



Policy Practice Research Series

Executive summary

In their own words

The experiences of 50 young witnesses
in criminal proceedings

The NSPCC in partnership
with Victim Support



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NSPCC 
Cruelty to children must stop. **FULL STOP.**

Executive summary

This report describes the experiences of 50 young witnesses who gave evidence in 15 of the 42 criminal justice areas in England, Wales and Northern Ireland. These were not 'tick the box' interviews. Instead, young people were invited to respond to prompt cards captioned with open-ended questions, for example:

- n When I was waiting to go to court I felt...
- n When I was a witness, I was able to choose...
- n When they asked me questions I felt...
- n After court was over I felt...

Some were better able to discuss their feelings and provide details than others and some did not comment on every prompt question. Where the report indicates that a certain number of children expressed a particular view, it does not necessarily mean that the remainder disagreed or felt differently. The full range of comments, whether positive or negative, are reflected in the text.

Witness profile

- n Witnesses were referred by 23 support organisations and gave evidence in 29 different courts.
- n Their ages ranged from 7 to 17 with an average age of 12.
- n Twenty-six were female and 46 were white.
- n Three gave evidence twice: two in magistrates' court trials and in resulting appeals to the Crown Court; and one in a retrial.
- n Thirty-two gave evidence concerning sexual offences.
- n All gave evidence for the prosecution: 36 in the Crown Court, eight in a magistrates' court and six in the youth court. They gave evidence in a total of 42 cases, of which 26 resulted in a conviction on some or all of the charges.

Waiting to go to trial

- n On average, witnesses in Crown Court trials waited 11.6 months before trial, those in the magistrates' court waited 9.9 months and those in the youth court cases waited 8.6 months.
- n Fourteen witnesses waited for 12 months or longer before their case came to trial.
- n 28 witnesses did not give evidence on the first date scheduled for trial. Cases involving 12 witnesses were rescheduled on two or three occasions.
- n Thirty-five described themselves as very nervous or scared in the pre-

trial period. Nine had felt intimidated. Twenty described symptoms of anxiety. There was some overlap between those reporting pre-trial anxiety and those who said they had not been kept informed about the case. Six children mentioned having specific difficulties at school: none of them had been kept informed about what was happening with the court case.

- n Referral organisations supplied background information about 22 witnesses, of whom seven were described as having some type of vulnerability in addition to their youth. This information had been communicated to the court. However, a further 17 young witnesses had needs and concerns that were not identified on the referral form. These included a child attending a special needs school; two who were self-harming in the pre-trial period; three receiving medication from a GP for depression; several who were bedwetting and having trouble sleeping; and some having problems with school attendance as a result of the offence and the pending court case.

Special measures and witness choice

- n Of the 50 witnesses, 44 gave evidence by TV link at court, one gave evidence behind a screen in the courtroom and five gave evidence in open court.
- n Eighteen said they were not given a choice about anything associated with being a witness.
- n Ten felt they had a choice about how to give evidence.
- n Of the 44 witnesses giving evidence by TV link, only nine said they had chosen to do so but 28 preferred this method.
- n In some cases where young witnesses gave evidence by TV link and in the courtroom, children and their parents were unhappy about people watching from the public gallery. In addition to youth court cases, which are always held in private, members of the public were excluded from the courtroom during the evidence of four witnesses giving evidence by TV link but not for any of the five witnesses giving evidence in the courtroom.

Arrangements and physical facilities

- n Nine young witnesses had seen the defendant in or around the court building and a further five witnesses spent time in public areas or saw supporters of the defendant.
- n Nineteen young witnesses criticised facilities or arrangements while they were waiting. Problems included the size of the waiting room and lack of windows, the temperature, uncomfortable seating and having to go out of the secure area to use the toilet. Many were bored.

Pre-trial preparation

- n Fourteen young witnesses had no contact with a supporter before the trial date. The remainder had between one and eight pre-trial contacts.
- n Twenty-four young people received a pre-trial visit.
- n Eleven were critical of the lack of information and support in advance of the trial.
- n The things young witnesses found most helpful were contact with the supporter (32 of the 36 who had such contact); the pre-trial visit (23

of the 24 who received a visit); and NSPCC Young witness pack materials (17 of the 20 who saw them).

Refreshing the witness's memory

- n Seeing the videotaped statement for the first time was often distressing. Of the 39 witnesses who made a videotaped statement, 14 saw it before trial and almost all found this helpful. Nine who did not see their videotaped statement until trial thought that seeing it at an earlier stage would have helped them.
- n Of the 10 witnesses who made a written statement, four read it before trial. One requested to do so but was refused.

Waiting on the day of trial

- n The shortest wait for a young witness to give evidence was 20 minutes; the longest was over 20 hours spread over four days; and the average time waited was over five hours. Twenty-seven witnesses waited for three or more hours.
- n Eleven attended court and were sent away without giving evidence, some more than once.
- n Only two waited on standby at a location away from the court building. None gave evidence by remote TV link.

Meeting the advocates and the judiciary

- n Twenty-six young witnesses said they had met the prosecutor, five said they had met the defence lawyer and seven said they had met the judge or magistrates. Supporters reported that a greater number of meetings had taken place. However, a number of young witnesses were confused about the identity of people that they met at court.
- n Thirteen young witnesses said the meeting with the prosecutor (and, where it occurred, the judge/ magistrates or defence lawyer) had helped them cope with the court process.

The TV link

Of the 44 witnesses who gave evidence by TV link:

- n Nineteen had had a pre-trial visit. Ten were able to practice on the link during the visit.
- n Twelve disliked the TV link room (most often the confined space).
- n Three saw the defendant in the courtroom on the TV monitor.
- n Seven reported problems with the operation or quality of TV link equipment. In three cases, technical problems delayed the start of the witnesses' evidence.
- n Seventeen were upset by the idea of being seen by the defendant on the TV link. At least five had been told they could not be seen by the defendant and only found out later that this was not true.
- n Arrangements were made to meet the concerns of two witnesses who did not want to be seen by the defendant over the TV link. In one case, TV monitors in the courtroom which could have been seen by the defendant were covered. In the other, the witness gave evidence in the courtroom behind a screen. An application concerning a third witness was refused on the basis that there had been no intimidation before the trial.

The presence of a supporter

- n Out of six young people giving evidence in the courtroom, five were accompanied by someone from a support organisation and four were accompanied by a family member. All had chosen who accompanied

them.

- n Out of 44 young witnesses giving evidence by TV link, 25 were accompanied by someone from a support organisation, 18 were accompanied only by a court usher, two were also accompanied by a family member and one was alone. Eight of these witnesses had chosen who accompanied them.

Conclusions

Introduction

Were the 50 young witnesses in this study enabled to give their 'best evidence'? Access to TV links helped most of the young people, many of whom were reluctant to give evidence in court. However, in almost all other respects, the process let these young people down. Despite a network of policies and procedures intended to facilitate children's evidence, only a handful of young witnesses in this study gave evidence in anything approaching the optimum circumstances. Their experiences reveal a chasm – an implementation gap – between policy objectives and actual delivery around the country.

In July 2004, the Government announced that it would not implement section 28 of the Youth Justice and Criminal Evidence Act 1999, which would have allowed the visual recording of pre-trial cross-examination in some cases. Instead, it will undertake 'a wider review of how child evidence is taken and presented in the criminal courts' (House of Commons, 2004). We hope that this report will inform the review and that, in particular, the issues discussed below will be addressed.

Identification of young witness cases and provision of pre-trial support

The July 2003 Report of Inter-Agency Working Group on Witnesses concluded that young witnesses do not have access to a 'coherent support system' nation-wide.⁴³ Nor is there an agreed mechanism to identify and flag up young witness cases. In 2003/04, the Witness Service identified 18,466 people whom it considered entitled to special measures but who were not referred to the service as vulnerable or intimidated. Victim Support considers it likely that the majority of these were young witnesses (Victim Support, 2004).

Fourteen of the 50 young witnesses in this study did not have contact with a supporter before the trial date; 13 said no one kept in touch with them or their family about case progress; only 24 received a pre-trial visit and only 20 had seen NSPCC Young witness pack materials. The study identified 17 young witnesses whose vulnerabilities had apparently not been picked up and brought to the attention of the courts at any stage in the proceedings. Four⁴⁴ were strongly discouraged from receiving pre-trial therapy, despite policy to the contrary.

⁴³ Para. 7.7 'A new deal for victims and witnesses: National strategy to deliver improved services' (Home Office, 2003a). See also para. 4.13 Inter-agency Working Group on Witnesses 'No Witness - No Justice: Towards a national strategy for witnesses' (May 2003). Victim Support points out that all Witness Services provide a core service to young witnesses including familiarisation visits to court and support on the day of trial. Almost half of all Witness Services receive additional funding to provide an 'enhanced' service to vulnerable and intimidated witnesses (including earlier and more frequent contact and home visits).

⁴⁴ One of these was a six-year-old witness, identified by the mother, who was not part of the interview group.

⁴⁵ Paul Goggins (House of Commons, 2004) op. cit.

The Government intends that the 'No Witness, No Justice' project will 'ensure that children's needs are assessed and met, so that, for example, pre-trial court visits are arranged; access to a range of emotional support and guidance through appropriate groups is offered; home visits take place where possible; and parents are provided with a single point of contact to access information and advice throughout the case' (House of Commons, 2004).⁴⁵ Furthermore, Witness Care Units, to be rolled out nationally, should seek and pass on relevant information about children's needs. However, it is vital that this information is updated as a case progresses. The well-being of a number of witnesses in this study deteriorated markedly in the pre-trial period. Up-to-date information is needed when scheduling cases and making witness arrangements. Consideration should be given to revisiting the Court Service Plea and Directions Hearing: supplementary pre-trial checklist for cases involving young witnesses and accompanying guidance endorsed by the Lord Chief Justice (Court Service, 1999). These have not been revised since the introduction of special measures.

Pre-trial delay

A lack of accountability and compliance monitoring characterises key aspects of the Government's implementation of commitments for improving the processes and experiences of young witnesses, particularly in relation to pre-trial delay. There is a major element of system-induced stress for young witnesses and this will inevitably affect the quality of their evidence. Witnesses in the study waited, on average, over 11 months to give evidence in the Crown Court; those in the magistrates' and youth courts waited almost 10 months and over eight months respectively. More than half of the young people did not give evidence on the first date scheduled for trial. Many of the cases involving the young witnesses actually take longer to reach disposition than the norm.

The policy to give priority to young witness cases was first stated by a Home Office minister in 1988, as we pointed out in Section 2. It was given legislative status when child witness case transfer provisions, bypassing committal for trial, were introduced by the Criminal Justice Act 1991.⁴⁶

The early transfer of 'indictable only' cases to the Crown Court, introduced by section 51 of the Crime and Disorder Act 1998, with the intention of expediting trial listing in the most serious cases, did not affect the scheduling of indecent assaults triable 'either way' (i.e. most sexual offences involving young witnesses).⁴⁷

There is a danger that the 'speedy trial' policy has now slipped from the Government's and court's agenda. The recommendation in 1999 that all Crown Court child witness cases should be placed under the supervision of a designated judge with responsibility for the timetable and pre-trial

⁴⁵ See Footnote 5.

⁴⁷ The Sexual Offences Act 2003 makes many offences previously charged as indecent assault indictable only and therefore eligible for section 51 transfer.

⁴⁸ 'The courts will ...where appropriate, give cases involving child victims priority' (our emphasis) (Home Office, 2001b).

applications, was never implemented (Davis et al., 1999). A weaker version of the policy was proposed in A Review of the Victim's Charter (Home Office, 2001b)⁴⁸ and then omitted altogether in the The Victim's Code of Practice: Indicative Draft (Home Office, 2003b). There is no mention of the case management priority status of young witness cases in the Lord Chief Justice's Criminal Case Management Framework (2004).

In the absence of published statistics, this study suggests that delay in young witness cases remains as much of a problem today as it did in 1989, when the Pigot Report recommended that cross-examination be videotaped so that the part of the case involving the child be disposed of 'as rapidly as is consonant with the interests of justice' (Home Office, 1989, Para. 2.14). This option, as enshrined in section 28 of the Youth Justice and Criminal Evidence Act 1999, is not being taken forward. It is therefore all the more urgent that the Government's review brings the problem of delay to centre stage. The priority status of young witness cases should be integrated into current case progression initiatives. Systematic monitoring and publication of relevant statistics is also essential if this chronic problem is to be tackled.

⁴⁹ Section 19(3)(a).

Delay on the day of trial

Delay on the day of trial also has a profound impact on the ability of young people to give their best evidence. Only 14 of the 50 witnesses waited two hours or less as most courts failed to schedule a 'clear start' for young witness evidence. They waited, on average, over five hours to give evidence and 11 attended court and were sent away without testifying, some more than once. Many prosecutors were evidently reluctant to stagger witness attendance even though this was encouraged in Speaking Up for Justice training. Few of the courts attended by witnesses in this study seem to have adopted the practice of scheduling the start of the trial in the afternoon, making a prompt start to the child's evidence more likely the following day.

Systemic delays, combined with failure to keep witnesses segregated from the defendant and inadequate court waiting and TV link room facilities, indicate the need for routine use of standby waiting arrangements and remote TV links as well as firmer case management.

Special measures and witness choice

Article 12 of the UN Convention on the Rights of the Child (1990) states that children have the right to participate in decision-making processes that are relevant to their lives and to influence decisions taken in their regard. It is a challenge for courts to take account of children's views about how to give evidence (Wade, 2002). It is therefore ironic that the Youth Justice and Criminal Evidence Act 1999, the first legislation requiring courts to take account of witness views about how to give evidence⁴⁹, has resulted in restricting the options available to young witnesses.

The Government has indicated its readiness to revisit the essentially compulsory use of TV links for young witnesses in cases of sex or violence under section 21, to enable 'measures to be more tailored to the individual witness's needs' (Home Office, 2004). Early research on use of the TV link in Australia indicated that witness choice about how to give evidence was an important factor in determining the effectiveness of the child's testimony (Cashmore and de Haas, 1992).

While most young witnesses in our study were content with the TV link decision, others feared being seen by the defendant or the public gallery over the TV link and some were misled into thinking this could not happen. Recognition of witness choice would enable such witnesses to give evidence either by TV link with the defendant's monitor blocked or in the courtroom behind a screen. Where TV link equipment breaks down or a backlog of cases causes listing delays, witnesses should be able to use a screen in court, if this means the case can be dealt with more

⁴⁹ Batterman-Faunce and Goodman (1993) found that children whose parent or loved one remained with them were rated as more credible witnesses and provided less inconsistent testimony regarding peripheral details during cross-examination.

⁵⁰ In Scotland, the Lord Justice-General's Memorandum on Child Witnesses provides for 'a relative or other supporting person to sit alongside the child while he or she is giving evidence' (1990, republished 2003).

⁵¹ The Equal Treatment Bench Book suggests the type of 'proper instructions' to be given to the person accompanying the child (Judicial Studies Board, 2004, section 4.4.3).

⁵² In a 1995 study, 84 per cent of supporters were well known to the child: K. Murray 'Live TV Link: an evaluation of its use by child witnesses in Scottish criminal trials' HMSO.

⁵⁴ Section 271L, Criminal Procedure (Scotland) Act 1995, as amended by Vulnerable Witness (Scotland) Act 2004.

quickly. The existing provision for clearing the public gallery applies only to sexual offence cases, or where there has been or is likely to be intimidation. Even within these parameters, little use of the provision seems to have been made. Greater consideration needs to be given to case-by-case eligibility for this special measure, including where evidence is given by TV link.

If witnesses have a choice about TV links or screens, their decision may be influenced by who may accompany them while they give evidence. It seems likely that some children will sacrifice the benefits of the TV link and opt to give evidence in court with a screen, if they can be accompanied by a supporter of their choice.

⁵⁵This should include the British Transport Police. Referral organisations observed that the BTP deals with a number of young witnesses whose cases are not flagged up to the criminal justice system.

⁵⁶See for example Bryan, 2003.

Achieving Best Evidence in Criminal Proceedings lists the objectives of the supporter's presence as providing emotional support, reducing anxiety and contributing to the witness's ability to give best evidence (Home Office, 2001a, para. 5.85). A number of studies indicate that potential benefits to recall and stress reduction flow from the presence of a known and trusted supporter: it is not surprising that young witnesses are likely to show greater accuracy in a more supportive environment (Moston, 1992; Batterman-Faunce and Goodman, 1993).⁵⁰

In our study, 17 young witnesses who gave evidence by TV link would have preferred to be accompanied by a relative or someone familiar to them. At present this is more likely to be permitted in the courtroom: all six witnesses giving evidence in court were accompanied by supporters and/or relatives of their choice. Thirteen young witnesses who gave evidence by TV link only met the person accompanying them on the day of trial. They derived little or no benefit from the presence of ushers or supporters whom they did not know. Strangers who meet the witness only on the day of trial are not 'supporters' within the terms of Achieving Best Evidence in Criminal Proceedings.

We do not believe that the divergence of practice between the TV link room and courtroom is justified. The 1991 Practice Direction, essentially stating that only an usher could accompany the child, was issued prior to an understanding of the potential benefits to the witness's testimony derived from the presence of a known and trusted supporter. This research finding may still not be well understood by the judiciary and advocates. Despite the more flexible Practice Direction introduced in 2002, some courts continue to be much more restrictive about the type of person accompanying witnesses in the TV link room than in the courtroom.⁵¹

Judges and magistrates may have given little thought to the identity of supporters, beyond ensuring that someone with the confidence of the court accompanies the young witness in the TV link room. The interests of the witness and the court are not mutually exclusive: it ought to be possible to identify a supporter who is trusted by the witness and is also acceptable to the other side and the court. Where no support organisation has had contact with the young witness before trial, there should be an increased obligation to identify a neutral person from among the young witness's own circle of acquaintances who can act as a supporter.

Safeguards relating to TV link room practice already exist. These include the presence of the usher; advising the jury that the judge has a separate camera and screen showing everything that happens; and requiring the supporter to swear an oath delineating their role before the child's evidence starts. These should be formalised and built on (for example, by the production of guidance for 'one-off' supporters⁵²). This would ensure that the use of the supporter during witness testimony meets the objectives stated by Achieving Best Evidence in Criminal Proceedings,

⁵¹ See, for example, section 1.7 'The Child Victim Witness Bench Handbook' California Center for Judicial Education and Research 2002.

⁵² 'The competence of children to interact with the legal system is a function of those dealing with them within that system' (Cashmore, 1991, p. 193).

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