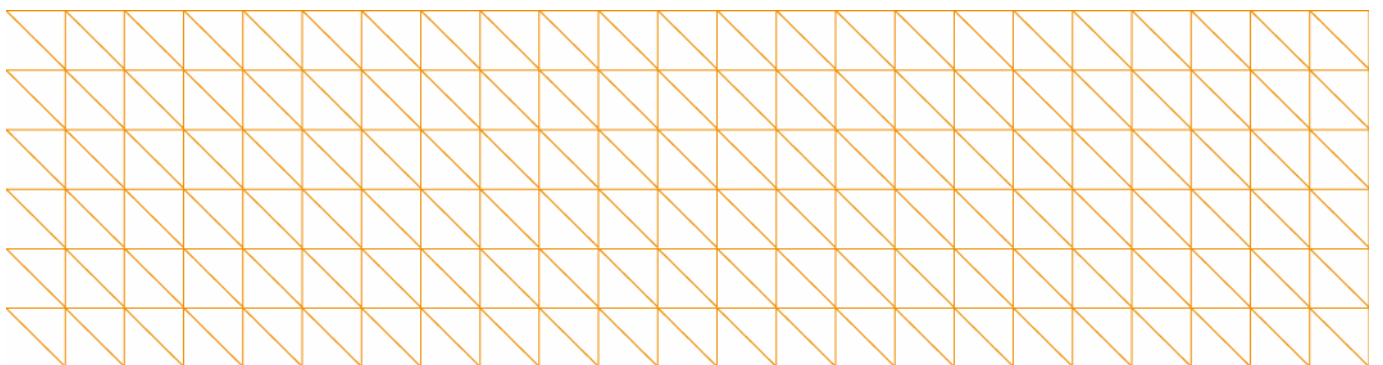




Government Response to the Improving the Criminal Trial Process for Young Witness Consultation

Response to Consultation

25 February 2009





Ministry of
JUSTICE

Government Response to the Improving the Criminal Trial Process for Young Witnesses Consultation

**Response to consultation carried out by Office for Criminal Justice Reform,
part of the Ministry of Justice. This information is also available on the
Ministry of Justice website: www.justice.gov.uk**

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Government Response to the Improving the Criminal Trial Process for Young Witnesses Consultation

Introduction and contact details

This document is the post-consultation report for the consultation paper, Improving the Criminal Trial Process for Young Witnesses.

It will cover:

- the background to the report
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting **Guy Wilson** at the address below:

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This report is also available on the Ministry's website: www.justice.gov.uk.

Alternative format versions of this publication can also be requested from Guy Wilson.

Background

The consultation paper 'Improving the Criminal Trial Process for Young Witnesses' was published on 22 June 2007. It invited comments on:

- more choice for young witnesses in how they give evidence (based on witness needs rather than assuming they would always prefer to give evidence away from the courtroom)
- enhancement of the current special measures provisions
- the use and availability of newer technology for giving evidence
- pre-trial support for young witnesses, including an effective initial needs assessment
- pre-trial therapy and counselling
- special procedures for vulnerable defendants to ensure they can participate effectively in their trials
- delay in proceedings
- standards of cross-examination and other matters relating to current practice including the early identification of witness needs.

The Government has already made major advances in enabling young witnesses to receive assistance in giving evidence. A range of special measures was introduced in the Youth Justice and Criminal Evidence Act 1999 and better information and support for young witnesses is now available. The Young Witness Pack is available free of charge from the Office for Criminal Justice Reform. The Witness Service is present in all criminal courts and the 165 Witness Care Units cover England and Wales, providing telephone support for victims and prosecution witnesses throughout the criminal justice process.

Rights for victims and witnesses have also been enhanced by the introduction of the statutory Code of Practice for Victims of Crime in April and the Witness Charter, which require agencies to work together to provide an enhanced service to vulnerable and intimidated witnesses, including young witnesses.

Despite these significant developments, and that independent research has established that special measures work (76% of child witnesses were satisfied with special measures),¹ it is clear that the time has come to reflect on whether further changes are now required. That is why we consulted publicly on this last year. We consulted with an open mind and wanted to hear the views of practitioners and experts to ensure that any further improvements were the best possible with the resources that we have.

¹ Hamlyn, B, Phelps, A, Turtle, J and Sattar G, *Are special measures working? Evidence from surveys of vulnerable and intimidated witnesses* (London: Home Office Research Study No. 283; June 2004)

Government response to the Improving the Criminal Trial Process for Young Witnesses Consultation

The consultation period closed on 19 October 2007 and this report summarises the responses, including how the consultation process influenced the final shape/further development of the policy/proposal consulted upon.

A list of respondents is at Annex A.

Summary of responses

1. A total of 58 responses to the consultation paper were received. Most took the form of detailed submissions. Of those, 8 were from local police forces, 5 from Local Criminal Justice Boards and 4 from Local Safeguarding Children Boards. Several bodies and organisations concerned with the Criminal Justice System also responded. These included the Crown Prosecution Service, the Association of Chief Police Officers, HM Council of Circuit Judges, the Magistrates' Association, the Law Society and the Criminal Bar Association. A number of academics and some NGOs with a professional interest in the issues in the consultation paper also responded.
2. The vast majority of respondents addressed all or most of the 42 consultation questions. Some respondents chose to only comment on the areas which were of particular concern to them.
3. In addition to responding to the individual consultation questions, some respondents chose to provide a more detailed response which tackled the issues raised in the questions more broadly. Those responses have been included as responses to the relevant consultation questions. Additional comments and suggestions were made by respondents that were not directly relevant to this consultation exercise or the questions posed. These have been referred to the relevant Government departments for consideration and are not discussed in the present summary.
4. Additionally, the views of young witnesses were canvassed. We are grateful to the NSPCC Leatherhead for organising and facilitating a young witness workshop. A summary of the views of those young witnesses are set out in Annex B.
5. We are grateful to all those who took the trouble to respond for their contribution to the exercise and to the young people and their parents who participated in the Leatherhead workshop.

Responses to specific questions

Section 1- Video-recorded cross-examination or re-examination (section 28 of the Youth Justice and Criminal Evidence Act 1999)

Question 1

Do you agree that section 28 should be retained and implemented for the cross-examination of the most vulnerable witnesses if this is the only way in which they would be able to give evidence?

Question 2

Have we identified all the categories of vulnerable witness for whom this measure would be most beneficial or would you suggest any others?

Question 3

(a) If we implemented this proposal would you envisage any practical difficulties in doing so?

(b) If so, do you have any suggestions as to how we could solve the practical problems this proposal presents?

1.1 There were 49 responses to question 1. 47 respondents agreed that section 28 should be retained and implemented; 2 respondents were against the proposal. 41 responses were received to question 2 and 45 replies were received to question 3.

1.2 There was almost universal support for the retention and implementation of section 28 (47 out of 49 responses). Victim Support said that: "without such a measure being available the majority of (the vulnerable

witnesses outlined in the Consultation Paper) would not have a voice. A similar view was expressed by one respondent who argued: “without (the) option, justice may be denied to the most vulnerable people in our society”.

1.3 It was recognised by many that there were significant difficulties which would need to be addressed before it could be effectively implemented. Respondents also made a number of suggestions as to how the practical problems that the implementation of section 28 would present could be overcome.

1.4 The difficulties identified were:

- ensuring that there is sufficient disclosure of the prosecution case to enable meaningful cross-examination to take place at a suitable stage in advance of the trial
- problems in getting all of the parties (Counsel, judge and witness) together early for the “pre-trial”
- changes in legal representation between the committal and “pre-trial” listing. Some priority would need to be given to these cases
- logistical difficulties – where would the defendant be located? If he was located other than in the same place as the witness and his Counsel, how would he be able to confidentially instruct his Counsel?
- a risk that there could be contact with other witnesses who are due to give evidence at the full trial after the pre-trial has been conducted
- the defendant may be shown the video after the “pre-trial” giving them more time to come up with answers to the cross-examination
- there are limitations in that the pre-trial cross-examination could never be the last word – the defence would have to have the right to call the witness at trial if further evidence emerged that they needed to cover with them
- the defence may on occasion make inappropriate requests for further cross-examination at the full trial
- the judge could still exclude some, or all, of the evidence at the full trial under section 28(4) of the 1999 Act or section 78 of the Police and Criminal Evidence Act 1984.

1.5 Possible solutions to these difficulties suggested were:

- early appointment of the trial judge
- issuing clear guidance and protocols covering both witness eligibility and procedure. A respondent from academia pointed out that “the Australian and American experience with pre-trial cross-examination has demonstrated the high importance of detailed guidance for the court, counsel and child witness services”
- use of alternative or “child friendly” locations, such as Sure Start Children’s Centres, Sexual Assault Referral Centres
- holding the “pre-trial” as close as possible to the full trial to reduce disclosure or further cross-examination issues
- national training programmes for all those involved in the criminal justice process

- having a single point of contact to make arrangements for the “pre-trial”
- setting down strict timetables (and prioritisation), perhaps in the Criminal Procedure Rules
- ensuring that witnesses have a full assessment of their needs.

1.6 The Criminal Bar Association were very strongly opposed to introducing section 28 at all. They consider that the principle aim of section 28 (keeping young witnesses out of the court room) has largely been achieved by video-recorded examination-in-chief and live links. They also suggested that there was no reason in principle why all young witnesses could not give evidence remotely from a non-court site to reduce the trauma of the process. If it were to be implemented they argued that it would have to be for all vulnerable witnesses, and not just for the categories proposed in the Consultation Paper (very young children, witnesses with a terminal/serious degenerative illness and those with a mental incapacity but who are still capable of giving good evidence, see para 3.7 of the Consultation Paper).

1.7 They suggested as an alternative that there could be a new “special circumstances special measure” which would cater for the particularly vulnerable and which would take place during the actual trial but in a separate room to the trial court. It would be shown “live” to the jury.

1.8 An academic raised concerns about the implementation of section 28 in respect of concerns about the timing of video-taped cross examination. He felt that this should occur as soon after interview as possible, in chambers, to enable the child witness to drop out of the proceedings as early as possible. Section 28, however, was based on the idea that the cross-examination should take place shortly before the eventual trial. He recognised that this has been done to address problems of disclosure but believed that it defeated the whole purpose of the provision. He proposed that an alternative ‘procedure’ could be created for these cases, coupled with a special fast-track disclosure procedure (which would act as an exception to the CPIA 1996 regime). He also pointed out that in not providing for a procedure whereby at least some young witnesses can give evidence in private and ahead of the trial the UK may be in breach of its obligations under EU law, namely the Framework Decision of 2001 providing minimum rights for victims as interpreted in Pupino (C-105/3, Grand Chamber, 16 June 2005).

1.9 There were calls for a pilot of the provision (from Lexicon and a member of academia). It was pointed out by one academic that there were a number of ‘ancillary’ benefits from the use of pre-trial cross-examination in other jurisdictions. These are:

- it helps the prosecution and defence to make informed decisions about charges/plea before the trial
- it facilitates the scheduling of the trial
- it aids the conduct of the trial by enabling, for example, admissibility issues to be dealt with at the pre-trial

- reducing “system abuse”, i.e. allowing children to get therapy early²

1.10 The equivalent to section 28 is used in Western Australia and large parts of the USA. The respondent argues that the procedural problems have proved to be insignificant, at least in Western Australia, and that we should learn from their experience in implementing the provision here.

Experience in Western Australia and Scotland

1.11 In Western Australia, “special hearings” have been available since 1992 where children in certain sexual or violent offence cases have all of their evidence pre-recorded and played at trial. The provision is also available for witnesses which we would classify as vulnerable or intimidated adults. There is a presumption of eligibility for this provision, with the witness having the chance to opt out if they wish.

1.12 In terms of procedure, the accused is usually in the courtroom with the judge, advocates, any family members and members of the public; the witness will usually be in a live link room within the courthouse and their evidence transmitted to the courtroom via live link. There is also an alternative procedure whereby the accused is taken to a CCTV room away from the courtroom whilst the witness gives evidence. The judge must approve anyone who sits in the live link room with the child. The pre-recording will usually commence by showing an empty image of the remote room. The pre-recording includes cross-examination and re-examination of the witness. Where a visually recorded interview of the witness has been taken, a practice has evolved whereby the tape is identified by the witness at the pre-recorded hearing but not played.

1.13 The main difficulty in securing early hearings has been the late filing of indictments by the prosecution. In the state of Victoria, they have introduced similar legislation and set down time-limits which stipulate that the hearing is to take place within 21 days of the filing of the indictment. That, however, has been found to be unworkable in some courts.

1.14 The prosecution are permitted to apply for proceedings to be heard in private. However, there is a need for open justice, and it is usually only those witnesses who may give evidence at the subsequent trial who will be prohibited from being present at the special hearing. Exhibits are transported to the live link room before the hearing starts to prevent unnecessary disruption.

² The best interests of the child are the paramount consideration in decisions about the provision of therapy before the criminal trial. (See *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses and Using Special Measures*)

1.15 Technical support is necessary to ensure that the proceedings run smoothly. High quality equipment is used and court staff are well trained to ensure that any technical faults are quickly rectified.

1.16 In Scotland, the Vulnerable Witnesses (Scotland) Act 2004, introduced a special measure of taking evidence by a commissioner, by inserting section 271I into the Criminal Procedure (Scotland) Act 1995. This provides that evidence of a child or vulnerable adult witness can be taken in full (examination-in-chief, cross-examination and re-examination) at a pre-trial hearing before a Commissioner appointed by the court. The proceedings are video recorded and the recording is later received into evidence at the subsequent trial or court hearing. The 1995 Act provides that the Commissioner proceedings may take place by live television link and that the accused shall not, except by leave of the court on special cause shown, be present in the same room as the witness during these proceedings.

1.17 This special measure has been used in one case so far which involved a young child witness giving evidence against his father in a High Court case. A great degree of inter-agency cooperation and planning was involved in ensuring that the appropriate facilities and arrangement were put in place prior to the taking of evidence by commissioner. The use of this special measure will require to be considered on a case by case basis. The feedback from using this special measure was positive. It made the experience of the child witness less traumatic and enabled issues to be raised regarding the needs of the child witness which would not otherwise have been addressed.

1.18 The Consultation Paper outlined the categories of witnesses which the Review of Child Evidence has identified as being of particular need of this provision. They were:

- very young children
- witnesses with a terminal/serious degenerative illness
- those with a mental incapacity but who are still capable of giving good evidence.

1.19 Many respondents agreed with those categories of vulnerable witness, but a significant number chose to suggest alternatives or variations of the categories proposed. The alternatives were:

- allowing the court a residual discretion to permit the use of the special measure in any appropriate case – the ‘list’ should be no more than indicative
- all vulnerable witnesses
- all young witnesses
- all vulnerable and intimidated witnesses
- witnesses with serious mobility problems
- children in urgent need of therapy
- where there are care, custody and control issues for the child
- those with very limited attention spans

- intimidated witnesses in cases involving gun and/or gang crime
- witnesses who may retract their evidence
- all young witnesses who would suffer severe psychological stress if cross-examined in the “conventional” way
- some older witnesses
- victims of rape and/or domestic violence.

Government response

The Government recognises the strong support respondents gave to the implementation of section 28 and is grateful for the comments and suggestions on ways of overcoming the practical obstacles to implementation that were highlighted in the Consultation Paper and by respondents. The Government is persuaded that, in principle this provision could assist a limited number of witnesses who would otherwise be unable to access justice. We have, therefore decided to retain and implement section 28 subject to the successful development of rules of procedure and practitioner guidance. In developing rules and guidance consideration will be given to practice in other jurisdictions, including Western Australia and Scotland.

The Government has considered whether a pilot of section 28 would be feasible, but has rejected the idea given the likely small number of witnesses who would take the benefit of this provision which would mean that effective evaluation would not be possible. But once procedures and guidance have been developed, consideration will be given, in consultation with CJS priorities, to testing these before proceeding with implementation.

Responses to Specific Questions

Section 2 - Use of live links in criminal trials

Question 4

Do you think that a greater focus on developing remote live links to keep witnesses out of the courtroom would be a good use of resources?

Question 5

Given the resource implications, do you think it is more important to develop further live links in courthouses or should the money be spent on developing non-court remote facilities? What are the reasons for your preference?

Question 6

What are your views on the advantages and disadvantages of witnesses giving evidence by way of a remote live link?

Question 7

(a) Have you any experience of the use of remote live links?

(b) If so, what type of remote live link was used and what were the benefits and drawbacks? How were the exhibits managed?

(c) If the witness gave evidence from a non-court location, who was present with the witness in the live link room?

Question 8

Do you think there should be a legal presumption in favour of use where a live link exists and the witness wishes to use it?

Question 9

What non-court remote live links do you have in your area which are used, or could be used, for criminal court cases? What use is presently made of them for court purposes?

2.1 (i) There were 47 responses to question 4. 43 were in favour of more focus being placed on developing remote live links; 2 respondents were against the proposal and 2 were equivocal.

(ii) 43 responses were received to question 5. Of those, 26 responses were in favour of the greater development of non-court remote links; 11 preferred court-to-court remote links and 6 respondents expressed no preference.

(iii) 45 respondents commented on question 6.

(iv) For question 7, 34 responses were received, 22 of which outlined their experience of the use of remote live links.

(v) Of the 47 responses to question 8, 35 were in favour of the proposal and 12 were against.

(vi) 15 respondents provided evidence of remote live links in their area in response to question 9.

2.2 There was strong support for greater development of live links, particularly those located in non-court facilities. South Yorkshire Police argued that: “the development of remote links would be an excellent tool to help children feel less traumatised by the process of giving evidence”.

Advantages and disadvantages of remote live link evidence

2.3 Respondents’ views on the main advantages and disadvantages of witnesses giving evidence by remote live link are set out below. Some of these responses were aimed at the use of a specific type of remote link (e.g. non-court remote links) whilst other responses reflected views about remote live links generally.

2.4 The main advantages were said to be:

- helping witnesses to achieve their best evidence
- reducing the stress of the process
- allowing witnesses to give evidence in a more supportive, responsive, safe and secure environment
- keeping witnesses away from the courthouse; ensuring that prosecution witnesses do not come into contact with the defendant
- reducing travel time and cost for witnesses and also the time that they are kept waiting
- increasing the likelihood of witness attendance.

2.5 The main disadvantages outlined by respondents were:

- this is costly
- it is less “real” for the jury – they find it harder to judge the demeanour and body language of the witness: “remote can feel remote”
- the witness may appear less serious
- there is a lack of supervision by the court where the witness is at a non-court remote site
- the witness may not have the opportunity of meeting their advocate for re-assurance and discussion, for example of a guilty plea offered by the defendant
- the remote site may not be suitable on health and safety, security and/or comfort grounds. Certain sites may be inappropriate as a whole, such as police stations
- there may be question marks over the integrity of the process with exhibits being handled remotely
- it is difficult getting court and/or technical staff to the remote site
- sound and image quality are often poor

- the equipment may fail requiring the witness to come to court and give evidence
- it slows down the evidence-giving process
- the ability to cross-examine witnesses over the remote link may be hindered which could lead to more appeals on fairness grounds
- there will be additional training needs
- parents will probably have to go to court if they are giving evidence, rather than stay at the remote site
- it gives the impression that prosecution witnesses are “protected” by the criminal justice system.

2.6 Around two-thirds of respondents thought that resources should be focused on developing more non-court remote sites. A number of reasons were offered for this preference. It was argued that the environment would be nicer and more familiar to the witness. It was said to reduce fear in the witness – a major factor in witness non-attendance at present. Non-court remote sites are more child-centred. Another reason offered was that more should be provided as not many exist at present.

2.7 Those in favour of developing more court-to-court remote links argued that:

- it saves money
- the importance of the occasion is impressed upon the witness by being within the court building
- Counsel will be able to meet with the witness
- H.M. Council of Circuit Judges argued that: “so often something unexpected arises which without immediate access to the witness, can create substantial delay in the trial”.

Experience of using remote live links

2.8 It was noted that if non-court sites were developed it was essential that they were equipped with the very latest technology and that technical support would be required on the day to ensure that there was no disruption to the trial. A number of respondents had experience of the use of remote live links, and some of the facilities that either have been or could be used were:

- Victim Support/NSPCC buildings
- hospitals
- private homes
- Children’s Trust Centres
- Universities
- Witness Care Units
- bespoke facilities at police stations
- Young Offender Institutions.

2.9 It is notable that there do not appear to have been any significant problems with exhibits used in cases where there were non-court remote sites. Police officers or Witness Service volunteers handled the exhibits and any further documents produced on the day could be viewed via a document camera linked to the live link room from the court. It is clearly essential that there is effective pre-trial case management in these cases to ensure that the exhibits are handled securely and that the remote site is suitable and secure for the witness. It is encouraging that use is already being made of remote non-court facilities in many areas of the country and that there do not appear to have been many insurmountable difficulties in these trials.

2.10 The NSPCC pointed to the experience of their Young Witness Project in Devon and Cornwall. They have had a live link installed since 2002 from which over 300 children and young people have given evidence. An independent evaluation of the remote link was conducted in 2003 which recommended that the facility be used for all young witnesses.³

2.11 The Council of Circuit Judges were not in favour of the use of remote (non-court) facilities as they suggested that it was inevitable that things went wrong during the course of the trial and the witness would need to be brought to court leading to delays. It was also pointed out that it was often necessary for Counsel to have face-to-face contact with witnesses to introduce themselves at the beginning of the day and discuss any pleas offered by the defendant with the victim.

Creating a legal presumption for the use of live links

2.12 Those in favour of the proposal to create a legal presumption for the use of live links where one exists and the witness wishes to use it argued that it will help encourage witnesses come forward. Five respondents were in favour of creating the legal presumption but only where there had been a full assessment of the witness' wishes beforehand. The Victims' Advisory Panel argued that: "there should be a preference of live link providing the full benefits and disadvantages are discussed with the client (witness)". Some respondents (e.g. Victim Support and a respondent from academia) suggested that there could be an assessment placed before the court as to why a witness wanted to use certain special measures (although it was acknowledged that this may be difficult in cases where there was no specialised support).

2.13 A Resident Judge argued that each application requires careful thought and consideration and that there should not be any "counter-productive prescription". H.M Council of Circuit Judges were in favour of the use of video-recorded evidence-in-chief and live link evidence remaining the norm, but argued that each application needed to be made and considered on the basis of "need". The Law Society and Criminal Bar Association were also

³ Applegate, R (2006), *Taking child witnesses out of the Crown Court: a live link initiative*, International Review of Victimology, Vol. 13, 179-200

against the presumption, the CBA arguing that “special measures” are special. The Institute of Legal Executives (ILEX) disagreed with the proposal, arguing that: “the court should have a full discretion in light of all the circumstances to determine whether it is in the interests of justice to allow a live link”.

Government response

The Government was encouraged by the number of respondents who had experience of remote live links and the innovative approaches that had been taken to the challenges faced. It is clear that live links are generally well regarded by the witnesses who use them, and that witnesses feel safer and more secure when they give their evidence away from the courtroom. We are not persuaded that any current empirical studies demonstrate that evidence given by live link detracts from the quality of evidence given by the witness or the weight juries attach to it.

The Government favours maximising the use of live link facilities in courts where this best meets the needs of a particular witness. Since there is already a rebuttable presumption that live links should be used for young witnesses and that the general consensus is that special measures applications should be based on the needs of the individual young witness, which is reflected in the accepted recommendation to reform the present rigid primary rule, we have decided not to create a further inflexible legal presumption for the use of live links.

The Government is focusing on providing more and better live link facilities within the court estate. In 2007/08, 56 installations in the Crown Court were replaced with modern live link equipment, including plasma screens. £2m has been allocated for 2008/09 to be spent on replacing old equipment in 39 Crown courtrooms and 25 Magistrates courtrooms.

Protocols on the use of live links have been published by the Office for Criminal Justice Reform to help criminal justice agencies better understand their roles and responsibilities where different types of live links are being used or considered. These Protocols are available at: http://frontline.cjsonline.gov.uk/_includes/downloads/guidance/better-trials/Live_Links_Protocols.pdf .

Responses to Specific Questions

Section 3 - Video recording evidence during the trial

Question 10

We would welcome your views on recording cross-examination and re-examination over live link for use in subsequent appeals to the Crown Court or re-trials and also the examination where the evidence-in chief was not video or digitally recorded.

Question 11

In the light of the likely high costs:

(a) Do you consider that it would be practical to select cases in advance for recording during the trial where video or digital recording would benefit the young witness in the event of an appeal or a re-trial?

(b) If so, what criteria would you suggest should be applied in deciding which cases to video or digitally record?

Question 12

What practical difficulties would you envisage if we implemented this provision? Do you have any suggestions as to how we could solve the practical problems this measure presents?

3.1 There were 46 responses to question 10, 42 responses to question 11 and 32 responses to question 12.

3.2 These proposals met with a mixed response. Some argued that all trials involving young witnesses needed to be recorded in order to prevent young witnesses ever having to give evidence twice. By recording all such

trials, this would obviate the risk of some young witnesses feeling that the prosecution had decided there was a risk from the outset that the case would be re-tried if there was a conviction. It was pointed out in the Sussex Area response that some parents refuse to allow their children to give evidence twice if the case is to be re-tried. Lexicon Limited referred to two of their recent research studies which suggested that between 6-8% of young witnesses had given evidence twice.

3.3 A number of respondents recognised that the recording of trials would be very costly and may only benefit a few witnesses. Wiltshire Witness Care Unit pointed out that whilst this is an “excellent idea” it would “impact on a very low number of cases”. It was their experience that in the last 2 years only one case would have benefited from this provision. Essex Criminal Justice Board pointed out that the equipment would need updating frequently, and argued that allowing young witness evidence to be recorded would inevitably lead to calls for other witnesses to have their evidence recorded.

3.3 It was recognised that this could be very costly and it may not achieve the benefit that was hoped for:

(a) Magistrates’ Court

3.4 An appeal from the Magistrate’s Court to the Crown Court involves a re-hearing of the case which is effectively a fresh trial and the defence are perfectly entitled to run the case in a different way and require the witnesses to attend again and be subject to a different line of questioning. This proposal does only relate to around 1% of cases and so the cost is not outweighed by the benefits. A couple of respondents also noted that the Magistrates’ Court is also not a court of record and this proposal would alter that position.

(b) Crown Court

3.5 In response to Question 11, it was generally considered impractical to pre-select cases to be recorded; you either recorded all cases or none. There were some suggestions for limiting the application of these proposals. Recording could be limited to:

- cases which involved intermediaries
- cases involving allegations of serious sexual or other violence
- “serious cases”
- cases involving intimidation
- cases where there is a long delay between report and trial
- cases where the witness would, be ineligible for special measures by the time of a re-trial due to their age
- cases involving multiple witnesses, where the jury may be more likely to disagree and fail to reach a verdict

3.6 Some suggested that the recording could be limited to cases tried in the Crown Court as the video could then be played at the Court of Appeal but the experience of the Court of Appeal suggests that witnesses only attend in around 1% of appeals and that young witnesses are a very small proportion of that 1%.

3.7 A number of practical problems were highlighted:

- storage room would need to be found for a large number of videos/DVDs, with the attendant security requirements
- the quality of the equipment would need to be high to ensure that the recording itself was not off-putting to the witness
- the recording would have to capture all of the participants
- there would be a need for extensive training.

Government Response

The Government has fully considered the responses to these proposals. Whilst there may well be benefits for a small number of witnesses in recording the evidence they give at trial, the costs and practical difficulties of providing such a facility are high and difficult to limit. It therefore concludes that the case has not been made for wide-scale investment in recording facilities in all courts.

Responses to Specific Questions

Section 4 - The primary rule and special measures

Question 13

Should a young witness be allowed the choice of giving their evidence in the courtroom as opposed to from a live link room?

Question 14

What factors would the court need to take into consideration when making its decision to ensure that this will not result in a diminution of the quality of the young witness' evidence? For example:

- ***the age and maturity of the witness***
- ***their level of development***
- ***their understanding of the implications of their preference***
- ***their relationship with the accused and***
- ***their social and cultural background.***

Question 15

(a) Should there be a presumption that where a young witness does give evidence in court that they do so with a screen around the witness box?

(b) If so, what factors should the court consider when making this decision to ensure that the quality of the young witness' evidence will not be reduced? (see the examples listed in Question 14)

Question 16

Do you agree that the distinction between children in need of special protection and other young witnesses should be removed and that special measures should be applied for based on the assessed need of the individual witness?

Question 17

Do you agree that there should be a rebuttable presumption that any young witness in any trial should give their evidence by live link?

Question 18

Do you agree that there should be a presumption that all child witnesses should give their evidence in private, with appropriate support, in all criminal courts unless they do not wish to do so?

4.1 (i) 47 responses were received to question 13. 44 responses were in favour of the proposal, two were opposed and one respondent was undecided.

(ii) 43 responses were received to question 14.

(iii) 42 responses were received to question 15; 27 respondents were in favour of the proposal in question 15 (a) and 15 were against it.

(iv) 47 responses were received to question 16. 44 respondents were in favour of the proposal, whilst three were against.

(v) 43 responses were received to question 17. 32 respondents were in favour of the proposal, 10 were against and one was not convinced either way.

(vi) 46 responses were received to question 18. 31 of the respondents were for the proposal, and 15 were against.

Enhanced choice for young witnesses

4.2 There was almost universal support for the abolition of the current inflexible special measures provisions for young witnesses. . It was argued by many that special measures should be applied for on the basis of individual need. Many respondents commented that the identification of vulnerable and intimidated witnesses is, at present, far from ideal and that needs to be improved as well as a full assessment of each individual's need.

4.3 Many respondents suggested that the choice must be based on full and accurate information. Victim Support argued that all young witnesses should see the *Young Witness Pack*, the CPS Policy document, "Children and Young People"⁴ or the guidance, "Millie the Witness"⁵ and "Jerome: A Witness in Court"⁶ and have a pre-trial familiarisation visit to help inform their choice. Lancashire County Council recommended that young witnesses be allowed to change their minds and use a live link if circumstances changed. The Council of Her Majesty's Circuit Judges and Dyfed Powys Police argued that it must ultimately be for the court to decide which special measures are required. ACPO argued that the wishes of the witness should take precedence over the view of the court, and that is in accordance with the Victim's Code.

4.4 There was also support for a move away from any rigid categorisation based on the type of case rather than the individual witness. Special measures should be available for all vulnerable and intimidated witnesses and applied for on the basis of need. One academic respondent offered a cautionary note that we do not want to return to a position where the burden will be on the prosecution to prove that there is a real risk that without a live link, for example, the young witness would not be able to give complete evidence (citing the case of *R v Redbridge Youth Court (2001)*). She also questions who would be expected to rebut the various presumptions set out in the Consultation Paper.

Safeguards and young witness choice

4.5 The vast majority of respondents acknowledged the need for safeguards to be in place to ensure that the choice the young witness makes is really what they want and is in their best interests. 12 respondents agreed with the safeguards listed in Question 14. Other suggestions included:

- the emotional and psychological development of the young witness
- their mental capacity and whether they have any mental health problems
- whether they have learning disabilities

⁴ CPS Policy Directorate (June 2006) Children and Young People – CPS policy on prosecuting criminal cases involving children and young people as victims and witnesses

⁵ CPS (November 2007) Millie the Witness

⁶ CPS (November 2007) Jerome: A Witness in Court

- any previous experience of giving evidence
- views of carers, parents, supporters, etc.
- whether they have been fully prepared for giving evidence
- six respondents suggested that there needs to be a catch-all “any other factor which the court considers relevant”.

Screens around the witness box

4.6 Whilst a majority of respondents favoured the creation of a presumption that where the young witness gives evidence live in the courtroom they have a screen around them, it was noted that there should also be a move away from rigid categorisation here. The individualised needs of the witness should be explored and met. 12 respondents favoured including safeguards along the lines of those suggested in Question 14.

Live links

4.7 The majority of respondents were in favour of retaining a presumption on the use of live links for young witnesses (32 out of 43 respondents). Respond/Ann Craft Trust/Voice UK and Nottinghamshire Safeguarding Children’s Board argued that the live link should be used unless it is the young witness’ choice not to use the live link and that it is in the interests of justice to allow them to give evidence live in court. The Criminal Bar Association agreed that a child should be allowed to “opt out” providing that decision was fully supported with evidence.

Clearing the court (giving evidence in private)

4.8 There was strong opposition to creating a presumption that all young witnesses would give evidence in private. The opponents to this proposal included the Newspaper Society, the CBA, the Council of Circuit Judges, CPS, the Police and Voice UK. The Newspaper Society argued that this represented a “significant departure from the open justice principle”. Section 25 of the Youth Justice and Criminal Evidence Act 1999 was implemented in the face of strong opposition from the press, and a number of assurances were offered at the time of the Bill’s passage through Parliament. These included limiting the provision to sex offence cases and those involving witness intimidation and Ministers stressed that the provisions would be used rarely. If the press were routinely limited to one named individual it would hinder the fair and accurate reporting of criminal proceedings which could be detrimental to witnesses and the accused alike.

4.9 In the Sussex Area response it was argued that there was little evidence of section 25 being used at present in cases where it should be.

Government response

The Government accepts that whilst many young witnesses are content with giving evidence initially on video and subsequently at trial via live link, this is not true in all cases, some witnesses are uncomfortable about being seen by the defendant on the live link screen and would prefer to give evidence in court but with a screen around the witness box. In the light of the proposals to extend the age of eligibility to those under 18 (see section 7 below), it is even more important to allow for flexibility and allow courts to base their decisions on special measures on the informed views of the witness and the judgment of the prosecutor.

Therefore the Government proposes to remove the present rigid special measures presumptions for young witnesses and to provide a more flexible approach, enabling young witnesses to opt out of video recorded evidence in chief and live links, whilst providing appropriate safeguards, including the approval of the court.

In its draft legislative programme published on 14th May 2008, the Government indicated that it intended to legislate on special measures in the current session of Parliament. Provisions are included in the forthcoming Coroners and Justice Bill.

The Government is working closely with the Association of Chief Police Officers and the CPS to ensure that witnesses are provided with all the information they need to form a view on what special measures they would prefer and that appropriate special measures applications are presented to the court with full details of the witness' views. This will be especially important if the application is other than for the "normal" special measures (the video-recorded statement and the live link).

The Government acknowledges the lucid and understandable concerns expressed against the proposal to introduce a presumption that all young witnesses should give evidence in private. We agree with the views put forward, and have decided not to proceed with this proposal. However, we are concerned that the existing limited provision (under section 25 of the Youth Justice and Criminal Evidence Act 1999) may not be applied for in all eligible and appropriate cases. The CPS will be issuing fresh guidance to prosecutors to re-iterate the need for prosecutors to consider and discuss this special measure with young witnesses and their parents/guardians in appropriate cases.

Responses to Specific Questions

Section 5 - Restricting the visual image of young witnesses

Question 19

Do you agree that where young witnesses testify in cases where their visual image is not known to the defendant it should be possible, with the agreement of the court, to restrict their image from the defendant where there is fear of reprisal or intimidation?

Question 20

Do you agree that young witnesses suffering fear and distress at the defendant watching them giving their evidence should be able to, with the agreement of the court, have their image concealed when giving their evidence by live link, or have a screen to prevent the accused seeing the witness, if giving evidence from the witness box?

Question 21

What practical difficulties would you envisage if we implemented these proposals? Do you have any suggestions as to how we could solve the problems presented by these proposals?

5.1 (i) 48 responses were received to question 19. Only one respondent was against the proposal.

(ii) 47 responses were received to question 20. One respondent was against this proposal.

(iii) 31 responses were received to question 21. 14 respondents outlined practical difficulties and 24 respondents suggested potential solutions.

5.2 The general proposal to conceal the image of witnesses who were in fear was viewed positively. The NSPCC pointed out that “it is often a huge worry to children when they discover their evidence will be heard by the defendant’s family and supporters and by members of the general public”. The majority of respondents focused on the non-technical solutions to this problem, e.g. the combination of live links and screens to prevent the defendant from seeing the witness’ face. Victim Support were particularly behind the use of this “dual” special measure and offered evidence of its use in some locations across the country. It is of course possible to do this at the moment, but the responses suggest that it requires excellent case management and there may be a need for guidance here.

5.3 A specialist in children’s support services suggested that, if the public gallery was not to be cleared, and the witness was in fear or intimidated, then those in the public gallery should also be ‘screened’ from seeing the witness. The Council of Her Majesty’s Circuit Judges was in favour of the proposal in principle, but pointed out that the defendant’s legal representative would have to be able to see the witness and ultimately it must be left to the trial judge to “direct such arrangements be made as will provide proper protection and reassurance for the witness and a fair trial”.

5.4 The CBA were strongly opposed to anything which amounted to anonymity, either in name or in effect. They were particularly against any use of technology to occlude the face of a witness. They argued that it is the norm that the defendant should be able to hear and see his accuser and this should only be departed from in rare and exceptional circumstances. Another academic found this a “troubling proposal” and pointed to Court of Appeal authority which supported the argument made by the CBA. She also argued that this raises concerns under Article 6 of the ECHR (fair trial provision).

5.5 The main practical difficulties which respondents highlighted were:

- limitations with the way in which the court was laid out making it potentially difficult to prevent the defendant from seeing the witness, whilst ensuring that the jury, judge and legal representatives could still see the witness
- if technical solutions were proposed, equipment would need to be updated
- screens can be cumbersome
- it is time-consuming to effectively conceal images
- it defeats the object of preventing the defendant seeing the witness at trial if he has already seen the witness on video giving their initial statement.

5.6 As to the solutions, the following were suggested:

- just use screens and clear the court before and after the witness enters
- provide laptops for the judge, jury and counsel
- turn off the defendant’s monitor, or erect a screen around him
- use voice distortion technology

- early appointment of the trial judge to consider an application for withholding the visual image of the witness from the defendant
- warn the witness before they provide their statement visually that it will be seen by the defendant, and if they do not want it disclosed submit an audio copy to the defence
- “remove” the visual image of the witness from the visual recording (without application to the court) and disclose it in its amended form as part of the advance information.

Government response

The Government notes the strong support for the proposal to restrict the visual image in certain circumstances, while ensuring that the identity of young witnesses is known. However, we acknowledge that there have been some concerns raised about this proposal. We will carefully consider this proposal further in light of a defendant’s right to a fair trial and the approach of the courts since R v Davis.

Responses to Specific Questions

Section 6 - Child defendants

Question 22

Can you suggest any other measures that would assist these vulnerable defendants participate more effectively in the trial process?

6.1 There were 38 responses to question 22.

6.2 There was widespread support for applying the ‘special procedures’ (set out in paragraph 5.4 of the Consultation Paper) to vulnerable defendants. Some other suggestions made by respondents were:

- allowing defendants to have a pre-trial familiarisation visit
- ensure that defendants meet the trial advocates before the trial
- pre-trial “education” for defendants about the criminal justice process.

6.3 Some respondents argued that in addition to those procedures all defendants should be made eligible for all of the special measures. One academic argued that the exclusion of defendants from the special measures regime in the 1999 Act was “illogical” and “indefensible”. Amongst other respondents, the provision of intermediaries for vulnerable defendants was felt to be particularly important.

6.4 As outlined in the consultation paper, the new section 33A of the 1999 Act, introduced by s 47 of the Police and Justice Act 2006, permits certain accused persons to use the live link (where their ability to participate effectively in the proceedings as a witness giving evidence in court is compromised by their level of intellectual ability or social functioning and a live link would help them to participate effectively in the proceedings as a witness).

6.5 After the consultation paper was published, an amendment to the Consolidated Criminal Practice Direction on Vulnerable Defendants (Part III.30) was issued by the President of the Queen’s Bench Division on 22 May 2008. This applies to:

“...proceedings in the Crown Court and in magistrates' courts on the trial, sentencing or (in the Crown Court) appeal of (a) children and young persons under 18 or (b) adults who suffer from a mental disorder within the meaning of the Mental Health Act 1983 or who have any other significant impairment of intelligence and social function”.

6.6 The Practice Direction details the actions that can be taken to assist a vulnerable defendant such as; ensuring that a suitable supporting adult is available and that the defendant can sit with his family if they so wish; ensuring and regularly checking throughout the proceedings that they understand what is happening; frequent and regular breaks; removal of gowns and wigs; and clearing the court room. Also upon application from the defendant, and if the court considers that it is in the interest of justice to do so, the court may direct that the defendant be permitted to give their evidence by live link.

6.7. It was also argued that there is a pressing need for better information and care for vulnerable defendants across the board. The Young Defendants Pack was felt to be particularly needed as well as pre-trial visits for defendants and a full needs assessment.

Government response

Special measures were developed to protect vulnerable and intimidated witnesses, and help them to give their best evidence. Defendants are normally in a slightly better position than witnesses since legal aid provides them with a solicitor and counsel (in Crown Court) who will help them to participate in the process and present the defence as effectively as possible. The new Practice Direction recognises that some, particularly vulnerable defendants need additional assistance in court. We are considering, as part of the PACE Review, what more needs to be done to enhance the provision of appropriate adult services, particularly to vulnerable defendants.

The Government recognises that in some limited circumstances vulnerable defendants with communication difficulties may also benefit from the provision of an intermediary to assist them with communication when giving evidence in court in order to ensure that they receive a fair trial. We will therefore legislate to provide for this in proposed legislation on special measures during the current Parliamentary Session. Provisions are included in the forthcoming Coroners and Justice Bill.

The Government also recognises that it is important for young defendants to be provided with appropriate and sufficient information regarding the criminal justice process. There are no immediate plans to produce a Young Defendants Pack but HMCS is currently working with a cross CJS Working Group to develop a simple national information leaflet with key messages that can be readily understood by a young person, their parent or guardian.

Responses to Specific Questions

Section 7 - Equality between witnesses and defendants

Question 23

Do you agree that young witnesses should qualify for special measure if aged under 18?

7.1 There were 47 responses to question 23. 46 respondents were in favour of raising the age limit, with one respondent being opposed.

Government response

The Government agrees that the age of eligibility for special measures should be extended to those aged under 18 years and aims to include this in proposed legislation on special measures during the current Parliamentary Session. Provisions are included in the forthcoming Coroners and Justice Bill.

Responses to Specific Questions

Section 8 - Day of trial: delay factors

Question 24

Do you agree that for all young witnesses regardless of when they are scheduled to give evidence, trials should begin in the afternoon to allow young witnesses' testimony to be either:

- ***at the start of the second day when they will be fresh and with the minimum of waiting or;***
- ***at the start of the day for those young witnesses scheduled to give evidence later in the trial?***

Question 25

If so, what are the obstacles to achieving this and how would they be overcome?

8.1 There were 46 responses to question 24; 36 were in agreement. There were 37 responses to question 25.

Question 24

8.2 Although a large majority were in agreement in principle with the proposal, a number of caveats were added.

8.3 In particular there were concerns that it would not be feasible in the Magistrates' Courts particularly because of the continued practice of listing additional "back-up" cases. This was something that was echoed by a number of those who responded negatively to the proposal. CJS agencies tended to take a negative view whilst NGOs were supportive.

8.4 The CPS agreed in principle but wondered whether it was achievable, adding that each case needed to be considered on an individual basis. Both His Honour Judge Wide QC and the Magistrates' Association took the view that this was a judicial function and rejected such a prescriptive approach. HM

Council of Circuit Judges submitted: “that the timetabling of evidence should be a matter for specific direction at the Plea and Case Management Hearing and not prescribed by direction”.

8.5 Those that supported the proposal emphasised the traumatic effect of any uncertainty on witnesses. Professor Graham Davies referred to his personal experience sitting in the Magistrates’ Court to highlight this stating that he has: “seen the faces of many adult witnesses who have screwed up their courage to give evidence” when told that they will not be giving evidence that day and took the view that the impact would be even greater on a child witness.

Question 25

8.6 A common concern was the potential for delay and the difficulties that such a policy would face in the Magistrates’ Courts which deal with a high volume of cases and where cases are listed for one day trials.

8.7 The length of legal argument was seen as an issue by the NSPCC, Derby Local Safeguarding Children Board and Hampshire Safeguarding Unit. Some respondents, including representatives from the police, complained that much of the delay was due to issues that could and should have been resolved prior to the court day. Other respondents, including the NSPCC and Derby LSCB, suggested that advocates do not take into account the length of the video recorded evidence-in-chief when preparing timetables.

8.8 HM Council of Circuit Judges and other members of the judiciary were also concerned by the length and poor editing of the video recorded evidence-in-chief considering it an obstacle to the policy proposed in Question 24. The inflexibility of the court operating procedures was cited as an obstacle by the Criminal Bar Association and Lexicon Limited.

8.9 The Law Society thought that one obstacle would be a slight lengthening of the trial process. The Institute of Legal Executives (ILEX), which agreed in principle, thought: “the proposal also needs to balance the needs of the court and the interests of justice. For example, it would not be in the interest of justice to give evidence out of sequence”. However the Law Society took the view that if the prosecution wished to call the evidence in a certain order this: “could be overcome by an explanation to the court and jury”.

Government response

The Government welcomes the considered responses on these issues. Listing is a matter for the judiciary and so we have passed the responses to the Consultation Paper on this matter to the senior judiciary.

Responses to Specific Questions

Section 9 - Standards of cross-examination

Question 26

Do you think that there should be established accredited panels of practitioners to ensure that those questioning young witnesses have successfully completed specific training?

Question 27

How could the court ensure that inappropriate cross-examination does not take place? Would this process be best facilitated by the judge or Bench discussing the ground rules with the advocates in advance?

Question 28

Do you think that training for magistrates who try cases involving young witnesses in the adult court should reinforce guidance in Achieving Best Evidence, A Case for Balance and A Case for Special Measures?

Question 29

Do you agree that the prosecution and defence should consider using intermediaries more widely for young witnesses as they provide a useful assessment of the young witness' ability to understand questions put during cross-examination?

9.1 There were 42 responses to question 26; 35 of which were in agreement. There were 45 responses to question 27, of which 29 agreed with the proposal that there should be advanced discussion of the ground rules prior to cross-examination. All 42 respondents to question 28 agreed that there should be training for Magistrates. Question 29 received 47 responses of which 39 were in agreement.

Accredited panels of young witness practitioners (Question 26)

9.2 The CPS, Law Society and the CBA disagreed with the proposal, as did HM Council of Circuit Judges. The general view was, in the words of the Council: “education not accreditation”. It should be part of training but accreditation was impractical and costly.

9.3 Both the CBA and CPS thought accreditation would restrict the number of available advocates and that the high volume of offences of differing categories involving young witnesses made it even more problematic. The CPS was of the view that it would be disproportionately affected and that there was sufficient guidance in place. The CBA and the CPS supported training for the judiciary. However the CBA believed the answer was: “greater and more specific training in understanding, development and ability”. One member of the judiciary expressed concerns that accreditation would lead to a costly and bureaucratic process: “which would create an impression of improvement without real substance”.

9.4 Humberside Criminal Justice Board agreed with the proposal but wondered how practitioners would be removed from the accredited panels. This was a view expressed by a couple of other respondents.

9.5 Those respondents who supported accreditation often felt very strongly that accreditation was required to prevent inappropriate cross-examination. The Gwent Criminal Justice Board argued there were no real obstacles as such accreditation had been in place for family proceedings for many years.

9.6 The NSPCC supported accreditation for practitioners and called for training for the judiciary citing the training introduced in the Western Circuit as a good example that could be expanded upon and implemented nationwide. Another respondent who supported the proposal suggested a move towards inquisitorial trials as these: “would prevent child witnesses being subjected to the highly unpleasant experience that giving evidence currently is”.

Cross – examination: rules (Question 27)

9.7 The CPS supported advance discussion and, as already stated, thought judges should be provided with legal guidance and additional training. A number of respondents, including the Law Society and representatives from community services took the view that judges needed to intervene more.

9.8 One academic suggested a greater role for intermediaries with the intermediary assessment report being used in the setting of the ground rules by the judge. Derby City LSCB, Barnado's Bridgeway Project and Derbyshire Victim and Witness Project also thought that there was greater scope for the intermediary to take an active role in making the judge aware that the cross-examination might be inappropriate.

9.9 HM Council of Circuit Judges took an unfavourable view of the proposal and stated that judicial intervention should be kept to a minimum. The CBA also disagreed. They argued that although it might be possible in certain cases for ground rules to be discussed: "counsel must be free to put their case in their own way within boundaries considered appropriate by the judge".

Magistrates' training (Question 28)

9.10 The CPS suggested including input from those who deal with witnesses, for example that Witness Service and CPS practitioners. Salford LSCB agreed but cautioned against compromising the impartiality of the magistrates.

9.11 Lancashire Constabulary suggested that the lead should be taken by Legal Advisers who would be checking that there is actually compliance and understanding.

Use of intermediaries (Question 29)

9.12 Some of those who agreed with the proposal expressed concerns about overuse and did not want to see intermediaries being used for every witness. Also there were many concerns about where the resources would come from to facilitate the greater use of intermediaries. This was a concern raised by ACPO among others. However respondents with such reservations were, in principle, generally in favour. The Criminal Bar Association were concerned that what was being proposed was an intermediary for every child witness and thought that this would be a misuse of the provision.

Government response

Accreditation and training

The Government acknowledges the concerns expressed by the relevant professional bodies and the judiciary on the proposals for accreditation of legal practitioners. Of particular concern is the fact that accreditation may not in itself improve standards, and it may also lead to a limited "pool" of advocates who could appear in cases involving young witnesses, of which there are significant numbers.

The Government is encouraged by the developments in training, particularly in the area of sexual offences. The CPS has successfully piloted specialist sexual offences training as part of its Proactive Prosecutor Programme. This is currently being rolled out nationally. A Rape Prosecution Manual has been drafted and published on the CPS Infonet. An e-learning package based upon the Rape Prosecution Manual is currently being developed. It is anticipated that this will be launched during October 2008. Completion of this course, which emphasises the special provisions relating to child victims and witnesses, will be compulsory for all rape specialist prosecutors and co-ordinators. A joint CPS/ACPO Rape Manual is currently being drafted by representatives of the CPS and National Police Improvement Agency (NPIA), with an anticipated launch date of winter 2008. This will provide comprehensive guidance to investigators and prosecutors in rape cases and will emphasise the importance of joint working as part of the "prosecution team". The CPS Rape Public Policy Statement has been updated and refreshed and is currently the subject of public consultation. The purpose of this document is to set out the standards of service which the public can expect to receive from the CPS in rape cases. The CPS aims to launch the revised document during January 2009.

In the light of the responses, the Government has decided not to proceed with the proposal for accreditation and agrees that the focus should be on training through the relevant bodies.

The responses on Magistrates training have been passed to the Judicial Studies Board. Guidance for District Judges, Magistrates and Legal Advisers on Child and Vulnerable Witnesses' was issued in April 2008 and sent to all HMCS Courts to allow for distribution to Bench and Deputy Chairman, Youth Panel Chairmen and all members of local Judicial Leadership Groups. In addition copies were supplied to every District and Deputy District Judge. Further copies were made electronically available on the JSB Trainer website which every Justices' Clerk and Training Manager within HMCA has access to. The guidance was produced by a JSB working group which included representatives from the JSB, HMCS, the Justices' Clerks Society, the Magistrates Association, Victim Support and OCJR and was chaired by a DJ (MC). The guidance was also critically read by other criminal justice agencies including members of the Bar Council and the NSPCC.

Intermediaries

The Government agrees that intermediaries should be used in appropriate cases (particularly where the witness is very young or where the witness has specific communication difficulties which inhibit their ability to tell their story fully and effectively) and it notes that the use of this special measure has expanded rapidly now that national roll out of the provision has been completed.

Responses to Specific Questions

Section 10 - Evaluation of the Liverpool Witness Support, Preparation and Profiling Scheme

Question 30

Should the OCJR evaluate the witness profiling scheme in Liverpool to assess its potential application for all witnesses including children?

Question 31

Are you aware of any other similar schemes for young witnesses which could also be evaluated?

10.1 There were 43 responses with 39 supporting the recommendation to evaluate the Liverpool scheme fully or partially.

10.2 Nottingham and Nottinghamshire Safeguarding Children Boards disagreed with the proposal, taking the view that the process had moved on as the scheme had been superseded by the intermediary special measure. Respond-Ann Craft Trust-Voice UK, in agreeing with the proposal, suggested that the evaluation should consider how wider use of the Liverpool model would fit with the intermediary special measure.

10.3 Humberside Criminal Justice Board wanted OCJR to evaluate other young witness schemes not just Liverpool. The Justices' Clerks' Society, Lexicon Limited, CPS and the HM Court Service NW Witness Champion agreed with evaluating the scheme but highlighted the financial implications of extending it.

Other young witness schemes (Question 31)

10.4 Most respondents were not aware of other schemes or gave no indication. Those that did suggested the following schemes:

- NSPCC Devon & Cornwall Young Witness Project
- Greater Manchester Young Witness Service
- Nottinghamshire Victim Support Young Witness Service
- Humberside Young Witness Scheme
- Vulnerable Witness Partnership between Dorset Police, CPS and Bournemouth social services
- Victim Support scheme in Cumbria

Government response

The Government notes the significant support for the proposal to evaluate young witness schemes and, in particular, the Liverpool witness profiling scheme. Some evaluation has already been done as part of the Government's review of young witness support schemes, including the models of support provided by the NSPCC, Victim Support and some Local Safeguarding Children Boards. Guidance based on this evaluation and national standards will be published in March 2009.

The Government acknowledges the excellent work done by those responsible for all of the schemes supporting young witnesses and vulnerable adults. However, the Government has decided to give priority to the roll out of the intermediary's special measure, following independent evaluation rather than evaluate any further schemes at present.

Responses to Specific Questions

Section 11 - Pre-trial therapy guidance and protocols

Question 32

Do you think that the current guidance on pre-trial therapy for children is effective? Would you suggest any changes?

Question 33

Do you agree that all areas should develop pre-trial therapy protocols?

Question 34

Which body/organisation is best placed to monitor the implementation and effective use of these protocols? Why?

11.1 There were 34 responses to question 32. There were 40 responses to question 33 with 27 agreeing. There were 36 responses to question 34.

Effectiveness of pre-trial therapy guidance (Question 32)

11.2 Only 5 of the respondents thought the guidance was operating effectively. A number of respondents thought that for the guidance to be effective there had to be more awareness-raising about its existence.

11.3 However some respondents (Hampshire Police, NSPCC, Essex Criminal Justice Board, and South Yorkshire Police) thought that the guidance itself lacked clarity. South Yorkshire Police stated that the guidance: "is woolly in that some officers and members of social services are still reluctant and

unsure whether this is best undertaken before the trial for fear of accusations of coaching”.

11.4 Salford LSCB and Barnado’s Bridgeway Project proposed that the guidance would be more effective if there was less delay in proceedings. The Law Society said that it has little knowledge of pre-trial therapy and has reservations about it.

Development of pre-trial therapy protocols (Question 33)

11.5 Amongst those who supported the development of local protocols there were concerns expressed by some regarding maintaining a consistent approach nationally. The CPS suggested a national model from which local areas could develop their protocols. Some went further and recommended a national protocol.

11.6 The concern that local protocols would lead to inconsistency was also made by those who rejected the notion of national protocols as well. Some, such as HM Council of Circuit Judges, thought that clear national guidance was adequate and would ensure consistency. A number thought that better national guidance with better awareness would render such protocols unnecessary.

Monitoring pre-trial therapy protocols (Question 34)

11.7 10 respondents suggested that this should be the CPS, either alone or in partnership with other agencies. Others supported the suggestion of the CPS that it should be the LSCBs and/or LCJBs. The NSPCC thought that it should be a joint initiative between LCJBs and LSCBs.

11.8 Essex Criminal Justice Board suggested a similar approach to the Victims’ Code of Practice which: “falls under the remit of the LCJBs but each individual agency is responsible for monitoring their section”.

11.9 Other suggestions were Victim Support (Victim Advisory Panel), Witness Care Units, CAF/CASS (Lancashire County Council) and numerous other bodies involved with the care of children. No real explanation was given in the majority of cases for the choice of organisation.

Government response

The Government recognises that amongst criminal justice practitioners and therapists, the level of awareness of the guidance on the use of pre-trial therapy (issued by the Government in 2001-2) is not as high as it should be. The guidance is currently being revised and the aim is to increase awareness when the document is reissued early next year.

We are aware of some local protocols and consideration is being given as to whether a “model” protocol should be included in the revised guidance to provide all areas with a better understanding of the process, roles and responsibilities. The Government does not consider it necessary or desirable to go further and produce a national protocol given the need for local areas to respond to local needs.

As it is evident that very few areas have developed local protocols to date, the Government considers that it would be premature to set up local monitoring mechanisms. As part of the strategy for re-launching the draft guidance local areas will be encouraged to develop their own protocols. We still consider that, in the long-term, local monitoring of protocols will be useful and the various suggestions as to the local monitoring body provided by respondents will be considered as we take this forward.

Responses to Specific Questions

Section 12 - Child witness supporter in the live-link room

Question 35

Do you agree with the Review Group's recommendation that the Government should legislate to make a supporter in the live-link room a special measure?

Question 36

What safeguards would be needed to ensure that the trial is fair but that the young witness is provided with proper emotional support?

Question 37

Who should be permitted to act as a young witness supporter in the live-link room?

Question 38

What, if any, further safeguards do you think are necessary to ensure that the integrity of the evidence is not open to question?

12.1 Question 35 received 44 responses, 39 agreed. There were 44 responses to question 36. Question 37 received 44 responses and question 38 received 31 responses.

Legislation on supporters in the live link room (Question 35)

12.2 Although there was strong support for proposal, the responses from the judiciary were not in favour. HM Council of Circuit Judges rejected the proposal. The Council did not think that a special measure was necessary although they accepted that it was entirely appropriate that young witnesses were accompanied when giving evidence. They argued that the decision as to who should act as a supporter must be left to the trial judge's discretion. One judge thought that a Practice Direction would suffice and the Magistrates' Association took the view that: "it should be a guideline rather than a legislative requirement".

12.3 Lexicon Limited supported the proposal because they argued that the Lord Chief Justice's 2002 Practice Direction had not entirely achieved its aim in recommending a more flexible approach to who could act as a supporter. The CBA expressed reservations about legislating to make a supporter in the live link room a Special Measure but the Law Society had no such objection.

Safeguards to ensure a fair trial (Question 36)

12.4 Most respondents thought the independence of the supporter was the primary safeguard and that this could be assured through training. One specialist in child support services suggested that the training should: "emphasise the importance of the integrity of the evidence" and that practitioners and the judiciary should be made aware of the training to increase confidence in the use of supporters.

12.5 The NSPCC and Lexicon Limited suggested the need to install overview cameras as standard so that the judge could see the supporter. ACPO and an academic respondent recommended looking at the use of supporters in the live link room in Scotland and learning from it.

Who can act as supporters? (Question 37)

12.6 There was a broad range of responses to this question with many responding, in line with the previous question, that an independent and properly trained individual would be appropriate.

12.7 ACPO considered that the supporter could be any person known or trusted by the child, who was not involved in the case. Similarly Cumbria Police thought it could be: "someone the witness is comfortable with". Dyfed Powys Police were more specific recommending trained Witness Service volunteers. A number of respondents suggested a youth worker or social worker.

12.8 Lexicon Limited approvingly cited the Scottish guidance which was very broad including relatives and personal friends as potential supporters. Professor Graham Davies also recommended looking at the Scottish guidance.

12.9 HM Council of Circuit Judges emphasised the need for complete impartiality and suggested the court usher who had accompanied the witness on their pre-trial court visit.

12.10 The Law Society stipulated that it should not be an immediate family member or witness in the case. However the CPS thought that a family member not involved in the case would be acceptable along with Witness Service volunteers, carers, guardians and social workers. The CBA suggested a counsellor who had provided therapy.

Safeguards to ensure the integrity of the evidence (Question 38)

12.11 The CPS recommended transparency of the process so that the integrity of the evidence was not open to question. This was echoed by a number of other respondents such as the Sussex Joint Area response. The NSPCC cited work in Devon and Cornwall where the NSPCC have built working relationships over the past 13 years which engender trust and guarantee the integrity of the process. There were also protocols with the children and their families at the outset of preparation work that emphasise the boundaries regarding evidence and the need to disclose anything relating to evidence

12.12 Another suggestion was the court questioning the supporter about their relationship with the child (CBA), or providing the defence with the details of the supporter pre-trial (South Yorkshire Police). A number of respondents suggested some sort of technical solution which would allow court officials or the judge to observe everyone in the live link room.

Use of a Supporter in Scotland

12.13 In Scotland the use of a witness supporter in the live link room is a special measure for child witnesses under the age of 16. According to the Scottish Government, judges and legal practitioners are quite accepting of the presence of a witness supporter in the live link room and there have so far been no problems over this or any legal challenges. The supporter must always remain in camera shot for the judge however, so that the judge can be satisfied that the witness is not being coached. On his monitor therefore the judge will see everyone in the live link room whereas everyone else in the court will only see the witness.

12.14 Guidance issued by the Scottish Executive is quite permissive regarding who may act as a witness supporter and includes relatives. A witness would

normally be asked for their views on who they would wish the supporter to be. However the guidance highlights that careful consideration should be given to such a decision and it is ultimately at the discretion of the court who may act as a supporter. Scottish judges generally prefer that a supporter has no close relationship to the witness because it could be that the supporter who is a family member, for example, could become emotionally or otherwise involved with the case risking contamination of the evidence or inhibiting the witness in what they say. Most supporters however, are independent of the witness and provided in the main by the Witness Service. It has been known for a judge to direct that the supporter is someone from the Witness Service.

Government response

The Government recognises that the use of supporters in the live link room is a sensitive issue, given the need to balance the needs of the witness against ensuring that there is no perception that the witness could be subject to undue influence while in the live link room. We note that the present approach through guidance has not been wholly satisfactory from the perspective of the witness, while the legislative approach adopted in Scotland has been successful. The Government has concluded that legislation should be introduced to enhance the live links special measure, so that when the courts are considering live links applications consideration is given to permitting a supporter in the live link room. The decision on who should act as a supporter will remain a matter for the court to determine after taking into account the witness's wishes. This provision will be included in legislation on special measures planned for the current Parliamentary Session (the Coroners and Justice Bill).

Responses to Specific Questions

Section 13 - Refreshing memory

Question 39

How can we ensure that processes are put in place to ensure that young witnesses can watch their video, or see their written statement, in advance of the trial?

13.1 There were 41 responses to question 39.

13.2 Four respondents thought that building this into the Pre-Trial Review or PCMH would be a way on ensuring that it happened. The Justices' Clerks' Society and CPS were amongst those that thought this was appropriate.

13.3 Another suggestion was adding it to the child witness checklist (Victim Support) with the judiciary managing it. Both the CPS and Lancashire County Council wanted consideration to be given to a national protocol.

13.4 Lexicon Limited criticised the CPS policy, which proposes the pre-trial court familiarisation visit as the best time for memory refreshment, as unrealistic due to the typical length of the videos and: "it is better for 'refreshing' to take place at another time and in more relaxed circumstances". This concern was somewhat echoed by Lancashire LSCB who wanted the location to be: "somewhere appropriate and familiar to the child".

13.5 Victim Support called for greater judicial activism in ensuring that this happens and for greater awareness of the guidelines in volume 2 of *Achieving Best Evidence*. The NSPCC, along with some other respondents, reiterated that this was a police responsibility. The NSPCC suggested adding it to the WCU checklist.

Government response

The Government recognises the importance of providing young witnesses with the opportunity to refresh their memories of the evidence they gave initially before going to trial. The national guidance in *Achieving Best Evidence (2007)* makes it clear that it is the responsibility of the police to arrange for prosecution witnesses to refresh their

memories, in consultation with the prosecution. As the most appropriate time for consideration of this issue seems to be the Plea and Case Management Hearing we will share the responses on this issue with the Criminal Procedure Rules Committee and ask them to consider introducing appropriate court procedure rules.

Responses to Specific Questions

Section 14 - Young Witness Checklist

Question 40

To what extent, if any, are you using the child witness checklist in appropriate cases, and if so do you find it an effective tool in assisting the provision of child witness support?

Question 41

Is there anything that is included in the checklist which might be helpful, or which should be removed or changed?

14.1 There were 26 responses to question 40. There were 16 responses to question 41, 8 said they had nothing to add.

The use and effectiveness of the child witness checklist (Question 40)

14.2 Of the 26 responses 15 expressed no knowledge of the checklist, or said it was only used in a limited fashion. A significant number of respondents appeared to confuse the child witness checklist with the Witness Care Unit checklist.

14.3 The CPS said that one area had commented that the checklist was used in all appropriate cases.

14.4 Salford LSCB thought that the checklist was not particularly useful. They argued that: "what is needed is a more simple process and less forms. It needs to be child centred rather than process driven".

Changes to the checklist (Question 41)

14.5 Again, quite a few respondents confused the child witness checklist with the Witness Care Unit checklist. The CPS said that the CPS Area which used the child witness checklist considered it to be satisfactory.

14.6 Lancashire LSCB did not think that anything needed to be added to the form but that it would need to be used consistently across all agencies. Victim Support suggested the addition of a reminder to ensure that witnesses who have made a video are contacted to check whether they have viewed their recorded statement nearer the trial.

Government response:

The Government acknowledges the consultation has revealed confusion amongst frontline practitioners about the two types of checklist. The Witness Care Unit checklist is for Witness Care Officers to complete when they conduct their witness needs assessment and so performs a very different function to the child witness checklist.

The child witness checklist (Pleas and Directions Hearing Supplementary Pre-Trial Checklist for Cases Involving Young Witnesses) is primarily for use by the prosecution or defence advocate in connection with a pre-trial case management hearing to ensure that everything is in place for an effective trial. That checklist is referred to in the guidance to the Plea and Case Management Hearing form. Action is being taken to ensure that the child witness checklist is available online so that advocates can have ready access to it. In light of the responses, it does not appear that this checklist needs amending at present but it will be kept under review.

Responses to Specific Questions

Section 15 - Performance and monitoring statistics

Recommendation 27

The Government should routinely collect and publish data on the time taken between charge and trial in cases involving child witnesses in order to establish the causes of delay, with a view to tackling them.

Recommendation 28

The Government should conduct regular research into the experience of young witnesses within the criminal justice system.

Recommendation 29

For the purpose of monitoring the support for child witnesses as they progress through the criminal justice process, early identification by the prosecution team is vital and should begin at the investigative pre-charge stage.

13.1 Only a few respondents commented on this section of the paper. Of the small number of respondents who did comment there was general agreement that improved performance and monitoring statistics was desirable as long as it was consistent across areas. There was also support for regular research.

13.2 A member of the judiciary, in response to recommendation 27, made the point that the crucial time is not between charge and trial but between complaint and trial.

13.3 The CBA expressed concern that too great a burden was being placed on front line police officers to identify a range of witness problems (recommendation 29).

Government response

The Government recognises the importance of gathering data to monitor the support for young witnesses and to help guide new policies to ensure that young witnesses receive a high standard of service from the criminal justice system. We will consider carefully what improvements can be made in this area, while balancing the need for robust data with consideration of any additional demands made on young witnesses.

Responses to Specific Questions

Section 16 - Equality Impact Assessment

Question 42

(a) Do you consider that any of the proposals in this consultation document could or would have a differential impact upon any equality target group(s) or any other group(s)?

(b) If so, what are the reasons for your view and what do you suggest that the Government could do to address these concerns?

There were 29 responses to this question 12 of which said they did not see any differential impact on equality target groups.

It was apparent that some respondents had misunderstood the nature of an equality impact assessment.

The CPS took the view that the Equality Impact Assessment (EIA) was overly focussed on ethnicity and did not give sufficient consideration to gender and faith issues. However they did not cite any adverse or differential impacts that the proposal might have on these groups.

Some respondents commented on witnesses who did not have English as their first language but did not explain how the proposals in the consultation paper would differentially impact on this group.

Conclusion and next steps

This section provides a short summary of the Government response to the Consultation Paper as a whole. It does not cover all of the matters on which the Government has responded. For those, you will need to turn to each section above.

The Government has decided to accept the following key recommendations:

- retention and implementation of section 28 of the Youth Justice and Criminal Evidence Act 1999 (pre-recorded cross-examination), subject to the successful development of rules of procedure and practitioner guidance with a view to possible testing in ‘mock trials’.
- removing the present rigid special measures provisions for young witnesses to provide more flexibility and choice, subject to safeguards
- supporter in the live link room
- extending special measures to those under 18 years of age
- extending the intermediary special measure to certain vulnerable defendants when giving evidence in court

The Government has decided to consider further the proposal to give the court power to order the restriction of the visual image of certain young witnesses

The Government has decided not proceed with the following recommendations:

- A legal presumption for the use of live links
- Visual recording of witness evidence during the trial
- A presumption that young witnesses will give evidence in private
- Formal accreditation of legal practitioners in cases involving young witnesses

A number of these proposals require legislation and the Government has indicated in its draft legislative programme published on 14 May that it proposes to include amendments to the special measures provisions in the legislation to be considered during the next session of Parliament.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact Gabrielle Kann, Ministry of Justice Consultation Co-ordinator, on 020 3334 4496, or email her at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

Gabrielle Kann
Consultation Co-ordinator
Ministry of Justice
7th Floor
102 Petty France
London
SW1H 9AJ

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under the **How to respond** section of this paper at page 3.

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Annex A – List of respondents

HH Judge Wide QC, Resident Judge, Northampton Crown Court

Gill Richards, Circuit Secretary, Western Circuit

Hampshire Police

Professor Graham Davies (University of Leicester)

Justices' Clerks' Society

Laura Hoyano

Cumbria Police

Manchester Police

Det. Inspector Glen Boulton Solihull Child Abuse Investigations Unit SIO

Deborah Kitson

North Wales Police

Lexicon Limited

Sharon Gay South Wales Elder Abuse Project Officer, Age Concern

Geraldine Monaghan

Crown Prosecution Service

NSPCC

Derby City LSCB

HM Court Service NW Witness Champions

Salford LSCB

Angela Gilbert

Chester Witness Care Unit

Karin Saunders

Derbyshire Parents' Project

ACPO

Sussex joint response: HM Courts, CPS, Witness Service and Police

Dyfed Powys Police

Gwent Criminal Justice Board

Lancashire LSCB

University of Cambridge

Respond – Ann Craft Trust – Voice UK

Humberside Criminal Justice Board

Council of HM Circuit Judges

Essex Criminal Justice Board

Lancashire Constabulary Police

Magistrates' Association

Mangali Murali

Newspaper Society

Nottingham and Nottinghamshire Safeguarding Children Boards

Police Federation

Fiona Raitt

Shelagh Mayo

South Yorkshire Police

Victim Support

HM Inspectorate of Court Administration

Lancashire County Council – Children's Integrated Services

Criminal Bar Association

Barnado's Bridgeway Project

Law Society

Dr Helen R Dent

Government Response to the Improving the Criminal Trial Process for Young Witnesses Consultation

Dorset Police: Criminal Justice Division and Child Protection Unit

Derbyshire Victim and Witness Project

Rita Crowne Head of Safeguarding Unit Children's Services Hampshire

Society of Editors

Professor Jennifer Temkin

HM Inspectorate of Court Administration

Humberside Criminal Justice Board

ILEX

Victim Advisory Panel

Lincolnshire Criminal Justice Board

Annex B - Leatherhead Young Witness Workshop

As part of the consultation process the NSPCC Young Witness project in Leatherhead agreed to hold a workshop for young people to look at their experiences as witnesses in criminal proceedings. The NSPCC in Surrey has provided young witness preparation since 1994, working with between 150 and 250 witnesses a year.

The 22 young people who participated in the workshop were aged between 8 and 17. They had all given evidence in criminal proceedings (both in Crown and Magistrates' courts) and were able to give a young person's perspective on the system based on their own personal experience. Their parents'/carers' views and experiences were also canvassed but separately from those of the young witnesses. All the children had been supported pre trial by the NSPCC Project.

The children participating were split into three groups depending on age; 8 – 12 years (yellow group); 13 – 16 years (blue group); and 16 and 17 years of age (red group).

They were asked their views on, and experience of various special measures and of cross-examination by the lawyers when they gave evidence.

A "graffiti wall" divided into three parts was set up at the workshop. The witnesses and their parents/carers were invited to write on the wall "what went well," "what didn't go well" and "what would you change?" about their experiences.

The workshop ended with a question and answer panel. The witnesses were invited to ask questions of a panel made up of Portia Ragnauth, Chief Crown Prosecutor, Les Holmes, Force Advisor, Child Protection, Surrey Police, DCI Ian Chandler, Manager of Surrey Witness Care Unit, Peter Stables, magistrate, Youth panel, Jill Taylor, magistrate, Family Panel, Gabrielle O'Donovan, Surrey County Council and Mike Hall, Manager, Witness Service, Surrey. The young people spent some time preparing their questions with an NSPCC worker before the panel started.

Quotes from young witnesses throughout this document are taken from the graffiti wall.

Cross-examination:

Overall 48% of the children stated that they did not understand the questions they were asked by the lawyers at court. The reasons given were; the questions were too long (48%); they did not understand some of the words used (38%); and that the lawyer spoke too fast (14%).

There was a significant variation in comprehension between older and younger children. Over half (71%) of those in the group of youngest children said that they did not understand the questions.

When asked whether they were told that they could say that they did not understand a question 95% confirmed that they had been told. However 33% still did not feel able to say that they did not understand and the major reason for this was that the child thought they would look stupid (24%) followed by the fear that someone would be cross with them (19%).

“They shout at you”

95% of the children did not feel that the lawyers treated them with respect. All but one in both the red (16/17 year olds) and blue (12-16 year olds) groups felt that the lawyer had not treated them with respect.

“The way the person spoke to you who was asking questions, I thought was rude and was trying to catch you out and try and say you were lying”

Amongst those children who felt that they had been badly treated by the lawyer 38% of them said that the lawyer shouted at them; 43% said the lawyer made them feel stupid; and 50% felt the lawyer was horrible to them.

“The man who was defending the bad man should stop saying the same stuff”

Over a third of the children said they had not been informed that the defence lawyer would challenge their evidence

“It felt like I was the one in trouble”

Special Measures:

For the special measures of live links, clearing the court, screens, removal of wigs and gowns in the Crown Court and pre-trial visit to the court the majority said they had been informed of the existence of these by the NSPCC. Only a small minority indicated that they had been informed by the police or social workers.

Live Links

The majority of children were aware of and had used a live link to give their evidence. Asked to rate, on a scale of 1 to 5 (5 being the most helpful) the helpfulness of the live link in enabling them to give their evidence 82% gave it a score of 3 or above and 59% gave it a score of 4 or above.

The majority of the witnesses were upset that they had been supported in the TV link room by a member of court staff who they did not know and would have been preferred to have been supported by their NSPCC supporter or someone they were more familiar with.

“Children should be allowed someone comfortable in TV Link Room with them.”

“I would have liked to have had Beverley (NSPCC worker) in the TV room because she supported me before the case”

The witnesses were asked how it made them feel to know that the defendant could see their faces whilst they were using the TV link. Their responses to this were all negative – upset, sad, moody, annoyed, distraught, anxious - apart from one “didn’t care”

The NSPCC were asked by the OCJR to ask the young people if it would have helped having their faces disguised/pixelated whilst giving evidence. The responses were split roughly 50/50, across the age groups. The parents felt this would be a good idea and expressed surprise that this had not already been done.

“We were worried that the defendant got a sexual kick out of seeing our child give evidence. He had all the power and intimidated our child”

Pre-trial visit to the court

This was probably the most popular support measure with only one child giving a score below 3 and 64% of children giving a score of 4 or more (5 being the most helpful).

Removal of wigs and gowns

This was the only special measure where the majority of children gave a score of under 3 and a significant proportion (46%) gave a score of 1 (1 being the least helpful).

Clearing the court

This was the only special measure that none of children said that they had used. Slightly less than half of the children were aware of this special measure but over half of them stated that they would have been interested. However a third did not feel that it would have been helpful.

One witness wanted to know why the court/public gallery was not cleared for her as she was upset about the defendant's family hearing the evidence. One parent raised concerns about the difficulties in arranging for the court to be cleared for her child's evidence and the fact that the public gallery did not segregate the defendant and prosecution supporters.

"The public shouldn't be allowed in the court"

Screens

Just over three quarters (77%) of the children had heard of the special measure, only 23% of them had been told of its existence from the police. Only 2 had used a screen and both gave it a score of 5 (5 being the most helpful). 22% of the children said they had wanted to give evidence from behind a screen whilst 45% did not.

Video recorded evidence-in-chief

This special measure was known to all but one of the children and 77% of the children had their evidence recorded. In 73% of cases this was used at trial. 36% of the children gave a score of 1 (least helpful). The other children gave it a score of 3 or above with 44% giving it a score of 4 or above. It should be noted that it was children from the yellow group (containing the youngest children) who gave this Special Measure the high scores of 4.5 or 5.

Other issues

Remote TV link

Another theme from the day focussed on protecting the young witness from the defendant and the defendant's family/friends and the impact of being in the court building for the trial knowing the defendant is in the same building.

"I'd have different entrances to the court so there is no chance of meeting the accused"

The NSPCC Leatherhead project houses a remote TV link. To date judges at Guildford Crown Court have granted its use on only a handful of occasions. The link has been used to courts outside of the county – namely the Central Criminal Court, Reading Crown Court and Canterbury Crown Court. The link has been used on a more regular basis to Surrey magistrates' courts.

“There should be a different place for victim / witnesses to give evidence”

The young people who attended the workshop were able to see the NSPCC facilities and speak through the link to a NSPCC young witness project in Swansea. The majority of the witnesses felt they would have benefited from using this link and felt that it should have been available to them. One witness said that she saw the defendant over the TV link in the magistrates' court which she thought defeated the point. Several witnesses saw the defendant when attending the Crown Court and were upset that they couldn't have used the remote link which would have prevented this.

“I think we should be able (if we wanted to) have more private places to ask questions on what we want and what happened”

Pre-trial therapy

There were also concerns raised about the difficulty in getting pre-trial therapy and the failure of the police to make it clear that by giving a witness statement, the witness was obliged to attend court if the case went to trial.

“Counselling should never be discouraged”.

“Once video evidence given, child should be allowed counselling without negative effect on trial outcome”.

“People weren't allowed counselling while waiting (over two years for me) and it meant we were depressed and no-one cared. It killed somebody”.

Delay

The long wait for trials to come to court was a recurring issue throughout the workshop. In one case the trial had been adjourned three times.

“It takes too long to get to court case –it took us three years to get to court”

The young people and their parents expressed concern about the delay in cases reaching trial, something that a number of the children also commented on. This had led to several parents questioning whether they would have let

their children go through such a process if they had known how long and drawn out it was going to be.

“No consideration of the witnesses when delays occurred”

“Children’s cases should come first!”

“Cutting delays would result in more successful prosecutions”

Lack of information before, during and after the trial.

It was felt by most of the witnesses that they were not given enough information at all stages of the process.

“Being kept up-to-date with frequent phone calls”

“More information needs to be given to parents pre-trial to keep them up-to-date with what is going on, even if there is no change”

“I would like to have had the sentencing explained more clearly. It was very confusing and for a long time after the sentencing, I still did not know what the final sentence was.”

The interests of the defendant v interests of the child

It was recorded by many that they felt the interests of the defendant were put ahead of those of the witness

“Police treated me like the criminal”

“Shift the emphasis so that the child’s interests are prioritised”.

“The defendant had complete control over everything that was said and all the evidence that was allowed to be shown to the jury and it meant that the whole truth wasn’t told.”

Pre and post trial support and preparation

The majority of comments on the “what went well” section of the graffiti wall were about the importance of pre and post trial support and preparation.

“We would not have gone to court without NSPCC support.”

“Witness Service were very helpful at the trial”

“Big thanks to the NSPCC for helping me and being kind”

The panel

All the young witnesses participated fully in the panel and addressed the members with questions based on most of the issues mentioned earlier. The issues that took up the majority of the time were the effects of delay, use of the remote TV link, having the court cleared and having their supporter with them in the TV link room whilst they were giving evidence. All the witnesses appreciated having the opportunity to contribute to the consultation despite it being difficult for some of them to think about their experiences again. They all found it helpful to meet with other young witnesses and wanted to make a difference to witnesses' experiences in the future.

Frances Le Roy, NSPCC

October 2008

Annex C

Impact Assessment

A Partial Public Sector Regulatory Impact Assessment was conducted in spring 2007 which was published as an annex to the consultation paper. There have been no significant changes to that cost information. We do not expect any of the recommendations we are taking forward to have a significant cost impact. Further information is provided in the Regulatory Impact Assessment produced for the Justice Bill.

Equality Impact Assessment Report

An initial Equality Impact Assessment (EIA) was carried out as part of the consultation process (see consultation paper) which did not envisage any adverse or differential impacts on equality target groups. The consultation process did not elicit any evidence of any unforeseen impacts. As there is not believed to be an equality impact a full EIA has not been carried out.

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