

Supporting victims and witnesses with a learning disability

July 2009

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Introduction

This section tells you about this document, what its purpose is and who it is for

About this document

This document is a 'public policy statement'. It explains how the Crown Prosecution Service (CPS) will deal with cases which involve victims and witnesses who have a learning disability. There is a separate public policy statement for victims and witnesses who have mental health issues published in the Publications section on our website at www.cps.gov.uk. We recognise that some people will have a learning disability and experience mental health issues; in those circumstances both policies may apply.

The purpose of this document

The purpose of this document is:

- to explain the role of the CPS;
- to give an overview of the criminal justice system (CJS);
- to set out what victims and witnesses can expect from the CPS; and
- to give information about particular issues which may affect victims and witnesses who have a learning disability.

Who is this document for?

This document is for everyone, but it is particularly for people who have a learning disability and who are the **victim** of, or **witness** to, a criminal offence.

Why have we published this public policy statement?

People with learning disabilities may experience:

- particular crimes;
- higher than average rates of crime; and
- particular barriers to justice.

Successful prosecutions can only happen if victims and witnesses feel confident and capable of giving their best evidence. This is more likely to happen if those involved in the CJS understand the particular requirements that people with a learning disability may have.

We want victims and witnesses of crime to be clear about their rights. We want them to be clear about the responsibilities of the CPS and the responsibilities of other criminal justice agencies. We want victims and witnesses to know what support is available to them and what we can do to help them to give their evidence in the best way for them.

This public policy statement aims to provide information and reassurance to victims and witnesses with learning disabilities that the CPS takes their needs seriously.

Frequently Asked Questions

Q. Why isn't this document also about people who have a learning disability and who may have committed crimes?

A. Victims and witnesses have different rights and support needs from those suspected of committing offences. The purpose of this document is to ensure that these particular rights and needs are clear to victims and witnesses.

Q. Will prosecutors have more detailed information to support this document?

A. Yes. Legal Guidance has been produced for prosecutors. The Legal Guidance goes into more detail about the relevant law, practice and procedure and is available on our website at www.cps.gov.uk

Q. There are some words and phrases that are quite complex contained within this document. How can I understand them?

A. There is a glossary of words and phrases at the end of this document – Annex A.

Q. What alternative formats is this document in?

A. An easy read version of this document will be made available in the Publications section on our website at www.cps.gov.uk

Printed copies, as well as information about the availability of alternative formats and translations, can be requested from CPS Communication Branch, phone 020 7796 8442 or email publicity.branch@cps.gsi.gov.uk

The Crown Prosecution Service

This section gives information about the work of the Crown Prosecution Service - or CPS

The CPS is the main prosecuting authority for England and Wales. In other words, the CPS decides whether someone charged with a crime should go to court.

The CPS is headed by the Director of Public Prosecutions. It is a national organisation which is divided into 42 Areas. There is also an out-of-hours telephone charging advice service for the police called 'CPS Direct'. A Chief Crown Prosecutor is in charge of each Area.

The CPS is a separate organisation from the police. The police and the CPS work closely together but have different functions.

The police investigate all the circumstances when people experience a crime or see it happening. They gather all the facts or 'evidence'.

After the police have gathered the evidence lawyers – known as 'Crown Prosecutors' - who work for the CPS then have to decide whether the case should go ahead by applying the 'Code for Crown Prosecutors'.

You can find further details about the Code for Crown Prosecutors in the Publications section on our website at www.cps.gov.uk. Printed copies, as well as information about the availability of alternative formats and translations, can be requested from CPS Communication Branch, phone 020 7796 8442 or email publicity.branch@cps.gsi.gov.uk

There is more information about how the police and CPS work together to bring cases to court in the section below.

This section explains how the CPS works with the police

The police are responsible for investigating crimes. This means that they collect evidence, obtain statements from witnesses and interview people suspected of an offence. The police do not go to court to prosecute cases; that is the role of lawyers and other legally qualified staff employed or 'instructed' by the CPS.

The CPS has the responsibility for deciding (in all but the most minor of cases) whether a person should be charged with a criminal offence, and, if so, what the charges should be. This is known as a charging decision.

The police do not refer every complaint of criminal behaviour to the CPS. Sometimes there is obviously not enough evidence to justify referring the case to the CPS for a charging decision. In other cases, where there is enough evidence, it may be possible for the police to deal with the case without the case having to go to court or needing to be referred to the CPS. In those cases, no-one is charged with a criminal offence. This is a decision taken by the police.

For some minor offences the police are allowed to make the charging decision without referring the case to the CPS at the beginning. However, once the case is passed to the CPS we have to decide whether to continue with the case. We do this in accordance with the Code for Crown Prosecutors (set out below).

In all cases the police tell the suspect about the charge or charges they will face.

The CPS employs lawyers and other legally qualified staff to prepare and prosecute cases, and administrative staff to help in the preparation of cases and the smooth running of the organisation. Crown Prosecutors do not investigate criminal offences; that is the role of the police. However, Crown Prosecutors work closely with the police, providing legal advice and assistance.

A member of the CPS will not usually be in touch with a victim or witness until after someone has been charged with an offence. The police provide the CPS with information about the victim or witness. This will be done by talking to the victim or witness at the time that they give their account of what has happened (their 'witness statement').

It is important that any requirements or particular needs that a victim or witness may have to enable them to come to court to give their best evidence are known. It is helpful if this is made clear to the police at an early stage by the victim or witness so that the police can discuss these requirements with the CPS.

The Code for Crown Prosecutors

This section gives more detailed information about the Code for Crown Prosecutors and charging decisions

We decide which cases to prosecute by applying the Code for Crown Prosecutors - 'the Code'. The Code has two stages. Both stages must be passed before a case can be prosecuted.

- First, there must be sufficient **evidence** to provide a realistic prospect of conviction before the case can go to court. This means that before we advise the police to charge someone suspected of a crime there must be enough evidence so that magistrates or a jury will be more likely than not to find the person guilty of what they are accused of.

- Secondly, it must be in the **public interest** to prosecute. We have to balance the factors for and against prosecution carefully and fairly. The CPS does not act for victims or the families of victims in the same way as solicitors act for their clients. The main difference is that the CPS acts on behalf of the public. We have to think about how important the case is for the whole of society – not just for the people involved.

Charging the suspect

If there is enough evidence and it is in the public interest for a case to go to court, we will decide what criminal offences the suspect should be charged with. There may be more than one charge.

We will make sure that the offences charged represent the seriousness of the offending and give the court sufficient power to sentence someone who is found guilty.

Once a decision has been made to prosecute a suspect, the police will charge him or her with the offences and he or she will have to go to court to answer the charges. This is when the prosecution begins and the suspect is called the defendant.

Changes after the prosecution has started

Sometimes the circumstances of a case change after the prosecution has started and the case has gone to court. We have to make decisions all the way through cases. This may mean

that, even after a prosecution has started, we have to change or drop charges. If we make significant changes or drop charges we will tell the victim what we have done and why. We call this 'Direct Communication with Victims'.

You can find further details about Direct Communication with Victims in the Legal Resources section, under Legal Guidance, on our website at www.cps.gov.uk

The lawyer who makes the decision is responsible for letting the victim know. This is usually by letter so that the victim has a written record of our decision and the reason for it. The letter is sent after the decision has been made.

In some cases, for example where the offence appears to have been aggravated or made worse by hostility based on disability, the lawyer must offer to meet the victim in person to explain the decision. Our Direct Communication with Victims guidance explains in more detail the types of case where a victim will be asked if they want to meet the lawyer personally for an explanation of the decision to change or drop a charge.

Where can I get more information about the Crown Prosecution Service?

- CPS website - www.cps.gov.uk
- The Code for Crown Prosecutors - 'The Code'
- Direct Communication with Victims Scheme

You can find further details on our website at www.cps.gov.uk. Printed copies of the Code, as well as information about the

availability of alternative formats and translations, can be requested from CPS Communication Branch, phone 020 7796 8442 or email publicity.branch@cps.gsi.gov.uk

Frequently Asked Questions

Q. Why would the CPS drop a charge?

A. This can happen for any number of reasons, such as new evidence becoming available, or doubt being cast on evidence that was previously considered to be reliable. Every case is considered using the tests set out in the Code.

Q. Can I complain if the CPS drops a charge?

A. You can complain to the CPS Area that made the decision. The CPS prosecutor who decided to drop the charge will write to the victim in cases where a charge is dropped explaining the reason for the decision, and in some cases will offer to meet the victim.

Q. Can I take someone with me to a meeting with the prosecutor?

A. Yes, you can take someone with you, such as a family member or friend or other supporter. We will take into account any special requirements you may have to facilitate the meeting, such as assistance with communication.

Ability to give evidence

This section deals with some of the concerns that victims and witnesses with a learning disability have told us that they have about access to justice

In it, we explain what some of the legal terms mean and what prosecutors might have to consider when making a decision in a case where a victim or a witness has a learning disability.

Victims and witnesses with a learning disability should have the same access to justice as any victim or witness. We want our prosecutors to make their decisions free from assumptions or stereotypes, and with a better understanding of the issues that are relevant to cases involving victims or witnesses with a learning disability.

Competence

The law states that **all** people are competent to give evidence. Competent in this context means 'lawfully able to give evidence'. This is the starting point from which all witnesses should be assessed when prosecutors are considering their evidence.

A witness is **not** competent to give evidence if they are not able to understand questions put to them as a witness and give answers to those questions which can be understood.

People with a learning disability should have the same opportunity as anyone else to be able to give evidence. Prosecutors should only question the competence of a witness

with a learning disability in the same circumstances as they would for any other witness. Prosecutors must not make negative assumptions about the competence of a witness who has a learning disability.

Capacity

The law states that a person must be assumed to have mental capacity unless it is established that he or she lacks mental capacity.

What do we mean by 'mental capacity'? In simple terms, a person has mental capacity if they are able make their own decisions. A person is unable to make a particular decision if they cannot do one or more of the following four things:

- understand information given to them;
- remember that information long enough to be able to make the decision;
- make a decision based on the information;
- communicate / tell someone their decision.

All sorts of decisions are covered by this description. It includes decisions about criminal proceedings. If you have a learning disability, you may have capacity to make a particular decision on one day but not the next. A decision may need to be delayed until you are able to make that decision.

There are some key rules or principles that have to be followed by anyone who is supporting or working with a person who may not have capacity.

The starting point is that all adults are legally able to make a decision for themselves unless it is shown that they are unable to make it. This means that people should not assume that someone with a learning disability cannot make decisions for themselves.

Secondly, people should be supported as much as possible to make their own decisions before anyone concludes that they cannot make their own decisions. This support may be through using different ways of communicating such as pictures or signs and providing information in different formats, such as tape or easy-to-read. In some cases an independent advocate familiar with supporting people with learning disabilities may be able to help.

Prosecutors should be aware that whilst a witness with a learning disability may not have capacity at a particular time, with the right support, capacity may be achieved.

Credibility and reliability

When prosecutors are deciding whether there is sufficient evidence for a case to go on they have to consider whether the evidence they have is reliable and credible. This is part of the Code.

Credible – will people believe what you say?

Reliable – will you give good evidence in court and give the same account all the way through?

Many people with learning disabilities are concerned that the police and prosecutors do not think that they are able to give evidence that can be believed or be understood in court.

The starting point for prosecutors should be that a witness is credible and capable of giving reliable evidence. It should never be assumed that someone is not credible or capable of giving reliable evidence just because they have a learning disability.

Credibility or reliability should only be questioned in the same circumstances as any other witness, that is, when something specific is raised which calls into question the credibility or reliability of the witness. We give examples of what we mean by reliability and credibility below.

Reliability and credibility can be influenced by how a victim/witness is treated. If people with learning disabilities are taken seriously and listened to, they may feel more confident and less anxious, and therefore be able to give their best evidence in court.

Sometimes the only question of reliability is whether the witness is going to be able to give their evidence in a way that can be understood by the magistrates or the jury. When this happens, prosecutors and police should consider whether an intermediary would be able to help the witness to give their evidence.

If the prosecutor has good reason to be concerned about the credibility or reliability of a witness, for example, because their story has changed, the prosecutor should seek robust evidence about the witness to be able to assess their credibility and reliability, so that victims are not denied access to a trial automatically because they have a learning disability. This may include evidence about the person's type of learning disability, and whether it affects their memory, understanding of events and their ability to communicate and to interact with other people.

It is the police officer's role to seek information from the witness and, with the witness's consent, friends or family and their medical professionals. This information can be extremely sensitive so prosecutors will advise the police to ensure that they obtain informed consent, observe data protection rules and only seek information that is necessary to support good decision making.

In some cases a 'pre-trial witness interview' with the prosecutor and the witness may help the prosecutor come to a decision about the reliability of a witness. These can be very helpful because the prosecutor can meet the witness and ask them questions about their evidence to make the right decision about what happens in the case.

You can find more detail about pre-trial witness interviews in the Support for victims and witnesses section of this document.

The following examples may help in explaining what we mean by credibility and reliability:

Example 1 – A witness says that he saw something happen at six o'clock. He says that he knows that it was six o'clock because he looked at his watch. Further enquiries reveal that the witness's watch was broken at the time.

The witness is **credible** – there is no reason to believe that he is not telling the truth and that he thought that it happened at six o'clock. However, his evidence cannot be relied upon because of the broken watch.

Example 2 – A man tells the police that his car has been stolen from outside his house and crashed by the thief. The man is disqualified from driving.

The police go to the scene of the crash and find the damaged car. The car owner says that he was with a friend when the crash happened.

The police speak to the friend who confirms that the car owner was with him at the time of the crash. The police make further enquiries and discover that the friend has been convicted of lying to the police in similar circumstances. The friend **may be reliable** but is **not credible** – that is, not capable of belief – because of his earlier lies in similar circumstances.

Example 3 – A witness who has a learning disability sees a person steal a bicycle from outside a shop. The witness has difficulties in remembering dates and times, and sometimes gets mixed up when talking to people she doesn't know well, or who are in positions of authority, like police officers. The witness tells the police officer different times and dates when she is asked questions about what she saw. She gets muddled up when she is asked questions about which shop the bicycle was stolen from.

The witness has a good relationship with a self advocacy group who have worked with her on a regular basis. Their support worker gives her confidence when speaking to others and helps her to sort out her thoughts when being asked to explain things to other people. Without their help, she can seem to be muddled and confused. With their support, she can sort out facts and explain things better. To an outsider, the witness might **seem to be unreliable** because she can't explain clearly, or gets confused when put under stress. With the help of a supporter, she might be able to manage better and give an account that is **reliable**.

Supporting witnesses so that they can withstand the court process

When considering whether it is in the public interest for a prosecution to continue prosecutors have to consider whether 'a prosecution is likely to have a bad effect on the victim's physical or mental health'. This is part of the Code.

Prosecutors should not make assumptions about the effect a prosecution is going to have on a victim or witness. If the prosecutor has valid concerns that the witness will not be up to giving evidence, **wherever possible** the witness should be asked what their views are.

People with a learning disability are usually experts in their **own** strengths and support needs. If they are required to attend court as a witness they are usually best placed to decide whether or not they will be able to cope with giving evidence in court.

People with a learning disability will know if having support will help them if they are asked to give evidence in court. If they think that they need support, they will know what sort of support will be best for them.

The prosecutor will ask either the Witness Care Officer assigned to the case or the police officer in the case to ask the witness. The witness should be asked what adjustments can be made to allow them to give their best evidence.

Equally, prosecutors should ask themselves "what support can we offer this witness to ensure that they are able to give their best evidence?". The support should take into account any views expressed by the witness.

In some cases, parents, family members, friends and carers may be well placed to offer a view about the type of support that could assist the witness. But sometimes it might not be appropriate to ask for their view. For example where the parents, family members, friends or carers are suspected of being involved in the alleged crime.

Medical records

Information about a person's health and treatment for ill health is confidential and potentially sensitive.

If the police, or a prosecutor, ask to see a person's medical records, that person must first be asked if they agree to those records being handed over and should be told what the reason is for the request and what can happen to the records if they are handed over.

The prosecutor will have to consider medical records in the same way as any other evidence and decide if it has any bearing on the case. If it does, the prosecutor may wish to use it to support the case.

If the prosecutor decides that the evidence does not support the prosecution case, or is not "relevant" (has no bearing on the case), he or she will have to decide if the material has to be given to the defendant and his/her legal team. This procedure is known as disclosure. There are strict rules about how we make decisions about disclosure. Evidence will only be disclosed if it is legal to do so and the rules permit it.

If a defendant asks to see details of a person's medical history, the judge in the case will need to make a decision whether this is really necessary to make sure the trial is fair. Before making that decision, the person whose medical records are being asked for will be told, and will be given the chance to say what he or she wants to happen to those records.

Frequently Asked Questions

Q. What happens if a prosecutor wants details of my medical history, or any records about counselling or therapy?

A. You will be told why the prosecutor wants to see the records and what might happen to them. You will be asked if you agree to the prosecutor seeing your records.

Q. If a defendant asks to see my medical records, can I object?

A. You will be asked if you agree to the defendant seeing your record. If you don't agree, you will have the chance to tell the court why. It is up to the court to make the final decision.

Q. Is there more information available about how the CPS will deal with my medical records?

A. We will issue Legal Guidance for prosecutors to help them when making decisions in cases involving people with a learning disability. This will include guidance on how to deal with a person's personal medical details.

Disability hate crime

This section explains what is meant by disability hate crime

There is a part of the Criminal Justice Act 2003 – Section 146 – that says that some crimes can be classed as disability hate crimes. A disability hate crime is any sort of crime which is made worse if someone is targeted because of a disability. The Act describes this behaviour as 'hostility'.

Any type of crime can be a disability hate crime but we have to satisfy the court about two things. First, that someone has committed a **crime** (a burglary, for example). Second, that the crime was a **disability hate crime.**

If someone pleads guilty to, or has been found guilty of, a disability hate crime then the judge or magistrates must treat this as something that makes the offence more serious when they decide on sentence.

In this Act 'disability' means "*any physical or mental impairment*". This is the language that is used in the Act. It includes people with learning disabilities.

If the prosecutor believes that there is evidence of hostility then the prosecutor must bring this to the attention of the judge or magistrates who will decide what punishment should be given to the person responsible.

Some examples of disability hate crimes:

Example 1 – a person with a learning disability is hit by someone who, immediately before hitting that person, makes offensive and hostile comments about people who have learning disabilities.

Example 2 – the parents of a teenage boy with a learning disability are attacked by someone in the street. This person had previously made offensive and hostile comments on social networking websites about the couple and their son, commenting in particular upon the son's learning disability. The person claimed that their son's presence was bringing down the value of houses in the neighbourhood.

This section gives more detail about disability hate crimes

Section 146 of the Criminal Justice Act 2003 applies to offences committed in either of the following circumstances:

a) At the time of committing the offence or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on a disability or presumed disability of the victim.

For example, an assault upon a person who has a learning disability by an offender who, immediately before hitting the victim, makes a derogatory and offensive comment about people who have learning disabilities.

OR

b) The offence was motivated (wholly or partly) by hostility towards persons who have a disability or a particular disability.

For example, a minibus known to be used by people with learning disabilities is damaged and graffiti sprayed on it. The minibus is owned by the local council. The graffiti makes it plain that the offenders do not approve of the bus being used by people with learning disabilities.

It is important to note that **a** and **b** above are alternatives. So, if we can prove that hostility was demonstrated at the time of the offence we do not have to prove that the offence was motivated or caused by hostility.

Some crimes are committed against people with learning disabilities for reasons other than hostility towards their disability. It could be because the person committing the offence sees the person with learning disabilities as someone who is vulnerable or easier to take advantage of.

For example, someone enters a store, clearly upset and distracted. Their distress is obvious to others in the shop. They buy a newspaper for £1 and hand over a £10 note saying 'I'm sorry, I only have a £5 note'. The shopkeeper sees the £10 note,

gives change for a £5 note and pockets the £5 difference. The shopkeeper has stolen from someone and has taken advantage of their vulnerability.

In cases like these, the judge or magistrate must bear in mind the level of 'culpability' or fault of the offender and the harm caused or risked being caused to the victim. The level of fault is considered to be higher where the offender deliberately targets a vulnerable victim.

Also, where a victim is in a particularly vulnerable situation, this may indicate a more than usually serious degree of harm.

In the case of the shopkeeper example given above, Section 146 of the Criminal Justice Act 2003 does not apply, as, on the evidence available, we cannot show that the offence was accompanied by a demonstration of hostility or motivated by hostility towards someone's disability. But the sentencing court will take into account the victim's vulnerability.

Frequently Asked Questions

Q. Where can I find out more about disability hate crime?

A. You can find further details in our public policy statement Policy for Prosecuting Cases of Disability Hate Crime available in the Publications section on our website at www.cps.gov.uk. Copies can be requested from CPS Communication Branch, phone 020 7796 8442 or email publicity.branch@cps.gsi.gov.uk

Q. Is there easy read information about disability hate crime?

A. Yes. An easy read version of our public policy statement about disability hate crime is available in the Publications section on our website at www.cps.gov.uk. Printed copies can be requested from CPS Communication Branch, phone 020 7796 8442 or email publicity.branch@cps.gsi.gov.uk

The rights of victims and witnesses to a good and fair service

This section gives information about the responsibilities that the CPS has towards victims and witnesses

In the Annex C called 'Progress of a criminal case' we show how this fits into the criminal justice process.

The Prosecutors' Pledge

This is a document that explains what the CPS will do for all **victims**. There are ten pledges – or promises – which prosecutors should bear in mind throughout the progress of a case.

Of particular importance for people with learning disabilities is the promise that prosecutors should 'protect victims from unwarranted or irrelevant attacks on their character and may seek the courts intervention where cross examination is considered to be inappropriate or oppressive'.

Put simply, this means that the prosecutor must act quickly so that the court can make sure that a victim is not asked questions that:

- are not allowed, for example about the witness's learning disability where this is not relevant to the case;
- he or she might not understand, for example where the court has been told about a witness's communication needs;
- are over-aggressive or bullying in nature, for example where a witness's learning disability is used to confuse the witness or used expressly to cause harm.

The Code of Practice for Victims of Crime

Known as the 'Victims' Code' this sets out the minimum standard of service that **victims** of crime can expect from the CPS, police, Witness Care Units and courts, amongst others.

The most important purpose of the Victims' Code is to make sure that victims of crime are provided with prompt and accurate information about their case. For instance, victims will be given information about court hearing dates, the outcome of pre-trial hearings, the verdict and sentence.

The Victims' Code applies to victims only – it does not set out obligations to witnesses.

The Victims' Code is a government document, which a number of agencies (including the CPS) have to follow.

The Witness Charter

This sets out the standards of service which all **witnesses** can expect if they are a witness to a crime or an incident. It sets out what help and support each witness can expect to receive at every stage of the criminal justice process from all the agencies and lawyers involved. But it does not cover the role of judges and magistrates.

Examples of some of the promises made in the Witness Charter are:

- if you are vulnerable or intimidated you will be asked whether you would like special support;
- if you have to go to court you will be given practical details about the court where you will be giving evidence (for example, court opening times, where the court is, information about parking);
- you will be offered the chance to visit the court before the trial.

If a witness is also a victim they will also have the additional rights set out in the Victims' Code.

The Charter is a government document, which a number of agencies have to follow.

Victim Personal Statements

Victims of crime and witnesses to crime are asked to make a witness statement to the police. This statement may be in writing or may be video recorded. It will be used as evidence in the case.

Victims of crime can, if they want, make an **extra** statement. This is called a Victim Personal Statement. It has a different purpose from the witness statement described above.

The purpose of the Victim Personal Statement is to give the victim (or the victim's family in some cases) the chance to explain the effect that the crime has had on them physically, emotionally or financially.

The Victim Personal Statement can also provide extra information, such as:

- whether the crime has had an impact upon the victim's independent lifestyle;
- whether the victim feels vulnerable or intimidated;
- if the victim is worried about the defendant being given bail;
- information about any compensation that the victim might wish to claim for.

The Victim Personal Statement will be read by the prosecutor. But it will also be seen by other people including the defendant and their solicitor as well as the judge or magistrates.

It is for the victim to decide whether they would like to make a Victim Personal Statement. The victim does not have to make a Victim Personal Statement if he or she does not want to. The police will ask the victim if he or she would like to make this additional statement.

You can find further details about Victim Personal Statements in the Legal Resources section, under Legal Guidance, on our website at www.cps.gov.uk

Frequently Asked Questions

Q. I am a victim and I don't think that the prosecutor has followed the Prosecutors' Pledge or the Victims' Code. What can I do?

A. You should write to the CPS office which dealt with the case. You should outline why you think the prosecutor did not follow the Prosecutors' Pledge or the Victims' Code. Any complaints will be dealt with under our complaints procedures. If your complaint is about the Victims' Code, and you remain dissatisfied, you may ask your Member of Parliament to refer the case to the Parliamentary Ombudsman.

Where can I get more information about my rights as a victim or witness?

- CPS website - www.cps.gov.uk
- Code for Crown Prosecutors - 'the Code'
- Direct Communication with Victims Scheme
- Prosecutors' Pledge
- Code of Practice for Victims of Crime - 'Victims' Code'
- Witness Charter

You can find further details on our website at www.cps.gov.uk Copies of the Code and Prosecutors' Pledge, as well as information about the availability of alternative formats and translations, can be requested from CPS Communication Branch, phone 020 7796 8442 or email publicity.branch@cps.gsi.gov.uk

Support for victims and witnesses

This section gives information about the support that is available to help victims and witnesses to give their best evidence

We also explain who is responsible for making sure that the support is requested and made available – listed in Annex D.

Witness Care Units

Every CPS Area has at least one Witness Care Unit. These are run and staffed jointly by the CPS and the police. Witness Care Officers work in the Witness Care Units.

Witness Care Officers are not lawyers or police officers. Their job is to provide a single point of contact for witnesses. They also make sure that witnesses have the support they need to let them give their best evidence.

Witness Care Officers provide information to witnesses about the progress of court cases. They also provide information about witnesses to the court and to the prosecutor.

The sort of information provided to the court could be, for example, the dates when a witness is on holiday. This information helps the court to list a case for trial on a date when the witness is available.

The sort of information provided to the prosecutor could be, for example, whether the witness requires an interpreter or whether the witness would like the prosecutor to apply to the court for 'special measures'.

Special measures

For some people the process of giving evidence in court can be particularly difficult. In some cases witnesses who are vulnerable or intimidated can be helped to give their evidence in the best possible way. In criminal cases this is known as 'special measures'.

Special measures is the term for different ways of giving evidence. Special measures may make the experience of giving evidence less stressful for witnesses.

The police officer and prosecutor have to decide whether to apply to the court for any of the special measures listed below. But the views of the witness must also be considered. The police officer should explain special measures to the witness and make a note of their views. This will help in the discussion between the prosecutor and the police officer.

Not everyone is able to have the assistance of special measures. There are certain rules that must be met before an application can be made to the court. It is for the judge or magistrates to decide whether to allow a witness to have a special measure.

Special measures include:

- video recorded evidence – the evidence of the witness is recorded on video weeks or months before the trial and played to the court at trial;

- the use of screens around the witness box to prevent the witness from having to see the defendant;

- giving evidence using a television link – the witness can sit in a room away from the courtroom and give their evidence via a live television link to the courtroom. The witness will be able to see the courtroom and those in the courtroom (including the defendant) will be able see the witness on a television screen;

- evidence given in private – this is when members of the public are not allowed in the courtroom; and

- being helped to give evidence in court by an intermediary. An intermediary is someone who can help a witness understand the questions that they are being asked, and can make his or her answers understood by the court. There is more information about intermediaries later in this section.

The police and the prosecutor should consider whether a witness would benefit from special measures as early as possible.

The police officer should ask the witness if they would like to meet the prosecutor to talk about special measures. More information about this meeting ('Witness special measures meetings') is given later in this section.

If an application for special measures is made, it is for the **judge or magistrate** to decide whether or not the special measure applied for will be allowed. They have to decide whether the rules for special measures have been met. This is what the law says.

The Witness Care Officer will tell the witness if special measures have been allowed by the court.

Even if special measures are not allowed, or if a witnesses who has a learning disability doesn't want or need special measures, they might want some other support that will make it less stressful when going to court, like knowing that a friend or supporter can go to court with them, and can sit in the court room when they give evidence. The police officer can let the prosecutor know what might help. The prosecutor can then ask the court to allow it.

Intermediaries

An intermediary is someone who can help a victim or witness have their say. An intermediary can help someone to:

- understand questions that are being asked; and
- make sure that the answers given by that person are understood.

An intermediary can help a witness to understand and answer questions asked by the police or by lawyers in court. So, an intermediary could assist a witness when he or she gives a statement to the police. And an intermediary could also help a witness to give evidence in court.

An intermediary can be used if a witness finds it hard to understand questions from the police or lawyer **or** the police or lawyer find it hard to understand the witness's answers.

An intermediary is not the same as an 'appropriate adult'.

An intermediary will not think up answers for a witness – the answers have to be those of the witness.

An intermediary is one of the special measures described above. The police will make the arrangements for an intermediary. The final decision about whether an intermediary can be used to help a witness to give evidence in court is made by the judge or magistrate.

You can find further details about intermediaries in the Legal Resources section, under Legal Guidance, on our website at www.cps.gov.uk

Witness special measures meetings

These are meetings between the witness and the prosecutor to talk about special measures. They do not happen in every case involving vulnerable and intimidated witnesses. But if a vulnerable or intimidated witness asks for a meeting with the prosecutor to discuss special measures it should take place.

The reason for the meeting with the prosecutor is to talk about what special measures can or will be applied for. The prosecutor will also be able to tell the witness about court procedure.

The prosecutor will **not** be able to talk about the evidence at this meeting.

The witness can come to the meeting with a relative, carer or supporter. If an interpreter or intermediary is required they will also need to attend.

The meeting can be held at a CPS office, a police station or the courthouse where the case will be heard. If a witness has particular access or other requirements then the prosecutor should consider holding the meeting somewhere else, for example at social services premises.

The arrangements for the witness special measures meeting will be made by the police, the Witness Care Unit and the prosecutor.

The witness will not have to make any of the arrangements.

You can find further details about witness special measures meetings in the Publications section on our website at www.cps.gov.uk. Printed copies can be requested from CPS Communication Branch, phone 020 7796 8442 or email publicity.branch@cps.gsi.gov.uk

Pre-trial witness interviews

If a prosecutor has concerns about the reliability of a witness's evidence he or she can invite the witness to attend a 'pre-trial witness interview'.

A pre-trial witness interview can take place in any case where the prosecutor needs to be sure about the reliability of a witness's evidence. It can also take place if there is some complicated evidence that the prosecutor would like the witness to explain in more detail.

The witness can bring a friend or supporter to the pre-trial witness interview. Travel expenses and loss of earnings will be paid to the witness and his or her supporter. A witness does not have to attend a pre-trial witness interview if he or she does not want to.

A pre-trial witness interview is not the same as a witness special measures meeting. One of the main differences between the two is that the prosecutor can ask the witness questions about their evidence at a pre-trial witness interview.

You can find further details about pre-trial witness interviews in the Victims and Witnesses section, under Victim and Witness resources on our website at www.cps.gov.uk

Witness Service

Victim Support – which is a charity – runs the Witness Service in every criminal court in England and Wales. The Witness Service helps:

- witnesses who are called to give evidence;
- victims of crime and their families and friends attending court for any reason;
- children and adults.

The Witness Service is free and independent of the police, CPS or the courts.

Witness Service staff and volunteers can offer witnesses:

- someone to talk to in confidence;
- a chance to see the court beforehand and learn about court procedures (also known as 'pre-trial visits');
- a quiet place to wait at court;

- practical help (for example, with expense forms);
- a chance to talk over the case when it has ended and to get more help or information.

Further details about the Witness Service are available in the Services for Witness section on their website at www.victimsupport.org.uk.uk

Frequently Asked Questions

Q. I don't think that the prosecutor has followed the Prosecutors' Pledge. What can I do?

A. You can complain to the CPS Area that dealt with your case. Our policy on dealing with complaints is available in the Publication section under Communications Policy and Guidance on our website at www.cps.gov.uk

Q. If I am accused of a crime can any of these measures be used to help me?

A. No. The support provided by the Witness Care Units, Victim Support and the Witness Service is for victims and witnesses only. Special measures and intermediaries are only available for victims and witnesses who find the process of giving evidence in court particularly difficult.

Q. I don't need any of the special measures to help me give evidence, but it would help me if a self advocacy supporter came with me to the court hearing. I find it hard to concentrate and I am worried that I will panic and get mixed up if I am being asked questions for a long time. Can anything be done to make it less stressful for me?

A. It is important that the prosecutor knows what your worries are and what might help. Tell the police officer dealing with your case, and he or she should tell the prosecutor.

For example, if having a break every 10 minutes would help you when you are in court, or knowing that your supporter is sitting in the court room is important to you, the prosecutor can let the court know this and can ask the court to allow this to happen. It is up to the court to say yes.

Where can I get more information about support to help me give evidence in court?

- CPS website - www.cps.gov.uk
- Code for Crown Prosecutors - 'the Code'
- Direct Communication with Victims Scheme
- Prosecutors' Pledge
- Code of Practice for Victims of Crime - 'Victims' Code'
- Witness Charter

You can find further details on our website at www.cps.gov.uk Copies of the Code and Prosecutors' Pledge, as well as information about the availability of alternative formats and translations, can be requested from CPS Communication Branch, phone 020 7796 8441 or email publicity.branch@cps.gsi.gov.uk

Sentencing

This section tells you what happens when someone is found guilty of a crime or pleads guilty to a crime

When someone pleads guilty to, or is found guilty of a crime, the judge or magistrates have to decide upon that person's punishment. This is known as 'sentencing'.

There are many different sentences ranging from prison to a fine or doing unpaid work. The types of sentence and options available to the court are too numerous to set out in this document.

You can find out more about the different types of sentence in the Victims and Witnesses section, under Going to Court on our website at www.cps.gov.uk

We will give the judge or magistrate all the information that they need to make additional orders along with the main sentence. For instance, if the victim is claiming compensation for damage caused to his or her property we will tell the judge or magistrate how much this is.

If the crime against you is proved to be a disability hate crime this makes the crime more serious and the sentence should be more severe. We will make sure that the judge or magistrate has all the information that they require.

Before being sentenced the defendant's lawyer is allowed to give the judge or magistrates some information about the defendant. This might be something about the defendant's background or the reason why he or she committed the crime. This is known as 'mitigation'.

If the defendant's lawyer says things that are incorrect about the victim, or says things that put the victim in a bad light, we will challenge this with the judge or magistrate. This is part of the Prosecutors' Pledge that is referred to earlier in this document.

This section tells you how sentencing may directly involve you

If the defendant is sentenced in an adult court (magistrates' court or Crown Court), you can attend court when the defendant is sentenced should you so wish. The Witness Care Officer dealing with your case will be able to tell you when this will be. Youth courts are generally closed to the general public.

If you have been injured or your property has been damaged or stolen you can make a claim for compensation from the defendant. This will be handled by the police and the CPS. To do this you will be asked to provide evidence of the injury and for receipts or anything that can prove the value of the things damaged. The prosecutor will tell the court how much is claimed

and ask the judge or magistrates to order compensation to be paid. It is then up to the court to decide how much compensation should be awarded.

You will be told the result (guilty or not guilty) and the sentence by the Witness Care Officer who has been dealing with your case.

If the defendant has been ordered to pay you compensation you will be contacted by the court who will tell you how and when this will be paid. The defendant should not contact you directly about this. The court is responsible for collecting the money and making sure the defendant pays the compensation on time.

Frequently Asked Questions

Q. What happens after the defendant is sentenced?

A. The defendant may appeal against his conviction and/or sentence. The Witness Care Unit will keep you informed of any appeals by the defendant.

Q. Can I appeal against a decision made by the court?

A. In a limited range of serious offences it is possible for a victim to ask the Attorney General to consider appealing a decision made by the court. If the victim thinks that the sentence is unduly lenient but the prosecution disagrees, the victim can ask the Attorney General to consider it, but this has to be done within 28 days of the sentencing decision.

Some other questions you may have

Q. What should I do if I don't want the case to go to court?

A. You should tell the police. Sometimes victims will ask the police not to proceed further with the case and say that they no longer wish to give evidence. There may be a number of explanations for this. This does not mean that the case will automatically be stopped. We will ask the police to find out why you don't want the case to go to court before we decide what action to take. If you withdraw your complaint, this does not mean that you can't call the police if it happens again.

Q. Will I be seen by the defendant and the public when I give evidence?

A. Yes. However, some victims and witnesses are eligible for "special measures". The measures enable victims and witnesses to give their best evidence. An example of a special measure is allowing the use of screens in a courtroom to prevent a victim or witness from seeing the defendant. Another special measure allows for the clearing of the public gallery in sexual offence cases or cases involving intimidation. The judge will decide whether a victim or a witness can have special measures.

Q. Will my case be reported in the newspaper or on the television?

A. It may be. In some cases, the law allows us to apply for an order preventing the reporting of certain details of witnesses in the media that may lead to their identification.

Q. Will someone be with me when I give evidence?

A. We can ask but it is up to the court to decide.

Q. What should I do if I am being intimidated or frightened by the defendant or their friends or family?

A. You should contact the police.

Annex A: Glossary - words explained

Here is a list of some of the words that are used when we are talking about crimes and going to court.

Accused – somebody charged with a crime.

Admitted – saying that you did something.

Adjourned – a court case delayed until another date.

Advocate – someone who speaks up for somebody else in court.

Alleged – saying that something has happened.

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

Application – asking for something.

Appropriate adult – someone who supports and advises a young person or vulnerable adult in police custody. This person is different from a solicitor and does not give legal advice.

Arrested – the police making someone go to the police station because they think that person may have done a crime and they want to question them.

Associate Prosecutor – a person who has been trained to present the prosecution case in the magistrates' court.

Attorney General – the chief legal advisor to the Government.

Bail – the person accused of a crime not being in jail before their trial. Sometimes there may be conditions. For example, the accused person may not be allowed to stay out after dark. Or they may have to report to a police station every day or week.

Barrister – a lawyer who speaks in court.

Case – an investigation and any legal work that follows a complaint about a criminal offence.

Charge / charged – this is what we call the crime when someone is in court.

Code for Crown Prosecutors (the Code) – a document that sets out how the CPS makes decisions about cases.

Compensation – a sum of money to make up for or make amends for loss, breakage, hardship, inconvenience or personal injury caused by another.

Conviction – this is when the judge or magistrate has decided that someone has done a crime.

Court clerk – someone who helps the judge and makes sure that cases run smoothly.

CPS – Crown Prosecution Service.

Crime – breaking the law. There are different sorts of crimes, such as theft, robbery and assault.

Criminal law – criminal law means the rules that help to keep us safe and secure. This includes rules against harming us, our mind or our property and against damaging or stealing our possessions.

Cross-examination – this is when someone is asked questions in court by the lawyer for the other side. Prosecution witnesses will be cross-examined by the defence lawyer. Cross-examination happens after someone has given 'evidence in chief'.

Crown Court – the court where serious criminal cases are heard. It hears more serious cases than the magistrates' courts. Sometimes, the magistrates' court will ask the Crown Court to take over a case.

Crown prosecutors – lawyers employed by the CPS who review, prepare and prosecute cases in court.

Custody – jail or prison.

Defence – the explanation given by the defendant explaining why he or she is not guilty of a crime.

Defence witness – a person who gives evidence at court to support the defence case.

Defendant – the person accused of a crime and appearing before the court. If someone has been accused of a crime they will defend themselves by saying that they did not commit the crime.

District Judge – a legally qualified person who sits in place of, or with magistrates. Previously known as a stipendiary magistrate.

Dock – the place in court where the defendant sits or stands when the case is being heard.

Evidence – facts used to decide whether someone is guilty or not guilty of a crime. This can include witness statements, photographs, closed circuit television footage and maps.

Evidence in chief – this is where a witness gives evidence in a trial and tells the judge and jury or magistrates what they know about a crime. It happens before cross-examination.

Gowns – the black cloak worn by lawyers in the Crown Court. They also usually wear a white horsehair wig.

Guilty – when it has been decided by the jury or magistrates that someone has committed a crime, or the person has admitted it.

Hearing – when a criminal case is discussed in court. There can be many hearings before a case is finally dealt with.

Innocent – when it has been decided by the jury or magistrates that someone did not commit a crime. It is the opposite of guilty and sometimes referred to as 'not guilty'.

Intermediary – a person qualified to help witnesses with communication difficulties to give evidence in court.

Intimidated – you would feel intimidated if someone makes you feel afraid.

Investigation – finding out the facts. This is usually done by the police.

Judge – the person in charge of a trial in the Crown Court who makes sure that the trial is fair and the law is followed. The judge sentences people who have been found guilty or who have admitted that they are guilty.

Jury – 12 ordinary people who listen to trials at the Crown Court and decide whether the person charged is guilty or not guilty.

Lawyers – people with legal qualifications who speak in court.

Live link – a closed circuit television or video link that lets witnesses give evidence from somewhere away from the courtroom. The witness can be seen and heard by people in the courtroom and can also see and hear what happens in court.

Magistrate – a magistrate is a type of judge. Magistrates are not trained as lawyers and do not work full time as magistrates. They are trained to make judgements in legal cases.

Magistrates' court – magistrates' courts deal with three types of cases:

- **Summary** – these are less serious crimes, like driving carelessly. These are crimes where there is no right for trial by jury and the case will be heard by magistrates.

- **Either way** – these are cases that can be heard in the magistrates' court or the Crown Court. The defendant can ask for the case to heard in the Crown Court or the magistrates can decide that the case is too serious for them to deal with.

- **Indictable only** – these involve serious cases like murder and robbery. These sorts of cases can only be heard at the Crown Court. The magistrates will quickly send the case to the Crown Court to be heard, dealing only with things like the defendant's bail.

Negotiation – trying to agree something.

Not guilty – a defendant pleads not guilty if he or she denies the charge. A defendant is found not guilty if the magistrate or jury decide the prosecution has not proved its case.

Oath – a promise.

Offender – someone who has broken the law, also sometimes called the accused, defendant or suspect.

Offence – the law that has been broken. Sometimes referred to as a crime.

Plead – to say if you did or did not commit a crime.

Previous convictions – a list of crimes that someone has committed in the past.

Proceedings – a court case.

Prosecution – when the CPS takes someone to court.

Prosecution witness – a person who gives evidence at court to support the prosecution case.

Prosecutor – a crown prosecutor, barrister or associate prosecutor who tries to prove that the defendant is guilty of committing a crime.

QC – a top lawyer; the letters are short for 'Queen's Counsel'.

Sentence – the punishment that a judge or magistrate decides a defendant should have when they have been found guilty.

Solicitor – a lawyer who is trained to give advice and prepare cases and defends (or represents) people in the magistrates' court.

Special measures – ways in which a witness can be helped to give evidence in court, such as using a screen, or giving evidence from a room away from the court room over a TV link.

Statement – saying what happened in relation to a crime. Usually it is written down and then signed by the person saying what has happened. Sometimes the statement may be video recorded.

Suspect – the person the police believe committed a crime.

Swearing in (oath) – making a promise in court.

Therapy – this includes psychotherapy and counselling.

Trial – a court case where evidence is heard and witnesses are called.

Usher – the people in court who make sure that everyone is where they should be.

Victim – a person who has been directly subjected to criminal conduct, or, where a person has died or has been disabled as a result of criminal conduct, a victim's family representative.

Victim Support – a national charity that supports victims of crime and runs the court Witness Service.

Video evidence – this is the same as evidence in chief except that the witness's evidence is recorded on tape before the trial. At the trial the video is played to the judge and jury or magistrates. Not everyone can give their evidence in this way. There are special rules that have to be met before video evidence can be played.

Vulnerable witness – a vulnerable witness is someone who is under 17 years old OR has a learning disability OR has mental health issues OR has a serious disability.

WCU – Witness Care Unit, run and staffed by the CPS and police who care and support victims and witnesses.

Wigs – sometimes worn by lawyers in the Crown Court, made of white horsehair.

Witness – a person who saw a crime happen.

Witness box – the place a person stands in the court room when they give evidence.

Witness Care Officer – a police officer or member of CPS staff who works in the Witness Care Unit and who gives help and information about the case to a victim or witness.

Witness Service – a national service provided by the charity Victim Support. There are Witness Service staff in every Crown Court centre and magistrates' court in England and Wales.

Youth court – a criminal court where cases involving young people accused of crimes are heard.

Annex B: Reference list

Code for Crown Prosecutors

Code of Practice for Victims of Crime

Direct Communication with Victims

Intermediaries

Policy for Prosecuting Cases of Disability Hate Crime

Pre-trial witness interviews

Prosecutors' Pledge

Special measures

Supporting victims and witnesses with a learning disability

Victim Personal Statements

Witness Charter

Witness special measures meetings

You can find further details on our website at www.cps.gov.uk
Information about the availability of printed documents and alternative formats can be obtained from CPS Communication Branch, phone 020 7796 8442 or email publicity.branch@cps.gsi. gov.uk

Annex C: Progress of a criminal case

Key: Police | CPS | CPS / WCU | WCU

Before charge

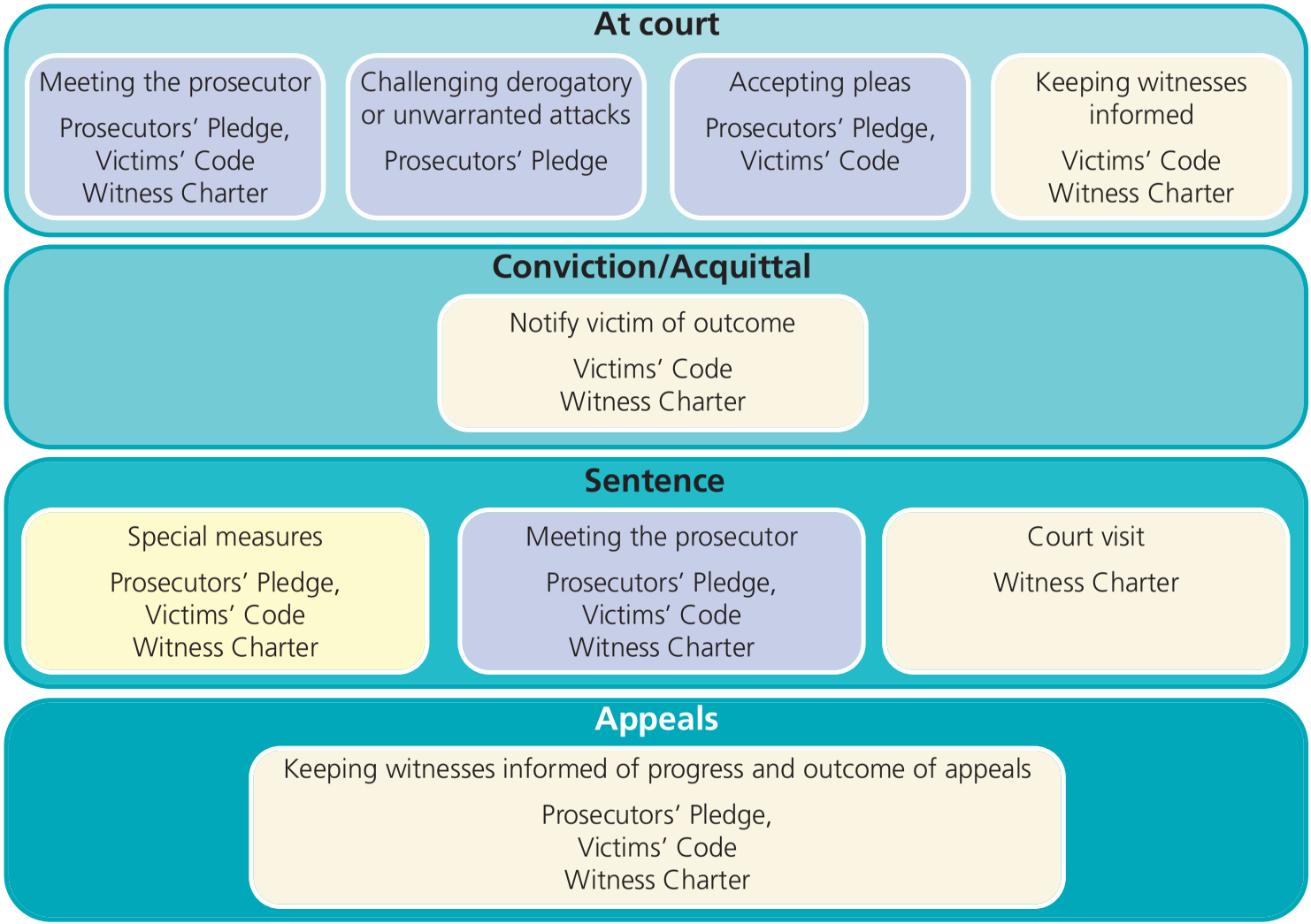
- Making a statement to the police
- Charging decision
  - Prosecutors' Pledge,
  - Code for Crown Prosecutors
  - Victims' Code
- Explaining our decisions
  - Prosecutors' Pledge
  - Victims' Code

After charge

- Explaining decisions to drop or alter charges
  - Prosecutors' Pledge
  - Victims' Code
- Keeping victims and witnesses informed of progress
  - Prosecutors' Pledge,
  - Victims' Code
  - Witness Charter
- Explaining outcomes
  - Victims' Code
  - Witness Charter
- Special measures
  - Prosecutors' Pledge,
  - Victims' Code
  - Witness Charter

Preparing to go to court

- Special measures
  - Prosecutors' Pledge,
  - Victims' Code
  - Witness Charter
- Meeting the prosecutor
  - Prosecutors' Pledge,
  - Victims' Code
  - Witness Charter
- Court visit
  - Witness Charter


At court
Meeting the prosecutor
Prosecutors' Pledge,
Victims' Code
Witness Charter
Challenging derogatory or unwarranted attacks
Prosecutors' Pledge
Accepting pleas
Prosecutors' Pledge,
Victims' Code
Keeping witnesses informed
Victims' Code
Witness Charter
Conviction/Acquittal
Notify victim of outcome
Victims' Code
Witness Charter
Sentence
Special measures
Prosecutors' Pledge,
Victims' Code
Witness Charter
Meeting the prosecutor
Prosecutors' Pledge,
Victims' Code
Witness Charter
Court visit
Witness Charter
Appeals
Keeping witnesses informed of progress and outcome of appeals
Prosecutors' Pledge,
Victims' Code
Witness Charter

Annex D: Support organisations

Listed below are contact details for some of the organisations that support people with learning disabilities and provide information on issues affecting people with learning disabilities.

Ann Craft Trust
Centre for Social Work,
University of Nottingham, University Park
Nottingham NG7 2RD
Phone: 0115 9515400
Email: ann-craft-trust@nottingham.ac.uk

British Institute of Learning Disabilities
Champion House
Green Street, Kidderminster
Worcestershire DY10 1JL
Phone: 01562 723010
Email: enquiries@bild.org.uk

Change
Unit 41, Shine
Harehills Road
Leeds LS8 5HS
Phone: 0113 3880011
Email: info@change-people.co.uk

Dial
St Catherine's, Tickhill Road
Doncaster DN4 8QN
Phone: 01302 310123
Email: informationenquries@dialuk.org.uk

Downs Syndrome Association
Phone: 0845 2300372
Email: info@downs-syndrome.org.uk

Foundation for People with Learning Disabilities
9th Floor, Sea Containers House
20 Upper Ground
London SE1 9QB
Phone: 020 7803 1101
Email: fpld@fpld.org.uk

Mencap
England
123 Golden Lane
London EC1 0RT
Phone: 020 7454 0454

Wales
31 Lambourne Crescent
Cardiff Business Park
Llanishe
Cardiff CF14 5GF
Phone: 02920 747588
Email: information@mencap.org.uk

National Autistic Society
393 City Road
London EC1V 1NG
Phone: 0845 070 4004
Email: info@nas.org.uk

National Forum for People with Learning Disabilities
c/o PO Box 2100
Shoreham-by-Sea
West Sussex BN43 5UG
Email: info@nationalforum.co.uk

People First
Unit 3, 46 Canterbury Court
Kennington Park Business Centre
1-3 Brixton Road
London SW9 6DE
Phone: 020 7820 6655
Email: general@peoplefirstltd.com

RADAR
12 City Forum, 250 City Road
London EC1V 8AF
Phone: 020 7250 3222
Email: radar@radar.org.uk

United Response
113-123 Upper Richmond Road
London SW15 2TL
Phone: 020 8246 5200
Email: info@unitedresponse.org.uk

Voice UK
Rooms 100-106, Kelvin House
RTC Business Centre, London Road
Derby DE24 8UP
Phone: 01332 291042
Email: voice@voiceuk.org.uk

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