

# Measuring up?

Evaluating implementation of Government commitments  
to young witnesses in criminal proceedings

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## Foreword

In 2004, Lord Judge warmly welcomed *In their own words*, a study by Joyce Plotnikoff and Richard Woolfson of the giving of evidence by children based on interviews at the beginning of 2004 of 50 children who had given evidence. The report set out in detail the perceptions of those interviewed and demonstrated that much needed to be done.

It was clearly necessary that a further study with a larger sample should be undertaken. That further study, made possible by the generosity of the Nuffield Foundation and NSPCC, was undertaken with the interviewing of 182 children between May 2007 and October 2008. It cannot have been easy for many of these children to have re-lived the experience each had had of giving evidence; all should be grateful to them for doing so as their experience is the foundation of this study.

It was also important that the study should examine the changes which were being made at the time of the 2004 study and the further reforms and initiatives introduced since that time. As the authors remind us, there is no system for obtaining feedback from those whom the changes were intended to help. It is not only Her Majesty's Government which devises the policy and Parliament which embodies it in legislation which needs such feedback: all involved in implementing the legislation do, including the judiciary.

The title of the study underlines the objective of meeting this need – *Measuring Up? Evaluating implementation of government commitments to young witnesses in criminal proceedings*. It has succeeded. It is not perhaps surprising to discover from this very valuable study that, although much has been done, much remains to be done. There are real lessons to be learnt.

First, the many welcome reforms and initiatives which have been made have put in place a legislative framework that should ameliorate the ordeal that giving evidence inevitably is for any person, but particularly children. Very broadly, the legislative framework, and the detailed policy supplementing it, is now very much better; it may need some refinement, but that is all.

Second, although a very good legislative framework has been put in place and it has been supplemented by clear policy objectives, it requires a cultural change to ensure that it operates in practice. Merely because there is put in place a new legislative framework and an implementation programme, the change that the framework envisages does not simply come

about. The study sets out clear evidence of this and provides clear reasons as to the real need – not yet more initiatives and reforms, but the cultural change that is necessary to make the new framework a reality. However, the difficulty of achieving this should not be underestimated given current resource constraints.

Third, each person involved each day in the work of a court will find the views of those interviewed a necessary reminder of the experience and perceptions of those who encounter the system for a day. They make compelling reading.

If we have the good fortune to have the benefit of another study by Plotnikoff and Woolfson half a decade hence, I hope that it will show that real change has been achieved. That will only come about by an understanding of the problems so clearly set out in this report and by cultural rather than policy or legislative change.

**The Rt Hon Lord Justice Thomas**

Vice-President of the Queen's Bench Division

Deputy Head of Criminal Justice

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## Acknowledgements

The Rt Hon Lord Judge, Lord Chief Justice of England and Wales and Head of Criminal Justice, provided the impetus for this research by calling for a national study of young witnesses. We are most grateful for his long-standing interest in all issues associated with young people in the criminal justice system. Lord Justice Thomas, Lord Justice Kay and Her Honour Judge Cahill QC provided helpful comments on the research findings.

Barbara Esam, lawyer, Child Protection Awareness and Diversity, NSPCC, and Sharon Witherspoon MBE, Deputy Director, Nuffield Foundation, have been the mentors of this study since its inception. Barbara chaired its advisory group: Janet Arkinstall, Law Society; Michael Bowes QC, General Council of the Bar and Criminal Bar Association; Chief Superintendent Simon Deacy and Pauline Spencer, respectively police and CPS leads, Police/CPS Victim and Witness Delivery Unit; Nadine Tilbury, Crown Prosecution Service; John Wright, HM Courts Service, Ministry of Justice; Julie Clouder, Stephen Underwood and Gita Sisupalan, Office for Criminal Justice Reform, Ministry of Justice; Anne Coughlan, Sarah Bridgman and Beverley Radcliffe, Victim Support; and Jenny Gray OBE, Department for Children, Schools and Families. Kathy Rowe OBE, Manager, Kingston upon Hull Local Safeguarding Children Board, was also a member of the advisory group and provided anonymised information from the Humberside Young Witness Service database for comparison purposes. The advisory group provided considerable help at all stages of the research, including commenting on the draft report; however, the views expressed remain those of the authors.

Young witness interviews were conducted by the authors; independent social workers for children Sharon Cavanagh, Lande Fourie, James Kingsley, Sue Lee, Jean Satterthwaite and Judy Tomlinson; Pamela Cooke (former research consultant, Ann Craft Trust); Jill D'Adhemar (former probation officer); Michele Lazarus (Parentline Plus training manager and former Victim Support researcher); Elaine Morrison (former police child protection team officer); and Deborah Turnbull (former CPS Policy Directorate with national responsibility for children's evidence and vulnerable adult issues). Deborah played a key role in liaising with organisations referring children to the project and appointing interviewers.

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This report was coordinated by Barbara Esam, NSPCC, and funded by the NSPCC and the Nuffield Foundation. The NSPCC has been the UK's leading charity specialising in child protection since 1884, when the Society was founded by Benjamin Waugh. It is the only charity to have been given the statutory powers to carry out child abuse investigations. The Nuffield Foundation is a charitable trust established by Lord Nuffield, whose widest charitable object is "the advancement of social well-being". The Foundation has long had an interest in social welfare and has supported this project to stimulate public discussion and policy development. The views expressed are however those of the authors, and not necessarily those of the NSPCC or the Foundation.

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## Summary of findings

This study compared young witness policies and guidance with children's experiences in order to measure whether improvements have been achieved in:

- identification of young witness needs by criminal justice organisations
- the appropriateness of support provided to young witnesses and the consistency with which it is made available
- the criminal justice system's treatment of young witnesses
- experiences reported by young witnesses, in light of *Every Child Matters* (Department for Education and Skills, 2003) objectives to improve the following outcomes for children: "being healthy" and "staying safe", because of the risk of secondary abuse from the court process, and "making a positive contribution", given the requirement on young witnesses to perform a public service.

Interviews were conducted with 182 young witnesses (172 of whom gave evidence) and parents of 172 of these children. Information was also received from managers of 52 Witness Services, seven young witness support schemes and from each organisation that referred a young witness to the research project. In England and Wales, 147 young witnesses were referred for interview by Witness Care Units (WCUs). The remainder were referred by ten police child protection teams, five young witness support schemes managed by the NSPCC, and one by Victim Support. Northern Ireland does not have WCUs: all 15 witnesses living in Northern Ireland were referred by its local NSPCC young witness scheme (three of these children gave evidence in England. Jurisdiction is distinguished in this report as appropriate). A very small proportion of young witnesses give evidence for the defence. The project received two defence referrals but was unable to interview any young defence witnesses.

**The key findings in this summary are presented under headings that refer to the relevant policies and guidance relating to young witnesses. The findings are also cross-referenced to the relevant sections further on in the report, in which policies and findings are discussed in detail. Conclusions and recommendations for action are listed in the final chapter.**

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**Young witnesses will be identified; their needs and wishes will be assessed and information will be passed on; and they and their parents will be kept informed of case progress**

WCUs in England and Wales reported inconsistent use of database flags to identify children, victims, intimidated or vulnerable witnesses and instances of child abuse (section 2.1). WCUs had made an important contribution to the flow of information to families, with more parents acknowledging receipt of information from a WCU than from any other source.

Interviews were conducted with parents of 172 children in England, Wales and Northern Ireland (section 2.2):

- 145 (84 per cent) identified some aspect of their child's needs and wishes as having been discussed with them by criminal justice personnel.
- Parents of 27 (16 per cent) did not recall anyone discussing their child's needs and wishes with them (11 of these young witnesses were aged 16 and over so it is possible that their needs and wishes were discussed with them directly).
- Parents of 152 children (88 per cent) recalled being given a phone number to call if they had questions (section 2.3).
- 140 (81 per cent) remembered someone explaining about the live link and other special measures.
- 128 (74 per cent) said someone kept them informed about what was happening in the case (for example, about the defendant's bail conditions) before the day of trial.

Information on project referral forms was compared with what parents said about their children (section 2.2). There was a disparity between issues or problems identified by parents and awareness of these on the part of project referral forms completed by WCUs or police officers in England and Wales. For example, parents of children referred by WCUs or police officers identified 34 children as having health or development concerns (acknowledged on forms for ten children); 43 who described their child as intimidated (acknowledged on forms for 18 children); and 48 as experiencing stress symptoms before trial (acknowledged on forms for nine children).

Witness Service and young witness scheme supporters provided additional information about 108 young witnesses interviewed for the project (section 2.2.1). They received advance notice about 105 (97 per cent) of these children before the day of trial. Supporters identified 52 (50

per cent of 105) of these children as having particular concerns or needs. They did not receive advance notice of the needs of ten (19 per cent of 52) of these young witnesses.

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### **Young witnesses in England and Wales will each have their own witness care officer as a “single point of contact”**

Of 74 WCUs in England and Wales that participated in the project (section 2.3):

- 34 (46 per cent) dealt with all young witness cases.
- 40 (54 per cent) dealt with only some young witness cases because specialist police units retained direct contact with other young witnesses.
- Ten (14 per cent) served only magistrates’ and youth courts, and five WCUs (7 per cent) served only Crown Courts. All criminal cases begin in magistrates’ court. In areas served by both magistrates’ court and Crown Court WCUs, witnesses in Crown Court cases were therefore transferred between two WCUs.

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### **Young witness cases will be given priority**

For 87 young witnesses in England and Wales, the average time between the defendant’s first court appearance and trial in the magistrates’ or youth court was three months (section 3.1.1). For 55 in Crown Court cases, it was around eight months (this information was not available for Northern Ireland cases). On average, pre-trial delay for young witnesses in the study was longer at all three levels of court than for all criminal cases, as reported in the most recent available national statistics (section 3.1.2).

In England and Wales, trials went ahead or “cracked” (cases concluded without a trial) on the first scheduled date for 110 (65 per cent) of 170 young witnesses (section 3.2). Trials involving 35 children (21 per cent) were re-scheduled once; 18 (11 per cent), twice; six (4 per cent), three times; and a youth court trial involving one young witness was rescheduled nine times (confirmed by the WCU). In Northern Ireland, 12 young witnesses gave evidence: trials went ahead on the first scheduled date for five children (42 per cent); for three children (25 per cent) trials were re-scheduled once; for two (17 per cent) trials were rescheduled twice; and for another two children (17 per cent) they were rescheduled three times.

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### **Waiting time to give evidence will be kept to a minimum**

In England and Wales, the average actual waiting time for 150 witnesses at a trial or Newton hearing (excluding those involved in an appeal or re-hearing) was (section 3.3):

- 3.5 hours at magistrates' or youth court (91 young witnesses), ranging from 15 minutes to 13.5 hours. Of the 91 young witnesses, 49 (54 per cent) waited more than two hours and 84 (92 per cent) waited more than one hour.
- 5.8 hours at Crown Court (59 young witnesses), ranging from 20 minutes to 31 hours. Of the 59 young witnesses, 43 (73 per cent) waited more than two hours.

Despite the commitment in the *Victims' Code* (CJS, 2006), waiting times for victims were no shorter than for non-victim witnesses.

In Northern Ireland, the average waiting time was 6.3 hours for five young people attending magistrates' or youth court and 12.7 hours for five who gave evidence in the Crown Court.

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### **Witnesses will be asked to attend court only when needed to give evidence**

In England and Wales (section 3.4):

- 114 (75 per cent of 152) began their evidence on the first day of attendance at court.
- 77 (51 per cent of 152) began their evidence in the morning of the first day of court attendance.
- 94 (67 per cent of 140 who gave evidence only once) completed their evidence on the first day.

In Northern Ireland:

- Four (33 per cent of 12) began their evidence on the first day of their attendance at court.
- One (8 per cent of 12) began their evidence in the morning of their first day.
- Three (30 per cent of 10 who gave evidence only once) completed their evidence on their first day.

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### Children can visit the court before the trial

A parental interview was conducted for 172 children, of whom 130 (76 per cent) were offered a pre-trial visit; 44 (34 per cent of 130) refused. For several, the timing of the proposed court visit was not convenient or the court was too far away or inconvenient to reach (section 4.1). A smaller proportion of children in the Southeast and London court regions visited the court before trial, compared with interviewees in other court regions (section 4.1 and Appendix 3). Of 182 young witnesses (section 4.2):

- 91 (50 per cent) had a familiarisation visit to the court before trial.
- 76 (84 per cent of 91 children who visited the court before the trial) said the pre-trial visit helped them feel more confident or to know what to expect at trial.
- Of 91 who did not visit the court beforehand, 64 (70 per cent) were shown a courtroom and/or live link room on the day of trial, but 27 (30 per cent) saw neither a courtroom nor a live link room before giving evidence (section 4.2.1).

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### Pre-trial visits to court should involve practising on the live link, if this has been applied for/granted

Of 91 young witnesses who visited the court before trial, 20 (22 per cent of 91) were able to practise speaking on the link (section 4.5).

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### All young witnesses should be well-supported

A survey of 59 support organisations indicated that over three-quarters were not routinely made aware of some young witnesses before a plea was entered and were therefore unable to offer or explain support services before that stage was reached (section 5.1). Also, many did not receive advance notice of all young witnesses in a systematic way:

- 26 (44 per cent) learned of *some* young witnesses only on their arrival at court on the day of trial.
- Five (8 per cent) learned of *many* young witnesses only on the day of trial.

Of 182 young witnesses:

- 80 (44 per cent) had neither a familiarisation visit nor pre-trial contact with a supporter. Parents of 78 of these children indicated that 30 (38 per cent) were not offered either service. These included some of the most vulnerable children in the study.
- 81 (45 per cent) met a supporter before the trial for the purpose of preparing them for court; 47 of these (58 per cent of 81) were seen by a young witness scheme (section 5.2).

A smaller proportion of children interviewed in the Southeast and London court regions met a supporter before the day of trial, compared with interviewees in other court regions (section 5.2 and Appendix 3).

Parents indicated that, where children met a supporter before trial:

- 35 children (49 per cent of 72 for whom parental information was available) saw the same supporter before and on the day of trial.
- 31 (43 per cent) first met the supporter within four weeks of trial (section 5.1).

Referral forms for 154 children were completed by WCUs or police officers in England and Wales (section 5.3.1). These indicated that 50 children (32 per cent) had been identified (by the police MG11 form or in some other way) as needing additional support. Of these 50 children, 24 (48 per cent) saw a supporter before trial, compared with 32 (31 per cent) of the other 104 who were not identified in need of additional support. The difference was significant at the 5 per cent level.

Pre-trial assistance was appreciated (section 5.4):

- 77 (95 per cent of 81 children who saw a young witness scheme or Witness Service supporter before the trial) said the supporter made them feel better about going to court.
- Over a third of children and parents who saw a supporter pre-trial said this contact was what made it possible for the child to go to court.

Of 182 young witnesses, 127 (70 per cent of 182) received Young Witness Pack<sup>1</sup> booklets (section 5.5). These are designed to be used with a supporter from the Witness Service or (where available) young witness scheme: 40 young witnesses (31 per cent of 127 who received booklets) had a supporter or police officer to help go through them. Of these 40 children, 34 (85 per cent) who received this assistance found the booklets helpful.

### **Witnesses are entitled to refresh their memory from their statement before giving evidence**

Of 88 young people who testified and whose visually recorded statement was used as their evidence-in-chief (section 6.1):

- 40 (45 per cent) watched their visually recorded statement for the purpose of memory refreshing before trial.
- 48 (55 per cent) saw it for the first time at trial, of whom 35 (73 per cent) described the viewing as upsetting, funny or strange, or said that that it was hard to concentrate on it (section 6.2).
- 18 of 35 (51 per cent) who said their visually recorded statement had been edited had not seen it before trial for the purpose of memory refreshing (section 6.3).

### **Arrangements at trial include offers of help with transport; escorted or alternative access to the court building; and waiting in separate, secure waiting areas equipped with material suitable for children of different ages**

Parents of 54 children (31 per cent of 172) recalled being offered help with transport. Parents of 23 children (20 per cent of 115 who said no offer was made) would have liked help with transport (section 7.1).

Of 170 young witnesses who attended the court building (section 7.2):

- 89 (52 per cent) were met at the public entrance by an official escort or were brought in through a rear or side entrance; the remaining 81 (48 per cent) used the public entrance without an escort
- 76 (45 per cent) saw the defendant in the court building or while entering or leaving.

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<sup>1</sup> A series of booklets and the DVD *Giving Evidence: what's it really like?* Originally published by the NSPCC and now available from [homeoffice@prolog.uk.com](mailto:homeoffice@prolog.uk.com) and 0870 241 4680

Parents of 53 children (33 per cent of 160 for whom this information was available) said their child's security at court was handled "very well"; 30 (19 per cent) said it was handled "quite well"; but 56 (35 per cent) said it was "not well" handled.

Of 182 young witnesses in the sample:

- 167 waited at the court building (section 7.2). Of these:
  - 154 (92 per cent of 167) were directed to a separate waiting room at the court.
  - 12 (7 per cent) waited in the public area of the court building (eight of whom saw the defendant in the building).
  - One waited in the court live link room.
- 12 (7 per cent of 182) waited at a remote live link location.
- 10 (5 per cent) were offered the opportunity to wait away from the court on standby and three (2 per cent) did so (section 7.4).
- 91 young witnesses (50 per cent) said there were already things for them to do in the waiting room and 25 (14 per cent) had brought something with them but 74 (41 per cent) said there was nothing to do while waiting, or at least nothing they considered age-appropriate (section 7.5).

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**Prosecutors are expected to introduce themselves and judges or magistrates may do so**

Of 172 young people who gave evidence:

- 118 (69 per cent) were introduced to the prosecution lawyer before court (section 7.6).
- 37 (22 per cent) were introduced to someone but did not know who this was. It is possible that some or all of these met prosecutors.
- 14 (8 per cent) were introduced to the judge, district judge or magistrates (section 7.7).

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**Young witnesses are entitled to the use of special measures to assist them to give evidence**

Of 172 young witnesses who gave evidence (section 8.1):

- 94 (55 per cent) had made a visually recorded statement. Of these, 88 (95 per cent) used it as their evidence-in-chief.
- 75 (85 per cent of 88) whose visually recorded statement was used as their evidence-in-chief said this was helpful.
- 117 (68 per cent of 172) used a live link at the trial court and 12 (7 per cent) used a remote live link away from the court building.
- 23 (13 per cent) were in court, screened from the defendant, and 20 (12 per cent) were in open court without a screen.
- Not counting those giving evidence in youth court which is closed to the public, 56 (41 per cent of 135 young witnesses) appear to have been eligible for the special measure permitting the public to be excluded from the court. The measure was used for one of these witnesses (section 8.1.1).

A smaller proportion of young witnesses in the Southeast and London regions had access to the key special measures (a visually recorded interview as evidence-in-chief and cross-examination by live link), compared with interviewees in other court regions (section 8.1 and Appendix 3).

Of 172 young people who gave evidence:

- 141 (82 per cent) were content with arrangements for them to give evidence and 67 of these (39 per cent of 172) would have been unwilling to give evidence any other way (section 8.2).
- 26 (15 per cent) did not give evidence the way they wanted, comprising:
  - 12 who used the live link
  - 14 who testified in the courtroom.
- 68 (40 per cent) said there was a problem or delay because of faulty live links, difficulties in playing visually recorded statements or the lack of screens. Eight who gave evidence in the courtroom did so because the live link was not working (section 8.6).

Of 129 young witnesses who gave evidence by live link:

- 17 (13 per cent) had practised on the link at a pre-trial visit (section 8.2).
- 15 (12 per cent) saw the defendant on their TV screen (section 8.4).
- 85 (66 per cent) were accompanied by someone they had not met before the day of trial (section 8.7).

- 123 were asked whether they knew the defendant could see them:
  - 100 knew the defendant could see them over the live link (81 per cent of 123). Of these 100 children, 40 (40 per cent) only found out on the day of trial (section 8.3).
  - 33 (27 per cent) were unhappy about the defendant being able to see them. For four of these witnesses, the defendant's TV screen was turned off or covered.

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**Advocates are expected to use a developmentally appropriate questioning style**

Of 172 young people who gave evidence:

- 49 (28 per cent) described defence advocates as polite but 84 (49 per cent) described them as sarcastic, rude, aggressive or cross (section 9.1).
- 85 (49 per cent) did not understand some questions. This was a problem for all age groups. A greater proportion of those giving evidence in Crown Court had a problem understanding some questions (section 9.2).
- 111 (65 per cent) reported one or more problems of comprehension, complexity, pace of questions that were too fast or having their answers talked over. Of these (section 9.2.1):
  - 89 (80 per cent of 111 with a problem) had been advised they could tell the court.
  - 50 (45 per cent) actually told the court. Conversely, 61 young people (55 per cent) with a problem were unable to tell the court even though they had been advised they could do so (this was the case across all age groups).
- 100 (58 per cent) said the other side's lawyer tried to make them say something they did not mean or put words in their mouth (section 9.3).
- 75 (44 per cent) described being asked repetitive questions.
- 45 (26 per cent) said defence lawyers talked over some of their answers.
- 34 (20 per cent) were asked questions that jumped around in time (section 9.3.1).
- 66 (38 per cent) said the defence lawyer did something else that made it difficult for them to answer questions (section 9.4).
- 98 (57 per cent) said the defence lawyer accused them of lying. Of these, 69 (70 per cent of those accused of lying) said this happened more than once (section 9.4.2).
- Six (11 per cent of 55 victims of sexual offences) volunteered that they had been asked to demonstrate intimate touching on their own body, contrary to guidance (section 9.5).
- Four were asked for their address during questioning (section 9.6).

- 23 (13 per cent) recalled the prosecutor intervening in respect of how questions were asked by the defence (section 9.7).
- 65 (38 per cent) recalled intervention from the bench (or, in one youth court case, from the justices' legal adviser) asking the defence lawyer to change how questions were asked (section 9.8).
- 35 (20 per cent) did not get to say everything they wanted to tell the court (section 9.10).
- 102 (59 per cent) thought they were treated fairly when they were cross-examined but 64 (37 per cent) thought they had been treated unfairly.
- 97 (56 per cent) were offered a break during their evidence. Of 71 who were not offered a break, 19 (11 per cent of 172) would have liked one (section 9.11).

All young witnesses under 17 are entitled to be considered for the intermediary special measure to facilitate communication. The study estimated that 74 (70 per cent) of 106 children in England and Wales in the study sample (those in areas where the intermediary special measure was implemented before the date of trial) may have benefited from having their communication skills assessed by an intermediary (section 9.12). Only one of these 74 was the subject of such an assessment.

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### **Safeguarding and promoting the welfare of young witnesses**

Of 172 young witnesses in full-time education (section 10.2):

- 65 (38 per cent) said their studies or attendance were affected in the pre-trial period.
- 14 (8 per cent) dropped out altogether and five (3 per cent) changed schools due to intimidation.
- 60 (35 per cent) described their school or college as supportive but 33 (19 per cent) thought their school had been unsupportive.

Of 182 young witnesses (section 10.3):

- 39 (21 per cent) described themselves as "OK", not too worried throughout the pre-trial period.
- The remaining 143 (79 per cent) described themselves as worried or anxious.

These 143 young people were asked about the nature of their concerns:

- 90 (49 per cent of 182 young people in the sample) were anxious about giving evidence.
- 31 (17 per cent) were worried because of delay while waiting to go to court and 17 (9 per cent) were anxious because of changes in trial dates.
- 64 (35 per cent) gave other reasons for feeling worried or anxious. Most related to being questioned, embarrassment about describing the offence, fear of not being believed and feeling responsible for the case outcome.
- 37 (20 per cent) described themselves as intimidated by the offender or offender's friends/family and 28 (15 per cent) were afraid to go out (section 10.3.1).
- 95 (52 per cent) reported experiencing at least one symptom of stress in the pre-trial period, including sleep and appetite problems, depression, panic attacks and (for three) self-harming.

Parents identified:

- 43 children (28 per cent) as intimidated.
- A further 11 young people as experiencing stress symptoms before trial where the child had not acknowledged this at interview (section 10.3.2).

Parents of 32 young people (19 per cent of 172) had sought counselling for their child before the trial and 17 (16 per cent) did so after the trial. However, contrary to policy, 15 (9 per cent) had been advised not to do so in the pre-trial period (section 10.3.3).

The 172 young witnesses who gave evidence were asked how they felt while answering questions (section 10.3.4):

- 56 (33 per cent) felt confident or another positive or neutral feeling.
- 114 (66 per cent) expressed negative feelings including feeling upset, scared, shaky, sick, intimidated, annoyed, angry, tired, frustrated, under pressure and having fast heart beats.

Supporters and parents who observed children give evidence identified children whose needs were not well accommodated at trial. Neither parents nor supporters rated the needs of the majority of children as having been met "very well" at trial.

Of 172 young interviewees who gave evidence:

- 143 (83 per cent) recalled being thanked by one or more people when their testimony was finished (section 10.4.1).
- 86 (50 per cent) identified something good or positive for them in having been a witness (section 10.4.5).
- 112 (65 per cent) would be a witness again in future; 90 per cent of these had been thanked for being a witness.

Parents of 142 children (83 per cent of 172) said someone told them about the case outcome (section 10.4.2).

Of 81 children who met a supporter pre-trial to prepare them for court, 37 (46 per cent) said this supporter met them after the case was over to discuss what happened. Witness support organisations did not themselves provide post-trial support in all areas: 37 of 52 Witness Services (England and Wales) and six of seven young witness schemes (in all, 73 per cent of organisations who responded) routinely provided support or a debriefing after the day of trial (section 10.4.3).

## 1 Introduction

This study has its origins in the NSPCC and Victim Support report *In their own words: the experiences of 50 young witnesses in criminal proceedings* (2004). In his foreword, the then Rt Hon Lord Justice Judge, Deputy Chief Justice of England and Wales commended the study but observed that it was “of course, a very small sample”.<sup>2</sup> Speaking at the report launch, he expressed the hope that it could be followed by a national study. In response to that request, the Nuffield Foundation and NSPCC commissioned this project, which was carried out between May 2007 and October 2008.

The project aimed to interview 180 young prosecution and ten defence witnesses in all seven court regions of England and Wales and ten (later, 15) prosecution witnesses in Northern Ireland, and to examine their experiences in the court process in light of government commitments to improve witness care and enable young witnesses to give their best evidence. The study did not address police investigative interviews with young witnesses, many of which do not result in a court case.<sup>3</sup>

Recent initiatives aimed at delivering improvements to witness care include:

- Witness Care Units (WCUs), jointly managed by the police and Crown Prosecution Service (CPS), and rolled out nationally across England and Wales in 2005 in the *No Witness No Justice* programme.<sup>4</sup>
- Phased national roll-out in England and Wales of the intermediary special measure (section 29, Youth Justice and Criminal Evidence Act 1999) which was completed in 2008. An intermediary assesses the communication needs of certain classes of witness, and assists the questioner and witness as necessary at investigative interview and at court, for example by flagging up hard-to-understand questions. Witnesses under 17 are the biggest potential category of those eligible for this special measure but in evaluation, only 14 per cent of applications were based solely on age (Plotnikoff and Woolfson, 2007b).

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<sup>2</sup> In 2006/07 the Witness Service supported over 30,000 young witnesses at court in England and Wales: email to the authors from Witness Service Development, Victim Support National Centre, 6 October 2008.

<sup>3</sup> For example, in 1997 the police took no further action in 76 per cent of 1,000 alleged child abuse and neglect investigations: Gallagher and Pease, 2000.

<sup>4</sup> Available at: [www.cps.gov.uk/publications/communications/fs\\_nwnj.html](http://www.cps.gov.uk/publications/communications/fs_nwnj.html)

- A programme including renovation of witness accommodation and upgrading of technical equipment (see Appendix 1, List provided by HM Courts Service of projects impacting on young witnesses).

Recent policies and guidance documents also aim to improve witness care. Their status varies:

- The *Code of Practice for Victims of Crime* (CJS, 2006), referred to in this report as the *Victims' Code*) sets out victims' rights and agency obligations established under section 32, Domestic Violence, Crime and Victims Act, 2004.
- *Achieving Best Evidence in Criminal Proceedings* (CJS, 2007) is advisory and does not constitute a legally enforceable code of conduct.
- *Children and young people: CPS policy on prosecuting criminal cases involving children and young people as victims and witnesses* (CPS, 2006) sets out "standards that the public can expect".
- *The Witness Charter* (CJS, 2008b)<sup>5</sup>, which consolidates existing witness commitments and processes into one document.<sup>6</sup> Unlike the *Victims' Code* (CJS, 2006), the Charter is not set out in law.

*The Witness Charter* had not been implemented across the country at the time of this research. However, references to Charter standards are included in this report as indicative of existing good practice and because young witness interviews were conducted in eight of 10 Beacon Areas which implemented draft standards on a pilot basis. The Charter was first issued for consultation in 2005 and has been subject to changes. National roll out of the Charter has been delayed (initially, from April 2007 to April 2008) and is now expected in 2009.

This study compares government policies and guidance with children's experiences, in order to measure whether improvements have been achieved in:

- the identification of young witness needs by criminal justice organisations
- the appropriateness of support provided to young witnesses and the consistency with which it is made available

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<sup>5</sup> Available at: [http://lcjb.cjsonline.gov.uk/area7/library/The\\_Witness\\_Charter.pdf](http://lcjb.cjsonline.gov.uk/area7/library/The_Witness_Charter.pdf)

<sup>6</sup> The Charter replaces 'Statement of National Standards of Witness Care in the Criminal Justice System: Taking forward standards of witness care through Local Service Level Agreements' Trials Issues Group, 1996.

- the criminal justice system's treatment of young witnesses (for example, giving priority to cases in which they are involved, helping them feel safe and ensuring that questioning at court is developmentally appropriate)
- the experiences reported by young witnesses in the context of improving three of the five outcomes for children proposed by *Every Child Matters* (Department for Education and Skills, 2003): "being healthy" and "staying safe" in terms of the risk of secondary abuse from the court process; and "making a positive contribution" in terms of the requirement to perform a public service.

Listening to "victims and the vulnerable" is a key government priority, underpinning objectives to increase victim and witness satisfaction.<sup>7</sup> Listening to children is also emphasised, for example:

"There is value to be gained in engagement and consultation with children to obtain their views... encouraging confidence in the criminal justice system, and helping children feel safe" (para 1.9, HM CPS Inspectorate, 2008).

"For young victims of crime our ambition is that they have a voice locally to influence decisions that affect them" (para 3.5, Home Office, 2008).

However, the government has no mechanism for obtaining feedback from young witnesses. The ongoing *Witness and Victims Experience Survey* (WAVES)<sup>8</sup>, introduced in 2004, does not seek the views of young people under the age of 16. This study was intended to help fill this gap.

Criminal justice policies and practice and children's experiences were also compared in the context of the 2003 Green Paper *Every Child Matters*, the government's policy to safeguard and promote children's welfare and improve the following outcomes for children: "being healthy" and "staying safe", because of the risk of secondary abuse from the court process, and "making a positive contribution", given the requirement for young witnesses to perform a public service. *Every Child Matters* applies only to England, Wales<sup>9</sup> and Northern Ireland<sup>10</sup> have made separate but similar commitments to improve outcomes for children.

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<sup>7</sup> For a recent Ministry of Justice statement on this subject, see [www.justice.gov.uk/docs/corporate-plan-2009-11.pdf](http://www.justice.gov.uk/docs/corporate-plan-2009-11.pdf)

<sup>8</sup> Carried out for the Office for Criminal Justice Reform.

<sup>9</sup> Safeguarding Children – Working Together under the Children Act 2004. Welsh Assembly Government, 2007.

<sup>10</sup> *Our Children and Young People – Our Pledge: Action Plan 2007-2008* (Office of the First Minister and Deputy First Minister, Northern Ireland, 2006).

The study examined what children and their parents said about the impact of the child's involvement as a witness on their health, welfare and education. Again, the study aimed to fill a gap because the remit of Inspectorates reviewing safeguarding in the court system does not extend to the exercise of judicial discretion (para 6.2, Commission for Social Care Inspection et al, 2005). Judicial decisions include whether to intervene if questioning seems inappropriate and whether young witnesses may be accompanied while giving evidence by a known and trusted supporter.

There was discussion when this research was commissioned about the measurement of outcomes and whether there were baselines for comparison. Studies referenced provide a basis for comparison with adult witnesses (Moore and Blakeborough, 2008), and with witnesses, including young witnesses, in relation to implementation of special measures following the Youth Justice and Criminal Evidence Act 1999 (Hamlyn et al, 2004<sup>11</sup>; Burton et al, 2006; and Cooper and Roberts, 2006). References are also made to two previous young witness studies. While *In their own words* (Plotnikoff and Woolfson, 2004) achieved good geographical coverage by interviewing 50 young witnesses who had testified at 29 courts, those who gave evidence in sexual offences and were supported by specialist young witness support schemes were over-represented. *Evaluation of young witness support* (Plotnikoff and Woolfson, 2007a) also did not provide a typical sample as it was based on interviews with 110 young people supported by six specialist schemes and 41 supported by the court-based Witness Service. In terms of the generality of young witnesses' experiences, this research will itself form a baseline for future work.

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## 1.1 The study sample

*In their own words* (Plotnikoff, and Woolfson, 2004) relied on asking individual Witness Services and young witness schemes to refer young witnesses for interview. The introduction of WCUs in England and Wales in 2005 offered the possibility of a more systematic and ambitious approach. This was only partially successful. While 74 of 160 WCUs across England and Wales agreed to take part, only 43 had referred a young witness to the study by the end of field work. Even those who did so found it difficult to approach young witnesses systematically, as requested. Several were reluctant to offer a research interview to those in sensitive cases, had had a difficult time at trial, or who were looked after by a local authority. Most WCUs did not keep a "refusal log", as requested, so it was not possible to tell to what

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<sup>11</sup> This included some young witness interviews but one-third were proxy interviews conducted with parents.

extent families declined to participate in the research. To compensate for an anticipated shortfall in referrals, requests were also made to police forces and young witness support schemes. The project was unsuccessful in obtaining interviews with any young defence witnesses. (Details of the methodology are set out in Appendix 2, Research Design.)

Although the project did not meet its target of 200 interviews, by the end of fieldwork 216 young people had been referred and 182 had been interviewed (76 per cent of whom were victims)<sup>12</sup>, along with parents or carers of 172 of these children. This constitutes the largest group of young witness interviews thus far in the UK.<sup>13</sup> The objective of conducting interviews in all seven court regions was achieved (see Appendix 3).

Information was also received from managers of 52 Witness Services, seven young witness support schemes and from each organisation which referred a young witness to the research project.

Most referrals to the research project in England and Wales came from WCUs but some were also received from ten police child protection teams, five young witness schemes managed by the NSPCC and one managed by Victim Support. Northern Ireland does not have WCUs: the 15 witnesses interviewed in Northern Ireland were referred by its NSPCC young witness scheme (three of these children gave evidence in England).

How typical is the study sample? There are no government statistics on the profile of young witnesses called to give evidence, so we compared the study sample of 172 young people who gave evidence<sup>14</sup> with 151 young witnesses supported by the young witness service in Humberside who were called to give evidence in 2007–08 (see Appendix 4). Humberside Young Witness Service, which aims to serve all young witnesses in its area, has a comprehensive database.

The two groups were broadly similar. The most important difference was that the conviction rate in the study sample was higher (76 per cent compared with 60 per cent in Humberside). Possible reasons for this difference include the smaller proportion of children in the study sample who gave evidence at Crown Court, where conviction rates are lower; children and

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<sup>12</sup> Thirty-four did not proceed to interview either because the child did not give evidence, withdrew consent or could not be contacted.

<sup>13</sup> Young witness interviews are particularly difficult to obtain. A study covering a three-year period in Scotland noted that 'despite considerable efforts', including approaching approximately 100 witnesses, only 11 vulnerable witnesses or their representatives were interviewed, three of whom were children: paras. 6.7-8, Richards et al, 2008. Even young witness support schemes can have difficulty. A project that approached 30 parents of children whom it had supported was only able to obtain research interviews with three children: pp 15-16, Applegate and Mawby, 2004.

<sup>14</sup> Although the project intended to focus only on those who gave evidence, it emerged at interview that ten had attended court but did not, in the end testify. The responses of these ten children were included for all questions other than those relating to giving evidence.

parents who may have been more willing to participate in the study because they were satisfied with the case outcome; and differences in regional conviction rates (discussed further in Appendix 4).

While interviewees were not, in the end, identified by random sampling methods, they were widely drawn – from 30 Crown Courts, 26 magistrates’ courts and 23 youth courts sitting at 67 locations in England, Wales and Northern Ireland. It therefore seems reasonable to conclude that the experiences of these 182 young people reflect those of most other young witnesses around the country. There is one caveat: interviews included only 12 with young people from ethnic minority backgrounds, constituting 7 per cent of young people in the sample (see Appendix 5, Table 15). While this is close to the proportion in the general population (almost 8 per cent, according to the *2001 Census*, Office for National Statistics), more targeted work is needed to find out about witnesses from ethnic minority groups and whether their needs are being met.

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### 1.1.1 Notes

This report brings together for the first time a wide range of policies and guidance relating to young witnesses. Excerpts are summarised in green shaded text in the chapters that follow. Readers should refer to original source materials as necessary.

WCUs have been established in England and Wales only. References to project referral forms completed by WCUs or by police officers apply to England and Wales (15 young people interviewed in Northern Ireland were referred to the project by the NSPCC young witness service; three of these children gave evidence in England).

At interview, parents and children often revealed confusion when referring to different criminal justice roles: in particular, “witness care” could be applied to Witness Care Units, the Witness Service and young witness support schemes; and “witness liaison” could refer to a police officer, supporter or court staff member. This blurring of terminology was also reflected in the comments of a few criminal justice personnel.<sup>15</sup> Interviewers were aware of this problem at the start of the study and took time, in speaking to children and parents, to clarify which role was meant. However, some element of confusion remains possible in reported findings about “who did what”.

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<sup>15</sup> In forms referring young witnesses to this study.

The project included various questions to parents about offers of help and provision of information (often by phone) by criminal justice personnel. Parents may have received such calls but forgotten this by the time of the project interview.

In identifying quotes, young witnesses' names have been changed (some chose their pseudonym). The NSPCC has requested that quotes from young witnesses in Northern Ireland are distinguished with an asterisk to assist Northern Ireland personnel in identifying local issues to be addressed.

Rounding errors mean that some percentages do not sum to exactly 100. Also, some interviewees did not respond to some questions: where this happens, percentages sum to less than 100 because of missing answers.

Where the report indicates that a certain number of children expressed a particular view, it does not necessarily mean that the remainder disagreed or felt differently. Some young people were better able to discuss their feelings and provide details than others.

**The full range of comments from children and parents as noted by interviewers (or as written by parents themselves in responding to the interview questionnaire), whether positive or negative, is reflected in the text. Most positive quotes from young people and parents have been included. A range of quotes which may be construed as negative in tone have been selected to illustrate learning points for criminal justice practitioners, supporters and policy-makers.**

## 2 Identifying witness status and needs

### 2.1 Witness status

The police must take all reasonable steps to identify vulnerable or intimidated victims. A victim under the age of 17 at the time of the offence is eligible for an enhanced service under the *Victims' Code*. All organisations with responsibilities under the code should identify victims as vulnerable or intimidated as defined by this Code. Once the service provider has done so, it must ensure that this information is passed on as necessary to other organisations with responsibilities in this Code (sections 4.2, 4.3, 4.11, 5.7, *Victims' Code*, CJS, 2006).

Children are defined as vulnerable by reason of their age. All children under 17 at the time of the hearing, appearing as prosecution or defence witnesses, are eligible for special measures to assist them in providing their evidence and having their evidence heard at court (section 1.2, *Achieving Best Evidence*, CJS, 2007).

Identification of young witnesses early in the criminal justice process is essential in ensuring that appropriate services and special measures are considered. Burton et al (2006) found that both police and CPS failed to identify some children entitled to special measures.<sup>16</sup> Witness status and eligibility for special measures may be identified on police MG forms, other criminal justice system paperwork and also by means of electronic flagging.

In the sample of 182 young witnesses who were interviewed, 147 (81 per cent) were referred to the study by WCUs in England and Wales. Project referral forms asked WCUs whether various flags were set on their database.<sup>17</sup> The WCU Witness Management System (WMS) and CPS COMPASS (CMS) systems share witness and other information relevant to both; most flags can be applied either by WCUs in WMS or by the CPS in CMS. For the 147 children in the study referred by WCUs:

- The “child” flag was set for 130 young witnesses (88 per cent of 147). All those for whom the flag was not used were under 17 when the offence was reported to the police. The three youngest for whom no flag was set were aged seven, 11 and 13 at the time of trial.

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<sup>16</sup> Burton et al (2006) identified a hierarchy of identification, with child victims of sexual offences most readily identified by the police as vulnerable, and child victim of offences which were not sexual or violent as the least likely: pp 32-34, 37, 50-52, 68.

<sup>17</sup> At the time of the study, a few WCUs used an alternative system.

- WCU referrals identified 91 children as victims. The “victim” flag was set for 78 of these (86 per cent of 91 victims). WCUs also set the victim flag for nine interviewees who said they were bystander witnesses, not victims.
- WCUs identified 24 children (16 per cent of 147) as intimidated. The “intimidated” flag was set for 23 of these witnesses (96 per cent). Parents<sup>18</sup> described as intimidated a further 24 children referred to the project by WCUs but it was not possible to determine whether these could be defined as “intimidated” within the Home Office definition.<sup>19</sup>
- The “vulnerable” flag was set for 74 witnesses (50 per cent).<sup>20</sup> Parents described 55 of these children as particularly vulnerable<sup>21</sup> in some way.<sup>22</sup> Parents also considered vulnerable 53 other children for whom the flag were not used. This flag was therefore used for 51 per cent of 108 children identified as vulnerable by their parents.
- CPS set the “child abuse” flag for nine children (6 per cent of the 147 children referred by WCUs).<sup>23</sup> Although there is no definition of “child abuse” for criminal justice purposes<sup>24</sup>, the study identified 26 other young people to whom this flag should have been applied but was not: 15 were victims of sexual or violent offences where the defendant was a member of the family circle and 11 were victims of such offences where the defendant was in a position of trust (teachers, scout leaders and a school driver for special needs children). The flag was therefore used for only nine (26 per cent) of 35 children who might be defined as falling within the child abuse category.

## 2.2 Assessing witness needs

Police officers should have undertaken an initial needs assessment for every witness and recorded relevant information on the rear of the MG11 statement form (section 5.42). The

<sup>18</sup> There was a parent interview in respect of 142 of the 147 children referred by WCUs.

<sup>19</sup> “Witness intimidation may involve threats to harm someone, acts to harm them, physical and financial harm and acts and threats against a third party (such as a relative of the witness), with the purpose of deterring the witness from reporting the crime in the first instance or deterring them from giving evidence in court”: *Speaking Up for Justice*, 1998, quoted in Anderson et al, 2008.

<sup>20</sup> The Police/CPS Victim and Witness Care Delivery Unit pointed out that, as children are automatically vulnerable under the Youth Justice and Criminal Evidence Act 1999, failure to apply the flag will not impact upon the service they receive.

<sup>21</sup> Parents were asked whether any of the following applied to their child: conditions such as dyslexia, learning difficulties, autistic spectrum disorder or ADHD; short attention span for their age; poor level of speech and understanding; unable or unwilling to say if they do not understand a word or question; intimidated while waiting to go to court; had stress symptoms while waiting to go to court (eg sleep or eating problems, bedwetting or depression).

<sup>22</sup> WCUs were not necessarily wrong in flagging as vulnerable a child not so identified by a parent, as police and others may also assess a child as vulnerable.

<sup>23</sup> This flag can only be applied by the CPS in the CMS system and cannot be applied by WCUs.

<sup>24</sup> HM CPS Inspectorate (2008) pointed out that there is no child abuse definition for flagging purposes on CMS and recommended that a clear definition be produced: paras. 4.20, 8.5. Problems caused by the lack of a clear understanding of what constitutes ‘child abuse’ are long-standing: pp. 82-83, Plotnikoff and Woolfson, 1995.

police may also seek indirect information about witness needs from their court witness supporter, relatives, friends or carers (provided that they are not party to the crime under investigation) or other agencies. The CPS or legal representative should seek such information if it is not provided, as this will be necessary for pre-trial planning and decision-making at the plea and case management hearing. The defence lawyer has a similar responsibility (section 5.34). Information about the witness's needs and wishes should be available to the person preparing the witness for court. Depending on who the supporter is, this may include items listed in forms MG2, MG6 and the back of the MG11 (section 5.63, *Achieving Best Evidence*, CJS, 2007).

The children's checklist is for use by witness care officers dealing with any case involving child witnesses. This checklist is not exhaustive. Nor will each bullet point be appropriate for every child. At all times it must be remembered that there is a need for a tailored needs assessment for each witness as an individual. Question 1: Have the MG2/6/11 forms been fully completed? (*Witness Care Unit Child Witness Checklist and Explanatory Note*, Office for Criminal Justice Reform, 2007c).<sup>25</sup>

The structured needs assessment needs to be completed close after the first court appearance (p 5, *Criminal Justice – Simple, Speedy, Summary: Witness Care Unit Briefing Notes*, Office for Criminal Justice Reform, 2007a).

This follow-up assessment [by the witness care officer] will explore concerns regarding intimidation; communication; conditions or physical disabilities affecting court attendance (including hearing or sight problems); religious or cultural needs; help with childcare or other dependants; a pre-trial court visit; and transport on the day of trial. This is a further opportunity to identify whether you may be a vulnerable or intimidated witness and what special or other measures would help you give best evidence (Standard 10, *The Witness Charter*, CJS, 2008b).

The aims of assessment include ensuring that the child's needs are addressed at trial, that the child's wishes are taken into account, and that support tailored to the child's needs is offered ahead of time. Interviews were conducted with the parents of 172 children:

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<sup>25</sup> This checklist was distributed to WCUs in April 2005 and in an updated version in November 2007. Its status is advisory only. It was not possible to determine whether the checklist was used by WCUs participating in the study.

- 145 (84 per cent of 172) identified some aspect of their child's needs and wishes as having been discussed with them by criminal justice personnel<sup>26</sup>:
  - 70 (48 per cent of 145) said this was done by a WCU in England and Wales
  - 55 (38 per cent) by a witness supporter
  - 53 (37 per cent) by a police officer
  - eight (6 per cent) by others, including prosecutors and ushers.
- 27 (16 per cent) said no one discussed their child's needs and wishes with them (11 of these young witnesses were aged 16 and over so it is possible that their needs and wishes were discussed with them directly and not with their parent).

The MG11 form completed by the police<sup>27</sup> asks whether a witness is willing and likely to attend court; has any special needs; and requires additional support as a vulnerable or intimidated witness. An affirmative answer directs the officer to submit an MG2 initial witness assessment with the statement, also addressing the witness's eligibility for special measures.<sup>28</sup> WCUs and police officers in England and Wales referred a total of 154 witnesses to this project, and identified a subset of these as having special needs or requiring extra support:

- Special needs were flagged on the police MG11 form or in some other way for 54 witnesses (35 per cent of 154).
- The need for additional support was flagged on the police MG11 form or in some other way for 50 witnesses (32 per cent).<sup>29</sup>
- A police MG2 form was completed for 86 children (56 per cent).

Although the WCU young witness checklist asks whether MG11 and MG2 forms have been completed, some WCUs advised that the MG11 (the reverse side of the written witness statement form) was seldom completed if the police make a visually recorded interview with the witness. These WCUs also suggested that completion of MG2s for eligible children was inconsistent, or at least that witness care officers did not routinely have access to them.

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<sup>26</sup> In their responses to this question and others, it is possible that some parents did not recall all such discussions. It is also possible that some confused organisation roles, including those of the witness care officer and witness supporter, although interviewers attempted to clarify this at interview.

<sup>27</sup> The Police Service of Northern Ireland has introduced forms equivalent to the MG11 and MG2.

<sup>28</sup> HM CPS Inspectorate identified some unsatisfactory performance in relation to the initial review of witness needs and on-going consideration of these needs: para 5.8, *Safeguarding Children*, 2008.

<sup>29</sup> Action taken in response to this flag is described in section 5.3 below.

Parental interviews were conducted for 148 of 154 young interviewees who were referred to this project by WCUs and police officers. Information on project referral forms and from CPS<sup>30</sup> concerning assessment of these 148 young witnesses was compared with what parents said about these children. The results revealed a disparity between issues or problems identified by parents and awareness of these matters on forms completed by WCUs and police officers:

**Table 1 Awareness of children's needs**

	Parent who said this issue applied to their child	Parent who said someone* discussed this issue with them	Referring organisation forms indicated they were made aware of this issue
Health or development issues	34	11	10
Short attention span	8	1	1
Worries about going to court	105	17	51
Intimidation	43	7	18
Stress symptoms about going to court	48	8	9
Religious or cultural needs	3	2	0

\* Witness care officers, police officers or supporters

### 2.2.1 Passing on information to inform criminal justice decision-making

We will make sure we find out about any extra help that children may need so they can give their best evidence (p 6). Where defendants plead not guilty, the witness care officer will do a full needs assessment to find out if the child victims or witnesses need any particular help and have any worries, and use this information to decide how we can best support children to give their best evidence (p 12, *Children and young people policy*, CPS, 2006).

Witness care officers also provide practical help for witnesses, such as liaison with the courts over any disabilities or other special needs (section 5.31). Lawyers at pre-trial hearings should have full instructions, including up-to-date information from and about the witness, eg mental or medical condition and witness attendance times. Judges may be expected to ask for this information if not provided (sections 6.2, 6.7). Both prosecution and defence legal

<sup>30</sup> CPS provided information from 13 WCU witness assessment forms to supplement information from project referral forms. These appeared to be standard assessment adult forms which did not reflect the details covered on the WCU child witness checklist (Office for Criminal Justice Reform, 2007c).

representatives are expected to inform the judge of the special needs or requirements of any vulnerable or intimidated witnesses they intend to call (section 6.14, *Achieving Best Evidence*, CJS, 2007).

Project referral forms asked WCUs and police officers if they were made aware of and passed on information in the categories in Table 1 above:

- WCUs and police officers were made aware of at least one such issue in relation to 92 witnesses (60 per cent of the 154 young people they referred to this project).
- WCUs and police officers passed on this information in relation to 83 witnesses (90 per cent of 92 children):
  - for 60 children (72 per cent of 83), it was communicated to witness support organisations<sup>31</sup>
  - for 46 (55 per cent), it was passed to the CPS
  - for 37 (45 per cent), it was passed to the police
  - for 20 (24 per cent), it was passed to the court
  - for two, it was passed to a counselling service.
- For nine children (10 per cent of 92) in five cases, WCUs reported being made aware of such information but not passing it on to other criminal justice personnel. This included worries about going to court (including reports of stress symptoms) for eight witnesses and concerns about intimidation for two witnesses.

A survey of 52 Witness Services and seven young witness support schemes provided information about 108 young witnesses interviewed for the project:

- Supporters had been alerted to 105 of these young witnesses (97 per cent of 108) before the day of trial.
- They considered that 52 of these young witnesses (50 per cent of 105) had particular concerns or needs about which supporters needed advance notice before the day of trial.
- Supporters received advance notice of *all* the needs of 35 young witnesses (67 per cent of 52 with particular concerns or needs) and to *some* needs of five such witnesses (10 per cent).

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<sup>31</sup> In the survey of support organisations, ten of 52 Witness Services (19 per cent) said someone from Victim Support or the Witness Service was based in their local WCU; 29 Witness Services and two of seven young witness schemes (53 per cent in all) had ongoing input into WCU staff training.

- Supporters did not receive advance notice of *any* of the needs of ten young witnesses (19 per cent of 52) with particular concerns.

For example, support organisations reported not receiving advance information about a 13 year-old with ADHD and dyslexia; an 11 year-old and a 16 year-old with learning difficulties; a 15 year-old with a form of epilepsy; and 17 year-old on medication for depression due to the offence.

Support organisations also reported being inadequately alerted in advance to the degree of anxiety presented by some young witnesses at trial and the requirements of some parents with mental health or other problems.

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### 2.3 Providing a “single point of contact”

Witnesses should be told who is responsible for keeping them informed. In most cases this will be the WCU or an alternative supporter. The *Victims’ Code* places a statutory obligation on some criminal justice agencies to keep victims, especially vulnerable or intimidated victims, informed at key stages in their case. The WCU will seek to achieve this standard for all witnesses by appointing each witness with a single point of contact, but where updates are given outside of the WCU it is good practice for the same individual to communicate this information to the witness (section 5.58, *Achieving Best Evidence*, CJS, 2007).

Each child witness will have his or her own witness care officer who will explain the reasons for any delays; organise help and support; explain what happened at court hearings; give the dates of future hearings; say when and where the child next needs to attend court; and explain the result of a trial or sentence (pp 11, 14, *Children and young people policy*, CPS, 2006).

Your WCU will provide a single point of contact<sup>32</sup> and tailor arrangements for your attendance at court to meet your personal circumstances (Standard 11, *The Witness Charter*, CJS, 2008b).

The witness care officer role involves liaising with witnesses by phone (or their preferred means of communication), almost never meeting witnesses face-to-face. Witness care officers seldom spoke to young witnesses directly, except for some older teenagers in the upper age range of this study. Families confirmed that witness care officer contact was almost always

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<sup>32</sup> See also: [www.cjsonline.gov.uk/victim/your\\_case/index.html](http://www.cjsonline.gov.uk/victim/your_case/index.html);  
[http://archive.cabinetoffice.gov.uk/opsr/local\\_service\\_projects/criminal\\_justice/no\\_witness/witness\\_care.asp](http://archive.cabinetoffice.gov.uk/opsr/local_service_projects/criminal_justice/no_witness/witness_care.asp)

with parents and carers. WCUs did not act as a “single point of contact” for *all* young witnesses:

- Of 74 WCUs participating in this project, 34 (46 per cent) reported dealing with all young witness cases but 40 (54 per cent) indicated that, while they dealt with some young witnesses<sup>33</sup>, specialist police units (such as child protection, family support, sex offence and serious crime units) retained direct contact with young witnesses in their own cases, or did so in sensitive cases.<sup>34</sup>
- While most participating WCUs dealt with all levels of court, five (7 per cent) served only Crown Courts and ten (14 per cent) served only magistrates’ and youth courts. Witnesses in Crown Court cases were dealt with initially by the magistrates’ court WCU then were transferred to the Crown Court WCU.
- At least one participating WCU divided its work internally by level of court, with witnesses transferred between officers if a trial went to the Crown Court.

Some of those involved in Crown Court cases commented on problems when they were transferred between WCUs:

“It was very difficult to get answers to questions. We were transferred between two different WCUs and mum complained to them. You have to ask for everything, nothing is handed to you. This is very difficult, especially when you are stressed. It would’ve been nice to be contacted at the start and have someone say, ‘If you have any questions, call me’.” (Carol, 15)

“The magistrates’ court WCU was OK and sent us letters but once it went to the Crown Court we were completely in the dark about the outcome of hearings etc. The Crown Court WCU didn’t tell us about the change of trial date.” (Parent of Janice, 14)

“I made a point of building up a relationship with the witness care officer [concerning the appeal] because I drove it. I realised from our experience with the WCU for the youth court that we got messed about and didn’t get any useful information about what was going to happen at the trial. They didn’t even call to let me know it was definitely going ahead on the

<sup>33</sup> This division of responsibilities between WCUs and police specialist units was not always governed by a local protocol. For example, London WCUs have a protocol with Metropolitan Police serious sex offence units but not with child protection units. Witness Service managers in London indicated that services they were able to provide to young witnesses varied significantly because of the uneven identification and referral of young witnesses.

<sup>34</sup> The Police/CPS Victim and Witness Care Delivery Unit advised that even where WCUs say they deal with all witnesses, there will always be instances where direct contact is retained by the police, eg in the case of protected witnesses and certain key or significant witnesses handled by major incident teams.

Monday – I had to call them as I didn't want to go into the weekend not knowing.” (Parent of Katy, 17)

Information provided to victims and witnesses about the criminal justice process and the way they are kept informed of case progress has a direct impact on the way they rate their experience (Allen et al, 2005 and Whitehead, 2001). Interviews were conducted with the parents of 172 young witnesses. They were asked about information they received from criminal justice personnel:

- Parents of 152 children (88 per cent) had been given a phone number to call if they had questions.
- 140 (81 per cent) said someone explained about the live link and other special measures.
- 128 (74 per cent) said someone kept them informed about what was happening in the case (for example, about the defendant's bail conditions) before the day of trial.
- Seven (4 per cent) in different cases (one in Northern Ireland and six in England) said that no one gave them a phone number to call, explained about special measures or kept them informed about what was happening in the case.
- 142 (83 per cent) said someone told them about the case outcome.<sup>35</sup>

Parents recalled that information about various aspects of the process was provided by the following:

**Table 2 Who provided information to parents?**

Source of information	Before trial	After trial
Witness Care Unit (E & W)	121 (75%)	93 (58%)
Police officer	88 (51%)	52 (30%)
Witness supporter (Witness Service or young witness scheme)	58 (34%)	37 (22%)
Prosecutor/prosecution staff	13 (8%)	13 (8%)
Unsure of role	5 (3%)	5 (3%)

Note: Percentages relate to 172 witnesses except for WCUs, where they relate to 161 young witnesses whose parents were interviewed, and whose cases were heard in England and Wales.

<sup>35</sup> Many parents also found out because they were at court when the case ended.

Many interviewees praised the quality of contact with their witness care officer, some because the officer called often and others simply because the officer was available when they called:

“The witness care officer was brilliant. I was on the phone nearly every day, I haven’t met her, it was just on the phone.” (Simone, 13)

“The WCU was brilliant: we had lots of phone calls.” (Parent of Sean, 16)

“The witness care officer was really good, always on the end of a phone. She phoned up a few times, checking if there was anything we wanted to ask.” (Parent of Sam, 15)

Others complained about not being kept informed:

“It would have been good if the police could have given me a number to call if I had any questions.” (Paul, 16)

“We would have liked a single point of contact that knew what was going on. It was us doing the ringing.” (Parent of Jess, 16)

“We had an initial letter and phone call and then months passed and then another letter came to say they would be in touch but they didn’t get in touch.” (Parent of Lisa, 16)

Being updated about changes to bail conditions was a particular concern:

“We were sent his bail conditions but we weren’t told when they were changed to allow him to go back to work down the road. [Our daughter] saw him and was hysterical. We called the police and the officer hadn’t been told. We never got a letter from the WCU saying they’d been changed. When we got other letters from the WCU, they still had the old bail conditions. This drove us mad.” (Parent of Susan, 17)

Despite such problems, WCUs are making an important contribution to the flow of information to families of young witnesses, with more parents acknowledging receipt of information from a WCU than from any other source.

In Northern Ireland, responsibility for warning witnesses to attend court lies with the Public Prosecution Service and the police (WCUs have not been introduced outside England and Wales). Lack of ongoing information about case status was a problem for several families:

“I didn’t even know it was going to court. We told the police in September 2007 and they didn’t tell us about the trial until May 2008, a month before the trial.” (Matthew\*, 15)

“It should have been dealt with faster. We were afraid it wouldn’t go to court at all – it was over a year before we even heard it was going to court.” (Rachel\*, 15)

“I would have liked more information. I went to all the interim hearings at court because nobody told me we would be notified of the trial date. I went fortnightly. I had to get child-minding. If you are in the public gallery you can’t always hear and I had to ask someone what happened. I thought I had to keep running back and forward [to court hearings] to find out the contest date. I came home drained. I hated it.” (Parent of Samantha\*, 16)

## 3 Expediting young witness cases

### 3.1 Priority listing of young witness cases

Priority should be accorded to the trial of young defendants and cases where there are vulnerable or young witnesses (Annex A, Section 16 of the Crown Court Manual, 2[b], *Adult Criminal Case Management Framework*, CJS, 2008a).<sup>36</sup>

We will arrange to have any case involving a child witness heard as soon as possible (*Courts Charter*, HMCS, 2007a; p 11, *Every Witness Matters: Employee Handbook*, HMCS, 2005).

As a basic principle, in cases involving children either as victims or as witnesses, delay should be kept to a minimum in order to reduce, so far as is possible, the levels of stress and worry about the process that the child may feel. From an evidential point of view, the less delay there is the more likely it is that the events will be fresher in the child's memory (para 84, *Safeguarding Children*, CPS, 2008).

CPS will try to get the earliest possible trial date and have the date fixed in advance (p 11, *Children and young people*, CPS, 2006).

In setting the trial date, the Witness Care Unit or defence lawyer will ask the court to seek to meet your needs as a witness, including trying to ensure that you are not required to attend court on a date on which you have an important commitment unless there are exceptional circumstances (Standard 12). If you are a vulnerable or child witness, the prosecution or the defence lawyer will ask the court to give the case priority in respect of times and dates of hearings. The defence lawyer may not ask the court to give the case priority if it is not in the best interests of the defendant (Standard 13, *The Witness Charter*, CJS, 2008b).

Reducing delay between reporting and trial is crucial to ensuring that a child is able to give the most complete and consistent testimony possible (Bala et al, 2005). Research over a 20-year period has demonstrated the negative impact of pre-trial delay on children's mental health (Plotnikoff and Woolfson, 2007a; 2004; Sas et al, 1991, 1993; Watkins, 1990; Glaser and Spencer, 1990; Runyan et al, 1988; and Tedesco and Schnell, 1987). Just over half of the

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<sup>36</sup> Section 5.82, *Achieving Best Evidence* (CJS, 2007) inaccurately quotes Annex A of the Crown Court Manual as section 14, stating that child witness cases are to be given "the earliest available fixed date and that trial dates must only be changed in exceptional circumstances". These words do not appear in section 16, the relevant part of the Crown Court Manual: <http://ccmf.cjsonline.gov.uk/adult/crown/appendices/a/>

young people in this study described symptoms of stress and other difficulties in the pre-trial period (see section 10.3 below).

In 2004, the government announced that it would not implement the provision on pre-trial cross-examination in section 28, Youth Justice and Criminal Evidence Act 1999.<sup>37</sup> This decision was based in part on a briefing paper suggesting that “case processing [of young witness cases] has dramatically changed in recent years... apparently proving effective in bringing serious offences to trial within months” (para 107, Birch and Powell, 2004).

Many witnesses mentioned the impact of delay:

“I was sad, nervous and scared while I was waiting to go to court.” (Joan, age 10, a witness in a trial that took place 24 months after the offence was reported).

The parent of another ten-year old said the child was bedwetting in the run-up to each of three trial dates. The first trial should have been March but did not take place until December.

Delay sometimes resulted in other witnesses dropping out:

“Cases should come to court quicker [there was 17 months between reporting the offence and the trial]. We lost my other witnesses because it all took so long. In the end, only me and my sister told what happened.” (Calum, 17)

CPS policy refers to the desirability of young witness cases receiving a fixed trial date: this commitment has been dropped from court listing policy.<sup>38</sup> While it was not possible to determine how project cases were listed, several families mentioned receiving only one or two weeks or even a few days’ notice of the trial, suggesting these trials may not have been originally listed to a fixed date.

A Witness Service supporter mentioned a child brought to court to testify in the afternoon following an exam in the morning and another who missed a GCSE because of being required to give evidence. A few young witnesses mentioned not being asked for their available dates, resulting in some trials being listed at exam time:

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<sup>37</sup> The question whether section 28 should be retained for use by the most vulnerable witnesses was revisited in the Office for Criminal Justice Reform consultation paper *Improving the Criminal Trial Process for Young Witnesses*, 2007b. Experiences from other jurisdictions on this point are discussed in chapter 8 of Hoyano and Keenan, 2007.

<sup>38</sup> *Guidelines for Crown Court Listing* (in place until the introduction of the *Criminal Case Management Framework*, 2004) said “child witness cases should always be given the earliest available fixed date: paras. 8.6, 12.3, Lord Chancellor’s Department, 1994. See also para 14.3, *Statement of National Standards of Witness Care in the CJS*, Trials Issues Group, 1996.

“The appeal was delayed and came at my exam time in May, even though we were told it would be over in April. We were never given the opportunity to provide our convenient dates.” (Katy, 17)

“At the youth court we waited all day and were then sent away. No one explained why. They asked the judge if he’d go on past 4 pm to take our evidence but he said he had to leave. I had exams. The next day, the day I gave evidence, the prosecutor had to get the judge’s permission for me to leave and take an exam in the afternoon.” (Carol, 15)

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### 3.1.1 Time to trial

The time to trial was examined for young witnesses giving evidence in the study.<sup>39</sup> Dates when offences were reported to the police, dates of the defendant’s first court appearance and trial dates were provided by organisations referring young witnesses to the project but there were many gaps. Parents were asked how long it was between reporting the offence to the police and the trial. Their answers were used in the calculations below of the time between reporting the offence and trial, where dates were not provided by referring organisations.

In magistrates’ or youth court in England and Wales:

- The average time for 90 young witnesses between *reporting offences* and trial was seven months (ranging from one to 19 months).
- The average time for 87 young witnesses between the *defendant’s first court appearance* and trial was three months (ranging from one to 16 months).

In the Crown Court in England and Wales:

- The average time for 61 young witnesses between *reporting offences* and trial was around 13 months (ranging from six to 67 months).
- The average time for 55 young witnesses between the *defendant’s first court appearance* and trial was around eight months (ranging from three to 30 months).

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<sup>39</sup> This excludes four children who gave evidence in Newton hearings.













































































































































































































































































































































