witness, and what special or other measures would help you give your best evidence in court.

## **11: Meeting your needs**

If you are a prosecution witness, the Prosecution will maintain contact with you, and will assist with arrangements for your attendance at court depending on your personal circumstances.

If you need help to give your evidence effectively in court you may be eligible for assistance from a range of support and special measures.

You will qualify for this help if you:

- are a vulnerable witness;
- are an intimidated witness;
- reside overseas;
- are a witness under the age of 17;
- suffer from a mental or physical disorder;
- have communication needs; or
- are the victim of a sexual offence.

You may also be eligible if you feel so intimidated about giving evidence that it affects your ability to do so.



The police, or the prosecutor will explain which special measures may be available to you, and ask which, if any of them, you would like to take.

If you are eligible for special measures for giving evidence, the prosecutor, having heard your views, would then assess whether they should make an application to the court for the use of one or more measures. The court will consider your views – and whether the measure will help you to give your best evidence – when deciding whether to allow its use or not.

## **I2: Taking account of your availability**

In setting the trial date, the prosecution lawyer will ask the court to seek to meet your needs as a witness. This will include trying to ensure that you are not required to attend court on a date on which you have an important commitment (e.g. hospital appointment, pre-booked holiday), unless there are exceptional circumstances.

If the case is adjourned, a new date will be set that is as convenient to all parties as possible. As a witness, you can help by informing those involved of any changes to your availability as early as possible.

Your employer or a family member may be reluctant to let you make yourself available to attend court. If this occurs, an application can be made by the prosecution lawyer to the court for the issue of a witness summons, which you can then use to show that you are required to attend. A witness summons may also be used if witnesses themselves are unwilling to give evidence.

## **I3: Giving priority to cases involving vulnerable witnesses, including child witnesses**

If you are a vulnerable, intimidated or child witness, or if your case involves such a witness, the prosecution lawyer will ask the court to give the case priority in respect of the times and dates of hearings.

The defence lawyer may object to the court giving the case priority if it is not in the best interests of the defendant and it is ultimately for the court to decide whether to give the case priority.

## **I4: Notice of trial date and minimising unnecessary attendance**

You will not be required to attend court for every hearing.

If you are a prosecution witness, the Witness Care Officer will inform you of when

you need to give evidence in court. They will notify you as soon as practicable after receiving this information from the court. One method of informing you may be by means of a witness summons.

Every effort will be made to ensure that you are only asked to attend court on the day on which you are required to give evidence. Occasionally trials and hearings will be unable to take place on the day they are planned, and you will be notified of any cancellations and adjournments.

If the witness giving evidence is a child, every effort will be made to set a trial date during the school vacation, to minimise the disruption to the child.

You will be told:

- if a trial will not take place on the date that has been set;
- the reason for any adjournment of your case, if appropriate; and
- when your case is likely to be heard.

### **I 5: Information about the court process**

The Witness Care Officer will give you information on the court process to help you prepare for attending court.

The Witness Care Officer will give you a copy of the Witness Charter and will seek to explain the contents to you.

You can also obtain information on the internet, including an explanation of the process, from [www.dpp.gov.ky](http://www.dpp.gov.ky).

### **I 6: Information about the court and its location**

If you have to go to court, the Witness Care Officer will inform you of, or help you find out:

- the court opening hours;
- the location of the court;
- the facilities available at court, including food and drink, toilets, telephones, separate waiting areas and arrangements for people with disabilities;
- the support available at the court;

### **I 7: Visiting the court before trial**

As a prosecution witness, you will be offered the opportunity to visit the court before the trial. These pre-trial visits will be arranged by the Witness Care Officer in

conjunction with the court staff. During your visit you should, where feasible, be given the opportunity to practice using the live TV link facility and shown how a screen would be positioned, if the use of any such measure has been granted.

### **18: Attendance of family and friends**

Where the layout of the court permits, staff will seek to arrange for seats to be provided in the public gallery for anyone accompanying you to the hearing, provided you ask them to do this before the day itself. However, there is no public gallery in a youth court. Your family and friends can also use the public facilities at court, which are usually open to everyone.

If you are a witness and are accompanying another witness to court in the same case, you will be unable to sit in the public gallery until after you have given your evidence.

### **19: Support at court**

The prosecution may also arrange other support for you, with the permission of the court. This may include specific help with arrangements for your appearance in the witness box or in the live TV link room.

### **20: Court facilities and signage**

When you come to court, you should find:

- clear signs indicating the number of the court;
- the notice board will publicly display a list of cases to be heard that day;
- functional, accessible and clean toilet facilities; and
- clean and comfortable waiting areas.

### **21: Safety at court**

There are police officers based in the public area in the immediate vicinity of all courts, who will seek to monitor everyone - including witnesses, defendants and supporters who seek entry to the court building. They have the power to exclude, remove or restrain individuals who may disrupt court business or pose a threat to the safety of other court users.

At Court you may be in the same waiting room as other witnesses, defendants and supporters. If you feel intimidated by any other person at the Court you must inform a member of staff, a police officer or the prosecution lawyer who will take appropriate action, as far as possible.

If you are a vulnerable or intimidated witness and you have informed the investigating officer, they will seek to review entrance and exit routes to limit the

opportunity for you to come into contact with the other parties.

## **22: Lawyers introducing themselves**

If you attend court as a witness, the relevant prosecution lawyer will, where practicable, seek to introduce themselves to you on the day and will seek to answer any practical questions you have.

## **23: Waiting rooms and standby arrangements**

Facilities may not exist for separate waiting areas for prosecution and defence witnesses and their family and friends. If there is no separate area available, other arrangements will be considered, where necessary and practicable, for you to wait separately from the other parties.

Where a witness waiting room is available it will be:

- well maintained and clean; and
- secure.

If you are a vulnerable or intimidated witness, you may be able to wait somewhere near to the court until the time you need to give evidence.

It is important that you do not speak to other witnesses about your or their evidence at any stage.

On the day of the trial you may have to wait a while before you are called to give evidence. You may want to bring a snack and drink or any medication you may need to take at a specific time. Eating is not permitted in some areas of the Court building. Signs will tell you where these are. It is also a good idea to take something to read to pass the time.

## **24: Waiting times at court and being updated on progress**

Everyone involved in your case will seek to ensure that from the time you are asked to attend court and give evidence, you do not have to wait more than two hours. However, there are sometimes delays which will be unavoidable.

If the defendant agrees that they committed the offence, they may plead “guilty”. If this happens, you will not have to give evidence. Sometimes the defendant pleads guilty at the last minute after everyone has come to court. If this happens, the magistrate or judge will say that you don’t have to give evidence after all and that you can leave.

A lot of planning and preparation is needed before a trial can start. Sometimes

problems arise. For example a witness may not be able to come to court on the trial date, or a report needed by the prosecution or, defence may not be ready on time. If these problems cannot be solved, the trial might have to be put off until a later date. If the problem is serious, the trial might be cancelled altogether. In some cases, problems come up after the trial has started. If this happens, the court may decide that the trial should stop. The witnesses will be told that they can go. The defendant may also be free to leave the court if he is on bail.

If the witness giving evidence is a child, every effort will be made to reduce the chances of them being kept waiting to give evidence.

The prosecution lawyer or Witness Care Officer will seek to:

- tell you as quickly as possible if your case cannot be heard on the day;
- give you an indication, where possible, of how long you will have to wait before giving evidence; and
- inform you if you are likely to have to wait longer than expected and the reason for any delay.

## **25: Special arrangements for witnesses with disabilities or medical conditions**

The prosecution lawyer will ask the court to make provision for any special needs you may have as a result of a disability, medical condition or age, which mean you will need help attending court or in giving evidence.

## **26: Special measures for vulnerable or intimidated witnesses**

If the court has granted an application for one or more special measures to help you give evidence, court staff will ensure the special measure is available and provide any assistance as required.

If you give evidence via the TV link you will sit in a room that is separate to the courtroom. You will sit facing a TV which has a camera on it. There will be another camera on the wall. The cameras are linked to the courtroom where there are other TV's. When these are switched on people in court can see you. The judge and lawyers can talk to you and hear you. You can see and hear them. The defendant can see and hear you.

## **27: Communication aids**

You are entitled to give evidence in the language of your choice if English is not your first language.

If you have any language or communication needs a court approved interpreter, signer or other assistance will be provided either by the court staff, provided that this need has been identified in advance.

## **28: The witness box**

Before the marshal calls you into the courtroom and shows you to the witness box, they will ask you how you want to promise to tell the truth. You will be able to use the holy book of your religion and court staff will ensure that they handle it in the correct way.

Alternatively if you prefer you can choose to 'affirm', which is a non-religious way of promising to tell the truth.

You will be asked to repeat the oath after the court marshal who administers the oath.

You will be expected to give your name in court when you give evidence. Judges, magistrates and court staff will only require you to disclose your address in open court if it is relevant to the case.

If you feel unwell or particularly upset at any point while giving evidence, or you need a short break, you should tell the judge or magistrate, who may allow you to pause and have a rest. If at any stage you do not understand a question that you have been asked, you should make this known to the questioner or the magistrate or judge.

Lawyers may use words or phrases that are hard for witnesses to understand. It is important to be sure that you know what each question means before you answer it.

If you don't understand say:

**"I don't understand. Can you ask me again in a different way."**

If someone asks you the same question again and you still don't understand it, it is OK to say:

**"I'm sorry but I still don't understand."**

Someone may ask you two or three questions together. If this happens, it's OK to say:

**"Please ask me the question one at a time."**

Think carefully before you answer and take your time. If you know the answer, tell

the court. Say what happened, and try not to leave anything out. Never make anything up, and don't guess. Speak as loudly and clearly as you can.

If you don't know the answer, it's OK to say:

"I don't know" or "I can't remember."

If you forget to say something you consider to be important to the case or if you make a mistake, tell the judge or magistrate.

Some questions may be about something the defendant did or said. The questions might make you feel embarrassed or upset. It's alright to use any words you need to. The most important thing is telling the court everything you know and the truth.

The magistrate or the judge and jury need to know what you as a witness remember seeing or hearing. The lawyers who are asking you questions need to make sure you are telling the truth. There are a number of ways in which their questions will check this:

- Lawyers may suggest answers to their own questions. Do not agree with any suggestions unless it is true. Never agree just to please that person.
- Some questions might suggest that what you say at court is different from what you told the police. Don't worry, just tell the truth.
- You may be asked a question that you have already answered. This does not mean that your first answer was wrong. Just answer again.
- Don't be angry or hurt if a question suggests that you are not telling the truth. Remember it is the lawyers' job to "test" what you have to say to help the court understand what happened.

Also remember you can ask the Judge or Magistrate for help if you do not understand a question or you need a break. If you are standing you can ask if you can sit.

Once you have given evidence, you may with the permission of the Court remain in the court building and can watch the rest of the proceedings from the public gallery. This does not apply in the Youth Court, which does not have a public gallery.

## **29: Cross-examination**

Cross-examination is an essential element of a fair trial. You may be questioned by another party's lawyer, who will test the evidence you have provided to ensure that it is accurate and that you are being honest, or may put another version of an event

to you for your comment. Defendants can represent themselves and, are entitled to cross-examine you.

The lawyer for any party may object to questions put to you, which they will seek to do if cross-examination by another party is considered to be unreasonable: for example, if it is unfair, offensive or oppressive.

### **30: Being informed of the result**

If you are a victim, the Witness Care Officer will:

- notify you of the outcome of your case and, if relevant, the sentence after they receive this information from the court; and
- explain to you what the sentence means.

### **31: Appeals**

If you are a prosecution witness, the Prosecution will notify you of any appeal against a conviction or sentence and inform you of the outcome passed on appeal.

The prosecution may ask the Court of Appeal to review a sentence that they consider to be

unduly lenient. If the prosecution decides not to refer a case, having been requested to do

so, they will write to the relevant person (or persons) informing them of that decision.

### **32: Post-trial support**

The Witness Care Officer will seek to give you the chance to talk over the case when it has ended and provide you with any necessary information. This may include advice to report a matter to the police if you think you are at risk of intimidation after appearing as a witness. In any event, if you believe you are at risk of intimidation after appearing as a witness you should contact the police immediately.

### **33: Claiming expenses**

In most cases, if you are a prosecution witness, you will be able to claim expenses for costs incurred while travelling to and from court. You may contact the Court's Office for your claim.

### **34: Complaints**

If you are unhappy with the level of service that you have received from the Prosecution, you can make a complaint through the complaints procedure of the



Office of The Director of Public Prosecutions, which may be found on the internet at [www.dpp.gov.ky](http://www.dpp.gov.ky). However, this does not extend to any complaint about the judicial outcome, verdict or sentence.

Prosecution lawyers will always:

- make it clear how to make a complaint;
- treat your complaint seriously;
- try to deal with your complaint as soon as possible; and
- tell you how to take a complaint forward if you are not satisfied with the outcome of the initial investigation.

## **GLOSSARY OF TERMS**

### **Acquittal**

The discharge of the defendant(s) following a verdict or direction of not guilty.

### **Adjournment**

The temporary suspension of the hearing of a case by order of the court.

### **Affirmation**

The declaration by a witness who has no religious belief, or has religious beliefs that prevent him or her taking the oath, that the evidence he or she is giving is the truth.

### **Appeal**

An application to a higher court or authority for review of a decision of a lower court or authority.

### **Bail**

The release of a defendant from custody, until his or her next appearance in court. This is sometimes subject to security being given and/or compliance with certain conditions.

### **Charge**

A formal accusation against a person(s).

### **Conviction**

When an offender has pleaded or been found guilty of an offence in a court, he or she is said to have been convicted. The conviction then appears on the offender's criminal record.

### **Cross-examination**

The process of challenging in court the evidence given by a witness.

### **Grand Court**

A court where criminal proceedings are commenced before a judge and a jury. The Grand Court also acts as an appeal court for cases heard and dealt with by the Magistrates' and Youth courts.

### **Defence lawyer**

The person representing the interests of the defendant(s).

**Defendant**

A person charged with a criminal offence.

**Lawyer**

The general term used in the Witness Charter to describe barristers (who usually work in the Magistrates' Court, Grand Court and Appeal Court, or for the prosecuting authority concerned).

**Magistrates' Court**

A court where criminal proceedings are commenced before magistrates, who examine the evidence and statements put before them.

**Oath**

A verbal promise by a person with religious beliefs to tell the truth.

**Prosecution lawyer or Prosecutor**

The person who presents the case against the defendant(s).

**Remand in custody**

The defendant is kept in custody pending further court appearance(s).

**Special measures**

The various measures that a court can order to assist vulnerable or intimidated witnesses to give their best evidence in court. These measures include live TV links, video-recorded statements, screens around the witness box and assistance with communication.

**Statement**

A written or video account by a witness of the facts and details of a crime or an incident.

**Summons**

Order to appear or to produce evidence to a court.

**Vulnerable or intimidated witness**

The Evidence Law defines 'vulnerable' witnesses as being children and young people

under 17 years of age and those suffering from a physical, or mental incapacity or social or intellectual impairment; and 'intimidated' witnesses as those who are in fear or distress about giving evidence, which may reduce the quality of that evidence, and victims of sexual offences.

### **Witness Care Officer**

A dedicated member of staff tasked with ensuring all witnesses are provided with the necessary support and assistance required through the trial process.