

**Public Prosecution Service
for Northern Ireland**

VICTIM AND WITNESS EXPENSES POLICY

Draft for Consultation



Independent, Fair and Effective



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Victim and Witness Expense Policy

Introduction

The Public Prosecution Service (PPS) is required to call the victims and witnesses of crime to court to give evidence in the prosecution of cases. For the purpose of this document, unless otherwise specified, when the term witnesses is used it refers to both victims and witnesses.

PPS will seek to have evidence 'agreed' by the defence where possible in order to relieve witnesses of the obligation to attend and minimise their inconvenience but this is not always possible.

When witnesses are required to attend court the PPS wish to make this process as easy for them as possible. PPS will pay travel and subsistence expenses and compensates witnesses for loss of earnings in attending, subject to daily capped rates. PPS also provides additional support services to witnesses who are considered to be particularly vulnerable in different ways.

Witnesses and other concerned parties (including family members) are free to attend court in any case on any occasion that they wish. However, PPS will only pay their expenses for the days on which the witnesses have been required to attend at the request of the PPS. Hence PPS will ensure witnesses are given clear instruction as to when they are required.

This document sets out PPS policies with regard to inviting and supporting members of the public as witnesses in the prosecution of crimes and reimbursing their expenses. This policy has been drafted in compliance with victims' rights as set out in the EU Victims Directive, and the Victim's Charter.

Section 1

The Victim and Witness Care Unit

The Victim and Witness Care Unit (VWCU) rolled out across Northern Ireland during 2012-14 and acts as a dedicated single point of contact for the victims and witnesses of crime. The Unit was a joint initiative between PPS and the Police Service for Northern Ireland (PSNI) and will communicate with witnesses by their preferred means of contact, providing timely and relevant information.

The primary function of the VWCU is to keep witnesses fully informed of the progress of their case. All witnesses will be appointed a Case Officer from within the team who will assess their individual needs and where appropriate offer access to additional services or referrals to other service providers.

The Case Officer will act as the witness' single point of contact within the PPS. In addition to their initial assessment, they can be contacted for updates during the life of the case and will formally notify the witness of the outcome.

This policy is for guidance only and to ensure consistency of treatment but decisions regarding payment of expenses, where an issue arises, will be determined on a case by case basis. The VWCU can assist in determining what services and expenses are applicable.

Section 2

The Types and Definitions of Witnesses

2.1 Attendance at Court

PPS will compensate victims and witnesses for expenses they have incurred in attending court to give evidence in prosecutions resulting from police investigations.

PPS will only pay expenses for the days on which witnesses are requested to attend and will make clear to witnesses when they are no longer required.

PPS will also pay expenses for:

- any occasion, outside of court days (whether pre or post prosecution decision), where a witness is required to meet to consult with PPS staff or prosecuting Counsel; or
- A court familiarisation visit for witnesses, if judged helpful. This allows witnesses to visit the court house in advance of the trial in order to familiarise themselves with the layout and running order.

PPS can pay some travel and accommodation costs, such as air fares and hotels, on behalf of witnesses if required but in most instances PPS will reimburse the individual for costs they have already incurred on the basis of actual receipts or within pre-set limits.

2.2 Witness Types

When PPS generate a Witness Invitation to Attend Court it will automatically generate an expense claim form which will also be sent out.

There will be 5 main witness types:

- Ordinary Witness (including Victims) – this status applies to all witnesses other than those giving evidence in a professional capacity;
- Professional Witness – a witness giving evidence in a professional capacity as part of their previous involvement in the case e.g. family doctor;

- Independent Expert Witness – an individual or organisation who has been sourced by Police or PPS to provide independent expert evidence in the case and has no prior involvement in the matter;
- Police Witness;
- Public Sector Witness – who receive an invitation but no claim form.

Different witness types will be entitled to different support and expenses.

Section 3

Ordinary Witnesses

3.1 Ordinary Witnesses

Victims of crime and most prosecution witnesses are considered to be **Ordinary Witnesses**. The evidence they give is not based on a professional opinion but rather on their observations, experiences and what they have heard.

Expenses are based on pre-determined rates which are consistent with those paid in England and Wales. Travel expenses are generally based at public transport rates. Expenses will be paid for each day that the witness is requested to attend court to give evidence. The witness may choose to attend on additional dates at their own expense.

Sometimes victims or witnesses of a crime have additional difficulties in relation to giving evidence and may be considered as Vulnerable or Intimidated. Both these classifications are defined under the Criminal Evidence (NI) Order 1999 in order to establish eligibility for Special Measures, though PPS may adopt a wider view of when a witness can be classed as vulnerable or intimidated for expense purposes. PPS will give these witnesses additional support to attend court.

3.2 Vulnerable Witnesses

Witnesses are defined under the Criminal Evidence (NI) Order 1999 as vulnerable where:

- They are under 18 years of age at the time of the hearing of the application for special measures; or

- The quality of his/her evidence is likely to be reduced because of having:
 - A “mental disorder”;
 - A “significant impairment of intelligence and social functioning”;
 - A “physical disability” or a “physical disorder”.

Where ordinary witnesses are considered by the PPS to be vulnerable, PPS realise they may need additional support in order to give evidence. This support can take different forms but this document deals with the additional expenses that PPS will pay in such cases.

3.2.1 An Individual under the age of 18

Where a victim or witness is under 18 they are required to be accompanied by an adult. One parent, guardian or other appropriate adult will be designated to attend court or consultations with them whenever they are required.

When a Witness Invitation to Attend is issued to a minor, PPS will also generate a witness claim form for one accompanying adult who will be entitled to receive expenses on the same basis as the minor.

3.2.2 An Individual who has a Learning Disability or Mental Health Issue

Where a victim or witness has a learning disability or mental health issue which makes it difficult for them to attend court and give evidence, PPS will consider whether a designated adult should attend with them as support.

Where this has been agreed with the VWCU at the outset, PPS will then pay the expenses of this designated adult to accompany the victim or witness whenever they are required to attend. This person’s expenses shall be determined in the same way as if they are a witness in the case.

Where a need has not been identified by Police at the outset but is identified by the VWCU under the witness needs assessment, it will be necessary for the PPS to request a GP letter to confirm the requirement of a designated adult.

This individual may also require the support of a Registered Intermediary to assist in

their communication. If a Registered Intermediary has not yet been appointed this service may be offered by the VWCU case officer or prosecutor in the case.

3.2.3 An Individual who has a Physical Disability

Where a victim or witness has a physical disability or mobility issue (whether through illness, old age or other reason) which make it difficult for them to attend court and give evidence, the VWCU may approve travel arrangements other than public transport, to facilitate the individual in attending. Such arrangements should be agreed in advance with the VWCU and recorded by the Case Officer.

Alternately or additionally it may be that the VWCU will agree that a designated adult should attend with them as support. Where this has been agreed with the VWCU at the outset, PPS will then pay the expenses of this predetermined companion to attend court or consultations whenever the victim/witness is required.

When a Witness Invitation to Attend is issued, we will also generate a witness claim form for an accompanying adult who will be entitled to receive expenses on the same basis as the victim or witness they are accompanying.

3.2.4 An Individual /identified as Vulnerable via VWCU Needs Assessment

For the purposes of allowing additional support, PPS may adopt a wider view of when a witness can be classed as vulnerable as that provided for within the special measure regime.

Each witness will have a Needs Assessment undertaken by their Case Officer and will have an opportunity to flag any difficulties they are experiencing. The Case Officer will then offer referrals or support which they feel could be beneficial and document the arrangements agreed.

3.3 Intimidated Witnesses

PPS understand that often witnesses will find giving evidence unfamiliar and unnerving. They may find the process more difficult if other parties do not wish them to give their evidence. In extreme circumstances witnesses may be subject to intimidation intended to prevent them from giving evidence.

Witnesses are defined under the Criminal Evidence (NI) Order 1999 as intimidated if the quality of a witness's evidence is likely to be reduced because of his/her fear or distress in relation to giving evidence at court.

When deciding whether a victim or witness is intimidated for expense purposes, PPS will contact the Police to establish whether they are aware that the individual has been the subject of intimidation or there is any active threat against them.

Where Police confirm that a witness has been intimidated, it is possible alternative travel or accommodation arrangements can be made for them if necessary to facilitate the individual in attending, for instance the VWCU may approve travel arrangements other than public transport or for them to travel to court from a different location.

Alternately or additionally it may be that the VWCU will agree that a designated adult should attend with them as support. Where this has been agreed with the VWCU at the outset, PPS will then pay the expenses of this predetermined companion to attend court or consultations whenever the witness is required.

3.4 Nominated Representative

Where the victim of the crime is deceased, either as a result of the crime or subsequently, this may make the experience of a prosecution all the more difficult for their family. While we recognise that more than one family member may wish to follow the progress of the case, for communication purposes the PPS will request the bereaved family to choose a Nominated Representative (NR) to represent them.

This person will be treated by the PPS as if they were the victim and will receive communication, support and expenses on that basis. This will include the provision of a Witness Needs Assessment to identify any additional support they may require for example due to vulnerability.

We recognise this is a sensitive issue, and traumatic for the family involved, but where a family is unable to nominate a sole party the PPS will be willing to appoint a maximum of two representatives who will be responsible for communicating to the remainder of the

family. This should be agreed in advance through the VWCU, who can seek advice and approval from the prosecutor and Police Family Liaison Officer where appropriate.

The additional NR will be notified of the commencement of the case and will also be entitled to be paid ordinary witness expenses on the days they attend court.

Section 4

Professional Witnesses

A Professional Witness is:

A person of any calling, profession or trade who gives evidence on the basis of a recognised qualification, membership of an accredited body or proven experience and who is required to give evidence due to their prior involvement with any aspect of the case.

Examples of professional witnesses may be the defendant's GP or a physiotherapist treating the patient.

The witness will be paid for time and expenses in attending court, based within preset allowances.

Section 5

Independent Expert Witnesses

An Independent Expert Witness is:

A person of any calling, profession or trade who gives evidence on the basis of a recognised qualification, membership of an accredited body or proven experience and who has had no previous involvement with any aspect of the case, prior to engagement, but is called to give evidence in an area in which they hold specialist knowledge.

Examples of independent witnesses could include a handwriting expert brought into an investigation by Police to provide an opinion on the providence of evidence or an accountant engaged to provide a forensic accountancy report.

The vital distinction in relation to an Independent Expert is their lack of prior involvement in the case. The independence and hence the credibility of their evidence could be called into question if they are considered to have any interest in the case.

Hence an Independent Expert will have been sourced, usually by Police during the investigation of the crime, on the basis of an identified need for evidence which they are judged qualified to supply. Their engagement by PPS in support of the presentation of the case in court will be based on preset terms.

Section 6

Police (including Forensic Medical Officers and other Police Specialisms)

6.1 Serving Police Officers (from any NI funded force)

Serving Police Officers (from any NI funded force) who appear as witnesses in a professional capacity, have **Police Witness** status. They will receive an invitation but will not be issued with an expense claim form. Attendance at court is considered part of their employment.

6.2 Retired Police Officers

Retired Police Officers will be treated as **Ordinary Witnesses** and will be paid travel and subsistence expense, and where appropriate, loss of earnings (up to a pre-set limit) for attendance.

Section 7

Public Sector Workers

7.1 Serving Public Sector Workers

Serving Public Sector workers (other than police) who appear as witnesses in a professional capacity in PPS prosecutions, will be paid by their own employer under their existing conditions of employment. They will receive an invitation but will not be issued with an expense claim form.

PPS will be willing to then accept an invoice from the employer for their actual salary and travel and subsistence costs.

This policy applies to any representative from any public sector organisation whether department, agency, Non-Departmental Public Body (NDPB) etc. If the organisation is based within the UK there will be no additional cost to the public purse from this policy.

Where the individual appears in a departmental prosecution their expenses will be paid by the Department taking the prosecution. They will still be classified as a **Public Sector Witness** but PPS will not accept the recharge of their costs.

Where an acting public sector worker is not appearing in a professional capacity (i.e. representing their department) then they are classed as an **Ordinary Witness**.

7.2 Retired Public Sector Workers

Retired Public Sector Workers will be treated as Ordinary Witnesses and will be paid travel and subsistence and, where appropriate, loss of earnings (up to a pre-set limit) in respect of their attendance.

7.3 Specialist Public Sector Workers

Where the evidence given by a retired public servant is of such a technical or specialist nature that consultation with counsel will or may be required in advance, to support the preparation of the case for trial, they will be classified as a **Professional Witness** and paid in accordance with these rates.

The PPS is obliged to notify NI Civil Service Pension Branch annually of all payments made to retired civil servants within the previous 12 months and this will be undertaken in April each year.

Section 8

Rates of Expense

The PPS pays expenses to witnesses on a compensatory basis as opposed to a full reimbursement basis. This means attendance expenses are capped at an upper daily rate.

The current allowable expenses and rates payable were reviewed in 2014 and are consistent with those paid by the Crown Prosecution Service.

Section 9

Partners Organisations

The PPS has Memorandums of Understanding with Victim Support NI (VSNI) and the NSPCC and will signpost witnesses to their services as appropriate. These partner organisations will supply some services to witnesses on behalf of PPS and will be required to notify us in advance of any commitments they make which PPS will be subsequently responsible for funding.

Where a witness has been referred and considers it would be helpful, it is possible for VSNI or NSPCC to arrange pre-trial familiarisation visits. Where the witness or a designated adult accompanying them incur expenses in relation to such visits PPS will pay these.

Section 10

Witness Invitations and Communication with Witnesses in respect of their Claims

Witness invitations to attend court will generally be issued from the PPS Case Management System (CMS) and accompanied by a witness expenses claim form.

Witnesses should contact their VWCU Case Officer to discuss their travel arrangements if necessary. The Case Officer can book travel arrangements (flights, hotels etc.) on behalf of witnesses to save them incurring these costs and then reclaiming them. The Case Officer can give approval for alternative arrangements for court attendance (e.g. to accommodate a vulnerable witness).

The expense form also provides a court witness helpdesk number, **0845 300 5770**, that witnesses can call if they are unsure about any aspect of making the claim.

Section 11

Witness Attendance

The expenses claim form requests the witness to record the days they are required to attend court. At the conclusion of the court case these forms should be signed by the PPS or Police representative in court to verify attendance. If this is not possible it will not prevent a claim form being paid as PPS can use alternative means of verification but it may delay payment.

Section 12

Complaints

The PPS is committed to providing a high standard of service at all times. Comments from victims and witnesses are important as the information provided helps us to put things right if they have gone wrong and to improve the overall standard of our service over time.

If you are not satisfied with the service provided by the PPS, you are entitled to make a complaint. A complaint can be made directly or through a nominated representative, for example, a family member, solicitor, support group or public representative.

We commit to deal with all complaints fairly and impartially, in a timely and consistent manner.

There are a number of ways in which to make a complaint:

By letter to: Central Management Unit
Public Prosecution Service
Belfast Chambers
93 Chichester Street
Belfast
BT1 3JR

Using the PPS Website:

Details of your complaint can be submitted using the complaints 'web form' which can be accessed via the PPS website at www.ppsni.gov.uk/complaints.

By email:

Please send the details of the complaint to complaints@ppsni.gsi.gov.uk.

Deaf/Hard of hearing (SMS)

A SMS text service is available on **07795 675528**.

By Telephone:

Some individuals who are dissatisfied with the service provided by the PPS will simply want someone to review their concerns as quickly as possible – without the need to lodge a formal complaint. The initial step is to contact us in order that the matter might be resolved informally. If you are interested in an informal resolution, please contact us by telephone on **0845 300 5770**.

A copy of this guidance will be provided on request, or can be accessed via the PPS website.



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