
Witness Charter

Bar Council – Consultation Response

Introduction

1. The Bar Council is the representative body of the Bar of Northern Ireland. Members of the Bar specialise in the provision of expert independent legal advice and courtroom advocacy. Access to training, experience, continual professional development, research technology and modern facilities within the Bar Library enhance the expertise of individual barristers and ensure the highest quality of service to clients and the court. The Bar Council is continually expanding the range of services offered to the community through negotiation, tribunal advocacy and alternative dispute resolution.
2. The Bar Council welcomes the opportunity to contribute to the DOJ's consultation on the new Witness Charter. The Department was able to provide the Bar with advance sight of the Charter in March 2016 and we appreciate that a number of our points have already been taken on board.
3. The Bar acknowledges the aim of the Charter in setting out the standards of care and entitlements that witnesses can expect to receive and the move to break the policy down into distinct sections detailing the individual journey that they are likely to undertake as their cases progress through the criminal justice process. We also accept the assertion in the introduction to the Charter that witnesses have a "legitimate interest in knowing how the system operates" and service providers must strive to ensure that they have all necessary information. The Bar's response is structured according to our comments on the substantive proposals outlined in each of the questions contained in the document.

Q1. Do you think that the 'witness journey' approach used in the Witness Charter is the right one?

4. The Bar believes that the witness journey approach and accompanying flowchart in section 5 are helpful for mapping the criminal justice system for witnesses. We welcome the move towards detailing the various key stages from reporting a crime and the police investigation to the court process and post-trial support which provides a useful visual aid for witnesses. It also might be helpful to link the flowchart explicitly to the relevant standards which apply at each stage beyond the general ones outlined in section 6, for example standard 7.1 on reporting a crime could be detailed beside the first box on witnessing a crime with standard 7.2 on making a statement to police linked to the second box in the flowchart.
5. We would also query whether the Department might consider creating separate witness journey diagrams for prosecution and defence witnesses which are clearly signposted given that the policy is directly aimed at these individuals. Such an approach will provide all witnesses with an improved ability to locate where

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they are in the criminal justice process, the service providers they will be dealing with and relevant information on support entitlements. This suggestion is explored further in response to consultation questions 6 and 7.

Q2. Do you have any comments on who the Witness Charter is for, i.e. prosecution, defence and expert witnesses?

4. The Bar notes that the Witness Policy directly addresses the witnesses of crime by aiming to set out the “standards of care and entitlements you can expect if you are a witness to a crime in Northern Ireland”. The Bar considers that the focus of the policy is primarily on prosecution and defence witnesses with expert witnesses less of a priority for inclusion in this document. We believe that it might be more appropriate for references to expert witnesses to be removed from this policy to lessen confusion for readers, instead focusing solely on prosecution and defence witnesses. This is the case with the Ministry of Justice’s Witness Charter published in December 2013 which outlines the standards of care for witnesses in the criminal justice system of England and Wales.
5. In addition, the Public Prosecution Service makes no reference to expert witnesses in its Victim and Witness Policy which was recently consulted on in June 2016. Meanwhile the PPS’s Code for Prosecutors published in 2016 only makes a brief reference to obtaining independent expert evidence in order to ensure informed decision making in court. Consequently, the Bar takes the view that it would be more appropriate for the Department to consider the issue of expert witnesses separately with a view to developing relevant guidance. Furthermore, this might also provide the Department with the opportunity to consider wider policy development around expert witnesses. The Bar highlighted in response to the Access to Justice 2 consultation that reform in this area could represent significant cost savings for the DOJ if appropriate measures are put in place to reduce the fees paid to expert witnesses.

Q3. Does the Witness Charter contain the key entitlements, standards and/or services that you would expect to see in it?

6. The Bar has no difficulty with any of the entitlements, standards or services detailed in the Witness Charter. We consider that the table at paragraph 34 provides a helpful quick overview of the expectations that each category of witness should have from service providers. In considering section 9 on giving evidence in court, we note that standard 9.1 states that a witness is entitled to meet the Public Prosecution Service Prosecutor or representative when possible. Whilst mentioned earlier in the document, it might be beneficial to reiterate here that the PPS often brings in independent barristers to handle the prosecution lists to avoid any potential confusion. It would also be beneficial to clarify that due to briefing practices, where there are multiple hearings of a case, it is unlikely that

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the same barrister will be instructed. This necessitates the repetition of their evidence and a lack of continuity which often cause stress for witnesses. The Bar notes the references at paragraphs 84 and 85 to delays, court listing arrangements and waiting times. We are supportive of steps being taken to reduce avoidable delay within the system and improve the administration of justice given the inevitable impact that this has on witnesses who are required to give evidence.

7. Furthermore, paragraph 91 explains that when a witness is giving evidence in court, “the Public Prosecution Service prosecutor, or defence legal representative, will seek the court’s intervention where they consider that the questioning by the defence is not appropriate or is aggressive”. The Bar considers that it would be worth adding here that representatives operate in accordance with professional Codes of Conduct which include their conduct in court. The Bar of Northern Ireland’s Code of Conduct is available online [here](#).

Q4. Is there anything that you think should be added to, or omitted from, the Witness Charter?

8. The Bar considers that it might be worthwhile adding a short statement to section 9 of the Charter recognising the important civic responsibility involved in providing evidence as a witness in a criminal trial which necessitates a duty of care of the part of the criminal justice system. The document might also highlight that all citizens owe a duty to each other to give such evidence as may be required in a court of law to ensure that prosecutions of the guilty are as effective as possible and that the innocent are not unfairly convicted.
9. However, we also believe that the Charter should note the caveat that this cannot detract from the fundamental principle that a defendant has the right to be presumed innocent until proven guilty. Often the liberty of a defendant is at stake alongside the protection of the public from crime; the preservation of these factors is best served by high quality advocacy within the adversarial system which allows barristers to freely put forward arguments from both sides before a judge and jury. Consequently, the evidence of witnesses must rightly be properly tested in court under cross-examination and no assumptions can be made in advance that their accounts are necessarily entirely accurate. The task of the criminal justice system is to achieve the proper balance between these sometimes conflicting rights which our members always strive to achieve.
10. Separately we note the description of the Public Prosecution Service contained in the overview of service providers in section 2. We welcome the emphasis on the PPS’s obligation to provide an independent, fair and effective service. In addition, the Bar notes that the “best interests” of victims and witnesses are taken into account in the decision making process. However, we also feel that it might be

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helpful to add that the PPS does not act as a legal representative for victims or witnesses involved in a case. This will help to explain to the intended audience that the PPS will not be reliant on approval from either victims or witnesses in the prosecution decision making process, ensuring that the organisation is not inhibited from making sensible but difficult decisions. More importantly, the role of independent counsel when advising or instructed by the PPS should also be clearly explained at this point in the document.

Q5. Do you have any other comments on the content of the Witness Charter?

11. Annex D entitled ‘who to contact if you are not satisfied’ lists a separate section at the end for ‘defence witnesses dealing with defence legal representatives’. The Bar considers that there is no need for this clarification and that the contact details for the Law Society and Bar of NI should be listed with the other bodies above, especially given that both prosecution and defence witnesses have the right to make a complaint about any barrister involved in their case. The present layout and description may cause confusion for readers as it is unnecessarily complicated. The address, telephone number and website for the Bar should also be laid out in a manner consistent with the format used to list the contact details for the Law Society. Furthermore, we would welcome clarification on the reason for the distinction between ‘internal investigation’ and ‘independent investigation’ in Annex D as readers may be confused as to their course of action should they not be satisfied.
12. In addition, the Bar of Northern Ireland’s Code of Conduct is referenced in the Charter at page 19 in standard 6.1. There is a footnote here containing a web link to the Code but this is already out of date. Therefore it would be more appropriate to direct readers to the Bar’s own website: <http://www.barofni.com/page/code-of-conduct> The Code of Conduct is often updated during the year and the most recent version will always be available here.

Q6. Do you think that the Witness Charter adequately sets out how it applies to each of the categories of witness? If not, do you consider that any further information should be provided?

13. The Bar considers that the summary table at paragraph 34 sets out a useful overview of the expectations that each category of witness should have from service providers. Further to our response to question 1, we consider that the Department should do more to ensure that the relevant sections for prosecution and defence witnesses are clearly signposted since the policy is directly aimed at these individuals. We appreciate the Department’s suggestion in the consultation document that splitting the respective journeys could lead to duplication and a lengthier document. However, it is already a very lengthy document at 55 pages

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and unnecessarily verbose at times. It also reads confusingly in places with many paragraphs qualified by beginning “if you are a prosecution witness” or “if you are a defence witness”; a quick search of the Charter shows the former is mentioned 27 times and the latter 26 times throughout it. Consequently, large sections of the document will become irrelevant for the reader depending on whether they are a prosecution or defence witness and there is a real risk that the Charter in its present form will be inaccessible for the vast majority of court users.

14. We believe that the relevant information needs to be simplified for the reader. At the very least the Department should consider recreating the most visual elements of the Charter in the form of the witness journey flowcharts which should be separated out for prosecution and defence witnesses. These could then perhaps be included in the useful summary information for both witnesses referenced in question 7.

Q7. The Witness Charter is a lengthy document. In light of this it contains a two page overview and flowchart. A summary document, easy read document and Young Person’s Guide to the Charter are also available. Following consultation the summary document will be translated into the six languages for which interpretation is most commonly used at police or court stage.

- (i) Are these documents useful?
(ii) Do they contain the right level of information?
(iii) Is there anything else that you think should be added to or omitted from them?
(iv) Have you any suggestions about improving them or making them more accessible?

15. The Bar welcomes the creation of a summary document and overview material outlined in the consultation. However, given our concerns mentioned in response to question 6 around the length of the document and the potential for this to compromise its practical application, we believe that the Department must do more to separate out the prosecution and defence witness journey more clearly. Alongside the creation of separate journey flowcharts within the Charter, there is also obvious potential for some simple visual graphics to be designed up which would be more accessible to prosecution and defence witnesses than the full document or policy summary. These could then be made readily available by the NI Courts and Tribunals Service and other service providers.

16. Looking to the summary of terms contained in the Charter, the Bar considers that Annex B is a useful addition for both prosecution and defence witnesses. However, there is a typing error on page 47 under defence legal representative which should read “in Crown Court cases a barrister”. We welcome the move to highlight the key words and phrases which are employed throughout the policy which require further explanation for those who may be unfamiliar with the criminal justice system, such as conviction, appeal, sentence, prosecutor, court,

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evidence, judge. The policy also references a range of support service providers, such as the Victim and Witness Care Unit, Victim Support Northern Ireland, NSPCC, Police Service of Northern Ireland and the NI Courts and Tribunals Service. The inclusion of Annex C to the policy with contact details for these organisations is also useful for those witnesses who may be coming into contact with the system for the first time. We consider that it will be key to include these definitions within the more easily accessible documents as these are more likely to be read than the lengthy Charter. We note the inclusion of a condensed version at the end of the summary document which is useful.

Q8. We are keen to ensure that as many people as possible are aware of the Witness Charter and the supporting documents. Do you have any suggestions on how we can best promote awareness of the Witness Charter?

17. The Bar would be content to distribute the Charter electronically to our members to make them fully aware of it. Considerable information is already on the NI Courts and Tribunals Service, NI Direct, Victim Support NI, and NSPCC websites which provide a range of information leaflets to victims and witnesses of crime. The simple visual graphics mentioned in question 7 or supporting online video material could be developed and promoted in partnership with organisations across the criminal justice system to communicate in a direct way what to expect and illustrate how a case is prepared, the role of witness evidence in the hearing and how witnesses should expect to be treated by service providers.

Q9. Do you have any comments on how best to take account of the views of witnesses on the operation of the Witness Charter?

18. The Bar considers that it would be useful for the Department to develop a feedback mechanism to ensure that the Witness Charter is operating as intended. The Bar notes the DOJ's 'Victim and Witness Experience of the Northern Ireland Criminal Justice System: 2008/09-2013/14'¹ publication which appears on the website from June 2014, incorporating five administrations of the NI Victim and Witness Survey during these years. We consider that this would be an appropriate means by which to survey witnesses on the operation of the Charter and would query whether the Department will be seeking to publish a more up to date version of this online in the future. We would also ask whether the DOJ will seek to do this in relation to the Victim Charter launched in 2015.

¹ Department of Justice, *Victim and Witness Experience of the Northern Ireland Criminal Justice System: 2008/09 – 2013/14*, June 2014 at <https://www.justice-ni.gov.uk/sites/default/files/publications/doj/victim-and-witness-ni-cjs-2008-09-2013-14.pdf> (last accessed 22 September 2016)