

The NSPCC's Response to Improving the Criminal Trial Process for Young Witnesses

NSPCC
42 Curtain Road
London
EC2A 3NH
Telephone: 020 7825 2854
Fax: 020 7825 2763

Website: www.nspcc.org.uk/publicaffairs

11 October 2007

NSPCC Response to

Improving the Criminal Trial Process for Young Witnesses

Introduction

The NSPCC welcomes the opportunity to respond to the Improving the Criminal Trial Process for Young Witnesses Consultation Paper.

The NSPCC is the UK's leading charity specialising in child protection and the prevention of cruelty to children.

The NSPCC exists to end cruelty to children through a range of activities designed:

- To help children who have suffered abuse overcome the effects of such harm
- To prevent children from suffering abuse
- To prevent children from suffering significant harm as a result of ill-treatment
- To help children who are at risk of such harm
- To work to protect children from further harm.

We have more than 180 teams and projects throughout England, Wales and Northern Ireland and the Channel Islands. Their work includes:

- Family support, assessment, counselling and therapy to children and families experiencing abuse
- Investigations into allegations of child abuse
- Work within schools and other youth organisations to provide a voice for children and advocate their rights.

The aim of our FULL STOP Campaign is to end cruelty to children. We believe that, given the will, most abuse can be prevented. In order to achieve this, it is vital that all children, whatever their needs, have a range of services that are flexible and offer them support and protection.

General Comments

This response is based on the NSPCC's experience and knowledge of delivering young witness preparation and support services for over thirteen years. We currently have 6 Projects: Cheshire, Essex, Surrey, Devon and Cornwall, Swansea and Northern Ireland working with approximately 900 young witnesses each year. The majority of young people are giving evidence in crown court trials relating to child abuse but we also deliver a service, in some areas, where children are witnesses at magistrates and youth court trials. The NSPCC aims to roll out a full magistrates courts service in Northern Ireland next year, a programme funded by the Northern Ireland Office.

The NSPCC piloted the first remote video link for child witnesses, which was launched in Exeter in 2002. This facility was independently evaluated by the University of Leicester. Further remote links are being developed at NSPCC sites in Surrey, Swansea, Plymouth, Truro and Northern Ireland.

All our local NSPCC Young Witness Services work closely with both local safeguarding children boards and local criminal justice boards to help develop and deliver services and share good practice.

Most, if not all of the measures which are now in place to assist vulnerable witnesses in criminal proceedings (e.g. giving evidence by video link) were initially met with scepticism on the part of many. The proposals within this consultation involve breaking new ground. This cannot be achieved without the genuine and robust commitment of all those involved in the criminal justice system. Monitoring and evaluation of the implementation of new proposals that are agreed is an essential ingredient to avoiding the prevalent implementation gap which exists in relation to criminal prosecutions involving young witnesses and which was highlighted by the NSPCC/Victim Support report: *In their own words*.¹

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?

Yes, we do consider that section 28 should be retained and implemented.

Question 2

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

We do think that the categories identified are correct and accept that this is a realistic starting point. However, we consider that it should be extended to all

¹ Plotnikoff, J. and Woolfson, R. (2004) *In their own words – The experiences of 50 young witnesses in criminal proceedings*. NSPCC.

prosecution and defence young witnesses in the future because decisions on the use of this special measure, like all the special measures, should be based on the individual needs of the particular young person.

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?*

Giving evidence in chief by TV link was initially considered an insurmountable problem by many. There would need to be a real commitment on the part of all those involved in the criminal justice system in order to overcome the potential practical difficulties.

Convincing efforts to tackle delay and an increased use of remote links would go a long way towards achieving the implementation of this proposal. There is a risk of inappropriate calls for re-examination which may indicate a need for restrictions to ensure that the interests of justice are served.

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?

Yes. Remote links provide a benefit for the young witness, especially where it means avoiding travelling very long distances. Families often move after a traumatic abusive experience, sometimes for their own safety, and it is not in their best interests to make them travel back to the area, often to be accommodated in B&B, where they may feel uncomfortable and insecure. This is particularly true when the trial is delayed. That can mean they have to move to different accommodation as the booking was made for too short a period. In addition, some children are harmed whilst on holiday or on train journeys. No child should be asked to travel long distances or to return to the place where they were abused, to give evidence at court.

Court to court remote links (as opposed to remote links away from court) might ensure the young person does not have contact with the defendant or their supporters but still brings them into contact with an austere adult environment and other adult defendants.

Some court facilities remain unacceptable where for example video link rooms often double for other purposes, e.g., staff rooms, storage facilities, meeting rooms. Toilets are not always adjacent and routes in and out of the buildings do not afford privacy from onlookers. Surprisingly, planning of new facilities still does not take account of these needs. For example, Exeter Crown Court was built two years ago. The vulnerable witness waiting area is on the other side of the building to the video link rooms, meaning witnesses have to walk across a public thoroughfare. The video link room is too small for the supporter to sit with the witness and the usher sits facing the witness in a

small space, which can be intimidating. NB: At Exeter young witnesses, generally, do not go to the court building as they use the NSPCC remote facility, but this does not negate the fact that planning of the building did not address the needs of vulnerable witnesses including the young witnesses who do not get a service from Exeter NSPCC and adult vulnerable witnesses who still have to cope with these inadequacies.

Crown courts in Plymouth, Truro and Exeter have made efforts to improve services and facilities for young witnesses, but this is most probably as a result of there being an active young witness service in the area, advocating on behalf of children and young people. The Kingston Crown Court was built 10 years ago with no separate entrance for witnesses and they have to use the entrance for deliveries.

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?

As an organisation, the NSPCC considers that non-court remote facilities are the way forward. Remote links away from court buildings provide more security, a child centred environment and an atmosphere that can be more conducive to producing a calm, confident and competent witness. Once again there is a need for a commitment from all those involved to make this work well.

Question 6

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

There are many advantages where witnesses give evidence by way of a remote live link as listed above and the advantages by far outweigh the disadvantages.

One disadvantage experienced in the Devon and Cornwall young witness project is that there can be delay in receiving information as to the progress of the trial at the court, i.e. poor communication in telling the witness what is happening while waiting, but this could be easily addressed through training.

If parents are with the child at the remote link site and then have to travel to give evidence themselves, this can cause delays unless the listing of witnesses is handled carefully.

The normal procedure is to use an usher at the remote link and this has resource implications. Further consideration needs to be given regarding who can fulfil this role to alleviate pressure on ushers. Not all young witnesses have a supporter and in these cases, ushers are vital.

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?*

a) The NSPCC Devon and Cornwall Young Witness Project has 5 years experience of using a remote link for children and young people from Devon and Torbay, giving their evidence to Exeter Crown Court. During this time, approximately 300 children and young people have used the facility to give evidence. The link was funded and installed by the NSPCC at our office in Exeter in 2002. The service was fully supported by the judiciary and Court Service. An independent evaluation of the remote link (2003) recommended this facility should be made available for all young witnesses.²

The main benefit is that children and families feel safe and secure while waiting and giving evidence. This has meant that a significant number of cases have gone to trial that otherwise would have not done so, because of fear or threats, particularly in cases of domestic abuse and intra-familial sexual abuse.

b) As well as the NSPCC link, we have worked with a small number of children who have given evidence from another court, which was preferable to being required to travel back to the area where the abuse occurred, but still had the disadvantage of being in a court environment. In two cases, children used video link facilities hired from private sector businesses. Their feedback was that this environment did not feel particularly private which made them more vulnerable. This may have been reduced if support services had been available on the day.

The NSPCC link in Exeter is located within a reasonable distance of the Crown Court, so exhibits are brought to the young witness by the police officer in the case or the court usher on the trial day. A document camera was also procured, which can relay 3 dimensional images. This has not yet been used but could be helpful where the remote site is distant from the Court.

In one NSPCC area, in crown court cases, an usher comes to the remote site and the NSPCC supporter also sits in the video link room with the young witness. In the magistrates court and county court cases, only the NSPCC worker accompanies the young witness. On the two occasions where business sites were used, the young witness had no support or court official present.

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?

² Applegate, D. and Mawby, R. (2004) *Taking child witnesses out of court – an evaluation for NSPCC*. Perpetuity Research and Consultancy International Ltd.

Yes, there should be a legal presumption in favour of the use of a remote live link where it exists. In Devon and Cornwall, young witnesses are not given a choice. Although there should be a presumption in favour of use of the remote link, some young witnesses would rather not be visible to the defendant or the public gallery. This could be overcome by the additional special measures of evidence in private (clearing the public gallery) and turning off TV screens visible to the defendant.

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 is presently made of them for court purposes?

Please see response to Question 7. The NSPCC link is used for all young witnesses called to give evidence at Exeter Crown Court.

Question 10

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

Recording of cross-examination would certainly benefit young people in circumstances where there is a 'hung jury', re-trial or appeal. In addition, we have experience of young people having to give evidence in finding of fact hearings, following criminal proceedings. This might be in care proceedings relating to their own safety, or that of siblings or the children of the defendant. Any situation requiring a child to give evidence on more than one occasion can only be abusive and increase their levels of trauma.

It should be possible to attach a digital recorder to the camera unit on a video link unit without high costs.

It will, of course, be vital to ensure the safe storage of all tapes.

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

It is impossible to identify cases that may result in a further trial, except perhaps where care proceedings are pending. Our experience is that the seemingly most unlikely cases result in a further trial.

Question 12

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

Technical support would need to be readily available to avoid delay.

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?

Yes. Young witnesses should be consulted about how they give their evidence and their views taken into consideration. This should be carried out with appropriate advice and support which ensures that their best interests and any safeguarding issues are addressed. Those children who do not want to use the video link usually express fear of being identified or seen by the defendant or the public gallery. Additional special measures could easily be used to negate these fears. Consideration should be given to hearing all children's evidence in private.

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*
- *Their social and cultural background.*

A very small number of young people state that they want to go into the courtroom and face the accused. Their reasons for this need to be explored to ensure they know how this might make them feel. Their ability should be assessed by an appropriate professional supporter. This information can then be provided to the CPS and the court, so that an informed decision can be made. This could form part of the assessment of the young witness's needs and wishes that may be provided to the court.

Question 15

- (a) *Should there be a presumption that where a young witness does give evidence in court 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)?*

If a young witness is to be given a choice, (which may include in a few cases a wish to 'look the defendant in the eye') there should be no presumptions. They should have the option of screens made available.

Decisions about the impact on the quality of evidence can only be made based on sound assessment of the young person's understanding and competence.

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 needs of the individual witness?

Yes. Children who are not currently classed as in need of special protection can be equally vulnerable by virtue of disability, limited comprehension, fear or intimidation. Applications for special measures should be made on the basis of individual need, which should be based on assessment carried out with the young witness.

The NSPCC's experience is that most young witnesses are granted special measures. In the few cases where this has not occurred, it has generally been in very minor cases where the police took a written statement. However, a video link has still been used.

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?

Yes. Live link, together with other measures, is currently the most secure method for young people to give their evidence. However, while a presumption will protect children from delay in decision-making and perhaps legal argument by the defence, their wishes should also be taken into account, including a change of mind on the part of the child who changes their mind once they have additional/better information about the process.

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?

Yes, there should be a presumption that children give their evidence in private. It is often a huge worry to children when they discover their evidence will be heard by the defendants' family and supporters and by members of the general public. An exception may be where a child wants their parent or carer to be in the court room.

Further, there is the possibility that some individuals attend trials involving child sexual abuse as a means of gratifying their own deviant sexual behaviour.

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 for the defendant where there is fear of reprisal or intimidation?

Yes, children should be protected from having their image shown to the defendant. Fears of reprisal are often cited by children who do not want to give evidence. This should apply to the video-recorded evidence as well as cross-examination.

In very many cases, young witnesses are not made fully aware of (or do not take on board) the fact that they will be seen by the defendant and the public when the case comes to Court. When we carry out the pre-trial court visit, many children are distressed to see the TV screens in the court room and realise that their account of what has happened will be open to the defendant as well as the public.

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 them being seen by the defendant, if giving evidence from the witness box.

Yes, in all proceedings involving child abuse or where the young witness expresses fears, consideration should be given to screening the young person from the defendant. There has been reluctance by CPS in some cases to apply for this measure, on the basis that video link is sufficient protection.

The judiciary have commented that on occasions, they have observed indications of sexual arousal in defendants who are observing and hearing children's evidence. We have also noted visitors to the public gallery exhibiting inappropriate behaviour during a trial.

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?

There are no practical difficulties in closing the public gallery.

TV screens in the Court room should have the capacity to be turned off or the picture turned off. If the system installed has a single control panel and

individual screens cannot be adjusted, then the defendant could be screened. This option has been used occasionally in one of our areas. We note that police officers are sometimes given this level of anonymity to protect their identity.

Comment on Chapter 5

There is a misconception that the use of video-link can adversely affect the impact of evidence of witnesses and the same is probably true for young defendants. Providing the equipment and screens are of good quality, there should be no reduction in the quality of the evidence. The protection of the young person's welfare should be addressed.

Question 22

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

Child defendants have a right to be appropriately prepared and supported to give their evidence. Our experience suggests that this is not fully provided by their solicitors, who do not have knowledge of preparation materials. This is also a problem for young people called as witnesses for the defence, who are often forgotten. We have case evidence to support these points, including feedback from defence witnesses, young defendants and their families.

There was a young defendants' pack steering group initiated by the NSPCC and later chaired by the Youth Justice Board which started meeting at the end of 2001. A decision was taken in March 2002 to commission a scoping study on the possible production of a Young Defendants' Pack. The NSPCC contributed £5000 towards the study and the government also contributed to it. The report of the study (by Richard Woolfson and Joyce Plotnikoff) was published in November 2002 (see attached, available by hard copy only). In September 2003, the government published 'Youth Justice - the Next Steps'³ which makes a commitment to developing a Young Defendants' Pack at point 11 on page 5:

*11. When young people need to go to court the process needs be both fair and effective. This means ensuring they properly understand what is going on, and participate fully so that they answer for their behaviour. To follow up work which has already been done in this area, in the form of changes in the style of trials for young people, **we propose to develop a Young Defendants' Pack** to help young defendants and their carers understand and participate in the court process. This would entail **assigning youth offending team (YOT) officers or other professionals** to prepare young defendants and their carers for court hearings and to follow cases through the system, emphasising the rights and responsibilities of the young defendant in court. We also **propose to continue to promote the use of plain English at trials and to improve lawyers' training** with a view to accreditation for youth cases.*

³ Youth justice – The next steps. Companion document to every child matters (2003). Home Office.

It is inexcusable that nothing has been done to produce and distribute a young defendants' pack to satisfy this clear mandate.

Consideration would have to be given as to who would be the most appropriate persons to support young defendants through providing the information in a pack.

Question 23

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

All young witnesses under the age of 18 should qualify for special measures.

Comment on Chapter 6

We would welcome an opportunity to participate in a consultation regarding third-party disclosure as the delays caused by this issue are very damaging to young people.

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.*
- *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 could they be overcome?

Question 24 & 25

Yes, young witnesses' testimony should be either at the start of the second day or at the start of the day later in the trial. Delays on the day of the trial are usually caused either because judges have a list of mentions/warrants/sentencing to hear prior to starting the trial or because of legal argument. Neither should happen on days when child witnesses are giving evidence. If it is known there will be legal argument on day one of the trial, this should be included in the timetable, so that the young witness is not called until the next day and waiting time is kept to a minimum.

For the primary victim, where they do not complete their evidence and are required to return another day, significant trauma can be caused, particularly if there are other witnesses in the same household. When preparing timetables

CPS/counsel consistently have unrealistic expectations of what can be achieved and rarely take into account the length of the video-recorded interviews or the need for the young witness to have breaks, despite this information being available.

When planning trials, listings officers should have access to information relating to the needs of young witnesses. For example, there may be medical issues, which mean a young person is less able to give evidence at certain times of day, based on medication, or for younger children, they will become tired later in the day.

There is also an issue for courts in reaching targets for use of court time and the need to fit brief hearings around trials. This could be overcome by better planning and communication between agencies.

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?

Yes, there should be an accreditation scheme for lawyers and barristers which is based on an appropriate training programme. A review of training for the judiciary and magistrates should also be completed. It is not sufficient to require legal practitioners to view current materials such as 'A Case for Balance' and 'A case for Special Measures', although these materials should be viewed and continue to be very valuable. There also needs to be practical training and observation of practice. This has been introduced for the Western Circuit (but could be expanded) and should be implemented nationwide.

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?

A discussion with the advocates of the ground rules in advance would be very helpful. There appears to be some reluctance from the judiciary, to intervene where cross-examination is inappropriate, perhaps based on a fear of jeopardising the defendant's right to a fair trial. Undoubtedly, support agencies and the legal profession have different views on the boundaries of what is acceptable but we regularly see cross-examination where children are subjected to repetitive questioning and asked about personal issues, either in an inappropriate manner or relating to issues that are not relevant to the evidence in the trial. Judges and magistrates should be more willing or enabled to intervene, where questioning of a young person is inappropriate. This would not be inconsistent with protecting the defendant's right to a fair trial. Prosecution counsel virtually never intervene and rarely use re-examination to deal with any inappropriate cross-examination.

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*?*

As above, magistrates should receive appropriate and accredited training before hearing cases involving young witnesses, including the guidance found in these two videos and practical training which involves observation of good practice.

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?

Yes. It is essential to ensure that the court has relevant information relating to the young witness from the appropriate assessor. The primary role of the intermediary is to facilitate communication. Not all young witnesses require this service, although it should be carefully considered. We should avoid involving too many adults, as this can add to the levels of anxiety and stress for the child. An assessment of need can be provided to the court by a suitable preparation and support service where available. This profile is provided to the CPS and court by NSPCC practitioners, in some cases routinely and in some cases on request.

We are aware that some judges are saying that they will not use intermediaries at all. Again, the commitment of all those involved in the criminal justice system is essential to the success of these prosecutions.

Comment on Chapter 9

While Witness Care Units carry out assessments of basic needs, this does take place over the telephone and in our experience, is carried out with the parent/carer, rather than with the child. All too often, we find that the views and wishes of the young person differ from those expressed by the parent, whose own anxieties can get in the way of recognising and understanding the needs of their child.

Question 30

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

We would like to see an evaluation of the Liverpool scheme to assess the potential application to young witnesses. The scheme has provided valuable information to assist the development of preparation and profiling services for victims. However, it must be remembered that this service is provided for a very specific cohort of adults with learning difficulties and that other issues, including safeguarding, need to be considered when working with children.

Question 31

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

The NSPCC Devon and Cornwall Young Witness Project provides an assessment of all young witnesses and writes profiles for the CPS and court, where this is requested by the CPS. In all cases, the needs of young witnesses are provided to CPS and the court for trial day.

Question 32

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

We consider that the current guidance on pre-trial therapy needs to be the subject of awareness raising plus revision because it is plagued by confusion and local interpretation. The guidance is not well understood and sometimes we hear that the police and/or CPS are not even aware of it. This means that criminal justice agencies and therapists alike, are unsure as to services that can be provided. Children who need help with the abuse they have suffered deserve therapy if required. This should of course be possible prior to trial, as is indicated by the guidance, particularly if it is in the best interests of the child and provided by a suitably qualified professional who makes appropriate records of discussions. These records should not necessarily become an issue for disclosure, but be reviewed by an appropriate and qualified officer of the court.

The training for criminal justice and therapeutic professionals is completely inadequate. The police and CPS continue to advise children and families to avoid therapy prior to trial. In some cases CAMHS services have offered an initial meeting and then only agreed to start therapy after the trial.

The provision of therapeutic services also needs to be addressed as their availability is inadequate and inconsistent. This area should be subject of a separate consultation with the health service and other providers to ensure a service is available to all young people.

Question 33

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

Yes. While local protocols are helpful, these should be based on national guidance that supports the provision of therapy, requires agencies to provide the resources and provides guidance on principles for service delivery. Some agencies are refusing to sign protocols, including the CPS.

Question 34

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

Implementation and monitoring could be a joint initiative between local criminal justice and safeguarding boards, who should work more closely together on this particular issue. There should be representation on behalf of young people on all LCJBs, particularly sub-groups for victims and witnesses. The implementation and monitoring should be drawn together on a national basis.

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?

Yes, legislation on this point is essential. An appropriate supporter should always accompany the young witness in the video link room. Court ushers who sit with children should receive training but this should not negate the need for a trusted, known supporter to be present. If a court usher is going to be in the video link room on trial day, they should meet the child at the pre-trial court visit and help to conduct this visit.

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?

The remote link room provided by the NSPCC at Exeter has a static camera installed. This enables the judge to have full view of the room to ensure proper and appropriate behaviour. However, if appropriate support services are in place, then courts should come to assume that practitioners will work in a professional manner and not act in any way that might jeopardise a fair trial.

Question 37

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

The young witness supporter should be an individual who does not know the evidence in the case. The supporter should be fully trained in young witness support and have an understanding of child development, communication skills, criminal justice procedures and safeguarding. The supporter should be known to the child and have been involved in their preparation for giving evidence so that there is a relationship of trust to ensure the child feels safe.

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?

In Devon and Cornwall, the NSPCC has worked with criminal justice agencies for 13 years and established working relationships that engender trust and integrity. The witness service works in courts to support victims on the trial day and also offers a pre-trial court visit. There are no concerns that this

service may affect the integrity of the evidence. Nor should there be any concern that appropriate and fully trained preparation and support providers for young witnesses, should in any way question the integrity of evidence. NSPCC projects have protocols that are agreed with children and families at the outset of preparation work that include boundaries regarding evidence and the need to disclose any information which may arise that relates to evidence.

Comment Chapter 11

It is concerning that criminal justice statistics are not collected in relation to child witnesses. Categories of 'vulnerable witness' or 'sexual offence' do not provide any useful information relating to children and young people. Separate statistical data should be collated for young witnesses. NSPCC projects collect data but this could be enhanced by information held by criminal justice agencies. Does the OCJR have access to information about how many young witnesses are required to give evidence each year, the nature of the charges, the outcomes and experiences for the young person and the reasons and numbers of cases that never reach trial?

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?

The police officer in the case has a duty to ensure the young person has the opportunity to refresh their memory and review their video evidence prior to trial. In Devon and Cornwall, our service sends a reminder letter to the police officer which is followed by telephone communication, if this has not taken place when trial date approaches. This should be a police procedure but could be added to the WCU checklist to ensure young witnesses have reviewed their video. The procedure is especially prone to failure when the police officer is not child protection trained, i.e., CID or Uniform.

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 not included in the checklist which might be helpful, or which should be removed or changed?

Question 40 & 41

The NSPCC supported and still supports the use of the pre-trial checklist for cases involving young witnesses which was endorsed by the Lord Chief Justice at the time (see attached). Sadly, as is the case with so many policies

and procedures within the criminal justice system, this is another which has fallen out of use over time for no apparent reason due to lack of monitoring and evaluation. It is another example of the implementation gap highlighted by the NSPCC/Victim Support report: *In their own words*.⁴

The NSPCC does not use the WCU child witness checklist and we have not seen this document. We were consulted locally, in respect of the *No Witness, No Justice - Witness Care Unit Needs Assessment*, and reached agreement that all young witness assessments would be carried out by the NSPCC young witness project, rather than the WCU, and based on our assessment procedures and standards but the checklist did not form part of this consultation.

A WCU checklist will presumably be used in a telephone contact with the parent/carer of the young witness. This does not address the views, wishes or feelings of the young person and these cannot be ascertained via telephone contact. There are, however, many areas of the country where no enhanced young witness support project is available and in those cases, the WCU checklist will be better than nothing.

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?*

Consultation with young people is considered in a separate document but this does rely on agencies identifying witnesses who may be prepared to participate. We still have little knowledge of some sectors of the community who do not come forward, for example for reasons of fear, reprisals, cultural issues or youth culture.

⁴ Plotnikoff, J. and Woolfson, R. (2004) *In their own words – The experiences of 50 young witnesses in criminal proceedings*. NSPCC.