

Special Measures: an evaluation and review

Response to Pre-Policy Consultation by the NSPCC in Northern Ireland



Introduction

1. The NSPCC is the lead voluntary child protection agency in Northern Ireland and is unique among charities, with statutory powers by virtue of Royal Charter and the Children (NI) Order 1995. In addition our authorised status is recognised in the Criminal Justice (NI) Order 2008 in relation to public protection arrangements. Our purpose is to end cruelty to children. We aim to achieve this through the provision of direct services to children and young people, work within the safeguarding system itself and a range of training, research, policy and public affairs initiatives which are designed to change the way we all think and behave in relation to the needs of children and protecting children in particular.
2. The Society employs approximately 150 staff in Northern Ireland across a wide range of projects and services: recovery and therapeutic work, family support services, assessment work, sexually harmful behaviour, young witness support, schools' counselling services, Child Protection in Sport and Childline.
3. The NSPCC also provides training, consultancy, research and policy development work and is represented on all child protection fora and bodies. The Society is a member of Public Protection Arrangements Northern Ireland (PPANI) and the Victim and Witness Task Force of the Criminal Justice Board. The NSPCC has provided the chair for the group that will produce a Northern Ireland version of *Achieving Best Evidence*.

Special Measures and the Young Witness Service

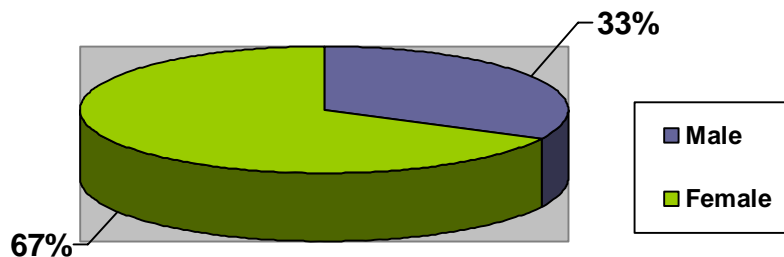
4. The NSPCC has been providing a young witness support service in Northern Ireland since 1999. The service is almost wholly funded by the Northern Ireland Office with additional funding provided by the NSPCC. We work in partnership with Victim Support NI who provide support to adult witnesses through their witness service. We also work closely with PSNI, PPS and NI Court Service. We noted the statistics provided in relation to 'Special Measures usage – 2006' [Table 1, page 11] and thought that it would be helpful for purposes of comparison to provide details of the referrals received by the Young Witness Service in recent years. All the figures below relate to the Crown Court and include all Crown Courts in Northern Ireland.

Number of young witnesses referred by gender

Gender	2005-6	2006-7	2007-8	2008-9	Total
Female	89	55	71	86	301
Male	27	25	57	36	145
Total	116	80	128	122	446

The figures for referrals illustrate a major problem in terms of throughputs for the Young Witness Service. In 2006-07 there was a significant drop in cases going through the courts and an explanation could not be provided by the criminal justice agencies. Even in year there can be quite dramatic swings in referral rates with cases often arriving en masse to be followed by very quiet periods. It is the NSPCC's view that this relates to how cases are being processed rather than a sudden drop in reported crimes or offending rates. This is then relevant to delay issues in the system as a whole.

Gender of young witnesses 1 April 2005 – 31 March 2009



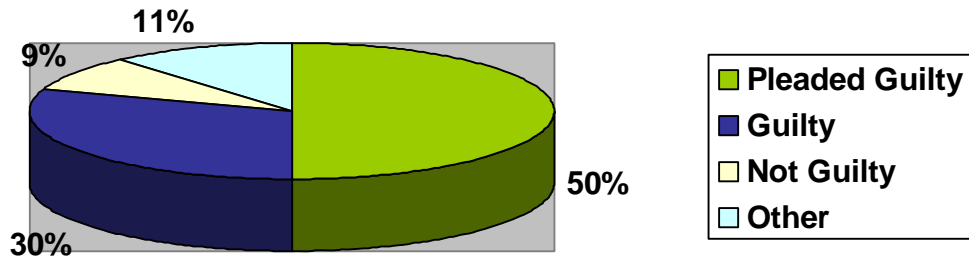
Special Measures Usage

Special Measures	2005-6	2006-7	2007-8	2008-9	Total
TV Link Applied For	109	78	120	115	422
TV Link Granted	109	77	117	96	399
TV Link Used	49	29	26	35	139
Video Evidence Applied For	68	56	81	76	281
Video Evidence Granted	68	56	79	67	270
Video Evidence Used	36	30	22	18	106

Outcomes

Outcomes	2005-6	2006-7	2007-08	2008-9	Total
Pleaded Guilty	42	36	72	44	194
Guilty	39	25	34	19	117
Not Guilty	21	4	4	10	33
Withdrawn Dismissed Directed Not Guilty	10	9	7	13	39
Hung Jury	4	0	1	0	5
Ongoing	0	6	10	36	52
Total	116	80	128	122	446

Outcomes 1 April 2005 – 31 March 2009



In relation to outcomes it is interesting to note that over the period 2005-06 to 2007-08 there is a year on year increase in the percentage of guilty pleas from 36% in 2005-06 to 56% in 2007-08. Findings of guilt at trial stay fairly consistent at about 30% while not guilty findings show a steady decline from 18% to 3% over the same period. Some of these figures will change given that there are still 16 ongoing cases from 2006-07 and 2007-08 (which in turn illustrates issues in relation to delay). Over the last ten years we would have observed a steady increase in the percentage of definite findings (guilty plea or a guilty/not guilty finding at trial) with a consequent fall in the 'other' outcomes. This is to be welcomed and it would be our contention that the provision of support services to young witnesses has played a key role in this improvement for the system.

Consultation Response

- 5. Significant Witnesses** - Section 137 of the Criminal Justice Act 2003 makes provision for special measures for significant witnesses and this is reflected in the England and Wales version of Achieving Best Evidence [ABE (E&W)]. Given the absence of similar legislation in Northern Ireland it has not been possible to include these reforms in the draft of Achieving Best Evidence for Northern Ireland [ABE (NI)]. ***The NSPCC believes that these reforms should be extended to Northern Ireland.*** The approach to drafting ABE (NI) means that future guidance could be produced and implemented without the need for a full revision of ABE (NI).

6. **Intermediaries** – The approach in Northern Ireland to the implementation of this Special Measure has been to learn first from the implementation in England and Wales. Unfortunately the result has been that we have not kept pace with England and Wales and the implementation of this Special Measure is now very overdue. The McNeill Case Management Review by the Northern Area Child Protection Committee and comments the Society has received from Speech and Language Therapists emphasise the need to prioritise the development of this Special Measure in Northern Ireland. The second trial in England of Baby Peter’s stepfather which involved evidence given by a 4 year old victim of sexual abuse highlights the need for urgent progress in relation to intermediaries. ***The NSPCC recognises that the implementation of the intermediary provision has been identified in action planning and would wish to ensure that it remains a high priority for development and resources.***
7. **Services for defence witnesses** – from the inception of the pilot of the Young Witness Service, the NSPCC has held the view that witness support services should be available to prosecution and defence witnesses. The current service profile in Northern Ireland, where statutory funding is only available for services to prosecution witnesses (children and adults) creates the danger of a perception that the legal provisions do not apply equally to defence witnesses. It also has the potential to create a perception that would impugn the impartiality of the support services provided by NSPCC and Victim Support NI i.e. that they are seen as prosecution only services. The service deficit has caused considerable problems in the drafting of ABE (NI) and the changed wording from ABE (E&W) only serves to emphasise the issues already identified. This issue has been captured by the Victim and Witness Task Force. ***The NSPCC believes that this is an area where there needs to be more progress over the short to medium term.*** Extending provision to all defence witnesses in magistrates courts would present a considerable challenge however extending services provision to all child defence witnesses in the crown court would be relatively straightforward and inexpensive.
8. **Legislation** - there may be new legislation as a result of the full consultation. Given the work that will have gone into ABE (NI) it would not be efficient or effective to replace the Criminal Evidence (NI) Order 1999. However, there may be an opportunity to tidy up in other areas so that the relevant provisions are found across no more than two pieces of legislation. This would greatly assist training and awareness initiatives, in particular the roll out of ABE (NI). A good example would be the fast tracking provision from The Children's Evidence (NI) Order 1995 (Article 4) which is still live. ***The NSPCC would welcome a process which would result in the key provisions in relation to special measures and other assistance to witnesses being found in no more than two pieces of legislation. In relation to children it would be helpful to ensure that any legislation complements welfare considerations within the Children (NI) Order 1995 and the government’s***

responsibilities under the Human Rights Act and the UN Convention on the Rights of the Child (Cf. point 12 below)

9. **Plea and Case Management Hearings** - these are a regular feature of ABE (E&W) as they are a focal point for ensuring that children's needs are considered and that applications for Special Measures do not cause delay. ***The NSPCC believes that a similar approach to case management should be piloted and implemented in Northern Ireland Courts. This would make the courts more efficient, having a direct impact on delay and cost; it would also bring an improved focus on the needs of children contributing to increasing confidence in the courts and the criminal justice system generally.*** We are cognisant of Justice Hart's observations in relation to the procedural complexities that have in some ways interfered with the central purpose of Special Measures provision. A key test for Plea and Case Management Hearings would be whether or not they add to the procedures and bureaucracy (and costs) or actually cut through it. Plea and Case Management Hearings would also help to address the problems associated with the late editing of video interviews, which cause delay and impede appropriate memory refreshment for witnesses.
10. **PPS and PSNI joint working** - ABE (E&W) provides considerable detail on the working arrangements between the CPS and the Police. Given different structures and processes in NI a great deal of this has been excised from the ABE (NI) draft. This however goes to the heart of issues relating to which agency holds responsibility for victims and witnesses at various stages of the criminal justice process, something which was highlighted in the *Review of the Criminal Justice System in Northern Ireland* (Recommendation 231). ***The NSPCC believes that the PPS and PSNI should use ABE (NI) as a catalyst to formalise joint working arrangements in a protocol that would complement ABE (NI).***
11. **Responsibility for victims and witnesses** – following on from point 10 above, the lack of clarity in this area is a significant barrier to the timely provision of services to victims and witnesses. In addition to clearly delineated roles and responsibilities it would be helpful have specific court user groups in each court location to implement the necessary arrangements for working together effectively. This would involve the PPS, PSNI, NI Court Service, Victim Support NI and the NSPCC. Case progression officers would play a key role in co-ordinating efforts to work together more effectively. ***The NSPCC believes that there would be benefit in reviewing the implementation of Recommendation 231 of the Criminal Justice Review in Northern Ireland to better understand how it has been working in practice.***
12. **Key issues from 'Improving Criminal Trials' (England and Wales)** - we have considered this recent report from the Office of Criminal Justice Reform. ***The NSPCC believes that the Criminal Justice System in Northern Ireland should plan to implement the areas agreed in England and Wales –***

- Retention and implementation of pre-recorded cross-examination
- Removing rigid provisions re Special Measures for young witnesses to allow more choice, subject to safeguards
- Presence of the supporter in the live link room [this is normal practice in NI courts however there may be merit putting this accepted practice on a more formal footing, either through legislation or practice direction]
- Extending Special Measures to those under 18 [drafting ABE (NI) has highlighted again the tension that is created between assistance to under 17s at court and wider child welfare considerations that operate on an under 18 basis. This would also promote consistency with the Youth Court where there has been a move from under 17 to under 18 for defendants. [Cf. point 8 above re Children Order]
- Extension of intermediary provision to certain vulnerable defendants

The NSPCC is disappointed that a number of other areas for reform were rejected in 'Improving Criminal Trials' - legal presumption for the use of live link; visual recording of witness evidence during trial; presumption that young witnesses will give evidence in private; formal accreditation for legal practitioners in cases involving young witnesses. The NSPCC in Northern Ireland has case experience where the visual recording of a child's evidence would have prevented the child having to give evidence at more than one hearing. This would include trials where a case had been aborted after the child had given evidence for legal reasons not related to the child's evidence, retrials in general and appeals from Magistrates Courts. In relation to giving evidence in private the **NSPCC is concerned that the existing measure to clear courts when a child is giving evidence is underutilised and this is an area where practice needs to be strengthened.** The NSPCC welcomes the approach taken by the PPS to the recruitment and training of their own staff and the retention of independent counsel. However, there is considerable resistance in the legal community and within the judiciary in Northern Ireland to the concept of accreditation to work with children in criminal courts. This creates a divergence between the criminal courts and the civil courts when dealing with children which serves neither the welfare of children nor the interests of justice. It reinforces the cross-examination culture which tends to treat children as 'mini-adults' and fails to achieve best evidence from children. Clear, coherent and consistent evidence from young witnesses is in the best interests of victims, defendants, the courts and society in general. ***The NSPCC continues to hold the view that there should be a system of accreditation for lawyers and judges dealing with young witnesses.*** The full consultation in Northern Ireland would create an opportunity for these rejected measures to be considered in this jurisdiction.

13. **Video Evidence** – there are regular difficulties with the technical quality of video evidence (original sound and vision; playback) that need to be resolved. The completion of ABE (NI) should provide the impetus for work to be done on agreed technical specifications and standards that will

avoid delay and present clear, audible recordings. It would be helpful to consider making changes that would allow the main image to be solely of the child – similar to the image that is seen on the live link. There is no need for the interviewer to be in shot when they can be seen on the second overview shot. Judges and lawyers who view the videos in advance should be able to satisfy themselves that nothing inappropriate was done by the interviewer and the jury will benefit from having a better image of the young witness. ***The NSPCC believes that technical aspects of video recorded evidence should be reviewed in order to make improvements to the quality of evidence presented.***

14. **Live Link and Remote Link** – legislation in England and Wales (Criminal Justice Act 2003 s.51) has allowed for a more flexible use of remote link technology, aimed particularly at professional witnesses to balance the needs of the court with the demands from their employment. **The NSPCC believes that consideration should be given to similar provision in Northern Ireland including its use beyond professional witnesses.** Live and Remote Link tends to be used primarily for giving evidence in the trial. For children and other vulnerable witnesses there are limitations on their ability to observe proceedings that affect them. For young witnesses this is most acute when it comes to the verdict and sentencing. We know from other judicial processes e.g. the Omagh Bomb Inquest and the Bloody Sunday Inquiry, that technology has been used creatively to maximise the inclusion and participation of those directly affected. ***The NSPCC believes that there should be a review of the use of live and remote link technology to explore to what extent it could be used more flexibly and creatively to allow children and young people to participate more fully in proceedings that directly affect them.*** From case experience we have noted that there continues to be considerable variation from court to court in confidence in the use of the live and remote link systems – this includes court staff and the judiciary. ***The NSPCC recommends that there is a review of the training needs of court staff and judges who operate live and remote link technology.***

15. **Information** – the Northern Ireland Young Witness Pack is now 10 years old. Given that a revised version has been produced in England and Wales there is a strong case for producing an up to date pack for Northern Ireland. This could take account of excellent materials produced in Scotland. Following the production of ABE (NI) there would be an opportunity to review the information needs of all vulnerable witnesses and produce a suite of information booklets that would meet the needs of children and vulnerable adults, as well as providing clear guidance for witness supporters. ***The NSPCC would wish to see this included as an action plan priority for the Victim and Witness Task Force on completion of ABE (NI).***

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